

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Petitions for Reconsideration by)
)
Lake Pend Oreille School District) File Nos. SLD-666055, 736611
Ponderay, ID)
)
Trillion Partners, Inc) File Nos. SLD-666055, 736611
Austin, TX)
)
Schools and Libraries Universal Service) CC Docket No. 02-6
Support Mechanism)

ORDER ON RECONSIDERATION

Adopted: February 12, 2013

Released: February 12, 2013

By the Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

1. Consistent with precedent,¹ we dismiss a petition for reconsideration filed by Lake Pend Oreille School District (LPOSD) and another filed by Trillion Partners, Inc. (Trillion) (together, Petitions for Reconsideration)² of a decision by the Wireline Competition Bureau (Bureau) finding that LPOSD

¹ See, e.g., Requests for Review of Decisions of the Universal Service Administrator by Bloom High School District 206, Chicago Heights, Illinois et al., CC Docket No. 02-6, Order and Order on Reconsideration, 27 FCC Rcd 14029 (Wireline Comp. Bur. 2012); Petition for Reconsideration by North Central Ohio Computer Cooperative, CC Docket No. 02-6, Order on Reconsideration, 27 FCC Rcd 13371 (Wireline Comp. Bur. 2012); Requests for Review of Decisions of the Universal Service Administrator by Marana Unified School District et al., CC Docket No. 02-6, Order, 27 FCC Rcd 1525, 1529-1530, para. 8 (Wireline Comp. Bur. 2012) (Marana) (finding that the applicant and Trillion had engaged in improper communications, thereby violating the Commission’s competitive bidding rules); Schools and Libraries Universal Service Support Mechanism, Third Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket No. 02-6, 18 FCC Rcd 26912, 26939, para. 66 (2003) (stating that a fair and open competitive bidding process is critical to preventing waste, fraud, and abuse of program resources); Request for Review of Decisions of the Universal Service Administrator by MasterMind Internet Services, Inc.; Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order, 16 FCC Rcd 4028, 4033, para. 10 (2000) (MasterMind Internet Services) (finding that all potential bidders and service providers must have access to the same information and must be treated in the same manner throughout the procurement process); Request for Review of the Decision of the Universal Service Administrator by Dickenson County Public Schools, Clintwood, Virginia; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc., CC Docket Nos. 96-45, 97-21, Order on Reconsideration, 17 FCC Rcd 15747, 15750, para. 8 (Wireline Comp. Bur. 2002) (“A service provider’s ineligibility to provide discounted telecommunications does not eliminate the possibility that, acting as contact person, the provider will prevent an open and fair bidding process for those services”); Requests for Review of the Decisions of the Universal Service Administrator by Approach Learning and Assessment Center et al.; Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 22 FCC Rcd 5296, 5303, para. 19 (Wireline Comp. Bur. 2007) (finding that service provider participation may have suppressed fair and open competitive bidding).

² Letter from Henry M. Rivera, Counsel to Trillion Partners, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Mar. 20, 2012) (Trillion Petition for Reconsideration); Letter from Stephen Adams, Counsel to Lake Pend Oreille School District, to Marlene H. Dortch, Secretary, Federal (continued...)

violated the Commission's competitive bidding rules for the E-rate program (more formally known as the schools and libraries universal service support program).³ The petitions seek reconsideration of the Bureau's *Charlton County Order*, to the extent it denied LPOSD's and Trillion's (together, Petitioners') underlying requests for review of decisions made by the Universal Service Administrative Company (USAC). For the reasons explained below, we dismiss the Petitions for Reconsideration as procedurally defective. In addition, as an alternative and independent basis for the decision, we affirm our previous denial of the Petitioners' requests for review on the merits.

2. *Dismissal.* In its decisions, USAC found that Petitioners violated the E-rate program's competitive bidding rules by, *inter alia*, engaging in numerous discussions prior to and during LPOSD's competitive bidding process, thereby tainting the overall process.⁴ Petitioners sought review of USAC's decisions, arguing that, among other reasons, there was a fair and open bidding process, that their communications did not violate the Commission's rules, and in the alternative, that a waiver of the rules was warranted because after learning of USAC's concerns about its communications with Trillion, LPOSD attempted to find a different service provider by posting a new Form 470, but no other service providers bid on its request for services.⁵ Based on our review of the record, we affirmed USAC's decision and denied the request for waiver.⁶ In seeking reconsideration of our decision, Petitioners have merely reiterated their previous assertions.⁷ We have already fully considered and rejected Petitioners' arguments. Therefore, we dismiss the Petitions for Reconsideration pursuant to section 1.106(p)(3) of the

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Communications Commission, CC Docket No. 02-6 (filed Mar. 20, 2012) (LPOSD Petition for Reconsideration); Letter from Mark J. Palchick, Counsel to Lake Pend Oreille School District, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Jul. 12, 2012).

³ *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Charlton County School System et al.; Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-658765 et al., CC Docket No. 02-6, Order, 27 FCC Rcd 2010 (Wireline Comp. Bur. 2012) (*Charlton County Order*) (finding that seven petitioners, including LPOSD and Trillion, the Petitioners, violated the Commission's competitive bidding requirements and that the Petitioners did not demonstrate that good cause exists to justify a waiver of the Commission's competitive bidding requirements).

⁴ See Letter from USAC, Schools and Libraries Division, to Scott Smyth, Trillion Partners, Inc., at 11-12 (dated Sept. 28, 2010) (regarding LPOSD FY 2010 FCC Form 471 application number 736611, funding request numbers (FRN) 1990460 and 2019726); Letter from USAC, Schools and Libraries Division, to Scott Smyth, Trillion Partners, Inc., at 9-10 (dated Sept. 29, 2010) (regarding LPOSD FY 2009 FCC Form 471 application number 666055, FRNs 1818465, 1818472).

⁵ See Letter from Stephen Adams, Counsel to Lake Pend Oreille School District, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6, at 10, 18 (filed Nov. 12, 2010) (LPOSD Appeal); Letter from Trillion Partners, Inc. to Federal Communication Commission, CC Docket No. 02-6, at 2-8 (Nov. 19, 2010) (Trillion Appeal).

⁶ See *Charlton County Order*, 27 FCC Rcd at 2011, para. 1.

⁷ See, e.g., LPOSD Appeal at 16 (filed Nov. 12, 2010) ("There is nothing in the communications between LPOSD and Trillion . . . which allowed Trillion to provide a better bid than Conterra, or any other entity. The communications from Trillion are little more than encouragement to LPOSD to fill out the Form 470 so that Trillion could submit a bid."); *id.* at 12 ("all bidders had access to equal information"); LPOSD Petition for Reconsideration at 11 ("Though there were a number of communications between Jim Bangle and Trillion, ultimately these communications were insignificant"); Trillion Appeal at 2 ("communications between both parties were in full compliance with all applicable (FCC, state, and local) competitive bidding requirements at the time"); Trillion Petition for Reconsideration at 4 ("competitive bid process remained open and fair and its integrity was unharmed by the allegedly impermissible participation by Trillion"); *id.* at 6 ("The communications between Trillion and the District prior to the posting of the Form 470 did not violate the competitive bid rules").

Commission's rules, which allows the Commission to dismiss petitions for reconsideration that rely on arguments that have been fully considered and rejected by the Commission within the same proceeding.⁸

3. *Denial.* In addition, although it is not necessary to reach the merits of the Petitions for reconsideration, independently, and in the alternative, we deny the Petitions for Reconsideration on the merits. In denying LPOSD and Trillion's appeals, the *Charlton County Order* relied on Commission rules and precedent which require applicants to provide bidders access to the same information and equal treatment during fair and open competitive bidding processes.⁹ For example, the *Charlton County Order* reiterated the established proposition that all potential bidders and service providers must have access to the same information and must be treated in the same manner throughout the procurement process.¹⁰ This is consistent with the Bureau's more recent decisions. For example, in *Marana*, the Bureau found that the applicant violated the Commission's competitive bidding rules by providing the service provider with information about the needs of the school district that it did not provide to other prospective bidders, and by advising only one service provider about what to include in its bid.¹¹ Similarly here, USAC found that LPOSD provided Trillion with detailed information about its needs¹² and worked with Trillion on a proposal prior to and during the competitive bidding process.¹³ Thus, consistent with precedent, the

⁸ See 47 C.F.R. § 1.106(p)(3).

⁹ See *Charlton County Order*, 27 FCC Rcd at 2010, para. 1; 47 C.F.R. § 54.503(a). See also 47 C.F.R. § 54.504(a) (2009); *supra* n.1. In this order, we describe the requirements of the E-rate program as they currently exist, but because the order involves applications from funding years 2009 and 2010, and the Commission has re-organized the E-rate rules since then, where the Commission's codification of the rules in the Code of Federal Regulations has changed, we also cite to the relevant rules as they existed during the relevant funding years.

¹⁰ See *Charlton County Order*, 27 FCC Rcd at 2010, para. 1 n.1. See also *MasterMind Internet Services*, 16 FCC Rcd at 4033, para. 10.

¹¹ See *Marana*, 27 FCC Rcd at 1530, para. 10.

¹² See, e.g., Email from Jim Bangle, Technology Director, LPOSD, to David White, Trillion Partners, Inc. (dated Dec. 27, 2005) (answering questions posed by Trillion: "How much Internet do you need – 3 MB? 1. Yes, let's start with that. I'd like to see a price list for bandwidth? 2. Check into DSL from Verizon into 2 locations, preferably Sandpoint High and the DO. 1. If not the DO, then Farmin/Stidwell. 2) Do you want Managed Firewall services for Internet (its erateable)? 1. Yes please. 3) How many email accounts do you want? 1. I have about 20 student email accounts. It's not a general function supported. Only newspaper editors, etc. 2. Staff accounts: 600 (included accounts above. Real number is 557) 4) How many email accounts need Spam Filtering? 1. All above. 5) How may PC's/Mac's need Content Filtering? 50 Macs, 1300 PCs 2. 13 Entities! Board meetings: These are probably the only dates of interest to us at this time: Get him the board meeting dates. January 24, 2006 – FAST February 14, 200[6] – SHS; February 28, 2006 – SMS); Email from Jim Bangle, LPOSD, to Kate Stetzner, Trillion Partners, Inc. (dated Aug. 3, 2005) (stating "We're at about 1200 machines, now, on our network"); Email from Jim Bangle, LPOSD, to Kate Stetzner, Trillion Partners, Inc. (dated May 17, 2005) (stating "It is not. It's currently on the wireless backbone as well. SHS, SMS, and SpecServ each have their own links. However, there is fiber between SHS and SMS. We can combine those."); Email from Jim Bangle, LPOSD, to Kate Stetzner, Trillion Partners, Inc. (dated May 11, 2005) (stating "First, you can kill off the Charter school as a site. We do not run their network; so, we don't pay for their connectivity either. Here are the extra addresses you're looking for: Juvenile Detention Services . . . Facilities . . . Special Services . . . Lake Pend Oreille Alternative High School . . . That's 15 sites and that's how we'd leave it with your services."); Email from Jim Bangle, LPOSD, to Kate Stetzner, Trillion Partners, Inc. (dated May 3, 2005) (providing details about InterMax service "WAN Connections: 13.3 megabit wireless connections; Contract term & Expiration: 1 Year, June 30, 2006; Cost: 327.00/mo.; Bandwidth: 3 mbps; Network OS: Windows 2000/2003 Server; Topology (ring vs. star): Star; Hub Location: Ponderay, ID (Co-Op Building); Notes: Each site has 3mbps burst to mountain. All hub to single 3mbps out").

¹³ See, e.g., Email from Roger Clague, Trillion Partners, Inc. to Jim Bangle, LPOSD (stating "I enjoyed meeting with you and Chris [Lake Pend employee] . . . I have prepped our engineers, and feel quite positive about being able to get to the additional hard to reach sites . . . could you or Chris get the physical locations of the Radio Station tower to the NW of the District and possibly the location of the towers on Gold Hill so that we can pr[e] – engineer

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Bureau correctly found in the *Charlton County Order* that LPOSD had provided information to Trillion that was not available to other bidders and therefore conducted a competitive bidding process in violation of Commission rules and precedent.¹⁴ While Trillion argues that the *Charlton County Order* failed to provide a reasoned analysis,¹⁵ we find that our denial was fully supported by cited precedent which clearly prohibits the actions taken by Petitioners here.

4. Petitioners agree that the E-rate competitive bidding process should be fair and open, and they do not dispute that they had communications with each other. Petitioners instead claim the communications were limited in scope and involved individuals with no control over the award of the contract.¹⁶ We disagree with Petitioners' characterization of the breadth and nature of the communications. The record demonstrates that LPOSD and Trillion had more than 50 contacts before and during the competitive bidding process. Petitioners discussed subjects that provided Trillion with information unavailable to other potential bidders, including such subjects as LPOSD's upcoming FCC Form 470 and its exact technical requirements, and existing infrastructure and solutions for remote school sites.¹⁷ Petitioners also had many discussions about revisions to Trillion's proposal for the district.¹⁸ Moreover, the communications were between Trillion and LPOSD's Form 470 contact person who also evaluated the bids and had influence in LPOSD's process.¹⁹

5. LPOSD attempts to justify its extensive communications with Trillions by arguing that its request for proposals (RFP) was made available to all bidders and that all bidders had access to personnel.²⁰ However, no evidence in the record documents LPOSD sharing all of the information it

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and determine what would be involved in using them to reach your more remote sites.”); Email From Jim Bangle, LPOSD, to Roger Clague, Trillion Partners, Inc. (dated June 25, 2005) (stating “Chris was working on this exact thing this morning with a buddy of his who owns and licenses towers and tower space. He will be putting you in touch with this person directly so that there are no middlemen in the mix as your engineers discuss exact pole locations and physical options. I have been crunching your speculative numbers just a little bit, and it looks as though we would be adding only about 10k to our annual post-eRate billing, which I know I can pick up on leveraged cost savings alone. So this will not be a hard sell. Let’s get it RIGHT, and then let’s plan to get it done.”); Email from Kate Stetzner, Trillion Partners, Inc. to Jim Bangle, LPOSD (dated June 30, 2005) (stating “I believe we should be good to go in the next few weeks with a final proposal . . . we can plan to meet with you in July to discuss finalization and board approvals etc.”); Email from Jim Bangle, LPOSD, to Kate Stetzner, Trillion Partners, Inc. (dated May 23, 2005) (stating “Thank you all for the great experience last week. I’m praying we can make this happen. I know that if we can actually do this that there are at least two other bigger districts in our area who will JUMP on it. But, I’d like to be the pilot as we are in such great pain and can’t centralize our databases, etc.”); Email from Kate Stetzner, Trillion Partners, Inc., to Jim Bangle, LPOSD, (dated June 8, 2005) (stating “Will you look over this draft and be sure this is what you want?”); Email from Jim Bangle, LPOSD, to Kate Stetzner, Trillion Partners, Inc. (dated June 8, 2005) (stating “So assuming that these targets can all be hit from the locations as designed, has there been any consideration put to getting a point on top of Gold Hill on the south side of the Long Bridge? From Gold, we could reach Clark, Fork and Hope, and *maybe* even Southside. Therefore towers up there now being used for other things such as cell.”).

¹⁴ See *Charlton County Order*, 27 FCC Rcd at 2010, para. 1.

¹⁵ See Trillion Petition for Reconsideration at 3.

¹⁶ See LPOSD Petition for Reconsideration at 4, 5; Trillion Petition for Reconsideration at 5, 6, 8.

¹⁷ See *supra* nn.12 & 13.

¹⁸ See *supra* n.13.

¹⁹ See LPOSD Appeal, Declaration of Lisa Hals in Support of Request for Review, Exhibit 7, Form 470 Lake Pend Oreille School District #84 (posted Dec. 16, 2005) (listing Jim Bangle as LPOSD contact); *id* at Exhibits 3-4 (Bid evaluation sheets for Trillion and Conterra, Inc. from Jim Bangle to District Office Administration).

²⁰ LPOSD Petition for Reconsideration at 10-12.

provided to Trillions with other potential bidders. Instead, the record is clear that the numerous and substantive contacts between the Petitioners show that LPOSD provided Trillion with access to information and selective treatment that was not provided to other bidders, thereby violating the Commission's competitive bidding requirements. Furthermore, LPOSD has failed to present special circumstances that would justify a waiver of the Commission's rules.²¹ We, therefore, affirm USAC's denial of E-rate funds to LPOSD and our *Charlton County Order*.

6. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3, 1.106, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 1.106 and 54.722(a), that the petitions for reconsideration filed by Trillion Partners, Inc. and Lake Pend Oreille School District ARE DISMISSED and as an independent and alternative basis for the decision, the Petitions for Reconsideration are also DENIED on the merits.

FEDERAL COMMUNICATIONS COMMISSION

Kimberly A. Scardino
Acting Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

²¹ Generally, the Commission's rules may be waived if good cause is shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.