

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Requests for Review of)	
Decisions of the)	
Universal Service Administrator by)	
)	
Central Islip Union Free School District)	File No. SLD-797739
Central Islip, NY)	
)	
Jennings School District)	File No. SLD-775302
Jennings, MO)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: March 12, 2014

Released: March 12, 2014

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

1. Consistent with precedent,¹ we grant requests from Central Islip Union Free School District (Central Islip)² and Jennings School District (Jennings)³ seeking review of decisions made by the

¹ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9029, paras. 480-81 (1997) (*Universal Service First Report and Order*) (subsequent history omitted) (requiring applicants to conduct a fair and open competitive bidding process when seeking support for eligible products and services); *Federal-State Joint Board on Universal Service; Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72, Report and Order and Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5425-26, para. 185 (1997) (stating that competitive bidding is a key component of the Commission's effort to ensure that universal service funds support services that satisfy the precise needs of an institution, and that the services are provided at the lowest possible rates); *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District et al.*; *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, 18 FCC Rcd 26407 (2003) (*Ysleta Order*) (stating that applicants may consider factors other than pre-discount prices, but price must be the primary factor in selecting the winning vendor); *Request for Review of the Decision of the Universal Service Administrator by Allendale County School District et al.*; *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 6109 (Wireline Comp. Bur. 2011) (*Allendale County Order*) (finding that the petitioners used price of eligible products and services as the primary consideration when selecting the winning vendor and therefore did not violate E-rate program rules).

² See Letter from Robert Snieciński, E-rate Advantage, LLC, on behalf of Central Islip Union Free School District, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Nov. 12, 2012) (Central Islip Request for Review) (regarding funding year (FY) 2011 FCC Form 471 application number 797739 (funding request numbers (FRNs) 2159271, 2159266, 2159281, 2159279, 2159273, and 2159262)).

Universal Service Administrative Company (USAC) under the E-rate program (more formally known as the schools and libraries universal service support program).⁴ In each decision, USAC found violations of the Commission's competitive bidding requirements.⁵ Based on our review of the record, we find that Central Islip and Jennings have demonstrated good cause to waive sections 54.503 and 54.511 of the Commission's rules.⁶ In particular, the record here persuades us that: (1) their competitive bidding processes were not compromised by their technical violation of the Commission's competitive bidding requirements; and (2) the outcomes of their vendor selection processes were otherwise consistent with the policy goals underlying the Commission's competitive bidding rules.⁷ Additionally, at this time, there is no evidence of waste, fraud or abuse in the record. Given these circumstances, we remand the underlying applications to USAC for further action consistent with this Order. To ensure that the underlying applications are resolved expeditiously, we direct USAC to complete its review of each application and issue an award or a denial based on a complete review and analysis no later than 60 calendar days from the release date of this Order. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the underlying applications.

2. Lastly, on our own motion, we waive section 54.507(d) of the Commission's rules with respect to the applications at issue and direct USAC to waive any procedural deadline, such as the invoicing deadline, that might be necessary to effectuate our ruling. We find good cause to waive section

(Continued from previous page) —————

³ See Letter from Addam Jones, Jennings School District, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Sept. 28, 2012) (Jennings Request for Review) (regarding FY 2011 FCC Form 471 application number 775302 (FRN 2102193)).

⁴ Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c).

⁵ See Letter from USAC, Schools and Libraries Division, to Robert Sniecinski, E-rate Advantage, LLC, on behalf of Central Islip Union Free School District (dated Sept. 19, 2012) (regarding FY 2011 FCC Form 471 application number 797739 (FRNs 2159271, 2159266, 2159281, 2159279, 2159273, and 2159262)) (concluding that Central Islip failed to use price as the primary factor in its vendor selection process); Letter from USAC, Schools and Libraries Division, to Donald Dietrich, E-rate Professionals, on behalf of Jennings School District (dated Aug. 12, 2012) (regarding FY 2011 FCC Form 471 application number 775302 (FRN 2102193) (finding that Jennings failed to select the vendor with the highest point score in its vendor selection process).

⁶ See 47 C.F.R. §§ 54.504, 54.511 (2009); see also 47 C.F.R. §§ 54.503, 54.511 (2011). 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. *Northeast Cellular*, 897 F.2d at 1166.

⁷ Among other things, we find that the outcomes of the competitive bidding processes here provided Central Islip and Jennings with the services that met their needs in a way that ultimately was likely to impose the least burden on the federal universal service fund, which is consistent with Commission objectives underlying the competitive bidding requirement. See, e.g., *Universal Service First Report and Order*, 12 FCC Rcd at 9029, paras. 480-81 (concurring with the Joint Board that schools and libraries should have flexibility "to take service quality into account and to choose the offering or offerings that meets their needs 'most effectively and efficiently,'" while also recognizing that "[a]bsent competitive bidding, prices charged to schools and libraries may be needlessly high, with the result that fewer eligible schools and libraries would be able to participate in the program or the demand on universal service support mechanisms would be needlessly great"). See also, e.g., *Allendale County Order*, 26 FCC Rcd at 6116-17, para. 11 (granting waiver of competitive bidding requirements under unique circumstances where, even though price was not the primary factor considered, the selected bidder had the lowest price for the services that actually met the school's needs).

54.507(d) because filing an appeal of a denial is likely to cause the petitioners to miss the program's subsequent procedural deadlines in that funding year.

3. 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 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that the Requests for Review filed by Central Islip Union Free School District and Jennings School District ARE GRANTED and the underlying applications ARE REMANDED to USAC for further consideration in accordance with the terms of this Order.

4. IS FURTHER 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 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that sections 54.503, 54.507(d) and 54.511 of the Commission's rules, 47 C.F.R. §§ 54.503, 54.507(d) and 54.511, ARE WAIVED for Central Islip Union Free School District and Jennings School District to the limited extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

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