

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Requests for Review of
Decisions of the
Universal Service Administrator by
Kings Canyon Unified School District
Reedley, CA, et al.
Schools and Libraries Universal Service
Support Mechanism
File Nos. SLD-482378, et al.
CC Docket No. 02-6

ORDER

Adopted: April 17, 2012

Released: April 17, 2012

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

1. Consistent with precedent,1 we grant two requests from Kings Canyon Unified School District ("Kings Canyon") and two from Trillion Partners, Inc. ("Trillion") seeking review of decisions made by the Universal Service Administrative Company (USAC) under the E-rate program (more formally known as the schools and libraries universal service support program).2 In each decision, USAC found violations of the Commission's competitive bidding requirements. Specifically, USAC found that Kings Canyon accepted gifts, including meals, conference expenses, and site trip expenses3 in violation of

1 See, e.g., Request for Review by Approach Learning and Assessment Center, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, 22 FCC Rcd 5296, 5303, para. 19 (Wireline Comp. Bur. 2007); 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); Request for Review by Dickenson County Public Schools, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, 17 FCC Rcd 15747, 15748, para. 3 (2002); Request for Review 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); see also Schools and Libraries Universal Service Support Mechanism and a National Broadband Plan for Our Future, Sixth Report and Order, 25 FCC Rcd. 18762 (2010) (Schools and Libraries Sixth Report and Order); Requests for Review of Decisions of the Universal Service Administrator by Dimmitt Independent School District, et al., Schools and Libraries Universal Support Mechanism, CC Docket No. 02-6, Order, 26 FCC Rcd 15581, 15587-88, para. 10 (Wireline Comp. Bur. 2011) (Dimmitt Order) (noting that in the Schools and Libraries Sixth Report and Order, the Commission amended section 54.503 of the Commission's E-rate program rules and adopted gift rules consistent with the gift rules applicable to federal agencies, which became effective January 3, 2011). As was the case in the Dimmitt Order, the current gift rules are not applicable in the instant matter because those rules became effective after the completion of the applicant's bidding process. Therefore, we review USAC's denials and recovery actions of the instant applications by determining whether the gifts at issue impeded a fair and open competitive bidding process.

2 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).

3 Kings Canyon visited an existing Trillion customer site to determine whether Trillion's services were feasible for Kings Canyon. See Letter from USAC, Schools and Libraries Division, to Ron Hudson, Kings Canyon Unified School District, at 2 (dated Jun. 4, 2010) (USAC June 4, 2010 Letter); see also Request for Review by Kings Canyon Unified School District, CC Docket No. 02-6, at 5 (filed Mar. 25, 2011) (Request for Review).

the Commission's rules.⁴

2. Based on our review of the record, we find that Kings Canyon conducted a fair and open competitive bidding process under Commission rules. The record demonstrates that Trillion offered the lowest price and presented a proposal that Kings Canyon believed accounted for the unique geography of its school district.⁵ Furthermore, we find that King's Canyon complied with the E-rate procedures and rules that existed at the time it selected Trillion as its service provider.⁶ At this time, we do not find evidence of waste, fraud and abuse in the record. Therefore, we conclude that Kings Canyon's receipt of the aforementioned gifts did not impede the competitive bidding process. We emphasize, however, that our analysis of this matter could be different under our current rules,⁷ because the Commission established clear guidelines on permissible gifts in the *Schools and Libraries Sixth Report and Order*, which became effective on January 3, 2011.⁸

3. On our own motion, we also waive section 54.507(d) of the Commission's rules and any USAC procedural deadline, such as the invoicing deadline, that might be necessary to effectuate our ruling.⁹ We find good cause to waive section 54.507(d) because filing an appeal of a denial is likely to cause petitioners to miss the program's subsequent procedural deadlines in the relevant funding years.

4. We therefore remand the underlying applications listed in the appendix 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 listed in the appendix and issue an award or a denial based on a complete review and analysis no later than 90 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. We direct USAC to discontinue recovery actions against those parties based on the denials that are addressed herein.¹⁰

5. 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), the requests for review filed by the petitioners listed in the appendix ARE GRANTED and the underlying applications ARE REMANDED to USAC for further consideration in accordance with the terms of this order.

⁴ See e.g., Letter from USAC, Schools and Libraries Division, to Emerson Tripoli, Kings Canyon Unified School District (dated Feb. 9, 2011) (regarding Kings Canyon Funding Year (FY) 2005 FCC Form 471 application number 482378); see also USAC June 4, 2010 Letter at 1-2.

⁵ See Request for Review at 2-4.

⁶ See 47 C.F.R. § 54.504 (2005); see also *Dimmitt Order*, 26 FCC Rcd at 15587-88, para 10.

⁷ See 47 C.F.R. §54.503(d) (2011); see also *supra* n.1. Consequently, we remind applicants that under our current rules, if they wish to participate in activities such as conferences and trips to view service provider offerings, they should consider doing so at their own expense.

⁸ *Schools and Libraries Sixth Report and Order*, 75 Fed. Reg. 75393 (Dec. 3, 2010); see also 47 C.F.R. §54.503(d) (2011).

⁹ 47 C.F.R. § 54.507(d) (requiring non-recurring services to be implemented by September 30 following the close of the funding year).

¹⁰ USAC shall cease recovery actions against both the applicant and the service provider, unless otherwise provided in this order.

6. IT 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 section 54.507(d) of the Commission's rules, 47 C.F.R. § 54.507(d), IS WAIVED for the petitioners listed in the appendix to the limited extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Trent Harkrader
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

APPENDIX

Petitioner	Application Number(s)	Funding Year	Date Request for Review Filed
Kings Canyon Unified School District Reedley, CA	482378	2005	Mar. 25, 2011
	537076	2006	Mar. 25, 2011
	568166	2007	Mar. 25, 2011
	602928	2008	Nov. 12, 2010
	672183	2009	Nov. 12, 2010
	715729	2010	Nov. 12, 2010
Trillion Partners, Inc. Austin, TX (Kings Canyon Unified School District Reedley, CA)	482378	2005	Mar. 11, 2011
	537076	2006	Mar. 11, 2011
	586166	2007	Mar. 11, 2011
	602928	2008	Nov. 9, 2010
	672183	2009	Nov. 9, 2010
	715729	2010	Nov. 9, 2010