

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of the
Decision of the
Universal Service Administrator by
New Orleans Public Schools
New Orleans, Louisiana
Federal-State Joint Board on
Universal Service
Changes to the Board of Directors of the
National Exchange Carrier Association, Inc.
Billed Entity No. 139233
File Nos. SLD-201456, 201463
201409, 201449,
201493
CC Docket No. 96-45
CC Docket No. 97-21

ORDER

Adopted: September 17, 2001

Released: September 18, 2001

By the Common Carrier Bureau:

1. Before the Common Carrier Bureau is a Request for Review filed by New Orleans Public Schools (New Orleans), New Orleans, Louisiana. New Orleans seeks review of a decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator). Specifically, New Orleans seeks review of the decision to deny its applications for Funding Year 3 discounted services on the grounds that New Orleans failed to demonstrate that it had the necessary resources to make effective use of those services. For the

1 Letter from Alonzo R. Luce, New Orleans Public Schools, to Schools and Libraries Division, Universal Service Administrative Company, filed May 25, 2001 (Request for Review).

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

3 These applications were filed by the Orleans Parish School District (Orleans Parish), New Orleans, Louisiana, but were subsequently handled by New Orleans. Although the precise distinction between the two entities is not entirely clear from the record, it appears that New Orleans itself used the two names interchangeably for purposes of the pending applications. See, e.g., Item 25 Certification Review Response to Supplemental Information Request, filed September 14, 2000 (Item 25 Supplemental Response), at 1 ("Enclosed is Orleans Parish School District (New Orleans Public Schools) response . . ."). Therefore, for purposes of simplicity and clarity, we will refer to the party handling the pending applications at all times as New Orleans.

reasons discussed below, the Bureau denies the Request for Review and affirms each of SLD's decisions.

I. BACKGROUND

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.⁴ The Commission's rules require that the applicant make a bona fide request for services by filing with the Administrator an FCC Form 470,⁵ which is posted to the Administrator's website for all potential competing service providers to review.⁶ After the FCC Form 470 is posted, the applicant must wait at least 28 days before entering an agreement for services and submitting an FCC Form 471, which requests support for eligible services.⁷ SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. Item 25 of the Funding Year 3 FCC Form 471 required applicants to certify that they had secured access "to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to make effective use of the services purchased as well as to pay the discounted charges for eligible services."⁸ These certifications are consistent with the requirements set forth in the Commission's May 8, 1997, *Universal Service Order* and the Commission's rules.⁹ In the *Universal Service Order*, the Commission

⁴ 47 C.F.R. §§ 54.502, 54.503.

⁵ Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470).

⁶ 47 C.F.R. § 54.504(b); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part, Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service First Report and Order* in part and reversing and remanding on unrelated grounds), *cert. denied, Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied, AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed, GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000).

⁷ 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 471).

⁸ See FCC Form 471 at Item 25.

⁹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9079, para. 577 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part in Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999), *motion for stay granted in part* (Sept. 28, 1999), *petitions for rehearing and rehearing en banc denied* (Sept. 28, 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds), *cert. denied in Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. granted in GTE Service Corp. v. FCC*, 120 S. Ct. 2214 (June 5, 2000), *cert. denied in AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed, GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000). See also 47 C.F.R. § 54.504(b)(1) (requiring applicants to provide information about equipment, services, training and other facilities in place to make use of the services requested) and 47 C.F.R. § 54.504(b)(2) (requiring

stated that applicants for discounts under the schools and libraries universal service support mechanism would be required to certify in their requests for services that “all of the necessary funding in the current funding year has been budgeted and will have been approved to pay for the ‘non-discount’ portion of requested connections and services as well as any necessary hardware, software, and to undertake the necessary staff training required in time to use the services effectively.”¹⁰ Further, in the *United Talmudical Academy Order*, the Commission affirmed SLD’s practice of reviewing the accuracy of applicants’ certifications regarding necessary resources, concluding that by so doing, SLD ensures compliance with statutory requirements and Commission rules and curbs waste, fraud, and abuse in the schools and libraries universal service mechanism.¹¹

4. New Orleans submitted eight separate Funding Year 3 applications for discounted services, Application Nos. 180143, 201409, 201425, 210440, 201449, 201456, 201463, and 201493, seeking discounted telecommunications service, Internet access, and internal connections for the public schools within the district.¹² The total non-discount portion of these requests that New Orleans would be responsible for paying was \$11,078,946.78.¹³

5. On July 24, 2000, SLD notified New Orleans’ contact person, Marilee Waguespack, by fax that New Orleans had been selected for an Item 25 “necessary resources” review.¹⁴ The letter directed New Orleans to submit documents that set forth the school district’s resource estimates and its ability to pay the non-discount portion of the services for which it was

that each applicant’s FCC Form 470 certify that “all of the necessary funding in the current funding year has been budgeted and approved to pay for the ‘non-discount’ portion of requested connections and services as well as any necessary hardware or software, and to undertake the necessary staff training required to use the services effectively . . .”). These requirements are referred to collectively hereinafter as the “necessary resources certifications.”

¹⁰ *Universal Service Order*, 12 FCC Rcd at 9079, para. 577.

¹¹ *Request for Review of the Decision of the Universal Service Administrator by United Talmudical Academy, 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, 15 FCC Rcd 423 (2000) (*United Talmudical Academy Order*).

¹² See FCC Form 471, Orleans Parish School District, App. No. 180143, filed January 18, 2000; FCC Form 471, Orleans Parish School District, App. No. 201409, filed January 18, 2000; FCC Form 471, Orleans Parish School District, App. No. 201425, filed January 18, 2000; FCC Form 471, Orleans Parish School District, App. No. 291440, filed January 18, 2000; FCC Form 471, Orleans Parish School District, App. No. 201449, filed January 18, 2000; FCC Form 471, Orleans Parish School District, App. No. 201456, filed January 18, 2000; FCC Form 471, Orleans Parish School District, App. No. 201463, filed January 18, 2000; FCC Form 471, Orleans Parish School District, App. No. 201493, filed January 18, 2000.

¹³ Letter from Schools and Libraries Division, Universal Service Administrative Company, to New Orleans Public Schools, dated April 27, 2001 (Administrator’s Decision on Appeal), at 2; see also Letter from Col. A. G. Davis, New Orleans Public Schools, to Schools and Libraries Division, Universal Service Administrative Company, filed December 20, 2000 (Appeal to SLD), at 4.

¹⁴ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Marilee Waguespack, Orleans Parish School District, dated July 24, 2000 (Item 25 Certification Review Letter).

seeking support.¹⁵ New Orleans submitted a response on August 25, 2000, which included a Funding Year 3 budget for the New Orleans Public Schools' Division of Information Technology (First Budget) and estimates of its expected resources in hardware, software, and other categories.¹⁶ The First Budget did not indicate a specific amount for discounted services, but indicated that \$4,945,554.55 was for "contracted services."¹⁷ For its hardware resource estimate, New Orleans indicated that it had 3,580 computers in Funding Year 2, and would be purchasing or obtaining 5,045 additional computers (5 each for 1009 classrooms) in Funding Year 3.¹⁸ New Orleans indicated that its estimated expenditures in Funding Year 3 for all non-eligible hardware, including printers, computers, fax machines, telephones, etc., would be \$5,769,800.¹⁹ It estimated that its expenditures for software in Funding Year 3 would be \$466,107.²⁰

6. On August 28, 2000, SLD faxed New Orleans a request for additional information.²¹ The faxed letter asked what portions of the budget would be used to pay the applicant's share of the service costs and whether there were additional dollars elsewhere in the school district budget that would also be used for this purpose.²² SLD also asked for any additional specific strategies or resources in the categories of hardware and software, along with supporting documentation.²³ SLD specified that New Orleans was required to submit the information requested within 7 days.²⁴

7. On September 14, 2000, New Orleans responded by submitting a revised budget (Second Budget), along with written responses to SLD's inquiries.²⁵ The Second Budget changed the amount of the "contracted services" line item from \$4,945,554.55 to \$16,207,834.14, and indicated that \$12.5 million of this money would be used for the "E-rate"

¹⁵ *Id.*

¹⁶ Item 25 Certification Review Response, filed August 25, 2000 (Item 25 Response).

¹⁷ Item 25 Response, New Orleans Public Schools, Division of Information Technology, Budget Request (First Budget); Item 25 Supplemental Response, at 2.

¹⁸ Item 25 Response, Item 25 Worksheet, Section II.

¹⁹ *Id.*

²⁰ Item 25 Response, Item 25 Worksheet, Section IV.

²¹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Orleans Parish School District, dated August 28, 2000.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *See* Item 25 Supplemental Response.

program.²⁶ With regard to hardware, New Orleans indicated that classrooms would all be capable of connecting 8 computers in each classroom to the Internet, and that in Funding Year 3, it planned to purchase five computers for each classroom in grades 3, 4, 6, and 7, a total of approximately 5000 computers.²⁷ New Orleans indicated that in general, each school determined for itself what software it would purchase.²⁸

8. On December 5, 2000, SLD issued a decision, finding that New Orleans had failed its Item 25 review and denying all affected applications.²⁹ SLD's decision relied on the original information, and concluded that this information failed to demonstrate that New Orleans would have the necessary hardware, software and financial resources.³⁰

9. On December 20, 2000, New Orleans filed an appeal with SLD.³¹ It asserted that the lateness of the supplemental submission in response to SLD's August 28, 2000 letter was due to the fact that Marilee Waguespack, its designated contact person, had been on medical leave.³² With its Appeal to SLD, New Orleans provided another version of the budget, listing a third figure for "contracted services" of \$9,952,679.10.³³ It also provided new descriptions of its hardware and software resources.³⁴ On February 6, 2001, New Orleans withdrew its appeal in connection with three of its applications, Application Nos. 201440, 201425, and 180143.³⁵

10. On April 27, 2001, SLD denied the appeal in full.³⁶ It found that the Second Budget's figure of \$16 million for "contracted services" was in conflict with the original information.³⁷ SLD concluded that, with nothing to explain or reconcile the discrepancy, it was still lacking assurance that New Orleans had secured access to sufficient funds to pay its share of

²⁶ Item 25 Supplemental Response, New Orleans Public Schools, Division of Information Technology, Budget Request (Second Budget).

²⁷ Item 25 Supplemental Response, at 2-3.

²⁸ Item 25 Supplemental Response, at 3.

²⁹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Orleans Parish School District, dated December 5, 2000 (Review Decision Letter).

³⁰ *Id.* at 1-2.

³¹ *See* Appeal to SLD.

³² *Id.* at 2.

³³ *Id.*, New Orleans Public Schools, Division of Information Technology, Budget Request (Third Budget).

³⁴ *Id.* at 2-3.

³⁵ Letter from Leroy Prout, New Orleans Public Schools, to Schools and Libraries Division, Universal Service Administrative Company, filed February 6, 2001.

³⁶ *See* Administrator's Decision on Appeal.

³⁷ *Id.*

discounted service.³⁸ SLD also rejected the information on hardware and software submitted with the appeal as improper “new evidence.”³⁹ New Orleans then filed the pending Request for Review.

II. DISCUSSION

11. On appeal to the Commission, it is unclear whether New Orleans is arguing that SLD erred in concluding that New Orleans failed to establish that it had all necessary resources, or whether it is acknowledging that it failed to do so and is seeking a waiver of the necessary resources requirement. Accordingly, we address both claims here. While we recognize the laudable efforts of New Orleans to provide its students the benefits of the E-rate program, we find no basis to grant relief.

12. Initially, we must emphasize the importance of SLD’s Item 25 “necessary resources” review. The necessary resources certification requires applicants to examine their technology needs and available technological and budgetary resources before making funding requests, in order to ensure that applicants will be able to make effective use of any discounted services they receive.⁴⁰ As noted before, we have concluded that SLD’s process for reviewing this certification is critical to curbing waste, fraud, and abuse and to ensuring that the resources of the schools and libraries universal service support program are used in compliance with statutory requirements.⁴¹ Because of the importance of this review process, we are particularly reluctant to relax its requirements or to overlook errors or omissions that might threaten the integrity of the review process determination.

13. Based on our review of the record, we affirm SLD’s determination that New Orleans did not demonstrate compliance with the “necessary resources” requirement.⁴² The Second Budget, although providing for sufficient funds in the “contracted services” line item to cover the non-discounted portion of service costs, directly contradicted New Orleans’ original

³⁸ *Id.*

³⁹ *Id.* at 3.

⁴⁰ FCC Form 471, Item 25.

⁴¹ *United Talmudical Academy Order*, 15 FCC Rcd 423, 430, para. 14.

⁴² Although SLD asserted that the information submitted in the Item 25 Supplemental Response was untimely in the Administrator’s Decision on Appeal, it nonetheless considered it. *See* Administrator’s Decision on Appeal at 2. We therefore consider it as properly part of the record on review. However, we find that the information submitted on appeal to the FCC should not be considered part of the record. In reviewing a necessary resources determination, we look solely to the record before SLD at the time of its review decision, so long as SLD gave the applicant an adequate opportunity to submit relevant documentation. *See Request for Review by Children’s Village Academy, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-204351, CC Dockets No. 96-45 and 97-21, Order, DA 01-794, para. 8 (Com. Car. Bur. rel. March 30, 2001). Here, the opportunity for New Orleans to address the issues in the original and supplemental submissions was adequate. Therefore, because the additional information submitted with the Request for Review was not part of the record before SLD at the time of its review decision, we will not consider it.

submission and provided no explanation for the conflict.⁴³ New Orleans' appeal papers to SLD, far from clarifying this apparent contradiction, introduced yet a third value for "contracted services."⁴⁴ New Orleans' Request for Review likewise provides no explanation, despite being apprised of the need for an explanation by the Administrator's Decision on Appeal.⁴⁵ Indeed, the Request for Review does not specify which of the three figures for "contracted services" it is relying on. Where an applicant alters critical data without explanation in response to concerns expressed by SLD, our confidence in the accuracy of the subsequent data is undermined. To avoid the accidental occurrence of such discrepancies, we specifically require applicants to certify that they are aware that they may be audited and that they will have and retain all records relied upon in filling out the application.⁴⁶ We therefore find that, in the absence of an explanation of the discrepancy between the contract services amount in the First Budget and the Second Budget, SLD reasonably relied on the original \$4,945,554.55 figure for "contracted services." This amount was insufficient to satisfy the non-discount portion of costs.

14. New Orleans' application and subsequent submissions to SLD also failed to adequately demonstrate that it would have the necessary hardware resources to make use of the discounts it requested. In its submissions, New Orleans stated that it sought to purchase only five computers per classroom for rooms that would have sufficient connections to connect eight. New Orleans stated that it already had approximately 3000 computers already. If these computers were also assigned to the 1000 classrooms in grades 3, 4, 6, and 7, then the 8 connections in those rooms would be fully used. However, New Orleans made no such claim to SLD or in its Request for Review, and strongly suggested that the 3000 existing computers are distributed throughout the entirety of the system's total 5000 classrooms.⁴⁷ More importantly, although New Orleans seeks to purchase computers for only 1000 classrooms, it states that in Funding Year 3, it will connect a total 1,650 classrooms, each with 8 Internet drops, a total of 13,200 Internet connections.⁴⁸ The supply of computers available based on New Orleans' projected purchases is thus substantially less than what New Orleans would need to make effective use of its requested connections.

15. In addition, New Orleans did not provide actual documentation, as requested by SLD, of its ability to pay for its new hardware. The only documentation of ability to pay is the "contracted services" line item in the submitted budget, but of the three figures submitted, even the highest amount attributed to E-Rate expenses, that of \$12.5 million, would not come close to

⁴³ Compare First Budget and Second Budget.

⁴⁴ See Third Budget.

⁴⁵ Administrator's Decision on Appeal at 2-3.

⁴⁶ See FCC Form 471, Item 32.

⁴⁷ See Item 25 Supplemental Response, at 2 (stating that "[a]ll schools in the district have computers in the classrooms and libraries").

⁴⁸ *Id.* (noting that by Funding Year 2, "[a]pproximately 67% (3,350) classrooms were connected," that New Orleans "will have 100% of its classrooms connected by end of Year 3," and that "[e]ach classroom will have the capability of connecting 8 computers to the Internet . . .").

covering the non-discount amount for services of approximately \$11 million plus the expected hardware expenses of over \$5 million.⁴⁹

16. Because the information provided to SLD in New Orleans' original and supplemental responses failed to demonstrate that it possessed the necessary resources to make effective use of the services for which it requested support, we affirm SLD's Item 25 review decision. Our conclusion is not altered by the fact that New Orleans appealed only five of its applications, and that these five require significantly fewer resources than the original eight.⁵⁰ With one exception not relevant here, SLD performs its necessary resources review on the application (or group of applications) as a whole, not on individual service requests.⁵¹ The elimination of certain requests presents a different total of services to be reviewed, altering the various resources needed, *e.g.*, financial, hardware, and software. To allow an applicant to seek review of such an altered package after receiving an initial negative determination would thus undermine the integrity of SLD's initial review and place upon SLD the burden of performing a second necessary resources review on the same application. This would significantly increase the administrative burden SLD would face while carrying out its obligation to guard against the occurrence of errors and fraud. We therefore reject New Orleans' implicit request to limit the necessary resources review to those applications on appeal.

17. Moreover, New Orleans does not appear to dispute the conclusion that it failed to demonstrate that it had all of the necessary resources for its applications. Indeed, it concedes that it made errors, but argues that awarding it the requested discounts would be most consistent with the "spirit of E-Rate."⁵² New Orleans attributes any mistakes in the application process to the fact that its most knowledgeable E-Rate employee, Marilee Waguespack, went on sick-leave and to the fact that her replacement was unfamiliar with the program's procedures.⁵³ However, New Orleans has not demonstrated any error in SLD's findings or conclusions, and the fact that New Orleans' current position is attributable to a disruption in personnel does not provide a basis for granting its Request for Review.

18. To the extent that New Orleans seeks a waiver of the necessary resources requirement, we find no basis to grant a waiver. The Commission may waive any provision of its rules if the request for waiver is supported by a showing of good cause.⁵⁴ However, we find

⁴⁹ *See supra*, paras. 4, 5.

⁵⁰ Request for Review, attachment (noting that the five applications on appeal include non-discount costs of only \$4,706,071.20).

⁵¹ *United Talmudical Academy Order*, 15 FCC Rcd at 430-31, para. 15; *see also id.*, 15 FCC Rcd at 431-32, paras. 18-19 (discussing exception).

⁵² Request for Review at 1; *see also id.* at 2 ("[W]e have been remiss in our attention to detail . . .").

⁵³ Request for Review at 2-3.

⁵⁴ 47 C.F.R. § 1.3; *See e.g. Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990), ("Waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.")

that the personnel disruptions that New Orleans alleges do not constitute good cause to grant a waiver. In light of the thousands of applications that SLD must review and process each year, it is administratively necessary to require an applicant to be responsible for ensuring that its request for discounts satisfies the Commission's policies as well as program rules.⁵⁵ Here, the necessity of replacing a sick employee skilled in the application process for the schools and libraries program provides no basis for deviating from the Commission's policy of placing on the applicant the responsibility for understanding program rules and requirements.

19. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by New Orleans Public Schools, New Orleans, Louisiana, on May 25, 2001, is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief, Common Carrier Bureau

⁵⁵ 47 C.F.R. § 54.504 *et seq.*