

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrative Company)	
by)	
)	
Laurel Hall School)	File No. SLD-148415
Hagerstown, Maryland)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: April 5, 2001

Released: April 6, 2001

By the Common Carrier Bureau:

1. This Order denies the Request for Review of Laurel Hall School, Hagerstown, Maryland (Laurel Hall).¹ Laurel Hall seeks review of a decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) that denied Laurel Hall’s request for funding of telecommunications services, Internet access, and internal connections for Funding Year 2 of the schools and libraries support mechanism.² For the reasons cited below, we uphold SLD’s determination that Laurel Hall did not adequately demonstrate that it had secured access to all of the resources necessary to effectively use the services for which it had applied for funding.

¹ Request for Review of Benjamin J. Aron, Counsel, Laurel Hall School, to Federal Communications Commission, filed January 14, 2000 (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).

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 on eligible telecommunications services, Internet access, and internal connections.³ In order to receive discounts on eligible services, applicants must file certain information with SLD. Specifically, the Commission's rules require that an applicant submit to SLD a completed FCC Form 470, in which the applicant sets forth the school's technological needs and the services for which it seeks discounts.⁴ In its FCC Form 470, the applicant must provide an assessment of the applicant's existing technology that may be necessary for the effective use of eligible services. Once the applicant has signed a contract for eligible services, it must file an FCC Form 471 application to notify SLD of the services that have been ordered, the carrier with whom the applicant has signed a contract, and an estimate of the funds needed to cover the discounted portion of the price of the eligible services.⁵

3. On the FCC Form 471, among other things, applicants must certify that they have secured access to "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."⁶ These certifications are consistent with the requirements set forth in the Commission's May 8, 1997 *Universal Service Order*.⁷ In that order, the Commission stated that applicants for schools and libraries discounts 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"⁸

4. On April 6, 1999, Laurel Hall filed its FCC Forms 471 with SLD, requesting funding of various telecommunications and advanced services for Year 2 of the schools and libraries support mechanism in the total annual pre-discount amount of approximately \$205,000.⁹

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ 47 C.F.R. § 54.504(b)(1), (b)(3).

⁵ 47 C.F.R. § 54.504(c).

⁶ See FCC Form 471, OMB No. 3060-0806, at Item 22 (December 1997).

⁷ *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*) (subsequent history omitted).

⁸ *Id.* 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 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."

⁹ See Laurel Hall School, FCC Forms 471, Funding Year 2, Application No. 148415, received April 6, 1999.

Laurel Hall was selected by SLD for an “Item 22 Review” to scrutinize whether Laurel Hall 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 for the discounted charges for eligible services.¹⁰ During the Item 22 review, Total Communications USA, the proposed service provider for Laurel Hall, provided various documentation and information to SLD on behalf of Laurel Hall, and completed the “Item 22 Worksheet” provided by SLD.¹¹ Total Communications’ response to SLD also detailed Total Communications’ contract with Laurel Hall, its technology plan for Laurel Hall, and the other information requested in the Item 22 Worksheet.

5. In a letter dated December 15, 1999, SLD denied Laurel Hall’s request for support in its entirety.¹² In support of its determination that Laurel Hall did not qualify for funding under the schools and libraries support mechanism, SLD stated that, after careful review of the information Laurel Hall submitted, SLD had determined that Laurel Hall had not secured access to all of the resources, including computers, training, software, maintenance, and electrical connections, necessary to make effective use of the services for which Laurel Hall sought discounts.¹³

6. On January 14, 2000, Laurel Hall filed with the Commission a Request for Review of SLD’s denial of funding.¹⁴ Laurel Hall’s Request for Review asserts that SLD’s denial provided no specific explanation of the reasons for denial, and thus Laurel Hall is “hard pressed to properly state any possible grounds for appeal.”¹⁵ Laurel Hall claims that SLD based its denial only upon its “arbitrarily exercised discretion.”¹⁶ Laurel Hall argues that, in the alternative, if SLD’s decision is deemed to be supported by the rules governing funding decisions, SLD should “issue a rejection notice citing those rules and specifying the manner in which the application fails to satisfy the requirements.”¹⁷ Laurel Hall argues that such specificity is necessary so that it may be adequately informed of the appropriate steps through funding,

¹⁰ Item 22 of Block 6 of the Year 2 FCC Form 471 required the applicant to certify that it has secured access to all of the resources necessary to make effective use of the services purchased as well as to pay the discounted charges for eligible services. SLD performs reviews of selected applications to ensure that Item 22 certifications are accurate, as part of its duty to safeguard against program waste, fraud and abuse.

¹¹ See facsimile transmission from Total Communications USA, to Frank Rebeis, SLD, dated August 19, 1999.

¹² See Letter of Kate L. Moore, President, SLD, to Moses Freedman, Laurel Hall, dated December 15, 1999.

¹³ *Id.*

¹⁴ See Letter from Benjamin Aron, Laurel Hall School, to Federal Communications Commission, filed January 14, 2000 (Request for Review).

¹⁵ Request for Review at 2.

¹⁶ Request for Review at 2.

¹⁷ Request for Review at 2.

training, acquisition of technology, or in any other manner, to ensure funding for the next funding year.¹⁸

7. In response to requests from the Common Carrier Bureau staff, SLD filed an *ex parte* letter with the Commission on July 10, 2000.¹⁹ Specifically, SLD stated that the information it obtained during the Item 22 review “raised serious questions about whether Laurel Hall had acquired adequate funding for required hardware, software, teacher training, or electrical capacity to make effective use of the service for which it was requesting discounts.” SLD also stated, that although Laurel Hall indicated it had only six computers available, with plans to have 14 more by the end of the fiscal year, its application had requested support for three servers and 48 network workstation lines. SLD also stated that the school’s technology plan did not provide adequate evidence of resources available in future years for additional equipment.

II. DISCUSSION

8. 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.²⁰ In a prior order, the Commission concluded that the review of these certifications by SLD to determine whether applicants have the necessary resources to make effective use of the services that they request is an integral part of SLD’s responsibility for reviewing funding applications to ensure compliance with statutory requirements and Commission rules.²¹ SLD review of applicants’ “necessary resources” certifications also is an important means by which SLD implements the Commission’s directive to SLD to take steps to curb waste, fraud, and abuse in the schools and libraries universal service support mechanism.²² Finally, the Commission also found that the method by which SLD performs its necessary resources review, at the applicant level and applied against all of an applicant’s funding requests within a funding year, constitutes a reasonable application of the Commission’s rules under the schools and libraries support mechanism.²³

¹⁸ Request for Review at 2.

¹⁹ Letter of D. Scott Barash, Universal Service Administrative Company, to Magalie Roman Salas, FCC, filed July 10, 2000.

²⁰ See note 7, *supra*.

²¹ *Request For Review of the Decision of the Universal Service Administrator by United Talmudical Academy, Brooklyn, New York, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-105791, CC Docket Nos. 96-45, 97-21, FCC 00-2, 15 FCC Rcd 423, 430-31, paras. 14-15 (2000) (*United Talmudical*).

²² *United Talmudical*, 15 FCC Rcd 430, para. 14. See also 47 C.F.R. § 54.702(h) (requiring that the Administrator’s annual report to the Commission detail the Administrator’s “administrative action intended to prevent waste, fraud, and abuse”).

²³ *United Talmudical*, 15 FCC Rcd 430-31, para. 15.

9. Based on our review of the record, including Laurel Hall's application file, we affirm SLD's determination that Laurel Hall did not meet the "necessary resources" requirement. The record demonstrates that SLD conducted a thorough review of Laurel Hall's ability to secure access to all of the resources necessary to effectively use all of the services it was ordering, and obtained from Laurel Hall specific information geared toward this determination. We agree with SLD that the documentation submitted on behalf of Laurel Hall by its service provider, Total Communications, demonstrated a paucity of resources to support the requested services. For example, the record indicates that Laurel Hall is a relatively small school, with only 60 students. Laurel Hall's application indicated plans to install 14 computers by the end of the year, but its proposed service provider's contract indicated that 3 network servers and 48 lines, to serve 48 client operating systems, would be connected to the proposed network.²⁴ Laurel Hall clearly sought funding for a much larger network configuration than it could support with the hardware it proposed to obtain during the funding year. That alone, on its face, establishes a violation of section 54.504 of the Commission's rules.²⁵ Furthermore, Laurel Hall did not explain why it believed that its technology plan provided adequate levels of budgeted funds to obtain necessary resources and to train staff, acquire software, retrofit buildings, and maintain the services, especially for a network the size of the one sought by Laurel Hall. We find no basis upon which to overturn SLD's decision based on its assessment of Laurel Hall's proposed technology plans and budget. We find that the record clearly establishes that SLD's determination that Laurel Hall failed to have sufficient resources in place to make effective use of the services for which funding was sought was based on a thorough review of Laurel Hall's resources. Because the Commission has previously determined that the mechanisms utilized by SLD to review whether applicants have met the "necessary resources" criteria are reasonable, and there is no evidence that SLD acted in an arbitrary or capricious manner, we decline to overturn the determination of SLD.

10. We also disagree with Laurel Hall's assertion that SLD procedures provide inadequate notice or guidelines to applicants as to the criteria that shall be applied under the "necessary resources" rule. Applicants must certify on their Forms 471 that they have 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."²⁶ As articulated above, the Commission has clearly stated that applicants 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."²⁷ Applicants have flexibility under this program to design their networks in a way that best meets their unique needs. As such, determining what are "necessary

²⁴ See Total Communications USA Proposal at p. 6.

²⁵ See 47 C.F.R. §54.504(b)(1), (2).

²⁶ See FCC Form 471, OMB No. 3060-0806 at Block 6, Item 22 (December 1997).

²⁷ *Universal Service Order* at 12 FCC Rcd 9079, para. 577. See also 47 C.F.R. §§ 54.504(b)(1), (2).

resources” in a particular situation is a case-by-case determination. In this case, Laurel Hall sought funding for 3 network servers and 48 lines to serve 48 client operating systems, even though it planned to install only 14 computers by the end of the year. Under these circumstances, we believe that a reasonable and prudent applicant should have known that it did not have the necessary resources to make effective use of the services and connections it requested. Therefore, we find no merit in Laurel Hall’s argument to the contrary.

III. ORDERING CLAUSE

11. Accordingly, IT IS ORDERED, pursuant to sections 1-4, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.19, 0.219, 54.719 and 54.722 of the Commission’s rules, 47 C.F.R. §§ 0.19, 0.219, 54.719 and 54.722, that the Request for Review filed on January 14, 2000 by the Laurel Hall School, Hagerstown, Maryland, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief, Common Carrier Bureau