

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Application for Review by
United Talmudical Academy
Brooklyn, New York
Schools and Libraries Universal Service
Support Mechanism
File No. SLD-105791
CC Docket No. 02-6

ORDER

Adopted: October 21, 2003

Released: October 24, 2003

By the Commission:

1. The Commission has under consideration an Application for Review filed by the United Talmudical Academy (UTA), Brooklyn, New York, seeking review of an Order issued by the Common Carrier Bureau (now known as the Wireline Competition Bureau) (Bureau) on delegated authority. In the Order, the Bureau upheld a decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) to deny UTA's funding requests for Centrex service in Funding Year 1998. For the reasons set forth, we deny the Application for Review and affirm the Bureau's decision.

2. Background. 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. The Commission's rules require that the applicant make a bona fide request for services by filing with the Administrator an FCC Form 470, which is posted to the Administrator's website for all potential competing service providers to review. After the FCC

1 Application for Review of the Decision of the Common Carrier Bureau By United Talmudical Academy, CC Docket Nos. 96-45 and 97-21, Application for Review, filed November 29, 2001 (Application for Review).

2 Request for Review by United Talmudical Academy, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., File No. SLD-105791, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 18812 (Com. Car. Bur. 2001) (United Talmudical Academy II).

3 47 C.F.R. §§ 54.502, 54.503.

4 Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (December 1998) (FCC Form 470); 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,

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.⁵ SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. On the FCC Form 470, applicants must attest that any support they receive is conditional upon their "securing access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to use the services purchased effectively."⁶ As part of the FCC Form 471 application, schools and libraries must certify that their requests are based on an approved technology plan.⁷ The plans are required to be independently approved, to ensure that they are based on the reasonable needs and resources of the applicant and are consistent with the goals of the schools and libraries mechanism.⁸ Applicants must also 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."⁹ SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.¹⁰

4. UTA originally requested \$3.4 million in funding for telecommunications services, internet access, and internal connections for Funding Year 1998, which SLD denied in its entirety. SLD concluded that UTA had failed to show that it had the resources necessary to make effective use of the services for which it sought discounts.¹¹ UTA then filed a letter of appeal with SLD, seeking review only of the denial of its request for funding for its existing telecommunications services, a PBX, and two computer networks, totaling \$234,451. In denying this appeal, SLD indicated that its necessary resources review had not been applied to individual

Celpage, Inc. v. FCC, 120 S. Ct. 2212 (2000), *cert. denied*, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (2000), *cert. dismissed*, *GTE Service Corp. v. FCC*, 121 S. Ct. 423 (2000).

⁵ 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (December 1998) (FCC Form 471).

⁶ See FCC Form 470, at Item 25.

⁷ See FCC Form 471; *Universal Service Order*, 12 FCC at 9077, paras. 572-573.

⁸ *Universal Service Order*, 12 FCC at 9078, para. 574; see also SLD web site, Technology Plans, <<http://www.sl.universalservice.org/apply/step2.asp#1>>.

⁹ See FCC Form 471, at Item 22.

¹⁰ SLD is charged with the responsibility of developing applications and associated instructions, and administering the application process. See 47 C.F.R. § 54.705(a)(1); see also *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, *Federal State Joint Board on Universal Service*, Third Report and Order and Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058, 25075-76, para. 30-31 and 34 (1998).

¹¹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Mozes Greenfeld, United Talmudical Academy, dated February 26, 1998 [sic] (actual date February 26, 1999) (Funding Commitment Decision Letter).

funding requests, but rather to the application as a whole.¹² UTA then sought review of this decision by the Commission.¹³

5. In *United Talmudical Academy I*, the Commission largely upheld SLD's decision to conduct its necessary resources review on the application as a whole.¹⁴ The Commission affirmed that review of necessary resources certifications was an integral part of SLD's responsibility to ensure compliance with statutory requirements and Commission rules, and an important means by which SLD implements the Commission's directive to take steps to curb waste, fraud, and abuse in this support mechanism. The Commission found that, if SLD were required to perform a necessary resources review on individual funding requests, it would be required to determine, in the event that resources were inadequate to support the whole application, which set of discounted services the applicant would have chosen to fund if it had been aware of the necessary resource problems in the funding requests it actually made.¹⁵ To require such decisions, the Commission found, would undermine the policies and objectives underlying the schools and libraries support mechanism that individual schools and libraries, not SLD, are best positioned to determine their support needs in light of their particular technological capabilities and educational needs.¹⁶

6. The Commission thus affirmed as a general matter SLD's practice of applying its necessary resources review to the application as a whole rather than to individual funding requests, but established one exception.¹⁷ Specifically, the Commission indicated that it was reasonable for SLD to conduct a separate necessary resources review of those funding requests seeking only "basic voice telephone service."¹⁸ The Commission reasoned that the components and resources needed to make effective use of basic telephone service, *e.g.*, telephones, were "readily ascertainable" and did not require a detailed knowledge of an applicant's overall technology plan.¹⁹ The Commission expressly recognized that under the OMB-approved application forms, applicants seeking only basic voice telephone service were not even required

¹² SLD subsequently informed UTA that its application suffered from deficiencies in the areas of hardware, professional development, software, and maintenance, with the numbers submitted by UTA deviating by as much as 20% from SLD's projections of the resources necessary to make effective use of the services for which UTA sought discounts. See Letter of Ellen Wolfhagen, Schools and Libraries Division of the Universal Service Administrative Company, to Mozes Greenfield, United Talmudical Academy, dated August 9, 1999, at 2.

¹³ See Letter of Appeal of Mozes Greenfeld, United Talmudical Academy, to the Federal Communications Commission, dated August 11, 1999 (First Request for Review).

¹⁴ See *Request for Review by United Talmudical Academy, Federal-State Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-105791, CC Dockets No. 96-45 and 97-21, 15 FCC Rcd at 430-432, paras. 15-18 (2000) (*United Talmudical Academy I*).

¹⁵ *Id.*, 15 FCC Rcd at 431, para. 16.

¹⁶ *Id.*

¹⁷ *Id.*, 15 FCC Rcd at 431-32, para. 18.

¹⁸ *Id.*

¹⁹ *Id.*

to file a technology plan.²⁰ The Commission remanded UTA's application to SLD to determine whether UTA submitted requests seeking discounts on basic voice telephone service, whether such requests individually passed SLD's review for necessary resources, and whether such requests were otherwise in compliance with our rules.²¹

7. On remand, after engaging in further review, SLD granted three of UTA's eight funding requests.²² The unfunded requests sought cellular and Centrex service, which SLD determined were not "basic voice telephone service."²³ UTA then sought review of this decision.²⁴

8. In *United Talmudical Academy II*, the Common Carrier Bureau reversed in part and affirmed in part SLD's decision.²⁵ The Bureau reversed SLD as to the cellular phone service requests, noting that SLD had, subsequent to its action on UTA's application on remand, modified its definition of "basic phone service" to include cellular service. The Bureau reasoned that cellular service should be considered basic voice telephone service for purposes of the schools and libraries support mechanism because the resources necessary for such service were as readily ascertainable as those for Plain Old Telephone Service (POTS).²⁶ The Bureau thus concluded that UTA's request for cellular phone service should have received a separate necessary resources review and remanded that portion of the application to SLD for further action.²⁷

9. The Bureau affirmed SLD's denial of funding for Centrex service, reasoning that UTA was not entitled to a separate necessary resources review for that service under the reasoning of the Commission's *United Talmudical Academy* order. In particular, the Bureau concluded that Centrex should not be viewed as "basic voice telephone service" for purposes of the schools and libraries mechanism because users may not be able to effectively utilize the features of Centrex service without training, unlike POTS.²⁸ UTA then filed the pending Application for Review, challenging the Bureau's decision as to the Centrex service requests.

²⁰ *Id.* (citing FCC Form 470, Description of Services Requested and Certification Form, OMB 3060-0806, Block 6, Item 22 (December 1997) and FCC Form 471, Services Ordered and Certification Form, OMB 3060-0806, Block 6, Item 23 (December 1997)).

²¹ *Id.*, 15 FCC Rcd at 432, para. 19.

²² Letter from Schools and Libraries Division, Universal Service Administrative Company, to Mozes Greenfeld, United Talmudical Academy, dated August 21, 2000 (Second Funding Commitment Decision Letter).

²³ See Request for Review at 1-2.

²⁴ Letter from Eugene Sander, United Talmudical Academy, to Federal Communications Commission, filed September 20, 2000 (Second Request for Review).

²⁵ See *United Talmudical Academy II*, 16 FCC Rcd 18812.

²⁶ *Id.*, 16 FCC Rcd at 18817, para. 12.

²⁷ *Id.*

²⁸ *Id.*, 16 FCC Rcd at 18817, para. 14.

10. Discussion. We affirm the Bureau's conclusion that UTA was not entitled to a separate necessary resources review for its requested Centrex service, although we rely upon different reasoning than the Bureau order. In resolving this issue today, we reaffirm the importance of ensuring that all applicants for discounts have the resources to utilize effectively the services for which they request discounts. Moreover, we emphasize the importance of applicants demonstrating a need for the services requested through an independently approved technology plan. Both serve to implement the statutory requirement that discounts be provided on bona fide requests for services to be used for educational purposes, and represent important measures to help ensure that critical universal service support is provided without waste, fraud, or abuse.²⁹

11. In this Application for Review, UTA argues that the Bureau erred in concluding that Centrex should not be viewed as basic telephone service for purposes of this program because it failed to analyze the actual Centrex service that UTA receives.³⁰ UTA asserts that the actual service that it ordered does not have any advanced features, requires little or no training, and should thus be found to constitute basic voice telephone service.³¹ To support its assertions, UTA submits a letter from Verizon, its service provider, stating that the service is a "basic Centrex account consisting of 83 lines in which basic features are built into the contract price." Verizon states that the features included are "simple to use" and require "little or no training"³²

12. We conclude that the nature of the particular Centrex service at issue is not relevant to our analysis. When the Commission directed USAC to determine which of the original funding requests sought funding for basic telephone service, it did not enunciate a new policy for what should be defined as basic telephone service under the schools and libraries support mechanism. Rather, the Commission's decision must be viewed against the backdrop of USAC's longstanding practice that Centrex service is not considered "basic telephone service" for purposes of application processing. Historically, SLD's Eligible Services List has drawn a distinction between "Centrex," defined as "[a] private communications system that consists of a wide variety of features provided by central office software and extended to the customer's premises via local distribution facilities" and "basic telephone service," defined as including both "Plain Old Telephone Service and long distance telephone service."³³ The significance of this distinction, fully recognized by the Commission in *United Talmudical Academy I*, is that applicants seeking basic telephone service are not required to justify the acquisition of that service in a technology plan.³⁴ The Commission merely was directing USAC to determine which of the funding requests sought discounts on basic telephone service, as USAC had consistently defined that term in the past.

²⁹ 47 U.S.C. §254(h)(1)(B).

³⁰ Application for Review at 4.

³¹ Application for Review at 4-5.

³² Application for Review, Attachment (Verizon Letter).

³³ See Schools and Libraries Eligible Services List (December 2, 1999) (Eligible Services List).

³⁴ 15 FCC Rcd at 431-32, para. 18.

13. Adopting a case-by-case approach to determining whether and what type of Centrex should be viewed as basic telephone service would inevitably create significant uncertainty for applicants and SLD as to whether any particular Centrex service request could qualify as basic telephone service. Applicants could not be confident in advance of whether their Centrex service should be included in a technology plan, nor could SLD be sure of whether a particular Centrex request should receive a separate necessary resources review. This could delay the efficient processing of applications, and have unintended consequences for applicants that fail to correctly anticipate whether their requested service should be addressed in a technology plan. We conclude that all parties benefit from being able to anticipate with certainty, prior to the filing of an FCC Form 471, their obligations in the application process in connection with requests for Centrex service.

14. SLD's longstanding policy not to treat Centrex as basic telephone service for application processing purposes also serves to limit waste, fraud, and abuse. Since the program's inception, applicants have not been required to prepare, submit and have an approved technology plan for basic telephone service.³⁵ In contrast, all applicants have been required to justify their need for Centrex service in an independently approved technology plan.³⁶ This independent check helps to ensure that schools and libraries do not order more expensive telecommunications offerings merely because significant discounts are available.

15. There may be a reasonable argument that Centrex should be treated as a basic telephone service in future funding years, to streamline application processing. In our view, such a change, if appropriate, should be implemented uniformly, upon the commencement of the application window for a future funding year, so that all applicants are subject to the same requirements. But we decline, in the course of this adjudicatory matter, to change the policies that have applied consistently and equally to all applicants in the past, merely because the application of that policy to one applicant led to a denial of funding in Funding Year 1998.

16. Finally, we note that, in one respect, UTA overstates the adverse consequences of this decision. UTA asserts that the decision impairs its ability to seek discounts on its "long term, 7 year, contract . . . with Verizon for the Centrex service"³⁷ To the extent that UTA believes that it is prohibited from seeking discounts on any year of its 7-year Centrex service contract with Verizon, UTA is mistaken. The underlying problem with UTA's requests was a failure to demonstrate that it had the necessary resources in Funding Year 1998 to make effective use of the requested services. This determination affects only UTA's Funding Year 1998 application, and would not bar UTA from demonstrating that it has the necessary resources in subsequent years to support its requested services, including, presumably, its Centrex service.³⁸

³⁵ See FCC Form 470, Description of Services Requested and Certification Form, OMB 3060-0806, Block 6, Item 22 (December 1997) and FCC Form 471, Services Ordered and Certification Form, OMB 3060-0806, Block 6, Item 23 (December 1997).

³⁶ See *Id.*; Eligible Services List at 2.

³⁷ Application for Review at 3.

³⁸ UTA received funding commitments of \$1,321,930 in Funding Year 1999, \$763,529 in Funding Year 2000, and \$784,207 in Funding Year 2001.

17. In conclusion, we find that there is no indication that the Commission intended to alter SLD's existing definition of basic telephone service when it carved out an exception to SLD's general practice of applying its necessary resources review to the application as a whole rather than to individual funding requests. We affirm the Bureau's conclusion that, for purposes of the schools and libraries program, Centrex service is not a "basic voice telephone service" and therefore UTA was not entitled to a separate necessary resources review for its funding request for Centrex in Funding Year 1998.³⁹

18. ACCORDINGLY, IT IS ORDERED that the Application for Review filed by United Talmudical Academy on November 29, 2001 is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³⁹ We also deny UTA's request to review the records of both SLD and the Bureau regarding this matter. See Application for Review at 6. In light of our conclusion that the Commission did not make any change in SLD policy when it remanded UTA's application for further processing in *United Talmudical Academy I*, we see no reason to grant this request. As mentioned above, SLD's definition of basic telephone service has been posted on its website since the program's inception. We note that the Commission denied a similar request to review SLD's records from UTA in *United Talmudical Academy I*. See *United Talmudical Academy I*, 15 FCC Rcd at 432-433.