

Nov 3 10 45 AM '99 Federal Communications Commission

DA 99-2284

DISPATCHED BY Before the
Federal Communications Commission
 Washington, D.C. 20554

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Nefesh Academy)	File No. SLD - 27881
Brooklyn, New York)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Changes to the Board of Directors)	
of the National Exchange Carrier)	CC Docket No. 97-21 ✓
Association, Inc.)	

ORDER

Adopted: October 22, 1999

Released: October 22, 1999

By the Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration an appeal by Nefesh Academy, Brooklyn, New York (Nefesh Academy), filed May 27, 1999, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator). For the reasons set forth below, we deny Nefesh Academy's appeal.

2. By letter, dated February 25, 1999, SLD denied Nefesh Academy certain requests for discounts pursuant to section 254.¹ Nefesh Academy appealed SLD's decision to the Administrator, and the Administrator denied this appeal.² On May 27, 1999, Nefesh

¹ 47 U.S.C. § 254(h)(1)(B) and (h)(2). In the application process, SLD assigns numbers, called funding request numbers (FRN), to each specific request for discounted services. We will refer to the specific requests at issue here by their assigned FRN.

² See Administrator's Decision on Appeal, dated May 10, 1999.

Academy filed the instant appeal.³ In Nefesh Academy's Letter of Appeal, it states that

[o]n the [Administrator's Decision on Appeal] it states the reason for denial for FRN# 56[54]4, 56583, 56664, 56595 and 56827, was due to the fact th[at] "all attempts to receive additional information which would support your original request were unanswered within the prescribed 7 calendar day period." We have answered within the correct time period on several occasions during the year in regards to our E-rate application. I was not contacted once in regards to the appeal letter we submitted on March 22, 1999. I have attached a detailed contract, which should be on file with the SLD sent over by myself due to a request by the SLD several months ago.⁴

It appears from this language that Nefesh Academy seeks to appeal the Administrator's denial of discounts for the enumerated FRNs on the grounds that the "7 calendar day period" for providing requested additional information is not a valid basis for denying requested discounts.

3. Under the federal schools and libraries support mechanism, schools may receive discounts only on services deemed eligible pursuant to section 254 of the Communications Act and the Commission's rules.⁵ Applications for discounted services are scrutinized to ensure that only eligible services are funded, and such scrutiny may result in requests for additional information. Absent such additional information, applications may be denied for failure to demonstrate that the services in question are eligible for support. Such was the case here. According to SLD, it requested further information on all of the above-enumerated FRNs, but did not receive the requested information prior to issuance of the original SLD letter.⁶ Indeed, it is not apparent from the record that all information requested was ever received, although Nefesh Academy did provide some material in its appeal to the

³ See Letter, dated May 26, 199[9], from Rabbi Sroya London, Nefesh Academy, to [Federal Communications Commission] ("Letter of Appeal").

⁴ *Id.*

⁵ 47 U.S.C. § 254(h)(1)(B) and (h)(2) and 47 C.F.R. §§ 54.502, 54.503, 54.506, and 54.517.

⁶ Letter from D. Scott Barash, Vice President and General Counsel, Universal Service Administrative Company to Magalie Roman Salas, Secretary, Federal Communications Commission, dated October 21, 1999.

Administrator.⁷

4. We deny Nefesh Academy's appeal. In order to ensure that only eligible services are funded consistent with our rules,⁸ SLD clearly may request additional information with respect to services about which there is a question of eligibility. Moreover, in order to ensure that implementation of the schools and libraries program is not unduly delayed, there cannot be an open-ended time period in which applicants are allowed to respond to requests for information. Therefore, when SLD requests information with respect to the eligibility status of a particular service, applicants must respond within a reasonable time period or risk the potential of denial because SLD cannot be sure of the eligibility status of the discounted service in question. Nefesh Academy seems to indicate that the "prescribed 7 day calendar period," was an inadequate period in which to provide the requested information. We note, however, that SLD's records show that SLD faxed its request for particular information to Nefesh Academy on February 12, 1999 (the request was transmitted by fax rather than by mail at the direction of Nefesh Academy),⁹ and that the SLD letter denying Nefesh Academy's request for discounts was not issued until February 25, 1999, giving Nefesh approximately two weeks in which to respond.¹⁰ We believe this time period is reasonable especially since Nefesh Academy does not suggest that it experienced any particular difficulty in providing the information requested. Although Nefesh Academy indicates that it was timely on other occasions, it does not claim to be timely in this instance. Indeed, Nefesh Academy does not claim that it provided the information to SLD prior to seeking an appeal with the Administrator. Therefore, we deny Nefesh Academy's request for review of the Administrator's decision.

5. In addition, we note that, in seeking Commission review, Nefesh Academy

⁷ For example, in its appeal to the Administrator, Nefesh Academy recognizes that it included the cost of ineligible services in its request for discounts made pursuant to FRN 56664, stating that it had misread "the eligible services when we filed our 471." Nefesh Letter of Appeal to Administrator, dated March 22, 1999, at 1.

⁸ 47 C.F.R. §§ 54.502, 54.503, 54.506, and 54.517.

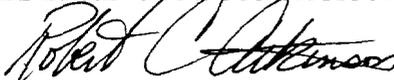
⁹ Letter from D. Scott Barash, Vice President and General Counsel, Universal Service Administrative Company, to Magalie Roman Salas, Secretary, Federal Communications Commission, dated October 21, 1999. We note that SLD did not request information with regard to FRN 56827 on February 12, 1999. Rather, SLD attempted to contact Nefesh Academy sometime between February 12, 1999 and February 18, 1999 to seek additional information on this particular FRN, but was unsuccessful. Regardless of whether SLD was able to communicate its request to Nefesh Academy, Nefesh has failed to provide a basis on which to grant its appeal because it has failed to provide sufficient information to support a conclusion that the denial was wrong as discussed *infra* at para. 5.

¹⁰ SLD states that it made at least three attempts between February 12, 1999 and February 22, 1999, to get the requested information. *Id.*

offers no additional reasoning to support a decision to overturn the Administrator with regard to any FRNs. For example, Nefesh Academy references FRN 56544 in the heading of its Letter of Appeal, but that FRN was not denied on the basis of failure to provide information within a reasonable time period, and Nefesh Academy states no other grounds for appeal. Because Nefesh Academy fails to state any other reasons for overturning the Administrator's decision regarding FRN 56664, 56583, 56595, and 56827, beyond that discussed above, and because it fails to provide any reason why it believes the Administrator's decision regarding FRN 56544 was incorrect, we deny the appeal of the Administrator's decision. The Commission's rules state that a request for review "shall contain . . . (ii) a full statement of relevant, material facts with supporting affidavits and documentation; (iii) the question presented for review, with reference, where appropriate, to the relevant Federal Communications Commission rule, Commission order, or statutory provision; (iv) a statement of the relief sought and the relevant statutory or regulatory provision pursuant to which such relief is sought."¹¹ Although a school need not provide an extensive legal analysis in order to appeal SLD or Administrator decisions, a request for review, at a minimum, must set forth sufficient information to support a conclusion that a denial was wrong. Nefesh Academy has failed to provide such information here.

6. 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 Letter of Appeal filed May 27, 1999 by the Nefesh Academy IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Robert C. Atkinson
Deputy Chief, Common Carrier Bureau

¹¹ 47 C.F.R. § 54.721(b).