

ROOM

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of	)	20010329 P 1:36
	)	
Request for Review of the	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
Central Minnesota Computing Center	)	File No. SLD-143701
St. Cloud, Minnesota	)	
	)	
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: March 28, 2001**

**Released: March 29, 2001**

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has before it a Request for Review filed by Central Minnesota Computing Center (CMCC), St. Cloud, Minnesota, requesting review of a decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).<sup>1</sup> CMCC seeks review of SLD's denial of its application for Year 2 funding under the schools and libraries universal service support program.<sup>2</sup> Because CMCC has failed to demonstrate that its consortium members have the necessary resources to make effective use of the requested funding, we deny the Request for Review and affirm SLD's decision.

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.<sup>3</sup> The Commission's rules require that an applicant seeking funds under this program must first submit to the Administrator a completed FCC Form 470, in which the applicant sets forth its

<sup>1</sup> Letter from Michael T. Bauer, Central Minnesota Computer Center, to Federal Communications Commission, filed October 13, 2000 (Request for Review).

<sup>2</sup> 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).

<sup>3</sup> 47 C.F.R. §§ 54.502, 54.503.

technological needs and the services for which it seeks discounts.<sup>4</sup> Once the applicant has signed a contract for eligible services, it must file an FCC Form 471 application notifying the Administrator 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.<sup>5</sup>

3. On the Form 470, applicants 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."<sup>6</sup> Similarly, in Item 22 of Block 6 of the Form 471, applicants certify 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."<sup>7</sup> These certifications are consistent with the requirements set forth in the Commission's May 8, 1997, *Universal Service Order* and the Commission's rules.<sup>8</sup> In the *Universal Service Order*, the Commission 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

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<sup>4</sup> 47 C.F.R. §§ 54.504(b)(1), (b)(3). In submitting its FCC Form 470, an applicant is required to provide general information about the services for which it seeks discounts, e.g., number of phones that require service, number of dial-up connections necessary, as well as an assessment of the applicant's existing technology that may be necessary for the effective use of eligible services. See Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (Form 470).

<sup>5</sup> 47 C.F.R. § 54.504(c); see also Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (Form 471).

<sup>6</sup> See Form 470 at Item 25.

<sup>7</sup> See Form 471 at Item 22.

<sup>8</sup> *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 (5<sup>th</sup> 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. 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). 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."

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.”<sup>9</sup>

4. On April 5, 1999, CMCC, a Minnesota consortium of 67 public schools and 44 libraries, filed a Form 471 application for year 2 funding of Internet access on behalf of its members.<sup>10</sup> On September 21, 1999, SLD’s Selective Review Team sent a letter to CMCC, stating: “As part of our Program Integrity Assurance (PIA) procedures you are among applicants who are being asked to provide additional information about the Item 22 certification before we can make final decisions on your request. We are asking you to elaborate on your Item 22 certification, by estimating the resources you have available to make use of the services you are requesting under the Universal Service Program.”<sup>11</sup>

5. Along with its request, SLD sent two worksheets to be filled out. The first, a “Technology Implementation Worksheet,” required the applicant to indicate which of four levels of technology implementation it expected each of its members to reach as a result of funding.<sup>12</sup> The second worksheet, entitled “FCC Form 471 Item 22 Review Worksheet,” consisted of six sections.<sup>13</sup> Section one, labeled “Connectivity,” required the applicant to indicate the amount of money which SLD and the applicant would each be paying for telecommunications, Internet access, and internal connections.<sup>14</sup> The applicant was required to provide documentation of its ability to pay its share.<sup>15</sup> In the following five sections, entitled “Hardware,” “Professional Development,” “Software,” “Retrofitting,” and “Maintenance,” the applicant was required to estimate the amount of various specified types of resources that would be available.<sup>16</sup> For example, the “Professional Development” section directed the applicant to estimate, *inter alia*, “the percent of your instructional or library service staff that have been trained to use technology to improve education or library services.”<sup>17</sup> The applicant was *not* required to provide documentation supporting its estimates for sections two through six of the Item 22 Review Worksheet.<sup>18</sup>

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<sup>9</sup> *Universal Service Order*, 12 FCC Rcd at 9079, para. 577.

<sup>10</sup> FCC Form 471, Central Minnesota Computing Center, filed April 5, 1999.

<sup>11</sup> Letter from Schools and Libraries Corp. Program Integrity Assurance Unit, Schools and Libraries Division, Universal Service Administrative Co., to Central Minnesota Computing Center, dated September 21, 1999, at 1 (Item 22 Review Letter).

<sup>12</sup> Item 22 Review Letter, at 3.

<sup>13</sup> Item 22 Review Letter, at 4-9.

<sup>14</sup> Item 22 Review Letter, at 4-5.

<sup>15</sup> Item 22 Review Letter, at 4.

<sup>16</sup> Item 22 Review Letter, at 5-9.

<sup>17</sup> Item 22 Review Letter, at 5.

<sup>18</sup> Item 22 Review Letter, at 4.

6. On September 29, 1999, CMCC responded to the request.<sup>19</sup> It provided a completed Connectivity section, with some documentation in support, but provided no estimates for the other five sections.<sup>20</sup> On November 9, 1999, SLD faxed a request for additional information on two issues, which we describe below.<sup>21</sup> On November 15, 1999, CMCC faxed its response.<sup>22</sup>

7. On March 28, 2000, SLD issued its application decision, denying in full CMCC's application.<sup>23</sup> It stated that after initial review of the "necessary resources" documentation provided by CMCC, SLD found that CMCC "did not have sufficient resources in place."<sup>24</sup> It further stated that "[s]ince you did not respond to our repeated requests for further information, we were unable to determine that you secured access to the resources [including hardware, professional development, software, retrofitting and maintenance.]"<sup>25</sup>

8. On April 24, 2000, CMCC filed a Letter of Appeal with SLD.<sup>26</sup> In the Letter of Appeal, CMCC asserted that the individual schools and libraries were responsible for obtaining the necessary resources, and that each school and library had submitted a technology plan addressing the availability of resources. CMCC asserted that it "considered that level of documentation . . . to be sufficient evidence."<sup>27</sup> CMCC also disputed SLD's claim that it did not respond to repeated requests for information, and claimed that the September 21, 1999 letter which made the initial Item 22 information request was the only request for documentation it

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<sup>19</sup> Letter from Georgia Kedrowski and Tracey Plante, Central Minnesota Educational Research and Development Council, to Tom Schnipp, Schools and Libraries Division, Universal Service Administrative Co., dated September 29, 1999 (Response to Item 22 Review Letter).

<sup>20</sup> *Id.* at 2-3.

<sup>21</sup> Letter from Tom Schnipp, Selective Reviews-Program Integrity Assurance, Schools and Libraries Division, Universal Service Administrative Co., to Tracey Plante, Central Minnesota Computing Center, dated November 9, 1999 (Item 22 Follow-up Review Letter).

<sup>22</sup> Letter from Tracey Plante, Central Minnesota Computing Center, to Tom Schnipp, Schools and Libraries Division, Universal Service Administrative Co., dated November 15, 1999 (Response to Item 22 Follow-up Review Letter).

<sup>23</sup> Letter from Schools and Libraries Division, Universal Service Administrative Co., to Georgia Kedrowski, Central Minnesota Computing Center, dated March 27, 2000 (Funding Commitment Decision Letter).

<sup>24</sup> Funding Commitment Decision Letter at 1.

<sup>25</sup> *Id.*

<sup>26</sup> Letter from Michael T. Bauer, Central Minnesota Computing Center, to Schools and Libraries Division, Universal Service Administrative Co., filed April 24, 2000 (Letter of Appeal).

<sup>27</sup> Letter of Appeal at 1.

ever received.<sup>28</sup> However, it offered to provide additional documentation to satisfy SLD's requirements, and included a "sampling" of school district profiles relevant to resource review.<sup>29</sup>

9. In a decision dated September 13, 2000, SLD denied the appeal.<sup>30</sup> It stated that "[i]t is the responsibility of the applicant to provide documentation to support [the necessary resources] certification if requested."<sup>31</sup> It further stated that it would not consider new information unless there was evidence that the applicant was not given the opportunity to provide the documentation during the review.<sup>32</sup> SLD concluded that "[s]ince the applicant was given sufficient time to provide information during the review process, the appeal is denied."<sup>33</sup> On October 13, 2000, CMCC filed the pending Request for Review, challenging SLD's decision.

10. We initially note that SLD was acting well within its authority in engaging in a careful review of CMCC's Item 22 "necessary resource" certification. In *United Talmudical Academy*, the Commission upheld SLD's practice of reviewing the accuracy of applicants' certifications regarding necessary resources. It concluded that by doing so, SLD ensures program compliance with statutory requirements, including the directive in section 254(h)(1)(B) of the Communications Act of 1934 which allows funding only for bona fide requests for services to be used for educational purposes.<sup>34</sup> The Commission also found that review of the certifications curbs waste, fraud, and abuse in the schools and libraries universal service program.<sup>35</sup> Thus, there is no doubt that SLD is authorized to obtain estimates and documentation to confirm a necessary resource certification.

11. It is also clear that the FCC Form 471 Item 22 certification review may be applied to consortia as well as individual schools and libraries. Section 54.501(d) of the Commission's rules, which grants schools and libraries the authority to submit applications as consortia, does not provide that they will thereby be excused from the certification requirements than would be applicable if the schools and libraries had filed their requests individually.<sup>36</sup> The language of the "necessary resource" certification, which has been upheld by the Commission, itself confirms

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 2.

<sup>30</sup> Letter from Schools and Libraries Division, Universal Service Administrative Co., dated September 15, 2000 (Administrator's Decision on Appeal).

<sup>31</sup> *Id.* at 1.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *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, 15 FCC Rcd 423, paras. 9, 14 (2000) (*United Talmudical Academy*); see also 47 U.S.C. § 254(h)(1)(B).

<sup>35</sup> *Id.* at para. 14.

<sup>36</sup> 47 C.F.R. § 54.501(d).

that consortia are required to make such a certification in the same manner as individual schools and libraries.<sup>37</sup> With this language, each applicant must certify that “[t]he school(s) or library(ies) I represent have secured access to all 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.”<sup>38</sup> The use of the plural clearly extends the certification and the potential for review of that certification to consortia.

12. Where schools and libraries choose to apply as a consortium to obtain the resulting advantages, the consortium must be prepared to accept the associated burdens as well.<sup>39</sup> Moreover, Item 22 Review only demands from a consortium the same documentation that would be demanded from the individual members had they applied separately as individual schools and libraries and been reviewed on that basis.<sup>40</sup> Thus, by subjecting consortia to Item 22 review, SLD is simply treating them in a way which is consistent with reviews that individual applicants are subject to. To do otherwise would create an arbitrary regulatory preference for consortia which would unfairly disadvantage individual applicants and would undermine the purposes of Item 22 Review discussed above. Therefore, we affirm SLD’s authority to subject CMCC to a review of its “necessary resource” certification.

13. In its Request for Review, CMCC principally asserts that it never refused to respond to any request for documentation, let alone “repeated” requests. After reviewing the record, however, we find that CMCC failed to provide requested Item 22 Review information on at least two occasions. First, in its response to the September 21, 1999 SLD Item 22 Review letter, CMCC provided no estimates whatsoever in connection with five of the six sections of the Item 22 review worksheet. Specifically, CMCC failed to provide responsive information in the sections designated Hardware, Professional Development, Software, Retrofitting, and Maintenance, despite the explicit request for this data in SLD’s September 21, 1999 letter. Instead of providing the estimates on hardware, professional development, software, and retrofitting, CMCC merely stated that “[t]he information requested by these sections is not readily available” and asserted that gathering the data “will take considerable time and effort.”<sup>41</sup> In connection with the Maintenance section, it asserted only that “[m]aintenance plans and agreements are in place for any equipment managed through the funding source associated with

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<sup>37</sup> *United Talmudical Academy* at para. 3.

<sup>38</sup> Item 22 Review Letter at 1 (emphasis added).

<sup>39</sup> As discussed in the Year 2 Program Description, these advantages include (1) attracting competitors and negotiating lower prices by aggregating demand; (2) improving efficiency by consolidating services; and (3) reducing cost by sharing network infrastructure, knowledge, facilities and technical staff. *See* SLD Year 2 Program Description, at 3 (December 1998).

<sup>40</sup> *See* Item 22 Review Letter at 2 (“If you have submitted your E-Rate request on behalf of a school system, a library system, or a consortium, your response on these worksheets should represent the total of all of the resources available in all of the eligible entities covered by your request . . .”).

<sup>41</sup> Item 22 Response at 2.

the connections in this application.”<sup>42</sup> These responses were inadequate and rendered it impossible for SLD to perform any part of the Item 22 Review which the Commission has authorized. Further, the difficulty of producing the estimates provides no excuse for the inadequacy of the response, as the Item 22 instructions did not make the provision of data on these sections discretionary. We find, therefore, that CMCC failed to properly respond to the initial Item 22 Review Letter.

14. We also find that CMCC failed to provide data requested by the SLD Item 22 reviewer in his follow-up request on November 9, 1999.<sup>43</sup> In this request, the reviewer first sought further explanation or documentation of CMCC’s ability to pay the undiscounted costs of the services requested.<sup>44</sup> Second, the reviewer stated: “[Y]our investment in professional development appears low in relation to the level of network resources you are requesting.”<sup>45</sup> He then requested a summary of the resources and strategies CMCC had available for professional development.<sup>46</sup>

15. In its November 15, 1999 response, CMCC again refused to provide data on professional development, asserting that “[p]rofessional development is not a service offered by Central MN Computing Center in this sense. It is the responsibility of our member school districts to provide the training to their staff.” Thus, although CMCC did “respond” to both the initial and follow-up requests in a literal sense, those responses both expressly declined to provide the necessary Item 22 Review data. We therefore find that CMCC effectively refused on two occasions to respond to requests for information in connection with an Item 22 Review. Based on the limited responses that it did provide, we conclude that CMCC did not demonstrate that its members possessed the necessary resources to make effective use of the services requested, and we hold that SLD properly denied funding on that basis.<sup>47</sup>

16. CMCC argues in its Request for Review that it was not required to produce certification materials with its Year 3 application and therefore should not have had to do so with its Year 2 application.<sup>48</sup> However, CMCC is not entitled to determine for itself what

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<sup>42</sup> *Id.*

<sup>43</sup> Letter from Tom Schnipp, Schools and Libraries Division, Universal Service Administrative Co., to Tracey Plante, Central Minnesota Computer Center, dated November 9, 1999 (Follow-up Letter).

<sup>44</sup> *Id.* at 1.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> In its Request for Review, CMCC asserts that it had a phone conversation with Tom Schnipp, the Item 22 reviewer, in which Mr. Schnipp asserted that CMCC’s September 29, 1999 response was “acceptable.” Request for Review at 2. However, the record also establishes that Mr. Schnipp subsequently indicated in writing that the response was inadequate and requested further information. Thus, even assuming that CMCC could reasonably rely on the initial statement, notwithstanding the clear directions to the contrary in the Item 22 Review Letter, CMCC’s reliance on Mr. Schnipp’s earlier oral statement was unreasonable after receiving the follow-up letter.

<sup>48</sup> Request for Review at 2.

documentation it must produce, and as noted previously, the Commission has already upheld SLD's authority to engage in the Item 22 review process.<sup>49</sup> Moreover, the reason why it was required to produce Item 22 documentation in Year 2 and not in Year 3 is not difficult to discern: it is simply that the review process is not performed on every applicant in every year. This fact was evident from the September 21, 1999 letter mailed by SLD, which explained that CMCC was "among the applicants" who were being asked to provide additional Item 22 information that year.<sup>50</sup> Such selectivity, justified by the thousands of applications received each year and the need for administrative efficiency, does not excuse CMCC from having to produce the requested information in the event that it is among the applicants selected for a more detailed audit of its certifications.

17. CMCC asserts in its Request for Review that the individual schools and libraries, not CMCC, are responsible for the five resources under review. We find that this assertion also fails to justify CMCC's failure to provide the requested resource data. If CMCC is suggesting that its non-response was adequate because the Item 22 Worksheet only required it to list its own resources, and not those of its members, we must reject this argument. The instructions accompanying the Item 22 Review Letter were clear that CMCC was obligated to substantiate its certification that "[t]he school(s) or library(ies) I represent have secured access to all the resources, including computers, training, software, maintenance, and electrical connections necessary to make effective use of the services purchased."<sup>51</sup> The letter also emphasized that "your response on [the Item 22 Review] worksheets should represent the total of all of the resources available *in all of the eligible entities covered by your request.*"<sup>52</sup> Because CMCC failed to comply with these clear directives, its Request for Review must be denied.

18. 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 Central Minnesota Computing Center, filed October 13, 2000, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert  
Deputy Chief, Accounting Policy Division  
Common Carrier Bureau

<sup>49</sup> *United Talmudical Academy* at paras. 14-15.

<sup>50</sup> Item 22 Review Letter at 1.

<sup>51</sup> Item 22 Review Letter at 1 (emphasis added).

<sup>52</sup> *Id.* (emphasis added).