

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

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In the Matter of)	
)	
Request for Review of Decisions of the)	
Universal Service Administrator by)	
)	
Bethlehem Temple Christian School)	SLD-119643
Duquesne, Pennsylvania)	
)	
Federal-State Joint Board)	CC Docket No. 96-45
on 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. The Common Carrier Bureau (Bureau) has before it a Request for Review filed by Bethlehem Temple Christian School (BTCS), requesting review of a decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ As further described below, the Bureau denies the instant Request for Review because BTCS failed to demonstrate in its application that it possessed the necessary resources to make effective use of the services for which it requested support. By denying this Request for Review, the Bureau advances the Commission's goal to prevent waste of universal service funds in the schools and libraries program.

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.² Administration of the schools and libraries support mechanism is the responsibility of SLD, under the oversight of the Schools and Libraries Committee of USAC.³ The Commission's rules

¹ Letter from Benjamin J. Aron, Schwaninger & Associates, to Federal Communications Commission, filed December 8, 1999 (Request for Review).

² 47 C.F.R. §§ 54.502, 54.503.

³ See 47 C.F.R. § 54.705(a)(1) (setting forth the functions of the Schools and Libraries Committee) and 47 C.F.R. § 54.701(g)(i) (directing the Administrator to establish the Schools and Libraries Division, and setting forth its functions); see also *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.* and (continued....)

require that an applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth the applicant's technological needs and the services for which it seeks discounts.⁴ Once the applicant has signed a contract for eligible services, it must file an FCC Form 471 application to notify 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.⁵

3. On the 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 Similarly, on the Form 471, applicants must 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."⁷ These certifications are consistent with the requirements set forth in the Commission's May 8, 1997, *Universal Service Order* and the Commission's rules.⁸ In that order, the Commission stated that applicants for discounts under the schools and libraries universal service support mechanism would be required to certify in

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Federal-State Joint Board on Universal Service, CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21 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 (1998).

⁴ 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).

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

⁶ See Form 470 at Item 25.

⁷ See Form 471 at Item 22.

⁸ *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 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."

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”⁹ The Commission approved, in *United Talmudical Academy*, 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.¹⁰

4. On April 5, 1999, an employee of Total Communications USA, a consulting firm, filed a Form 471 on BTCS’s behalf requesting support for discounted telecommunications services, Internet access, and internal connections. BTCS’s Form 471 indicated that fifty students attended school at its eleven-room building.¹¹ The prediscount cost of the services requested by BTCS in that application totaled approximately \$268,000.¹² BTCS requested support for the installation of ninety-six ports to network BTCS’s computers, despite having only seventeen computers.¹³

5. SLD contacted BTCS to request further information regarding the services requested by BTCS in its application.¹⁴ The director of BTCS told SLD that she did not know why BTCS’s consultant had requested support for the specific services listed on the Form 471.¹⁵ BTCS subsequently provided to SLD a copy of a letter from Total Communications USA to BTCS indicating its understanding that BTCS could not afford the nondiscounted portion of the services requested.¹⁶ In the letter, Total Communications USA assured BTCS that it would secure grants to pay for BTCS’s share of the costs, but BTCS never submitted any evidence to SLD that such grants had been obtained.¹⁷ A subsequent attempt by SLD to contact BTCS by

⁹ *Universal Service Order*, 12 FCC Rcd at 9079, para. 577.

¹⁰ *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*).

¹¹ Form 471, Bethlehem Temple Christian School, filed April 5, 1999 (BTCS Form 471).

¹² BTCS Form 471.

¹³ BTCS Form 471.

¹⁴ Letter from D. Scott Barash, Universal Service Administrative Company, to Federal Communications Commission, filed July 10, 2000 (USAC Letter) at 1.

¹⁵ USAC Letter at 1.

¹⁶ Letter from Martin Schwarts, Total Communications USA, to Gloria McAlester, dated July 12, 1999 (Schwartz letter).

¹⁷ Schwarts letter; USAC Letter at 1-2.

telephone was unsuccessful.¹⁸ On November 9, 1999, SLD issued a funding commitment decision letter denying every funding request because “[a]pplicant has not provided sufficient documentation to determine the eligibility of this item.”¹⁹ The instant letter of appeal was filed on December 8, 1999.

6. As a threshold matter, we believe that BTCS’s application raises serious concerns that BTCS inappropriately abdicated control over the application process to Total Communications USA. BTCS’s application and its surrounding circumstances—including the ninety-six ports for BTCS’s seventeen computers—also raise serious concerns that BTCS or Total Communications USA may have attempted to defraud the universal service fund or misrepresented facts to the Commission.²⁰ Accordingly, we intend to investigate this matter further and take additional action as warranted.

7. On the narrow issue before us on appeal, we conclude that BTCS did not demonstrate to SLD that it possessed the necessary resources to make effective use of the services for which it requested support. The record reflects that BTCS provided to SLD a letter from Total Communications USA indicating that BTCS had not secured the requisite financial resources to pay the nondiscounted cost of the services requested.²¹ Although Total Communications USA’s letter indicates that Total Communications USA intended to secure grants on behalf of BTCS to pay those costs, BTCS did not provide to SLD any evidence that such grants had been secured.²² Moreover, nothing in the record before us indicates that BTCS had the necessary resources to make effective use of certain services requested, even if BTCS had been able to pay its nondiscounted share of the costs. For example, BTCS requested support for 96 ports for connecting computers to a network.²³ The FCC Form 471 requires that the applicant certify that it possess the necessary resources, “including computers,” to make effective use of the services requested.²⁴ BTCS’s request would, however, provide BTCS with more than

¹⁸ USAC Letter at 2.

¹⁹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Mosses Freedman, Bethlehem Temple Christian School, issued November 9, 1999 (Funding Commitment Decision Letter).

²⁰ FCC Form 471 and its instructions clearly state that the person signing the form is subject to sections 502 and 503(b) of Title 47 of the United States Code, which provide penalties for willful violations of the Commission’s rules. Form 471; Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (FCC Form 471) (December 1998). *See also* 47 C.F.R. § 1.17 (requiring truthfulness in statements and documents filed before the Commission).

²¹ *See* Schwarts Letter.

²² USAC Letter at 2.

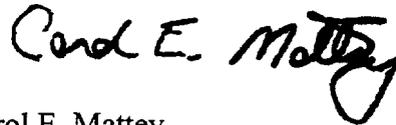
²³ BTCS Form 471.

²⁴ FCC Form 471 at Item 22.

five times as many computer ports as available computers.²⁵ We find that neither BTCS nor Total Communications USA demonstrated to SLD that BTCS possessed the necessary resources to make effective use of the services for which it requested support. We, therefore, deny BTCS's request for review.

8. 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 Bethlehem Temple Christian School, Duquesne, Pennsylvania, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey
Deputy Chief, Common Carrier Bureau

²⁵ See BTCS Form 471; Form 470 from Bethlehem Temple Christian School to Schools and Libraries Division, Universal Service Administrative Company.