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Before the
Federal Communications Commission
Washington, DC 20554

2001 OCT 17 A 11: 07

In the Matter of	)	
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Request for Review of the Decision of the Universal Service Administrator by	)	RECEIVED
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United Talmudical Academy Brooklyn, New York	)	File No. SLD-105791
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Changes to the Board of Directors of the National Exchange Carrier Association, Inc.	)	CC Docket No. 97-21

ORDER

Adopted: October 19, 2001 **Released: October 23, 2001**

By the Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration a Request for Review filed by the United Talmudical Academy(UTA), Brooklyn, New York, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).[1] UTA seeks review of SLD's decision on remand from the Commission to grant only some of UTA's Funding Year 1 requests for telecommunications services.[2] SLD, directed by the Commission to consider funding of UTA's requests for "basic voice telephone service," found that cellular phone service and Centrex phone service did not constitute basic voice telephone services.[3] For the reasons set forth below, we find that cellular phone service is basic voice telephone service, but that Centrex is not. Therefore, we grant in part and deny in part the Request for Review and remand again for further consideration of UTA's application.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for

[1] Letter from Eugene Sander, United Talmudical Academy, to Federal Communications Commission, filed September 20, 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).

[3] Request for Review at 1-2.

discounts for eligible telecommunications services, Internet access, and internal connections.[4] 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.[5] After the FCC 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.[6] 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."[7] On the FCC Form 471, 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."[8] These certifications are consistent with the requirements set forth in the Commission's May 8, 1997 *Universal Service Order*.[9] 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

[4] 47 C.F.R. §§ 54.502, 54.503.

[5] Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (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, 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).

[6] 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (FCC Form 471).

[7] See FCC Form 470, OMB No. 3060-0806, at Item 25 (December 1997).

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

[9] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (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 Order* in part and reversing and remanding on unrelated grounds), *cert. denied, 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).

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 ...."[10]

4. In 1998, UTA filed an FCC Form 471 seeking funding of various telecommunications and advanced services for Funding Year 1.[11] SLD denied the application in its entirety, however, finding that UTA had failed to show that it had the resources necessary to make effective use of the services for which it sought discounts.[12] UTA then filed a Letter of Appeal with SLD, limiting its appeal to the requests for funding of its existing telecommunications services, a new PBX system, and two computer networks.[13] SLD denied that appeal as well.[14] It stated that the necessary resources review looked only to whether UTA had the resources necessary for all of its requests; SLD did not perform a separate resource analysis for each funding request.[15]

5. UTA then filed a Request for Review with the Commission, asserting that SLD should have performed a separate necessary resources analysis for the funding requests seeking basic voice telephone service.[16] By decision released January 7, 2000, the Commission concluded that it is generally appropriate for SLD to analyze whether an applicant has demonstrated that it has the necessary resources to support its application by looking at the application as a whole with all FRNs because it would be administratively burdensome for SLD to determine which resources should be assigned to which request.[17] However, the Commission indicated that SLD should apply one exception to this rule.[18] Where an applicant has requested

[10] *Universal Service Order*, Order, 12 FCC Rcd 8776, 9079, para. 577; *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."

[11] FCC Form 471, United Talmudical Academy, filed April 13, 1998 (Year 1 Form 471).

[12] 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).

[13] Letter from Mozes Greenfeld, United Talmudical Academy, to Schools and Libraries Division, Universal Service Administrative Company, filed March 29, 1999 (Appeal to SLD).

[14] Letter from Schools and Libraries Division, Universal Service Administrative Company, to United Talmudical Academy, dated July 14, 1999 (Administrator's Decision on Appeal).

[15] *Id.* at 1.

[16] Letter from Mozes Greenfeld, United Talmudical Academy, to Federal Communications Commission, filed August 12, 1999 (First Request for Review).

[17] *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 423, paras. 15-16 (2000) (*United Talmudical Academy Order*).

[18] *Id.* at paras. 15, 18.

"basic voice telephone service" on a stand-alone basis and not bundled with other products or services in a funding request, the Commission directed SLD to engage in a separate necessary resources review.[19] The Commission remanded UTA's application to SLD for further determinations of the merits of "any [Funding Request Numbers] seeking discounts solely for basic voice telephone service."[20] The Commission further specifically instructed: "[i]f SLD finds that UTA submitted individual FRNs seeking discounts solely for basic voice telephone service, that such requests individually pass SLD's review for necessary resources, and that such requests are otherwise in compliance with our rules and orders governing the schools and libraries support mechanism, we direct SLD to fund those requests."[21]

6. On remand, SLD granted only three of UTA's eight telecommunications requests.[22] SLD did not specify in the Second Funding Commitment Decision Letter why the other five requests were not funded.[23] SLD subsequently informed UTA that these requests sought cellular phone service and Centrex service, which SLD found did not constitute "basic telephone service."[24] UTA then filed the pending Request for Review.

7. In its Request for Review, UTA asserts that SLD erred by applying its own internal definition of "basic telephone service" instead of a broader, more general definition which SLD asserts was intended by the *United Talmudical Academy Order*.[25] UTA asserts that in the *United Talmudical Academy Order*, the Commission "clearly indicated its approval of UTA's entire basic voice telephone service application."[26] In UTA's understanding, the term "basic voice telephone service" was intended to apply to all of UTA's requests that were part of the telephone service package it obtained from the local telephone company, including the provision of Centrex and cellular service.[27] As relief, UTA asks that its requests be granted in their entirety.[28] In addition, UTA asks that the Commission delay deciding the Request for Review and grant UTA an opportunity to file a supplement to the Request for Review after it has obtained all the records of SLD that pertain to UTA's application.[29]

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[19] *Id.* at para. 19.

[20] *Id.*

[21] *Id.*

[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] *Id.* at 3.

[24] *See* Request for Review at 1-2.

[25] Request for Review at 1-2.

[26] *Id.* at 2.

[27] *Id.* at 2.

[28] *Id.* at 3.

[29] *Id.* at 2.

8. We first address UTA's request for an extension of the time to appeal so that it may file a supplemental Request for Review after the Administrator has responded to UTA's request for the complete application file. Our review of SLD's decision is based solely on the record that is currently before us, consisting of the application materials and decisional documents. All of these materials are already in UTA's possession. Accordingly, we deny UTA's request for an extension of time and opportunity to file a supplemental pleading, and proceed to address the merits of the pending Request for Review.

9. After reviewing the complete record and governing precedent, we reject UTA's assertion that in the *United Talmudical Academy Order*, the Commission indicated its approval of UTA's entire telephone service application. Rather, as noted above, the Commission specifically directed that SLD should award funding only "if" it found several conditions satisfied.[30] For purposes of this appeal, one condition is critical: SLD was directed by the Commission to award funding only "*[i]f* SLD finds that UTA submitted individual FRNs seeking discounts solely for basic voice telephone service . . . ."[31] The Commission did not determine whether UTA had in fact made such requests, let alone which specific requests consisted of "basic voice telephone service." Instead, the Commission left the assessments of whether UTA's individual FRNs sought discounts for basic voice telephone service to SLD to determine, consistent with governing rules and program policies. Thus, SLD was directed to make this determination on remand.

10. The issue before us is whether SLD should have concluded that cellular service and Centrex service constitute basic voice telephone service and, therefore, that FRNs seeking funding for such services should be reviewed for necessary resources separate from the rest of the applicant's FRNs. We note initially that SLD has altered its position in part since its August 21, 2000 decision on UTA's application. Currently, it defines "basic phone service" as "[t]he basic telephone service provided by the telephone company . . . includ[ing] 'Plain Old Telephone Service' [POTS], Cellular/Personal Communications Service and long distance telephone service."[32] Thus, SLD now considers cellular phone service to be "basic voice telephone service," but still finds that Centrex is not "basic voice telephone service."

11. In analyzing whether cellular service and Centrex service should be considered "basic voice telephone service," we note that the importance of this conclusion, as stated in the *United Talmudical Academy Order*, is that requests for such service are entitled to a separate necessary resources review because the necessary resources of such requests, *e.g.*, "telephones," are readily ascertainable.[33] In addition, applicants seeking only basic voice telephone service need not have an approved Technology Plan.[34]

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[30] *United Talmudical Academy Order*, para. 19.

[31] *Id.* (emphasis added).

[32] *See* SLD Web Site, <http://www.sl.universalservice.org/data/pdf/EligibleServicesList_12_29_00.pdf>.

[33] *Id.* at para. 18.

[34] *Id.*

12. Taking into account these considerations, we find that cellular service should be considered "basic voice telephone service" for the purposes of the schools and libraries universal service support mechanism. Resources necessary for cellular phone service are as readily ascertainable as those for wireline POTS. Therefore, we reverse SLD's determination that cellular phone service should not be considered basic voice telephone service under the schools and libraries program.

13. However, we agree with SLD that Centrex is not "basic voice telephone service" for the purposes of the schools and libraries universal service support mechanism. "Centrex" is the generic name for central office-based private branch exchange (PBX)-type services that relies in part on customer premise equipment to provide an end user with a broad variety of features and functions that a customer premises-based PBX would provide, *e.g.*, intercom, access line pooling, call transfer, call restrictions, call forwarding, directed call pickup, and conference calling.[35] It may also include additional enhanced functions such as Customer Dialed Account Recording, which allows Centrex customers to use the telephone company's electronic switches for the storage and retrieval of customer business information that is not used in the provision or management of the customer's telephone service.[36]

14. As discussed above, we determine whether this service constitutes basic voice telephone service by considering whether the resources necessary to make effective use of the service are sufficiently analogous to those necessary to use POTS. Necessary resource categories include "computers, training, software, maintenance, and electrical connections."[37] Given that Centrex service is central office-based, the hardware and software resources necessary for Centrex will likely be analogous to those needed for POTS. However, in respect to the resources needed for training, the two services are not analogous. While we can safely assume that use of ordinary telephone service requires little or no training, we cannot assume that users will be able to make effective use of the numerous features provided by Centrex without training, particularly where those features involve advanced functions such as the Customer Dialed Account Recording function discussed above. We therefore find that FRNs seeking Centrex should not be considered requests for "basic voice telephone service" and should be analyzed for necessary resources together with the rest of the applicant's FRNs. In this case, because UTA failed its overall necessary resources review, we find that SLD correctly denied the FRNs seeking Centrex service.

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[35] *See Public Utility Commission of Texas the Competition Policy Institute, Intelcom Group, (USA), Inc. and ICG Telecom Group, Inc., AT&T Corp., MCI Telecommunications Corporation, and Mfs Communications Company, Inc. Teleport Communications Group, Inc. City Of Abilene, Texas*, 13 FCC Rcd. 3460, n. 492 (1997), petition for review denied, *City of Abilene, Tex. v. F.C.C.*, 164 F.3d 49 (D.C. Cir. 1999); *see also, e.g.*, <http:/ www.bellatlantic.com/largebiz/cent_standard.htm> (describing features of provider's Centrex service, promising "the latest features and functionality and . . . the newest system innovations as they become available.").

[36] *North American Telecommunications Association Petition for Declaratory Ruling Under Section 64.702 of the Commission's Rules Regarding the Integration of Centrex, Enhanced Services, and Customer Premises Equipment*, 3 FCC Rcd 4385, para. 1 (1988).

[37] *See, supra*, n.8.

15. In sum, we affirm SLD's conclusion that Centrex is not "basic voice telephone service" for purposes of the schools and libraries universal service support mechanism, but find that cellular phone service is encompassed by that term.[38] We remand this application to SLD to reconsider whether the affected funding requests for cellular phone service should be granted. Aside from finding that cellular phone service requests are requests for basic voice telephone service, entitled to a separate necessary resources review, we offer no opinion as to whether the particular cellular requests at issue here are entitled to funding.

16. 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 United Talmudical Academy is GRANTED in part and DENIED in part, and this application is REMANDED to SLD for further action consistent with this Order.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Mattey

Carol E. Mattey
Deputy Chief, Common Carrier Bureau

[38] Such a finding under the schools and libraries support mechanism has no precedential significance in other proceedings or contexts before the Commission.