

**United
almudical Academy
"Torah V'Yirah"**



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דרבינו יואל מסאטמאר

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NOV 29 2001
FCC MAIL ROOM

November 19, 2001 97-21

Re: FCC Docket # 97-32 & 96-45

Form 471 Application # 105791
Funding Year 1998
Billed Entity # 155580

Gentleman:

Enclosed please find the UTA's appeal of the order of the Common Carrier Bureau of October 2001.

Very truly yours,

Mozes Greenfeld

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of:

Request for Review by
the United Talmudical Academy
of the Decision of the Universal Service Administrator

FCC Docket Nos.
97-21 and 96-45

Review of Form 471
Application No. 105791
(1998 Funding Year)
Billed Entity No. 155580

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PRELIMINARY STATEMENT

The United Talmudical Academy, of Brooklyn, New York (hereinafter "UTA"), hereby appeals to the Federal Communications Commission and seeks review of the Order by the Common Carrier Bureau ("CCB"), adopted October 19, 2001 and released October 23, 2001 (copy submitted herewith). Said Order was made upon the Common Carrier Bureau's *de novo* review of the "Special - Funding Year 1998 Appeal, Funding Commitment Decisions Letter" of the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC"). UTA's Request for Review challenged the SLD's commitment when viewed in light of the remand Order of the Federal Communications Commission ("FCC"), Adopted January 4, 2000, Released January 7, 2000 (copy submitted herewith) in that it did not provide complete funding for basic voice telephone service as required by said Order. The Common Carrier Bureau granted in part and denied in part UTA's Request for Review. This appeal ensues.

ARGUMENT

The January 2000 Order of the FCC remanded UTA's application to the SLD "for further determination with respect to UTA's request for funding of basic voice telephone service."

It also dismissed the UTA's request for disclosure of the SLD documentation pertaining to its original denial as moot. Essentially, the FCC required the SLD to grant the UTA's initial application for basic voice telephone service, which was the core of the appeal.

Upon remand, the SLD took it upon itself to apply a term of art, "Basic Telephone Service" (as found in its published services eligibility list) to the FCC's remand Order and thus limit the funding commitment to only services that fall within the definition of that term of art.

The result was to eliminate that portion of UTA's initial basic voice telephone service application that sought funding for its interconnected centrex service and its cellphone service. When making its initial application, the UTA included its centrex and cellphone service as all services were to be obtained from the local telephone company as part of a reduced cost telephone service package. Specifically, the centrex service employed by UTA is not a private communications system but a basic telephone service package (or Plain Old Telephone Service - "POTS") designed to meet UTA's basic telephone needs. **This is verified in the annexed letter from UTA's local telephone service provider, Verizon, dated November 15, 2001.**

In any event, the FCC, in its January 2000 Order, clearly indicated its approval of the UTA's entire basic voice telephone service application. SLD was not authorized by the Order to dissect that application and commit funding to only selected parts. UTA's application for basic voice telephone service was an application for a complete package of services and that application was approved, in its entirety, by the FCC.

Furthermore, SLD's more recent actions only served to bolster UTA's original demand for disclosure of the SLD documentation. Such disclosure is no longer moot in that SLD is once again attempting to circumvent the FCC's policies and the intent of the Federal Communications Act.

THE COMMON CARRIER BUREAU'S ORDER

In reviewing the above, the Common Carrier Bureau granted the application in part and denied it in part. While the CCB Ordered that "cellular service should be considered 'basic telephone service' for the purposes of the schools and libraries universal service support mechanism" (CCB October 2001 Order, Par. 12), the CCB also found that "Centrex is not 'basic voice telephone service' for the purposes of the schools and libraries universal service support mechanism" (CCB October 2001 Order, Par. 13).

This latter ruling, of course, greatly affects UTA's funding request in that UTA's Plain Old Telephone Service, in place, consists only of the basic Centrex service supplied by its local carrier, Verizon. UTA is thus severely prejudiced in that a long term, 7 year, contract was signed with Verizon for the Centrex service in order to take advantage of lower telephone rates than the more commonly used basic telephone service.

The CCB's analysis in making its determination can be found entirely in Paragraph 14 of its October 2001 Order:

"As discussed above, we determine 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.' 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."

Verizon, in describing the **actual** Centrex service in question (see November 15, 2001 letter

annexed hereto), states as follows:

- “This is a basic Centrex account consisting of 83 lines in which basic features are built into the contract price. **You are not being billed for any additional features, such as Customer Dialed Account Recording, on this account.** Because basic Centrex service is simple to use (dial ‘9’ to make outgoing calls, and use simple two digit commands to activate features), **little or no training is required.**”

The finding of the CCB is flawed in a number of respects. First of all, the CCB makes *assumptions* about what the Centrex service may entail without regard to the *facts* as they stand today. Under the FCC’s October 2000 remand Order, the SLD was to review the UTA’s resources to see if they were adequate to support that which was being funded. Rather than analyze UTA’s resources, however, the SLD, and the CCB, sought to review all Centrex systems and the myriad possibilities they could bring. Thus their review was based on statements such as “while we can safely assume . . .”, rather than the factual analysis the FCC Ordered them to make.

This is underscored by the finding of the CCB that “the hardware and software resources necessary for Centrex will likely be analogous to those need for POTS.” (Order, Par. 14). The CCB’s only trouble with UTA’s resources is the CCB’s assumption that Centrex requires much more than the “little or no training” needed for use of Plain Old Telephone Service. However, as is testified to by the carrier itself - Verizon - “because basic Centrex service is simple to use (dial ‘9’ to make outgoing calls, and use simple two digit commands to activate features), **little or no training is required.**” The CCB’s assumption regarding the UTA’s system is simply wrong. And this is easily verifiable as the system is already in place.

Moreover, even the overall analysis fails to do justice to the underlying Order of the FCC. The FCC, in its January 2002 Order, directed the SLD to review the UTA’s application

for funding for basic voice telephone service. Assuming, *arguendo*, that the Order allowed for SLD to review, *de novo*, the necessary resources of UTA for the funding request, SLD's stated analysis should have been whether the UTA has the necessary resources required under the program. The program requires telephone service for funding. If none is in place, the proposal must include a reasonable plan for obtaining and implementing the resources. If the plan becomes too complicated, that could affect the reality of the applicant's plan. But if the resources are already in place and have been implemented, there can be no question as to the ability to implement what is already there.

The CCB specifically finds fault in the idea that a plan for a Centrex system *could become* complicated and unlikely to be implemented. However, UTA's Centrex system has *already been* implemented and is specifically *not complicated*.

The UTA's situation is analogous to one who directs his employee to buy a simple and cheap telephone so that it could be plugged into a jack and used immediately. The employee returns with a complicated computerized unit with 42 features and 57 buttons - it was on sale and cheaper than the regular phone. The employer asks "but can I make a simple call?" The employee plugs it into the jack and dials straight out. He has accomplished his purpose. So too has the UTA demonstrated that it has the necessary resources to immediately use the funding for telephone service. That some other Centrex services *could* require additional training for use of all its features is of no moment to the question of "but can I make a phone call?"

The undersigned hereby verifies that the Centrex system in place is the very basic Centrex system that is described in the annexed letter from Verizon. At the time it was purchased it was presented as a replacement package for our plain old telephone service - that Verizon would provide at a cheaper price so as to obtain our business. It was purchased so that we could save

the institution on expenses while maintaining plain telephone service, and there was never any intention to use any of the features other than those that ordinary telephones allowed for.

In the final analysis, the CCB analyzed not the current Centrex system in place at UTA, nor the ability of a basic Centrex system to provide basic telephone service to an applicant, but rather whether an applicant who installed a Centrex system would be able to easily use all of its features and potentials. Why that is relevant to the question of necessary resources for basic telephone services is the question the FCC should be addressing.

CONCLUSION

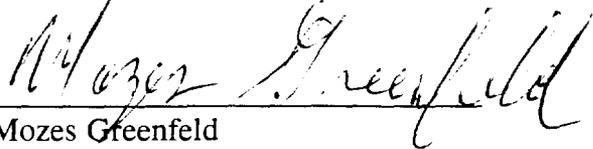
Based upon all the foregoing, it is respectfully requested that prior to the making of a final determination by the FCC the UTA be given an opportunity to review all the records of the SLD and CCB as they specifically pertain to the UTA's application so as to allow the UTA to submit a more informed and properly prepared supplemental memorandum on appeal to the FCC.

It is further requested that the UTA's request for Basic Voice Telephone Service funding be reviewed, *de novo*, and upon such review be granted in its entirety, including *all* service requested in the application (cellphones and Centrex), as a modified Form 471 application for funding.

The undersigned hereby verifies that I have read the foregoing, and that to the best of my knowledge, information and belief there is good ground to support it, and it is not interposed for delay.

Dated: November 19, 2001
Brooklyn, New York

Respectfully submitted,

A handwritten signature in cursive script, reading "Mozes Greenfeld". The signature is written in dark ink and is positioned above a horizontal line.

Mozes Greenfeld
Telecommunications Project Director
United Talmudical Academy
82 Lee Avenue
Brooklyn, New York, 11211
(718) 963-9260, *ext.* 1222
Fax: (718) 963-2172

.....



Verizon Enterprise Solutions
1166 Avenue of the Americas, 7th Floor
New York, NY 10036

November 15, 2001

United Talmudical Academy Torah Vyirah

82 Lee Avenue
Brooklyn, NY 11211

Dear Sir or Madam:

This letter is to inform you of the following information regarding your telephone account 718 963-9260 055.

This is a basic Centrex account consisting of 83 lines in which basic features are built into the contract price. You are not being billed for any additional features, such as Customer Dialed Account Recording, on this account. Because basic Centrex service is simple to use (dial "9" to make outgoing calls, and use simple two digit commands to activate features), little or no training is required. I am enclosing for your convenience a list of the numerical codes to operate the basic features. Please feel free to call me at 212 730-4925 if you have any further questions.

Sincerely,

A handwritten signature in cursive script that reads "Catherine Hoell".

Catherine Hoell
Sales Engineer

.....

Federal Communications Commission

DA 01-2457

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
United Talmudical Academy)	File No. SLD-105791
Brooklyn, New York)	
)	
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: 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.

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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).

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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.

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"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

¹⁹ *Id.* at para. 19.

²⁰ *Id.*

²¹ *Id.*

²² Letter from Schools and Libraries Division, Universal Service Administrative Company, to Moses 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.

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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

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.*

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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.

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 Mjs 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.

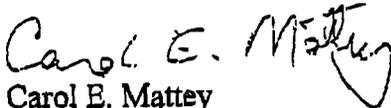
Federal Communications Commission

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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. Matthey
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.

Federal Communications Commission

FCC 00-2

Before the Federal Communications Commission Washington, DC 20554

In the Matter of)	
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Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
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United Talmudical Academy)	File No. SLD-105791
Brooklyn, New York)	
)	
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: January 4, 2000 Released: January 7, 2000

By the Commission:

1. This Order grants in part and dismisses in part the Letter of Appeal of United Talmudical Academy, Brooklyn, New York (UTA), that was received by the Commission on August 12, 1999. UTA's Letter of Appeal seeks review of a decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator), dated July 14, 1999. UTA seeks review solely with respect to SLD's denial of UTA's request for funding of basic voice telephone service. We remand UTA's application to SLD for further determination with respect to UTA's request for funding of basic voice telephone service. Furthermore, we dismiss UTA's request for an opportunity to review SLD documents pertaining to its application.

BACKGROUND

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. In order to receive discounts on eligible services, schools must file certain information with the

1 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).

2 47 C.F.R. §§ 54.502, 54.503.

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Administrator. Specifically, the Commission's rules require that an applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth the school's technological needs and the services for which it seeks discounts.³ Once the school 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 school has signed a contract, and an estimate of the funds needed to cover the discounted portion of the price of the eligible services.⁴

3. On the FCC Form 470, among other things, 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."⁵ On the FCC Form 471, among other things, 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."⁶ These certifications are consistent with the requirements set forth in the Commission's May 8, 1997 *Universal Service Order*. 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 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"⁷

4. Administration of the schools and libraries support mechanism is the responsibility of the Schools and Libraries Division (SLD) of USAC, under the oversight of the

³ 47 C.F.R. § 54.504(b)(1), (b)(3). In submitting its FCC Form 470, an applicant is required to provide only 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.

⁴ 47 C.F.R. § 54.504(c).

⁵ See FCC Form 470, OMB No. 3060-0806, at item 25 (December 1997).

⁶ See FCC Form 471, OMB No. 3060-0806, at item 22 (December 1997).

⁷ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Red 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). 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."

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Schools and Libraries Committee of USAC.⁸ Under the rules adopted in the Commission's *Eighth Reconsideration Order*, the Schools and Libraries Committee's functions include "development of applications and associated instructions," "review of bills for services that are submitted by schools and libraries," and "administration of the application process, including activities to ensure compliance with Federal Communications Commission rules and regulations."⁹ Thus, under the *Eighth Reconsideration Order*, the Commission vested in the Schools and Libraries Committee and the Schools and Libraries Division the responsibility for administering the application process for the universal service support mechanism for eligible schools and libraries. Moreover, under the Commission's rules, it is the responsibility of SLD, subject to the oversight of the Schools and Libraries Committee, to process and review each FCC Form 470 and FCC Form 471 filed with SLD to ensure that the funding applicant is in compliance with applicable rules and regulations of the Commission.

5. On April 13, 1998, UTA filed with SLD an FCC Form 471, requesting funding of various telecommunications and advanced services for Year 1 of the schools and libraries support mechanism in the amount of approximately \$3.4 million. By correspondence dated January 13, 1999, SLD requested additional information from UTA regarding its application.¹⁰ In particular, SLD inquired about UTA's plans for making use of a high bandwidth network, UTA's plans for staff training, apparent disparities between the number of personal computers that UTA had acquired and planned to acquire and the capacity of UTA's planned network, and UTA's requests for discounts on wireless service from multiple providers.¹¹ SLD's information request also sought descriptions or diagrams of the placement and use of several network components listed in Item 17 of UTA's application.¹² In response, UTA explained that it sought to give teleconferencing capacity to each of its 542 classrooms, that most of its teachers would not require more than 6-10 hours of formal training, and that it had signed long-term service contracts with multiple wireless service providers at different times.¹³ UTA's response also gave an account of the placement and number of components listed in Item 17 of its funding application.¹⁴ In its Funding Commitment Letter, dated February 26, 1999, SLD denied UTA's

⁸ 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)(1) (directing the Administrator to establish the Schools and Libraries Division, and setting forth its functions).

⁹ 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 Rod 25058, 25075-76, paras. 30-31 and 34 (1998) (*Eighth Reconsideration Order*) (describing the functions of the Schools and Libraries Committee).

¹⁰ See Letter from Schools and Libraries Division of the Universal Service Administrative Company to United Talmudical Academy, dated January 13, 1999 (*Request for Additional Information*).

¹¹ *Id.*

¹² *Id.*

¹³ See Letter from United Talmudical Academy to Schools and Libraries Division of the Universal Service Administrative Company, date unknown (on or about January 13, 1999).

¹⁴ *Id.*

request in its entirety. In support of its decision, SLD stated that, after careful review of the information UTA submitted, SLD had determined that UTA had not secured access to all of the resources, including computers, training, software, maintenance, and electrical connections, necessary to make effective use of the services for which UTA sought discounts.¹⁵

6. On March 29, 1999, UTA filed with SLD a Letter of Appeal requesting review of SLD's denial of funding with respect to certain items in its original FCC Form 471.¹⁶ UTA's Letter of Appeal to SLD indicated that, after reviewing its original FCC Form 471, UTA was modifying its technology plan for the 1999-2000 funding year.¹⁷ Furthermore, for the 1998-1999 funding year, UTA sought review only of SLD's denial of its requests for funding of: (1) UTA's existing telecommunications services; (2) a PBX system; and (3) two computer networks, reducing the amount of UTA's request to \$238,451.¹⁸ In its Decision on Appeal, SLD again denied UTA's remaining funding requests. In support of its decision, SLD stated that its review for necessary resources had not been not applied to individual funding request numbers (FRNs), but rather to the entire funding application UTA submitted in its FCC Form 471.¹⁹ After SLD issued its Decision on Appeal, UTA requested additional information from SLD regarding its denial of UTA's requests for discounts.²⁰ By letter dated August 9, 1999, SLD responded to UTA's information request.²¹ Specifically, SLD's response stated that its review indicated UTA's 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 percent from SLD's projections of the resources necessary to make effective use of the services for which UTA had requested discounts.²²

¹⁵ See Funding Commitment Letter of Debra M. Kriete, Universal Service Administrative Company, Schools and Libraries Division, to Mozes Greenfeld, United Talmudical Academy, dated February 26, 1998 [sic] (actual date February 26, 1999).

¹⁶ See Letter of Appeal of Mozes Greenfeld, United Talmudical Academy, to Universal Service Administrative Company, Schools and Libraries Division, dated March 24, 1999.

¹⁷ See *id.* at 1.

¹⁸ See *id.* at 2. In its appeal to SLD, UTA did not seek review of SLD's denial of UTA's other funding requests, including requests for discounts on Internet access and some internal connections services.

¹⁹ See Administrator's Decision on Appeal of Universal Service Administrative Company, Schools and Libraries Division, to Mozes Greenfeld, United Talmudical Academy, dated July 14, 1999 (*Decision on Appeal*).

²⁰ See Letter of Mozes Greenfeld, United Talmudical Academy, to Ellen Wolfhagen, Schools and Libraries Division of the Universal Service Administrative Company, dated July 21, 1999.

²¹ See Letter of Ellen Wolfhagen, Schools and Libraries Division of the Universal Service Administrative Company, to Mozes Greenfeld, United Talmudical Academy, dated August 9, 1999.

²² See *id.* at 2.

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UTA'S LETTER OF APPEAL

7. On August 12, 1999, UTA filed with the Commission a Letter of Appeal seeking review of SLD's Decision on Appeal.²³ In this Letter of Appeal that is currently before us, UTA limits its appeal solely to review of SLD's denial of funding of basic voice telephone service.²⁴ UTA also requests that, prior to making a final determination on its appeal, the Commission give UTA an opportunity to review all of SLD's records pertaining to UTA's application.²⁵

8. In its Letter of Appeal to the Commission, UTA raises several objections to SLD's Funding Commitment Letter and Decision on Appeal. In particular, UTA objects to the denial of UTA's application based on SLD's finding that UTA lacks the necessary resources to make effective use of the services requested. UTA deems this finding by SLD "perfunctory . . . [and] without explanation."²⁶ UTA also objects to SLD's denial of UTA's entire funding request based on a determination that a portion of UTA's application failed to meet the requirement of necessary resources to make effective use of the services requested.²⁷ In support of its denial of the entire funding request, SLD's Decision on Appeal states, "The necessary resources standard is one that is applied against the entire application, not to individual Funding Request Numbers (FRNs). This policy is based on the concept that the application as a whole must pass scrutiny, without regard to whether resources can be allocated differently to cover a portion of the expenses."²⁸ UTA objects to this methodology as "patently unfair," regarding it as illogical that a funding request under one Funding Request Number (FRN) could be denied because of problems in another FRN on the same FCC Form 471, when the former FRN would have received funding if it had been placed on a separate FCC Form 471.²⁹ UTA also contends that SLD's denial of entire applications based on irregularities within individual FRNs is not based on any Commission rule or regulation.³⁰

²³ See Letter of Appeal of Moses Greenfeld, United Talmudical Academy, to the Office of the Secretary, FCC, dated August 11, 1999 (*Letter of Appeal*).

²⁴ See *id.* at 1, 4, 5 and 6. In its appeal to the Commission, UTA did not seek review of SLD's denial of UTA's other funding requests, including requests for discounts on Internet access and internal connections services.

²⁵ See *id.* at 8.

²⁶ See *id.* at 6.

²⁷ See *id.* at 5-6.

²⁸ See *Administrator's Decision on Appeal*.

²⁹ See *Letter of Appeal* at 5-6.

³⁰ See *id.*

USAC'S LETTER

9. On December 20, 1999, USAC filed with the Commission a letter commenting on particular issues raised in UTA's Letter of Appeal and summarizing the method by which SLD reviews applications for necessary resources in order "to ensure that the record before the Commission is developed fully...."³¹ In support of its authority to review funding requests for necessary resources, generally, and of its method of performing such review, in particular, USAC cites to the Communications Act of 1934, as amended,³² particular Commission orders and rules implementing the schools and libraries support mechanism for eligible schools and libraries, as well as the necessary resources certification contained in the Commission-approved FCC Form 471.³³ At the outset, USAC notes that section 254(h)(1)(B) of the Act limits discounts to services provided in response to *bona fide* requests made for services to be used for educational purposes.³⁴ According to USAC, the necessary resources certification requirement, as adopted by the Commission and applied by USAC, is critical to achieving compliance with section 254(h)(1)(B) by helping to ensure that requests for discounted services are, in fact, *bona fide* requests and that applicants can make use of those services for their intended educational purpose.³⁵ USAC also points to the Commission's mandate that SLD take steps to curb waste, fraud, and abuse of funds in the schools and libraries support mechanism.³⁶ USAC asserts that reviewing applicants' necessary resources certifications constitutes SLD's primary means of guarding against waste, fraud, and abuse of funds under the schools and libraries support mechanism.³⁷

10. USAC defends the method by which SLD performs its necessary resources review (i.e., reviewing the adequacy of support resources against the totality of an applicant's funding requests and rejecting all funding requests in a given year where SLD finds inaccuracies or deficiencies with respect to an applicant's necessary resources certification) as the only practical way to give effect to the language of the Commission's rules and orders governing necessary resources certifications.³⁸ According to USAC, performing the necessary resources review on an FRN-by-FRN basis, in essence, would require SLD to "stand in the shoes" of the applicant.³⁹ SLD would be put in this untenable position, USAC argues, by having to determine

³¹ See Letter from D. Scott Barash, Universal Service Administrative Company, to Magalie Roman Salas, FCC, dated December 20, 1999 (*USAC letter*), at 2.

³² Communications Act of 1934 (as amended), ch. 652, 48 Stat. 1064 (June 19, 1934). Amended by Telecommunications Act of 1996, Pub.L. 104-104, 110 Stat. 56 (Feb. 8, 1996).

³³ *USAC letter* at 2.

³⁴ *USAC letter* at 2 (citing 47 U.S.C. § 254(h)(1)(B)).

³⁵ *USAC letter* at 2 (citing 47 C.F.R. § 54.504(b)(2)).

³⁶ *USAC letter* at 2 (citing 47 C.F.R. § 54.702(h)).

³⁷ *Id.*

³⁸ *USAC letter* at 2-3.

³⁹ *USAC letter* at 3.

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for the applicant the particular funding requests for which the applicant has the necessary resources and determine, thereby, how to allocate an applicant's available resources among particular funding requests.⁴⁰ According to USAC, this would undermine the Commission's stated goal of allowing applicants to determine the types of services they need and would "significantly expand" the work and associated costs of administering the program.⁴¹

11. Noting that the Schools and Libraries Committee of the USAC Board of Directors had considered the question of whether support for basic telephone service should be provided where an applicant had failed SLD's necessary resources review, USAC states that the Committee concluded that all funding requests associated with that applicant should be denied.⁴² Should the Commission reverse this decision, USAC urges that the Commission provide an exception from SLD's current necessary resources review procedure only with respect to basic telephone service that is provided on a stand-alone (unbundled) basis and where the request appears under a separate FRN, rather than as part of a grouping with other services under the same FRN.⁴³ USAC notes that providing such an exception for applicant requests for basic telephone service would not require SLD to substitute its judgment for that of the applicant or involve the same level of entanglement in an applicant's technology plan as discussed above, insofar as applicants requesting only discounted telephone service are not required under the current FCC Form 471 to submit a technology plan.

12. Finally, USAC takes issue with UTA's characterization of SLD's necessary resources review methodology as "patently unfair" to the extent that UTA's characterization is premised, according to USAC, on UTA's misapprehension that a funding request under one FRN may be denied because of necessary resources deficiencies in another FRN on the same FCC Form 471, but the former FRN could have received funding if it had been placed on a separate FCC Form 471.⁴⁴ In response to UTA's assertion, USAC states that it is not SLD's practice to perform its necessary resources review on an application-by-application basis (i.e., only with respect to those FRNs listed together on the same FCC Form 471).⁴⁵ Rather, USAC states that it is SLD's practice to consider concurrently all of an applicant's funding requests for a given funding year, including those listed on different FCC Form 471s.⁴⁶ Under this concurrent review, SLD denies all funding requests, including funding requests submitted on separate FCC

⁴⁰ USAC letter at 3. USAC states that "[w]ithout detailed, intimate knowledge of an applicant's current education technology, its budgeted plans for the future, and how much individual funding request fit into the applicant's technology plan, SLD would very likely approve requests for support that would not make for an integrated system and that would not produce the educational benefits for which the Schools and Libraries Program was established." *Id.*

⁴¹ USAC letter at 2-4.

⁴² USAC letter at 3.

⁴³ USAC letter at 4.

⁴⁴ USAC letter at 2.

⁴⁵ USAC letter at 2.

⁴⁶ USAC letter at 2.

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Form 471s, if any of an applicant's funding requests fails to pass SLD's review for necessary resources.

UTA'S LETTER

13. In a letter dated December 27, 1999, UTA restates certain arguments raised in its March 29, 1999 Letter of Appeal with SLD and its August 10, 1999 Letter of Appeal with the Commission.⁴⁷ In addition, UTA comments on the December 20, 1999 USAC letter. In particular, UTA suggests that the policy adopted by the Schools and Libraries Committee of the USAC Board, pursuant to which SLD denies the entirety of an applicant's funding requests where a necessary resources certification is inaccurate and/or inadequate, is not mandated by the Commission's rules, and harms the chances for funding of schools like UTA "whose annual budget is met through fundraising efforts and philanthropic donations."⁴⁸ UTA also contends that USAC's stated justification for its necessary resources review policy does not apply to the instant Letter of Appeal, inasmuch as UTA seeks review only of the denial of its request for discounted basic telephone service.⁴⁹ SLD should grant this request, UTA argues, given that doing so will not require SLD to "step into the shoes" of UTA, and because UTA has demonstrated adequate resources to support this service.⁵⁰

DISCUSSION

14. The necessary resources certification requires applicants to examine their technology needs and available technological and budgetary resources before making funding requests, in order to ensure that applicants will be able to make effective use of any discounted services they receive. We conclude that the review of these certifications by SLD to determine whether applicants have the necessary resources to make effective use of the services that they request is an integral part of SLD's responsibility for reviewing funding applications to ensure compliance with statutory requirements and Commission rules. We find that SLD's review of applicants' necessary resources certifications also is an important means by which SLD implements the Commission's directive to SLD to take steps to curb waste, fraud, and abuse in the schools and libraries universal service support mechanism.⁵¹

15. With one exception, we find that the method by which SLD performs its necessary resources review, at the applicant level and applied against all of an applicant's funding requests within a funding year, constitutes a reasonable application of the Commission's rules under the schools and libraries support mechanism. Our rules do not require SLD to

⁴⁷ See Letter from Mozes Greenfeld, Telecommunications Project Director, United Talmudical Academy, to Magalie Roman Salas, FCC, dated December 27, 1999 (*UTA letter*).

⁴⁸ See *UTA letter* at 2-3.

⁴⁹ See *UTA letter* at 3.

⁵⁰ See *UTA letter* at 3.

⁵¹ See 47 C.F.R. § 54.702(h) (requiring that the Administrator's annual report to the Commission detail the Administrator's "administrative action intended to prevent waste, fraud, and abuse").

perform its review of necessary resources certifications at the individual funding request level. The Commission's rules require applicants to 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"⁵² This certification does not distinguish individual FRNs, but instead applies to "all of the necessary funding in the current funding year" and to all of an applicant's "requested connections and services." Upon Commission adoption of this rule, an applicant reasonably should have expected that its necessary resources certification would apply to all of the applicant's requested connections and services within a funding year and that false or inaccurate certification by the applicant could jeopardize all of the applicant's funding requests for that year. Furthermore, in light of the thousands of applications that SLD must review and process each year, we find that it is administratively appropriate to require an applicant to be responsible for the accuracy and adequacy of the certifications it makes in support of its request for discounted services.

16. USAC correctly points out the potential problems inherent in performing a review for necessary resources at the individual FRN level. In order to perform such a review, SLD would be required to determine the extent to which particular FRNs submitted in the same funding year are or are not related to one another. In effect, SLD would be required to determine which set of discounted services an applicant would have requested had it been cognizant of the necessary resources problems in the funding requests it actually made. We find that SLD should not be placed in a position of making such choices on behalf of applicants. To do so would be contrary to the policies and objectives underlying the schools and libraries support mechanism, under which the Commission has determined 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.

17. Finally, contrary to UTA's suggestion, we are satisfied by USAC's explanation that an applicant cannot circumvent SLD's necessary resources review procedure simply by filing several applications with a portion of its funding requests listed on each one. As represented by USAC, SLD's practice is to perform a review of all of an applicant's funding requests that are submitted within a given funding year concurrently. As a consequence, segregating individual funding requests into separate FCC Form 471s would not cause particular funding requests to be approved where SLD had found that the applicant had made an inaccurate or inadequate necessary resources certification in connection with the applicant's submission of another FCC Form 471. Thus, with one exception, we find that SLD's current practice of reviewing necessary resources certifications constitutes a reasonable application of our rules and that SLD's necessary resources review serves as an effective and reasonable implementation of our mandate that SLD take steps to curb waste, fraud, and abuse.

18. Notwithstanding our determination to uphold SLD's general practice of denying funding for all requests where SLD determines that an applicant's certification is inaccurate or inadequate, we find that a funding request for basic voice telephone service reasonably may be considered in isolation from an applicant's other funding requests. Specifically, the components

⁵² 47 C.F.R. § 54.504(b)(2)(v).

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and resources needed to make effective use of basic telephone service (e.g., telephones) are readily ascertainable and do not require a detailed or intimate knowledge of an applicant's overall technology plan to determine whether the request is based on the reasonable needs and resources of the applicant. In fact, unlike applicants requesting discounts on all other eligible services, applicants requesting discounts solely for voice telephone service are not required to submit a technology plan in connection with such a request.⁵³ Thus, we find that separate consideration of an applicant's request for discounted voice telephone service is warranted where the service is requested on a stand-alone basis and is not bundled with other services within a single FRN.

19. Thus, we find that the considerations weighing in favor of SLD's method of review do not apply where individual FRNs seek discounts solely for basic voice telephone service. Accordingly, we find here that, unlike other types of funding requests, FRNs that seek discounts solely for basic voice telephone service should not be rejected by SLD solely because another funding request or set of funding requests submitted by the applicant within the same funding year falls under SLD's review for necessary resources. Therefore, we remand UTA's application to SLD for further determination on the merits of any FRNs seeking discounts solely for basic voice telephone service. If 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.⁵⁴

20. To effectuate the decision above, it may be necessary to waive section 54.507(b)(2) of the Commission's rules.⁵⁵ This rule section provides that schools and libraries may receive discounts on nonrecurring services only through September 30, 1999. If in the future UTA requires relief from this deadline in order to implement nonrecurring services pursuant to this Order, UTA will be able to obtain such relief under our order of December 28, 1999.⁵⁶ Under that order, certain applicants granted Year One funding requests late in the funding year, or after the funding year ended, pursuant to a favorable decision on a request for review may receive an additional 180 days from the issuance of their new funding commitment letter to implement nonrecurring services.

21. In its Letter of Appeal to the Commission, UTA also requests that it be given an opportunity to review "all the records of the SLD as they specifically pertain to the UTA's

⁵³ 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).

⁵⁴ Because we have granted UTA's appeal by remanding its request for basic telephone service to SLD for further determination, we do not reach any additional arguments raised by UTA in its December 27, 1999 letter.

⁵⁵ 47 C.F.R. § 54.507(b)(2).

⁵⁶ See *Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, DA 99-5013 (Com. Car. Bur. December 28, 1999).

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application³⁷ In light of UTA's currently limited funding request and the Commission's remand of UTA's application to SLD for further determination on the merits of UTA's requests for discounts on its basic voice telephone service, UTA's request for review of SLD's records is moot. We, therefore, dismiss UTA's request for an opportunity to review SLD records pertaining to UTA's funding application.

ORDERING CLAUSE

22. Accordingly, IT IS ORDERED, pursuant to sections 1-4, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 54.719 and 54.722 of the Commission's rules, 47 C.F.R. §§ 54.719 and 54.722, that the request for review filed on August 12, 1999, by the United Talmudical Academy of Brooklyn, New York, IS GRANTED IN PART and DISMISSED IN PART and United Talmudical Academy's application IS REMANDED to the SLD for further consideration in light of this decision.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

³⁷ See Letter of Appeal at 8.