

Before the  
Federal Communications Commission  
Washington, DC 20554



In the Matter of )  
 )  
Request for Review of the )  
Decision of the )  
Universal Service Administrator by )  
 )  
New York City Board of Education )  
Brooklyn, New York )  
 )  
Federal-State Joint Board on )  
Universal Service )  
 )  
Changes to the Board of Directors of the )  
National Exchange Carrier Association, Inc. )

File No. SLD-200310  
CC Docket No. 96-45 ✓  
CC Docket No. 97-21

**ORDER**

**Adopted: May 9, 2002**

**Released: May 13, 2002**

By the Wireline Competition Bureau:

1. Before the Wireline Competition Bureau (Bureau) is a Request for Review filed by the New York City Board of Education, Brooklyn (NYC BOE), Brooklyn, New York, on behalf of applicant United Federation of Teachers Teachers Centers (UFTTC), New York, New York, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).<sup>1</sup> NYC BOE seeks review of SLD's denial of UFTTC's Funding Year 3 application for discounts under the schools and libraries universal service mechanism.<sup>2</sup> For the reasons discussed below, we deny the Request for Review and affirm SLD's decision.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections.<sup>3</sup>

<sup>1</sup> Letter from Jackson S. N. Tung, New York City Board of Education, to Federal Communications Commission, filed May 21, 2001 (Request for Review). In its Request for Review, NYC BOE also appeals the denial of Application No. 203292. Request for Review, at 1-2. Because this application raises distinct issues, it will be addressed in a separate Order.

<sup>2</sup> Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

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

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.<sup>4</sup> 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.<sup>5</sup> SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. The instant application involves Teacher Centers, which are set up by the United Federation of Teachers (UFT), typically on the site of a school, to provide instructional preparation and professional development of the teachers employed there.<sup>6</sup> The record demonstrates that UFT has, pursuant to an agreement with the NYC BOE, established and run Teacher Centers in 243 schools in NYC BOE's public school system.<sup>7</sup>

4. In Funding Year 3, UFTTC applied for discounts on telecommunications services and Internet access to these 243 Teacher Centers. On October 13, 2000, SLD denied each of UFTTC's requests on the grounds that "[a] significant portion of the FRN is a request for an ineligible entity . . . [NYC BOE UFTTC,] which is not eligible to receive funding based on the program rules for eligible entities."<sup>8</sup> NYC BOE appealed to SLD, arguing that the UFTTC are part of NYC BOE, that they exist as a separate entity for internal accounting purposes, and that their employees are NYC BOE employees.<sup>9</sup>

5. On April 20, 2001, SLD denied the appeal. It applied an eligibility test for discounts received by administrative buildings, and stated that such buildings are eligible for discounts only if (1) the building is a centralized district office or similar facility; and (2) the services are being provided to the administrative building as part of a network whose primary function is the delivery of such services to places of instruction in instructional buildings or

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<sup>4</sup> 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).

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

<sup>6</sup> Request for Review at 3; *see also* Teacher Center, Professional Development Program, <<http://www.ufttc.org/>> (UFTTC web site).

<sup>7</sup> Request for Review at 3.

<sup>8</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Regina Barton, UFT Teacher Center, dated October 13, 2000, at 5.

<sup>9</sup> Letter from Aaron Rosenberg, New York City Board of Education, to Schools and Libraries Division, Universal Service Administrative Company, filed November 10, 2000 (Appeal to SLD), at 1.

rooms available to the public in libraries.<sup>10</sup> SLD found that UFTTC failed the first requirement because they are not “centralized district office[s] or similar facilit[ies].”<sup>11</sup> NYC BOE then filed the pending Request for Review.

6. In its Request for Review, NYC BOE asserts that UFTTC is part of NYC BOE and that, because NYC BOE is an eligible entity, UFTTCs are eligible.<sup>12</sup> NYC BOE also argues that UFTTC are eligible because the Teacher Centers are located within eligible schools.<sup>13</sup> It further asserts that, although the UFTTCs are primarily used for teacher and staff training, they are “not infrequently” also used for one-on-one or small group student instruction.<sup>14</sup>

7. As defined by statute, the only entities eligible for discounted services are elementary schools, secondary schools, and libraries.<sup>15</sup> NYC BOE does not meet this definition. Thus, although NYC BOE can apply for discounts on services to be received by its member schools and libraries that meet the statutory criteria, NYC BOE is not itself eligible to receive discounted services unless it meets the exception to the non-eligibility of administrative facilities established in the *Fourth Order on Reconsideration*.<sup>16</sup> In that Order, the Commission found that the non-instructional buildings of a school district may be eligible for internal connections under certain limited circumstances.<sup>17</sup> Because UFTTC are not requesting discounts on internal connections, the exception is inapplicable. Thus, the mere association of UFTTC with NYC BOE does not confer eligibility on an otherwise ineligible entity.<sup>18</sup>

8. NYC BOE argues that the UFTTC may receive discounts because they are located in eligible elementary and secondary schools.<sup>19</sup> However, the UFTTC are not eligible schools or

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<sup>10</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Aaron Rosenberg, Board of Education of the City of New York, dated April 20, 2001 (Administrator’s Decision on Appeal), at 1.

<sup>11</sup> Administrator’s Decision on Appeal at 2.

<sup>12</sup> Request for Review at 1.

<sup>13</sup> Request for Review at 3.

<sup>14</sup> *Id.*

<sup>15</sup> See 47 U.S.C. § 254(h)(1)(B).

<sup>16</sup> *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72, Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, para. 210 (1997) (*Fourth Order on Reconsideration*).

<sup>17</sup> *Id.*

<sup>18</sup> NYC BOE’s claim that UFTTCs are part of the NYC BOE government is unsupported by the record. Further, the UFTTC web site indicates that the Teacher Centers are a collaborative project between UFT, NYC BOE, and a number of other governmental and non-governmental entities, not a program instituted under NYC BOE. See UFTTC web site.

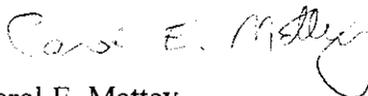
<sup>19</sup> Request for Review at 3.

libraries within the definition of the statute. Under the statute, only those entities defined as schools under state law qualify as eligible schools.<sup>20</sup> NYC BOE has not provided any evidence that New York law defines the UFTTC as schools. Further, although the UFTTC are located inside schools, we find, based on the record before us, that they are not part of those schools either administratively or operationally. Rather, as NYC BOE states in its Request for Review, the UFTTC are part of NYC BOE and run by the United Federation of Teachers, both ineligible entities, and locating an otherwise ineligible entity inside a school or library building does not render the entity eligible to receive discounted services.<sup>21</sup> Moreover, the “not infrequent” use of the UFTTC as locations for small-group student instruction does not establish that the UFTTC are part of eligible schools, given NYC BOE’s admission that the UFTTC are part of NYC BOE and “primarily” used as a site for teacher training and development rather than classroom instruction.<sup>22</sup>

9. Although we do not doubt that the existence of the UFTTC results in an improved educational experience for the students in New York City’s public schools, the provision of discounted services for administrative entities such as professional development centers is beyond the scope of our statutory authority and would divert support from the program’s intended beneficiaries. We therefore affirm SLD’s decision to deny discounts to the UFTTC.

10. 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 New York City Board of Education, Brooklyn, New York, on behalf of applicant United Federation of Teachers Teachers Centers, New York, New York, on May 21, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey  
Deputy Chief, Wireline Competition Bureau

<sup>20</sup> See 47 U.S.C. § 254(h)(7)(A).

<sup>21</sup> Request for Review at 3; see *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifteenth Order on Reconsideration, FCC 99-269, para. 49 (rel. November 1, 1999) (rejecting argument that nursing home, which was ineligible for support under rural health care universal service program, could receive support if it was “part of” of an eligible health care provider, stating that “[w]e are not persuaded that an entity omitted from the list [of entities eligible for support] in the statute should be allowed to apply for and receive the benefits of the program directly from the universal service support mechanism simply because of the relationship between the ineligible and eligible entity.”). As another example, a school might permit a private computer vendor to establish a sales office on school grounds in exchange for the offering of computers at discounted prices. If this were to occur, it would not render the computer vendor eligible for discounted telecommunications services despite its location within an otherwise eligible school.

<sup>22</sup> Request for Review at 3.