

September 15, 2013

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OCT 17 2013

FCC Mail Room

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

CC Docket No. 02-6**Request for Review****Re: Appeal of USAC Funding Decision**

Billed Entity Name: Viznitzer Chaider Tiferes Yisroel

Form 471 Application Number: 721314

Billed Entity Number: 208926

Funding Year: 2010

Funding Request Number: 2034954

This letter is an appeal in response to an Administrator's Decision on Appeal - Funding Year 2010-2011 received from USAC dated August 6, 2013. The Administrator's Decision on Appeal has denied our request to USAC not to rescind previously approved and disbursed funding for FRN 2034954. We are hopeful that our explanations disproving the basis for recovery of funds will provide adequate grounds for the FCC to reverse USAC's decision to recover the funds.

The appeal we submitted to USAC was in response to a Notification of Commitment Adjustment Letter from the Schools & Libraries Division/USAC dated January 30, 2013 which states: *"Our routine review of Schools and Libraries Program funding commitments has revealed certain applications where funds were committed in violation of Program rules. In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now adjust the overall funding commitment. The purpose of this letter is to make the required adjustments to the funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the service provider is responsible for all or some of the program rule violations. Therefore, the service provider is responsible to repay all or some of the funds disbursed in error (if any)."*

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The Funding Commitment Adjustment Report that was attached to that letter gives the following funding commitment adjustment explanation: *“During a review, it was determined that funding was provided for the following ineligible items: Bogen Quantum PBX Expansion System....FCC rules provide that funding may approved only for eligible products and/or services. The USAC web site contains a list of eligible products and/or services. See the web site, www.usac.org/sl/about/eligible-services-list.aspx for the Eligible Services List. On the SPAC Form, the authorized person certifies at Item 10 that the service provider has billed its customer for services deemed eligible for support. Therefore, USAC has determined that the service provider is responsible for this rule violation. Accordingly, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the service provider.”*

This funding request was for the installation of a Bogen Quantum PBX Expansion System at the school Viznitzer Chaider Tiferes Yisroel. When the school originally applied for funding for this FRN, they presented to us with a communication deficiency which they were experiencing at their school. Although they had an existing telephone system, they were clearly seeing an ineffective ability to communicate between classrooms and offices. On the telephone system, in order to communicate with another extension, one must recall or be able to look up the extension number they need to reach. In their school environment, where frequently it was the students who had to contact the office personnel or locate a teacher in a different room, this was proving extremely difficult as the children could not remember the proper procedure for finding correct extension numbers and were just dialing random numbers. The school was worried about this inability of students to be effectively in contact with staff members and was further concerned that in the event of an emergency the time being lost by students playing around with the phones could prove catastrophic.

After doing extensive research, the Bogen Quantum PBX Expansion System appeared to be the perfect solution in meeting their communication deficiencies. Specifically designed for classroom use and with its simple push-button features, even young students would not have trouble being able to initiate communication with any staff member. Additionally, the system was fully compatible with the school's already existing telephone system through the use of a Bogen Telco card and therefore, would act as an improvement to effectively meet their communication needs without causing the waste of any existing resources. The USAC website was searched to determine the eligibility of the products. **The website clearly listed the components of the Quantum PBX Expansion System by Bogen Communications, Inc. as eligible.** The school accepted our proposal for the Bogen System and applied through USAC for funding to help with the installation costs. Their funding request was approved and the equipment has already been installed and put to great use by the school.

On March 20, 2013, we submitted an appeal to USAC refuting the explanation for the funding adjustment given on the Funding Commitment Adjustment Report which

are active and online and used daily by the school, and both are an essential element in the transmission of information within the school. A dictionary search defines 'redundant' as exceeding what is natural; superfluous or repeating something else and therefore unnecessary. This would stand to reason that two items that perform similar tasks but are not accomplishing the same objectives would not be considered redundant. At Viznitzer Chaider Tiferes Yisroel, both systems are being used simultaneously yet satisfying different needs.

A few additional points that we would like to point out:

Firstly, in applying for funding for this FRN, all steps were taken in accordance with the guidelines established by USAC. After the school identified a real and justifiable need, they requested a bid for equipment that would solve their problem and in all due-diligence they followed all steps of the application process correctly. As a vendor, we submitted a bid and once the funding was approved, we delivered and installed all the equipment. The Notification of Commitment Adjustment Letter states that "*funds were committed in violation of program rules*" and that "*the service provider is responsible for all or some of the program rule violations*". As indicated, the steps taken did **not** violate any program rules. All steps taken by both parties were done in good faith and we are not aware of any other steps that we could have taken. The Funding Commitment Adjustment Report continues: "*On the SPAC Form, the authorized person certifies at Item 10 that the service provider has billed its customer for services deemed eligible for support. Therefore USAC has determined that the service provider is responsible for this rule violation.*" At the time the service provider certified Item 10, we were billing our customer for services that **were** deemed eligible for support and no program rules were violated. This is evidenced by the fact that the products were listed as eligible on the USAC website. Additionally, the SLD themselves approved the funding confirming that everything was legitimate and deeming the services eligible for support. In this case, the reason the funding is being rescinded is because USAC decided that a previously eligible item should no longer be considered eligible. In all fairness, the service provider can only be held responsible for information that is available at the time. They should not be considered responsible for retroactive rule changes of the SLD. Therefore, it would stand to reason that the service provider is not the responsible party.

Secondly, the SLD does a thorough review of all funding requests before they are approved and has the final say in determining a funding request's eligibility. The fact that the FRN was approved indicates that the review satisfied all the SLD's criteria. In approving the funding request, it is obvious that the initial and final reviews did not determine the system to be redundant. Finding a basis to rescind already disbursed funding at a later time seems arbitrary and capricious and is an injustice to all parties involved, especially to the school and their students who have already been relying on the features of this system and use it on a daily basis.

We are respectfully requesting that the funding for the already installed Bogen System not be rescinded in light of the above information indicating that:

- the services requested are eligible according to the SLD Eligible Services List
- the Bogen Quantum equipment is listed as eligible on the product search list
- the SLD thoroughly reviewed the funding request and deemed it eligible
- at the time the service provider signed Item 10 on the SPAC form, the services were deemed eligible by the SLD
- the services provided by the Bogen Expansion System are not redundant
- the equipment is being used on a daily basis by the school and effectively meets the communication needs of their students.

Should you have any further questions regarding this matter, please feel free to contact me via email at nfendrich@yahoo.com.

Thank you for taking an interest in this matter.



Nicole Fendrich
Executive Director

Enc.



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Search criteria: manufacturer(bogen communications, inc.) product([< all >])

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Bogen Communications, Inc.	Rack System Mainframe	QRC24-48	Compact Quantum Rack System Mainframe (mounts in IDF). Includes built-in ventila	Circuit Cards/Components (other)	VIEW MORE ▶
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