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COMMUNICATION INC.

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October 29, 2013

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 2A554

Subject: Appeal of USAC Funding Decision – CC Docket No. 02-6
&
Request for Waiver

RE: **Administrator's Decision on Appeal**

Funding Year:	***2009-2010***
SPIN:	***143032731***
SP Contact:	***Rose Klein***
Billed Entity Number:	***151142***
Applicant Name:	***Meorot Beite Yahkov***
Applicant Contact:	***Sophia Simantov***
Form 471 App #:	***695196***
FRN #:	***1909175, 1909219, 1909318, 1909348***
COMAD Letter Date:	***February 25, 2013***
Appeal Decision Date:	***July 15, 2013***

I am writing with reference to above mentioned decision from the Universal Service Administrative Company, School & Libraries Division. Our company had filed an appeal in a timely manner with our appeal letter dated April 7, 2013. (see attached letter of appeal). The appeal was submitted via Federal Express and accepted for delivery by M.Mann on April 11, 2013. (see attached copy of delivery confirmation). However, a typographical error was made on the mailing label and instead of being sent to 30 Lanidex Plaza West, it was sent to 20 Lanidex Plaza West. (See attached shipment receipt) We were unaware of the mistake until we got a letter demanding payment. Upon inquiry, it was discovered that USAC never received any of our appeals and we were instructed to resubmit the original appeal letters and send them to the SLD Problem Resolution Mailbox together with a copy of the FEDEX delivery confirmation showing our timely submission of the appeals. However, within the week, we received the above-mentioned decision that USAC/SLD would not accept our appeal and we would now like to submit this Appeal and a Request for Waiver directly to the FCC. The Appeal follows:

Following you will find an appeal to the Commitment Adjustment notification that we received which demands recovery funds for the FRN referred to above. The purpose of this appeal is to respond to the claims expressed in the Commitment Adjustment Letter (COMAD) and the anticipation that the FCC shall reverse USAC's decision of rescinding the originally approved funds. An additional goal of this appeal is to provide the relevant facts that will convince the FCC to correct what we recognize as a serious error on USAC's part by deciding that the

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Bogen PBX Expansion System is an ineligible product. We have therefore started with a short clarification of the Bogen PBX system and only afterwards do we address the specific COMAD.

As a result of this decision, the schools and libraries who are recipients of USAC funding will be deprived of a reliable, top quality, cost effective communication system. Additionally, the Service Providers who installed these systems, and worked together with the eligible services lists included on USACs website to find the best eligible system possible for their customers, are now being faced with extreme hardship. These commitment adjustments will leave these Service Providers in a very difficult position since they understood that they were installing a system that had been deemed eligible and was repeatedly approved by USAC for over ten years. It is also likely, that if USAC does not change this policy (of ineligibility for the Bogen systems), that additional costs will be borne by USAC since the schools will request replacements for their current Bogen systems in order to abide by USACs new eligibility requirements.

The Bogen PBX Expansion system is a very robust system that was specifically designed for schools and similar facilities to provide a very wide range of communication options. Since the Bogen PBX Expansion system has such a wide variety of features, it can theoretically be designed in ways that could make it partly or even completely ineligible. Nonetheless, based on our company's understanding of USAC eligibility requirements, the manner in which the Bogen PBX Expansion system in question was designed and installed is eligible.

After speaking with other Service Providers and a number of consultants, we have come to the conclusion that since the Bogen system *can* be configured in ways that could be deemed ineligible, USAC made the decision to remove the system from their eligibility lists based upon this information. We are therefore hoping to correct any misunderstanding or misinterpretation on USAC's part by proving that the Bogen PBX Expansion system in question is truly an eligible system. We have spoken with Bogen as well, and they stand behind us in their willingness to work with USAC to help rectify this misunderstanding and bring about a reversal of USAC's ineligibility decision.

Configuration of the BOGEN PBX Expansion System:

When our company, in our role as Service Providers, prepares a proposal for a school or library for their PBX design, we look to use the most suitable and cost effective installation that will function properly and address their needs. As a result of our investigations, we have found the most efficient and cost effective method is to use a "primary" PBX which offers the capability for advanced multiline telephone instruments, IP Telephones, voicemail and standard and advanced telephone line interface such as PRI or SIP Trunks. However, for the areas in the establishment that need a more durable system, we utilize the Bogen PBX expansion system. The Bogen system and the "primary" PBX system are fully integrated and work seamlessly together. Most people would never know that they are really two systems.

The cost of combining the Bogen system with the primary PBX is usually similar to adding additional equipment to the primary PBX. However, since the Bogen system is a much more durable and reliable system, and was designed specifically for school and classroom use, it ends up being a much more cost effective system. When considering what works best for our customers, we look at the future maintenance costs saved by installing the Bogen system as opposed to expanding the primary PBX with equipment from the same manufacturer as the primary PBX.

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While the design as described above is typically how we utilize the Bogen PBX Expansion system, it should be noted that telephone lines can be connected directly to the Bogen system enabling access to the public switched network without requiring a "primary" PBX. However, it is the combination of the two systems that offers the best and most cost effective solution for the school's over all communication requirements.

Potential Ineligible Designs:

Although it is constantly being upgraded (it now supports VoIP phones and multi-system networking) the Bogen PBX Expansion system is a classic school communication system. Even though it is not the design or configuration that we use, the Bogen PBX Expansion can be configured to function as a stand-alone intercom or a public address system. If the system were to be configured as an intercom only or PA system, the equipment listed on the Item 21 Attachment would indicate this. It is our feeling that it is very probable that someone who is not familiar with this system and the way that we design it could have easily and unintentionally used the wrong language and inadvertently represented the system in such a way so as to give the impression that it is just an intercom or PA system.

We hope that this explanation will allow for a proper assessment on the information we are providing below in response to the Commitment Adjustment Letter and that you will decide to discontinue the commitment adjustment action.

1- In the section titled "Funding Commitment Adjustment Explanation" of the COMAD the reason for the COMAD is described as being "ineligible". "After a thorough review, it was determined that the funding commitment for this request must be rescinded in full. During a review, it was determined that funding was provided for the following ineligible item; ... Bogen PBX Expansion Unit. .....FCC rules provide that funding may be approved only for eligible products and/or services." The paragraph continues with information as to how determine if a product and/or service is eligible; it states "The USAC web site contains a list of eligible products and/or services. See the web site, www.usac/sl/about/eligible-services-list.aspx for the Eligible Services List".

As of this writing the URL referred to above is no longer available, however the Bogen PBX Expansion Unit in question was listed as an eligible product on the Schools and Libraries Web Site. Please see the attached printouts from the original eligibility lists taken from the website for verification. Furthermore, even according to the generic Eligible Service List, the Bogen PBX Expansion Unit qualifies as an eligible product as a "Private Branch Exchange (PBX)" and as a "Key System".

The Eligible Services List in the "Internal Connections" section Page 15 states the following: "Centralized components that are an essential element in the transport of telephone services within a school or library ***are eligible***. (emphasis added) This includes:

Private Branch Exchange (PBX)
Key System (KSU)
Wireless
VoIP Telephony Equipment

In addition, the following features are eligible:

Automatic Route Selection

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E911
Voice Compression Module
Voice Interface Card
One switchboard/attendant console necessary for the operation of
Eligible Centrex telephone service is eligible.
An intercom system that is an integral component of a PBX or other eligible product can be included in the cost of the eligible component"

The Bogen PBX Expansion functioning as a "Private Branch Exchange (PBX)" or as a "Key System" provides telephone services (to the Public Switched Network and for internal use) and is therefore an eligible product.

During the review process we, as well as other service providers whom we are in contact with who have also received COMAD notifications, were questioned regarding other possible reasons that the Bogen PBX Expansion Unit may have been considered as an ineligible product based on its specific use as opposed to it being intrinsically ineligible. In the event that this COMAD failed to name any of these other reasons we shall pose them now and respond to them in order to avoid potential complications of the appeal process.

Possible Claim No. 1:

The Bogen PBX Expansion Unit is being used as an Intercom which is an ineligible product.

The manner in which the Bogen PBX Expansion system we install is configured is not for use as an (ineligible) intercom. The Bogen PBX Expansion Unit provides the eligible Private Branch Exchange (PBX) functionality as described in the Eligible Products List, Internal Connections section, page 41 in that it provides "a centralized telephone switching system located at a business or organization site. The PBX provides station-to-station dialing and access to the public switched network".

As indicated above, station-to-station dialing is an eligible function of the PBX. Also, as previously noted, as per the Eligible Services List in the "Internal Connections" section Page 15 "...An intercom system that is an integral component of a PBX or other eligible product can be included in the cost of the eligible component"

Possible Claim No. 2:

Where the Bogen PBX Expansion Unit is being used in conjunction with or integrated with another PBX the Bogen PBX Expansion Unit is Redundant.

The only place that the word "redundant" is found in the Eligible Items List is in the "Internal Connections" section, page 17 where it lists ineligible components. There is stated: "...components that are installed in standby mode, redundant, not active and online, or otherwise not an essential element in the transmission of information within the school or library...."

The Bogen PBX Expansion Unit provides telephone services (to the Public Switched Network and for internal use) and is therefore an "essential element in the transmission of information within the school or library" therefore maintaining its status as an eligible product.

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The Bogen PBX Expansion Unit is operational and accessible at all times and the locations within the school where the Bogen PBX Expansion Unit provides telephone services are not covered by the other PBX, therefore there is no redundancy.

Possible Claim No. 3:

Where the Bogen PBX Expansion Unit is being used in conjunction with or integrated with another PBX the Bogen PBX Expansion Unit is not Cost Effective.

The Bogen PBX Expansion Unit is typically used to provide telephone services for those locations within the school that require single line telephones. Each system is individually assessed for the needs of that location, however in general it has been found that the total installation cost of using the Bogen PBX Expansion Unit for the single line telephones combined with another PBX will be similar to the cost of expanding the other PBX to accommodate the capacity required to provide single line telephone services for the locations that the Bogen PBX Expansion Unit is providing. Moreover, the benefit of a more durable system which was specifically designed for schools, and classroom use in particular, is an added bonus. The greater reliability, combined with the fact that the cost of the system component cards and in particular the station cards for the Bogen Expansion system are typically less expensive than those of the "primary' PBX, makes maintenance and replacement costs lower, further enhancing the cost effectiveness consideration. Based on these factors and the additional significance of durability and lower maintenance costs, the Bogen PBX Expansion Unit being used in conjunction with or integrated with another PBX is truly cost effective.

2- Once the COMAD has stated the reason for the commitment adjustment, the "Funding Commitment Adjustment Explanation" paragraph of the COMAD notification continues with an explanation of whom USAC will seek recovery from and why:

The "Funding Commitment Adjustment Explanation" states as follows; "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 service violation. Accordingly, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the service provider"

On the SPAC Form, the full text of item 10 is:

"10. The Service Provider Invoice Forms that are submitted by this service provider contain requests for universal service support for services which have been billed to the service provider's customers on behalf of schools, libraries, and consortia of those entities, as deemed eligible for universal service support by the fund administrator."

"Paragraph 10 clearly states that the determination of eligibility is the responsibility of the Fund Administrator. The Service Provider is certifying that he is billing for items that have been approved for

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funding by the fund administrator and were judged as being eligible. Based on the information provided above, the Bogen PBX Expansion Unit was deemed eligible by the fund administrator as evidenced by the fact that the items were listed on the website as eligible and the items by form and function meet the requirements of the generic Eligible Items List. In addition the application in which the Bogen PBX Expansion Unit was included was assessed through the Program Integrity Insurance (PIA) procedure and deemed eligible. All the items were clearly listed on the Item 21 Attachment which was thoroughly reviewed by PIA so there can be no argument that known to be ineligible items were included and were only discovered during the subsequent review.

Furthermore, the Bogen PBX Expansion Unit has been reviewed by PIA and approved for funding by the program for over ten years. Even if the program administrator were to determine, for reasons that our company cannot imagine, that the Bogen PBX Expansion Unit should be judged ineligible, that would create a change in its status. It would be unreasonable to expect the Service Provider to make a determination of ineligibility that the program administrator himself had not done after over ten years of review.

Based on this, the Service Provider acted correctly when billing for the Bogen PBX Expansion Unit and is not responsible for any violation of program rules.

3- Conclusion:

a. The Bogen PBX Expansion Unit, as designed and installed, was (is) an eligible product so there is no basis for the COMAD.
b. At the time of billing the Bogen PBX Expansion Unit was appraised and determined to be eligible by the fund administrator so the Service Provider did not violate any program rules.
c. In the event that for some reason the Bogen Multicom is still considered to be redundant, the entire FRN should not have to be rescinded. The installation charges, wire runs, and other components of the system connecting the classrooms to the primary PBX system should not be considered redundant and the funding for them should not be rescinded as they would have been required to provide connectivity to the classrooms and would have been added to the primary PBX in the first place. These components would therefore have been funded in any case. Subsequently, the only part of the system that might be considered redundant would be the main PBX expansion Multicom Quantum processor.

We therefore request that you withdraw the commitment adjustment action. Thank you for your consideration in this matter.

Sincerely yours,

CRYSTAL CLEAR COMMUNICATIONS, INC.

Rose Klein

Rose Klein, Secretary

Enclosures/Attachments:
COMAD; USAC Appeal Letters; USAC Decision Letter
FEDEX Shipment Receipt & Delivery Conf.