



# Lion Communications, Inc.

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December 26, 2013

Letter of Appeal  
Federal Communications Commission  
Office of the Secretary  
445 – 12 Street SW  
Washington, DC 20554

<b>RE:</b>	<b>Administrator's Decision on Appeal</b>
<b>Dated:</b>	<b>December 2, 2013</b>
<b>SPIN:</b>	<b>143034503</b>
<b>SP Contact:</b>	<b>Suri Klein</b>
<b>Applicant Name:</b>	<b>Kollel L'Horauh</b>
<b>Billed Entity Number:</b>	<b>16064106</b>
<b>Applicant Contact:</b>	<b>David Markowitz</b>
<b>Funding Year:</b>	<b>2011</b>
<b>Form 471 App #:</b>	<b>820336</b>
<b>FRN:</b>	<b>2232954, 2232973</b>

We have received a decision letter from USAC stating that the FRN referred to above is to be rescinded in full. The following is a response to the Administrator's decision that we received. The goal of our appeal is to respond to the claims stated in the COMAD and the decision letter and effect a reversal of USAC's decision to recover the amounts in question. We would also like to use this appeal as a way of providing the FCC with adequate information to convince the FCC that a grievous misunderstanding has occurred in USAC's decision that the Bogen Multicom System be deemed as an ineligible product.

Since USAC's decision was to dismiss our appeal since it arrived in an untimely fashion, I would like to explain the tardiness of our appeal. The original Commitment Adjustment Letter and consequential Demand Payment letter were only received in our office on October 10, 2013. The letters had inadvertently been delivered to one of the other occupants of our building and they only delivered it to us on the above-mentioned date. As soon as we received the correspondence, we appealed to USAC. We did not realize that it was after the 60 day period as the Demand Payment letter was dated August 26 and we understood that we had 60 days from *that* date.

The effect of this decision on the schools and libraries participating in the Erate program will be to deprive these schools and libraries of the benefits of an exceptionally well respected, dependable, feature rich and cost effective communication system. Furthermore, if these COMADs are to prevail the Service Providers, who acted in good faith selling a product that was considered to be eligible and was in fact approved for funding for over 13 years prior to this action, will be face with great hassle. Also, since the schools affected by these COMADs will be forced to replace their Bogen Multicom system, there will be a

high cost to the program in funding the expansion of their existing PBX, adding a second PBX, either of which will most likely be at a much higher cost than that of this COMAD.

The Bogen Multicom is a very robust system which was designed to provide a very wide spectrum of communication options all specifically designed for schools and similar facilities. Like many other products that have a broad scope of options and features the Bogen Multicom can potentially be configured in such a way as to make it partly or possibly even wholly ineligible. However the design and configuration used by our company is one that based on our understanding of the program rules is eligible.

Based on information amassed from consultations with other service providers and several consultants, we understand that misinformation and undue emphasis on the potentially ineligible configuration of the Bogen Multicom has led USAC to an incorrect deduction that the Bogen Multicom should be considered an ineligible product. We hope to help correct that presumption and we offer our assistance in supplying any additional information needed to help clarify the FCC's understanding of this product. Bogen has assured us as well, that company representatives are willing to meet with USAC and provide any information and present a system demonstration if needed in order to correct any misinterpretation USAC may have of the Bogen Multicom so as to reverse its current opinion.

#### **Configuration:**

The fundamental notion of our PBX designs for use in schools and libraries is to use the most suitable and cost effective product for each type of function. In keeping with this notion we employ a "primary" PBX which provides the capability for advanced multiline telephone instruments, IP Telephones, voicemail and standard and advanced telephone line interface such as PRI or SIP Trunks. For the areas of the school or library that require standard telephone service (single line phones), particularly where more durable wall mounted phones are needed, we use the Bogen Multicom system. The Bogen Multicom and the "primary" PBX are integrated in such a manner that they are effectively one system, station-to-station calls and calls to the public switched network flow freely between the two systems. Most users do not even realize there are actually two systems integrated.

Since the cost of employing the two systems would usually be similar to the cost of adding the additional capacity to the "primary" PBX, it results in a more cost-effective system. In the event where the cost may be slightly greater, the benefit of a more robust system, specifically designed for school, and in particular classroom, use adds significant value. In addition, the higher reliability combined with the fact that the cost of the system component cards and in particular the station cards for the Bogen Multicom are typically less expensive than those of the "primary" PBX makes maintenance and replacement costs lower, further enhancing the cost effectiveness of the Bogen system.

While the design we just described is how we typically utilize the Bogen Multicom please note that telephone lines can be connected directly to the Bogen Multicom enabling access to the public switched network without requiring a "primary" PBX. However, it is the combination of the two systems that provides the best and most cost effective solution for the school's over all telephony requirements.

#### **Potential Ineligible Designs:**

Although it is constantly being upgraded (it now supports VoIP phones and multi-system networking) the Bogen Multicom is a classic school communication system. Though it is not the design or configuration that we use, the Bogen Multicom can be configured to function as a stand alone intercom or a public address system. If the system were to be designed as an stand-alone intercom or public address system it would be indicated by the component list of the Item 21 attachment. We feel it is likely that persons not

familiar with the program could have easily and innocently 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 overview will give a proper perspective on the information we are providing below in response to the COMAD and that you will decide to reverse the commitment adjustment action.

**1- The COMAD in the section titled “Funding Commitment Adjustment Explanation” describes the reason for the COMAD as follows: “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; Redundant Bogen Quantum Multicom equipment.....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](http://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 (Bogen Multicom) in question was listed as an eligible product on the Schools and Libraries website. (Screens shots of the website have been attached.)

In addition, even according to the generic Eligible Service List, the Bogen PBX Expansion Unit (Bogen Multicom) qualifies as an eligible product as a “Private Branch Exchange (PBX)” and as a “Key System”. As per the Eligible Services List in the “Internal Connections” section Page 15 it states (emphasis added):

“Centralized components that are an essential element in the transport of telephone services within a school or library *are eligible*. This includes:

***Private Branch Exchange (PBX)***

***Key System (KSU)***

Wireless

VoIP Telephony Equipment

In addition, the following features are eligible:

Automatic Route Selection

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

During the review process we as well as our colleagues who have also received COMAD notifications were questioned regarding other possible reasons that the Bogen PBX Expansion Unit may have been considered as in ineligible product based on its specific use as opposed to it being inherently ineligible.

In the event that the COMAD failed to name any of these other reasons we shall pose them now and respond to them in order to avoid potential convolution of the appeal process.

**A- Possible Claim: The Bogen PBX Expansion Unit is being used as an Intercom which is an ineligible product.**

Based on our design and installation, the Bogen PBX Expansion Unit is not being used 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. In addition as stated above, 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”

**B- Possible Claim: 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 reference to the word “redundant” in the Eligible Items List is in the “Internal Connections” section, page 17 where it lists components that are ineligible, it states “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.

The Bogen PBX Expansion Unit is active and online at all times and the locations within the school where the Bogen PBX Expansion Unit provides telephones services are not overlapped by the other PBX, therefore there is no redundancy.

**C- Possible Claim: 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.

Depending on the specific installation, 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.

In addition the benefit of a more rugged system which was specifically designed for school and in particular classroom use adds additional value.

The higher reliability combined with the fact that the cost of the system component cards and in particular the station cards for the Bogen Multicom are typically less expensive than those of the “primary” PBX makes maintenance and replacement costs lower, further enhancing the cost effectiveness consideration.

Based on the costs being similar, there being additional value and lower maintenance costs, the Bogen PBX Expansion Unit being used in conjunction with or integrated with another PBX is Cost Effective.

**2- After having defined the reason for the determination that a COMAD was required, the “Funding Commitment Adjustment Explanation” paragraph of the COMAD notification then explains from who USAC will seek recovery and why.**

The “Funding Commitment Adjustment Explanation” says 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 determined by the fund administrator to be eligible. Based on the information provided above, the Bogen PBX Expansion Unit (Bogen Multicom) was deemed eligible by the system 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 (Bogen Multicom) was included was reviewed 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.

In addition, the Bogen PBX Expansion Unit (Bogen Multicom) has been reviewed by PIA and approved for funding by the program continuously for over 13 years.

Even if the program administrator were to conclude, for reasons that this writer cannot envision, that the Bogen PBX Expansion Unit (Bogen Multicom) should be considered ineligible that would constitute 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 13 years of review.

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

**3- Conclusion**

- a. The Bogen PBX Expansion Unit (Bogen Multicom), as designed and installed, is an eligible product so there is no basis for the COMAD.
- b. At the time of billing the Bogen PBX Expansion Unit (Bogen Multicom) was reviewed and concluded to eligible by the fund administrator so the Service Provider did not violate any program rules.
- c. If, for any reason, the Bogen Multicom is still considered to be ineligible, after the FCC review, because of redundancy, the entire FRN should not have to be rescinded. The

installation charges, wire runs, and other components of the system connecting the telephones in the classrooms to the original PBX system would in any case not be considered redundant since they would have been considered a necessary part of the classroom installation. Therefore, the funding for these eligible components should not be rescinded as they would have been funded anyway. The only part of the system that might have been considered redundant would be the main PBX expansion unit of the Multicom Quantum Processor

We therefore request that you reverse USAC's decision and this commitment adjustment action.

Thank you for your time and attention to this matter.

Sincerely,



Suri Klein  
Secretary

SK/srk  
Encs.