

# Morgan Lewis

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July 31, 2017

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**Via ECFS**

**ACCEPTED/FILED**

JUL 31 2017

Federal Communications Commission  
Office of the Secretary

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

**RE: CC Docket No. 02-6**  
**Sunesys, LLC Petition for Reconsideration**

Dear Ms. Dortch:

Sunesys, LLC ("Sunesys") submits via ECFS a redacted version of a Petition for Reconsideration. A confidential version of the Petition has been filed with the Secretary's office with a request seeking confidential treatment of correspondence between the Universal Service Administrative Company and Sunesys.

Please do not hesitate to contact us with any questions.

Respectfully submitted,

/s/ Tamar E. Finn

Tamar E. Finn

Patricia Cave

*Counsel for Sunesys, LLC*

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )

Petition for Reconsideration )

by )

Sunesys, LLC )

CC Docket No. 02-6

**ACCEPTED/FILED**

JUL 31 2017

Federal Communications Commission  
Office of the Secretary

**Petition for Reconsideration**

Sunesys, LLC ("Sunesys") through its undersigned counsel and pursuant to Section 1.106 of the Rules of the Federal Communications Commission ("FCC" or "Commission"), respectfully submits this Petition for Reconsideration ("Petition") of the Wireline Competition Bureau's ("the Bureau") Public Notice released on June 29, 2017,<sup>1</sup> which denied Sunesys's request for a waiver of the invoice deadline rules.<sup>2</sup>

Because the Bureau failed to consider distinguishable facts arising out of the acquisition of Sunesys by Crown Castle International Corp. ("Crown Castle") and unreasonable delays in the issuance of funding commitment decisions, the denial of the waiver request was arbitrary and capricious. Sunesys requests that the Bureau reconsider and grant Sunesys 30 days from the date of an order addressing this Petition to submit to the Universal Service Administrative Company ("USAC") its Form 474 for E-rate services provided to Montebello Unified School District

<sup>1</sup> *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, Public Notice 32 FCC Rcd. 5074, 5084 (WCB 2017).

<sup>2</sup> 47 C.F.R. § 54.514(a) (requiring submission of invoices to USAC within the later of 120 after the last day to receive service or the date of FCC Form 486 Notification Letter).

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(“Montebello”) in Funding Year (“FY 2015”).<sup>3</sup> Providing a limited extension is in the public interest and would not adversely impact the Universal Service Fund.

### **I. Background**

Sunesys has a long history of participation as a provider in the Universal Service Fund Schools and Libraries (“E-rate”) program and has complied with all applicable rules for nearly two decades. During summer 2015, Crown Castle completed its acquisition of Sunesys and work began to integrate Sunesys into Crown Castle’s operations and systems, including the billing system.<sup>4</sup>

On June 3, 2016 -- just 27 days before the close of FY 2015 -- USAC finally issued a Funding Commitment Decision Letter (“FCDL”) committing E-rate support for Wide Area Network (“WAN”) services provided by Sunesys to Montebello.<sup>5</sup> Montebello mailed its Form 486 to USAC on or about September 27, 2016. USAC’s Form 486 Notification Letter for Montebello was dated October 13, 2016.<sup>6</sup> All of these steps had to occur before Sunesys could submit invoices to USAC for services provided to Montebello in FY 2015. Had the FCDL been issued in a more expedient manner, Sunesys would have been able to submit invoices to USAC prior to June 30, 2016 from Sunesys’s legacy billing system.

On June 30, 2016, Sunesys customer billing data was “pulled” into Crown Castle’s billing system.<sup>7</sup> However, as a result of the substantial delay in receiving funding commitments from USAC for FY 2015, at that time Montebello was classified in the Sunesys systems as a

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<sup>3</sup> The Bureau has authority to act on petitions seeking reconsideration of final actions taken pursuant to delegated authority. 47 C.F.R. § 1.106(a)(1).

<sup>4</sup> See Declaration of Nicole Jackson, ¶ 5 (“Declaration”), attached hereto as Exhibit 1.

<sup>5</sup> See Letter from USAC, Schools and Libraries Division, to Gena Ragnoli, Sunesys, LLC (June 3, 2016) (“FCDL”), attached hereto as Exhibit 2.

<sup>6</sup> See Letter from USAC, Schools and Libraries Division, to Gena Ragnoli, Sunesys, LLC (Oct. 13, 2016) (“486 Notification Letter”), attached hereto as Exhibit 3.

<sup>7</sup> Declaration at ¶ 10.

“deferred account” because USAC had not issued a Form 486 Notification Letter.<sup>8</sup> The Montebello records therefore were not transferred into Crown Castle’s billing system.<sup>9</sup>

On October 3, 2016, a representative of Montebello requested a 120-day extension of the invoice filing deadline, to June 10, 2017.<sup>10</sup> Upon learning that services provided to Montebello in FY 2015 had not yet been billed, Sunesys attempted to locate the customer records in Crown Castle’s billing system. Efforts to identify and “clean up” Sunesys customer data transferred to the Crown Castle billing system have been ongoing, with additional delays and complications arising out of the need to use manual processes for inputting Montebello’s customer information into Crown Castle’s system.<sup>11</sup> Sunesys was not able to issue invoices to Montebello and USAC prior to the extended deadline of June 10, 2017, and filed a deadline waiver request on June 14, 2017.

Sunesys issued a bill to Montebello for its portion of services provided in FY 2015 on July 28, 2017. Sunesys will be ready and able to provide an invoice to USAC as of July 28, 2017.<sup>12</sup>

## **II. Argument**

### **a. The Bureau Failed to Consider Facts Presenting Extraordinary Circumstances.**

Although “it is generally not in the public interest to waive the Commission’s invoicing rules absent extraordinary circumstances,”<sup>13</sup> extraordinary circumstances are present here. The Bureau failed to consider facts that distinguish this instance from past waiver denials. The

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at ¶ 11.

<sup>10</sup> *Id.* at ¶ 8.

<sup>11</sup> *See id.* at ¶¶ 13-14.

<sup>12</sup> *Id.* at ¶ 17.

<sup>13</sup> *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd. 8870, 8966, ¶ 240 (2014) (establishing the extraordinary circumstances test for waiver of the invoice filing deadline rules subsequent to an initial 120-day extension by USAC) (“*E-rate Modernization Order*”).

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Public Notice cites as precedent the *2016 Ada Order* that dismissed several petitions because none of the petitioners sought an automatic 120-day invoicing extension.<sup>14</sup> Moreover, Petitioners in the *Ada Order* merely offered employee confusion, lack of understanding of the program rules, staff turnover, waiting on service provider certifications, and family/personal health issues, or otherwise provided no reason for not timely seeking an automatic extension of the invoice filing deadline.<sup>15</sup> In contrast, Montebello's representative requested an extension of the deadline on October 3, 2016 (ten days prior to issuance of the Form 486 Notification Letter dated October 13, 2016). And Sunesys explained that the combination of USAC's late FCDL, merger integration, and billing system issues prevented Sunesys from meeting the extended invoicing deadline.<sup>16</sup>

Sunesys facts are distinguishable and justify a waiver of the rule. As described above, the failure of Sunesys to timely file its Form 474 are due to (1) yet-to-be-fully-resolved difficulties associated with the integration of Sunesys records into Crown Castle's billing system and (2) USAC's unreasonable delay in issuing a FCDL until the close of FY 2015, which contributed to the inability of Sunesys to track and locate the Montebello account within Crown Castle's billing system. The Bureau has found extraordinary circumstances to exist where USAC does not conduct its business in a timely manner,<sup>17</sup> and it should do so again here. Furthermore, like another party that received a waiver of the invoicing deadline from the Bureau,

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<sup>14</sup> See *Requests for Waiver of Decisions of the Universal Service Administrator by Ada School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 31 FCC Rcd. 3834, ¶ 1 (WCB 2016) ("*2016 Ada Order*").

<sup>15</sup> *Id.* at 3836, ¶¶ 8-9.

<sup>16</sup> See Request for Waiver from Sunesys, LLC, CC Docket No. 02-6 (filed June 14, 2017).

<sup>17</sup> See *Requests for Waiver of Decisions of the Universal Service Administrator by Ada School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 32 FCC Rcd. 1909, 1911, ¶ 7 (WCB 2017) (granting *sua sponte* waivers of invoice filing deadline extension rules as a result of USAC's substantial delays in approving invoice deadline extension requests).

Sunesys filed its waiver request just three business days after the invoice filing deadline had lapsed<sup>18</sup> and took steps to resolve the technical issues of identifying and integrating Montebello's legacy Sunesys account into Crown Castle's billing system prior to the extended deadline. As a result of disregarding these critical facts that distinguish the instant Petition and waiver request from Commission precedent, the Bureau's denial was arbitrary and capricious and should be reconsidered.

**b. Good Cause Exists For Waiver of the Section 54.514(a) of the Commission's Rules**

The Commission's rules may be waived for good cause.<sup>19</sup> The Commission may exercise its discretion to waive a rule where "particular facts make strict compliance inconsistent with the public interest . . . and when the relief requested would not undermine the policy objective of the rule in question."<sup>20</sup> Waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.<sup>21</sup> The Commission considers hardship, equity and effective implementation of policy in reviewing a request for a waiver.<sup>22</sup>

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<sup>18</sup> See *Request for Review of the Decisions of the Universal Service Administrator by Jefferson-Madison Regional Library et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order on Reconsideration, 32 FCC Rcd 4626, 4631, ¶ 13 (WCB 2017) ("Jefferson-Madison Order") (noting White Lake School District's "rapid attempt . . . to seek a waiver" as a factor in demonstrating extraordinary circumstances). Cf. *Requests for Waiver of Decisions of the Universal Service Administrator by Hancock County Library System et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 30 FCC Rcd. 4723, 4726, ¶ 9 (WCB 2015) (denying extensions for petitioners who "waited an unreasonable amount of time after the last date to invoice to seek an invoicing deadline extension" and offered only employee confusion, lack of understanding of the program rules, or staff turnover as bases for failing to seek reimbursement in a timely fashion, or provided no reason at all).

<sup>19</sup> See 47 C.F.R. § 1.3.

<sup>20</sup> See *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, Order on Reconsideration, WT Docket No. 01-309, Order on Reconsideration, 20 FCC Rcd. 11221, 11243, n.158 (2005) (citing *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990)).

<sup>21</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>22</sup> See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), affirmed by *WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972) cert. denied, 409 U.S. 1027 (1972) (holding that the Commission consider hardship, equity, or more effective implementation of overall policy on an individual basis).

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Strict compliance with the invoicing rules in this instance would be inconsistent with the public interest. The confluence of events surrounding the integration of billing records between two newly merged companies and the unreasonable funding commitment delays from USAC constitutes extraordinary circumstances which warrant a deviation from the Commission's general predisposition that the Bureau deny waiver of the invoicing deadline. Failing to provide additional time for Sunesys to submit its Form 474 as requested herein will create undue hardship and could prevent an "otherwise eligible school district from receiving funding that they need to bring advanced telecommunications and information services to [its] students . . ." contrary to the goals of the E-rate program and the public interest.<sup>23</sup> A limited waiver of the invoice filing deadline would serve the public interest by ensuring that an otherwise eligible school district receives funding to which it is entitled but has not yet received as a result of extraordinary circumstances beyond its control and that were unforeseen by the Sunesys E-rate team.

Finally, granting a limited waiver as requested herein would not undermine the policy objective of the invoicing rules. Although efficient administration of the E-rate program is the primary policy objective of the invoicing rules, the Bureau may grant waivers of the rules in extraordinary circumstances such as these.<sup>24</sup> Furthermore, because USAC accounts for appeals in determining the de-obligation date for funds against which an invoice has not been received for a particular funding year and the instant appeal is pending,<sup>25</sup> funds committed for FRN

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<sup>23</sup> *Requests for Review of the Decisions of the Universal Service Administrator by Canon-McMillan School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd. 15555, 15558, ¶ 8 (WCB 2008).

<sup>24</sup> *See Jefferson-Madison Order* at 4631, ¶ 13 (finding that it did not serve the public interest to withhold E-rate funds from a small school).

<sup>25</sup> *See E-rate Modernization Order* at 8967, ¶ 241.

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2852486 are still committed within the E-rate fund to Montebello and distributing those funds therefore will not adversely affect other E-rate applicants.

**III. Conclusion**

For the foregoing reasons, Sunesys respectfully requests that the Bureau reconsider its denial of waiver of the invoicing rules and expeditiously grant Sunesys 30 days to file its Form 474 with USAC for processing and disbursement.

Respectfully submitted,

*/s/ Tamar E. Finn*

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Attorneys for Sunesys, LLC

Date: July 31, 2017



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**Exhibit 1**

Declaration of Nicole Jackson

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition for Reconsideration	)	
	)	CC Docket No. 02-6
by	)	
	)	
Sunesys, LLC	)	

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**DECLARATION OF NICOLE JACKSON**

1. My name is Nicole Jackson and I am Senior Manager, Customer Relations, of Sunesys, LLC (“Sunesys”). My business address is 185 Titus Avenue, Warrington, PA 18976.
2. I am authorized to make this declaration on behalf of Sunesys.
3. This Declaration is in support of the Petition for Reconsideration filed by Sunesys on July 31, 2017.
4. As Senior Manager, Customer Relations, among other things I am responsible for Billing adjustments and customer account management.
5. During the summer of 2015, Crown Castle International Corp. (“Crown Castle”) closed its acquisition of Sunesys and work began to integrate Sunesys into Crown Castle’s operations and systems, including the billing system.
6. During Funding Year 2015 (“FY 2015”), which ended June 30, 2016, Sunesys provided Wide Area Network (“WAN”) services to Montebello Unified School District (“Montebello”).

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7. On June 3, 2016, the Universal Service Administrative Company ("USAC") issued a Funding Commitment Decision Letter ("FCDL") committing FY 2015 E-rate support for WAN services provided by Sunesys to Montebello.
8. Montebello mailed its Form 486 to USAC on or about September 27, 2016. On October 3, 2016, a representative of Montebello requested a 120-day extension of the invoice filing deadline, to June 10, 2017. USAC's Form 486 Acknowledgement for Montebello was dated October 13, 2016.
9. Under program rules, Sunesys could not submit invoices to USAC for services provided to Montebello until USAC acknowledged receipt of Montebello's Form 486.
10. On June 30, 2016, Montebello was classified in the Sunesys systems as a "deferred account" because USAC had not issued the Form 486 Notification Letter. After USAC acknowledged the Form 486, Sunesys would have transferred the accrued accounts receivable into revenue to be processed. The revenue would then have been captured in the general ledger and invoiced to the customer for payment.
11. However, June 30, 2016 was the final "pull" of Sunesys active customer billing data into Crown Castle's billing system, referred to as "JDE." Upon learning that services provided to Montebello in FY 2015 had not yet been billed, Sunesys attempted to locate Montebello's records in Crown Castle's billing system. We determined that because Montebello was classified as a "deferred account" at the time of the final pull of billing information into JDE, it was not one of the active Sunesys customers that was transferred into Crown Castle's billing system.
12. Efforts to identify and "clean up" Sunesys customer data transferred to the Crown Castle billing system have been ongoing since October 2016, with delays and complications arising

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out of the need to input manually Montebello customer information into Crown Castle's system.

13. Crown Castle's process for adding new billing lines to JDE includes reviewing the customer contract, assigning unit numbers to each customer physical location, and recording the unit numbers into additional software mapping and data collection sites. In the case of Montebello, the process also required additional managerial approvals because of the manual nature of the account transfer.
14. Sunesys and Crown Castle have been working since at least March, 2017, to get Montebello's FY 2015 deferred account into JDE. Because that process was not completed as of June 10, 2017, Sunesys was not able to issue invoices to Montebello and USAC prior to the extended invoice deadline.
15. On June 14, 2017, Sunesys filed with the FCC a request to waive the extended June 10, 2017 deadline for submitting invoices to USAC for FY 2015 WAN services provided to Montebello.
16. Sunesys completed the process of moving Montebello's deferred account into JDE on or about July 27, 2017. Sunesys issued a bill to Montebello for its portion of services provided in FY 2015 on July 28, 2017.
17. Sunesys is ready and able to provide an invoice to USAC as of July 28, 2017.

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I declare under penalty of perjury that the foregoing statements are true and correct to the best of my information and belief.

Nicole Jackson 7/31/2017

Nicole Jackson

July 31, 2017

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**Exhibit 2**

Letter from USAC, Schools and Libraries Division, to Gena Ragnoli, Sunesys, LLC  
Dated June 3, 2016

**[REDACTED IN ITS ENTIRETY]**

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**Exhibit 3**

Letter from USAC, Schools and Libraries Division, to Gena Ragnoli, Sunesys, LLC  
Dated October 13, 2016

**[REDACTED IN ITS ENTIRETY]**