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September 18, 2017

VIA ECFS

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

Re: WC Docket No. 06-122
Sunesys, LLC Emergency Request for Waiver

Dear Ms. Dortch:

Sunesys, LLC ("Sunesys") submits via ECFS a redacted version of an Emergency Request for Waiver of May 2017 Form 499-Q 45-Day Revision Deadline. A confidential version of the Request 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)
Request for Waiver of May Form 499-Q 45-)
Day Revision Deadline) WC Docket No. 06-122
by)
Sunesys, LLC)

Emergency Request for Waiver of
May Form 499-Q 45-Day Revision Deadline

Sunesys, LLC (“Sunesys”), through its undersigned counsel and pursuant to Section 1.3 of the Commission’s rules, requests that the Wireline Competition Bureau (“Bureau”) (1) waive the 45-day Form 499-Q revision filing deadline to permit Sunesys to correct a substantial error in its May 2017 Form 499-Q and (2) require the Universal Service Administrative Company (“USAC”) to refund excess Universal Service Fund (“USF” or “Fund”) contribution payments by Sunesys resulting from the error. Sunesys requests that the Commission take such action on an expedited basis so that Sunesys is not required to make additional incorrect and unduly burdensome USF contributions that would not otherwise be refunded until the annual true-up process is complete in the third quarter of 2018.

I. Background

Sunesys is a telecommunications provider that makes USF contributions and is a recipient of E-rate distributions from the Fund. On April 30, 2017, Sunesys timely filed its FCC Form 499-Q reporting projected revenues for third quarter 2017. The form as submitted included a significant clerical error which resulted in grossly inflated interstate end user revenues being reported on its May 2017 Form 499-Q. Sunesys inadvertently reported revenues of

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BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL on Line 120 as interstate, an amount nearly seven times the amount of interstate revenues that should have been projected, ***BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL***. Sunesys did not discover this error until it received its July 21, 2017 invoice from USAC,¹ well beyond the 45-day deadline of June 15, 2017 for making corrections to its Form 499-Q.²

As a result of this inadvertent yet consequential error, the erroneous amount of revenue reported on its May 2017 Form 499-Q increased Sunesys' quarterly contribution base nearly 1200% in compared to its February 2017 Form 499-Q.³ The third quarter monthly USF contribution invoices USAC sent based on Sunesys' erroneous May Form 499-Q are nearly a 13-fold increase in Sunesys' monthly contribution obligation.⁴

Sunesys has taken steps to ensure that this type of error is not repeated in future Form 499 filings. The Form 499 review process has been moved to a department with access to both accounting and general ledger information and Sunesys has established checks and balances for data entry, quality checking, and certification of the data. Sunesys' August 2017 Form 499-Q filing was submitted using this process.

Sunesys has complied with the Commission's pay-and-dispute policy by submitting payment in full for the July 21, 2017 and August 22, 2017 invoices based on the erroneous May 499-Q.⁵ In the event that the Bureau declines to waive the Form 499-Q revision deadline, Sunesys will be unable to recover excess contributions already paid – as well as those to be paid

¹ Although Sunesys received from USAC a May 18, 2017 email asking the Company to verify the increase in projected revenue, the recipients of the email misread the percentage increase and did not realize the magnitude of the error until they received the USAC invoice.

² Sunesys did not attempt to file a revised Form 499-Q with USAC because it knew that any such revised filing would be denied by USAC as untimely. Accordingly, Sunesys requests that the Commission waive the 45-day revision deadline to permit filing of a revised Form 499-Q for May 2017.

³ See Exhibit A.

⁴ See Exhibit B.

⁵ See Exhibits C, D, and E.

in October of 2017 – until the completion of the annual true-up process during the third quarter of 2018, one year after payment of grossly inflated, erroneous USF contributions. Indeed, the billed third quarter contribution likely exceeds the company’s USF contribution obligation for the entirety of 2017 based on corrected revenue projections. Accordingly, Sunesys requests that the Bureau waive the 45-day revision deadline and permit Sunesys to file a corrected 499-Q for May 2017 with USAC. Additionally, Sunesys requests the Bureau to direct USAC to promptly refund the amount of USF contributions paid by Sunesys in excess of its USF contribution obligation based on the revised 499-Q.

II. Good Cause Exists to Waive the 45-Day Revision Deadline.

The Commission may waive its rules for good cause shown.⁶ A rule may be waived where the particular facts make strict compliance with the rule inconsistent with the public interest.⁷ A waiver is appropriate “if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”⁸ Additionally, good cause for a waiver may be shown “in cases where allowing deviation from a rule requirement would not disserve the rule’s underlying purpose and would better serve the public interest than requiring strict compliance.”⁹

⁶ 47 C.F.R. § 1.3. The Bureau may act on requests for waiver of the Commission’s rules on delegated authority. *See* 47 C.F.R. § 0.91(b).

⁷ *See Northeast Cellular Telephone Co. v. FCC*, 897 F2d 1164, 1166 (D.C. Cir. 1990).

⁸ *Id.*

⁹ *See Mobile Satellite Ventures Subsidiary LLC, Memorandum Opinion and Order*, 22 FCC Rcd. 20548, 2055 (I.B. 2007). *See In the Matter of Federal-State Joint Board on Universal Service; Universal Service Contribution Methodology, Aventure Communications Technology, LLC*, Order, DA 08-1514, ¶ 4, n. 10 (rel. Jun. 26, 2008) (“Aventure Order”).

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Sunesys requests a waiver of the 45-day revision deadline for Form 499-Q¹⁰ and asks the Bureau to direct USAC to accept a revised May 2017 Form 499-Q. The Bureau has waived the 45-day Form 499-Q revision deadline rule and directed USAC to accept corrected forms submitted outside of the revision window when clerical errors have resulted in invoiced contribution obligations that vastly exceed the amount a carrier should have owed. In its *Aventure Decision*, the Bureau found that inadvertently reporting total revenues rather than end-user revenues that resulted in a \$261,000 overpayment (i.e., an amount nearly 20 times Aventure's actual USF obligation) with the prospect of not receiving a refund for 15 months were circumstances which justified a waiver of the revision deadline.¹¹ Similarly, in *Ascent Media*, the Bureau granted a waiver when the carrier "mistakenly reported its total projected company revenues instead of its end-user interstate and international telecommunications revenues on the FCC Form 499-Q at issue" resulting in a single payment that represented more than 75% of the company's total USF obligation for the entire year.¹² The Bureau also found a waiver to be in the public interest when American Broadband & Telecommunications added an extra zero to its projected end-user interstate revenues resulting in an "invoiced amount for the quarter [that] was several times the company's trued-up contribution obligation for the entire year."¹³ In *Peerless Networks*, the Bureau granted a waiver of the revision deadline after an inadvertent clerical error that was not discovered until after the revision deadline had passed

¹⁰ See *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd. 24952, 24972, ¶ 36 (2002) ("*2002 Contribution Methodology Order*").

¹¹ See *Aventure Order*, ¶ 7 (explaining that waiver was warranted "[b]ased on the amount of the overpayment at issue and the length of time that would elapse before Aventure would be reimbursed").

¹² See *In the Matter of Universal Service Contribution Methodology; Petition for Reconsideration by Ascent Media Group, Inc.*, WC Docket No. 06-122, Order, 28 FCC Rcd. 6150, ¶ 10 (WCB 2013) ("*Ascent Order*").

¹³ See *Universal Service Contribution Methodology; Request for Review of a Decision of the Universal Service Administrator and Request for Waiver by American Broadband & Telecommunications*, WC Docket No. 06-122, Order, 28 FCC Rcd. 10358, ¶ 12 (WCB 2013) ("*American Broadband Order*").

resulted in contributions owed that exceeded the carrier's USF obligation for the entire year.¹⁴

Furthermore, in *Peak Communications*, the Bureau granted a waiver of the 45-day revision deadline when a clerical error resulted in an invoice for a contribution amount substantially more than what Peak Communications would typically pay.¹⁵

These facts are nearly identical to Sunesys' situation. Just as the Bureau found good cause to justify a waiver of the 45-day revision deadline in the above cases, good cause exists here because a minor yet consequential clerical error resulted in Sunesys owing a USF contribution amount for third quarter that exceeds its likely USF contribution for the entirety of 2017. The clerical error resulted in a quarterly contribution obligation of ***BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL*** which is more than the net universal service base contribution revenues Sunesys should have reported for the third quarter of 2017. Sunesys has taken steps to ensure the mistakes leading up to the erroneous May 2017 499-Q will not happen again. Good cause exists to grant of a one-time waiver of the 45-day revision deadline because it would correct an inadvertent yet significantly consequential clerical error that resulted in an unjustifiably large USF contribution obligation.

a. Denial of the Waiver Will Cause Significant Financial Harm to Sunesys

Sunesys has paid the first two months of a USF contribution obligation that is exponentially larger than its true obligation due to an inadvertent clerical error. Strict

¹⁴ See *In the Matter of Universal Service Contribution Methodology; Emergency Request for Review of Decision of the Universal Service Administrator and Request for Waiver of Deadline by Peerless Network, Inc.*, WC Docket No. 06-122, Order, 29 FCC Rcd. 7546, ¶ 2 (WCB 2014) ("*Peerless Order*").

¹⁵ See *In the Matter of Emergency Request for Review by Peak Communications, Inc. of a Decision of the Universal Service Administrator and Request for Waiver of Deadline for Filing Revisions to FCC Form 499-Q*, WC Docket No. 06-122, Order, 29 FCC Rcd. 9668, ¶ 2 (WCB 2014) ("*Peak Communications Order*").

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compliance with the revision deadline would require Sunesys to make additional erroneous contribution amounts for October 2017 and would disproportionately penalize Sunesys.¹⁶

Absent a waiver, Sunesys would be forced to pay the erroneously invoiced amount in contribution payments totaling nearly ***BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL*** without recourse until USAC processes a true-up credit during the third quarter of 2018. This would leave Sunesys without significant monies for almost a year that could otherwise be spent on network deployment and improving services to Sunesys' E-rate and other customers. Grant of the instant waiver request will help to ensure that Sunesys' operations and customers are not harmed unnecessarily by the need for Sunesys to make excess USF contribution payments based on the erroneous May Form 499-Q.

Additionally, waiting until the true-up process to refund excess USF payments will harm Sunesys because any refund of overpayments ultimately made by USAC will be based on the average of the two lowest contribution factors for the year, rather than the amount of overpayment actually made by Sunesys.¹⁷ As a result, Sunesys likely will receive less in a true-up refund for overpayment than it otherwise would be entitled to (in addition to waiting one year for a refund). Although this policy is intended to provide an incentive for carriers to accurately report their quarterly revenues,¹⁸ strict adherence to the rule in this circumstance will result in unwarranted financial harm to Sunesys arising solely out of an inadvertent clerical error that will not be fully redressed through the annual true-up process. The amount of the error and the length

¹⁶ See *Ascent Order*, ¶ 11.

¹⁷ See *2002 Contribution Methodology Order*, ¶ 36.

¹⁸ See *In the Matter of Federal-State Joint Board on Universal Service*, Order, 22 FCC Rcd. 4965, 4967, ¶ 8 (2007).

of time before Sunesys will receive a refund through the true-up process amount to good cause justifying grant of a waiver.¹⁹

b. Neither the Universal Service Fund nor the Public Interest Will Be Adversely Impacted.

Waiver of the 45-day revision deadline in this instance will not disserve the rule's underlying purpose and would better serve the public interest than requiring strict compliance. The 45-day revision deadline is intended to "eliminate incentives for carriers to revise their revenue projections after the announcement of the contribution factor for the upcoming quarter in order to reduce their contribution obligations and to otherwise reduce the likelihood of a shortfall in universal service funding in a given calendar quarter."²⁰ Rather than attempting to reduce its contribution obligation, Sunesys seeks to correct an inadvertent clerical error that resulted in an unreasonably large, and inaccurate, contribution obligation owed. Revising Sunesys' remaining USF contribution payments for third quarter and refunding the overpayment already made implicates only a fraction of total USF contribution obligations for third quarter 2017 such that a downward revision is unlikely to impact USF in the short term. The erroneous amount owed by Sunesys for third quarter USF contributions is ***BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL***, which is less than ***BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL*** of the amount deemed uncollectible by the Commission in setting the contribution factor for third quarter of 2017.²¹ If the Bureau grants the waiver, Sunesys will pay a revised third quarter USF contribution based on accurate projections, which Sunesys estimates will total ***BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL***

¹⁹ See *Aventure Order*, ¶ 7.

²⁰ *Id.*

²¹ See *Proposed Third Quarter 2017 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 17-580 at 2 (rel. June 13, 2017). The uncollectible figure is 1% of (\$13.110461 billion - \$1.896110 billion) or \$112,143,510.

in contributions for the third quarter. Furthermore, the Fund will not be harmed by permitting the revision to the May 2017 Form 499-Q because Sunesys would ultimately be entitled to a refund for overpayment through the true-up process in 2018.

Strict compliance with the 45-day revision deadline is inconsistent with the public interest when inadvertent typographical or clerical errors on Form 499-Q result in significantly overstated assessable telecommunications revenue.²² Absent a waiver of the revision deadline, Sunesys faces third quarter contribution obligations based on significantly overstated assessable telecommunications revenue. Grant of the instant waiver request would be consistent with Commission precedent and better serve the public interest by ensuring that an inadvertent clerical error does not result in a grossly disproportionate USF contribution burden on Sunesys.

III. The Bureau Should Direct USAC to Issue a Credit Balance Refund to Sunesys for the Amount of USF Contribution Overpayment Arising from the Erroneous Form 499-Q.

In the event that the Bureau finds good cause to grant a waiver of the 45-day revision deadline, the Bureau should direct USAC to retain an amount equal to Sunesys' revised third quarter contribution and promptly issue a credit balance refund for the excess contribution amount already paid.

USAC has the authority to refund overpayments by USF contributors.²³ Nothing in the Commission's rules requires that overpayments be treated as a credit toward future USF obligations, and USAC has an established process for one-time refunds at any time during the year if there is a credit balance on a contributor's account.²⁴ Accordingly, the Bureau should

²² See *Peak Communications Order*, ¶ 3, n. 9.

²³ See 47 C.F.R. § 54.713(a) (providing that "[o]nce a contributor complies with the Telecommunications Reporting Worksheet filing requirements, the Administrator may refund any overpayments made by the contributor, less any fees, interest, or costs").

²⁴ See USAC, Credit Balance Refunds, available at: <http://www.usac.org/cont/payers/credit-balance-refunds.aspx>.

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direct USAC to issue a refund of the USF contribution payment made based on the erroneous July and August 2017 invoices and any subsequent overpayments made during the pendency of this waiver request.

IV. Conclusion

Sunesys requests that the Bureau (1) waive the 45-day revision deadline to permit Sunesys to file a revised May 2017 Form 499-Q and (2) direct USAC to issue a refund to Sunesys for the amount of USF contribution paid pursuant to the erroneous July and August 2017 invoices in excess of the contribution that should have been owed based on Sunesys' accurate projected third quarter revenues.

Respectfully submitted,

/s/ Tamar E. Finn

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September 18, 2017

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Verification of Monica Gambino

I, Monica Gambino, am the Vice President of Legal, of Sunesys, LLC. I verify under penalty of perjury that the foregoing was prepared under my supervision and that the facts contained herein are true, complete, and correct to the best of my knowledge, information and belief.

Executed on September 18, 2017

A handwritten signature in black ink, appearing to read "Monica Gambino", written over a horizontal line.

Monica Gambino
Vice President, Legal
Sunesys, LLC

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EXHIBIT A

Email from Tariqua Beyene of USAC Regarding May 2017 499-Q Filed by Sunesys, LLC

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EXHIBIT B

July 2017 USAC Invoice

[REDACTED IN ITS ENTIRETY]

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EXHIBIT C

Sunesys, LLC Proof of Payment Dated August 7, 2017

[REDACTED IN ITS ENTIRETY]

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EXHIBIT D

August 2017 USAC Invoice

[REDACTED IN ITS ENTIRETY]

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EXHIBIT E

Sunesys, LLC Proof of Payment Dated September 14, 2017

[REDACTED IN ITS ENTIRETY]