COATESVILLE AREA SCHOOL DISTRICT

545 East Lincoln Highway
Coatesville, PA 19320

"Excellence in Education"

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

In the Matter of	)	
Request for Waiver of 60-day Appeal	)	
Deadline and Appeal of the	)	CC Docket No. 02-6
Administrator's Decision on Appeal	)	
by the Coatesville Area School District.	)	

PETITION FOR RECONSIDERATION

Billed Entity Name	Coatesville Area School District
Billed Entity Number (BEN)	126195
Funding Request Number (FRN)	1444270
471 Application Number	509428
Funding Year	2006
FCDL Date	Original FCDL – 9/19/2006 SLD Appeal Decision Date – 1/24/2007

Name of Contact Person for Appeal	Julie Tritt Schell
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In accordance with 47 C.F.R. §1.106(a), the Coatesville Area School District ("District") submits this Petition for Reconsideration of the Wireline Competition Bureau's ("Bureau") May 26, 2010 Order in *Agra Public Schools I-134,* Agra, Oklahoma, *et al.*, CC Docket No. 02-6, File No. SLD- SLD-363747, et al in which the Bureau denied the District's request for waiver of the 60 day deadline for submitting an appeal of a decision of the Schools and Libraries Division ("SLD") of Universal Service Administrative Company ("USAC").

In its initial appeal and request for waiver to the Commission, the District tried to explain the confusing nature of its Funding Year 2006 Form 471 application based on the fact that the SLD had previously denied the District's 2004 lit fiber request that that appeal was still under review as of the time the Funding Year 2006 request was submitted.

In the recent *Agra Public Schools I-134* decision, the Bureau stated that the District did not file a timely appeal because at that time they did not have grounds for appeal. *Id.* at n.17. This is not entirely accurate. In its initial appeal and request for waiver, the District did cite the fact that the PIA reviewer should have reached out to the applicant under the newly established *Bishop Perry* rules (Bishop Perry Middle School Appeal, SLD File No. . SLD-487170, et al.)(Released May 19, 2006) to help the applicant understand that the Form 470 they originally cited was inaccurate and the establishing Form 470 was posted in a previous year and before the contract was signed. But the District was not claiming that the 60-day appeal deadline should be waived because of the relief afforded under the *Bishop Perry* decision. The grounds for the District's request for waiver of the 60-day appeal deadline are fourfold:

1) The extenuating circumstances surrounding the District's efforts to convert their existing dark fiber contract to lit fiber and the confusing series of funding denials and approvals that left the District entirely confused about their status of two separate funding years and whether they were, indeed, compliant with the Form 470 competitive bidding requirements; and the confusing nature of the SLD's appeal decision letter in which they stated that the appeal was approved, but funding denied. Details surrounding these circumstances are spelled-out further below.

2) The contract and services at the heart of the District's initial Form 471 request and subsequent denials are identical to many of the Commission's goals as cited in the National Broadband Plan and the Notice of Proposed Rulemaking, released May 20, 2010. Although the Coatesville Area School District is not a wealthy school district by any stretch of the imagination -- more than 40% of students participation in the free and reduced lunch program -- the District undertook an ambitious initiative to provide broadband connectivity to each of their schools in 2001 by competitively bidding and entering into a long term dark fiber contract. In doing so, the District

was one of the first districts in Pennsylvania to provide gigabit speeds to its schools and multimedia-rich content and online curriculum to their students and educators.

3) The current cost of broadband is expensive, and the District's fiber contract is no exception with the monthly recurring fee of $17,000. When the District and school board entered into this long-term contract, they did so with the understanding that E-rate funding would support the extensive costs on an annual basis. Unlike other services or equipment purchases that could be contingent upon E-rate, the District's broadband communications network cannot be turned-off due to lack of E-rate funding. Therefore the 2006 denial of more than $112,000 created an unexpected economic hardship for the District as they were required to take funds from other programs to cover the shortfall.

4) The underlying appeal is 100% meritorious.

As the Bureau stated in its recent order:

> The Commission may waive any provision of its rules on its own motion and for good cause shown. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. *In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.* In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule. *Agra Public Schools I-134* Order at ¶ 5 (emphasis added).

In light of these facts, the District respectfully urges the Bureau to exercise its discretion and grant this Petition for Reconsideration and rule on the merits of the appeal in favor of the District.

Summary of Appeal

In March 2008, the District contacted their State E-rate Coordinator, Julie Tritt Schell, to inquire why the District had not yet received funding for the Funding Year 2007 requests. During Ms. Schell's research, she discovered that in two prior years – Funding Years 2004 and 2006 -- the District had not received E-rate funding for its lit fiber requests.[1] The denial from Funding Year 2006 is the basis of this appeal.

[1] The SLD ultimately approved the District's appeal relating to the 2004 funding request.

The District's 2006 E-rate request for lit fiber service was denied because SLD concluded the contract was signed before the allowable contract date of the Form 470. This is not true. In completing its Form 471 application, the District incorrectly listed the current year's Form 470 number which made it appear that the contract was signed prior to the Allowable Contract Date. In fact, there was an establishing Form 470, with an Allowable Contract Date that *preceded* the execution of the contract. The establishing Form 470 and valid contract are attached as Exhibit A and B, respectively, as proof of that relationship.

Background

In Funding Year 2006, the Coatesville Area School District's funding request for lit fiber wide area network service from Sunesys (service provider), FRN 1444270, was denied on the basis that, "The Form 471 application was signed and/or submitted prior to the expiration of the 28-day waiting period from the day of the posting of the Form 470 to the SLD Web Site." The District appealed the denial to the SLD, but the Administrator's Decision on Appeal stated the Decision was, "Approved, Funding Denied." The appeal decision did not state why the appeal was approved, or what portion of the appeal was approved.

The District recognizes and admits that it made a clerical error when it submitted the Form 471 because it listed the FUNDING YEAR 2006 Form 470 number (that was used to competitively bid the District's other priority one services) instead of the correct, establishing Form 470 number on which the Sunesys fiber contract was based (see Exhibit A). The correct Form 470 number that should have been listed on the Form 471 -- 641960000340500 -- was posted on December 21, 2000, with an Allowable Contract Date of January 18, 2001. In full compliance with the competitive bidding process, and fiber eligibility rules in place for Funding Year 2001, the District entered into a contract with Sunesys to lease dark fiber on January 18, 2001 (see Attachment B)[2].

As background on this contract, the parties' agreement *initially* provided for the District's leasing of dark fiber service, which was eligible for E-rate discounts for Funding Years 2001, 2002 and 2003. Beginning with Funding

Year 2004; however, the FCC concluded that unlit or dark fiber service was no longer eligible for E-rate discounts. In recognition of the fact that some applicants may have had multi-year dark fiber lease agreements, the FCC specifically allowed applicants and service providers to amend their existing agreements to convert them to lit fiber contracts. This is the precise situation describing the Coatesville Area School District's agreement with Sunesys. In compliance with the FCC's direction and guidance, the parties agreed that the wide area network agreement should be converted to a lease of lit fiber facilities. To accomplish this change, the parties signed a minor contract modification on January 19, 2004 to convert the contract to a lit fiber service agreement beginning July 1, 2004 whereby Sunesys took control of the WAN equipment associated with the District's network and became responsible for lighting the fiber.

These facts are relevant because the SLD erroneously denied the District's 2004 funding request for lit fiber service on January 24, 2005 stating that it was still considered dark fiber, a decision that was subsequently appealed to the SLD and overturned on appeal. As of the date that the Funding Year 2006 Form 471 was submitted, the District believed that their appeal was still pending at the SLD. And as a result, the District's E-rate Coordinator was entirely confused and unsure which Form 470 number should be listed on the Funding Year 2006 Form 471 for fear that the establishing Form 470 may have in some way resulted in the denial of the 2004 funding request.

During PIA review of the Funding Yea 2006 Form 471 application, the fact that the District inadvertently committed in citing the wrong Form 470 number for this FRN, was apparently detected by the PIA reviewer. But instead of informing the District contact that the wrong Form 470 had been used, they simply asked them to confirm that the Form 470 number was correct. Had the PIA reviewer (or the SLD appeal reviewer, when reviewing the District's timely appeal to USAC) simply reviewed the District's E-rate filing history from the prior year, where the District cited to the correct Form 470 application for the Sunesys contract; or, knowing the contract was signed in January 2001, simply searched the Funding Year 2001 Form 470 database to determine if a Form 470 had been posted prior to the signing of this contract; and subsequently informed the District that the wrong Form 470 number was cited and that there was a valid Form 470 that should instead be used, the District's clerical error could have been

fixed, resulting in successfully funding this FRN, and avoiding the District's appeal to the SLD and this subsequent appeal to the FCC.

It is the District's understanding that PIA review procedures do not prescribe that PIA reviewers, when faced with an incorrect Form 470 number citing, should engage in this kind of basic research or perform this kind of outreach to assist an applicant with identifying the correct Form 470 number from a previous year. Although PIA review procedures have been modified to reduce denials as a result of the recent FCC Orders and efforts undoubtedly have been made to make the program more applicant-friendly and reduce denials, this is one area where a deficiency continues to exist. Occasionally a PIA reviewer will identify what the valid Form 470 number should be , but when they do, they are apparently not permitted give the applicant the tools the tools and information to figure out what the correct Form 470 number should be. On occasion, PIA reviewers will verbally urge the applicant to contact their State E-rate Coordinator to seek guidance in the hopes that Coordinator will catch the mistake and provide the applicant with the correct establishing Form 470 number. But these occasions are rare and even when they do happen, the reviewer is not permitted to actually identify that the problem is correctable. We believe that this is in direct contradiction to the directives given to USAC under the Bishop Perry Order (FCC 06-54, Released May 19, 2006). In that Order, the FCC directed USAC to:

> "...provide all E-rate applicants with an opportunity to cure ministerial and clerical errors on their FCC Form 470 or FCC Form 471, and an additional opportunity to file the required certifications. Specifically, USAC shall inform applicants promptly in writing of any and all ministerial or clerical errors that are detected in their applications, along with a clear and specific explanation of how the applicant can remedy those errors. ... Applicants shall have 15 calendar days from the date of receipt of notice in writing by USAC to amend or refile their FCC Form 470, FCC Form 471 or associated certifications. USAC shall apply this directive to all pending applications and appeals even if such applications or appeals are no longer within the filing window."

The Form 471 application related to this appeal was submitted February 14, 2006 and the Funding Commitment Letter was dated September 19, 2006 – a full four months <u>after</u> the FCC ordered USAC to inform applicants of any and ALL ministerial or clerical errors that are detected in their applications, along with instructions on how to fix the problem.

The District takes full responsibility for making the initial clerical error that is at the root of this appeal. The District has sought ongoing E-rate expertise to augment its existing i- house resources to ensure that such mistakes do not happen in the future.

The District sincerely appreciates the Commission's efforts over the last four years to make the E-rate program more applicant-friendly and to understand that the E-rate program rules are rigid and often unforgiving. Where an applicant has tried to commit fraud against the program or has wasted program resources, we fully understand and support strict penalties and loss of E-rate support. The Coatesville Area School District has, in no way, tried to defraud or cheat the E-rate program. The District has made every attempt to follow not only the letter of the law, but also the spirit of the program in not applying for excessive services and strictly abiding by all procurement rules and guidelines for E-rate eligible services. The District respectfully urges the Bureau to exercise its discretion and grant this Petition for Reconsideration and rule on the merits of the appeal in favor of the District based on the information provided.

Respectfully submitted,

Richard W. Como

Mr. Richard W. Como

Superintendent