

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Petition for Reconsideration of a Decision of the)
Wireline Competition Bureau by)
)
Sunesys, LLC (Montebello Unified School District)) File No. SLD-1045399
Warrington, PA)
)
Schools and Libraries Universal Service) CC Docket No. 02-6
Support Mechanism)

ORDER

Adopted: August 27, 2019

Released: August 27, 2019

By the Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

1. In this Order, we address the petition filed by Sunesys, LLC (Sunesys),¹ a provider of telecommunications services to E-Rate program² participants, seeking reconsideration of a decision by the Wireline Competition Bureau (Bureau) in the June 2017 Streamlined Request Resolution PN³ denying a request for waiver of the invoice deadline rules. Based on the record before us, we now find that there were extraordinary circumstances that merit a waiver of the program’s invoicing rules.⁴ Accordingly, we direct USAC to extend the invoice filing deadline for this funding request by 90 calendar days from the effective date of this Order.

2. Background. E-Rate program applicants or service providers may seek reimbursement for E-Rate supported services in one of two ways.⁵ An applicant may either pay upfront for the full cost of services and then seek reimbursement of the discounted share from USAC, or the applicant may pay the non-discounted share of the services and require the service provider to invoice USAC for reimbursement of the discounted share. In either case, the deadline for seeking reimbursement is described in section 54.514(a) of the Commission’s rules, which states that invoices must be submitted 120 days after the last day of service or 120 days after the date of the FCC Form 486 Notification Letter, whichever is later.⁶ Under the rule, applicants or service providers may seek a single, one-time automatic

¹ Petition for Reconsideration by Sunesys, LLC, CC Docket No. 02-6 (filed July 31, 2017) (Petition for Reconsideration).

² The E-Rate program is more formally known as the schools and libraries universal service support mechanism.

³ 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, n.19 (WCB 2017) (June 2017 Streamlined Request Resolution PN).

⁴ 47 CFR § 54.514(a).

⁵ 47 CFR § 54.514(c).

⁶ 47 CFR § 54.514(a). USAC issues the FCC Form 486 Notification Letter to confirm receipt of a properly completed FCC Form 486, the Receipt of Service Confirmation Form, on which an applicant or service provider informs USAC of the service start dates and which allows the applicant or service provider to begin submitting

(continued....)

120-day extension of the invoice filing deadline from USAC, but such a request must be filed prior to the invoice filing deadline.⁷

3. Generally, waiver of the Commission's rules is appropriate if (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.⁸ However, in codifying the invoicing rules in 2014, the Commission determined that waivers of the invoicing rules were generally not in the public interest and that the Bureau should grant waivers of the invoicing rules only in extraordinary circumstances.⁹ USAC accordingly has denied requests for an extension of the invoice filing deadline that are received after the deadline itself, and the Bureau has denied similar requests for waiver of the rule.¹⁰

4. On June 14, 2017, Sunesys filed a request for waiver of the invoice filing deadline, claiming it was unable to timely submit an invoice due to circumstances outside of its control.¹¹ During the summer of 2016, following the acquisition of Sunesys by Crown Castle International, Inc. (Crown Castle), Sunesys began work to integrate itself into Crown Castle's operations and systems, including transferring its E-Rate program accounts into Crown Castle's billing system. Due to the timing of the issuance of funding year 2015 commitments by the Universal Service Administrative Company (USAC), however, one of Sunesys' E-Rate accounts for a funding year 2015 funding request for services provided to Montebello Unified School District (Montebello) was misclassified in the system as a "deferred account" and did not get integrated into the new billing system. Despite efforts to correct the issue, Sunesys was unable to invoice for this funding request before the deadline had passed. In its waiver request, Sunesys explained that due to this billing system integration issue, it had missed the last date to invoice for a funding request for Montebello by three business days.¹² Thus, Sunesys sought a one-time waiver to invoice for the funding request based on these unforeseen changes to its new billing software.

5. The Bureau denied the request for waiver in the *June 2017 Streamlined Request Resolution PN*, finding that Sunesys had not demonstrated extraordinary circumstances justifying a waiver of the rules.¹³ On July 31, 2017, Sunesys then filed a petition for reconsideration of the decision.¹⁴ In it, Sunesys contends that it has demonstrated extraordinary circumstances that differ from other requests for waiver that the Bureau has denied. Specifically, USAC issued the funding commitment decision letter for this funding year 2015 funding request on June 3, 2016, just before the end of the funding year.¹⁵ Following acquisition by Crown Castle, Sunesys' billing was integrated on June 30,

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invoices. USAC, FCC Form 486 Filing, <https://www.usac.org/sl/applicants/step05/form-486.aspx> (last visited Aug. 27, 2019).

⁷ 47 CFR § 54.514(b).

⁸ Generally, the Commission's rules may be waived if good cause is shown. 47 CFR § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁹ See *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, 8965, para. 238-40 (2014) (*2014 First E-Rate Order*).

¹⁰ See, e.g., *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 (WCB 2016) (*Ada Order*).

¹¹ Request for Waiver by Sunesys, LLC, CC Docket No. 02-6 (filed June 14, 2017) (Request for Waiver).

¹² *Id.* at 2.

¹³ *June 2017 Streamlined Request Resolution PN*, 32 FCC Rcd 5084, n.19.

¹⁴ Petition for Reconsideration.

¹⁵ *Id.* at 2. Funding year 2015 ended on June 30, 2016.

2016;¹⁶ however, because the FCC Form 486 had not yet been filed for this funding request, the account for this request was misclassified in the system as a “deferred account.”¹⁷ Montebello then sought a one-time 120-day extension of the invoice deadline on October 3, 2016, extending its invoicing deadline to June 10, 2017.¹⁸ Sunesys filed its request for waiver on June 14, 2017, just three business days later. In the meantime, Crown Castle and Sunesys worked to invoice Montebello in the Crown Castle accounting system, but were unable to do so until July 28, 2017.¹⁹

6. *Discussion.* Upon reconsideration of the record, we now find that Sunesys has demonstrated extraordinary circumstances that warrant a waiver of our invoice rules.²⁰ Here, we find that Sunesys was unable to file timely invoices due to extraordinary circumstances outside of its control. Specifically, we find that the combination of USAC’s issuance of the associated funding commitment decision letter near the end of the funding year and the acquisition by a new company occurring just after USAC issued the funding commitment are extraordinary circumstances that merit a waiver of our rule.²¹ In waiving the rule here, we also find significant Sunesys’ good faith efforts to extend the invoicing deadline within the existing program rules and to seek a waiver as soon as it discovered that it would not be able to meet the extended deadline. While the Commission has a strong interest in ensuring efficient program administration,²² we find it does not serve the public interest to limit this petitioner to a single 120-day invoice extension when a unique circumstance led to the need to invoice less than 60 days later. We, therefore, waive section 54.514(b) of our rules for this funding request,²³ consistent with waiver relief we have granted previously.²⁴

7. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3, and 1.106 of the Commission’s rules, 47 CFR §§ 0.91, 0.291, 1.3, and 1.106 that section 54.514 is WAIVED and USAC SHALL GRANT an extension for Sunesys, LLC by 90 calendar days from the effective date of this Order as described herein.

¹⁶ *Id.*

¹⁷ *Id.* at 2-3.

¹⁸ *Id.* at 3.

¹⁹ *Id.*

²⁰ *See, e.g., Petitions for Reconsideration by Callisburg Independent School District; School and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order and Order on Reconsideration, 28 FCC Rcd 9459, 9461, para. 5 (WCB 2013) (granting petition for reconsideration where, upon reconsideration of the record, we do not find that the evidence supports our previous determination).

²¹ *See, cf., Request for Waiver by Utah Education and Telehealth Network; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 33 FCC Rcd 4607, 4609, para. 10 (WCB 2018); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 33 FCC Rcd 2042 (WCB 2018) (both granting waivers of Commission rules due in part to the timing of the funding commitment decision letters and/or revised funding commitment decision letters).

²² *See 2014 First E-Rate Order*, 29 FCC Rcd at 8965-66, para. 238-40.

²³ 47 CFR § 54.514(b). We also waive section 54.514(a) of the Commission’s rules and direct USAC to waive any procedural deadline that might be necessary to effectuate our ruling. 47 CFR § 54.514(a).

²⁴ *See, e.g., Petition for Reconsideration by Jefferson-Madison Regional Library; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order on Reconsideration, 32 FCC Rcd 4626, 4630-32, paras. 10-13 (WCB 2017) (finding extraordinary circumstances for White Lake School District to merit a waiver of the invoice filing deadline).

8. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Ryan B. Palmer
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau