January 13, 2015

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20054

RE: FRN 0017249558, FCC Filer ID 827150

WC Docket Nos. 10-90, 14-259, Rural Broadband Experiments; Worldcall Interconnect, Inc. Reply to Comments and Request for Confidential Treatment

Dear Ms. Dortch:

Attached behind this cover letter requesting confidential treatment are paper copies of the unredacted Worldcall Interconnect, Inc. (“WCX”) Reply to Comments pursuant to the Comment Cycle announced in Public Notice, Wireline Competition Bureau Announces Availability of Additional Funding for Rural Broadband Experiments; Seeks Comment on Waiver Petition of Provisionally Selected Bidders, DA 14-1889, WC Docket Nos. 10-90, 14-259 (rel. Dec. 23, 2014) (Waiver Public Notice).

Certain information contained in the Reply to Comments is sensitive financial and proprietary business information that should be protected from public disclosure. Pursuant to Section 0.459 of the Commission’s Rules, WCX hereby requests confidential treatment of the information, all of which is appropriately marked (the “Information”). The Information includes references to and certain content from WCX’s sensitive and proprietary financial statements and other financial-related data and network related data and is necessary for the Commission – but not the public – to review. The Commission has expressly required that this information be submitted on a confidential basis “in order to protect the integrity of the competitive bidding process.”

As required by Section 0.459(b), WCX provides the following further information:

1. Identification of the specific information for which confidential treatment is sought. WCX requests that the Information be treated as confidential pursuant to Exemption 4 of FOIA, 5 U.S.C. §552(b)(4), and Section 0.459, which protect confidential commercial and other information not routinely available for public inspection. The Information includes financial-related data. This is competitively sensitive, business confidential and proprietary commercial information that would not routinely be made available to the public and has been carefully guarded from WCX’s competitors. If the Information were disclosed, other parties could use it to determine information relative to WCX’s business plans, competitive operations, operations and performance.
2. Identification of the commission proceeding in which the information is submitted: description of the circumstances giving rise to the submission. The Information concerns the rural broadband experiment proceeding, the requirements for which were adopted in the Broadband Experiments Order.

3. Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged. The Information contains financial-related data. It is competitively sensitive, business confidential and proprietary commercial information that would not routinely be made available to the public and has been carefully guarded from other parties.

4. Explanation of the degree to which the information concerns a service that is subject to competition. The Information includes WCX financial-related data. If the Information is not protected, competitors and would-be competitors could be able to use the Information to their competitive advantage.

5. Explanation of how disclosure of the information could result in substantial competitive harm. Because the Information generally would not be subject to public inspection and would customarily be guarded from competitors, the Commission’s rules acknowledge that release of the Information to the public is likely to produce competitive harm. WCX’s competitors could assess aspects of WCX’s operations and undermine WCX’s deployment objectives and competitive position.

6. Identification of any measures taken by the submitting party to prevent unauthorized disclosure. WCX maintains strict security concerning financial information. Only WCX and persons directly authorized by it have access to the data required to produce the Information.

7. Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties. The Information is not available to the public and has not previously been disclosed to third parties.

8. Justification of the period during which the filing party asserts that material should not be available for public disclosure. WCX requests that the Information be treated as confidential indefinitely because it is not possible at this time to determine any date certain by which the Information could be disclosed without risk of competitive harm to WCX.

9. Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted. If publicly disclosed, the Information would be extremely harmful to WCX’s plans to deploy broadband service using funds made available by the Commission.

A public version of this filing, with the Information redacted, will be uploaded through the Commission’s Electronic Comment Filing System. Copies of this unredacted submission are also being provided to Ian Forbes, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-B438, Washington D.C. 20554, via e-mail to Ian.Forbes@fcc.gov.
Sincerely,

W. Scott McCollough
Counsel for Worldcall Interconnect, Inc.

Unredacted hard copy to:
Ian Forbes
Telecommunications Access Policy Division
Wireline Competition Bureau
445 12th Street, S.W., Room 5-B438
Washington D.C. 20554

Via e-mail: Ian.Forbes@fcc.gov
Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Connect America Fund
Broadband Rural Experiments

WC Docket No. 14-259
WC Docket No. 10-90
FOR PUBLIC REVIEW

WORLDCALL INTERCONNECT, INC. REPLY TO COMMENTS ON PETITIONS FOR WAIVER OF AUDIT REQUIREMENT

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EXECUTIVE SUMMARY

WCX sought a temporary and short-term extension of the auditing requirement and showed good cause for, and special circumstances justifying, the request. Special circumstances justified not yet having audited financial statements for 2011-2013. WCX was preparing to provide relevant audited financial information for meaningful periods, and in WCX’s case that would be from late 2012 through the end of 2014. In an extraordinary effort to now supply the information, however, WCX has arranged to secure audited statements for 2011-2013 by around January 31, 2015 (and audited 2014 information by March, 2015). The waiver is in effect merely a short extension. This extension will not harm any party. The extension will not impede or delay any Commission timelines for experiments or model-based support offers for Category One proposals. A short extension is in the public interest. Waiver will serve the public interest and still allow all purposes of the audit requirement to be met.

Other commentors explain that WCX’s waiver is reasonable and should be granted. Those who oppose do so for self-serving reasons, and their position is not an effort to advance the public interest. Their reasoning does not apply to WCX in any event.
WORLDCALL INTERCONNECT, INC. REPLY TO COMMENTS ON PETITIONS FOR WAIVER OF AUDIT REQUIREMENT

Worldcall Interconnect, Inc. (“WCX”), by and through its undersigned Attorneys, hereby submits this Reply to the initial Comments submitted on WCX’s Petition for Waiver of Audit Requirement.

I. BACKGROUND AND INTRODUCTION

On December 5, 2014, the Commission announced the provisionally selected low bidders who were required to submit information demonstrating their financial and technical qualifications by December 19, 2014. WCX was provisionally selected for 1 bid covering 34 census blocks. On December 16, 2014 WCX filed a request for waiver of the requirement that it provide three years worth of audited financial statements in association with the materials to be submitted by WCX on December 19, 2014. The Bureau released the comment cycle on WCX’s waiver request and waiver requests by other provisionally-selected bidders¹ on December 23, 2014.

2014. WCX filed a supplement to its original waiver request on December 24, 2014. Six parties filed timely comments on January 6, 2015. Four timely and filing-compliant commentors (Midwest Energy, Skybeam, USTelecom and ViaSat) opposed the waivers for various reasons, as did Barry Electric Cooperative’s late and non-compliant submission. The other two commentors suggested that some of the waiver requests may be in the public interest to the extent they meet certain assessment criteria.

WCX’s Reply Comments demonstrate that WCX meets the assessment criteria proposed by the American Cable Association and the Rural Broadband Association. WCX also explains why the opposing positions should be rejected as to WCX. As an initial matter, however, WCX will discuss several other relevant actions. First, WCX has rearranged its plans concerning audits, and it has firmer dates on when they should be complete (around January 31, 2015). Second, WCX will address the Commission’s Report and Order on December 18 and the Wireline Competition Bureau’s Public Notice pursuant to December 18, 2014 Report and Order ¶83.

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3 Barry Electric Cooperative submitted a late opposition on January 9, and filed in only Docket No. 10-90 notwithstanding the Bureau’s instructions that any comments should be filed in both Dockets (e.g., 10-90 and 14-259). See Waiver Public Notice p. 2 (“Because more than one docket number appears in the caption of this proceeding, filers must submit two additional copies for the additional docket number.”).


II. WCX’s PETITION FOR WAIVER IS A MERE EXTENSION, NOT A REQUEST TO BE ENTIRELY RELIEVED OF THE AUDIT REQUIREMENT

WCX could not supply three years of audited financial statements on December 19, 2014. WCX has been able to expedite and should have a completed audit for calendar years 2011-2013 by around January 31, 2015. Thus, WCX’s “waiver” request is simply for a temporary and short-term extension of the December 19, 2014 deadline, until January 31, 2015.

Pursuant to Sections 1.3 of the FCC’s rules, a waiver may be granted for “good cause.” A waiver is appropriate where special circumstances warrant a deviation from the general rule and the deviation will serve the public interest. Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

There is good cause. Special circumstances exist that warrant a deviation from the general rule. The deviation will serve the public interest.

A. Special circumstances.

The Commission requires audited statements for the “most recent” three years. Audited 2014 financial information is obviously not yet available to anyone that uses a calendar tax year since calendar year 2014 closed thirteen days ago. The “most recent” three years for which any audited financial information could possibly be available is therefore 2011, 2012 and 2013.

WCX, however, had limited operations until late in 2012. WCX was initially formed in 2004 as a subsidiary of another company for the purpose of engaging in other telecommunications markets, but the business did not show much promise. [BEGIN CONFIDENTIAL

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6 The auditors believe they will be able to complete their work by January 31. It may in fact a few more days, but only a few, if any. Although not required, WCX will have audited 2014 financials around March, 2015. This “above and beyond” commitment demonstrates that WCX is “serious” about its bid efforts.
Management decided in 2012 to spin WCX out as a stand-alone company and use the corporate entity as the vehicle for delivery of rural broadband in Texas. In September 2012, the Commission approved a license transfer for the 700MHz license for CMA667 - Texas 16 - Burleson (call sign WQJZ320) from Worldcall Inc. (the prior parent) to WCX. Only then could WCX begin to build-out the network. Financial information for the period between 2011 and the first three quarters of 2012 would not be relevant or material for the purposes at hand. More than one-half of the three year period (2011-2013) is simply not representative, useful or helpful in any way to an effort to determine whether WCX presently has the financial wherewithal to deploy networks in the affected areas if it is awarded Broadband Experiments funding for any or all of them.

Further, WCX has no historical audited statements for this period for good reasons. WCX is a small business and is not publicly traded. WCX had no business reason to obtain audited statements. They are costly, and the expense would have served no existing business purpose. The need for an audit and the cost arise solely for regulatory reasons associated with the Broadband Experiment. As a small company WCX would not normally justify spending [BEGIN CONFIDENTIAL END CONFIDENTIAL] for audits based purely on a hope and prayer that it might prevail in enough of the bidding rounds that the support funds would exceed the cost of the audit itself and significantly defray other justifiable and necessary costs. Responsible small businesses – those that succeed in the market – do not so cavalierly expend precious resources on this kind of gamble. Responsible small businesses do not pay good money

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7 This is the estimate provided by the certified public accountant firm to conduct the necessary audits. The public filing for another entity seeking a waiver in association with “standby” notes the cost of audits for them would be “at a minimum, $50,000, or more.” See Computer 5, Inc. d/b/a LocalTel Communications Petition for Waiver, p. 2, WC Docket Nos. 14-259, 10-90 (filed Jan. 6, 2015), available at http://apps.fcc.gov/ecfs/document/view?id=60001012548.
for audited statements covering past periods when they had limited activity, as was the case for WCX for 2011 through July 2012, or when no outside party requires such audited statements.

WCX did begin significant operations in the third quarter of 2012. WCX then built an operational LTE network in more than 35% of the licensed area, and is now has the capability to provide substantial services to the covered area. The rapid deployment and now-significant operations in nearby areas (WCX’s provisionally-selected bids are for other as-yet unbuilt areas in WCX’s license footprint) prove that WCX is financially capable and technically competent. In order to comply with the Commission’s requirements, WCX planned to obtain audited statements for relevant years, and in particular for 2012 through 2014, which is the period after significant operations commenced. WCX obviously could not provide audited 2014 information before the books were closed on December 31, 2014, and the auditors were able to assess the information.

These are special circumstances, and justify a deviation from the general requirement for audited financial information related to 2011, 2012 and 2013.

B. No harm, and public interest still served.

i. December 18, 2014 Report and Order is not an obstacle.

The Commission’s December 18, 2014 Report and Order ¶¶83-84 emphasized a need for three years’ of audited information prior to the time the Wireline Competition Bureau “finalizes the list of census blocks that will be offered to the price cap carriers for Phase II of the Connect America Fund.” Thus, for certain areas, the receipt of three years worth of audited financial information, even if for periods that in WCX’s case are not particularly useful, now appears to be more important than a process that yields three truly relevant and useful years of audited data. The focus on audited data for potentially immaterial periods, rather than still-reliable unaudited
data for material periods, is problematic in WCX’s case, and it does not apply in any event as explained below.

In any event, WCX has supplied reliable unaudited information demonstrating financial capability, and will in fact be able to supply three years’ audited information before the Wireline Competition Bureau finalizes the list of census blocks that will be offered to the price cap carriers for Phase II of the Connect America Fund or the final list of broadband experiments blocks is compiled. The Phase II Challenge process is moving to completion, but the Bureau almost certainly will not conclude the process before mid-February, 2015. Challenge process replies were filed on November 10, 2014, and filings continue to be made in Docket 14-93, with the most recent occurring on December 24, 2014. A fairly large number of challenges and census blocks must still be decided before the list of census blocks that will be offered to the price cap carriers for Phase II is known.8

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8 According to the Public Notice announcing the Challenge Response round date (DA 14-1397), the Bureau found that 20,183 challenges (related to 19,753 unique census blocks) made a valid prima facie case that a census block should be treated as served. There is obviously a lot of work remaining to be done and although the Commission hopes it will be complete in “early 2015” it almost certainly will not be finished by the end of January. Indeed, the challenge resolution process also impacts the broadband experiment process. DA 14-1397 note 27 correctly observes that “[t]he determinations of the challenge process will also be used in the rural broadband experiments. For example, if the challenge process ultimately determines a given census block to be served, funding for that particular
ii. WCX financial information is reliable and shows financial capability.

WCX planned to obtain audited statements for the years its broadband endeavors have been fully operational in order to meet anticipated Commission requirements associated with this proceeding. Therefore, WCX was going to include the most recent and relevant tax accounting year, which is 2014.\(^9\) That accounting year closed on December 31, 2014. It was obviously not possible to have audited statements for 2014 before 2014 even closed. WCX had scheduled an audit for January of 2015 so it could close its 2014 books. The timing of the recent spate of releases in December 2014 created problems because they came prior to the end of the 2014 calendar year, and thus prevented audited statements for calendar year 2014.

WCX was entirely responsive and responsible, and made every effort to meet the Commission’s requirements. WCX reasonably arranged to provide three full years of relevant data by including the most recent year. The timing of the releases made this impossible.

In an extraordinary and special effort to meet the Commission’s demands, while still providing truly useful, reliable and material information showing financial capability, WCX has changed its original plans. Thus, WCX has now asked its auditors to certify 2011, 2012 and 2013, rather than 2012, 2013 and 2014. Accordingly, the auditors have now been tasked (for the first time) to review the relatively irrelevant period (calendar year 2011) and certify that information. The auditors indicate they can provide reports for calendar years 2011-2013 around January 31, 2015. WCX will immediately provide them to the Commission after receipt. WCX will also continue with its original plan to have audited information for the most relevant year:

\(^9\) WCX intended to provide audited statements for 2012, 2013 and 2014, but obviously could not provide audited 2014 information before the 2014 books were even closed after December 31. WCX has now changed its audit request to cover 2011, 2012 and 2013 and that information should be supplied around the end of January, 2015. Audited 2014 financials will be completed around March, 2015.
2014, and provide that information when the audit for that year is complete, which should be in March, 2015.

As explained above, WCX had valid reasons to not have audited statements by December 19, 2014. The requested waiver that would allow WCX to provide audited information for 2011, 2012 and 2013 is temporary, and short-term. This is a mere slight extension and it will not in any way impact any of the Commission’s timelines.

WCX does, of course, have unaudited information for 2011 through end of third quarter 2014. That information, and additional information, was supplied in WCX’s December 24, 2014 Supplement to its waiver request. The Bureau already independently had that information since December 18. WCX has previously submitted this information in electronic form with the Bureau staff, and it is all attested. While an independent audit does provide additional certainty and reliability, that does not mean unaudited information is inherently unreliable. Businesses heavily rely on unaudited financial data all the time; private investors and creditors use it, as does even the IRS. Further, the mere fact that information is “audited” does not in and of itself prove an entity has or lacks financial capability. The information itself – whether audited or not – is the sole means to make that assessment. WCX submits that the unaudited information it has supplied is sufficiently reliable for the interim period, and it shows that WCX has the necessary financial capability.

iii. Public interest served by granting the extension.

The Commission determined that the public interest would be served by using “a competitive bidding mechanism for Phase II of the Connect America Fund to award support in price cap territories in those states where price cap carriers decline to make a state-level commitment in exchange for model-based support. … the Commission adopted an experiment to test how tailored economic incentives can advance the deployment of next generation networks,
both wireline and wireless, in rural, high-cost areas, including Tribal lands.\textsuperscript{10} WCX participated in the process and has been provisionally selected for one of its bids. The only question is whether the requirement that three years of \textit{audited} financial information be provided within 10 days of the provisional selection notice should be temporarily waived under the particular circumstances at hand.

WCX has fulfilled all other requirements, and anticipates it can also meet all future requirements. WCX provided financial information, and it demonstrates that WCX is financially capable. WCX will have audits in short order, so the request is for an extension, not a complete waiver. Therefore the real question is how much value would be lost by not having “audit” financial information for a little more than 40 days, many of which are weekend and/or holiday. What harm is caused? Does not having “audit” financials (as contrasted with unaudited information) prevent the Commission from performing some essential task? Then, of course, there is the question of what purpose, if any, would be served by disqualifying WCX based purely on the absence of “audit” financials during this brief period. The result would be denying support to the area involved if there is no “stand-by” bidder, or providing higher support to the “stand-by” bidder. WCX submits that no deployment, or deployment at higher cost, is not in the public interest. And, as explained in part i above, no harm would accrue if the extension is allowed. On the other hand, if the request is granted then the deployment would occur and the intended benefits would flow. Thus, granting the request would serve the public interest.

C. The general findings in *December 18, 2014 Report and Order* do not apply to WCX.

Footnote 185 to the *December 18, 2014 Report and Order* has several general findings that cannot reasonably be applied to WCX. In pertinent part note 185 states that “[a]ll serious bidders should have been prepared to submit their financial and technical information within ten days of the release of the Public Notice announcing the winning bidders, so this imposes no additional burden on them.”\(^{11}\) The conclusion that any and all “serious” bidders “should have been prepared” to submit audited financial information within ten days of December 5, 2014 cannot reasonably or responsibly be applied to WCX.

WCX is undoubtedly “serious” in its bid efforts. But as observed above, the “three most recent years” requirement included more than 18 months that would not be representative and therefore made no sense in WCX’s specific circumstances. WCX acted responsively and responsibly by arranging to provide audited information for three *relevant and useful* years, 2012, 2013 and 2014.

Further, the general conclusion implies that securing audited financials is not a “burden.” That may be so for publicly-traded companies, large entities with plenty of spare cash to throw around in order to merely be in position to bid on subsidies for high-cost endeavors or entities that must secure audits for other independent reasons, but that is not so for small, lean and smart companies that want to survive in the event they do not in fact win on enough bids to cover the audit cost and then apply the subsidy to actually building network. WCX is incurring a [BEGIN CONFIDENTIAL $30,000 END CONFIDENTIAL] expense for these audits, an activity for which WCX has no business need, and is purely for regulatory purposes. That is real money;

\(^{11}\) See also ¶86 “The submission of a network engineering diagram certified by a professional engineer and audited financial statements as described above provides some assurance that these are serious bidders prepared to participate in the Phase II competitive bidding process.” WCX has engineering diagrams from a professional engineer, so it meets that test for assurance regarding how “serious” it is.
Indeed, it is almost [BEGIN CONFIDENTIAL] 20% of WCX’s 2013 revenue. The expenditure would have directly impacted the bottom line for 2014, imposing a dollar-for-dollar reduction to operating profit, which is already negative for that year, just as any new business will experience in the first years of operation. The expenditure is 4% of the bid amount for the bid where WCX was provisionally selected. If WCX had been selected for bid 2 rather than bid 9 the $30,000 audit expense would have represented almost 14% of the entire support amount. [END CONFIDENTIAL]

Paragraph 86 goes on to state that “Moreover, entities with three years of audited financial statements by definition are ongoing businesses.” That is true, so far as it goes, but it fails to recognize that there are many “ongoing businesses” – including some that have been in business for many years – that have never had any need for audited financial statements. The Commission could not have meant to say that any entity without three years of audited financial statements is “by definition” not an “ongoing business.” WCX does not yet have audited statements, but it is definitely an “ongoing business.” It will remain one only if it continues to make smart decisions and refrains from spending precious resources on risky expenditures over future contingent events over which WCX has no control, and may not pan out. Recall that WCX submitted 9 bids, and was tentatively selected for only one. Rigid application of the general observations in ¶86 and note 185 would unfairly and automatically exclude small businesses trying to conserve cash in order to actually retain their “ongoing business” status in the event bidding efforts for potential projects are not successful.
III. WCX MEETS THE CRITERIA SUGGESTED BY AMERICAN BROADBAND ASSOCIATION AND NTCA-RURAL BROADBAND ASSOCIATION

A. American Cable Association.

The American Cable Association (“ACA”) observes that while having audited information is important, the Commission must also retain the “value derived from having smaller providers participate in the program.”\(^{12}\) ACA reiterates that many small entities often have no business reasons to have audited financials.\(^{13}\) ACA reminds the Commission that WCX and others are not seeking to be entirely relieved of the auditing requirement, and merely seek an extension of time to fulfill it.\(^{14}\) Ultimately, ACA recommends that the waivers seeking an extension be granted so long as the audits are provided within a reasonable period, which ACA suggests is 120 days, and also demonstrates that the requesting party has been operating for at least three consecutive years.

WCX has existed for over 10 years and has been “operating” for most of that time although its prior endeavors were in another communications market and fairly modest until 2012. WCX was spun out as a stand-alone company in July of 2012, and began robust operations soon thereafter. WCX therefore meets the “operating for three consecutive years” requirement.

B. NTCA-Rural Broadband Association.

NTCA-Rural Broadband Association (“NTCA”) also believes a waiver (or extension) may be appropriate under certain circumstances. NTCA says the primary concern should be entities that can show “demonstrated performance over a sustained period of time (i.e., more than

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\(^{12}\) ACA Comments, p. 2.

\(^{13}\) Id., pp. 2-3.

\(^{14}\) Id.
a few years) in the task of building and operating robust networks and delivering services in high-cost, rural areas” in order to “ensure that public monies are distributed to entities fully capable and worthy of accepting that funding and utilizing it in the manner intended by the Commission to further broadband deployment.” NTCA provides some further criteria in footnote 3 on page 2: “… grant of any waiver should turn upon a much more specific showing that the applicant or its management is actually familiar with the area it intends to serve, that the applicant or its management has operated in or near that area (or in areas like it) for a sustained period in the past in connection with other efforts, and that the applicant or its management has in fact had the experience of delivering quality, reasonably affordable services to consumers in such areas over a longer period of time than just a year or two.” WCX meets each prong of NCTA’s detailed test. See WCX December 24, 2014 Supplement, Confidential Attachments 1, 2 and 3. WCX is obviously familiar with the area, applicant and its management have operated in or near that area for several years, and management has extensive experience in a range of telecommunications endeavors, all of which involved using advanced technology and providing advanced telecommunications under challenging circumstances.

NTCA indicates that waivers from technical requirements should not be granted. WCX is not seeking any technical-related waivers. The sole requirement is provision of audited statements by December 19, 2014, and the waiver merely seeks an extension until around January 31, 2015.

15 NTCA Comments p. 1.
IV. THE OPPOSITIONS SHOULD BE REJECTED AS TO WCX

A. Midwest Energy.

Midwest Energy apparently submitted bids, but was not provisionally selected. The opposition is likely an effort to knock out those who were successful so it will have a better chance of ultimate success. Midwest Energy says it was “easily able” to fulfill all requirements, and no waivers should be granted to anyone, apparently even those who faced more of a burden. Midwest Energy does not disclose that it already had audited financials (in contrast to those who did not) and that is why they were so “easily able” and there was no burden. But Midwest Energy appears to regularly obtain audited statements, for entirely unrelated reasons. See http://www.teammidwest.com/wp-content/uploads/2011/04/MWE-COOP-2013-Audited-FS_032720141.pdf (Midwest’s 2012-2013 audited statements, completed on March 11, 2014).

Midwest Energy had independent reasons for audited financials, so compliance was not a burden. But this is the point. Other providers were not in a similar position and there is a burden for them. As ASA and NTCA observe, smaller companies often have no business reasons justifying the expense of audits. Midwest Energy may believe that small companies should be excluded if they do not act like big multimillion dollar enterprises, but that is not good policy or consistent with Congress’ policy regarding small business.

WCX has fully explained its particular circumstances, and in particular why the audit requirement was a burden and would not in fact achieve the stated goal of the audit requirement itself.


17 Midwest Energy had $142.4 million in assets, $73.2 million in operating revenues and a $3.9 million net margin in 2013.
B. Skybeam

Skybeam’s opposition is largely based on statements in the *December 18, 2014 Report and Order*. WCX has already shown why those statements do not and cannot be applied to WCX. Skybeam then says that all bidders should have undertaken the expense to obtain audits and be in a position to supply them 10 days after the list of provisionally-selected bidders was announced. WCX has also shown why this notion is incorrect as a general rule.

Skybeam is not a small company, and likely had independent reasons to obtain audited financial statements. It appears that Skybeam is a subsidiary of JAB Broadband. Although it is privately held, it has more than 750 employees, operations in 15 states, over 175,000 customers, and many millions of dollars in revenue. According to the SEC the company has made quite a few exempt securities offerings and other securities sales over the years. Skybeam cannot be compared to WCX or other smaller entities.

C. USTelecom

It is not surprising that USTelecom would be opposed to any result other than complete capture of all support monies by its ILEC members. USTelecom wants to exclude all others, even some of its regular allies such as WTA – which has many members that are also ILECs, but has recognized the problem in issue here. It is striking that all of the opponents are larger

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19 See [http://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0001370119&type=&dateb=&owner=include&count=100](http://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0001370119&type=&dateb=&owner=include&count=100).
20 One of the waiver requestors is “Rural Broadband Services, Inc.” This company – along with WTA – advised the Commission that the audit requirement would be a problem as far back as August 1, 2014. Specifically, WTA and Rural Broadband Services told the Commission that “Commission requirements for winning bidders to provide three consecutive years of audited financial statements within ten business days after public notice of their selection, and to obtain expensive irrevocable letters of credit before support will be disbursed, will block or disrupt RBSC’s plans. As a start-up, RBSC does not have three years of financial statements, and would have to pay for a letter of credit with funds it urgently needs for infrastructure investment and service deployment. Even if waivers of one or both requirements are deemed likely to be granted, the uncertainty, delays and expense of preparing and prosecuting the necessary waiver requests are a substantial disincentive to the participation of start-ups in the experiments.” See, August 1, 2014 WTA Ex Parte Notice, WC Docket Nos. 10-90 and 14-58, available at
companies, none of whom must contend with the obstacle at hand and each of which are trying to use their superior economic condition to take unfair advantage.

USTelecom argues that “Audited financial records are an essential showing for the Commission to make this determination and are typically requested in Commission auctions.”21 Both parts of this contention are incorrect. While financial records are essential, an independent audit by a CPA is not, as WCX has explained and ACA and NTCA confirm. In any event, WCX is not asking the Commission to completely dispense with the audit requirement. WCX will have audited financial information in very short order. The issue is timing. Further, the Commission does not always require audited financials for auctions. For example, WCX’s 700 MHz license was obtained in Auction 73. There was no audited financial statement mandate; instead a deposit was required, and that more resembles the “letter of credit” which comes later in this process. WCX is not seeking, and will not seek, a waiver of that obligation.

USTelecom is also wrong when it claims on page 3 that “Petitioners fail to provide any information as to why they were unprepared and unable to take these necessary steps prior to filing their waiver requests.” To the contrary, WCX did provide a full explanation why it did not obtain audited statements prior to December 8, 2014. The most recent three years for which an audits could have been conducted would not be representative or reveal useful information for 18 months of that period, and WCX was planning to have audited information for the three years ending December 31, 2014. That is why USTelecom’s suggestion that “[a] claim that they have been in business for less than three years does not obviate the need to submit audited financial information for the time period that they have been in business” is not applicable to WCX.

USTelecom’s self-serving opposition must be rejected.

21 USTelecom Comments, pp. 2-3.
D. Barry Electric Cooperative

Barry Electric Cooperative’s submission was late by several days and was filed in only Docket 10-90. Barry Electric appears to be much like Midwest Energy, in that it is an electric utility cooperative and none of its bids were provisionally selected.\(^{22}\) Like Midwest, Barry Electric has independent reasons to obtain audited financials, and it has consistently done so since at least 2008\(^{23}\) if not before. Barry Electric 2013 return reported $48.1 million in assets and $17.3 million in total revenue and returned $1.4 million to its member owners. Barry Electric’s situation is not comparable to WCX.

Barry Electric misconstrues WCX’s request. WCX did not have an “inability to provide financial data.” WCX did provide financial data, which shows that WCX does have “the ability to successfully operate a broadband project.” WCX is not asking for a waiver of the requirement to provide any financial information, or even a complete waiver of the requirement to supply three years’ audited data. WCX is merely seeking an extension of time to provide audited information. Barry Electric’s opposition does not apply to WCX.

E. ViaSat.

ViaSat’s opposition to audit waiver requests appears to be more in the nature of sour grapes based on the Bureau’s denial of ViaSat’s previous request for a waiver of technical requirements. ViaSat’s “false-equivalence” attempt to hold all other bidders hostage to the technical shortcomings of its contemplated delivery platform should be rejected. As NTCA notes, there is a material difference between a short extension allowing an entity to supply

\(^{22}\text{See Wireline Competition Bureau Announces Deadline for Bidders Interested in Remaining Under Consideration for Rural Broadband Experiments Support to File Additional Information, DA 14-1839 (rel. Dec. 18, 2014), Attachment A, listing “Rural Broadband Experiments Bidders Not Provisionally Selected for Funding.”}\)

\(^{23}\text{For example, Barry’s “Form 990” 2008 tax return is publicly available at http://990s.foundationcenter.org/990_pdf_archive/440/440520846/440520846_200812_990O.pdf#?1#?1#WebrootPl uglIn#?1#?1#PhreshPhish#?1#?1#agtpwd. It indicates that it has audited financials on page 11, in response to Part XI, question 2b.}\)
reliable and verifiable unaudited information pending delivery of audited information and a waiver of a fundamental technical requirement for the broadband service that is to be funded.

V. Conclusion

WCX has shown good cause, and special circumstances for a temporary and short-term waiver of the auditing requirement, in the form of an extension until around January 31, 2015. WCX will then have three years worth of audited information and it will be immediately supplied. This waiver will not interfere with or delay any other Commission determinations or actions. Waiver will serve the public interest and still allow all purposes of the audit requirement to be met. Those who oppose do so for self-serving reasons, and their position is not an effort to advance the public interest. Their reasoning does not apply to WCX in any event.

WCX respectfully requests that its waiver be granted.

Respectfully submitted,

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