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

In the Matter of )
) WC Docket No. 10-90
Connect America Fund ) WC Docket No. 14-259
) Broadband Rural Experiments
) Worldcall Interconnect, Inc. Petition for Waiver

MOTION FOR STAY

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MOTION FOR STAY

Worldcall Interconnect, Inc. (“WCX”), by and through its undersigned Attorneys, respectfully requests that the Commission Stay the Wireline Competition Bureau’s January 30, 2015 Order denying WCX’s Petition for Short-Term Waiver1 pending resolution of WCX’s simultaneously-filed Application for Review of that order. This Motion for Stay is made pursuant to Rule 1.102(b)(3). As required by Rule 1.44(e), this Motion is being submitted as a separate pleading from the Application for Review.

1. Background.

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 “waiver” request sought an extension of time, not a complete lifting of the audited financials requirement.

The Bureau released the comment cycle on WCX’s waiver request and waiver requests by other provisionally-selected bidders2 on December 23, 2014. WCX filed a supplement to its

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original waiver request on December 24, 2014. WCX again made clear that it was not seeking a complete waiver of the requirement for audited financial statements; rather, WCX merely sought more time and the “waiver” request was actually an “extension” request. WCX indicated that the audit would be completed on January 31, 2015 and WCX would immediately upload the documents. As promised, WCX provided the audited financials February 2, 2015. WCX has also wholly fulfilled all other requirements by supplying a report by a registered professional engineer and – although it was difficult to secure – a fully-compliant letter of commitment. WCX therefore fulfilled all requirements relating to financial and other demonstration on February 2, two days before the final deadline for demonstrating financial capability.4

It bears repeating that although it was styled as a request for waiver, the actual relief sought by WCX that was denied by the Order was a relatively short extension of time to submit audited financials as a supplement to the unaudited financials that WCX timely submitted prior

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4 The Commission’s files demonstrate that WCX has completed all tasks. See Application to Bid in Auction 501, File Number: 0006588263, Submission Information:
ETC Designation Texas PUC ETC Order 1 12/8/2014, 2:51 PM
ETC Designation Texas PUC ETC Order 2 12/8/2014, 2:52 PM
ETC Designation Texas PUC 2014 Report 12/8/2014, 3:01 PM
Spectrum Description Worldcall 700 B-Block 12/8/2014, 4:21 PM
Spectrum Description Worldcall 3650 12/8/2014, 4:21 PM
Spectrum Description Licensed MW Wharton to Wallis 12/8/2014, 4:22 PM
Technology Description Technology and Network by PE 12/18/2014, 9:53 AM
Indirect Ownership Filing 12/12/2014, 12:46 PM
Financial Attachment 1 12/18/2014, 10:13 AM
WCX-Financial Discussion 12/18/2014, 12:38 PM
Audited Financial Statements 2/2/2015, 3:46 PM
Commitment Letter Frost 1/28/2015, 2:31 PM
to December 19th. The independent auditors report validated the showing in the unaudited
financials that WCX was financially capable. WCX sought no other relief, and timely submitted
the outside engineer opinion and the required letter of commitment. WCX then completed the
audit and it was supplied on February 2, 2015, prior to the ultimate final deadline for bidders to
supply the last set of materials. Thus, WCX has now entirely fulfilled all of Rural Broadband
Experiments requirements, and did so in advance of the ultimate final date for doing so.

Nonetheless the Order removes WCX from further participation. The Bureau has already
announced potential next-in-line bidders. WCX will be irreparably harmed if the Bureau persists
in removing WCX from further consideration and proceeds to award the funds provisionally
awarded to WCX to a next-in-line bidder. WCX requests that the Commission stay the Order as
it pertains to WCX, and instruct the Bureau to not proceed with an award of the funds originally
awarded on a provisional basis to WCX pending disposition of this Application for Review.


In determining whether to stay the effectiveness of one of its orders, the Commission
applies a four factor test. The Commission will stay the effectiveness of a Commission Order or
an action taken through delegated authority if (1) the petitioner has demonstrated a strong
likelihood that it will prevail on the merits; (2) the petitioner will suffer irreparable injury in the
absence of a stay; (3) the issuance of a stay would substantially harm other interested parties; and
(4) the public interest favors grant of a stay. When confronted with a case in which other

5 Public Notice, Wireline Competition Bureau Announces Entities Under Consideration as Next-In-Line
Bidders for Rural Broadband Experiments Support, DA 15-157, Docket Nos. 10-90, 14-259, (Wireline
Telecommunications Bureau, rel. Feb. 3, 2015), available at

6 See In the Matter of Connect America Fund High-Cost Universal Service Support, Order, 27 FCC Rcd
7158, 7159-7160, ¶5 (2012), citing to Virginia Petroleum Jobbers Ass’n v. FPC, 259 F.2d 921 (D.C. Cir.
1985), modified, Washington Metropolitan Area Transit Comm’n v. Holiday Tours, Inc., 559 F.2d 841
(D.C. Cir. 1977).
elements strongly favor interim relief, and where there is irreparable harm that would accrue as a result of the delay attendant to the Commission’s review, a stay may be appropriate even if the petitioner’s showing on the other three factors is not overwhelming. The Commission has on a number of occasions temporarily stayed the effectiveness of an order pending resolution of particular issues when events threaten to overrun the Commission’s ability to consider appropriate relief.

WCX will suffer irreparable harm unless a stay is granted. WCX also meets each of the other three factors.

A. WCX will suffer irreparable harm.

The Order denies WCX’s request. It also “remove(s) [WCX] from further consideration for rural broadband experiments support.” This is so even though WCX has now completely met every requirement, including the audit requirement. The Bureau is also proceeding with its plan to identify a next-in-line applicant to whom the money “freed-up” by WCX’s disqualification will be awarded. Any action that will commit the funds previously allocated to WCX on a provisional basis to some other bidder would render ineffectual any relief that the Commission might grant with regard to WCX’s Application for Review. A stay is necessary in order to preserve the status quo pending the Commission’s decision on WCX’s Application for Review. WCX will suffer irreparable harm in the absence of a stay.

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7 See, e.g., In the Matter of Comcast Cable Communications, LLC; Orders Setting Basic Equipment Rates; Petition for Emergency Stay, Order, DA 05-1147, 20 FCC Rcd 8217, 8217-8218, ¶2 (Media Bureau, rel. April 26, 2005).


9 Order ¶2.
B. No other parties will be harmed by a stay.

No other party will be harmed by a stay. WCX’s request for a short extension of time to submit an outside audit in addition to the unaudited financials did not in any way impact or delay any part of the broadband experiments process or the broader activity in Docket 10-90 regarding USF in rural areas. As noted, WCX has in fact now supplied all of the required material, including the audit. The Bureau’s denial of WCX’s request, and its decision to remove WCX “from further consideration” on the other hand, may very well delay distribution of funds because the Bureau must now select a “next-in-line” replacement. Although potential next-in-line bidders have been designated no party has yet been selected as a direct replacement to date, so no party can be harmed by the stay. Indeed, a stay would prevent the situation where two entities have been awarded the same dollars.

C. The public interest favors a stay.

WCX was the most cost-effective bidder, and was one of only nine provisionally-selected category three bids. The sole selection criterion for broadband experiments was cost-effectiveness, so making awards to the most cost-effective bidders is obviously in the public interest, and removing the most cost-effective bidder merely because it could not meet an inconsequential formality would be contrary to the public interest. Selection of a higher-cost bidder will consume more funds and ultimately lead to bad information, which will in turn increase the total demand on high-cost programs. Since the Bureau did not in fact need audited financials until at least February 3, 2015, no “stewardship” concerns were implicated. See WCX Application for Review pp. 10-14, 18.
D. WCX is likely to prevail on the merits.

The *Technology Transitions Order*\textsuperscript{10} and *Rural Broadband Experiments Order*\textsuperscript{11} established the framework for the Rural Broadband Experiments process. *Rural Broadband Experiments Order*\textsuperscript{12} sets out the post-notice requirements for provisionally-selected bidders. One timing issue in one of the requirements created an obstacle for WCX.\textsuperscript{13} In specific, WCX could not provide 3 years of audited financial statements by December 19, 2014. WCX was able to secure and supply 3 years audited statements on February 2, 2015. Thus, WCX sought a forty-four day extension to fulfill the “audited” portion of the financial showing mandate. WCX did supply three years’ unaudited financials by December 19, and asserted that the unaudited information was reliable for the purpose of determining financial capability. The three years’ audit results that were then supplied 44 days later confirmed that this was so. WCX’s request

\textsuperscript{10} *Technology Transitions*, Order, 29 FCC Rcd 1433, at ¶ 128 (2014) (“*Technology Transitions Order*”).

\textsuperscript{11} *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769 (2014) (“*Rural Broadband Experiments Order*”).

\textsuperscript{12} See 29 FCC Rcd 8787-8788, ¶54 (notes omitted):

54. Within 10 business days of public notice of winning bidders, we require all winning bidders to provide the most recent three consecutive years of audited financial statements, including balance sheets, net income, and cash flow, and to submit a description of the technology and system design used to deliver voice and broadband service, including a network diagram, which must be certified by a professional engineer. Winning bidders proposing to use wireless technologies also must provide a description of spectrum access in the areas for which the applicant seeks support. Within 60 days of public notice of winning bidders, we require all winning bidders to submit a letter from an acceptable bank committing to issue an irrevocable stand-by original letter of commitment (LOC) to that entity. Finally, each selected applicant is required to provide within 90 days of public notice of winning bidders appropriate documentation of its ETC designation in all the areas for which it will receive support and certify that the information submitted is accurate. Once the Bureau has determined that the entity is financially and technically qualified to receive experiment support and that the LOC commitment letter is sufficient, it will release a public notice stating that the entity is ready to be authorized for support. Within 10 business days of this public notice, we require that the winning bidder submit an irrevocable stand-by original LOC that has been issued and signed by the issuing bank along with the opinion letter from legal counsel that we describe below. Once the Universal Service Administrative Company (USAC) has verified the sufficiency of the LOC and the opinion letter, the Bureau will issue a public notice authorizing the entity to receive its first disbursement.

\textsuperscript{13} Several other provisionally-selected bidders encountered significant difficulties with other requirements. WCX was able to meet all of the other requirements, but discovered that the letter of commitment specifics were surprisingly burdensome and difficult to meet. WCX shares many of the concerns that have now been raised about the current letter of commitment requirements and urges the Commission to use the experience gained to adjust its LOC specifics.
was short, and minor in nature. It created no delay or difficulty. WCX’s extension request, especially given WCX’s subsequent cure forty-four days later and before complete compliance with all of the requirements was required, gave rise to none of the concerns expressed in the Order that supposedly justified the Bureau’s rejection. See WCX Application for Review pp. 6-23.

The Technology Transitions Order contemplated that waivers would be available. “[A]pplicants may request that the Commission waive a mandatory condition in an experiment by making a good cause showing that strict compliance is inconsistent with the public interest. Such requests should be accompanied by a good cause demonstration that a waiver is necessary to the experiment and that the experiment has sufficient value to justify the waiver.”

The Bureau – at least at one point – clearly understood that the general requirements could be waived and waivers would be evaluated on an entity and request specific basis. In contrast to the holding in the Order that the “strict enforcement of the deadlines and filing

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14 The Order states in ¶7 that relying on unaudited financials “would provide less assurance regarding the true financial picture of the Petitioners and would likely require a more resource-intensive effort by the Bureau to assess the alternative financial materials of those entities seeking a waiver. This would divert the Bureau from fulfilling the Commission’s overarching objective of moving swiftly to implement Phase II.” This statement speaks to the future (“would likely”, “would divert”) which means that the Bureau has not, in fact, performed the financial assessment. Now that WCX has supplied audited financials the Bureau will not face this problem when it does turn to the financial assessment.

15 Letters of Commitment were due on February 3. WCX submitted the LOC on January 28.

16 Technology Transitions Order, 29 FCC Rcd at 1446, 1480, ¶¶37, 42.

17 Id. at 1480, ¶142.

18 Technology Transitions Order, ¶128.

requirements” was required and no waivers would be allowed under any circumstances, for any provisionally-selected bidder\textsuperscript{20} the Bureau’s issued an FAQ explaining that bidders could request waivers (or presumably, as in WCX’s case a short extension) of the audited financial statement requirement and the request would be reviewed on a “case-by-case” basis.”\textsuperscript{21}

The Order erred by strictly hewing to the December 19, 2014 compliance date. WCX showed good reasons for an extension. Compliance on February 2, 2015 did not in any way impede the Bureau’s progress because the financial capability review could not even begin until after the final set of financial capability documents (letters of commitment) were supplied on February 3. Indeed, the final analysis cannot truly begin until after the Challenge process on “served” areas has completed because only then will the final list of eligible census blocks be known. See WCX Application for Review pp. 10-14, 18, 20.

The Application for Review is sound. The extension waiver should have been granted. WCX is likely to prevail on the merits. WCX will suffer irreparable injury if a stay is not granted. No other party will suffer any injury if it is granted. The Order freezes out small business participation. See WCX Application for Review pp. 19-23. The public interest demands a stay.

WCX therefore respectfully requests that the Commission stay the Order pending consideration of WCX’s simultaneously-filed Application for Review. WCX also requests that the Commission instruct the Bureau to not commit the funds that were provisionally allocated to WCX for allocation to any other entity, pending the Commission’s decision on review.

\textsuperscript{20} Order ¶5.
\textsuperscript{21} “If a winning bidder is unable to produce three consecutive years of financial statements, it should file a waiver of this requirement after it has been named as a winning bidder. An entity should submit with its waiver petition evidence that demonstrates it is financially qualified. We then determine on a case-by-case basis whether it can assess the entity’s financial qualifications using the alternative evidence provided.”
Respectfully submitted,

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