

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

In the Matter of )
Standing Rock Telecommunications, Inc., ) WT Docket No. 10-208
Amended Request for Limited Waiver and )
Extension of Mobility Fund Phase I Public Interest )
Obligations )

ORDER

Adopted: October 25, 2019

Released: October 25, 2019

By the Wireline Competition Bureau, the Wireless Telecommunications Bureau, and the Auctions
Division of the Office of Economics and Analytics:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau and the Wireless Telecommunications
Bureau, in conjunction with the Auctions Division of the Office of Economics and Analytics,<sup>1</sup> grant a
petition filed by Standing Rock Telecommunications, Inc. (Standing Rock) seeking a limited waiver of
the construction, drive testing, and reporting deadlines associated with the receipt of its final disbursement
of Mobility Fund Phase I (MF-I) support.<sup>2</sup> We find that: (1) Standing Rock has demonstrated both that its
request for waiver presents special circumstances that warrant a deviation from the requirement that an
MF-I support recipient complete its buildout and testing of a supported 4G network within three years of
being authorized for support, and (2) the grant of its request for a brief extension of time serves the public
interest.<sup>3</sup>

<sup>1</sup> See 47 CFR §§ 0.91(p), 0.131(a); see also id. §§ 0.21(m), (o).

<sup>2</sup> See Standing Rock [Second] Amended Request for Limited Waiver and Extension of Mobility Fund Phase I Public
Interest Obligations, WC Docket No. 10-90; WT Docket No. 10-208 (filed Feb. 14, 2018)
https://ecfsapi.fcc.gov/file/1021482941247/Standing%20Rock%20Amended%20Waiver%20Request%20REVISED
%202018.02.14.pdf (February 2018 Amended Waiver Request); Standing Rock Request for Limited Extension
[sic] Of Mobility Fund Phase 3 [sic] Deadline, WC Docket No. 10-90; WT Docket No. 10-208 (filed Dec. 23, 2016)
(December 2016 Waiver Request) (requesting extension of requirements until June 30, 2017). Standing Rock
initially amended the December 2016 Waiver Request on January 19, 2018. See Standing Rock Amended Request
for Limited Waiver and Extension of Mobility Fund Phase I Public Interest Obligations, WC Docket No. 10-90; WT
Docket No. 10-208 (filed Jan. 19, 2018) (January 2018 Amended Waiver Request). In the February 2018 Amended
Waiver Request, however, Standing Rock states that that February request supersedes and replaces entirely the
January 2018 Amended Waiver Request. February 2018 Amended Waiver Request at 1 n.2. In addition, we note
that on December 17, 2018, the Mobility Division of the Wireless Telecommunications Bureau conditionally
granted the request of Standing Rock for a nunc pro tunc waiver of the filing deadline to renew its Broadband PCS
license, call sign WQJM325. Standing Rock Telecommunications, Inc.'s Request for Waiver and Renewal for
Broadband PCS License WQJM325, Order, DA 18-1259 (WTB Dec. 17, 2018).

<sup>3</sup> See 47 CFR § 1.3.

## II. BACKGROUND

### A. Mobility Fund Phase I

2. In the *USF/ICC Transformation Order*, the Commission comprehensively reformed and modernized the high-cost component of the Universal Service Fund (USF).<sup>4</sup> It adopted, among other things, a universal service support mechanism dedicated expressly to mobile services – the Mobility Fund.<sup>5</sup> Phase I of the Mobility Fund used competitive bidding – a reverse auction (Auction 901) to allocate among winning bidders up to \$300 million in one-time universal service support to deploy mobile voice and broadband services.<sup>6</sup> Winning bidders committed to extending the availability of mobile voice and broadband services on networks that provide third generation (3G) or better performance, or to accelerate the deployment of fourth-generation (4G) wireless networks in areas that lacked such services.<sup>7</sup>

3. Prior to the start of the auction, bidders were cautioned that they were responsible “for investigating and evaluating all technical and marketplace factors that may have a bearing on . . . bid[s] in Auction 901.”<sup>8</sup> Bidders were further advised that “[e]ach bidder is responsible for assuring that, if it wins the support, it will be able to build and operate facilities in accordance with the Mobility Fund obligations and the Commission’s rules generally.”<sup>9</sup> MF-I rules require winning bidders to provide service to at least 75 percent of the designated eligible road miles within the relevant area covered by their winning bids.<sup>10</sup> Winning bidders that committed to provide service over a 3G network are required to do so within two years of being authorized to receive support.<sup>11</sup> Winning bidders that committed to provide service over a 4G network are required to do so within three years of being authorized to receive support.<sup>12</sup>

4. MF-I rules further provide that support is to be disbursed to authorized winning bidders in up to three stages.<sup>13</sup> The first disbursement of one-third of the total winning bid amount is made when the winning bidder is authorized to receive support.<sup>14</sup> A recipient becomes eligible to receive a second disbursement when it submits a report demonstrating coverage of 50 percent of the coverage requirements

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<sup>4</sup> See generally *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011), *aff’d sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014) (*USF/ICC Transformation Order*).

<sup>5</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17773, para. 299.

<sup>6</sup> *Id.*

<sup>7</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17675, para. 28.

<sup>8</sup> *Mobility Fund Phase I Auction Scheduled for September 27, 2012; Notice and Filing Requirements and Other Procedures for Auction 901*, Public Notice, 27 FCC Rcd 4725, 4748, para. 71 (WCB/WTB 2012) (*Auction 901 Procedures Public Notice*).

<sup>9</sup> *Id.*

<sup>10</sup> A winning bidder will receive MF-I support only for the actual road miles covered, up to 100 percent, within the area covered by their winning bids. *USF/ICC Transformation Order*, 26 FCC Rcd at 17793, para. 367.

<sup>11</sup> 47 CFR § 54.1006(a).

<sup>12</sup> *Id.* § 54.1006(b). Absent a waiver, a winning bidder that has been authorized to receive MF-I support will be subject to a performance default payment if it fails or is unable to meet its minimum coverage requirement by the specified deadline, fails to meet other service requirements, or fails to fulfill any other term or condition of MF-I support. *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4777, para. 189; see 47 CFR § 54.1006(f). For each performance default, a winning bidder must repay all disbursements received for the area covered by that winning bid, together with an additional default payment of 10 percent of the total amount of support for which it is eligible in the area covered by the defaulted winning bid. See 47 CFR § 54.1006(f); *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4777, para. 189.

<sup>13</sup> 47 CFR § 54.1008(b).

of section 54.1006 of the Commission's rules.<sup>15</sup> A recipient becomes eligible to receive the final disbursement when it meets the final coverage requirements by the deadline specified in section 54.1006 of the Commission's rules.<sup>16</sup>

## **B. Standing Rock Telecommunications**

5. Standing Rock is a tribally-owned telecommunications provider serving the Standing Rock Sioux Reservation (the Reservation).<sup>17</sup> On December 23, 2013, the Wireless Telecommunications and Wireline Competition Bureaus authorized Standing Rock to receive up to \$3,320,527.21 in MF-I support for its four winning bids in Auction 901 to cover over 1,290 unserved road miles.<sup>18</sup> Standing Rock received its first and second support disbursements, with each payment totaling \$1,106,842.40.<sup>19</sup> Standing Rock had a deadline of December 24, 2015, to complete construction of a 3G network, drive testing, and submission of reports demonstrating coverage.<sup>20</sup> On December 24, 2015, Standing Rock requested an extension of the 3G construction deadline until June 30, 2016.<sup>21</sup> On June 20, 2016, Standing Rock requested to change its MF-I commitment to deploy a 4G network.<sup>22</sup> Commission staff granted Standing Rock's request in August of 2016, setting a new deadline of December 24, 2016, for Standing Rock to complete its construction, drive testing, and submission of drive testing data for the areas covered by its winning bids.<sup>23</sup>

6. On December 23, 2016, Standing Rock requested an extension of this deadline for approximately six months.<sup>24</sup> In particular, Standing Rock requested a limited waiver, under Section 1.3, of Sections 54.1006(b) and (c) of the Commission's rules and extension of the construction, drive testing, and reporting deadlines associated with the receipt of its final disbursement of MF-I support until June 30, 2017.<sup>25</sup> Standing Rock subsequently informed Commission staff that it had completed its required 4G network build and drive testing by June 30, 2017, and that the Universal Service Administrative Company had verified that Standing Rock's coverage met the coverage requirements associated with its MF-I

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<sup>14</sup> *Id.* § 54.1008(b)(1).

<sup>15</sup> *Id.* § 54.1008(b)(2). Recipients are not required to request a second disbursement and may instead request the remainder of their total support as a final disbursement upon completion of construction, after demonstrating coverage that meets the applicable requirements of section 54.1006. *Id.* § 54.1008(b).

<sup>16</sup> 47 CFR § 54.1008(b)(3).

<sup>17</sup> February 2018 Amended Waiver Request at 3-4. According to Standing Rock, the Reservation encompasses over 2.3 million acres of land in North Dakota and South Dakota, with a population of approximately 8,500 people and a population density of approximately 3.7 persons per square mile in the North Dakota portion of the Reservation and 1.7 persons per square mile in the South Dakota portion of the Reservation. *Id.* at 4.

<sup>18</sup> See *Mobility Fund Phase I Support Authorized For 222 Winning Bids; Default on 94 Auction Winnings Bids Determined*, Public Notice, 28 FCC Rcd 17062, 17075 (WCB/WTB 2013) (*MF-I Support Authorization Public Notice*); *Mobility Fund Phase I Auction Closes; Winning Bidders Announced for Auction 901*, Public Notice, 27 FCC Rcd 12031, 12045 (WTB 2012) (*MF-I Auction Closing Public Notice*). In its application for MF-I support, Standing Rock was required to certify that it will offer service in supported areas at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas for a period extending until five (5) years after the date on which it is authorized to receive support. 47 CFR § 54.1005(b)(2)(viii). As of December 23, 2018, Standing Rock had been authorized to receive MF-I support for five years.

<sup>19</sup> *MF-I Auction Closing Public Notice*, 27 FCC Rcd 12031, 12045, Appendix A; see also 47 CFR § 54.1008(b)(1)-(3); February 2018 Amended Waiver Request at 6-7.

<sup>20</sup> 47 CFR § 54.1006(a); see *MF-I Support Authorization Public Notice*, 28 FCC Rcd at 17075.

<sup>21</sup> See Standing Rock Request for Limited Waiver and Extension [sic] Of Mobility Fund Phase 3 [sic] Deadline, WC Docket No. 10-90; WT Docket No. 10-208, at 1 (filed Dec. 24, 2015), <https://ecfsapi.fcc.gov/file/60001390918.pdf>.

support.<sup>26</sup>

7. As support for its request for a limited waiver, Standing Rock asserts that it experienced consecutive, unexpected equipment, construction, and drive-testing delays that were outside of its control that warrant a waiver of the Commission's MF-I performance deadlines. In particular, Standing Rock maintains that the contentious nature of the protests related to the Dakota Access Pipeline presented significant challenges that caused a delay in its 4G construction and drive testing.<sup>27</sup> Standing Rock explains that, in the spring of 2016, protestors began public demonstrations against the federal government's planned route for the oil pipeline just north of the North Dakota portion of the Standing Rock Sioux Reservation.<sup>28</sup> Standing Rock represents that in September, October, and November of 2016, the volume of protestors, pipeline company security employees, and law enforcement personnel at these demonstrations increased, which caused numerous problems that impeded Standing Rock's construction timeline.<sup>29</sup> For example, Standing Rock asserts that the sheer number of people in the area, reported to be as high as 10,000 at the peak of the protests, so strained Standing Rock's wireless communications systems that it had to install additional point-to-point facilities to meet the increased communications demands, and that this diverted its limited staffing resources from its network construction.<sup>30</sup> Standing Rock also contends that vendors and contractors that were needed to work on Standing Rock's towers and networks were unable to find necessary lodging near the Standing Rock Reservation, because protestors, security personnel, and law enforcement booked such lodging continuously for months.<sup>31</sup> Standing Rock further states that tensions between protestors and security and law enforcement personnel ultimately led the latter to erect road blocks on the main road into the North Dakota side of the Reservation, which limited access for the vendors and contractors that Standing Rock needed to complete its network build out.<sup>32</sup> Standing Rock represents that some vendors and contractors expressed concerns for their personal safety, and that these concerns deterred them from working on the Reservation.<sup>33</sup> According to Standing Rock, these logistical burdens, lodging challenges, and safety concerns delayed equipment delivery and network construction.<sup>34</sup> As support for its request for a limited waiver of approximately six months,

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<sup>22</sup> See Letter from Fred McLaughlin, Telecommunications General Manager, Standing Rock Telecommunications Inc., to Marlene H. Dortch, Secretary, FCC at 2-3 (June 20, 2016), <https://ecfsapi.fcc.gov/file/10620242401163/SRT%20G%20Buildout%20Request.pdf>.

<sup>23</sup> See *Revised Construction Deadline Approved for Recipients of Mobility Fund Phase I Support*, Public Notice, 31 FCC Rcd 8997, 8997-98 (WCB/WTB 2016).

<sup>24</sup> See December 2016 Waiver Request at 2.

<sup>25</sup> February 2018 Amended Waiver Request at 1 (citing 47 CFR § 1.3).

<sup>26</sup> *Id.* at 1-2.

<sup>27</sup> *Id.* at 2, 8-10.

<sup>28</sup> *Id.* at 8.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 8-9; see Mayra Caevas, Sara Sidner, and Darran Simon, *Dakota Access Pipeline Protest Site Is Cleared*, CNN (Feb. 23, 2017, 7:09 PM), <https://www.cnn.com/2017/02/22/us/dakota-access-pipeline-evacuation-order/index.html>.

<sup>31</sup> See February 2018 Amended Waiver Request at 9.

<sup>32</sup> See *id.* at 9-10.

<sup>33</sup> *Id.* at 9.

<sup>34</sup> See *id.* at 8-10.

Standing Rock notes that the pipeline protests peaked in the fall of 2016 and did not dissipate until six months later in February of 2017.<sup>35</sup>

8. Beyond the complications associated with the pipeline protest, Standing Rock claims that it experienced difficulties in obtaining necessary 4G equipment, which also delayed buildout of its 4G network.<sup>36</sup> For example, Standing Rock asserts that in September 2016 it discovered that production of the antennas it needed for buildout would be delayed.<sup>37</sup> Standing Rock asserts that replacement antennas were ordered and installed in early November 2016.<sup>38</sup> Standing Rock also contends that delivery of LTE equipment, which was ordered in December 2016, was delayed until February 2017 because the vendor had to implement a software patch to address critical missing software before the equipment could be delivered and installed.<sup>39</sup>

9. To compound its problems, Standing Rock maintains that it encountered further delays in obtaining and installing equipment and conducting drive tests.<sup>40</sup> Specifically, Standing Rock claims that higher than average snowfall during the 2016-17 winter season hindered the delivery and installation of necessary 4G equipment, which in turn delayed drive testing of the census tracts until late spring 2017.<sup>41</sup> Standing Rock further explains that, even after the snow finally melted, it had to drive test many areas multiple times due to equipment malfunctions, and that poor road conditions and unreliable GPS location accuracy further delayed testing.<sup>42</sup>

10. Standing Rock argues that despite this string of complications and delays, it successfully completed a 4G network that far exceeds the Commission's MF-I requirements.<sup>43</sup> Standing Rock explains that waiving the performance requirements by approximately six months, and disbursing Standing Rock's final support payment, will serve the public interest because it will allow Standing Rock to continue to provide critical mobile and broadband services to rural and underserved areas that otherwise lack basic communications infrastructure.<sup>44</sup> According to Standing Rock, a grant of its request will also serve the public interest because it will further the Commission's policy to ensure that Tribes have access to communications services that facilitate economic development.<sup>45</sup>

### III. DISCUSSION

11. Generally, the Commission's rules may be waived for good cause shown.<sup>46</sup> Waiver is appropriate only if both: (1) special circumstances warrant a deviation from the general rule, and (2) such deviation will serve the public interest.<sup>47</sup>

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<sup>35</sup> *Id.* at 8 (citing Mayra Caevas, Sara Sidner, and Darran Simon, *Dakota Access Pipeline Protest Site Is Cleared*, CNN (Feb. 23, 2017, 7:09 PM), <https://www.cnn.com/2017/02/22/us/dakota-access-pipeline-evacuation-order/index.html>).

<sup>36</sup> *See id.* at 2, 7-8.

<sup>37</sup> *See id.* at 8.

<sup>38</sup> *See id.*

<sup>39</sup> *See id.*

<sup>40</sup> *See id.* at 2, 10-11.

<sup>41</sup> *See id.* at 2, 10-11.

<sup>42</sup> *See id.* at 11.

<sup>43</sup> *Id.* at 12.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 13.

<sup>46</sup> 47 CFR § 1.3.

12. Here, we find that granting a waiver of the construction, drive testing, and reporting deadlines applicable to Standing Rock for approximately six months, until June 30, 2017, is warranted. Standing Rock meets the first part of the waiver standard because it has demonstrated that special circumstances warrant a deviation from the general rule. Standing Rock has shown that the pipeline protests resulted in disruptions and delays that it could not reasonably have foreseen, controlled, or avoided. Indeed, the degree of disruption that the protests caused to its otherwise reasonable schedule for meeting these deadlines was extraordinary, overwhelming its diligent pursuit of solutions to continue the construction of its 4G network in the face of such obstacles.<sup>48</sup> These special circumstances lasted for six months—from September 2016, when the protests were at their height, through late February 2017, when the protestors finally disbanded—which corresponds to the six-month extension. Standing Rock also meets the second part of the waiver standard because it has demonstrated that the deviation will serve the public interest. The waiver will ensure the continued operation of a mobile voice and data network in a rural and underserved area that previously lacked basic communications infrastructure. Standing Rock was also diligent throughout this six-month period, ensuring that the time after the deadlines would be as brief as possible, without sacrificing its ability to meet the Commission’s MF-I performance standards. In sum, Standing Rock has made a sufficient good cause showing to meet the waiver standard specified in the rules and under applicable precedent.

13. Bidders in Auction 901 were cautioned by the Commission to perform their due diligence research and analysis before participating in the auction in order to confirm the availability of transmitter sites, and to assure themselves that if they became winning bidders for MF-I support, they would be able to build and operate facilities that fully comply with all applicable technical and legal requirements.<sup>49</sup> Furthermore, the Commission has been clear that requests to waive or extend construction obligations will not be routinely granted.<sup>50</sup> Consistent with Commission precedent, prospective recipients of support should have been aware that employee issues, vendor problems, inclement weather, and last minute delays should be expected in the regular course of business, and that these occurrences alone would not support waiver of Commission deadlines.<sup>51</sup> Thus, Standing Rock’s assertions of delays due to vendor-

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<sup>47</sup> See *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969), *cert. denied*, 93 S.Ct. 461 (1972)); see also *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008).

<sup>48</sup> See, e.g., *Leaco Rural Telephone Cooperative, Inc., and Pine Belt Cellular, Inc., Requests for Waiver of the Construction Deadline and Reporting Deadline Rules for Mobility Fund Phase I*, Order, 31 FCC Rcd 9001, 9006-07, paras. 16-19 (WTB 2016) (*Leaco/Pinebelt Order*) (granting waiver of the MF-I construction, testing, and reporting requirements where each support recipient encountered unusual delays beyond its control in its construction processes); see also *Monet Mobile Networks, Inc.*, Order, 17 FCC Rcd 18381, 18383-84, paras. 5-6 (WTB 2002) (granting waiver of construction requirements where licensee would have been able to satisfy its construction requirements but for unforeseen delays in establishing backhaul connections due to circumstances beyond its control); *Minnesota PCS Limited Partnership, Request for Waiver and Extension of the Broadband PCS Construction Requirements*, Order, 17 FCC Rcd 16371, 16373-74, paras. 6-7 (WTB 2002); *Leap Wireless International, Inc., Request for Waiver and Extension of Broadband PCS Construction Requirements*, Memorandum Opinion and Order, 16 FCC Rcd 19573, 19577 para.13 (WTB 2001).

<sup>49</sup> *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4748, para. 73.

<sup>50</sup> See *Skybridge Spectrum Foundation*, Order, 33 FCC Rcd 8138, 8145, para. 17 (WTB 2018) (“[E]xtensions and waivers of construction obligations will not be routinely granted.”); *Wireless Telecommunications Bureau Reminds Wireless Licensees of Construction Obligations*, Public Notice, 32 FCC Rcd 4802, 4802, 4804-05 (WTB 2017) (summarizing the Commission’s longstanding approach to the enforcement of construction obligations).

<sup>51</sup> See, e.g., *1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, And Processes et al.*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17539, para. 35 (1999) (finding that the effects of delays due to inclement weather on construction timelines are adequately overcome by a three-year construction term making additional time unwarranted); *Redwood Wireless Minnesota, LLC, and Redwood Wireless Wisconsin LLC Request for a Waiver and Extension of the Broadband PCS Construction Requirements*, Order, 17 FCC Rcd 22416,

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caused problems (i.e., equipment-delivery delays that were not attributable to the protests), its failure to order equipment in a timely manner, or greater than average snowfall during the winter do not warrant waiver of its construction obligations. Rather, waivers of MF-I performance obligations have been granted only where the support recipient has shown that it was delayed by special circumstances that were beyond its control.<sup>52</sup>

14. We conclude that Standing Rock has met this standard because it has demonstrated diligent efforts to complete its construction as expeditiously as possible despite the extraordinary disruptions that ultimately resulted from the pipeline protests near its site that were beyond its control. Nothing in the record indicates that, prior to September 2016, Standing Rock was unable to manage any challenges that it may have encountered from the protests that had begun in the spring of that year, or that any such challenges resulted in any impediments or delays to the deployment of Standing Rock's 4G network. However, in the fall of 2016, the scope, impact, and persistence of the protests increased to an unforeseeable degree, overwhelming Standing Rock's ability to avoid delays in executing its construction plans despite its diligent efforts to overcome the continuous string of disruptions attributable to those protests. For example, in order to assuage vendors' concerns about delivering equipment amidst protests outside of the Standing Rock Reservation, Standing Rock arranged to have equipment originally destined for the Reservation delivered to its consultant in St. Cloud, Minnesota, which then delivered it to the Reservation.<sup>53</sup> Notably, the consultant's employees also experienced difficulty and delays in delivering the equipment due to road closures caused by the protests.<sup>54</sup> Based upon its amended filing, we find that Standing Rock made reasonable plans and efforts to timely fulfill its MF-I obligations, and that the special circumstances surrounding the pipeline protests created disruptions to Standing Rock's schedule that were outside of its control.

15. Standing Rock successfully constructed a 4G LTE network with coverage that meets the MF-I requirement of 75 percent or more of previously unserved road miles. Moreover, Standing Rock was able to satisfy its construction and drive testing requirements and begin providing 4G service to rural

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22419-20 (WTB 2002) (construction delays resulting from business disputes were exercise of business judgment and were not outside Petitioner's control); *Eldorado Communications LLC Request for a Waiver and Extension of the Broadband PCS Construction Requirements*, Order, 17 FCC Rcd 24613, 24616, para. 7 (WTB 2002) (licensee's determination to initially deploy TDMA system and subsequently to adopt GSM with months remaining before construction deadline was business decision within its control); *Bristol MAS Partners Request for Extension of Time in Which to Construct and Place into Operation Multiple Address System Stations WPJF864 Through WPJF87*, Order, 14 FCC Rcd 5007, 5010, para. 8 (WTB 1999) (equipment installation or delivery not delayed for some unique reason and licensee failing to obtain equipment was business decision); *Application for Review of Specialized Mobile Radio Station WAY-671, Licensed to AAT Electronics Corporation, Staten Island, New York*, Memorandum Opinion and Order, 93 FCC 2d 1034, 1047, para. 46 (1983) (decision not to market service aggressively because of equipment uncertainties is within licensee's control); *Application for Review of Business Radio Communications Systems, Inc., Licensee of 800 MHz SMR System WZF-975, Laurel, Maryland*, Memorandum Opinion and Order, 102 FCC 2d 714, 716-17, paras. 6-7 (1985) (construction delay caused by zoning challenge not a circumstance beyond licensee's control); *Application for Review of Specialized Mobile Radio Station WQA-505, Licensed to Texas Two-Way, Inc., Fort Worth, Texas*, Memorandum Opinion and Order, 98 FCC 2d 1300, 1303, para. 8 (1984), *aff'd sub nom., Texas Two-Way, Inc. v. FCC*, 762 F.2d 138 (D.C. Cir. 1985) (licensee is responsible for the delay resulting from interference caused by construction adjacent to construction site because site selection was an independent business decision).

<sup>52</sup> *Leaco/Pinebelt Order*, 31 FCC Rcd at 9006, para. 16.

<sup>53</sup> See February 2018 Amended Waiver Request at 10. We note that generally routine delays in the delivery of equipment do not provide grounds sufficient to support a waiver. See, e.g., *Bristol MAS Partners*, 14 FCC Rcd at 5010, para. 8 (denying waiver where equipment installation or delivery was not delayed for some unique reason and licensee's failure to obtain equipment was a business decision). Here, however, the protests in the area complicated the delivery of Standing Rock's antennas and other LTE network equipment to a degree that was beyond its control.

<sup>54</sup> See February 2018 Amended Waiver Request at 10.

areas that previously lacked such service within the six months it requested beyond its MF-I deadline. Given the special circumstances surrounding the Dakota pipeline protests, which were beyond its control, the additional time Standing Rock requests is reasonable in relation to the nature of the delays it experienced and its efforts to overcome them. We find that grant of a waiver to Standing Rock serves the public interest and is consistent with the objectives of MF-I because it ensures the continued provision of the 4G LTE service that Standing Rock worked to achieve, and that a waiver does not undermine the Commission's policy of ensuring adherence to the performance requirements established thereunder.<sup>55</sup>

16. We therefore conclude that there is good cause for granting the requested waiver. Based on the special circumstances before us, we find that it serves the public interest to waive the deadlines applicable to Standing Rock for completing construction of a 4G network, conducting drive testing, and submitting a report demonstrating coverage for 75 percent or more of the designated eligible road miles. We therefore grant Standing Rock's request to extend these deadlines through the requested date of June 30, 2017.

#### IV. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 4(j), 5(c), 201, 254, and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 155(c), 201, 254, 303(r), and sections 0.21, 0.91, 0.131, 0.271, 0.291, 0.331, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.21, 0.91, 0.131, 0.331, 0.271, 0.291, and 1.3, the Request for Limited Waiver and Extension of Mobility Fund Phase I Public Interest Obligations, as amended, of Standing Rock Telecommunications, Inc. is HEREBY GRANTED to permit extension of the construction, drive testing, and reporting deadlines for SACs 388007, 388008, 398001, and 398002 through June 30, 2017.

18. IT IS FURTHER ORDERED that a copy of this Order SHALL BE transmitted by the Office of the Secretary to the Universal Service Administrative Company; and

19. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this Order SHALL BE effective upon release.

#### FEDERAL COMMUNICATIONS COMMISSION

Kris A. Monteith  
Chief  
Wireline Competition Bureau

Donald K. Stockdale  
Chief  
Wireless Telecommunications Bureau

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<sup>55</sup> *Leaco/Pinebelt Order*, 31 FCC Red at 9007, para. 18.

Margaret W. Wiener  
Chief, Auctions Division  
Office of Economics and Analytics