



# PUBLIC NOTICE

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## TRANSFER OF CONNECT AMERICA FUND PHASE II AUCTION SUPPORT TO ATLINK SERVICES, LLC;

WC Docket Nos. 22-55; 10-90; AU Docket No. 17-182

## WAIVER OF REDWIRE INC.'S SUPPORT REPAYMENT DEADLINE DENIED

WC Docket No. 10-90; AU Docket No. 17-182

By this Public Notice, the Wireline Competition Bureau (Bureau) recognizes AtLink Services, LLC's (AtLink) authority to receive Connect America Fund Phase II (Auction 903) support awarded to Redwire, Inc. (Redwire) to serve the census blocks identified in the Appendix (Assigned Census Blocks).<sup>1</sup> The Bureau also denies Redwire's request for waiver of the deadline to return support associated with the remaining census blocks covered by Redwire's winning Auction 903 bids that Redwire did not transfer to AtLink.

### A. Background

On June 12, 2020, the Bureau authorized Redwire to receive \$4,766,845.60 over ten years for its winning bids in Oklahoma.<sup>2</sup> Attendant to such award, Redwire committed to deploying broadband service meeting the performance tier and latency requirements associated with its bids to 8,041 eligible locations in Oklahoma.<sup>3</sup> When the Bureau (in conjunction with the Rural Broadband Auctions Task Force and the Office of Economics and Analytics) authorized Redwire to receive Auction 903 support, it also granted a 12-month waiver of the requirement that Redwire obtain a letter of credit prior to being authorized to receive Auction 903 support.<sup>4</sup> After Redwire had received one year of support, the Bureau extended the letter of credit waiver for an additional year subject to certain conditions, including the requirement that another qualified service provider assume Redwire's obligations within one year of the release of the *Redwire Second Waiver Order*, i.e., by September 2, 2022.<sup>5</sup> The Bureau also suspended Redwire's further Auction 903 support payments.<sup>6</sup>

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<sup>1</sup> *Connect America Fund Phase II Auction Support Authorized for 169 Winning Bids*, AU Docket No. 17-182 et al., Public Notice, 35 FCC Rcd 5849 (WCB/OEA 2020) (*Redwire Authorization Public Notice*).

<sup>2</sup> *Id.* at Attach. A.

<sup>3</sup> *Id.*

<sup>4</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 35 FCC Rcd 5844 (WCB/OEA 2020) (*Redwire Waiver Order*) (finding that "the unparalleled economic crisis diminishing the Tribe's livelihood presents special circumstances for this Tribe, making it impossible for Redwire to obtain a letter of credit for the first year of its term of support.")

<sup>5</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 36 FCC Rcd 13293 (WCB/OEA 2021) (*Redwire Second Waiver Order*). Redwire had within 90 days from the release of the Order to enter into a binding agreement (continued....)

On January 31, 2022, Redwire and AtLink (together, Applicants) filed an application, pursuant to section 214 of the Communications Act of 1934, as amended, (the Act) and sections 63.03 and 63.04 of the Commission's rules, requesting consent to transfer Redwire's Auction 903 support obligations for the Assigned Census Blocks and seeking waiver of the 40% and 60% Auction 903 service milestones for the Assigned Census Blocks.<sup>7</sup> Redwire also separately requested a "continuing waiver" of the conditional waiver granted in the *Redwire Second Waiver Order* for the remaining areas covered by Redwire's authorized Auction 903 bids (i.e., those census blocks not proposed to be transferred to AtLink).<sup>8</sup>

On June 17, 2022, the Bureau granted the requested transfer and the waiver of the 40% and 60% Auction 903 service milestones for the Assigned Census Blocks.<sup>9</sup> The Bureau also denied Redwire's request for a continuing waiver for the remaining census blocks, revoked the conditional waiver, and directed Redwire to return to the Universal Service Administrative Company (USAC) all the Auction 903 support it had received for the remaining census blocks within 30 days of the release of the Public Notice.<sup>10</sup> In order to track the timing and process associated with the Auction 903 support obligations in this proceeding, the Bureau directed the Applicants to submit, within 30 days of the closing of the transaction to transfer the Assigned Census Blocks, a consummation notice in WC Docket No. 22-55, and to provide a copy of the notice to USAC.<sup>11</sup>

(Continued from previous page)

with a service provider to assume all the obligations associated with its Auction 903 support and to ensure that this service provider applied for the necessary regulatory approvals, including an ETC designation for the areas at issue and approval to transfer Redwire's section 214 authorization. *Id.* at 13295-96, para. 10. Within one year of the Order, the service provider assuming Redwire's Auction 903 obligations was required to have the necessary regulatory approvals and submit a letter of credit and bankruptcy opinion letter to USAC that meets the Commission's requirements. *Id.* at 13296, para. 11.

<sup>6</sup> *Id.* at 13297, para. 15.

<sup>7</sup> 47 U.S.C. § 214; 47 CFR §§ 63.03, 63.04; Domestic Section 214 Application of Redwire, Inc., Assignor, and AtLink Services, LLC, Assignee, For Consent for the Assignment of Certain Assets of Redwire, Inc. to AtLink Services, LLC Pursuant to Section 214 of the Communications Act of 1934, as Amended, WC Docket No. 22-55 (filed Jan. 31, 2022). Redwire and AtLink also filed a supplement to their application on March 9, 2022. Letter from Stephen E. Coran, Counsel to Redwire and AtLink, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-55 (filed Mar. 9, 2022). The Commission has adopted service milestones that require each Auction 903 support recipient to offer service to a portion of the number of locations associated with the eligible census blocks included in its authorized winning bids in a state. 47 CFR § 54.310(c); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5964, paras. 40-41 (2016) (*Phase II Auction Order*). Specifically, all Auction 903 support recipients are required to build out to 40% of the requisite number of locations in a state by December 31, 2022; 60% by December 31, 2023; 80% by December 31, 2024; and 100% by December 31, 2025. *Connect America Fund et al.*, WC Docket No. 10-90 et al., 31 FCC Rcd 5949, 5964, paras. 40-41 (2016); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 35 FCC Rcd 109 (WCB 2020) (*Auction 903 Service Milestones Order*).

<sup>8</sup> See, e.g., Letter from Stephen E. Coran, Counsel to Redwire, Inc., to Kris Anne Monteith, Chief, Wireline Competition Bureau, FCC, WC Docket No. 10-90 et al., at 1-2 (filed Dec. 1, 2021); Letter from Stephen E. Coran, Counsel to Redwire, Inc., to Kris Anne Monteith, Chief, Wireline Competition Bureau, FCC, WC Docket No. 10-90 et al., at 1-2 (filed Jan. 31, 2022).

<sup>9</sup> *Domestic 214 Application and Waivers Granted for the Transfer of Connect America Fund Phase II Auction Support Obligations from Redwire, Inc. to AtLink Services, LLC; Conditional Letter of Credit Waiver Revoked for Redwire, Inc.'s Connect America Fund Phase II Auction Support Obligations Not Being Transferred to AtLink Services, LLC*, WC Docket No. 22-55 et al., Public Notice, DA 22-652, at 6-11 (WCB June 17, 2022) (*214 Grant Public Notice*).

<sup>10</sup> *Id.* at 11-12.

<sup>11</sup> *Id.* at 13, n.89.

On January 31, 2022, AtLink petitioned the Oklahoma Corporation Commission (OCC) for designation as an Eligible Telecommunications Carrier (ETC) in the Assigned Census Blocks.<sup>12</sup> On August 11, 2022, the OCC granted this request.<sup>13</sup> According to Applicants, they became aware of the OCC ETC designation on August 15, 2022, and “[o]n August 16, 2022, with the FCC and OCC approval orders now in hand, Redwire and AtLink executed a Closing Agreement. On or about that day, AtLink received from Redwire its payment of \$194,820.50 as authorized by the Approval Order.”<sup>14</sup> Applicants did not notify the Commission of the transaction consummation until October 11, 2022, i.e., 56 days after the August 16 closing date.<sup>15</sup> Redwire returned the remaining support to USAC for the census blocks that AtLink did not acquire on September 15, 2022.<sup>16</sup>

On November 16, 2022, AtLink submitted a letter of credit and Bankruptcy Code opinion letter from legal counsel that covers support associated with the Assigned Census Blocks. USAC has reviewed these documents and both meet the Auction 903 requirements.

**B. Grant of AtLink and Redwire’s Waiver Requests for Deadlines Associated with the Assigned Census Blocks**

We find good cause to waive certain deadlines that the Bureau adopted in the *214 Grant Public Notice* and *Redwire Second Waiver Order* so that we can proceed with this authorization. Specifically, we find good cause to continue the conditional waiver granted in the *Redwire Second Waiver Order nunc pro tunc* by permitting AtLink to submit a letter of credit and Bankruptcy Code opinion letter that covers support for the Assigned Census Blocks after the one-year deadline adopted in that Order.<sup>17</sup> Although AtLink was required to submit these documents by September 2, 2022, it did not submit the documents until November 16, 2022. Generally, the Commission’s rules may be waived for good cause shown.<sup>18</sup> Waiver of the Commission’s rules 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>19</sup>

As stewards of the public’s funds, the Bureau takes universal service deadlines very seriously. However, we find that the Applicants have demonstrated that special circumstances warrant waiver of the letter of credit documentation deadline. The Applicants claim the delay in closing their transaction was due to it taking longer than expected for the OCC to designate AtLink as an ETC for the Assigned Census Blocks.<sup>20</sup> The Applicants executed a closing agreement the day after they learned that AtLink had obtained the required ETC designation.<sup>21</sup> AtLink then engaged with USAC to confirm it had a letter of credit and bankruptcy opinion letter in place meeting the Commission’s requirements that covered the

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<sup>12</sup> Application of AtLink Services, LLC for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996, Cause No. PUD 20220012 (filed Jan. 31, 2022).

<sup>13</sup> Application of AtLink Services, LLC for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996, Oklahoma Corporation Commission, Cause No. PUD 202200012, Order No. 727586 (Aug. 11, 2022).

<sup>14</sup> Letter from Stephen E. Coran, Counsel to Redwire and AtLink, WC Docket No. 22-55 et al., to Marlene H. Dortch, Secretary, FCC, at 1-2 (filed Oct. 11, 2022) (Closing Notice and Waiver Request).

<sup>15</sup> *Id.* at 2.

<sup>16</sup> *Id.* at 2-3.

<sup>17</sup> *Redwire Second Waiver Order*, 36 FCC Rcd at 13296, para. 11.

<sup>18</sup> 47 CFR § 1.3.

<sup>19</sup> See *Northeast 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)).

<sup>20</sup> Closing Notice and Waiver Request at 1.

<sup>21</sup> *Id.* at 1-2.

new support amount associated with the Assigned Census Blocks.<sup>22</sup> We acknowledge that the delay in receiving an ETC designation was outside the Applicants' control and these circumstances, coupled with the Applicants' prompt actions once AtLink obtained its ETC designation, constitute special circumstances.<sup>23</sup>

We also find that granting a waiver of this deadline serves the public interest. If we were to revoke the extended waiver granted in the *Second Redwire Waiver Order* due to AtLink's late submission of the letter of credit documentation, we would require Redwire to pay back the Auction 903 support associated with the Assigned Census Blocks.<sup>24</sup> For the reasons explained in the *Section 214 Grant Public Notice*, it serves the public interest to allow AtLink to retain the support associated with the Assigned Census Blocks and serve the relevant areas.<sup>25</sup>

We further find that good cause exists to waive the requirement in the *214 Grant Public Notice* for Redwire and AtLink to notify the Commission and USAC within 30 days of their closing of the transaction to transfer the Assigned Census Blocks and support to AtLink. Redwire and AtLink state that it was first necessary to secure the OCC ETC designation for AtLink in order for the closing to occur.<sup>26</sup> They state that they then executed the closing agreement on August 16, 2022, the day after they became aware of the ETC designation, and that Redwire transferred the Auction 903 support to AtLink "[o]n or about that day."<sup>27</sup> Applicants submitted the consummation notice, due on September 16, 2022, more than three weeks late on October 11, 2022.<sup>28</sup> The Bureau mandated the consummation notice requirement in this case so that the Commission and USAC could track the rights and responsibilities of AtLink as the Auction 903 support recipient.<sup>29</sup> Nevertheless, the Bureau and USAC now have the accurate closing date information and are moving forward expediently to authorize AtLink to receive support and begin the process to serve customers in the Assigned Census Blocks, which is the primary public interest goal in this proceeding. Unlike section 214 applications that the Bureau grants on an unconditional basis, this proceeding involves multiple conditions with which Redwire and AtLink must comply. We find that waiving the consummation notice requirement allows AtLink to be properly identified by USAC as the support recipient now that the conditions have been met. For these reasons, we grant the waiver of the

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<sup>22</sup> *Id.* at 3

<sup>23</sup> We have previously found that applicants for high-cost support have demonstrated that special circumstances warrant the waiver of an ETC documentation filing deadline when the applicants acted in good faith to obtain a timely ETC designation and the process for obtaining an ETC designation took longer than expected for reasons outside the applicants' control. *See, e.g., Rural Digital Opportunity Fund Support for 7,608 Winning Bids Ready to Be Authorized; Bid Defaults Announced*, AU Docket No. 20-34 et al., DA 21-1582, at 5-6 (WCB/OEA Dec. 16, 2021).

<sup>24</sup> *Redwire Second Waiver Order*, 36 FCC Rcd at 13296, para. 11.

<sup>25</sup> *214 Grant Public Notice* at 7-8. *See also* Closing Notice and Waiver Request at 4-5 (describing the public interest benefits of granting the requested waivers).

<sup>26</sup> Closing Notice and Waiver Request at 1.

<sup>27</sup> *Id.* at 2.

<sup>28</sup> We disagree with Applicants' assertion that the closing could have been considered to have occurred on September 15, 2022, when USAC received the support payment from Redwire for the census blocks that AtLink did not acquire. Closing Notice and Waiver Request at 3. The support for the non-transferred census blocks was not the subject of the approved 214 transfer of control application, and the September 15 date is not relevant to the consummation notice stating that AtLink had acquired the obligations and support for the Assigned Census Blocks.

<sup>29</sup> In particular, as we state below, USAC is authorized, as of the consummation of the transaction to disburse from the Universal Service Fund all Auction 903 support associated with the Assigned Census Blocks that it has not already disbursed.

requirement in the *214 Grant Public Notice* for Redwire and AtLink to notify the Commission and USAC within 30 days of their closing of the transaction.

**C. Authorization of AtLink for the Assigned Census Blocks**

Based upon our review of AtLink's financial and technical qualifications and our grant of the waivers relevant to the transaction, we find that AtLink satisfies the criteria to be authorized to receive Connect America Fund Phase II auction support in return for its commitment to provide service meeting the Auction 903 requirements.<sup>30</sup> Accordingly, USAC is authorized, as of the consummation of the transaction, to disburse from the Universal Service Fund all Auction 903 support associated with the Assigned Census Blocks that it has not already disbursed. Such support will continue to be paid in monthly installments, with the exception of the support associated with the Assigned Census Blocks that was withheld from Redwire, which should be paid as a lump sum with AtLink's first payment. USAC will make disbursement payments to the account on file for the 498 ID associated with the study area code (SAC) 439090.

In exchange for such support, AtLink assumes Redwire's defined deployment obligations, voice and broadband service obligations, and common carrier service obligations for the Assigned Census Blocks. Specifically, AtLink must offer qualifying voice and broadband service to 3,013 qualifying locations by December 31, 2025 in the Assigned Census Blocks. In addition, AtLink assumes responsibility for complying with all other obligations of Auction 903 support recipients.<sup>31</sup> Finally, pursuant to the conditions adopted by the Bureau in granting the requested transfer and waiving the 40% and 60% service milestones, AtLink must, within six months of the *Section 214 Grant Public Notice* and on every March 1<sup>st</sup> thereafter, file a report in AU Docket No. 17-182 detailing its efforts to meet the 80% service milestone until it certifies that the 80% service milestone has been met for the Assigned Census Blocks.<sup>32</sup> AtLink remains subject to the 80% and 100% service milestones for the Assigned Census Blocks and will be subject to the Commission's non-compliance measures if it does not meet these service milestones.<sup>33</sup>

**D. Denial of Redwire's Waiver Request for the Support Repayment Deadline Associated with the Remaining Census Blocks Covered by Redwire's Auction 903 Winning Bids**

We find that Redwire has not demonstrated good cause for waiving the 30-day deadline the Bureau set for Redwire to return support associated with the remaining census blocks covered by Redwire's Auction 903 winning bids that were not included in the transfer to AtLink, and accordingly we deny Redwire's request for waiver of this deadline.<sup>34</sup> Although the Bureau required Redwire to return this support by July 17, 2022, Redwire did not return the support until September 15, 2022.<sup>35</sup> Redwire

<sup>30</sup> The Bureau already found that AtLink is qualified to receive Auction 903 funding in areas covered by its own Auction 903 winning bids located adjacent to or near the Assigned Census blocks. *Connect America Fund Phase II Auction Support Authorized for 2,413 Winning Bids*, AU Docket No. 17-182 et al., Public Notice, 34 FCC Rcd 5966 (WCB/OEA 2019).

<sup>31</sup> See 47 U.S.C. § 254(e); 47 CFR §§ 54.7, 54.314 (Universal Service Fund support must be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended"). In the *Redwire Authorization Public Notice*, the Bureau provided a summary of the various obligations of authorized Auction 903 support recipients that AtLink now assumes for the identified census blocks. The list is not a comprehensive list and AtLink is still responsible for conducting the due diligence required to comply with Universal Service Fund requirements and the Commission's rules. *Redwire Authorization Public Notice*, 35 FCC Rcd at 5850-55.

<sup>32</sup> *214 Grant Public Notice* at 11.

<sup>33</sup> 47 CFR §§ 54.310(c), 54.320; *Auction 903 Service Milestones Order*, 35 FCC Rcd 109.

<sup>34</sup> *214 Grant Public Notice* at 12.

<sup>35</sup> Closing Notice and Waiver Request at 3.

claims that it “was not comfortable” returning the funds to USAC as directed until the OCC designated AtLink as an ETC in the relevant areas because if the OCC had not designated AtLink, Redwire may have had to “return the entire amount of its support to USAC.”<sup>36</sup> Redwire has failed to provide any explanation for why it could not return the support associated with census blocks not transferred to AtLink prior to the Bureau’s deadline and then return the remaining support at a later date if the AtLink transaction did not close. While we acknowledge Redwire’s efforts to make the payment once the transaction had closed and the subsequent delay due to complications with making the payment,<sup>37</sup> these facts do not support a waiver given Redwire’s decision to wait to initiate the payment until after the deadline. Because Redwire failed to demonstrate that special circumstances warrant waiver of the deadline, we are unable to find good cause to waive the deadline. In the *214 Grant Public Notice*, the Bureau explained that if Redwire did not meet the 30-day deadline, “it may be subject to additional penalties.”<sup>38</sup> Accordingly, we refer the matter to the Enforcement Bureau for further consideration.<sup>39</sup>

For further information, please contact Heidi Lankau, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7400 or at TTY (202) 418-0484.

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<sup>36</sup> *Id.* at 1.

<sup>37</sup> *Id.* at 2-4.

<sup>38</sup> *214 Grant Public Notice* at 12-13.

<sup>39</sup> We also previously referred our revocation of the conditional waiver for Redwire’s remaining census blocks to the Enforcement Bureau. *Id.* at 12.

**APPENDIX****Auction 903 Census Blocks Assigned to AtLink**

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