

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

In the Matter of )
Connect America Fund ) WC Docket No. 10-90
Connect America Fund Phase II Auction ) AU Docket No. 17-182

ORDER

Adopted: September 2, 2021

Released: September 2, 2021

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau), in conjunction with the Rural Broadband Auctions Task Force (RBATF) and the Office of Economics and Analytics (OEA), grants Redwire Inc.'s (Redwire) petition requesting an extension of the waiver of the letter of credit requirement for the Connect America Fund Phase II auction (Auction 903). We extend the waiver for one year from the release of this Order, subject to certain conditions. Redwire, an Auction 903 winning bidder formed for the purpose of participating in Auction 903, is a corporation wholly owned by the Otoe-Missouria Tribe of Oklahoma (Tribe).

II. BACKGROUND

2. The Commission requires that before being authorized to receive support awarded by Auction 903, an applicant must obtain a letter of credit issued by a qualified bank to protect the public's funds. Once Commission staff announces that an auction winner's long-form application is complete and the applicant is ready to be authorized, the applicant then has 10 business days to submit a letter of credit meeting the Commission's requirements that covers the first year of support and an attorney bankruptcy opinion letter. The letter of credit must increase in value until it has been verified that the support recipient has met certain service milestones.

3. Redwire, a Tribally owned provider, participated in Auction 903 and was found ready to authorize on March 5, 2020 for \$4,766,845.60 in total to serve 8,041 locations in Oklahoma for ten years.

1 Petition for Limited Conditional Waiver, WC Docket No. 10-90, AU Docket No. 17-182 (filed June 11, 2021) (Redwire June 2021 Petition).

2 47 CFR § 54.315(c); Connect America Fund et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5989-99, paras. 119-40 (2016) (CAF Phase II Auction Order).

3 47 CFR § 54.315(b)(6)(v); Connect America Fund Phase II Auction (Auction 903) Closes; Winning Bidders Announced; FCC Form 683 Due October 15, 2018, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 8257, 8264, paras. 17-18 (WCB/WTB 2018).

4 47 CFR § 54.315(c)(1); Connect America Fund et al., WC Docket No. 10-90 et al., Order, 35 FCC Rcd 6556 (WCB 2020) (Letter of Credit Waiver Order).

5 Connect America Fund Phase II Auction Support for 150 Winning Bids Ready to be Authorized, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 35 FCC Rcd 1911, at Attach. A (WCB 2020).

Redwire initially requested a 30-day extension of the March 19, 2020 deadline to submit its letter of credit and bankruptcy opinion letter to the Universal Service Administrative Company (USAC).<sup>6</sup> Redwire explained that it would not be able to meet the March 19, 2020 deadline due to “[focusing] on the urgent needs of the Tribe’s members during the coronavirus pandemic.”<sup>7</sup> However, on April 20, 2020, Redwire filed another petition for waiver requesting a permanent waiver of the letter of credit requirement for Auction 903, stating that since the filing of the earlier waiver request the “conditions [of] the Tribe and Redwire have deteriorated rapidly and precipitously.”<sup>8</sup>

4. The Bureau, in conjunction with the RBATF and OEA, partially granted Redwire’s petition for waiver and limited the waiver to the first 12 months of Redwire’s support term.<sup>9</sup> Given the “uncertainty about the timing of an economic recovery,” the Bureau directed Redwire “to keep the Bureau apprised quarterly of its situation and to make every effort to secure a letter of credit going forward.”<sup>10</sup> The Bureau also required Redwire to either “file a letter of credit prior to its second-year support term or request a further waiver of the letter of credit requirement for good cause shown.”<sup>11</sup> On the same day Redwire was also authorized to begin receiving Auction 903 support.<sup>12</sup>

5. During Redwire’s first year of support, it timely filed quarterly reports that indicated the Tribe continued to face financial hardship because of the ongoing pandemic and the Bank of Oklahoma refused to issue it a letter of credit.<sup>13</sup> Redwire also explained that due to the Tribe’s covenants with the Bank of Oklahoma, it was prevented from obtaining a letter of credit from another bank, and that it was “explor[ing] strategic transactions with other entities that may be in a better position to move forward with the supported deployment.”<sup>14</sup> Because Redwire did not submit a letter of credit prior to its second year of support, the Bureau instructed USAC to suspend any future Auction 903 payments to Redwire until further notice.

6. *Redwire’s Petition.* On June 11, 2021, Redwire filed a petition seeking a one-year conditional extension of the waiver of the letter of credit requirement.<sup>15</sup> Redwire explains that because the Bank of Oklahoma continues to reject its requests for a letter of credit and will not waive its covenants with the Tribe to allow the Tribe to seek a letter of credit from an alternative bank, “[i]t is now clear that Redwire will not be able to obtain a letter of credit . . . .”<sup>16</sup> Additionally, Redwire claims to have

---

<sup>6</sup> Petition for Waiver, AU Docket No. 17-182, WC Docket No. 10-90, at 2 (filed Mar. 18, 2020) (Redwire March 2020 Petition).

<sup>7</sup> Redwire March 2020 Petition at 2.

<sup>8</sup> Petition for Waiver, AU Docket No. 17-182, WC Docket No. 10-90 (filed Apr. 20, 2020) (Redwire April 2020 Petition).

<sup>9</sup> *Connect America Fund; Connect America Fund Phase II Auction*, WC Docket No. 10-90, AU Docket No. 17-182, Order, 35 FCC Rcd 5844 (WCB 2020) (*Redwire Waiver Order*).

<sup>10</sup> *Id.* at 5847, para. 10.

<sup>11</sup> *Id.* at 5845, para. 6.

<sup>12</sup> *Connect America Fund Phase II Auction Support Authorized for 169 Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 35 FCC Rcd 5849 (WCB 2020) (*Redwire Authorization Public Notice*).

<sup>13</sup> Letter from Stephen E. Coran, Counsel to Redwire, Inc., to Kris Anne Monteith, Chief, Wireline Competition Bureau, FCC, WC Docket No. 10-90, AU Docket No. 17-182 (filed Sept. 11, 2020) (Redwire Sept. 2020 Status Report); Letter from Stephen E. Coran, Counsel to Redwire, Inc., to Kris Anne Monteith, Chief, Wireline Competition Bureau, FCC, WC Docket No. 10-90, AU Docket No. 17-182 (filed Dec. 11, 2020) (Redwire Dec. 2020 Status Report); Letter from Stephen E. Coran, Counsel to Redwire, Inc., to Kris Anne Monteith, Chief, Wireline Competition Bureau, FCC, WC Docket No. 10-90, AU Docket No. 17-182 (filed Mar. 10, 2021) (Redwire Mar. 2021 Status Report).

<sup>14</sup> Redwire Dec. 2020 Status Report at 1-2; Redwire Mar. 2021 Status Report at 1-2.

<sup>15</sup> Redwire June 2021 Petition.

“completed an engineering plan and cost projections” for meeting its Auction 903 service obligations, but has not spent any of its Auction 903 support.<sup>17</sup> It has also “engaged in, and continues to be engaged in, discussions” with other Auction 903 recipients and/or Auction 904 long-form applicants about potentially undergoing a transaction to assume Redwire’s Auction 903 obligations.<sup>18</sup>

7. Redwire proposes that the one-year extension of the waiver be conditioned on certain actions occurring within 90 days of the grant of its June 2021 Petition, including Redwire entering into a “binding” agreement with another Oklahoma eligible telecommunications carrier or carriers (ETC) to assume its Auction 903 obligations, the new entity applying to obtain certain state and Commission approvals, and, Redwire not spending its Auction 903 support until these first two conditions are met.<sup>19</sup> If all these conditions are not met, Redwire proposes to return all of its Auction 903 support and to not proceed with its Auction 903 obligations in the relevant areas.<sup>20</sup> Redwire also proposes that certain actions would be taken within one-year from the grant of the petition, including approval of the new entity or entities’ ETC designation covering the relevant areas and the submission of an acceptable letter of credit and bankruptcy opinion letter, and that Redwire would continue to provide the Bureau with quarterly status reports during this one-year period.<sup>21</sup>

### III. DISCUSSION

8. Generally, the Commission’s rules may be waived for good cause shown.<sup>22</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>23</sup>

9. We find good cause to conditionally grant Redwire’s petition for waiver. Therefore, we extend our waiver of the section 54.315(c) letter of credit requirement for a year from the date of the release of this Order, subject to certain conditions. We are persuaded that the conditions proposed by Redwire are reasonable and will serve the public interest, and thus adopt these conditions with a few modifications.

10. Specifically, within 90 days from the release of this Order, the following actions must be completed. First, Redwire must enter into one or more binding agreements with a service provider or providers and that service provider(s) must agree to assume all of the obligations associated with Redwire’s Auction 903 support.<sup>24</sup> Second, the service provider assuming the obligations must apply to obtain approvals from Oklahoma and the Commission to obtain or expand an Oklahoma ETC designation to cover areas where Redwire is authorized to receive Auction 903 support and to transfer Redwire’s

(Continued from previous page) \_\_\_\_\_

<sup>16</sup> *Id.* at 3, 7-8.

<sup>17</sup> *Id.* at 3-4, 5.

<sup>18</sup> *Id.* at 4-5.

<sup>19</sup> *Id.* at 5-6.

<sup>20</sup> *Id.* at 6.

<sup>21</sup> *Id.*

<sup>22</sup> 47 CFR § 1.3.

<sup>23</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)) (*Northeast Cellular*).

<sup>24</sup> Redwire has indicated that it may enter into more than one agreement with a service provider. For simplicity, we refer to one service provider throughout this Order, but do not preclude Redwire from entering into such agreements with more than one service provider, provided that it complies with the conditions contained in this Order for each service provider transaction.

section 214 authorization.<sup>25</sup> If either of these two conditions are not satisfied within the 90-day period, the waiver will be revoked, Redwire must return the Auction 903 support it has already received (and may be subject to additional penalties),<sup>26</sup> Redwire will no longer have an obligation to serve the areas where it was authorized to receive Auction 903 support, and the areas may be eligible for support awarded through future funding mechanisms to the extent they remain unserved.

11. Moreover, within one year from the release of this Order, the service provider that has agreed to assume Redwire's Auction 903 obligations must have obtained the necessary regulatory approvals for which it applied, including ETC and section 214 transactional approvals, in addition to any required state approvals. Once these approvals have been obtained and the transaction has been consummated, the acquiring service provider may begin spending the Auction 903 support that has already been disbursed to Redwire to make progress on the Auction 903 service obligations. The acquiring service provider must also submit a letter of credit and bankruptcy opinion letter to USAC that meets the Commission's requirements within one year from the release of this Order.<sup>27</sup> During this one year period, we direct Redwire to submit quarterly reports to the Bureau that describe the progress in meeting the waiver conditions. If and only if an irrevocable letter of credit and bankruptcy opinion letter have been approved, we will instruct USAC to resume Auction 903 payments to the acquiring service provider, including the support that has been withheld during this period.

12. We find that the adoption of these conditions supports a finding of good cause to grant Redwire's June 2021 Petition. First, we find that special circumstances warrant deviation from the Commission's letter of credit requirement for an additional one-year period. In the *Redwire Waiver Order*, the Bureau found 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>28</sup> Redwire's quarterly status reports and Redwire's waiver petition explain that despite its further good faith efforts to obtain a letter of credit, these circumstances persisted during Redwire's first year of support and continue to make it impossible for Redwire to obtain a letter of credit.<sup>29</sup>

---

<sup>25</sup> 47 U.S.C. § 214(a), (e); 47 CFR §§ 63.03; 63.04. ETCs seeking to transfer control of their domestic authorizations to operate pursuant to section 214 of the Act or to engage in the sale of assets under section 214 must first receive approval from the Commission in accordance with sections 63.03 and 63.04 of the Commission's rules governing the procedures for domestic transfer of control/asset applications. Transfers of control and assignments of international section 214 authorizations are separately subject to section 63.24 of the Commission's rules. 47 CFR § 63.24. Except where the Commission has forborne from the application of section 214, this requirement applies to all transfers of control or asset acquisitions involving ETCs. *Redwire Authorization Public Notice*, 35 FCC Rcd at 5855.

<sup>26</sup> 47 CFR § 54.320(c) ("Eligible telecommunications carriers authorized to receive high-cost support that fail to comply with public interest obligations or any other terms and conditions may be subject to further action, including the Commission's existing enforcement procedures and penalties, reductions in support amounts, potential revocation of ETC designation, and suspension or debarment . . .").

<sup>27</sup> 47 CFR § 54.315(c); *Letter of Credit Waiver Order*, 35 FCC Rcd 6556. Although Redwire did not specifically propose that the transaction would need to obtain section 214 transaction approval within the one year period, we view this approval as a necessary step prior to accepting a new letter of credit and bankruptcy opinion letter from the ETC that will be assuming the Auction 903 obligations. Redwire does propose that the submission of an acceptable letter of credit and bankruptcy opinion letter would occur within the one-year period.

<sup>28</sup> *Redwire Waiver Order*, 35 FCC Rcd at 5845-46, paras. 7-8.

<sup>29</sup> Redwire Sept. 2020 Status Report at 1-2; Redwire Dec. 2020 Status Report at 1-2; Redwire Mar. 2021 Status Report at 1-2; Redwire June 2021 Petition at 3-4, 7 ("The combination of the hardship created by the pandemic and [the Bank of Oklahoma's] unwillingness to allow Redwire to seek other banks to issue the letter of credit together constitute special circumstances justifying grant of the extended waiver and a finding that Redwire is not in default.").

13. Second, we find that it serves the public interest to conditionally grant Redwire's June 2021 Petition. In the *Redwire Waiver Order*, the Bureau acknowledged the impact of the pandemic and the digital divide on Tribal communities and concluded that it served the public interest to grant Redwire a waiver of the letter of credit requirement for its first year of support.<sup>30</sup> We found that it would have delayed the provision of voice and broadband service in the relevant areas if we had "precluded an otherwise qualified Tribal applicant from being authorized to receive support."<sup>31</sup> While under the conditions of this waiver Redwire would be conveying its obligations to another qualified ETC, Redwire has demonstrated that it has acted in good faith by taking substantial steps to prepare to bring service to the relevant area as soon as possible despite its challenges in obtaining a letter of credit. Redwire has used its own funding to complete an engineering plan and cost projections for the Auction 903-support areas and "has engaged in, and continues to be engaged in, discussions" with other service providers that already participate in or are familiar with the program and serve nearby areas.<sup>32</sup> We expect that giving Redwire additional time to enter into agreements with a service provider and for the acquiring service provider to obtain the relevant regulatory approvals will permit the acquiring entity to build on Redwire's one year of good faith progress, resulting in the relevant areas receiving service sooner than if Redwire's authorization was revoked and the areas were made eligible for other funding mechanisms.<sup>33</sup>

14. Moreover, the conditions impose deadlines for entering into agreements, obtaining the necessary approvals, and submitting an acceptable letter of credit to ensure that we can act quickly to recover support and make these areas eligible for other funding opportunities if the acquiring service provider is unable to act swiftly to begin deploying support to these areas. We will also be able to verify that the acquiring service provider has the qualifications to meet the Auction 903 obligations and provide service to these areas because the acquiring entity must be designated as an ETC in the relevant areas and will undergo the Commission's section 214 transfer of control process, which requires a finding that "grant of the application will serve the public interest, convenience and necessity . . . ."<sup>34</sup> To that end, although Redwire proposes that we permit the already disbursed Auction 903 support to be spent so that deployment can begin once Redwire has entered into an agreement with a service provider and that service provider has applied for the relevant approvals,<sup>35</sup> the condition we adopt requires that the necessary regulatory approvals be obtained first before the funds can be spent. We conclude this strikes an appropriate balance between ensuring that the entity that will be meeting the Auction 903 obligations is qualified to do so and the importance of commencing service to these areas as soon as practicable.

15. Finally, the conditions we impose on this waiver allow the Commission to uphold its responsibility to protect ratepayers' contributions to the universal service fund, which is the original intent of the letter of credit requirement. We have suspended further Auction 903 payments and will not resume these payments until an acceptable letter of credit is in place that will protect the funds moving forward.<sup>36</sup>

---

<sup>30</sup> *Redwire Waiver Order*, 35 FCC Rcd at 5846, para. 9.

<sup>31</sup> *Id.*

<sup>32</sup> Redwire June 2021 Petition at 3-5.

<sup>33</sup> *Id.* at 5 (explaining that the Oklahoma ETC that assumes its Auction 903 obligations "would have the benefit of Redwire's engineering and development plans").

<sup>34</sup> 47 CFR § 63.04(a)(12). As part of its public interest showing, the acquiring service provider must confirm it has the management expertise and the technical ability necessary to obtain Auction 903 support and meet Auction 903 program requirements, and it must certify that it will meet all relevant support obligations.

<sup>35</sup> Redwire June 2021 Petition at 6.

<sup>36</sup> *Id.* at 8 (explaining that "because Redwire has not spent any [Auction 903] support and the Bureau has recently suspended support, the Commission has mitigated its financial risk and will be able to recover all support if Redwire does not comply with the conditions it has proposed."); *CAF Phase II Auction Order*, 31 FCC Rcd at 5998, para. 139 (explaining that the "advantages of letters of credit" include "ensuring that Connect America support can be

(continued....)

**IV. ORDERING CLAUSES**

16. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 254, and sections 0.91, 0.291, and 1.3 of the Commission’s rules, 47 CFR §§ 0.91, 0.291, 1.3, that this Order IS ADOPTED.

17. IT IS FURTHER ORDERED that the petition for waiver filed by Redwire, Inc. IS GRANTED as described herein.

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

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief  
Wireline Competition Bureau

(Continued from previous page) \_\_\_\_\_  
quickly reclaimed to protect ratepayers’ contribution to the universal service fund, and that the support is protected from being included in a bankruptcy estate”).