

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

In the Matter of)	
)	
Petition of Hotwire Communications, Ltd. for Waiver of Section 54.804(b)(6)(iv) of the Commission’s Rules)	AU Docket No. 20-34
)	WC Docket No. 19-126
)	
The Rural Digital Opportunity Fund Phase I Auction (Auction 904))	WC Docket No. 10-90

ORDER

Adopted: December 16, 2021

Released: December 16, 2021

By the Chief, Wireline Competition Bureau and the Acting Chief, Office of Economics and Analytics:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (WCB) and the Office of Economics and Analytics (OEA), in coordination with the Rural Broadband Auctions Task Force deny the Petition of Hotwire Communications, Ltd. (Hotwire) for waiver of section 54.804(b)(6)(iv) of the Commission’s rules.¹ Hotwire, a winning bidder in the Rural Digital Opportunity Fund Phase I auction (Auction 904), seeks waiver of the rule that prohibits a winning bidder from making a major modification to its pending long-form application. We find that Hotwire has failed to present good cause to support the grant of the requested waiver. Accordingly, we also deny Hotwire’s long-form application for Rural Digital Opportunity Fund support.

II. BACKGROUND

2. The rule prohibiting major modifications of a Universal Service Fund (USF) auction application is based on a rule used in spectrum auctions² and was adopted by the Commission in 2011.³ The rule requires denial of an application to which a major modification is made after the deadline for

¹ See 47 CFR § 54.804(b)(6)(iv) (prohibiting major modifications, including ownership changes that constitute an assignment or change of control, to a post-auction long-form application). See also Petition of Hotwire Communications, Ltd. for Waiver of 54.804(b)(6)(iv) of the Commission’s rules, AU Docket No. 20-34, WC Docket Nos. 19-126, 17-207 (filed May 20, 2021) (Hotwire Petition for Waiver).

² See 47 CFR § 1.2105(b)(2). See also *In the Matter of Connect America Fund, et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Propose Rulemaking, 26 FCC Rcd 17663, 17804, para. 417 (2011) (*Connect America Fund Order*) (noting that the Commission has had a “positive” experience with the spectrum auction application process and adopting a similar process for the USF auction).

³ See *Connect America Fund Order*, 26 FCC Rcd at 17804, para. 418 n.703 (2011); *Mobility Fund Phase I Auction Scheduled for September 27, 2012; Notice and Filing Requirements and Other Procedures for Auction 901*, AU Docket 12-25, Public Notice, 27 FCC Rcd 4725, 4756-57, paras. 103-08 (WTB 2012); *Tribal Mobility Fund Phase I Auction Rescheduled for December 19, 2013; Notice And Filing Requirements and Other Procedures for Auction 902*, Report and Order and Further Notice of Proposed Rulemaking, AU Docket No. 13-53, Public Notice, 28 FCC Rcd 11628, 11666, paras. 122-27 (WTB/WCB 2013); *In the Matter of Connect America Fund, et al.*, WC Docket No. 10-90, et al., 31 FCC Rcd 5949, 5980, para. 94 n.189 (2016).

submitting applications.⁴

3. In January 2020, the Commission established the Rural Digital Opportunity Fund auction, which was to allocate up to \$16 billion in USF support over 10 years to service providers that commit to offer voice and broadband services to fixed locations in eligible areas.⁵ On June 11, 2020, the Commission released a public notice that established application and bidding procedures for Auction 904.⁶ Among other things, the *Auction 904 Procedures Public Notice* required entities seeking to participate in Auction 904 to file a short-form application (FCC Form 183) by July 15, 2020.⁷ Each Auction 904 applicant was required to fully disclose information regarding its real party or parties in interest and its ownership structure, including both direct and indirect ownership interests of 10% or more, as prescribed in section 1.2112(a) of the Commission's rules.⁸ In addition, each applicant had to certify, among other things, that it possessed the financial capability and technical qualifications to fulfill the Auction 904 public interest obligations.

4. On July 13, 2020, Hotwire filed a short-form application to participate in Auction 904.⁹ In its application, Hotwire disclosed one direct owner, Michael Karp, as having 100% ownership interest.¹⁰ Hotwire's short-form application did not disclose any pending or prospective changes in ownership.

5. Bidding in Auction 904 began on October 29, 2020 and concluded on November 25, 2020.¹¹ Hotwire was one of the 180 winning bidders in the auction. It won \$5,150,040 in support over 10 years for 3,233 locations in Florida.¹² On January 29, 2021, Hotwire filed a long-form application (FCC Form 683) for Rural Digital Opportunity Fund support.¹³ Hotwire's long-form application contained the same ownership information as its short-form application, disclosing Michael Karp as its sole owner, and did not include any disclosures concerning a future acquisition or transfer of control.¹⁴ As with its short-form application, Hotwire's long-form application contained a certification that Hotwire possessed the financial

⁴ See *Connect America Fund Phase II Auction Scheduled for July 24, 2018 Notice and Filing Requirements and Other Procedures for Auction 903*, AU Docket No. 10-90, Public Notice, 33 FCC Rcd 1428, 1487, para. 171 & n.353 (2018) (cautioning that the Commission would be reluctant to waive the major modification rule because waiving the rule could lead to auction participation by unexamined parties).

⁵ See generally *Rural Digital Opportunity Fund; Connect American Fund*, WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686 (2020) (*Rural Digital Opportunity Fund Order*).

⁶ *Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020; Notice and Filing Requirements and Other Procedures for Auction 904*, AU Docket No. 20-34 et al., Public Notice, 35 FCC Rcd 6077 (2020) (*Auction 904 Procedures Public Notice*).

⁷ *Id.* at 6088-89, para. 27. FCC Form 183 requires each applicant to provide specific information and certifications, under penalty of perjury, regarding its qualifications. See *id.* at 6089, para. 30.

⁸ See 47 CFR §§ 1.2112(a), 54.804(a)(1) (requiring the disclosure of the applicant's ownership information in the short-form application as set forth in 47 CFR § 1.2112(a)); see also *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6090-91, para. 37.

⁹ FCC Form 183 of Hotwire Communications Ltd., FCC File No. 0009146528 (filed July 13, 2020).

¹⁰ See *id.*

¹¹ See *Rural Digital Opportunity Fund Phase I (Auction 904) Closes; Winning Bidders Announced; FCC Form 683 Due January 29, 2021*, AU Docket No. 20-34 et al., 35 FCC Rcd 13888 (2020).

¹² See *id.*, Attach. A.

¹³ See *417 Long-Form Applicants in the Rural Digital Opportunity Fund Phase I Auction (Auction 904)*, AU Docket No. 20-34 et al., Public Notice, 36 FCC Rcd 4140 (2021). That same day, Hotwire informed staff that it was defaulting on 13 census block groups covering 997 locations. As a result, its long-form application sought support for 2,236 locations. See *Rural Digital Opportunity Fund Bid Defaults Announced*, AU Docket No. 20-34 et al., Public Notice, DA 21-910, Attach. A (WCB/OEA July 26, 2021).

¹⁴ See FCC Form 683 of Hotwire Communications, Ltd., FCC File No. 0009146528 (filed Jan. 29, 2021).

capability and technical qualifications to fulfill the Auction 904 public interest obligations.

6. On May 20, 2021, in an amendment to its still-pending long-form application, Hotwire disclosed that on April 22, 2021, Michael Karp consummated a transaction in which he transferred his interest to a new entity, Hotwire Holdings, LLC, and Hotwire became a wholly-owned subsidiary of Hotwire Holdings, LLC.¹⁵ Following the transaction, Mr. Karp holds a 40% equity and voting interest in Hotwire Holdings, LLC, while four funds owned by The Blackstone Group, Inc. (Blackstone) hold an aggregate equity and voting interest of 50%, and a company owned solely by Mr. Karp's wife, Kristen Johnson, holds the remaining 10%.¹⁶ Hotwire's long-form amendment further reports that a single individual, Stephen Schwarzman, ultimately controls 50% of Hotwire Holdings, LLC, through a chain of Blackstone holding companies.¹⁷ The amendment further explains that Hotwire Holdings, LLC, is controlled by a board of managers comprised of Mr. Karp, Ms. Johnson, and two Blackstone executives.¹⁸

7. On the same day it filed the amendment to its long-form application, Hotwire also filed a petition seeking waiver of section 54.804(b)(6)(iv) of the Commission's rules, which requires that a long-form application be denied if an applicant makes a major modification to its application, including any change in ownership that constitutes a change in control.¹⁹ Hotwire's petition questions whether this transaction should be treated as a major change in ownership, suggesting instead that treatment as a pro forma transfer is warranted because it maintains that Hotwire's existing management retains 50% of its ownership and day-to-day managerial control.²⁰ Hotwire asserts, however, that if a waiver is required, it has demonstrated good cause to grant its request, and that granting a waiver will promote the public interest by allowing Hotwire to use funds acquired in the transaction to accelerate its Rural Digital Opportunity Fund buildout efforts.²¹

III. DISCUSSION

8. As an initial matter, we conclude that the transaction at issue is not pro forma. A substantial change in ownership occurs where there is a transfer of 50% or more of a licensee's stock or a transfer that results in a stockholder whose qualifications have not been passed on by the Commission acquiring at least a 50% voting interest in a licensee.²² Sixty percent of the voting stock and equity ownership of

¹⁵ See Letter from Jeffrey Carlisle, Attorney for Hotwire Communications, Ltd., Lerman Senter PLLC, to Marlene H. Dortch, Secretary, FCC (May 20, 2021); FCC Form 683 of Hotwire Communications, Ltd., FCC File No. 0009395106 (filed May 20, 2021) (Amended Hotwire FCC Form 683).

¹⁶ See Hotwire Petition for Waiver at 5-6; Amended Hotwire FCC Form 683.

¹⁷ Amended Hotwire FCC Form 683.

¹⁸ *Id.*; Hotwire Petition for Waiver at 6.

¹⁹ See Hotwire Petition for Waiver at 4. Major modifications include, but are not limited to, any changes in the ownership of the applicant that constitute an assignment or transfer of control, or changes in the identity of the long-form applicant. See 47 CFR § 54.804(b)(6)(iv).

²⁰ Hotwire Petition for Waiver at 8.

²¹ *Id.*

²² See *Federal Communications Bar Association's Petition for Forbearance from Section 310(d) of the Communications Act Regarding Non-Substantial Assignments of Wireless Licenses and Transfers of Control Involving Telecommunications Carriers*, Memorandum Opinion and Order, 13 FCC Rcd 6293, 6298-99, para. 8 (1998). "Through long administrative interpretation the test for 'substantiality' has generally been (a) whether 50% or more of the stock is being transferred and (b) whether as a result of the transaction 50% or more of the outstanding stock will be held by a person or persons whose qualifications have not been approved of [by the Commission]." *Barnes Enterprises, Inc.* 55 FCC 2d 721, 725, para. 8 (1975) (*Barnes*). The Commission's rules for assigning and transferring section 214 authorizations are also instructive for a finding of what constitutes a transfer of control in the universal service fund context. See, e.g., 47 CFR §§ 63.03(d), 63.24(c) ("A change from less than 50 percent ownership to 50 percent or more ownership shall always be considered a transfer of control."); 47 CFR

Hotwire has changed hands, with 50% of the equity and voting stock now being controlled by Blackstone.²³ Moreover, Hotwire is now a wholly owned subsidiary of a holding company managed by a four person board of managers, two of which are managing directors of Blackstone. The Commission's rules and precedent are clear that a change of 50% or more of the voting stock of an entity constitutes a substantial change of control and is not a pro forma transfer.²⁴ Additionally, the Commission provided notice of its standards for transfer of control in its auction procedures prior to the start of Auction 904.²⁵

9. Thus, we turn to Hotwire's argument for waiver, and we are not persuaded that Hotwire has shown that waiver of the prohibition is warranted here. The Commission's rules may be waived for good cause shown.²⁶ A waiver is "appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."²⁷ For the Commission to make such a public interest determination, the waiver cannot undermine the purposes of the rule, and there must be a stronger public interest benefit in granting the waiver than in applying the rule.²⁸ We conclude that Hotwire has not demonstrated good cause to grant its requested waiver.

10. We are unconvinced by Hotwire's assertions that, because the harms that the rule is intended to prevent are not present here, the underlying purposes of the rule would not be undermined by waiving the prohibition in this instance.²⁹ To the contrary, this case presents a situation that the rule is intended to address. The purpose of the rule is to foster participation and competition in the auction by ensuring that an auction applicant's ownership information, real parties in interest, and financial condition can be fully assessed prior to the start of bidding, resulting in a pre-auction process that is transparent for the Commission, auction participants, and other interested parties and that enhances auction competition by leveling the informational playing field.³⁰ The rule also promotes transparency and competition by limiting the extent to which after the close of bidding and prior to authorization of the award a winning

§ 63.24(d) (explaining that only transfers of control that do not result in a change in the actual controlling party are considered non-substantial or pro forma).

²³ See Hotwire Petition for Waiver at 5-6; Amended Hotwire FCC Form 683.

²⁴ Blackstone has, at a minimum, gained negative control of the applicant. Pursuant to Commission precedent, if a corporation has two 50% shareholders then each possess negative control. The acquisition or relinquishment of negative control requires prior Commission approval where 50% or more of a licensee's stock is transferred to a party or parties, whose qualifications have not been passed on by the Commission. See *Barnes*, 55 FCC 2d at 725. For example, in a transaction effectuating a transfer of negative control with no record evidence of actual control of the entity, Commission staff has concluded that "prudence dictates" that such a transfer is considered to be substantial in nature. See, e.g., *Central Dakota TV, Inc.*, Order on Reconsideration, 19 FCC Rcd 21005, 21009, para. 10 (WTB 2004).

²⁵ See *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6091-92, para. 42; 47 CFR § 1.21001(d)(1) (defining *de jure* control as holding 50% or more of the voting stock of a corporation).

²⁶ 47 CFR § 1.3.

²⁷ *NE Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²⁸ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*); *Network IP, LLC v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008).

²⁹ Hotwire Petition for Waiver at 9-11.

³⁰ See *Cincinnati Bell Order*, DA 21-615 at 11-12; *Applications Filed for the Transfer of Control of Authorizations Held by Frontier Communications Corporation, Debtor-in-Possession and its Wholly Owned Subsidiaries et al.*, WC Docket No. 20-197 et al., Memorandum Opinion and Order and Declaratory Ruling, 36 FCC Rcd 291, 308-09, para. 47 (WCB/OEA 2021) (*Frontier Order*); *Connect America Fund, Petition of Sunset Digital Communications, Inc.*, AU Docket No. 17-181 et al., Order, 34 FCC Rcd 7010, 7015, para. 13 (WCB/OEA 2019) (*Sunset Digital Order*).

bidder can turn around and “shop” its winning bids to others.³¹ Among other things, the prohibition deters bidders from participating with an expectation that, post-auction, they may be able to leverage their winning bids in a late effort to gain financing, and it avoids unfairness to other bidders that comply with the auction rules.³² Furthermore, the rule promotes competition within the auction by encouraging interested entities to participate in the bidding directly and compete for the desired offered items, rather than subsequently combining their resources with a winning bidder after the auction. Here, after bidding concluded, Hotwire decided to assume the risk of denial of its application by consummating its transaction with Blackstone prior to requesting a waiver.³³ Granting Hotwire a waiver in this case would effectively vitiate the rule by permitting any winning bidder to “shop” its bid and allow an undisclosed and unexamined entity to take its place after bidding has closed.

11. Hotwire’s assertions that neither the Commission’s interests nor those of other bidders were harmed are unavailing.³⁴ Waiver of the rule in these circumstances would undermine the rule’s purposes. By substantially changing its ownership without having disclosed that change until after the auction, Hotwire denied the Commission an opportunity to review whether its prior application certifications remain valid and denied other bidders in Auction 904 a chance to factor into their bids and bidding strategies that Hotwire, a competing bidder, was backed by Blackstone and its financial resources. Preventing the Commission and other interested parties from scrutiny of the real parties in interest in an application is the kind of harm that the rule is intended to prevent. To allow an undisclosed party to gain access to USF support in that manner could permit the very type of shell game the rule seeks to prohibit.

12. We conclude that the particular circumstances of Hotwire’s transaction do not merit waiver of the major modification rule. Hotwire argues that its continued “identity of management” means that “Commission staff will not need to conduct a new analysis of Hotwire’s operational capabilities as part of its long-form review.”³⁵ We disagree. First, Hotwire has disclosed that its parent’s Board of Managers is now shared with Blackstone and that a single individual controls Blackstone’s interests, belying its contention that Hotwire’s identity of management remains unchanged. Second, Hotwire’s reliance on its argument that Mr. Karp and Ms. Johnson continue to operate in day-to-day management roles fails to address the implications of the other ownership changes that are relevant to the major change prohibition in section 54.804.³⁶ For instance, Hotwire’s argument would require us to disregard entirely that 50% of

³¹ See *Frontier Order*, 36 FCC Rcd at 308-09, para. 47; *Applications Granted for the Transfer of Control of Windstream Holdings, Inc., Debtor-in-Possession, and Subsidiaries*, WC Docket No. 20-151 et al., Public Notice, 35 FCC Rcd 10076, 10082 (WCB/IB/WTB/OEA 2020). The Commission has long been concerned that the integrity of the auction process would be undermined in the absence of a post-auction safeguard that prevents winners from shopping their bids. Cf. *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, PP Docket No. 93-253, Second Report and Order, 9 FCC Rcd 2348, 2381-82, para. 192 (1994) (adopting a requirement that winning bidders in spectrum auctions must submit a down payment within five business days of the close of bidding).

³² See generally *Commercial Realty St. Pete, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7057, 7062-63, para. 15 (1999) (holding that the down payment deadline in a spectrum auction serves the same purposes).

³³ See Hotwire Petition for Waiver at 6-7. Hotwire also claims, without evidence, that its success in Auction 904 had no bearing on Blackstone’s decision to invest in it. See Hotwire Petition for Waiver at 6, 11. We cannot rely on its characterization of Blackstone’s motivations. As the Commission has previously concluded, it “has no way of knowing why parties make certain decisions, and it cannot act on requests for regulatory relief based on a party’s post-hoc assertions regarding its earlier state of mind.” *Petition for Reconsideration and Motion for Stay of Paging Systems, Inc.*, Memorandum Opinion and Order, 25 FCC Rcd 4036, 4059, para. 75 (2010).

³⁴ Hotwire Petition for Waiver at i-ii, 9-11.

³⁵ Hotwire Petition for Waiver at 10.

³⁶ Hotwire cites no authority for its contention that Mr. Karp’s transfer of ownership to his wife means that he should be considered to retain 50% ownership and control of Hotwire. *Id.* We need not determine in this case whether the 10% ownership interest Mr. Karp transferred to his spouse should be attributed to Mr. Karp by

the new holding company is held by Blackstone. We are therefore unpersuaded by Hotwire's assertion that "[t]his is not a situation where [Hotwire] has been sold to or merged into an entirely different company."³⁷ In sum, Mr. Karp's transfer of more than half of his ownership interests, including 50% to Blackstone, is precisely the type of change prohibited by the major modification rule, and the particulars of this transaction do not constitute special circumstances warranting a waiver.

13. Hotwire's argument that the prohibition should be waived on the grounds that Blackstone's infusion of additional capital and managerial expertise would enable it to meet its Auction 904 public interest obligations sooner is unpersuasive.³⁸ Hotwire argues that strict application of the rule in these situations causes public interest harms because it forces a company to choose between accepting the addition of capital that results from the transaction and defaulting on its winning bids or delaying the infusion of capital for an unknown period of time while its long-form application is pending, impeding the company's plans for broadband network expansion.³⁹ Since the rule is designed to prevent applicants from seeking to shop their bids to gain added financing, if we were to accept these arguments the rule would be eviscerated.⁴⁰ In both its short-form and long-form applications, Hotwire certified that it possessed the financial capability and expertise to fulfill its public interest obligations.⁴¹ But in its petition, Hotwire asserts that the transaction will "improv[e] its ability to meet RDOF deployment obligations."⁴² Even if we assume that this assertion is not inconsistent with Hotwire's previous certifications, this assertion would be true of any major change resulting in an infusion of funds from new investors and cannot be considered special circumstances justifying a waiver. Notably, the Commission has only considered the influx of new capital as a factor warranting waiver of the rule where an applicant fully disclosed an impending transaction by the start of the auction application process, which allowed for transparency in the applicant's real parties in interest and its certifications throughout the entire auction process, transparency that is completely absent in this case.⁴³

14. Hotwire's contention that the major change prohibition should not be strictly applied in USF

application of principles of spousal affiliation. Such attribution is unavailing because Blackstone acquired a 50% voting and equity ownership interest in of Hotwire, which represents a substantial change in control and a major modification of its application.

³⁷ *Id.*

³⁸ See Hotwire Petition for Waiver at 13-16.

³⁹ *Id.* at 15.

⁴⁰ See *WAIT Radio*, 418 F.2d at 1159 (obligation to give meaningful consideration to waiver applications does not contemplate that an agency must or should tolerate evisceration of a rule by waivers).

⁴¹ See *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 719, 726, 727, paras. 72, 88, 91 (citing 47 CFR § 54.804(b)(2)(ii), (b)(2)(iii), (b)(2)(v), which were adopted specifically for the Rural Digital Opportunity Fund to ensure auction applicants understood and could meet their public interest obligations in accordance with the rules).

⁴² Hotwire Petition for Waiver at 14.

⁴³ See *Applications Granted for The Transfer of Control of Cincinnati Bell Inc. and Hawaiian Telcom, Inc. to Red Fiber Parent LLC*, WC Docket No. 20-146 et al., Public Notice, DA 21-615 (WCB/IB/WTB/OEA May 26, 2021) (*Cincinnati Bell Order*) (waiver of major modification rule granted to Auction 904 winning bidder where current and future ownership interests disclosed in section 214 applications prior to Auction 904 short-form application deadline); *Frontier Order*, 36 FCC Rcd 291 (waiver of major modification rule granted to Auction 904 winning bidder where current and future ownership interests disclosed in section 214 application and bankruptcy proceedings prior to Auction 904 short-form application deadline); *Sunset Digital Order*, 34 FCC Rcd 7010 (waiver of major modification rule granted to Auction 903 winning bidder where current and future ownership interests disclosed in section 214 applications on the same day as the Auction 903 short-form application deadline); *Connect America Fund, Petition of Hawaiian Telecom et al.*, AU Docket No. 17-182 et al., Order, 33 FCC Rcd 6208 (WCB/WTB 2018) (waiver of major modification rule granted to Auction 903 applicant where current and future ownership interests disclosed in section 214 applications prior to Auction 903 short-form application deadline).

auctions and that the abuses prevented by the rule can only arise in spectrum auctions is without merit.⁴⁴ In effect, Hotwire asks us to eliminate the major change prohibition of section 54.804, which is an action that could only be undertaken by the Commission in an appropriate proceeding. This argument fails to acknowledge that the Commission specifically adopted the section 54.804's major change rule to apply to applications for the Rural Digital Opportunity Fund.⁴⁵ Moreover, Hotwire's argument fails to recognize that the harm associated with a competing bidder not being able to assess the real parties in interest in an auction application and factor that information into its bids and bidding strategies is equally true in a USF auction.

15. We also find no merit in Hotwire's claim that applying the rule to Hotwire would result in less transparency and less Commission control over the qualifications of auction winners.⁴⁶ Hotwire posits that auction winners may time their transactions to avoid obligations under section 214 of the Communications Act of 1934, as amended, or may fail to report material changes as required pursuant to section 1.65 of the Commission's rules.⁴⁷ Hotwire's claim is based on a misunderstanding of the requirements that apply to USF support awardees. Hotwire incorrectly asserts that there is a short window after support is authorized during which a USF auction participant that does not yet hold a wireless license nor a section 214 authorization could avoid Commission scrutiny of a transaction.⁴⁸ Although an Auction 904 applicant was not required to have obtained a section 214 authorization prior to the start of bidding, it is required to obtain its ETC designation prior to the authorization of support.⁴⁹ Because ETCs are required to file a section 214 application for approval to transfer control of any Rural Digital Opportunity Fund support authorizations,⁵⁰ there is no scenario in which a USF support recipient can avoid the Commission's scrutiny as Hotwire contends.

16. Finally, we disagree that Hotwire is similarly situated to past applicants in USF auctions that were granted waiver of the major modification rule.⁵¹ Unlike the circumstances in the cases Hotwire cites, it did not disclose Blackstone's ownership interest until well after the bidding in Auction 904 closed.⁵² In contrast to the instant case, the public interest was served and the purpose of the rule was not frustrated by those past grants of a waiver because in those cases the real parties in interest in the auction application were transparent to the Commission and auction participants, which had consistent information about those applicants and their future ownership from the beginning of the auction application process. Comparison to the *Sunset Digital* decision is unavailing because there the applicant disclosed its pending transaction in its short form application even before seeking a waiver.⁵³ Additionally, the *Frontier* decision cited by Hotwire is inapposite because there the applicant's

⁴⁴ Hotwire Petition for Waiver at 13.

⁴⁵ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 753, Appendix A, Final Rules.

⁴⁶ Hotwire Petition for Waiver at 12.

⁴⁷ *Id.*

⁴⁸ *See id.*

⁴⁹ Section 254(e) limits the distribution of support to ETCs designated under section 214(e). *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 727-28, para. 92 n.263.

⁵⁰ *See Telecommunications Carriers Eligible for Universal Service Support; Connect America Fund*, WC Docket No. 09-197 et al., Order, DA 21-663, para. 30 (WCB 2021); *see also* 47 CFR § 63.24(c) (transfer of control of a section 214 authorization requires prior Commission approval).

⁵¹ Hotwire Petition for Waiver at 11-12 (citing *Sunset Digital Order*, 34 FCC Rcd 7010, and *Frontier Order*, 36 FCC Rcd 291).

⁵² *Sunset Digital Order*, 34 FCC Rcd at 7015, para. 15 (granting a waiver of the major modification rule where a pending transaction was disclosed in the applicant's auction short form, allowing for the Commission to review the real parties in interest in the application prior to the applicant becoming a qualified bidder).

⁵³ *Id.*

restructuring and application amendment were part of a plan of reorganization in bankruptcy.⁵⁴

17. Accordingly, we find that grant of this waiver serves neither the public interest nor the underlying purpose of the rule. Thus, we conclude that there is not good cause for granting Hotwire's Petition for Waiver, and it is denied. In addition, because Hotwire made a major modification to its pending long-form application, the long-form application is denied pursuant to section 54.804(b)(6)(iv).

IV. ORDERING CLAUSES

18. 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 0.21(m), 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.21(m), 0.91, 0.271, 0.291, 0.271, 1.3, that this Order IS ADOPTED.

19. IT IS FURTHER ORDERED that the Petition for Waiver of § 54.804(b)(6)(iv) of the Commission's rules filed by Hotwire Communications, Ltd. is DENIED as described herein.

20. IT IS FURTHER ORDERED that, pursuant to section 54.804(b)(6)(iv) of the Commission's rules, the FCC Form 683 filed by Hotwire Communications, Ltd. is DENIED as described herein.

21. 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 A. Monteith
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Wireline Competition Bureau

Deena M. Shetler
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Office of Economics and Analytics

⁵⁴ See *Frontier Order*, 36 FCC Rcd at 294-95, paras. 7-8.