



PUBLIC NOTICE

Federal Communications Commission
45 L St., N.E.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>

DA 24-568
Released: June 13, 2024

**DOMESTIC SECTION 214 APPLICATION GRANTED
FOR THE TRANSFER OF CONTROL OF
ATLINK SERVICES, INC. TO ELEMENT8 TECHNOLOGY INVESTMENT GROUP INC.**

WC Docket No. 23-268

By this Public Notice, the Wireline Competition Bureau (Bureau) grants an application filed by AtLink Services, LLC (AtLink) and Element8 Technology Investment Group Inc. (Element8), (collectively, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,¹ requesting consent to transfer control of AtLink to Element8.²

On September 8, 2023, the Bureau released a Public Notice seeking comment on the Application.³ The Bureau did not receive comments or petitions in opposition to the Application.

Applicants and Description of Transaction

AtLink, an Oklahoma limited liability company, currently provides voice and broadband service to approximately 10,000 Oklahomans in rural communities and urban areas throughout the state using fixed wireless and fiber-to-the-home technologies.⁴ On January 24, 2019, the Oklahoma Corporation Commission (OCC) designated AtLink as an ETC for the Oklahoma census blocks where it was the

¹ See 47 U.S.C. § 214; 47 CFR §§ 63.03-04.

² AtLink Services, LLC and Element8 Technology Investment Group Inc. Application Filed for Consent to Transfer Control of Domestic Section 214 Authorization, WC Docket No. 23-268 (filed Aug. 4, 2023) (Application). Applicants filed a supplement to the Application on September 1, 2023. Letter from Trey Hanbury, Counsel to Element8, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-268 (filed Sept. 1, 2023) (Supplement Letter). Applicants filed an application for the transfer of certain spectrum licenses and a petition for declaratory ruling (Petition) asking the Commission to find that it would serve the public interest to permit foreign ownership of the proposed controlling U.S. parent, Digital Alpha, to exceed the 25% benchmark in section 310(b)(4) of the Commission's rules, 47 U.S.C. §310(b)(4). See ICFS File No. ISP-PDR-20230807-00007 (amended and restated Aug. 30, 2023). Any action on the Application is without prejudice to Commission action on other related, pending actions.

³ See *Domestic Section 214 Application Filed for the Transfer of AtLink Services, LLC to Element8 Technology Investment Group Inc.*, WC Docket No. 23-268, Public Notice, DA 23-829 (WCB 2021) (Public Notice).

⁴ Application at 3. AtLink participates in the Lifeline program and had participated in the Affordable Connectivity Program (ACP). Applicants state that the proposed transaction will not affect AtLink's participation in these programs. *Id.* at 6. We note, however, that due to a lack of additional Congressional funding, the agency officially ended the ACP on June 1, 2024. Press Release, FCC, *The FCC Brings the Affordable Connectivity Program to a Close* (May 31, 2024), <https://docs.fcc.gov/public/attachments/DOC-402930A1.pdf>.

auction winner for Connect America Fund Phase II Auction (Auction 903) (CAF) support.⁵ On July 15, 2019, the Bureau authorized AtLink to receive \$4,762,647.20 in CAF support for 12,491 locations in Oklahoma.⁶ In addition, AtLink was authorized to receive, pursuant to approvals of section 214 transfer applications, an additional \$594,975.00 in CAF support to serve an additional 1,166 locations in Oklahoma acquired from Cherokee Telephone Company,⁷ and an additional \$1,948,205.00 in CAF support to serve 3,013 locations in Oklahoma acquired from Redwire, Inc.⁸

Element8, a Texas corporation, provides broadband services. Element8 is supported by a substantial investment from the Digital Alpha family of funds, which focuses on investing in digital infrastructure.⁹ Applicants state that “a U.S. citizen holds ultimate control of the Digital Alpha family of funds; however, non-U.S. investors hold insulated, non-voting, equity interests equal to an aggregate total of approximately 54% of the equity of the Digital Alpha funds seeking to invest in AtLink.”¹⁰ Applicants estimate that, post-consummation, non-U.S. entities will hold 37.97% of AtLink’s equity interests.¹¹

Pursuant to the terms of the proposed transaction, Element8 will acquire control of AtLink.¹² As a result, AtLink will become a subsidiary of Element8.¹³ Applicants state that AtLink would continue to exist and operate under the same name and would continue to provide service pursuant to then-existing rates, terms, and conditions for the near term.¹⁴

Applicants assert that the proposed transaction would serve the public interest, convenience, and necessity.¹⁵

⁵ Application at 3-4.

⁶ See *Connect America Fund Phase II Auction Support Authorized for 2,413 Winning Bids*, Public Notice, AU Docket No. 17-182 and WC Docket No. 10-90, 34 FCC Rcd 5966, Attach. A (WCB 2019) (*AtLink CAF Phase II Authorization Public Notice*).

⁷ *Authorization of AtLink Services, LLC to Receive Connect America Fund (CAF) Phase II Auction Support Transferred from Cherokee Telephone Company Pursuant to a Commission Approved Transaction*, WC Docket No. 10-90, Public Notice, 37 FCC Rcd 6158 (WCB 2022); *Domestic 214 Application Granted for the Transfer of Certain Authorizations of Cherokee Telephone Company to AtLink Services, LLC*, WC Docket No. 21-423, Public Notice, 37 FCC Rcd 701 (WCB 2022).

⁸ *Transfer of Connect America Fund Phase II Auction Support to AtLink Services, LLC et al.*, WC Docket Nos. 22-55 et al., Public Notice, 37 FCC Rcd 14086 (WCB 2022); *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 et al.*, WC Docket No. 22-55 et al., Public Notice, 37 FCC Rcd 7406 (WCB 2022).

⁹ Application at 4.

¹⁰ Supplement Letter at 1-2. Applicants submitted a chart illustrating AtLink’s post-transaction ownership. *Id.* at Exh. 1 (Post-Closing Ownership).

¹¹ *Id.* at 2, Exh. 1 (Post-Closing Ownership).

¹² Application at 2. The Bureau applies the same principal regarding the transfer of RDOF obligations to the transfer of CAF obligations. See *Telecommunications Carriers Eligible for Universal Service Support; Connect America Fund*, WC Docket Nos. 09-197 & 10-90, Order, 36 FCC Rcd 9384, 9393-94, para. 30 (WCB 2021) (“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 (including any authorization to receive RDOF support) 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.”).

¹³ Application at 5.

¹⁴ *Id.*

¹⁵ *Id.* at 7.

Discussion

We find, upon consideration of the record, that a grant of the Application will serve the public interest, convenience, and necessity. To make this determination under Commission precedent, we consider whether the proposed transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.¹⁶ We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.¹⁷ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.¹⁸

We find that there are no potential public interest harms identified in the record. First, the proposed transaction will not result in a reduction of competition. Applicants state that neither Element8 nor any of its affiliates currently provide domestic telecommunications services, and thus there will be no physical overlap or reduction in service providers in any markets as a result of the transaction.¹⁹ Further, because AtLink “will continue to provide service pursuant to then-existing rates, terms, and conditions for the near term,”²⁰ we expect no potential harm to existing customers to result from the transaction.

Second, Element8 commits to meeting all public interest and performance obligations associated with the receipt of the transferred CAF funding,²¹ and the record indicates that AtLink has the technical, financial, and managerial expertise to do so.²² In this regard, Element8 attests that it will “ensure that all CAF performance and buildout obligations of AtLink are met following consummation of the Transaction.”²³ Applicants maintain that “Element8 has both the necessary industry experience and

¹⁶ See, e.g., *Application of Verizon Communications Inc. and América Móvil S.A.B. de C.V. for Consent to Transfer Control of International Section 214 Authorization*, GN Docket No. 21-112, IBFS File No. ITC-T/C-20200930-00173, Memorandum Opinion and Order, 36 FCC Rcd 16994, 17001, para. 21 (2021) (*Verizon-TracFone Order*) (citing *China Mobile International (USA) Inc., Application for Global Facilities-Based and Global Resale International Telecommunications Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended*, ITC-214-20110901-00289, Memorandum Opinion and Order, 34 FCC Rcd 3361, 3366, para. 9 (2019); *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation (and Subsidiaries, Debtors-in-Possession), Assignors, to Time Warner Cable Inc. (Subsidiaries), Assignees; Adelphia Communications Corporation, (and Subsidiaries, Debtors-in-Possession), Assignors and Transferors et al.*, MB Docket No. 05-192, Memorandum Opinion and Order, 21 FCC Rcd 8203, 8219-21, paras. 27-28 (2006) (*Adelphia-TWC Order*)).

¹⁷ See *Verizon-TracFone Order*, 36 FCC Rcd at 17001, para. 21 (citing *Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-90, Memorandum Opinion and Order, 30 FCC Rcd 9131, 9140, para. 18 (2015) (*AT&T-DIRECTV Order*)) (further citations omitted).

¹⁸ See *Verizon-TracFone Order*, 36 FCC Rcd at 17001, para. 21 (citing *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 18; *Adelphia-TWC Order*, 21 FCC Rcd at 8217, para. 23; *Application of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp., Transferors, and EchoStar Communications Corp., Transferee*, CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 25 (2002)) (further citations omitted).

¹⁹ Application at 9, Supplement at 1.

²⁰ Application at 5.

²¹ *Id.* at 8-9.

²² *Id.* at 7-9. The Bureau has provided a summary of the various obligations of authorized CAF support recipients in prior authorization public notices. As stated in these public notices, the list is not intended to be comprehensive, and all authorized parties are responsible for conducting the due diligence required to comply with universal service fund requirements and the Commission’s rules. See, e.g., *AtLink CAF Phase II Authorization Public Notice*, 34 FCC Rcd at 5967-71.

²³ Application at 8.

requisite financial means to take on the responsibility of owning [AtLink],”²⁴ and that Element8 and AtLink “are not assuming any debt obligations in connection with the Transaction, and the Transaction will not increase AtLink’s cost to deploy service or negatively affect its deployment timetable.”²⁵ In addition, Applicants have confirmed that “Element8 does not contemplate any changes to the CAF buildout plans or services obligations.”²⁶ Overall, we conclude that the record in this proceeding does not support a finding of a public interest harm.

We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.²⁷ Applicants must provide evidence of a claimed benefit to allow the Commission to verify its likelihood and magnitude.²⁸ Where potential harms appear unlikely, as is the case with the Application before us here, the Commission accepts a lesser degree of magnitude and likelihood than when harms are present.²⁹

Applicants assert that the infusion of capital and human resources resulting from the proposed transaction will enhance “AtLink’s ability to serve unserved and underserved rural and Tribal areas of Oklahoma.”³⁰ Further, Applicants assert that “Element8 also has expansion plans in non-CAF areas.”³¹ Applicants also assert that, with the support of Element8, “AtLink aspires to bring Gigabit-speed internet service to areas that do not have this level of service available on an accelerated basis.”³² As a result of the proposed transaction, Applicants aver that customers will benefit from “increased investment and competition for telecommunications and broadband services in Oklahoma.”³³

The Commission has specified that ensuring consumers receive new or additional services is an important public interest factor,³⁴ and accelerating private sector deployment of advanced services is one of the aims of the Act.³⁵ In light of Applicants’ respective commitments to meet all of AtLink’s federal high-cost funding obligations³⁶ and the fact that Applicants are prepared to devote additional capital to

²⁴ *Id.* at 7.

²⁵ *Id.* We find relevant AtLink’s successful completion of the CAF Phase II Auction application process, which required the Bureau to assess the applicant’s audited financial statements, managerial experience, and technical capabilities and plans necessary to demonstrate that it could meet RDOF obligations. 47 CFR § 54.315; *see generally Connect America Fund Phase II Auction Scheduled for July 24, 2018 Notice and Filing Requirements and Other Procedures for Auction 903*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 1428 (2018).

²⁶ Application at 8.

²⁷ *See AT&T/DIRECTV Order*, 30 FCC Rcd at 9237, paras. 273-74.

²⁸ *See id.* at 9237-38, paras. 275-76.

²⁹ *See id.*

³⁰ Application at 9.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *See, e.g., AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 19.

³⁵ *See Verizon-TracFone Order*, 36 FCC Rcd at 17002, para. 22 (citing 47 U.S.C. §§ 254, 332(c)(7), 1302; Telecommunications Act of 1996, Pub. L. No. 104-104, Preamble, 110 Stat. 56 (1996) (one purpose of the Act is to “accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services”)).

³⁶ Application at 8-9.

accelerate facilities-based service offerings,³⁷ we find it likely that the proposed transaction would result in some public interest benefits. Absent any potential harms, and considering that the proposed transaction is likely to yield some benefits, we find, on balance, that the proposed transaction serves the public interest.

National Security, Law Enforcement, Foreign Policy and Trade Policy Concerns

On May 22, 2024, the National Telecommunications and Information Administration (NTIA), on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee), submitted a Petition to Adopt Conditions to Authorization and License (Committee Petition).³⁸ We grant the Committee Petition and condition grant of the Application on compliance by the Applicants with the commitments and undertakings set out in the Letter of Agreement (LOA) filed with the Committee Petition.

When analyzing a transfer of control or assignment application that includes foreign investment, we also consider public interest issues related to national security, law enforcement, foreign policy, or trade policy concerns.³⁹ As part of our public interest analysis, the Commission coordinates with the relevant Executive Branch agencies that have expertise in these particular issues.⁴⁰ The Commission accords deference to the expertise of these Executive Branch agencies in identifying issues related to national security, law enforcement, foreign policy, or trade policy concerns raised by the relevant Executive Branch agencies.⁴¹ The Commission, however, ultimately makes an independent decision on the application based on the record in the proceedings.⁴²

³⁷ *Id.* at 2, 8-9.

³⁸ National Telecommunications and Information Administration, Petition to Adopt Conditions to Authorization and License, WC Docket No. 23-268, ISP-PDR -20230801-00007 (filed May 22, 2024).

³⁹ See *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket 16-155, Report and Order, 35 FCC Rcd 10927 (2020) (setting rules and procedures for referring applications for Executive Branch review consistent with Executive Order No. 13913) (*Executive Branch Review Order*); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-21, paras. 59-66 (1997) (*Foreign Participation Order*), *recon. denied*, 15 FCC Rcd 18158 (2000) (in opening the U.S. telecommunications market to foreign entry in 1997, the Commission affirmed that it would consider national security, law enforcement, foreign policy, and trade policy concerns related to reportable foreign ownership as part of its overall public interest review of application for international section 214 authority, submarine cable landing licenses, and declaratory rulings to exceed the foreign ownership benchmarks of section 310(b) of the Act); see also *Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations, et al.*, WT Docket 18-197, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578, 10732-33, para. 349 (2019) (*T-Mobile/Sprint Order*).

⁴⁰ See *Executive Branch Review Order*, 35 FCC Rcd at 10935-36, paras. 17, 24.

⁴¹ *Id.* at 10930, para. 7 (citing *Foreign Participation Order*, 12 FCC Rcd at 23920-21, paras. 65-66; *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States; Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations*, IB Docket No. 96-111, CC Docket No 93-23, RM-7931, Report and Order, 12 FCC Rcd 24094, 24171-72, paras. 179, 182 (1997)); see also *T-Mobile/Sprint Order*, 34 FCC Rcd at 10733, paras. 349; *Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Report and Order, 31 FCC Rcd 11271, 11277, para. 6 (2016), *Pet. for recon. dismissed*, 32 FCC Rcd 4780 (2017).

⁴² 47 CFR § 1.40001(b) (“The Commission will consider any recommendations from the [E]xecutive [B]ranch on pending application(s) . . . that may affect national security, law enforcement, foreign policy, and/or trade policy as part of its public interest analysis. The Commission will evaluate concerns raised by the [E]xecutive [B]ranch and will make an independent decision concerning the pending matter.”).

Pursuant to Commission practice, the Application and the Petition for Declaratory Ruling, FCC Nos. ISP-PDR-20230807-00007, were referred to the relevant Executive Branch agencies for their review of any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of the Applicants.⁴³ On September 14, 2023, the U.S. Department of Justice (DOJ), on behalf of the Committee, informed the Commission that the Committee was reviewing the Application for any national security and law enforcement concerns that may be raised by foreign participation in the United States telecommunications services sector and requested that the Commission defer action on the Application.⁴⁴ We deferred action in response to this request from the Committee. Then, on January 23, 2024, DOJ notified the Commission that the Committee was “conducting [a 120-day] initial review to assess whether granting the Application will pose a risk to national security or law enforcement interests of the United States.”⁴⁵

In the Committee Petition, the Committee advises that it “has no objection to the Commission granting the above-captioned application, provided that the Commission conditions its consent” on compliance with the May 2, 2024, LOA, which NTIA filed with the Committee Petition.⁴⁶

In accordance with the request of the Committee, and in the absence of any objection from the Applicants, we grant the Committee Petition. Accordingly, we condition grant of the Application to transfer domestic section 214 authority on compliance by the Applicants with the commitments and undertakings set forth in the LOA that apply to the Application.⁴⁷ A failure to comply with and/or remain in compliance with any of the provisions of the LOA shall constitute a failure to meet a condition of this grant and the underlying authorizations and licenses and thus grounds for declaring the underlying authorizations and licenses terminated without further action on the part of the Commission. A failure to meet a condition of this grant and the underlying authorizations and licenses may also result in monetary sanctions or other enforcement action by the Commission.

Grant of Application

We find, upon consideration of the record, that the proposed transfer will serve the public interest, convenience, and necessity.⁴⁸ This grant of the Application is conditioned as set out in this Public Notice.

Therefore, pursuant to section 214 of the Act, 47 U.S.C. § 214, and sections 0.91, 0.291, 63.03, and 63.04 of the Commission’s rules, 47 CFR §§ 0.91, 0.291, 63.03, and 63.04, the Bureau hereby grants the Application discussed in this Public Notice, subject to Applicants’ compliance with all applicable obligations.⁴⁹

⁴³ See *Public Notice* at 3.

⁴⁴ Letter from Elizabeth K. McIntyre, Attorney Advisor, U.S. Department of Justice, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-268; File No. ISP-PDR-20230807-00007, and Attach. (filed Sept. 14, 2023).

⁴⁵ Letter from Nadia Asanchev, Attorney Advisor, U.S. Department of Justice, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-268; File No. ISP-PDR-20230807-00007, and Attach. (filed Jan. 23, 2024).

⁴⁶ Committee Petition at 2.

⁴⁷ *T-Mobile/Sprint Order*, 34 FCC Rcd at 10732-33, para. 349; *Foreign Participation Order*, 12 FCC Rcd at 23918-21, paras. 59-66.

⁴⁸ See 47 U.S.C. § 214(a); 47 CFR § 63.03.

⁴⁹ See, e.g., *AtLink CAF Phase II Authorization Public Notice*, 34 FCC Rcd at 5967-71 (providing a non-exhaustive list of obligations).

Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the grant is effective upon release of this Public Notice.⁵⁰ Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.

For further information, please contact Dennis Johnson, Wireline Competition Bureau, Competition Policy Division, (202) 418-0809.

-FCC-

⁵⁰ We direct Applicants to submit, within 30 days of closing the proposed transaction, a notice in WC Docket No. 23-268 that the proposed transaction has closed, with the consummation date, and also provide a courtesy copy of the notice to hcinfo@usac.org.