

**Before the
Federal Communications Commission
Washington, DC 20544**

In the Matter of)	
)	
Redwire, Inc.)	AU Docket No. 17-182
)	
Connect America Fund Phase II Auction)	
(Auction 903))	

To: Chief, Wireless Telecommunications Bureau

PETITION FOR WAIVER OF DEADLINE FOR ETC DESIGNATION

Redwire, Inc. (“Redwire”), by counsel and pursuant to Section 1.3 of the Commission’s Rules and procedures described by the Wireline Competition Bureau (“Bureau”),¹ respectfully requests waiver of the February 25, 2019 deadline to submit documentation of its eligible telecommunications carrier (“ETC”) designation in the state of Oklahoma, where Redwire is provisionally selected to receive Connect America Fund (“CAF”) Phase II support to deploy broadband service to 8,041 locations in Oklahoma.² As described herein, there is “good cause” for waiver.

Background

Redwire is a corporation formed for the purpose of participating in the CAF Phase II reverse auction. Redwire has two shareholders. The Otoe-Missouria Development Authority, Inc. (“OMDA”), the official enterprise and economic development of the federally-recognized Otoe-Missouria Tribe of Oklahoma (the “Tribe”), owns 51 percent of Redwire. The Tribe is

¹ See Public Notice, *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, DA 18-887 (rel. Aug. 28, 2018) (“*Auction Closing Public Notice*”). This Petition is also being filed in Redwire’s long-form application.

² See *id.*

based in Red Rock, Oklahoma and has approximately 3,300 members in North Central Oklahoma. These areas lack adequate fixed broadband service. The remaining 49 percent of Redwire is owned by TribalCom Wireless Solutions, LLC (“TribalCom Wireless”). TribalCom Wireless’ owners are TribalCom, LLC, which is majority-owned by John Fryrear, and Unitex Telecom, Inc. which is owned equally by Justin Nemec and John Yoo.

In November of 2017, TribalCom approached OMDA about the CAF auction opportunity. OMDA agreed to form Redwire as the entity that would bid in the auction. TribalCom indicated to OMDA that TribalCom would take responsibility for filing the application and conducting the bidding. OMDA made clear that its interest was in obtaining CAF support for Tribal lands in North Central Oklahoma and that TribalCom should focus its efforts on obtaining support for census blocks in that area. TribalCom did not provide OMDA with any updates of bidding during the auction.

Following the auction, OMDA was surprised to learn that Redwire was not the successful bidder in the areas it had targeted, but rather had won census blocks in other parts of Oklahoma. Although pleased that Redwire was successful, OMDA was very disappointed that the census blocks did not include the identified Tribal lands.

TribalCom Wireless also did not explain the post-auction process to OMDA, and OMDA continued to operate under TribalCom’s general statement that it would handle the process. Unfortunately, TribalCom Wireless did not follow through in a timely manner to file for ETC certification. As a result, Redwire filed the ETC application with the FCC instead of the Oklahoma Corporation Commission (“OCC”) in reliance on TribalCom Wireless’ poor mapping of the census blocks.

OMDA is now in the process of acquiring TribalCom Wireless’ interest in Redwire. Redwire also has retained STS Engineering and undersigned counsel to assist with the long-form

application, deployment and ongoing compliance and reporting. OMDA, through Redwire, remains committed to deploying broadband in the designated census blocks and believes it now has the resources and expertise to achieve that goal, consistent with the FCC's objective to close "the digital divide for all Americans, including those in rural areas of our country."³

Discussion

In the *Auction Closing Public Notice*, the Bureau provisionally selected Redwire for CAF funding for 1,541 census blocks in Oklahoma.⁴ Redwire has continued to prosecute its CAF long-form applications and satisfied the Commission's October 15, 2018 and November 5, 2018 deadlines to submit detailed technical information, system design descriptions and letter of credit commitment letter.

On February 15, 2019, Redwire filed an application with the Federal Communications Commission ("FCC") for ETC authority for the 1,541 census blocks in Oklahoma for which it was named the auction winner. As discussed above, TribalCom Wireless had provided assurances that it would handle CAF-related tasks, but TribalCom Wireless did not complete certain long-form requirements in a timely manner, including the requirement to file an application for ETC designation within 30 days of the release of the *Auction Closing Public Notice*. Following the auction, Redwire believed that its CAF areas covered the Tribe's lands and that, accordingly, the OCC would not have jurisdiction over Redwire's ETC application. However, following a more thorough review of the census blocks and its retention of local counsel in Oklahoma, Redwire subsequently determined that none of the census blocks where it

³ See Public Notice, *Connect America Fund Phase II Auction Scheduled for July 24, 2018; Notice and Filing Requirements and Other Procedures for Auction 903*, WC Docket No. 10-90, FCC 18-6 (rel. Feb. 1, 2018) at 1, ¶ 1.

⁴ See *Auction Closing Public Notice*.

was declared the auction winner were located on the Tribe's lands. Accordingly, on March 3, 2019, Redwire withdrew the ETC application it had filed with the FCC.

On February 22, 2019, Redwire filed its ETC application with the OCC (Cause No. 201900009). Redwire filed an amended application on June 12, 2019 "to amend the service territory for which Redwire requests ETC designation to include all of the census blocks in which Redwire has been awarded CAF II support."⁵ On October 15, 2019, Redwire filed a second amended application providing a corrected map of the census blocks for which ETC designation is sought.⁶ On October 17, 2019, the OCC's Public Utility Division submitted written testimony to the OCC indicating its belief that Redwire has satisfied state ETC requirements and recommending approval of the Amended Application.⁷ OCC approval is expected in the next few weeks.

The Commission may waive a rule for good cause shown.⁸ Waiver is appropriate where the "particular facts would make strict compliance inconsistent with the public interest."⁹ The Commission may grant a waiver of its rules where the requested relief would not undermine the policy objective of the rule in question, special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.¹⁰ The Commission may take into

⁵ Amended Application of Redwire, Inc. for Designation as an Eligible Telecommunications Carrier, Cause No. PUD 201900009 (filed June 12, 2019) at 1.

⁶ See Amended Application of Redwire, Inc. for Designation as an Eligible Telecommunications Carrier, Cause No. PUD 201900009 (filed Oct. 15, 2019) (collectively, "Amended Application") at 1.

⁷ Testimony of Jenny Dillon for Public Utility Division, Cause No. PUD 201900009 (filed Oct. 17, 2019) at 5-6.

⁸ See 47 C.F.R. § 1.3.

⁹ See *Northeast Cellular Telephone Company v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*").

¹⁰ See generally *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹¹

In the *Report and Order* adopting rules for the CAF Phase II program, the Commission anticipated that there may be circumstances where a provisional winner would be unable to provide documentation of ETC designation within the 180-day timeframe (*i.e.*, by February 25, 2019).¹² The Commission specifically stated that:

In the event the bidder is unable to obtain the necessary ETC designations within 180 days, we find that it would be appropriate to waive the 180-day timeframe if the bidder is able to demonstrate that it has engaged in good faith efforts to obtain an ETC designation, but the proceeding is not yet complete. A waiver of the 180-day deadline would be appropriate if, for example, an entity has an ETC application pending with a state and the state's next scheduled meeting at which it would consider the ETC application will occur after the 180-day window.

The Bureau released the *Auction Closing Public Notice* on August 28, 2018. Since that date, and notwithstanding TribalCom Wireless's false assertions and dilatory conduct, Redwire has diligently and in good faith prosecuted its long-form applications and filed its ETC application. OCC Staff has been responsive, cooperative, and supportive to Redwire throughout the Oklahoma ETC application process. Redwire fully expects to receive final approval very soon – within the next few weeks – and will keep the FCC informed of the status of the Amended Application. In short, consistent with the *Phase II Auction Order*, Redwire's efforts demonstrate that Redwire acted in “good faith” by diligently taking all steps necessary to comply with the February 25, 2019 deadline.

FCC staff has consistently granted waiver of the February 25, 2019 deadline. For example, in a May 6, 2019 Order, the Bureau waived the deadline for Tombigbee Communications, Inc. (“Tombigbee”) where Tombigbee filed its ETC application with the FCC

¹¹ See *id.* at 1159; *Northeast Cellular* at 1166.

¹² See *Connect America Fund*, 31 FCC Rcd 5949 (2016) (“*Phase II Auction Order*”) at ¶ 152.

on February 22, 2019 – one week after Redwire filed its initial ETC application with the FCC and, coincidentally, the same day that Redwire filed its ETC application with the State of Oklahoma.¹³ Like Redwire here, Tombigbee erroneously believed that the jurisdiction where it filed its initial ETC application – in that case the state – had authority to act on the ETC application. On it determined that this was incorrect, it immediately took steps to file its ETC application with the FCC. The Bureau explained that

Based on these circumstances, we find that Tombigbee acted diligently in attempting to obtain its ETC designation prior to the Auction 903 ETC deadline and, accordingly, waive the Auction 903 ETC deadline. The late-filing of this ETC application did not delay the Commission’s long-form application review process or the provision of voice and broadband services to consumers living in the areas where the petitioner was awarded support.¹⁴

The following month, the Bureau, citing the above-discussed Order, granted a waiver of the ETC certification deadline to Plains Internet, LLC, a CAF auction winner that filed its ETC application on December 3, 2018. Similar to Tombigbee and Redwire here, Plains Internet demonstrated that the basis for its filing on that date was a lack of understanding that the state had ETC jurisdiction. As it did in the May 6 Order, the Bureau made clear that “Plains Internet acted diligently in attempting to obtain its ETC designation prior to the deadline” and “[t]he late-filing of this ETC application did not delay the Commission’s long-form application review process or the provision of voice and broadband services to consumers living in the areas where the long-form applicant was awarded support.”¹⁵

¹³ See Order, WC Docket Nos. 09-197 and 10-90 (rel. May 6, 2019).

¹⁴ *Id.* at 10, ¶ 32 (footnote omitted).

¹⁵ Public Notice, *Connect America Fund Phase II Auction Support for 611 Winning Bids Ready to be Authorized*, AU Docket No. 17-182 & WC Docket No. 10-90, DA 19-535 (rel. June 7, 2019), at 2 (citation omitted); see also Public Notice, *Connect America Fund Phase II Auction Support for 2,025 Winning Bids Ready to be Authorized*, AU Docket No. 17-182 & WC Docket No. 10-90, DA 19-403 (rel. May 10, 2019), at 2 (granting waiver to Mercury Wireless Indiana, LLC which filed for ETC status after the 30-day deadline).

The Bureau can make the same finding here. FCC staff has not completed its review of Redwire's long-form application. As evidenced by recent updates to its long-form application and its retention of STS Engineering and experienced state and federal regulatory counsel, Redwire is proceeding expeditiously and diligently to complete its long-form application.

Waiver also would be consistent with the Bureau's decision to grant waiver to rural broadband experiment program recipients. In *Skybeam*,¹⁶ the Bureau found good cause to grant Skybeam's petition for waiver where Skybeam had diligently prosecuted its ETC application but did not receive ETC designation until after the deadline because of the timing of final state proceedings. The Bureau granted the waiver when it announced that it was ready to authorize Skybeam for initial-round funding. The same result should apply here given Redwire's diligence and good faith efforts with respect to its long-form application and its ETC application.

Waiver also would be consistent with other decisions in which the Commission waived Universal Service Fund filing deadlines. For example, in granting appeals of USAC decisions, the Commission waived Section 54.507 to permit schools that had missed the Form 471 filing deadline for various reasons, stating that strict enforcement of the deadline would create undue hardship by denying schools access to E-rate support.¹⁷ In granting Redwire's subject waiver request, the Bureau would be acting in a consistent manner by permitting a funding application to move forward. Here, where the Commission has established guidelines for a "good faith" presumption and Redwire has

¹⁶ *Skybeam, LLC Petition for Waiver of Deadline for ETC Designations*, WC Docket No. 10-90 et al. (filed Mar. 5, 2015), granted by Public Notice, *Wireline Competition Bureau Announces Rural Broadband Experiments Support for 15 Provisionally Selected Bids is Ready to be Authorized and Releases Updated Frequently Asked Questions*, WC Docket No. 10-90 & WC Docket No. 14-259 (rel. May 27, 2015).

¹⁷ See, e.g., *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, New Orleans, Louisiana*, 21 FCC Rcd 5316 (2006). See also *Universal Service High-Cost Filing Deadlines*, 29 FCC Rcd 3198 (2014); *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Academy of Math, Science, Tucson, Arizona, et al.*, 25 FCC Rcd 9256 (2010).

demonstrated that the reasons for an extension are beyond Redwire's control, "good cause" for grant of a waiver is even more compelling and clear.

Redwire remains committed to meeting the public interest demand for fixed broadband service in unserved rural areas of Oklahoma. In the absence of a waiver and rejection of Redwire's long-form application, these areas likely would remain unserved, a result that would be inconsistent with the public interest and the objectives of the CAF II program.

Conclusion

Redwire respectfully submits that the foregoing demonstrates "good cause" for grant of a waiver of the February 25, 2019 deadline for providing evidence that it is an ETC in Oklahoma. Consistent with the standard for waiver described in the *Phase II Auction Order* and the Bureau's decisions granting waivers to CAF auction winners, Redwire has continued to act with due diligence and in good faith in attempting to obtain ETC status in Oklahoma. OCC approval of the Amended Application and ETC designation are expected in the very near future. Grant of this waiver request would be consistent with the public interest, and the Bureau thus should grant this petition.

Respectfully submitted,

REDWIRE, INC.

By: /s/ Stephen E. Coran
Stephen E. Coran
Lerman Senter PLLC
2001 L Street, N.W., Suite 400
Washington, DC 20036
(202) 416-6744

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Its Attorneys