



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202 / 418-0500
Internet: <https://www.fcc.gov>
TTY: 1-888-835-5322

DA 21-1512

Released: December 8, 2021

WIRELINE COMPETITION BUREAU APPROVES EXCHANGE OF CAF PHASE II SUPPORTED CENSUS BLOCKS BETWEEN AMG TECHNOLOGY INVESTMENT GROUP, LLC DBA NEXTLINK INTERNET AND PLAINS INTERNET, LLC; MODIFIES DEPLOYMENT OBLIGATIONS AND SUPPORT AMOUNTS; WAIVES ELAP RULES TO PERMIT UPDATE TO LOCATION INFORMATION

WC Docket No. 10-90

On August 25, 2021, the Commission approved the transfer of domestic section 214 authorizations between AMG Technology Investment Group, LLC dba Nextlink Internet (Nextlink) and Plains Internet, LLC (Plains) (together, the Parties) in relation to the exchange of Connect America Fund (CAF) Phase II auction (Auction 903) support and obligations associated with certain census blocks in Texas.¹ Consistent with this approval, the Bureau, in coordination with the Rural Broadband Auctions Task Force (RBATF), modifies the support and associated defined deployment obligations of each of the Parties in recognition of this block exchange and authorizes each Party to receive modified support amounts, as described in more detail below.²

In the *Transfer Order*, the Bureau granted the Parties' application, pursuant to section 214 of the Communications Act of 1934, as amended (Act), and sections 63.03-04 of the Commission's rules, requesting approval for the transfer of domestic section 214 authorizations between the Parties.³ The Parties consummated the transaction on August 25, 2021.⁴ Per the terms of this transaction, Nextlink transferred to Plains 189 census blocks (16 awarded census block groups) with an associated annual Phase II auction annual support totaling \$132,289.33. Plains transferred to Nextlink 78 census blocks (three awarded census block groups) with an associated annual Phase II auction annual support totaling \$142,967.75.⁵ On net and pursuant to the terms of this authorization, Nextlink's support will increase by

¹ Domestic 214 Application Granted for Transfer of Certain Authorizations of AMG Technology Investment Group dba Nextlink Internet and Plains Internet, LLC, WC Docket No. 21-266, Public Notice, DA 21-1046 (rel. Aug. 25, 2021) (*Transfer Order*); *Connect America Fund Phase II Auction Support Authorized for 2,413 Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 5966, 5974-6026, Attach. A (Authorized Long Form Applicants and Winning Bids) (WCB 2019) (authorizing, among other support, CAF support for Nextlink in Texas Study Area Code (SAC) 449089) (*Nextlink Authorization Public Notice*); *Connect America Fund Phase II Auction Support Authorized for 593 Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 7081, 7111-115, Attach. A (Authorized Long Form Applicants and Winning Bids) (WCB 2019) (authorizing, among other support, CAF support for Plains in Texas SAC 449091) (*Plains Authorization Public Notice*).

² The Bureau has also revised the Authorized Auction 903 Long-Form Applicants (xlsx) data file available at <https://www.fcc.gov/files/a903authorizedpnall10-12-20.xlsx>.

³ See *Transfer Order*.

⁴ See Letter to Marlene K. Dortch, FCC, from Steven E. Coran, Counsel to AMG Technology Investment Group, LLC dba Nextlink Internet and Plains Internet, LLC, WC Docket No. 21-266 (filed Sept. 23, 2021).

\$10,678.42 per year and Plains' support will decrease by \$10,678.42 per year. In addition, Nextlink's defined deployment obligation for Texas will increase by 105 locations for a revised defined deployment obligation of 33,908 locations, and Plains' defined deployment obligation for Texas will decrease by 105 locations, for a revised defined deployment obligation of 834 locations.⁶

As a condition of this authorization, each Party assumes responsibility for complying with universal service fund requirements and Commission rules, regardless of any preexisting or reasonably foreseeable conditions on the ground in the exchanged blocks that could negatively impact the Party's ability to meet these obligations. Indeed, any carrier seeking authorization to receive high cost support pursuant to a section 214 transfer must conduct the proper due diligence prior to consummation of the transaction, and, in doing so, must assume all risk and consequences of noncompliance with Phase II auction requirements, including default penalties.⁷ Accordingly, each of the Parties must meet all administrative, performance, and deployment Phase II auction obligations and deadlines as modified by the exchange, including deployment of voice and broadband service meeting minimum standards to 40% of locations by the end of 2022, 60% of all locations by the end of 2023, 80% by the end of 2024, and 100% by 2025.⁸

Because both Parties successfully completed the Phase II auction application processes in 2019, and both Parties will continue to offer the same terrestrial wireless service and standards of service, the Bureau will not ask for additional information to reevaluate these Parties' technical and financial ability to meet the revised obligations that they now assume. We also note that, as a condition of receiving approval of their section 214 Applications, has each of the Parties has committed to meeting all Phase II auction performance and deployment requirements, attested to having necessary managerial and operational expertise to meet buildout and performance obligations, and has committed to remaining financially and technically capable of fulfilling the obligations required as a condition of receiving such support.⁹

The Bureau also finds each of the Parties has met all other relevant prerequisites to authorization. The Bureau recognizes that the Texas Public Utility Commission has approved each of the Parties'

(Continued from previous page) —————

⁵ Joint Application for Consent to Assignment of AMG Technology Investment Group, LLC dba Nextlink Internet and Plains Internet, LLC, for Consent to Assignment under Domestic Section 214 Authorizations, WC Docket No. 21-266 at Exh. 1 (filed June 17, 2021) (214 Application) (listing Phase II auction census blocks being assigned from Plains to Nextlink); Exh. 2 ((listing Phase II auction census blocks being assigned from Nextlink to Plains). On July 12, 2021, Applicants filed a supplement to their domestic section 214 application. Letter from Stephen E. Coran, Counsel for Applicants, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-266 (filed July 12, 2021) (Supplement).

⁶ See Attachment.

⁷ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order on Reconsideration, 33 FCC Rcd 1380,1390, para. 25 (2018) ("emphasiz[ing] that applicants are required to conduct the necessary due diligence prior to submitting their short-form applications, including identifying locations they will serve within the eligible areas, so that they can certify that they will be able to meet the relevant public interest obligations when they submit their applications."); see also *id.* at 5966, para. 47 (acknowledging that the risk of noncompliance is a factor in the bidding process but emphasizing that recipients of support awarded through a competitive bidding process generally have control over project areas and size and bid amounts).

⁸ 47 CFR § 54.316(b)(4); *Phase II Auction Order*, 31 FCC Rcd at 6011, para. 174. We have provided a summary of the various obligations of authorized CAF Phase II auction support recipients in prior authorization public notices, including those authorizing support for Nextlink and Plains. See *Nextlink Authorization Public Notice*, 34 FCC Rcd at 5967-5971 (WCB 2021); *Plains Authorization Public Notice*, 34 FCC Rcd at 7081-7085. As stated therein, the list is not intended to be comprehensive and all authorized parties are still responsible for conducting the due diligence required to comply with universal service fund requirements and the Commission's rules. See *Nextlink Authorization Public Notice*, 34 FCC Rcd at 5966; *Plains Authorization Public Notice*, 34 FCC Rcd at 7081.

⁹ *Transfer Order* at 3; Supplement at 1.

requests to relinquish their Eligible Telecommunications Carrier (ETC) designations in the relevant transferred census blocks and designated each of these Parties as an ETC eligible to receive funding associated with their respective acquired blocks.¹⁰

Pursuant to a waiver order effective until the end of 2021, the Bureau permitted Phase II auction support recipients to reduce their Letters of Credit (LOCs) consistent with Rural Digital Opportunity Fund (RDOF) LOC rules.¹¹ This waiver was then extended until December 31, 2022.¹² Nextlink certified that it has reached the optional milestone for its service area in Texas (SAC 449089) by deploying service to 20% of its original defined deployment obligation of 33,803 locations, successfully passed USAC's verification process, and reduced its LOC in accordance with this waiver flexibility, all well in advance of the consummation of this transfer on September 25, 2021. Even though this exchange of blocks increases Nextlink's total defined deployment obligation, we do not retroactively alter the prior determination that Nextlink satisfied its 20% milestone to account for this increase. While Nextlink must increase its LOC to reflect the revised support amounts it will receive, we leave undisturbed the decision to limit the LOC obligation consistent with the terms of the waiver grant and satisfaction of the 20% milestone.

Parties have LOCs securing the adjusted support amounts resulting from the transaction as a condition of this authorization. USAC has reviewed and approved the LOCs of each of the Parties. Accordingly, we authorize the Parties to receive the support associated with their newly acquired blocks. We direct USAC to disburse from the Universal Service Fund the revised Phase II auction support amounts that have not already been disbursed as of the release of this public notice. Such support will continue to be paid in monthly installments to the account on file for the 498 ID associated with their respective SACs, 449089 for AMG, and 449091 for Plains.

We also find good cause to waive the procedural rules adopted for the Eligible Locations Adjustment Process (ELAP) as necessary to permit Nextlink to amend its ELAP filings to include location information for the 78 census blocks for which it is newly authorized to receive support. Nextlink must submit this information no later than December 15, 2021.¹³ Nextlink demonstrated due diligence by timely submitting location evidence meeting ELAP *prima facie* evidentiary requirements for all of its supported areas in Texas by the August 3, 2021 ELAP filing deadline.¹⁴ This deadline preceded

¹⁰ *Joint Application of Plains Internet, LLC and AMG Technology Investment Group, LLC dba Nextlink Internet to Revise Eligible Telecommunications Carrier Service Areas*, Docket No. 50807, Order, at 8 (Pub. Util. Comm'n. of Texas, May 6, 2021) (approving each Applicant's relinquishment of census blocks and the other Applicant's designation as an ETC in each such census block involved in the proposed transaction) (*Texas ETC Order*).

¹¹ See *Connect America Fund, et al.*, Order, 35 FCC Rcd 6556, 6560, para. 10 (WCB 2020); 47 CFR § 54.804(c)(1)(v).

¹² *Connect America Fund; ETC Annual Reports and Certification; Rural Broadband Experiments; Connect America Fund Phase II Auction*, WC Docket Nos. 10-90, 14-58, 14-259; AU Docket No. 17-182, Order, DA 21-1502 (WCB rel. Dec. 2, 2021).

¹³ 47 CFR § 1.3 ("Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown."). Good cause may be found "where particular facts would make strict compliance inconsistent with the public interest." *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). In making this determination, the Commission may "take into account considerations of hardship, equity, or more effective implementation of overall policy." *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969). Waiver of the Commission's rules is "appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." *Ne. Cellular Tel. Co.*, 897 F.2d at 1166. 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. See, e.g., *Request for Permanent Renewal of, and Changes to Conditions on, Waiver Granted to SafeView, Inc.*, Order, 26 FCC Rcd 10250, 10252 (OET 2011) (citing *Ne. Cellular Tel. Co.*, 897 F.2d at 1166); see also *WAIT Radio*, 418 F.2d at 1155, 1157.

¹⁴ *WCB Announces CAF Phase II Support Recipients Meeting Standards for Continuing with the Eligible Locations Adjustment Process et al.*, Public Notice, DA 21-1479 (WCB rel. Nov. 29, 2021).

the August 25, 2021 release of the *Transfer Order*, only after which time Nextlink had reasonable notice and obligation to begin assessing locations within all CAF Phase II eligible areas it would acquire from Plains. The December 15, 2021 deadline thus provides a reasonable time frame for Nextlink to amend its ELAP filings without compromising the ability of the public to timely review this information in advance of the stakeholder challenge. Under these special circumstances, grant of the waiver serves the public interest by furthering the underlying policy goals of ELAP without giving Nextlink an unfair advantage over other participating carriers.

For further information, please contact Nissa Laughner, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau at Nissa.Laughner@fcc.gov or 202-418-7400 or at TTY (202) 418-0484.

- FCC-

ATTACHMENT**Summary of Changes to Defined Deployment Obligations of Parties**

Funding Recipient	Obligation	Total Number of Census Blocks	Total Number of Locations
AMG Technology Investment Group, LLC dba Nextlink Internet	Original	5,588	33,803
	Revised	5,666	33,908
Plains Internet, LLC	Original	353	939
	Revised	542	834