

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Rural Broadband Experiments	)	WC Docket No. 14-259

To: Chief, Wireline Competition Bureau

**SKYBEAM, LLC  
PETITION FOR WAIVER OF DEADLINE FOR ETC DESIGNATION**

Skybeam, LLC (“Skybeam”), by counsel and pursuant to Section 1.3 of the Commission’s Rules and procedures described by the Wireline Competition Bureau (“Bureau”),<sup>1</sup> respectfully requests waiver of the June 2, 2015 deadline to submit documentation of its eligible telecommunications carrier (“ETC”) designation in the state of Iowa, where Skybeam is provisionally selected to receive Rural Broadband Experiment (“RBE”) support for two additional projects (Bassett Project No. 1 and Parkersburg Project No. 9).<sup>2</sup> As described herein, and consistent with the Bureau’s recent grant of a similar waiver request for Skybeam’s Illinois ETC designation,<sup>3</sup> there is “good cause” for waiver.

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<sup>1</sup> See FAQs for Rural Broadband Experiments, available at <https://www.fcc.gov/encyclopedia/rural-broadband-experiments> (last visited May 28, 2015) (“*Bureau FAQs*”), at III.E (“To the extent any provisionally winning bidder believes it will be unable to obtain an ETC designation within this 90-day period due to circumstances outside of its control, i.e. the June 2nd deadline, it may file a request for waiver with the FCC, and should describe in its waiver request when it filed for ETC designation at the state and any relevant facts regarding the progress of the state ETC proceeding”).

<sup>2</sup> See *Public Notice*, “Wireline Competition Bureau Announces Additional Provisionally Selected Bidders for Rural Broadband Experiments and Sets Deadlines for Submission of Additional Information,” DA 15-288 (March 4, 2015) (“*Public Notice*”) at Attachment A. The *Public Notice* erroneously states a release date of March 4, 2014.

<sup>3</sup> See *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,” DA 15-635 (rel. May 27, 2015) (“*Ready Notice*”).

## **Background and Summary of ETC Application Status**

In the *Public Notice* released on March 4, 2015, the Bureau provisionally selected Skybeam for rural broadband experiment funding for projects covering census blocks in Iowa and Texas.<sup>4</sup> Skybeam has continued to prosecute its rural broadband experiment application for each project by timely submitting to the Commission three years of audited financial statements, technical information certified by a professional engineer and a written commitment for an irrevocable stand-by letter of credit.

On December 19, 2014, Skybeam filed an application with the Iowa Utilities Board (“IUB”) for ETC authority in Iowa for one project (Sioux City Project No. 10) selected in the initial funding round. On March 5, 2015, the day after the Bureau released the *Public Notice*, Skybeam filed supplemental exhibits with the IUB in order to include the additional census block areas for the two next in line projects (Bassett Project No. 1 and Parkersburg Project No. 9). On March 9, 2015, the IUB granted Skybeam ETC authority for its Sioux City project as well as the “next-in-line” Bassett and Parkersburg projects.

Because VoIP providers are regulated under Iowa law, however, IUB Staff requested that Skybeam file a separate application for a Certificate of Public Convenience and Necessity (“CPCN”) to be certified as a Competitive Local Exchange Carrier in Iowa. On February 27, 2015, Skybeam filed a CPCN application in order to be certified to provide VoIP services in Iowa. Based on a recent conversation between counsel and IUB Staff, Skybeam understands that Staff is working on an order recommending approval of Skybeam’s CPCN application and that the draft order will be submitted to the IUB in the next few business days. Barring unforeseen

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<sup>4</sup> Skybeam also was provisionally selected for a project in Minnesota, but withdrew that project from further consideration. See Letter from Jeff, Kohler, Skybeam Chief Development Officer, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 10-90 and 14-259 (filed Mar. 30, 2015). Skybeam obtained its ETC designation for its “next-in-line” project in Texas, and has uploaded a copy of that approval to its Form 5620.

complications or delay, Skybeam hopes to obtain a final order approving its CPCN application in June of 2015. Because of this additional requirement, the Bureau apparently will not deem Skybeam to have obtained the ETC designation required for the RBE program.

### **Discussion**

The Commission may waive a rule for good cause shown.<sup>5</sup> Waiver is appropriate where the “particular facts would make strict compliance inconsistent with the public interest.”<sup>6</sup> 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.<sup>7</sup> The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>8</sup>

In the *Report and Order* adopting rules for the rural broadband experiment program, the Commission anticipated that there may be circumstances where a provisional winner would be unable to provide documentation of ETC designation within the 90-day timeframe (*i.e.*, by June 2, 2015).<sup>9</sup> The Commission specifically stated that “a waiver of this deadline may be appropriate if a winning bidder is able to demonstrate that it has engaged in good faith to obtain ETC designation, but has not received approval within the 90-day timeframe.” The Commission further stated that:

We expect entities selected for funding to submit their ETC applications to the relevant jurisdiction as soon as possible after release of the public notice announcing winning bids, and *will presume an entity to have shown good faith if*

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<sup>5</sup> See 47 C.F.R. § 1.3.

<sup>6</sup> See *Northeast Cellular Telephone Company v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”).

<sup>7</sup> See generally *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

<sup>8</sup> See *id.* at 1159; *Northeast Cellular* at 1166.

<sup>9</sup> See *Connect America Fund; ETC Annual Reports and Certifications*, 29 FCC Rcd 8769, 8778 (2014) (emphasis added).

*it files its ETC application within 15 days of release of the public notice. A waiver of the 90-day deadline would be appropriate if, for example, if [sic] an entity has an ETC application pending with a state, and the state's next meeting at which it would consider the ETC application will occur after the 90-day window.*<sup>10</sup>

The Bureau reiterated the Commission's position in the *Bureau FAQs* posted on May 27, 2015, affirming that the Commission "will presume an entity is acting in good faith to complete the requirements necessary for it to be authorized for funding if the entity files its ETC application within 15 days of release of the provisionally selected bidders public notice."<sup>11</sup>

The Bureau released the *Public Notice* on March 4, 2015, and Skybeam filed its Iowa ETC application the following day. Following such filing, Skybeam has dutifully and diligently responded to requests for information and generally urged expedited action on its application where appropriate. Significantly, there are no objections to Skybeam's CPCN application, and Skybeam fully expects to receive final approval very soon. In short, Skybeam's efforts demonstrate that Skybeam acted in "good faith" by diligently taking all steps necessary to comply with the June 2 deadline.

Any lack of strict compliance with the deadline is not the result of any delay or shortcoming on Skybeam's part, but rather a consequence of the need to obtain a separate CPCN. Skybeam did not reasonably anticipate that the IUB would require a separate application process for a CPCN as part of the approval process, but it submitted its CPCN application as soon as practicable once the need for a CPCN became known. Nor was it anticipated that the Bureau would require the CPCN, in addition to the ETC designation Skybeam obtained on March 9, before it would authorize support. Further, Skybeam anticipates that a waiver of the June 2 deadline would be for a short duration while the IUB finalizes the CPCN approval process. Waiver of the June 2 deadline would not

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<sup>10</sup> *Id.* at 8778 n.52.

<sup>11</sup> *See Bureau FAQs* at III.D.

interpose delay in the implementation of the rural broadband experiment program, as evidenced by the adoption of the *Ready Notice*.

Waiver would be consistent with the Bureau's recent decision to grant a waiver to Skybeam with respect to its initial-round Illinois project. In the *Ready Notice*, the Bureau found good cause to grant Skybeam's petition for waiver where Skybeam had filed its ETC application within the 15-day "good faith" period but did not receive ETC designation until after the deadline because the next state commission meeting at which ETC applications could be approved did not occur until after the Commission's deadline for submitting evidence of ETC designation. Observing that Skybeam "timely submitted documentation," the Bureau granted the waiver in connection with its announcement that it was ready to authorize Skybeam for initial-round funding.<sup>12</sup> The same result should apply here, especially since Skybeam applied for state ETC designation *one day* after the *Public Notice* was released and its ETC designation (but not its CPCN) was approved on March 9.

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.<sup>13</sup> In granting Skybeam'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 Skybeam

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<sup>12</sup> *Ready Notice* at 3.

<sup>13</sup> 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).

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

Skybeam remains extremely interested in meeting the public interest demand for fixed broadband service in unserved rural areas of the country. In the absence of a waiver and rejection of Skybeam's "next-in-line" Iowa application, these areas would remain unserved, a result that would be inconsistent with the public interest and the objectives of the rural broadband experiment program.

### **Conclusion**

Skybeam, LLC respectfully submits that the foregoing demonstrates "good cause" for grant of a waiver of the June 2, 2015 deadline for providing evidence that it is an ETC in Iowa. Skybeam filed its ETC application on the first day of the 15-day "good faith" period, and has actually obtained ETC designation. Skybeam has continued to act with extreme diligence in attempting to obtain a CPCN by responding to IUB inquiries and submitting required information. Grant of the CPCN is expected in the very near future. Grant of this request would be consistent with the public interest, and the Bureau thus should grant this Petition.

Respectfully submitted,

**SKYBEAM, LLC**

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