

STATE OF IOWA
IOWA UTILITIES BOARD

In the Matter of Application of)
)
Skybeam, LLC) Docket No. WRU -2015
)
For a Certificate of Public Convenience and)
Necessity Authorizing the Company to Provide)
VoIP Services in Iowa)
)

FILED WITH
Executive Secretary
March 19, 2015
IOWA UTILITIES BOARD

VERIFIED MOTION FOR WAIVER OF REQUIREMENTS

Skybeam, LLC ("Skybeam"), through its attorney, Thomas H. Rowland, respectfully requests a waiver of specific Iowa Administrative Code sections related to Skybeam's Application for a Certificate of Public Convenience and Necessity ("CPCN") before the Iowa Utilities Board ("Board") to provide VoIP service in Iowa. In support of this motion, Skybeam states as follows:

1. Skybeam seeks CPCN designation in order to provide VoIP service in Iowa related to the Company's participation in the FCC's Rural Broadband Experiment program.
2. On July 14, 2014, the FCC adopted the *Rural Experiments Order*¹ and established a one-time program to award up to \$100 million to qualified applicants meeting certain criteria for the deployment of fixed broadband services in census blocks deemed by the FCC to be unserved by voice services and by broadband speeds of at least 4 Mbps downstream and 1 Mbps upstream. On November 10, 2014, Skybeam filed its application on FCC Form 5610. By *Public Notice*

¹ See *Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769 (2014) ("*Rural Experiments Order*").

dated December 5, 2014² the FCC provisionally selected Skybeam's application for 952 census blocks in Iowa. In a second Public Notice³, dated March 4, 2015, the FCC provisionally selected Skybeam for an additional 84 census blocks in Iowa. In so doing, the FCC determined that Skybeam proposed a cost-effective means of deploying broadband service to the designated census blocks. Skybeam's application pledged to deploy a network capable of delivering 100 Mbps downstream / 25 Mbps upstream with at least one service plan that provides 25 downstream / 5 upstream to all locations within the subject census blocks. Funding will be paid out to Skybeam over ten years. Among other things, the *Rural Experiments Order* requires Skybeam to become an ETC as a condition to receiving the funding. Therefore, on December 19, 2014 Skybeam submitted an ETC Application (docketed as ETA 2014-0005) before this Board for the purpose of receiving funding under the *Rural Experiments Order*.

3. In its *Rural Experiments Order*, the FCC adopted a census block methodology for designating a service area for the Rural Broadband Experiment program:

By accepting proposals at the census block level, we hope to provide greater flexibility to parties and encourage a greater number of entities to participate in the rural broadband experiments. For example, smaller entities may not be able to serve areas as large as census tracts, but would be interested in submitting proposals for smaller neighborhoods that they may already be well positioned to serve. Permitting applicants to aggregate census blocks themselves, rather than having to work within the pre-defined framework of census tracts, will encourage greater participation among these entities. Moreover, this approach provides an opportunity for entities to engage in an incremental expansion into neighboring areas, allowing parties to leverage economies of scale to provide broadband in an efficient manner that benefits consumers.⁴

Further, in its *Public Notice* the FCC stated:

² See *Public Notice*, DA 14-1772 (rel. Dec. 5, 2014).

³ See *Public Notice*, DA 15-288 (rel. March 4, 2015).

⁴ *Id.*

The identified bidders must provide appropriate documentation of their eligible telecommunications carrier (ETC) designation in each census block for which they are provisionally selected to receive support and certify that the information submitted is accurate.⁵

4. Skybeam recently received ETC approval from this Board with a service area based on the FCC's census block methodology. The Board's March 9, 2015 Order stated at page 11:

Eligible telecommunications carrier status is granted to Skybeam, LLC, as requested in its application filed December 19, 2014, as supplemented on February 27, 2015, and March 4 and 5, 2015, subject to the commitments described in the body of this order, in the census blocks listed in Attachment A.

5. 199 IAC 22.20 governs service territories for telephone utilities. It states:

Service territories are defined by the telephone exchange area boundary maps on file with the Iowa utilities board. The maps will be available for viewing at the board's office during regular business hours and copies are available at the cost of reproduction.

6. Skybeam requests a waiver of the Board's requirements related to designating its service territories as defined by telephone exchange boundaries. 199 IAC 22.20; 199 IAC 22.20.3.

7. Such a waiver is appropriate because, as noted above, the FCC approved Skybeam for participation in its Rural Broadband Experiment program using a census block methodology, and this Board approved the Company's ETC service area using the same methodology. Skybeam therefore respectfully requests that the Board use the same service area methodology for the Company's pending CPCN.

8. The application of the rule would therefore pose an undue hardship on the Company because the FCC and this Board has previously determined that the proper service area methodology for the Company's participation in the Rural Broadband Experiment program is via census blocks.

⁵ Public Notice, DA 14-1772 at Attachment B (Rel. Dec. 5, 2014).

9. Granting the requested waiver will not prejudice the substantial legal rights of any person because the Company has defined a service area in accordance with the FCC's methodology and is providing the Board with a description of the area.

10. The Company's requested waiver for the provision of fixed wireless VoIP services in accordance with the FCC's Rural Broadband Experiment program is not specifically mandated by statute or another provision of law.

11. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the rule for which the waiver is requested because the public will have notice of the Company's service area through a methodology that has previously been approved by the FCC and this Board.

WHEREFORE, on behalf of Skybeam, Counsel respectfully requests that the Iowa Utilities Board grant Skybeam waivers of Iowa Administrative Code sections 199 IAC 22.20 and 199 IAC 22.20.3 as inapplicable to establishing qualification for CPCN designation for purposes of Skybeam's provision of services in Iowa pursuant to the FCC's Rural Broadband Experiment program.

Dated: March 19, 2015

Respectfully submitted,

s/ Thomas H. Rowland
Thomas H. Rowland
Kevin D. Rhoda
Rowland & Moore LLP
200 West Superior Street
Suite 400
Chicago, Illinois 606010
(312) 803-1000
tom@telecomreg.com
krhoda@telecomreg.com

STATE OF ILLINOIS)

COUNTY OF COOK)

I, Thomas H. Rowland, depose and state that I am counsel for Skybeam, LLC, and the statements contained in the foregoing Verified Statement are correct to the best of my knowledge, information and belief.



Subscribed to and sworn to
Before me this 19th day of March 2015

