

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: SKYBEAM, LLC	DOCKET NOS. ETA-2014-0005, WRU-2014-0018-4424
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**ORDER DESIGNATING ELIGIBLE CARRIER AND
GRANTING WAIVER**

(Issued March 9, 2015)

I. BACKGROUND

In its *Rural Broadband Experiments Order*,¹ the Federal Communications Commission (FCC) directed \$100 million of Connect America Fund (CAF) support to targeted experiments to study the impact of technology transitions on rural America and to explore how broadband can be expanded in rural areas.

On December 5, 2014, the FCC announced that Skybeam, LLC (Skybeam), was provisionally selected to participate in the Rural Broadband Experiments Program. The FCC has indicated that provisionally selected bidders have until March 5, 2015, to obtain designation as an eligible telecommunications carrier (ETC). On March 5, 2015, Skybeam asked the FCC to waive the March 5 deadline.

On December 19, 2014, Skybeam filed with the Utilities Board (Board) an application requesting that the Board designate the company pursuant to 47 U.S.C.

¹ *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 (Rel. Jul. 14, 2014) ("*Rural Broadband Experiments Order*").

§ 214(e)(2) as a telecommunications carrier eligible under the provisions of 47 C.F.R. § 54.201(d) to receive federal universal service support.

On December 22, 2014, Skybeam filed a motion asking the Board to waive certain provisions of the Board's rules in 199 IAC 39. The waiver request was identified as Docket No. WRU-2014-0018-4424.

In its application, Skybeam explains it is a wholly-owned subsidiary of JAB Wireless, Inc. (JAB), which provides fixed wireless broadband and digital telephone services to residential, commercial, and enterprise customers using a combination of unlicensed and licensed frequencies. JAB serves approximately 175,000 wireless broadband subscribers and provides digital telephone service to 20,000 customers in 15 states.

Skybeam seeks an ETC designation in order to receive funds from the FCC's high-cost universal service programs awarded through the Rural Broadband Experiments Program. Skybeam asks the Board to issue an order on an expedited basis granting Skybeam ETC status so that it can begin to provide services to customers pursuant to the Rural Broadband Experiments Program as soon as possible.

Skybeam explains it will use fixed wireless technology to offer Voice over Internet Protocol (VoIP) and broadband service to residential and commercial locations with less than 100ms latency at speeds ranging from 5 Mbps downstream and 1 Mbps upstream to 25 Mbps downstream and 5 Mbps upstream. Skybeam will

also offer commercial and enterprise services to community anchor institutions and private enterprise; enterprise data services will deliver up to 1 gigabit per second.

Skybeam further explains that its service offerings will include voice service that will not exceed \$46.96 per month and a 10/1 Mbps broadband-only offering that will not exceed \$85.00 per month for up to 100 GB of monthly usage. Skybeam states that its network is designed to achieve 100/25Mbps service while offering a 25/5Mbps broadband service plan and that its broadband service is designed for no greater than 100 millisecond roundtrip latency.

Attached to Skybeam's application were Exhibit D, which listed census blocks that will comprise Skybeam's Iowa ETC service area, and Exhibit E, which is a map depicting the service area.²

Skybeam supplemented its application on February 27, 2015, and March 4, 2015, to provide additional information in response to questions from the Board. On March 5, 2015, Skybeam filed Supplemental Exhibits D-1, E-1, and E-2 listing and depicting additional census blocks that will be part of Skybeam's ETC service area.

No objections have been filed regarding Skybeam's application.

² On December 19, 2014, Skybeam filed a request for confidential treatment of Exhibit D and Exhibit E attached to its application. On December 22, 2014, Skybeam filed a revised request for confidential treatment of the exhibits. In a supplemental filing submitted on February 27, 2015, Skybeam withdrew the requests for confidential treatment of the exhibits.

II. DISCUSSION

A. Application for ETC Designation

The Board's rules at 199 IAC 39 provide a means by which the Board designates Iowa telecommunications carriers as eligible to receive funding from the universal service fund, pursuant to 47 U.S.C. § 214(e)(2). On February 13, 2015, in Docket No. RMU-2014-0002, the Board adopted amendments to its chapter 39 rules. Those amendments go into effect on April 8, 2015, and are intended to align the Board's rules with recent changes to the federal rules governing the USF and its component programs, including replacing the existing high-cost fund with the CAF and replacing the former list of nine supported services with a single supported service identified as "voice telephony service." See *Connect America Fund; et al.*, WC Docket Nos. 10-90, et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 F.C.C.R. 17663 (rel. Nov. 18, 2011).

Under federal law, 47 U.S.C. § 214(e)(2), states have primary responsibility for designating ETCs. The Board prefaces its discussion of whether Skybeam has complied with the requirements for ETC designation by noting that recipients of universal service support must offer voice telephony service on a common carrier basis throughout the carrier's service territory. Skybeam has not yet been certificated by the Board to provide voice service in Iowa, but has started the process of obtaining authorization to provide voice service in Iowa pursuant to Iowa Code § 476.29. On March 2, 2015, Skybeam filed with the Board an application for a certificate of public convenience and necessity (CPCN) in a proceeding identified as

Docket No. TCU-2015-0002. A certificate may be issued as soon as 30 days from the date of the application, but time for the Board's review of the application may be extended if objections are filed.

Pursuant to Board rule 39.2, 47 U.S.C. §§ 214(e) and 254, and corresponding federal regulations, the Board must determine that a carrier meets certain requirements before designating a carrier as eligible to receive support from the USF. The Board has reviewed Skybeam's statements in its application and supplemental filings for compliance with the Board's requirements in 199 IAC 39 for designating a carrier as eligible to receive funding from the federal USF and for compliance with federal requirements regarding ETCs.

With respect to federal requirements, Skybeam commits to provide (i) voice grade access to the public switched telephone network (PSTN) or its functional equivalent; (ii) minutes of use for local service provided at no additional charge to end users; (iii) access to emergency services; (iv) toll limitation services to qualifying low-income consumers as provided in accordance with 47 C.F.R. §§ 54.400 et seq. Skybeam indicates it will provide voice-grade access to the PSTN by providing interconnected VoIP service throughout its designated service area. Skybeam indicates that while the FCC has not specified a minimum amount of local usage that an ETC must offer, Skybeam will meet the local usage requirement by including local usage in its rate plans and will comply with any minimum requirements established by the FCC or the Board.

With respect to the requirement that ETCs provide access to emergency services, Skybeam indicates it will provide access to emergency services by providing 911 and E911 for its customers to the extent that the local governments in its designated service area have implemented 911 and E911.

Skybeam acknowledges its obligation as an ETC to make available Lifeline service pursuant to 47 C.F.R. § 54.405. Skybeam states it does not distinguish between toll and non-toll in its voice offering. Skybeam will offer toll limitation to qualifying low-income consumers at no additional charge in the event Skybeam offers a service that distinguishes between toll and non-toll calls.

Skybeam commits to offer the supported services throughout its service area using its own facilities and to advertise the availability of the services and the associated charges using media of general distribution. Skybeam explains that it provides high-speed broadband and digital telephone services to residential, commercial and enterprise customers using a combination of unlicensed and licensed frequencies. JAB has deployed a next generation fixed wireless network and targets rural markets outside of metropolitan areas that are either unserved or underserved. Skybeam states that it maintains one of the largest fixed wireless broadband networks in the United States, providing high-speed broadband and digital telephone services to residential, commercial and enterprise customers using a combination of unlicensed and licensed frequencies.

The application and supplemental filings contain statements which satisfy the Board's carrier eligibility requirements in 199 IAC 39.2. Skybeam states that it

- will offer the required services using its own facilities;
- will advertise the availability of the support services using media of general distribution to residential customers in its approved service area and will publicize the availability of its services in a manner reasonably designed to reach those likely to qualify for such service;
- will provide the supported services in a service area that includes the census blocks areas listed in Exhibit D and as shown on the map of the census block areas submitted as Exhibit E, and as shown in the supplemental exhibits filed on March 5, 2015;
- will comply with all state and federal consumer protection and service quality standards;
- is able to maintain a minimum of two hours of backup power to ensure functionality without an external power source;
- will offer a local usage plan comparable to that offered by the incumbent local exchange carrier in the relevant service areas; and
- acknowledges that the FCC may require it to provide equal access to long distance carriers in the event that no other eligible carrier is providing equal access within its ETC designated service area.

Skybeam states further that

- its designation as an ETC would serve the public interest by bringing increased competitive choices and unique advantages to qualifying Iowa consumers, serving the goals of universal service;

- it agrees to respond to Board surveys and requests for information;
- it will make rate and service information available by listing terms and conditions and service descriptions online on its website; and
- it will comply with the assessment for the Dual Party Relay Service by contributing three cents per month on each active telephone number.

Based on Skybeam's statements, certifications, representations, and documentation, and because Skybeam has filed an application for a CPCN to provide voice service in Iowa, the Board concludes that Skybeam will offer the services supported by the USF in the manner required by 199 IAC 39.2 and will comply with applicable state and federal requirements throughout its designated service area. The Board will grant Skybeam's application for designation as an ETC.

B. Motion for Waiver

Skybeam requests a waiver of the network improvement and maintenance plan requirements of rules 199 IAC 39.2(3)(e) and 199 IAC 39.5(8) and (9). Skybeam states that the *Rural Experiments Order* contain specific build-out requirements for the Rural Broadband Experiments Program. Those rules relate to network improvement and maintenance plans required of an applicant seeking designation as an ETC and to required extensions and progress reports required of carriers designated as ETCs. According to Skybeam, the FCC's *Rural Broadband Experiments Order* contains build-out requirements Skybeam was required to meet in order to become eligible for the for the Rural Broadband Experiments Program. The Board understands that the FCC's *Rural Experiments Order* provides that during the

ten-year support term, recipients will be required to meet interim build-out requirements consistent with build-out requirements the FCC adopted for recipients of CAF Phase II funding. By certain milestones during the ten-year program, support recipients must offer service meeting the FCC's public service obligation requirements for the relevant experiment and submit required certifications and evidence. The FCC waived the application of federal rule 47 C.F.R. § 54.313, which requires a high-cost recipient to provide annual progress reports on its five-year service quality improvement plan.³ In place of that rule, other requirements adopted for the rural broadband experiments will ensure that the FCC is kept apprised of the recipient's build-out progress and the FCC found it not necessary to require participating entities to file five-year service quality plans.⁴

To grant Skybeam's request for waiver of Board rules requiring network improvement plans and associated extensions and progress reports, the Board must find that the request meets the four criteria in 199 IAC 1.3. The four criteria are: 1) the application of the rule would cause undue hardship, 2) the waiver would not prejudice the substantial rights of any person, 3) the provisions of the rule are not specifically mandated by statute, and 4) substantially equal protection of the public health, safety, and welfare will be afforded by a means other than prescribed by the rule.

Based on the information provided by Skybeam about the build-out requirements and the Board's understanding of the related certifications that will be

³ See *Rural Broadband Experiments Order*, 29 FCC Rcd 8769, ¶ 77.

⁴ See *Rural Broadband Experiments Order*, 29 FCC Rcd 8769, ¶ 74.

required by the FCC which are unique to the Rural Broadband Experiments Program, the Board finds it would be an undue hardship for the Board to apply its rules at 199 IAC 39.2(3)(e) and 39.5(8) and (9) to require Skybeam to submit an initial network improvement plan with this application and subsequent extensions and progress reports relating to that plan. The first element of 199 IAC 1.3 has been met.

The Board finds that the second and third elements of rule 1.3 have also been satisfied insofar as no person's legal rights will be substantially prejudiced by granting the requested waiver and the waived provisions are not specifically mandated by Iowa statute.

Finally, the Board finds that the fourth element of rule 1.3 has been satisfied. The Board concludes that substantially equal protection of public health, safety, and welfare will be afforded because Skybeam will provide annual reports to the FCC that will address the network improvement and maintenance plan requirements in the Board's rules, modified to reflect factors unique to the Rural Broadband Experiments Program.

The Board will grant Skybeam's request for a waiver. The waiver will be in effect for a period of ten years (the life of the funding through the Rural Broadband Experiments Program) or until such time as there is a relevant change in the underlying facts and circumstances.

Finally, the Board observes that Skybeam will be designated as an ETC under the Board's current rules at 199 IAC 39, which will shortly be revised pursuant to amendments adopted in Docket No. RMU-2014-0002. As of April 8, 2015, the

effective date of the amendments, Skybeam will be subject to the new rules. The Board is granting Skybeam's requested waiver of the network improvement plan requirements in Board rules 39.2(3)(e) and 39.5(8) and (9). To the extent the network improvement plan requirements appear in the schedule of filings included in the new rules at 199 IAC 39.7(3)(d) ("Progress reports and extensions on previously filed two-year network improvement and maintenance plans"), the Board clarifies that the waiver also will apply to the new paragraph 39.7(3)(d) adopted in Docket RMU-2014-0002.

III. ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. 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.
2. The designated service area shall be the census blocks listed in Attachment A.
3. The Executive Secretary of the Utilities Board shall mail copies of this order to Skybeam, LLC, the Universal Service Administration Company, the Federal Communications Commission Universal Service Branch, and the Federal Communications Commission Office of the Secretary.

4. The motion for waiver of the Board's rules at 199 IAC 39.2(3)(e), 39.5(8), and 39.5(9) filed by Skybeam, LLC, on December 22, 2014, in Docket No. WRU-2014-0018-4424, is granted as discussed in the body of this order.

UTILITIES BOARD

/s/ Elizabeth S. Jacobs

/s/ Nick Wagner

ATTEST:

/s/ Joan Conrad
Executive Secretary

/s/ Sheila K. Tipton

Dated at Des Moines, Iowa, this 9th day of March 2015.

Skybeam, LLC
Census Blocks

Bid Project ID Entity FRN
Sioux City 0024062309

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Attachment A

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