

January 6, 2015

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: Skybeam, LLC – Statement in Opposition of Rural Broadband Experiments
Financial Waiver Requests
In the Matter of Connect America Fund Rural Broadband Experiments
WC Docket No. 10-90
WC Docket No. 14-259

Dear Ms. Dortch:

On behalf of Skybeam, LLC, a Colorado corporation (“Skybeam”), an entity provisionally selected for the Rural Broadband Experiments,¹ we submit the following comments in response to the Commission’s Public Notice requesting comments by interested parties to the financial waiver requests submitted by certain applicants for the Rural Broadband Experiments.²

Good Cause Cannot be Shown in Most Circumstances. Section 1.3 of the Commission’s Rules³ permits the Commission to grant a waiver to its rules if good cause is shown by a petitioner. In most petitions for waiver of financial qualification that have been submitted to the Commission with regard to the Rural Broadband Experiments and upon which the Commission now seeks comment, we disagree that good cause has been shown.

A waiver is only appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.⁴ It is clear, in the

¹ See *Public Notice*, DA 14-1772 (rel. Dec. 5, 2014).

² See *Public Notice*, DA 14-1889 (rel. Dec. 23, 2014).

³ 47 C.F.R. § 1.3.

⁴ *Northeast Cellular Telephone Co., L.P. v. F.C.C.*, 897 F.2d 1164 (D.C. Cir. 1969); see also, *Armstrong Telephone Co.*, 3 FCC Rcd. 1665 (rel. Mar. 23, 1988) (in which the Commission permitted amendment of

Commission's Report and Order⁵ and also in Notice of Proposed Rulemaking⁶ that the Commission required winning bidders to provide three consecutive years of audited financial statements within 10 business days of the public notification of winning bidders.⁷ In the Report and Order⁸, the Commission states that the audited financial statements provide "some assurance that these are serious bidders prepared to participate in the Phase II competitive bidding process." Further, in the Report and Order⁹, the Commission goes on to state that by providing audited financial statements, those applicants "will demonstrate a baseline understanding of the Commission's regulations and procedures." By failing to prepare such audited financial statements prior to the announcement of winning bidders, thereby ensuring that they are unable to fulfill this required delivery, those applicants seeking waivers essentially disregarded the rules and procedures established by the Commission and now seek a waiver of those rules, regulations and procedures. It is not fair to those that have complied with the audited financial statement requirement, whether having them prepared regularly or spending a large amount of time and money having them prepared especially for this opportunity.

Additionally, those applicants who have not been in business for three years should not get the benefit of being in business less than three years as a showing of good cause for the waiver of audited financial statements. As the Commission stated in its Report and Order¹⁰ "entities with three years of audited financial statements by definition are ongoing businesses." By waiving the audit requirement for those applicants that have not been in business for three years or more, the Commission is taking a risk that the applicant may not continue to be an ongoing business.

Skybeam reviewed the rules and procedures required prior to submitting its application, and it knew the possibility that it would need to provide such audited financial statements and the additional letter of credit should it be awarded any funds.

a defective financial showing by a sole wireline applicant in order to avoid the licensing delay inherent in a new lottery; however, that is not the case here where there are provisionally selected bidders who may be able to fulfill the audited financial statement requirements given the opportunity); *see also, Western California Cellular Partners*, 5 FCC Rcd. 2932 (rel. May 8, 1990) (denying a petition for waiver and citing to the Bureau in *Armstrong*, stating "[i]t is clear that the Bureau's decision to accept Armstrong's clarifying information was strictly limited to the facts of that case.").

⁵ *See Connect America Fund: ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, 14-192 Report and Order (rel. Dec. 18, 2014) ("*Report and Order*").

⁶ *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 (rel. July 14, 2014) ("*Notice of Proposed Rulemaking*").

⁷ *Report and Order* ¶ 82; *Notice of Proposed Rulemaking* ¶ 54.

⁸ *Report and Order* ¶ 86.

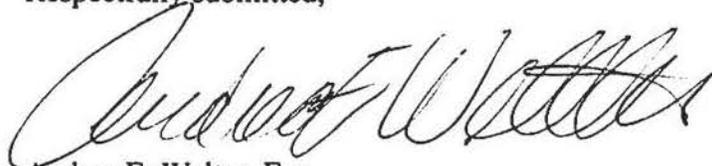
⁹ *Id.*

¹⁰ *Id.*

Skybeam was ready and willing to comply with the Commission's rules and regulations. It is detrimental to Skybeam, and the other winning bidders, or provisionally selected bidders who are in compliance with the audited financial statement requirement, to permit a waiver to each winning bidder of the audited financial requirements.

We appreciate the opportunity to provide comment on this matter.

Respectfully submitted,



Andrea E. Welter, Esq.

cc: Ian Forbes, Telecommunications Access Policy Division
(via e-mail: Ian.Forbes@fcc.gov)