

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

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

To: Chief, Wireline Competition Bureau

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

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”),¹ respectfully requests waiver of the March 5, 2015 deadline to submit documentation of its eligible telecommunications carrier (“ETC”) designation in the states of Illinois, Iowa and Nebraska, where Skybeam is provisionally selected to receive Rural Broadband Experiment (“RBE”) support.² As described herein, there is “good cause” for waiver in light of Skybeam’s timely filing of applications with the relevant states and its ongoing diligence in obtaining ETC approvals.

¹ See FAQs for Rural Broadband Experiments, *available at* http://transition.fcc.gov/wcb/FAQ_Rural_Broadband_Experiment.pdf (last visited March 1, 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 March 5th 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”).

² See *Public Notice*, “Wireline Competition Bureau Announces Entities Provisionally Selected for Rural Broadband Experiments; Sets Deadlines for Submission of Additional Information,” DA-14-1772 (Dec. 5, 2014) (“*Public Notice*”) at Attachment A.

Background and Summary of ETC Application Status

In the *Public Notice*, the Wireline Competition Bureau (“Bureau”) provisionally selected Skybeam for rural broadband experiment funding for projects covering census blocks in Kansas, Texas, Illinois, Iowa and Nebraska. 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.

Skybeam also has been diligently prosecuting its applications for ETC designation in each of the five states. On December 19, 2014 – 14 days after the Bureau released the *Public Notice*, Skybeam submitted ETC applications for each state. Since that time, Skybeam has timely responded to questions from reviewing state commission staff, filed requested information and documentation and amended applications as appropriate to address questions presented by staff in the various states. Two states, Kansas and Texas, have certified Skybeam as an ETC. Following is a state-by-state report on the status of Skybeam’s ETC applications.

Kansas (File No. 15-SKYT-262-ETC). Following the filing of its ETC application, Skybeam’s counsel had several conference calls with Kansas Corporation Commission Staff. Skybeam responded to information requests in January and staff recommended approval. On February 24, 2015, the Kansas Corporation Commission issued an Order granting Skybeam’s ETC application.³ Accordingly, Skybeam is not requesting waiver for its Kansas rural broadband experiment project.

Texas (File No. 44005). Following the filing of its ETC application, on January 19, 2015, the Public Utilities Commission of Texas (“TPUC”) issued an order stating that Skybeam

³ A copy of this Order is being submitted in the Form 5620 for the Kansas project.

had met the initial sufficiency test for an ETC filing. Skybeam's counsel has had numerous conference calls with TPUC Staff regarding Skybeam's structure and marketing of Lifeline services. As requested by TPUC staff, Skybeam submitted biographies, financials, organizations charts and marketing documents, and has responded to all of staff's outstanding questions. On February 24, 2015, the TPUC Staff issued a recommendation requesting administrative approval of Skybeam's ETC application. On March 4, 2015, the Administrative Law Judge signed an Order approving Skybeam's ETC application.⁴ Accordingly, Skybeam is not requesting waiver for its Texas rural broadband experiment project.

Illinois (File No. 14-0746). Following the filing of its ETC application, Skybeam participated in a pre-hearing status conference with the Illinois Commerce Commission ("ICC"). Skybeam submitted testimony on January 30, 2015 and responded to two sets of information requests. On February 12, 2015, ICC Staff indicated it had no objections and recommended approval of the application. On February 17, 2015, Skybeam presented its case at an evidentiary hearing. The parties entered into the record both the Skybeam testimony and the ICC Staff testimony. Skybeam drafted and submitted a Proposed Order for approval of its ETC application. The ICC Staff had no objection to the content of the Proposed Order, and on February 26, 2015, Skybeam submitted it to the Administrative Law Judge for consideration. The ICC is expected to rule on the application when the Commission meets on March 25, 2015. Skybeam is not aware of any reason why its application would be denied or why action would be deferred beyond March 25.

Iowa (File No. ETA-2014-0005). Following the filing of its ETC application, Skybeam responded to discovery requests from the Iowa Utilities Board ("IUB") Staff. Skybeam

⁴ A copy of this Order is being submitted in the Form 5620 for the Texas project.

diligently provided all requested information. VoIP providers are regulated under Iowa law. As a result, IUB Staff recommended that Skybeam file an 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 prepared and filed a CPCN application in order to be certified to provision VoIP services in the State. The ETC application and CPCN application may be considered on a similar Commission schedule. However, given that Skybeam has submitted all ETC-related filings, it is seeking an earlier ETC approval date. Based on a recent conversation between counsel and IUB Staff, Skybeam understands that Staff is working on an order recommending approval of Skybeam’s ETC application and that the draft order will be submitted to the IUB in the next few business days. Barring unforeseen complications or delay, Skybeam hopes to obtain a final order approving its ETC application in March 2015.

Nebraska (File No. C-4734/NSUF-101). Following the filing of its ETC application, Skybeam submitted all required and requested supporting information and documentation, including financials, marketing documents, technology background information, biographies, organizational charts and other information. On February 18, 2015, Skybeam participated in a pre-hearing conference with the Nebraska Public Service Commission (“NPSC”). The next day, Skybeam submitted testimony to the NPSC and on the following day answered Staff discovery. In response to questions about the Lifeline program and Nebraska state NTAP requirements, Skybeam amended its application on March 3, 2015 to provide additional information. In light of the filing of the amendment, a new 30-day notice public period is required. One party has intervened in the docket. Skybeam plans to present its testimony at a hearing before the NPSC in April 2015.

Discussion

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

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 March 5, 2015).⁹ 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 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.¹⁰

⁵ See 47 C.F.R. § 1.3.

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

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

⁸ See *id.* at 1159; *Northeast Cellular* at 1166.

⁹ See *Connect America Fund; ETC Annual Reports and Certifications*, 29 FCC Rcd 8769, 8778 (2014) (“*Report and Order*”) (emphasis added).

¹⁰ *Id.* at 8778 n.52.

The Bureau reiterated the Commission’s position in the *Bureau FAQs* posted on February 12, 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.”¹¹

The Bureau released the *Public Notice* on December 5, 2015. On December 19, 2015, well within the 15-day period in which “good faith” is presumed, Skybeam filed ETC applications with state commissions in each of the five states for which it was provisionally selected for rural broadband experiment funding. In the 76 days following submission of the ETC applications, at significant time and expense, Skybeam has dutifully and diligently responded to requests for information, submitted testimony, attended pre-hearing conferences, presented evidence at hearings and generally urged expedited action on its applications where appropriate. Two states, Kansas and Texas, have issued orders approving Skybeam’s ETC application, and staff in Illinois has recommended approval. Significantly, there are no objections to any of Skybeam’s ETC applications, and Skybeam fully expects to receive approval for ETC designation in Illinois, Iowa and Nebraska in due course. Skybeam recently briefed FCC Staff on the status of its ETC applications. In short, Skybeam’s efforts, and approvals in two states, demonstrate that Skybeam acted in “good faith” by diligently taking those steps necessary to comply with the deadline.

Skybeam has acted in good faith and with extreme diligence in prosecuting each of its state ETC applications. Any lack of compliance with the March 5 deadline is not the result of any delay or shortcoming on Skybeam’s part, but rather a consequence of several factors that are beyond Skybeam’s control. First, the rural broadband experiment program is a new funding mechanism that does not fit squarely within state laws or procedures. State commission staff may have been

¹¹ See *Bureau FAQs* at III.D.

unfamiliar with the rural broadband experiment program, and required some time to understand how the federal requirements and state requirements correlate. Second, the need to navigate novel issues presented by a first-time program raised questions from state commission staff that required time to understand and the submission of additional information. Third, in some states, especially those requiring hearings and judicial decisions, it simply is unrealistic for ETC applications to be processed, considered and approved within the 76 days between December 19, 2014 and March 5, 2015. Fourth, as described above, in some cases, as the Commission anticipated,¹² the state's next opportunity to consider ETC applications will occur after March 5. Finally, Skybeam anticipates that a waiver of the March 5 deadline would be for a short duration while Illinois, Iowa and Nebraska finalize their consideration of Skybeam's applications. Skybeam expects approval in Iowa this month and in Illinois on March 25, with Nebraska state certification expected next month following a second 30-day public notice period. Approvals are fully expected and imminent.

Waiver of the March 5 deadline would not interpose delay in the implementation of the rural broadband experiment program. The Bureau identified Skybeam for "next-in-line" consideration,¹³ and Skybeam timely submitted the required information on January 6, 2015. On March 4, 2015, the Bureau selected Skybeam for an additional \$11 million in rural broadband experiment funding for projects in Texas, Iowa and Minnesota.¹⁴ In two of these states, Iowa and Texas, Skybeam already begun (and in Texas, completed) the process of obtaining state ETC certification. Skybeam may need to seek modification of its ETC certifications to include additional census blocks, but Skybeam

¹² See *Report and Order* at 8778 n.52. For example, the Illinois commission is next scheduled to meet on March 25.

¹³ See *Public Notice*, "Wireline Competition Bureau Announces Deadline for Bidders Interested in Remaining Under Consideration for Rural Broadband Experiments Support to File Additional Information," WC Docket Nos. 10-90 and 14-259, DA 14-1839 (rel. Dec. 18, 2014).

¹⁴ See *Public Notice*, "Wireline Competition Bureau Announces Additional Provisionally Selected Bidders for Rural Broadband Experiments and Sets Deadlines for Submission of Additional Information," WC Docket Nos. 10-90 and 14-259, DA 15-288 (rel. March 4, 2015).

expects that the time to obtain such modified certifications would be truncated given the states' prior consideration of Skybeam's qualifications.¹⁵

Waiver also would be consistent with previous decisions in which the Commission waived filing deadlines for the Universal Service Fund. 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.¹⁶ 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 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.

As evidenced by its compliance with other deadlines and its submission of a provisionally selected "next-in-line" application, 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 applications, these areas would remain unserved, a result that would be inconsistent with the public interest and the objectives of the rural broadband experiment program.

¹⁵ Skybeam anticipates filing for ETC certification in Minnesota within the prescribed period, as well as seeking modification of its Texas and Iowa designations, within the 15-day period in which "good faith" is presumed.

¹⁶ 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).

Conclusion

Skybeam, LLC respectfully submits that the foregoing demonstrates “good cause” for grant of a waiver of the March 5, 2015 deadline for providing evidence that it is an ETC in the states of Illinois, Iowa and Nebraska. Skybeam filed its applications within the 15-day period for which “good faith” is presumed, has acted with extreme diligence in responding to state commission inquiries and submitting required information and expects approval in the near future. Any delay in receiving state approvals within the 76-day period can be attributed to factors beyond Skybeam’s control, such as the unique issues presented by the novel rural broadband experiment program and normal state approval processes. Grant of this request would be consistent with the public interest. The Bureau thus should grant this Petition.

Respectfully submitted,

SKYBEAM, LLC

March 5, 2015

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