

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

Before Commissioners: Shari Feist Albrecht, Chair  
Jay Scott Emler  
Pat Apple

In the Matter of the Application of Skybeam, )  
LLC for Designation as an Eligible )  
Telecommunications Carrier for Purposes of ) Docket No. 15-SKYT-262-ETC  
Receiving Federal Universal Service Support )  
for the Purpose of Participating in the FCC's )  
Rural Broadband Experiment Program )

## **ORDER GRANTING ELIGIBLE TELECOMMUNICATIONS CARRIER DESIGNATION IN 267 KANSAS CENSUS BLOCKS**

NOW, the above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed its files and records and being duly advised in the premises, the Commission makes the following findings:

1. On December 19, 2014, Skybeam, LLC (Skybeam) filed an Application with the Commission requesting designation as an Eligible Telecommunications Carrier (ETC) in 267 census blocks in Kansas. Skybeam was provisionally selected by the Federal Communications Commission (FCC) as a winning bidder for Category 1 funding from the FCC’s Rural Broadband Experiment (RBE) program. The purpose of the FCC’s RBE is to “advance deployment of voice and broadband-capable networks in rural, high-cost areas, including extremely high-cost areas...”<sup>1</sup>

2. In order to receive ETC designation from the Commission, the requesting carrier must make showings required by federal law. Pursuant to 47 U.S.C. § 214(e)(1)-(2), § 254(c), and 47 C.F.R. § 54.101(a), the carrier must make the following showings:

<sup>1</sup>Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, WC Docket No. 14-58 (July 14, 2014).

- a. The carrier will offer the services supported by federal universal service support mechanisms under 47 U.S.C. § 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another ETC) throughout the service area for which designation is received.<sup>2</sup>
- b. The carrier will advertise the availability of such service and the charges therefore using media of general distribution.
- c. Designation would be consistent with the public interest, convenience, and necessity.<sup>3</sup>

3. Pursuant to FCC orders, Commission orders, and Kansas law, the carrier requesting ETC designation must also show (when applicable):

- a. Lifeline customers will be able to apply the Lifeline discount to any calling plan offered by the carrier.<sup>4</sup> Additionally, the entirety of the Kansas Lifeline Service Program (KLSP) discount will be passed along to the end user consumer.<sup>5</sup> If the carrier offers the same service plans in other states that do not have additional

<sup>2</sup>The supported services are codified in 47 C.F.R. § 54.101(a), which reads as follows:

Voice Telephony services shall be supported by federal universal service support mechanisms. Eligible voice telephony services must provide voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers as provided in subpart E of this part.

47 C.F.R. § 54.101(a). Carriers who receive forbearance from the "own-facilities" requirement for federally-supported universal service still need to meet the "own facilities" requirement in order to be eligible for Kansas Universal Service Fund (KUSF) support. "Service area" is defined in 47 U.S.C. § 214(e)(5). In determining whether "minutes of use for local service is provided at no additional charge to end users," the Commission will consider the comparability of a competitive Eligible Telecommunications Carrier's (ETC's) offering to the incumbent local exchange carrier's offering. See Docket No. 06-GIMT-446-GIT, Order Addressing Comments Regarding Revisions to Eligible Telecommunications Carrier Certification Forms, October 2, 2007. The Commission will evaluate the total service package, "including the local calling scope, included features, and usage that might otherwise be considered long distance." *Id.* The Commission will also consider whether an ETC applicant offers unlimited calling to government, social service, health facilities, educational institutions and emergency numbers when considering comparability. *Id.*

<sup>3</sup>The Commission will weigh certain factors to determine whether it is in the public interest to grant another carrier ETC status. Those factors include a) benefits of increased competitive choice; b) the impact of multiple ETC designations on the Universal Service Fund; c) the unique advantages and disadvantages of the carrier's service offering; d) commitments made regarding high-quality telecommunications services by the company; and e) the carrier's ability to provide the support services throughout the designated service area within a reasonable time frame. See Docket No. 04-RCCT-338-ETC, Order No. 14 Order Granting ETC Designation and Addressing Additional Issues, September 30, 2004. The Commission will also take into account any other relevant factors in determining whether ETC designation is in the public interest.

<sup>4</sup>See Docket No. 06-GIMT-446-GIT, Order Adopting Requirements for Designations of Eligible Telecommunications Carrier, October 2, 2006.

<sup>5</sup>See Docket No. 10-GIMT-658-GIT, Order Addressing Issues Concerning The Kansas Lifeline Service Program, August 17, 2011.

support on top of federal Lifeline subsidies, the carrier will offer a plan in Kansas that justifies the additional Lifeline funds from the KLSP;<sup>6</sup>

- b. The carrier will use the Kansas Lifeline Credit Application to enroll eligible customers in the KLSP or their own Lifeline Credit Form which must contain all the data found in the Kansas Lifeline Credit Application;<sup>7</sup>
- c. The carrier is financially and technically capable of providing the supported Lifeline service in compliance with all of the low-income program rules;<sup>8</sup>
- d. The carrier has received approval of its Compliance Plan with the FCC;<sup>9</sup>
- e. The carrier undertakes efforts to eliminate waste, fraud, and abuse in the Lifeline program;
- f. The carrier in its advertising will use “meaningful language so that consumers will understand what they can expect from an ETC,” and include contact information for the Commission’s Office of Public Affairs and Consumer Protection (PACP), the Kansas Corporation Commission, and the Kansas Relay Center for the hearing or speech impaired;
- g. The carrier has sufficient back-up power to remain functional without external power in emergency situations, is able to re-route traffic around damaged facilities, and can manage emergency traffic spikes;<sup>10</sup>
- h. The carrier is properly registered with the Kansas Secretary of State’s Office;
- i. The carrier will provide service throughout its designated service areas to all customers making a reasonable request for service;

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<sup>6</sup>This only applies if the carrier is seeking Kansas Lifeline Service Program (KLSP) funds.

<sup>7</sup>See Docket No. 10-GIMT-658-GIT, Order Requiring Eligible Telecommunications Carriers to Comply With New Lifeline Requirements and Requesting Comments, March 27, 2012; 47 C.F.R. § 54.410(d).

<sup>8</sup>See 47 § C.F.R. 54.201, 54.202; Docket No. 10-GIMT-658-GIT, Order Requiring Lifeline-Only ETC Applicants to Provide Kansas-Specific Information and Requesting Comments on AT&T Refund Issue, June 21, 2012. The FCC has stated that relevant considerations for such a showing include: a) Whether the Applicant previously offered services to non-Lifeline consumers; b) How long the Company has been in business; c) Whether the Applicant intends to rely exclusively on USF disbursements to operate; d) Whether the Applicant receives or will receive revenue from other sources; and e) Whether the Company has been subject to enforcement action or an ETC revocation proceeding in any state. In Docket No. 10-GIMT-658-GIT, the Commission also stated that lifeline-only ETC applicants should provide Kansas-specific information regarding technical and financial capacity similar to the information provided in the carrier’s FCC Compliance Plan.

<sup>9</sup> This only applies if the carrier is seeking to become a Lifeline-only ETC and wishes for the FCC to forbear from the “own-facilities” requirement contained in section 214(e)(1)(A). See Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 11-42 (February 6, 2012).

<sup>10</sup>See Docket No. 06-GIMT-446-GIT, Order Adopting Requirements for Designations of Eligible Telecommunications Carrier, October 2, 2006.

- j. The carrier will comply with all applicable federal and state laws, rules, regulations, and orders. The carrier will inform the Commission of any changes in service made to comply with updated laws, rules, regulations, and orders.

4. On February 6, 2015, Commission Staff (Staff) submitted a Report and Recommendation to the Commissioners in regards to the Application for ETC designation, a copy of which is attached hereto and made a part hereof by reference. The Report and Recommendation contains Exhibit D, which lists the requested 267 census blocks. Staff thoroughly examined Skybeam's Application and made detailed findings in the Report and Recommendation. A summary of those findings are provided in this order. For a detailed account of Skybeam's evidentiary showings, refer to the Report and Recommendation.

5. Staff found that Skybeam is properly registered with the Kansas Secretary of State's Office and its status is "*active and in good standing*." Staff found that Skybeam demonstrated its ability to meet the federal requirements for being designated an ETC in the 267 census blocks listed in Exhibit D and to provide the services and functionalities supported by the federal universal service support mechanisms, including the RBE requirements, throughout its requested service areas. Staff found that Skybeam will properly advertise its services with meaningful language and include required contact information. Finally, Staff found that designating Skybeam as an ETC in Kansas would be consistent with the public interest, convenience, and necessity.

6. Staff, satisfied with Skybeam's showings, recommended approval of Skybeam's Application for ETC designation in the 267 census blocks listed in Exhibit D included with its Report and Recommendation.

7. The Commission finds Staff's analysis, findings, and recommendations to be reasonable and hereby adopts the same.

**IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:**

A. Skybeam's Application for ETC designation for federal RBE purposes is approved. ETC designation is granted in the 267 census blocks identified in Exhibit D attached to Staff's Report and Recommendation.

B. Skybeam shall utilize federal support for its intended purpose and shall be required to certify that it uses such support as intended each year. Skybeam shall also abide by all ETC requirements adopted by this Commission and may be required to follow these in order to maintain ETC designation in Kansas.


C. The parties have fifteen (15) days, plus three (3) days if service of this order is by mail, from the date this order was served in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118b; K.S.A. 77-529(a)(1).

D. The Commission retains jurisdiction over the subject matter and parties for the purpose of issuing such further order, or orders, as it may deem necessary.

**BY THE COMMISSION IT IS SO ORDERED.**

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner

Dated: FEB 24 2015

  
ORDER MAILED FEB 25 2015  
Neysa Thomas  
Acting Secretary

MJD

**REPORT AND RECOMMENDATION  
UTILITIES DIVISION**

**TO:** Chair Shari Feist Albrecht  
Commissioner Jay Scott Emler  
Commissioner Pat Apple

**FROM:** Christine Aarnes, Chief of Telecommunications  
Jeff McClanahan, Director of Utilities

**DATE:** February 6, 2015

**SUBJECT: Docket No. 15-SKYT-262-ETC**  
In the Matter of the Application of Skybeam, LLC for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Service Support for the Purpose of Participating in the FCC's Rural Broadband Experiment Program.

**EXECUTIVE SUMMARY:**

Skybeam, LLC (Skybeam) has filed an Application for designation as an Eligible Telecommunications Carrier (ETC) in order to receive federal universal service funding pursuant to the Federal Communications Commission's (FCC) Rural Broadband Experiment program.<sup>1</sup> Skybeam was provisionally selected by the FCC as a winning bidder for Category 1 funding, comprising 267 census blocks in Kansas.

The FCC Rural Broadband Experiment funding will allow Skybeam to deploy a network capable of delivering 100 Megabits per second (Mbps) downstream and 25 Mbps upstream, with at least one service plan that provides 25 Mbps downstream and 5 Mbps upstream to all locations within the approved census blocks. Among other things, the *Rural Broadband Experiments Order* requires Skybeam to become an ETC within 90 days of the FCC's Public Notice announcing the winning bidders as a condition of receiving the funding.<sup>2</sup> Staff recommends approval of Skybeam's request to be designated an ETC in the requested census blocks listed on the document identified as Confidential Exhibit D by the Applicant, which is attached to this Report and

<sup>1</sup> *Connect America Fund* et al, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, rel. July 14, 2014, ("Rural Broadband Experiments Order").

<sup>2</sup> Id. at 54. The FCC's Public Notice was issued on December 5, 2014; therefore, Skybeam must be designated an ETC by March 5, 2015.

Recommendation.<sup>3</sup> All of the census blocks are served by Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T).

### **BACKGROUND:**

On December 19, 2014, Skybeam filed this Application to request designation as an ETC in 267 census blocks in the state of Kansas for the purpose of receiving FCC Rural Broadband Experiment funding.

Skybeam, based in Englewood, Colorado, is a wholly owned subsidiary of JAB Wireless, Inc. Skybeam is a limited liability company incorporated in the state of Colorado. Skybeam is registered with the Kansas Secretary of State's Office and is "active and in good standing" with that office.

### **Rural Broadband Experiments (RBE)**

In its *Rural Broadband Experiments Order*, the FCC took further steps to implement the Connect America Fund (CAF) to advance the deployment of voice and broadband-capable networks in rural, high-cost areas, including extremely high-cost areas. The FCC determined it will use these Rural Broadband Experiments to explore how to structure the CAF Phase II competitive bidding process in price cap areas and to gather information about interest in deploying next generation networks in high-cost areas.

In the *USF/ICC Transformation FNPRM*, the FCC proposed that census blocks should be the minimum geographic areas for which support will be provided through the Phase II bidding process. The FCC also concluded that proposals for rural broadband experiments in price cap territories would be at the census tract level with funding provided only for locations in eligible census blocks as determined by the Connect America Cost Model.

On July 11, 2014, the FCC adopted a \$100 million budget for the Rural Broadband Experiments and established an objective methodology for selecting among formal applications. The \$100 million available for the experiments is divided into three types:

- Category 1: \$75 Million for projects meeting very high performance standards capable of delivering 100 Mbps downstream / 25 Mbps upstream, while requiring at least one service plan that provides 25 Mbps downstream / 5 Mbps upstream to all locations within the selected census blocks.

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<sup>3</sup> Once the FCC's WC Bureau announces the winning bidders, the proposals submitted by the winning bidders will be made publicly available. However, in order to prevent these proposals from affecting another potential bidder's behavior in the CAF Phase II competitive bidding process, all other proposals are to remain confidential, pending the completion of the Phase II competitive bidding process. Thus, the bid and census block locations must remain confidential until the bid is selected as a winning bidder or until the completion of the Phase II competitive bidding process. See *Connect America Fund et al*, WC Docket Nos. 10-90, 14-1203, Public Notice, Released August 19, 2014, ¶ 12.

- Category 2: \$15 million for projects meeting specified minimum performance standards that exceed the FCC's current standard<sup>4</sup> and capable of delivering 10 Mbps downstream / 1 Mbps upstream to all locations within the selected census blocks. This service plan also must offer at least a 100 GB usage allowance.
- Category 3: \$10 million for projects dedicated to serving extremely high-cost locations capable of delivering 10 Mbps downstream / 1 Mbps upstream, with 100 GB of usage.

The FCC will require all recipients of funding in the Rural Broadband Experiments program to offer, at a minimum, at least one standalone broadband service plan more robust than the Commission's current standard of 4 Mbps downstream / 1 Mbps upstream to all locations within the selected census blocks, with a specific amount of usage at a price no higher than the reasonable comparability benchmarks for voice service and broadband service.<sup>5</sup> The FCC also requires, as a condition of receiving high-cost support, ETCs to offer voice and broadband services in supported areas at rates that are reasonably comparable to rates for similar services in urban areas.

Like all recipients of Connect America Fund support, all Rural Broadband Experiment recipients that have been designated as ETCs by the FCC are required to file an annual certification pursuant to section 54.314 of the FCC's rules. If an entity is designated an ETC by a state, that state must file this certification on behalf of the entity.<sup>6</sup>

The FCC advised the entities that the carriers need not be an ETC at the time initial submission of their formal proposals for funding through the Rural Broadband Experiment, but must obtain ETC designation after being identified as winning bidder for the funding award. Therefore, the FCC expects entities to confirm their ETC status within 90 days of the public notice announcing the winning bidders.<sup>7</sup>

## **ANALYSIS:**

### **Federal ETC Requirements**

Pursuant to 47 U.S.C. § 214(e)(1), a common carrier designated as an eligible telecommunications carrier shall be eligible to receive universal service support in accordance with section 254 of the Federal Act and shall, throughout the service area for which the designation is received – (A) offer the services that are supported by Federal universal service support mechanism under section 254(c) of the Federal Act, either using its own facilities or a combination of its own facilities and resale of another carrier's

<sup>4</sup> Commission's current standard is 4 Mbps downstream / 1 Mbps upstream.

<sup>5</sup> The Bureau has proposed a methodology for a reasonable comparability benchmark for standalone fixed broadband services that deliver 10 Mbps downstream / 1 Mbps upstream at a price range from \$74.63 to \$77.99, depending on usage.

<sup>6</sup> 47 C.F.R. § 54.314 (a).

<sup>7</sup> See Public Notice DA 14-1772, released December 5, 2014, on Wireline Competition Bureau announcement.



service (including the services offered by another eligible telecommunications carrier); and (B) advertise the availability of such service and the charges therefore using media of general distribution.<sup>8</sup>

Congress empowers the states to designate a common carrier as an ETC. Federal law, 47 U.S.C. § 241(e)(2), states that "Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and *shall*, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission." (emphasis added).

### Service or Functionalities

The FCC identifies the services or functionalities that shall be supported by the federal universal service support mechanisms, pursuant to 47 U.S.C. § 254 (c). The supported services are codified in 47 C.F.R. § 54.101(a),

Voice Telephony services shall be supported by federal universal service support mechanisms. Eligible voice telephony services must provide voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers as provided in subpart E of this part.

In its Application, Skybeam provided the following explanations of how it proposes to provide Voice Telephony services.

**Voice-grade access to the public switched network** – In its *USF/ICC Transformation Order*, the FCC modified the definition of a supported service to a technologically neutral approach, allowing companies to provision voice service over any platform, including the PSTN [Public Switched Telephone Network] and IP [Internet Protocol] networks. Thus, the FCC amended Section 54.101 to specify that the functionalities of eligible voice telephony services include voice grade access to the public switched network or its functional equivalent. The FCC further explained that increasingly "consumers are obtaining voice services not through traditional means but instead through interconnected VoIP providers offering service over broadband networks. Interconnected VoIP services "allow customers to make real-time voice calls to, and receive calls from, the PSTN, and increasingly appear to be viewed by consumers as substitutes for traditional voice telephone services. Thus, the FCC concluded that its authority to promote universal services in this context

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<sup>8</sup> 47 U.S.C. § 254.

“does not depend on whether interconnected VoIP services are telecommunications services or information services under the Communications Act. Skybeam will therefore provide voice-grade access to the PSTN by providing interconnected VoIP service throughout the designated service area.

**Local usage** – “Local usage” means an amount of minutes of use of exchange services, prescribed by the FCC, provided free of charge to end users. 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. The Company will comply with any minimum local usage requirements adopted by the FCC or this Commission.

**Access to emergency services** – ETCs are required to provide access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911 (“E911”), to the extent the local government in an ETC’s service area has implemented 911 and E911 for all of its customers to the extent that the local governments in its designated areas have implemented 911 and E911.

**Toll limitations for qualifying low-income consumers** – Skybeam does not distinguish between toll and non-toll for its voice offering. To the extent Skybeam offers a service that distinguishes between toll and non-toll calls, it will offer toll limitation to qualifying low-income consumers at no additional charge.<sup>9</sup>

With regard to the local usage component, the Commission determined in its October 2, 2006, Order in Docket No. 06-GIMT-446-GIT [446 Docket] (October 2nd Order) that it would follow the FCC’s guidance and evaluate local usage by considering the comparability of a Competitive Eligible Telecommunications Carrier’s (CETC) offering on a case-by-case basis “by evaluating the total service package, including the local calling scope, included features and usage that might otherwise be considered long distance.” The Commission further stated that it would consider whether an ETC Applicant offers unlimited calling to government, social service, health facilities, educational institutions and emergency numbers when considering comparability.¶¶7-8.

In response to Staff Data Request (DR) 3, Skybeam provided its proposed Kansas service plans:

- \$46.95 for 5 Mbps download / 1 Mbps upload;
- \$56.45 for 10 Mbps download / 2 Mbps upload;
- \$66.45 for 15 Mbps download / 3 Mbps upload;
- \$59.95 - \$109.95 for small business plans; and

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<sup>9</sup> Application, pp. 8-10.

- \$19.95 for digital telephone service including unlimited local and long distance nationwide calling.

AT&T's monthly rate for a residential access line is \$24.00 and its single-line business rate is \$91.00 in the requested AT&T service areas.<sup>10</sup> The local calling scope is the exchange, but local calls are unlimited.

Staff is satisfied that Skybeam has demonstrated an ability to provide the service or functionalities supported by the Federal universal service support systems and RBE, and that Skybeam's local usage component is comparable to that of the incumbent carrier.

### **Types of Facilities Used to Provide Service**

Skybeam provides high-speed broadband and digital telephone services to residential, commercial and enterprise customers utilizing a combination of unlicensed and licensed frequencies. Skybeam leases 2.5 GHz EBS spectrum<sup>11</sup> in certain markets and has FCC microwave licenses in additional markets.<sup>12</sup>

Skybeam will use fixed wireless technology to offer VoIP and broadband service to residential and commercial locations with less than 100 milliseconds (ms) latency at speeds ranging from 5 Mbps downstream and 1 Mbps upstream to 25 Mbps downstream and 5 Mbps upstream. Enterprise data services deliver up to 1 Gigabit per second.<sup>13</sup>

Skybeam's ActivePhone™ Service is an Interconnected VoIP service, which is designed to replace circuit switched Plain Old Telephone Service (POTS) with a more modern packet switched voice service utilizing the Session Initiation Protocol (SIP). Through the use of an Analog Terminal Adapter, the service emulates POTS and is compatible with existing analog telephones and twisted pair copper in-building telephone wiring.

The Skybeam ActivePhone™ service platform is a fully geo-redundant Class 5 VoIP feature server designed with a no single point of failure architecture with 1:1 component redundancy. The platform is distributed between well-connected commercial data centers in Englewood, Colorado; Dallas, Texas; and Rockford, Illinois. The platform has achieved 99.999% annual service availability since deployment in 2006.

Interconnection to the PSTN is accomplished via peering and interconnection agreements with top tier wholesale SIP call origination and termination service providers. The majority of the interconnection is via SIP, and in a minority of cases, interconnection is

<sup>10</sup> AT&T Service Guidebook, <http://cpr.att.com/pdf/ks/0004-0002.pdf>.

<sup>11</sup> EBS, or Educational Broadband Spectrum, is a locally licensed prime mobile spectrum band in the 2495-2690 MHz (2.5 GHz) frequency range used for advanced 4G wireless services in the United States that is being deployed by multiple national, regional and local operators. Several domestic and international operators and equipment vendors are leading the standards based development of the 2.5 GHz band in the U.S. and internationally.

<sup>12</sup> Application, p. 10.

<sup>13</sup> Application, p. 3.

achieved through circuit switched dedicated circuits and an interconnection agreement with the Local Exchange Carrier.

### Service Areas

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

Based on our review of the expressions of interest, we now conclude that these objectives will best be realized by accepting rural broadband experiment proposals in price cap areas at both the census tract level and the census block level. We recognize that some parties may be able to submit cost-effective proposals that would encompass all of the eligible census blocks within a tract, and we continue to encourage these parties to file such proposals. For entities whose current operations do not allow them to design projects on this scale that make business sense, we waive the requirement to file proposals at the census tract level... Finally, allowing rural broadband experiment proposals on the census block level will help us determine whether the census block approach that the Commission proposed to use for the Phase II competitive bidding process is administratively feasible and straightforward for both Commission staff and applicants.<sup>14</sup>

The FCC further required successful bidders to provide the FCC with appropriate documentation of their ETC designation in each census block for which they are provisionally selected to receive support and certify that the information is accurate. The information must be provided to the FCC no later than Thursday, March 5, 2015.<sup>15</sup>

Skybeam requests ETC designation for the purpose of receiving rural broadband experiment support in the 267 Kansas census blocks listed in Confidential Exhibit D. All 267 census blocks are served by AT&T.

### Advertising

Eligibility for Federal universal service support is addressed by Section 214(e) of the Federal Act. Section 214(e) (1) of the Federal Act states as follows:

- (1) ELIGIBLE TELECOMMUNICATIONS CARRIERS – A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received – (A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities

<sup>14</sup> *Rural Broadband Experiments Order*, ¶ 14.

<sup>15</sup> Public Notice DA 14-1772, released December 5, 2014, Attachment B, Section C.

and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and (B) advertise the availability of such services and the charges therefore using media of general distribution.

Regarding advertising, Skybeam states it will advertise the availability of the supported services throughout its designated service area using media of general distribution in a manner that is designated to reach those likely to qualify for such services. Skybeam agrees to comply with all form and content requirements, if any, promulgated by the FCC and this Commission.

Staff notes that the Commission required CETCs to develop "meaningful language so that consumers will understand what they can expect from an ETC" and provide it to Staff to review within 90 days from the date of the October 2nd Order ¶12. In addition, the Commission determined that all CETCs shall include contact information for the Commission's Office of Public Affairs and Consumer Protection (PACP) in its advertisements to make sure that customers know where to turn with questions and complaints.

In response to DR 2, Skybeam provided the following language it agrees to provide in its advertising in Kansas ETC areas:

As a designated telecommunications carrier eligible to receive universal service support, Skybeam is proud to offer the Lifeline programs in the state of Kansas. We will provide discounts off on service activation and on basic monthly service for residential customers who qualify for income-assisted programs. To determine if you qualify for Kansas Lifeline service, customers may call (800) 527-2404. For unresolved questions or complaints, you may contact the Kansas Corporation Commission, Office of Public Affairs and Consumer Protection, at KCC Consumer Protection, 1500 SW Arrowhead Road, Topeka, KS 66604 or toll-free 1.800.662.0027 or in Topeka 785.271.3140. Hearing or speech impaired TDD Kansas Relay Center 1.800.766.3777.

### **Public Interest**

The FCC, in its Virginia Cellular Order,<sup>16</sup> made new findings regarding determination of the public interest. While the FCC's decision is not binding on this Commission, the Commission found in its ALLTEL and RCC Minnesota Orders that examination of the additional factors enumerated in the FCC's Order is reasonable.

In Skybeam's Application and in response to DR 4 the Company provided the following explanation of how it meets the guidelines that the Virginia Cellular Order suggested for evaluation:

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<sup>16</sup> See *In the Matter of Federal State Joint Board on Universal Service: Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, Released: January 22, 2004 ("Virginia Cellular Order"), FCC Docket No. DA 03-338.

- **Benefits of Increased Competitive Choice** – Designation of Skybeam as an ETC is also in the public interest because it will promote increased competitive choice, thereby increasing innovation and incenting other carriers to improve their existing networks in order to remain competitive. This will result in greater access to high-speed broadband and voice services, as well as improved service quality for residents of underserved communities in rural Kansas. Skybeam's services will provide consumers with additional choices in communications service providers, as well as a variety of service offerings at competitive rates.<sup>17</sup>
- **Impact of Multiple Designations on the Universal Service Fund** – The FCC has determined that participation in the broadband experiment will not burden the Universal Service Fund. In its *Rural Experiments Order*, the FCC stated:

*Source of Funds.* As we proposed in the *Tech Transitions FNPRM*, the funding for the rural broadband experiments will be drawn from the Connect America reserve account, which is projected to have approximately \$200 million in funding as of the third quarter 2014 that has not already been allocated to a specific program. We find that using the reserve account to fund the experiments will help achieve the goals the Commission set for the Connect America Fund. Not only are the experiments themselves designed to encourage the deployment of robust networks capable of offering voice and broadband services to consumers in high-cost areas, the experiments will also help us design the Phase II competitive bidding process and the Remote Areas Fund to efficiently achieve this goal throughout the country. Using unallocated support from the reserve account will also ensure that we will not increase the size of the Universal Service Fund or Connect America budget, that we will not increase the contribution burden on consumers, and that we will not divert resources from other universal service programs. We will consider the appropriate treatment of any unallocated funds in the future.<sup>18</sup>

- **Unique Advantages and Disadvantages of the Competitor's Service Offering** – Skybeam will use federal USF support to expand access to high-speed, high-quality broadband and voice provided through interconnected VoIP and fixed wireless for residents of rural Kansas. These advanced communications services will provide important connectivity to consumers, businesses, and community anchor institutions, including rural schools, libraries and medical facilities and are

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<sup>17</sup> Application, p. 12.

<sup>18</sup> Skybeam Response to DR 4(a). Also, see *Rural Broadband Experiments Order*, para. 11.

a unique alternative to services provided by traditional wireline carriers within the Company's designated service area.<sup>19</sup>

- **Commitments Made Regarding High-Quality Telecommunications Services By Company** – Skybeam has a demonstrated record of providing high-speed, high-quality fixed wireless broadband and VoIP services to residential customers, private businesses and public institutions in Kansas. The company provides broadband and voice services that are critical to customers and promotes economic growth in rural Kansas communities by providing broadband and voice connections. Skybeam will use fixed wireless technology to offer VoIP and broadband service to residential and commercial locations with less than 100 ms latency at speeds ranging from 5 Mbps downstream and 1 Mbps upstream to 25 Mbps downstream and 5 Mbps upstream. Commercial and enterprise services are available to community anchor institutions and private enterprise. Enterprise data services deliver up to 1 gigabit per second. Skybeam has invested significant resources in rural Kansas to provide consumers with high-quality broadband and voice services. With its participation in the broadband experiment, Skybeam will expand its communications infrastructure and service offerings for the benefit of the residents, businesses, and community anchor institutions in rural areas of Kansas.<sup>20</sup>
- **Does Skybeam Have the Ability to Provide the Support Services Throughout the Designated Service Area Within a Reasonable Time Frame** – Yes. Skybeam has deployed a next generation fixed wireless network and targets rural markets outside of metropolitan areas that are either unserved or underserved. Skybeam is a facilities-based wireless telecommunications carrier with its own switching, cell sites, and associated telecommunications facilities throughout its Proposed Service Areas. Skybeam provides its broadband Internet and phone service (Voice over IP) utilizing fixed wireless technology. Fixed wireless refers to wireless systems or devices that are installed at fixed locations. Fixed wireless operates over a terrestrial microwave platform rather than throughput and rapid deployment of ever-increasing bandwidth requirements needed to achieve performance characteristics for Internet users for today and tomorrow. Pursuant to the Application process under the *Rural Experiments Order*, Skybeam provided a description of the technology and system design that it will use to deliver voice and broadband service meeting the requisite speeds to all locations in the funded census blocks of Kansas, including a network diagram, which was certified by a professional engineer.<sup>21</sup>

After reviewing Skybeam's Application and its responses to Staff DRs, Staff believes that Skybeam has demonstrated that it is in the public interest to designate it as an ETC in the 267 requested census blocks for the purpose of participating in the Rural Broadband Experiments program.

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<sup>19</sup> Application, p. 12.

<sup>20</sup> Skybeam Response to DR 4(b).

<sup>21</sup> Skybeam Response to DR 4(c).

**RECOMMENDATION:**

Staff is satisfied that Skybeam has demonstrated an ability to meet the federal requirements for being designated an ETC in the 267 census blocks listed in Confidential Exhibit D and recommends approval of Skybeam's Application. Furthermore, no party has opposed Skybeam's Application and being designated as an ETC will serve the public interest by allowing Skybeam to participate in the FCC's rural broadband experiment program improving voice and broadband services in the requested designated areas.

Skybeam should be advised that rural broadband experiment funds received must be used for its intended purpose and the Company will be required to certify that it uses the support as intended each year.

Additionally, Skybeam should be aware that it is required to abide by all ETC requirements adopted by this Commission and the Company may be required to follow these to continue to receive support.



**15-SKYT-262-ETC**  
**REDACTED EXHIBIT D**

20141219123229  
Exhibit D Date: 12/19/2014

[REDACTED]

15-SKYT-262-ETC

Exhibit D  
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Exhibit D

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Exhibit D  
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Exhibit D

[REDACTED]

Exhibit D  
REDACTED

Exhibit D

[REDACTED]

Exhibit D  
REDACTED

Exhibit D

[REDACTED]

PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET TO THE FOLLOWING:

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
MICHAEL DUENES, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 ***Hand Delivered***		
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JACK KOO, CHIEF EXECUTIVE OFFICER SKYBEAM, LLC 400 INVERNESS PARKWAY SUITE 330 ENGLEWOOD, CO 80112		

ORDER MAILED FEB 25 2015

The Docket Room hereby certified that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, it caused a true and correct copy of the attached ORDER to be deposited in the United States Mail, postage prepaid, and addressed to the above persons.