

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
SKYBEAM ACQUISITION) File Nos.: EB-IHD-14-00013045^1
CORPORATION)
and) Acct. No.: 201432080021
DIGIS, LLC) FRN: 0021775820
Licensees of Various Authorizations in the) 0022536122
Wireless Radio Services)

ORDER

Adopted: March 12, 2014

Released: March 13, 2014

By the Chief, Enforcement Bureau:

1. In this Order, we adopt a Consent Decree entered into between the Enforcement Bureau (Bureau), Skybeam Acquisition Corporation (Skybeam), and Digis, LLC (Digis) (Skybeam and Digis, collectively, the Companies). The Consent Decree resolves and terminates the Bureau's investigation of the Companies for possible violations of Section 310(d) of the Communications Act of 1934, as amended (Act), and Section 1.948 of the Commission's rules (Rules).^2

2. A copy of the Consent Decree negotiated by the Bureau and the Companies is attached hereto and incorporated herein by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigations.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether the Companies possess the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 503(b) of the Act,^3 and Sections 0.111 and 0.311 of the Rules,^4 the Consent Decree attached to this Order IS ADOPTED.

6. IT IS FURTHER ORDERED that the above-captioned investigation IS TERMINATED.

^1 This case was formerly assigned file number EB-13-IH-1035.

^2 47 U.S.C. § 310(d); 47 C.F.R. § 1.948.

^3 47 U.S.C. §§ 154(i), 503(b).

^4 47 C.F.R. §§ 0.111, 0.311.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to the Companies' counsel, Monica S. Desai, Esq. and Jennifer L. Richter, Esq., Patton Boggs LLP, 2550 M Street, N.W., Washington, D.C. 20037.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief
Enforcement Bureau

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Washington, DC 20554

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SKYBEAM ACQUISITION CORPORATION)	File No: EB-IHD-14-00013045 ¹
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DIGIS, LLC)	FRN: 0021775820
)	0022536122
)	
Licensees of Various Authorizations in the Wireless Radio Services)	

CONSENT DECREE

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission or FCC), Skybeam Acquisition Corporation (Skybeam), and Digis, LLC (Digis) (Skybeam and Digis together, the Companies), by their authorized representatives, hereby enter into this Consent Decree for the purposes of terminating the Bureau’s investigation into whether Skybeam and Digis, commonly owned companies, violated Section 310(d) of the Communications Act of 1934, as amended (Act),² and Section 1.948 of the Commission’s rules (Rules),³ which require that Commission approval be obtained prior to assignment or transfer of control of wireless radio station licenses.

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (d) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which the Companies are subject by virtue of their business activities.
 - (f) “Companies” means Skybeam Acquisition Corporation and Digis, LLC.
 - (g) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 14.

¹ This case was formerly assigned file number EB-13-IH-1035.

² 47 U.S.C. § 310(d).

³ 47 C.F.R. § 1.948.

- (h) “Covered Employees” means all employees and agents of the Companies who perform, or supervise, oversee, or manage the performance of, duties that relate to the Companies’ responsibilities under the Communications Laws, including Section 310(d) of the Act and Section 1.948 of the Rules.
- (i) “Digis” means Digis, LLC, including all of Digis’s subsidiaries and affiliates, and its predecessors-in-interest and successors-in-interest.
- (j) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (k) “Investigation” means the investigation commenced by the Bureau’s Investigations & Hearings Division in File No. EB-IHD-14-00013045 regarding the Companies’ possible violations of Section 310(d) of the Act and Section 1.948 of the Rules.
- (l) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by the Companies to implement the Compliance Plan.
- (m) “Parties” means Skybeam Acquisition Corporation, Digis, LLC, and the Bureau, each of which is a “Party.”
- (n) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (o) “Skybeam” means Skybeam Acquisition Corporation, including all of Skybeam’s subsidiaries and affiliates, and its predecessors-in-interest and successors-in-interest.

II. BACKGROUND

3. Section 310(d) of the Act states “[n]o construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.”⁴ Section 1.948 of the Rules similarly requires Commission consent prior to a transfer of control or assignment of license.⁵

4. Skybeam and Digis are commonly owned by JAB Wireless, Inc. (JAB), which is headquartered in Englewood, Colorado. According to its website, JAB is the nation’s largest fixed wireless broadband service provider with more than 150,000 customers.⁶ Skybeam holds various common carrier and private industrial/business pool microwave licenses, which it uses to provide high-speed wireless broadband and Voice Over Internet Protocol (VoIP) services to residential and business customers in underserved rural communities in Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Minnesota, Nebraska, Nevada, Oklahoma, South Dakota, Texas, Utah, Wisconsin, and Wyoming. Digis also holds various private industrial/business pool and public safety pool microwave licenses, which it uses to provide wireless broadband and VoIP services in underserved rural communities in Colorado, Idaho, and Utah.

5. On June 1, 2012, without the assistance of communications counsel, Skybeam closed on an agreement to acquire 10 licenses (six Common Carrier Fixed Point-to-Point Microwave licenses, three Microwave Industrial/Business Pool licenses, and one nationwide 3.65 GHz registration) from KeyOn Communications. One month later, on July 1, 2012, also without the assistance of communications counsel, Digis closed on another agreement to acquire 40 licenses (38 Microwave Industrial/Business

⁴ 47 U.S.C. § 310(d).

⁵ 47 C.F.R. § 1.948.

⁶ See JAB Broadband: Company Overview, available at <http://www.jabbroadband.com/company-overview/> (last visited Jan. 10, 2014).

Pool licenses and two Microwave/Public Safety Pool licenses) from HJ LLC. Neither Skybeam nor Digis sought or acquired Commission consent to the transfers of control of the 50 wireless licenses prior to consummating the transactions, in apparent contravention of Section 310(d) of the Act and Section 1.948 of the Rules.

6. In approximately September 2012, in connection with another, unrelated transaction, Skybeam and Digis apparently realized that they had failed to obtain prior Commission consent for the two previous acquisitions. Thereafter, in November 2012, the Companies retained communications counsel.

7. On March 18, 2013, the Companies filed a total of 50 Special Temporary Authority (STA) requests in which they voluntarily disclosed their transgressions to the Commission. In their submissions, the Companies represented, among other things, that their failures to obtain timely consent were inadvertent and the result of inexperience with the acquisition of licensed spectrum and a lack of communications counsel. The Commission's Wireless Telecommunications Bureau promptly granted the STAs on March 20, 2013 (with special enforcement-related conditions), and alerted the Bureau's Investigations & Hearings Division (IHD), which immediately commenced an investigation. Several days later, on March 22, 2013, Skybeam and Digis filed curative assignment applications for the two previously-consummated transactions, both of which have since been granted.⁷

8. In light of the Companies' voluntary disclosures and their discussions with IHD, the Parties entered into negotiations to resolve the various matters under investigation.

III. TERMS OF AGREEMENT

9. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

10. **Jurisdiction.** The Companies agree that the Bureau has jurisdiction over them and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

11. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

12. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, the Companies agree to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, the Bureau will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any new proceeding, formal or informal, or take any action on its own motion against the Companies concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against the Companies with respect to their basic qualifications, including their character qualifications, to be Commission licensees or hold Commission licenses or authorizations.

⁷ ULS File Nos. 0005687597 and 0005403447.

13. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, the Companies shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that the Companies comply with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his/her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of Section 310(d) of Act and Section 1.948 of the Rules prior to assuming his/her duties.

14. **Compliance Plan.** For purposes of settling the matters set forth herein, the Companies agree that they shall, within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws, including Section 310(d) of Act and Section 1.948 of the Rules, and with the terms and conditions of this Consent Decree. The Compliance Plan shall implement the following procedures:

- (a) **Operating Procedures.** Within sixty (60) calendar days after the Effective Date, the Companies shall establish Operating Procedures that all Covered Employees shall follow to help ensure the Companies' compliance with the Communications Laws. The Company's Operating Procedures shall include internal procedures and policies specifically designed to ensure that the Companies comply with Section 310(d) of the Act and Section 1.948 of the Rules. The Companies shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with Section 310(d) of Act and Section 1.948 of the Rules.
- (b) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees, all of whom shall follow the procedures detailed in the Compliance Manual. The Compliance Manual shall explain the Communications Laws that apply to the Companies, including Section 310(d) of the Act and Section 1.948 of the Rules, and set forth the Operating Procedures that Covered Employees shall follow to help ensure the Companies' compliance with Section 310(d) of Act and Section 1.948 of the Rules. At least once annually, the Companies shall review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. The Companies shall distribute any revisions to the Compliance Manual promptly to Covered Employees. The Compliance Manual shall require personnel, including Covered Employees, to contact the Companies' Compliance Officer and, if appropriate, regulatory legal counsel with any questions or concerns that arise with respect to the Companies' obligations under Section 310(d) of Act and Section 1.948 of the Rules.
- (c) **Compliance Training Program.** The Companies shall establish and implement a Compliance Training Program on compliance with the Communications Laws, including Section 310(d) of Act and Section 1.948 of the Rules, and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of the Companies' obligation to report any noncompliance with Section 310(d) of Act and Section 1.948 of the Rules under paragraph 15 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within ninety (90) calendar days after the Effective Date. Any person who becomes a Covered Employee at any time thereafter shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. The Companies shall repeat the compliance training on an annual basis. At least once annually, the Companies shall review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

15. **Reporting Noncompliance.** The Companies shall report any noncompliance with Section 310(d) of Act and Section 1.948 of the Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of (i) each instance of noncompliance; (ii) the steps that the Companies have taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that the Companies have taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, SW, Washington, DC 20554, with a copy submitted electronically to Gary Schonman at Gary.Schonman@fcc.gov, and Gregory Simon at Gregory.Simon@fcc.gov.

16. **Compliance Reports.** The Companies shall file Compliance Reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of the Companies' efforts during the relevant period to comply with the terms and conditions of this Consent Decree, Section 310(d) of Act, and Section 1.948 of the Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of the Companies, stating that the Compliance Officer has personal knowledge that the Companies (i) have established and implemented the Compliance Plan; (ii) have utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) are not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 15 of this Consent Decree.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with Section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth in Section 1.16.⁸
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of the Companies, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully (i) each instance of noncompliance; (ii) the steps that the Companies have taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that the Companies have taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to the Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, SW, Washington, DC 20554, with a copy submitted electronically to Gary Schonman at Gary.Schonman.fcc.gov, and Gregory Simon at Gregory.Simon@fcc.gov.

17. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 13 through 16 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

18. **Voluntary Contribution.** The Companies agree that they will make a voluntary contribution to the United States Treasury in the amount of fifty thousand dollars (\$50,000) within thirty (30) calendar days after the Effective Date (Voluntary Contribution). The Companies acknowledge and agree that upon execution of this Consent Decree, the Voluntary Contribution shall become a "Claim" or

⁸ 47 C.F.R. § 1.16.

“Debt” as defined in 31 U.S.C. § 3701(b)(1).⁹ In addition, the Companies agree that it will make the Voluntary Contribution in United States Dollars without further demand or notice by the date specified above. The Companies shall also send electronic notification of payment to Gary Schonman at Gary.Schonman@fcc.gov, and Gregory Simon at Gregory.Simon@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁰ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions regarding the form of payment:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

Questions regarding payment procedures should be addressed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

19. **Waivers.** The Companies waive any and all rights they may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues the Adopting Order as defined in this Consent Decree. The Companies shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither the Companies nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and the Companies shall waive any statutory right to a trial *de novo*. The Companies hereby agree to waive any claims they may otherwise have under the Equal Access to Justice Act¹¹ relating to the matters addressed in this Consent Decree.

20. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

21. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order

⁹ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

¹⁰ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹¹ See 5 U.S.C. § 504; 47 C.F.R. Part 1, Subpart K.

specifically intended to revise the terms of this Consent Decree to which the Companies do not expressly consent) that provision will be superseded by such Commission rule or order.

22. **Successors and Assigns.** The Companies agree that the provisions of this Consent Decree shall be binding on their successors, assigns, and transferees.

23. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. The Parties further agree that this Consent Decree does not constitute and shall not be construed as either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Communications Laws. The Parties also agree that this Consent Decree does not constitute an admission of liability by the Companies or a concession by the Commission that its investigation was not well-founded.

24. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

25. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

26. **Authorized Representative.** Each Party represents and warrants to the other Parties that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

27. **Counterparts.** This Consent Decree may be signed in counterparts and may be delivered by facsimile or electronic delivery. Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

P. Michele Ellison
Chief
Enforcement Bureau

Date

Scott Perich
Vice President of Corporate Development
Skybeam Acquisition Corporation

Date

Scott Perich
Vice President of Corporate Development
Digis, LLC

Date