PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Communications Division **RESOLUTION T- 17473**
Carrier Oversight & Programs Branch **JANUARY 14, 2016**

R E S O L U T I O N

Resolution T-17473. This Resolution conditionally approves Blue Jay Wireless, LLC to be designated as an Eligible Telecommunications Carrier and authorized as a California LifeLine provider to offer wireless telephone services supported by both the federal Lifeline program and the California LifeLine Program throughout California where its underlying carriers, Sprint and T-Mobile, provide coverage, excluding federally recognized Tribal lands.

Summary

By this Resolution, the California Public Utilities Commission (CPUC or Commission) conditionally approves Blue Jay Wireless, LLC (Blue Jay) (U-4437-C), a wireless reseller, to be designated as an Eligible Telecommunications Carrier (ETC) and authorized to be a California LifeLine service provider throughout California where its underlying carriers, Sprint and T-Mobile, provide coverage, excluding federally recognized Tribal lands (Tribal lands). The CPUC approves the following two California LifeLine prepaid wireless service plans for Blue Jay:

- *California Unlimited Voice & Text Plan - No charge to LifeLine participants with unlimited number of minutes and domestic messages; and*
- *California Unlimited Voice, Text with 5 GB Data Plan - $25 monthly cost to LifeLine participants with unlimited number of minutes and domestic messages and 5 GB data.*

Background

Federal ETC Designation Requirements

In order to receive federal universal service support, a carrier must be designated as an ETC. Section 254(e) of the Communications Act (the Act), as amended, states that "only an eligible telecommunications carrier under Section 214(e) shall be eligible to receive specific federal universal service support."[1] Section 214(e)(2) of the Act provides that a State commission "shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State Commission."

[1] 47 C.F.R. §§ 54.400 *et seq*. contains the FCC's Lifeline rules issued to implement § 254 of the Act. Section 54.401 defines Lifeline as a non-transferrable retail service offering for which qualifying low-income consumers pay a reduced charge for voice telephony service after applying the federal Lifeline support amount.

Under Section 214(e)(2) of the Act, state commissions are given the primary responsibility for designating ETCs in their states. This section states that, "[u]pon 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" so long as the requesting carrier meets the requirements of Section 214(e)(1).

Section 214(e)(1) provides that, a common carrier designated as an ETC must offer services supported by the federal Universal Service Fund (USF) throughout the designated service area either by using its own facilities, resale, or by a combination of its own facilities and resale of another carrier's services, and must advertise the services and the related charges using advertising media of general distribution throughout the designated service area. Advertising must include the availability of federal Lifeline services in a manner reasonably designed to reach those likely to qualify for those services.

The Federal Communications Commission's (FCC) rules require that a carrier requesting ETC designation must:

1. Certify that it will comply with the service requirements applicable to the support that it receives;
2. Submit a five-year plan that describes proposed improvements or upgrades to the applicant's network throughout its proposed service area;
3. Demonstrate its ability to remain functional in emergency situations;
4. Demonstrate that it will satisfy applicable consumer and service quality standards;
5. Demonstrate that it is financially and technically capable of providing the federal Lifeline service; and
6. Submit information describing the terms and conditions of any voice telephone service plans offered to federal Lifeline participants.[2]

Before granting an ETC status to a carrier, state commissions must determine that it is in the public interest to do so.

The federal Lifeline program reimburses an ETC $9.25 per month for providing a discounted service to an eligible low-income household and provides additional reimbursement for serving enhanced Lifeline participants living on Tribal lands.[3]

CPUC ETC Designation Requirements

A carrier seeking an ETC designation also must comply with the CPUC's ETC rules. In Resolution T-17002 (May 25, 2006), the CPUC adopted *The Comprehensive Procedures and Guidelines for ETC Designation and Requirements for ETCs* that are consistent with FCC Order 97-157 regarding designation of a telephone carrier as a qualified ETC. Pursuant

[2] 47 C.F.R. § 54.202(a).
[3] 47 C.F.R. § 54.403.

to this Resolution, applicants seeking ETC designation in California are required to provide the following:

1. A description of the proposed service offerings and attach service area maps;
2. A description of the advertising plan(s);
3. A statement of commitment to provide service;
4. Submission of the 2-year service quality improvement plan;
5. A showing of the ability to remain functional;
6. A statement of commitment to consumer protection;
7. Demonstration that a carrier's usage plan is comparable to that of the incumbent Local Exchange Carrier (LEC) in the proposed service area; and
8. A public interest determination.

In addition to ETC designation rules, carriers requesting ETC designation must also comply with General Order (GO) 153, California LifeLine rules, and CPUC User Fee and surcharge obligations. The CPUC User Fee is levied on all telecommunications carriers providing services directly to customers and the amount of fees is a percentage calculation based on all intrastate customer billings for telecommunications services. All telecommunications carriers are also required to collect and remit public purpose program surcharges from end-users that fund the CPUC's universal service program.

California LifeLine Program Requirements

The purpose of the California LifeLine Program is to provide high quality, residential telephone service at affordable rates to low-income citizens of California. The California Legislature directed the CPUC to ensure that the program has essential consumer protections and is competitively neutral. A carrier seeking to be a California LifeLine provider must comply with the CPUC's California LifeLine rules and requirements set forth in Public Utilities Code §871 *et seq.*, GO 153, and various CPUC decisions including, but not limited to, D.14-01-036 and D.10-11-033. The carrier must also comply with all applicable CPUC rules, orders, decisions, resolutions, the Public Utilities Code, and federal Lifeline rules.

In order to become a California LifeLine provider, a carrier must generally demonstrate the following:

1) It has a valid, active operating authority issued by the CPUC;[4]
2) It is current in its remittance of CPUC User Fees and public purpose program surcharges;[5]
3) Its proposed offerings meet the CPUC's California LifeLine service elements;[6]
4) Its disclosures, schedule of rates and charges, and terms and conditions are thorough and consistent with state and federal rules;
5) Its marketing and selling methods are consistent with D.14-01-036 and 47 C.F.R. §54.405(b); and

[4] *See* OP 3 of D.14-01-036.
[5] *See* GO 153 §§ 9.5.3.1., 9.8.5, 9.8.6, 9.9.2, 10, and 11 and OP 21 of D.13-05-035.
[6] *See* OP 26.a. of D.14-01-036, Attachment D, *See also* GO 153, Appendix A as adopted in D.14-01-036.

6) Its provisioning process is consistent and complies with the California LifeLine Administrator's enrollment process, validation checks, transmission requirements, and efforts to prevent waste, fraud, and abuse.[7]

When a telecommunications carrier becomes a California LifeLine provider, it is authorized to provide California LifeLine services statewide without any geographic restrictions. Blue Jay stated that it will offer LifeLine services throughout the state except for Tribal lands.[8]

If a carrier seeks to offer discounted wireless services in California, the carrier must demonstrate that its proposed offerings meet the California LifeLine wireless service elements. The CPUC adopted the California LifeLine wireless service elements in D.14-01-036, set forth in GO 153, Appendix A-2. Some of the key service elements are as follows:

1. The provider must offer participants the ability to place and receive voice-grade calls over all distances using the public switched telephone network or successor network;
2. The provider must offer free, unlimited access to public safety N11s (211, 311, 511, 711, and 811) for California LifeLine eligible plans with 1,000 or more voice minutes, and to 911 emergency services for all California LifeLine eligible plans;
3. The provider must offer services on a non-discriminatory basis to any customer residing in the service territory;
4. The provider must offer at least one California LifeLine plan that meets or exceeds the California LifeLine service elements, and is not bundled with any video or data services (Unbundled Service Obligation);
5. The provider must offer to California LifeLine participants all handsets on the same basis as it offers to retail customers;
6. The provider must offer all plans that meet or exceed the California LifeLine service elements and are consistent with the rules on a discounted basis; and
7. The provider must provide free, unlimited access to customer service representatives in the same language in which the California LifeLine service was originally sold or marketed.

In addition, the carrier must comply with the California LifeLine wireless service terms and conditions adopted in D.14-01-036, set forth in GO 153, Appendix A-2, including, but not limited to:

1. The provider must exempt participants from paying CPUC User Fees, surcharges, and taxes;

[7] On February 14, 2014, the CPUC's Communications Division issued an administrative letter titled "Guidance for Service Providers Interested in Offering California LifeLine Wireless Services Consistent with Decision 14-01-036." (Administrative Letter) (http://www.cpuc.ca.gov/NR/rdonlyres/AEBD2120-0BE4-4811-B545-64AF0349382F/0/CDAdvice_Letter_Filing_Components_CaLLWireless_APPROVED_021414.pdf.). This Administrative Letter provides instructions and guidance for a carrier seeking to become a California LifeLine provider to offer California LifeLine wireless services.
[8] Blue Jay AL 2, fn 23.

2. The provider must not assess a fee to participants for paying their bills in person by cash, check or other form of payment;
3. The provider must allow participants to terminate service without incurring early termination fees;
4. The provider must allow participants to return their handsets within three days of service activation for free, without incurring a restocking fee; and
5. The provider must allow participants to purchase additional voice minutes at the lowest rate that is offered to retail customers.

To ensure that participants are adequately informed of the service plans, the California LifeLine provider must prominently disclose and disseminate terms and conditions, program information, and enrollment process to potential and existing participants in compliance with rules including, but not limited to, GO 153, Sections 4 and 5, D.14-01-036, Public Utilities Code §876, and 47 C.F.R. §54.405(c). Additionally, service providers must submit their marketing materials, including scripts, to the Communications Division (CD) for review and approval prior to dissemination and/or availability to the public.[9]

Notice/Protests of the Advice Letter

The advice letter filing was served via email to all parties on the ETC service list and appeared in the Commission's Daily Calendar on April 18, 2014. The Commission did not receive protests to this advice letter.

Discussion

Company Overview

Blue Jay Wireless, LLC has corporate offices at 4240 International Parkway, Suite 140, Carrollton, TX 75007. Blue Jay is registered with the Commission as a commercial mobile radio service (CMRS) in California under its authority U-4437-C (October 19, 2012). Through its arrangements with T-Mobile and Sprint, Blue Jay plans to offer discounted prepaid wireless telephone services to eligible low-income households in these carriers' service territories throughout California. Blue Jay does not propose at this time to offer federal Enhanced Lifeline service on Tribal lands.[10]

Blue Jay's Advice Letters

On April 15, 2014, Blue Jay submitted Tier 3 Advice Letter 2 (AL 2) to the CPUC requesting ETC designation for the purposes of receiving federal Lifeline support and authorization to be a California LifeLine provider to offer discounted prepaid wireless telephone services to eligible low-income households in California. Blue Jay committed to comply with the CPUC's rules, orders, and decision, including General Order 153 and

[9] *See* OP 24.c of D.14-01-036.
[10] *See* Blue Jay AL 2 footnote 23 and Supplement 2B at p.1.

Decision (D.) 14-01-036, and the California Public Utilities Code. Blue Jay proposed two wireless telephone service plans:

- *California 1,100 Anytime Minute Plan - No charge to LifeLine participants, 1,100 minutes or texts (1 text equals to 1 minute). Free basic cell phone; and*
- *California Unlimited Voice, Text, and Data Plan – $26.85 monthly cost to LifeLine participants, unlimited voice, text, and data. Free basic cell phone.*

On November 13, 2014, Blue Jay submitted AL Supplement 2A to modify the activation fee for both plans from $0 to "a one-time initial phone activation fee of $39.00 in connection with its provision of California LifeLine wireless service," which the company would assess on its retail services.[11]

In AL Supplement 2B filed April 29, 2015, Blue Jay submitted modifications of its terms and conditions and its proposed consumer disclosures, clarified Blue Jay's provisioning process, and revised its proposed wireless telephone service plans to as follows:

- *California Unlimited Voice & Text Plan - No charge to LifeLine participants with unlimited number of minutes and domestic messages;*
- *California Unlimited Voice & Text with 500 MB Data Plan – $15 monthly cost to LifeLine participants with unlimited number of minutes and domestic messages and 500 MB data; and*
- *California Unlimited Voice, Text with 5 GB Data Plan - $25 monthly cost to LifeLine participants with unlimited number of minutes and domestic messages and 5 GB data.*

In its August 27, 2015, AL Supplement 2C, Blue Jay clarified how the company would assess the activation fee for California LifeLine participants subsequent to the California LifeLine Program ending the reimbursement of non-recurring charges at the end of June 2015 for California LifeLine wireless telephone services.[12]

<u>Compliance with Federal ETC Rules</u>

Federal ETC Requirements:

A carrier must satisfy all federal ETC requirements in order to receive an ETC designation. Blue Jay has met the following federal ETC requirements:

Demonstration that the services intended to be offered comply with the voice telephony definition - Pursuant to 47 U.S.C. § 214(e)(1) and (6), Blue Jay submits that it is a common carrier and is able to provide telephone exchange and exchange access through its arrangements with its underlying facilities-based providers, T-Mobile and Sprint.

Advertise using media of general distribution – Blue Jay will advertise in a manner reasonably designed to reach Lifeline-eligible consumers using media of

[11] *See* Blue Jay AL Supplement 2A at p. 1.
[12] *See* Blue Jay AL Supplement 2C at p. 1.

general distribution through a variety of marketing channels, including informational brochures and flyers, newspapers of general circulation, radio and television spots, online and social media channels. In addition, Blue Jay intends to reach low-income individuals through its presence in their communities, working with local community groups, government agencies and non-profit groups, and at regular outreach events.

Commitment to provide supported service throughout the designated service area – Blue Jay commits to provide service to all requesting customers within the areas that it is designated as an ETC based on the network facilities of its underlying carriers, T-Mobile and Sprint. "Blue Jay does not propose at this time to offer service to eligible tribal residents."[13]

Demonstration of ability to remain functional – Blue Jay will utilize the extensive and well-established Sprint and T-Mobile networks and facilities to provide mobile services. It believes that the networks of these national carriers are capable of managing traffic spikes that may occur during emergency situations and can reroute traffic in the event of damaged facilities. Blue Jay understands that each carrier has sufficient back-up power to ensure functionality if its external power supply is unavailable. Both Sprint and T-Mobile have certified to the FCC that their networks function in emergency situations. These two carriers will provide the same functionality to Blue Jay and its customers as well as to their own customers.

Reseller's submission of FCC-approved *Compliance Plan* – Blue Jay submitted a compliance plan approved by the FCC on December 26, 2012.

Demonstration of financial and technical capability – Blue Jay is financially and technically capable of providing its proposed wireless telephone services. It currently operates as a common carrier providing retail/non-Lifeline wireless mobile phone services in 16 states and Puerto Rico and has 15 pending petitions in several states and at the FCC. Blue Jay also has financial support/backing from its owners and affiliates. Blue Jay's management and organization team have telecommunication and media experience in marketing services, telecommunication financing, provisioning telecommunication services, and administering Lifeline program regulation and compliance. Public and private technical communications experience includes telecommunication software development for provisioning and billing, call center system design and oversight, and state and federal regulations and compliance.

Commitment to meet public interest requirements for the proposed service areas – Blue Jay asserts that it meets the FCC public interest criteria because, as an ETC, it will further universal service goals to the benefit of California consumers. Blue Jay will offer prepaid low-cost wireless telephone service to low-income consumers thereby increasing consumer choice which will motivate other wireless ETC providers to compete for eligible customers by providing the highest value (e.g., higher quality handsets and superior customer service). In addition, there are

[13] *See* Blue Jay AL Supplement 2B at p.1.

advantages to Blue Jay's service offering for consumers including access to high quality service; the benefits of mobile service; prepaid plans without hidden costs, varying monthly charges, and no long-term contracts; pricing that allows consumers to tailor their wireless services to their needs and budgets; new, not refurbished, basic phone sets with option to upgrade to a smartphone; and, generous anytime minutes and data plans at low cost.

Commitment to satisfy all applicable consumer protection and service quality standards – Blue Jay commits to comply with the CTIA-The Wireless Association's *Consumer Code for Wireless Service*[14] and posts it on the company's website. Blue Jay will make every effort to resolve expeditiously complaints received by the Commission and will designate a specific contact person to work with the Commission staff to resolve any complaints or other compliance issues. CD staff notes that the CTIA *Consumer Code for Wireless Service* is amended from time to time and among other things, provides direction for carriers regarding unlocking of phones. CD staff recommends that the Commission direct Blue Jay to comply with the *Consumer Code for Wireless Service*, as it is amended.

Agreement to apply the Lifeline support discount to residential retail plans – Blue Jay demonstrates in its proposed rate plan breakout charts that the monthly rates assume California's support amounts and the current FCC approved USF support amount of $9.25 per participant, per month which it applies to a monthly retail cost.

CD staff notes that since Blue Jay did not assert in the advice letter that it would demonstrate compliance with the following federal ETC requirements[15], CD recommends as follows:

1) Blue Jay did not specifically address its commitment to file federal compliance reports including, but not limited to, Form 481 and 47 C.F.R § 54.422 annually. CD staff recommends that the Commission direct Blue Jay to file required federal reports annually with the FCC and Universal Service Administrative Company (USAC) and provide copies of these annual reports to this Commission.
2) Blue Jay did not specifically address that, when approved for ETC designation, it will submit specific information to USAC. Federal law, specifically 47 C.F.R. § 54.401(d), requires that when a state commission designates a carrier an ETC status, the state commission shall file or require the ETC to file information with USAC that demonstrates that the ETC's Lifeline plan meets the universal service support criteria for low-income consumers, including the terms and conditions of

[14] The *Consumer Code for Wireless Service* can be found on the CTIA-The Wireless Association web page: http://www.ctia.org/policy-initiatives/voluntary-guidelines/consumer-code-for-wireless-service. Site last visited March 16, 2015.

[15] Blue Jay indicated in its 2012 approved federal compliance plan that it would comply with all federal and state commission annual company certification requirements, it would provide results of such, and will report company information including affiliates, holdings and branding, terms and conditions, and service outage data, pp 20-22.

voice telephony service plans and the plan details.[16] To comply with § 54.401(d), CD recommends that the Commission direct Blue Jay to file the applicable information directly with USAC. Once USAC approves the service plans, Blue Jay shall provide a hard copy via U.S. Mail to the Communications Division Director a copy of the information submitted to USAC and a copy of Blue Jay's certification of approval from USAC within 30 days of receipt of certification from USAC.

With implementation of the recommendations above and elsewhere in this Resolution, CD staff will be satisfied with Blue Jay's compliance with the FCC's ETC requirements.

Compliance with Commission User Fee and Surcharge Obligations

CD staff has verified that Blue Jay is current with payment of the annual CPUC User Fees and public purpose program surcharges. Blue Jay is required to continue to remain current with its payments. Failure to comply may lead to enforcement action including, but not limited to, revocation of Blue Jay's wireless identification registration, and/or authority to operate as a California LifeLine provide, and denial and/or suspension of California Lifeline reimbursements.

Compliance with California LifeLine Program Requirements

In Blue Jay's AL 2, the company requests that the Commission grant it designation as an Eligible Telecommunications Carrier ('ETC') for the purpose of offering wireless Lifeline services to low-income California households as part of the federal universal service Lifeline program and the California LifeLine program.[17] Those areas are the areas covered by Blue Jay's underlying carriers, Sprint and T-Mobile.[18] Blue Jay does not propose offering service to eligible tribal residents at this time.[19]

CD staff recommends granting Blue Jay's request for ETC designation and authorizing Blue Jay as a California LifeLine provider in those areas served by its underlying service providers, excluding Tribal lands.

CD staff finds that these proposed California LifeLine wireless telephone service plans meet the California LifeLine Program requirements and ETC requirements and are eligible for reimbursement from the California LifeLine Fund and the federal Lifeline fund.

CD staff recommends approval of the following LifeLine prepaid wireless service plans:

- *California Unlimited Voice & Text Plan - No charge to LifeLine participants with unlimited number of minutes and domestic messages; and*
- *California Unlimited Voice, Text with 5 GB Data Plan - $25 monthly cost to LifeLine participants with unlimited number of minutes and domestic messages and 5 GB data.*

[16] USAC requires a copy of a new ETC's designation order issued by its state utility regulator, http://usac.org/li/telecom-carriers/step03/. Site last visited March 16, 2015.
[17] *See* Blue Jay AL2 at p.1 and Section V at p. 6.
[18] *See* Blue Jay AL 2 Section VI, at p.6.
[19] *See* Blue Jay AL 2 p. 1, Section I, fn 2.

California LifeLine providers must offer all plans, including bundled services, promotional services, and family plans, which meet or exceed the minimum California LifeLine service elements and are consistent with California LifeLine rules ("All Plans Requirement") to eligible low-income households.[20] Since Blue Jay does not currently provide service in California, CD staff recommends that Blue Jay file a Tier 2 advice letter to demonstrate that it meets the "All Plans Requirement" within 30 days of offering telecommunications services to California residents.[21] CD staff recommends Blue Jay use a Tier 2 Advice Letter to request approval for any future changes including, but not limited to, terms and conditions and to the approved California LifeLine wireless service plans.

Blue Jay requests a waiver of the California LifeLine pre-qualification requirement for its California LifeLine wireless telephone service plans since it will offer them on a prepaid basis. CD staff recommends that the Commission grant Blue Jay's request because it is consistent with D.14-01-036. However, this waiver does not apply to post-paid telephone service plans. If Blue Jay decides to offer any California LifeLine wireless telephone service plans on a post-paid basis in the future, it must comply with the pre-qualification requirement unless it is granted a waiver.

Additionally, under federal Lifeline rules, an ETC that offers federal Lifeline services on a prepaid basis must require every participant to 1) activate service or 2) complete an outgoing call before the ETC may *begin* to seek or to receive universal service support for the participant.[22] The purpose of this requirement is to validate that the "consumer is actually using the Lifeline-supported service" and to prevent waste of federal Lifeline funds.[23] Consistent with this federal requirement, D.14-01-036 requires that the discount for the prepaid telephone service begin with the date of approval notification or the service activation date, whichever is later.

Blue Jay will require consumers to make an outbound call to activate their service. CD staff finds that Blue Jay's provisioning process[24] and the terms and conditions for "Service Initiation" [25] as described in "Part 2: Terms and Information Related to California LifeLine Services" are consistent with both the California LifeLine Administrator's Status Code 53 Process[26] and the FCC's requirement.

Pursuant to D.14-01-036, the CPUC requires California LifeLine providers, among other things, to 1) prominently disclose and disseminate terms and conditions and 2) submit marketing materials,[27] including scripts used by customer service representatives, for

[20] *See* OP 26.c of D.14-01-036 and Appendix A of GO 153 (as adopted in D.14-01-036).
[21] *See* Blue Jay AL Supplement 2B at p.2.
[22] *Lifeline Reform Order* ¶260.
[23] *Id* at ¶255.
[24] *See* Blue Jay AL Supplement 2B at pp. 5-6 and CONFIDENTIAL Exhibit C.
[25] *See* Blue Jay AL Supplement 2C Exhibit C at pp.12-13.
[26] The Administrator developed a special process, "Status Code 53 Process," for telephone service providers offering pre-paid telephone services waiving the pre-qualification requirement. The Status Code 53 Process requires California LifeLine providers to send an update record with the Service Start Date and telephone number to the Administrator. California LifeLine providers are only supposed to send this particular type of update record after confirming the consumer has made an outbound call.
[27] *Lifeline Reform Order* ¶275 and *See* Footnote 15 and OP 24.c of D.14-01-036.

review and approval[28] by CD staff prior to distribution. Consistent with these requirements, CD recommends that Blue Jay submit terms and conditions, disclosures, and marketing materials for the two California LifeLine wireless service plans approved in this Resolution for review and approval by CD staff before dissemination and/or availability to the public.

Since December 2010, the CPUC has required carriers with limited ETC designation offering federal Lifeline services in California to label clearly its service, which is consistent with the FCC's requirement.[29] Therefore, CD also recommends that Blue Jay clearly label the two wireless telephone service plans approved in this Resolution as *California LifeLine wireless service plans*, and refer to the California LifeLine Program, where applicable, in Blue Jay's terms and conditions, disclosures, and marketing materials.

Compliance with the California LifeLine Administrator's Requirements

The Administrator is the sole entity responsible for determining eligibility and enrollment process for both the California LifeLine Program and the federal Lifeline program. Therefore, service providers that participate in the federal and/or state program must comply with the eligibility requirements and the Administrator's enrollment process.

Blue Jay commits to comply with the California LifeLine Program's enrollment process, including all eligibility rules and validation checks, and to provide the Administrator all required information for the Administrator to determine eligibility.

In addition, Blue Jay agrees to assist applicants during the application process through its pre-screening method. Blue Jay plans to pre-screen applicants before sending applicants' information and/or submitting any of the official California LifeLine forms to the Administrator. Once Blue Jay submits the official California LifeLine forms to the Administrator, Blue Jay agrees to comply with the Administrator's applicable notifications and eligibility decisions. The Administrator has a communications protocol called the Direct Application Protocol[30] to enable telephone service providers such as Blue Jay to receive and submit official California LifeLine application forms.

Blue Jay lacks experience with the California LifeLine Program and the Administrator's enrollment process, protocols, transmission requirements, etc. and is only in the preliminary stages of becoming and operating as a California LifeLine provider. Therefore, CD staff recommends Blue Jay notify the Administrator and obtain prior approval from CD staff of any future changes Blue Jay may propose for its provisioning process and operations including, but not limited to, Blue Jay's pre-screening process and service activation method.

[28] *See* OP 24.c of D.14-01-036.
[29] 47 C.F.R. § 54.405(c).
[30] *See* Resolution T-17366.
(http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_RESOLUTION/170652.PDF).

Compliance with Resolution T-17002

Blue Jay has satisfied the applicable requirements set forth in Resolution T-17002 including, but not limited to: providing Lifeline-only services within the proposed service area; providing the designated services; and, complying with advertising rules as required by the FCC. Blue Jay states it has the ability to remain functional in emergency situations by working with its underlying carriers, T-Mobile and Sprint. Blue Jay commits to satisfy all applicable state and federal requirements related to consumer protection and service quality standards.

Providing Federal Lifeline Wireless Service to Customers in Small LEC Service Areas and on Tribal Lands

Blue Jay seeks ETC designation throughout California where its underlying carriers, T-Mobile and Sprint, currently provide wireless coverage. Blue Jay neither proposed to exclude the small LEC service areas nor to offer federal Enhanced Lifeline service to eligible tribal residents.[31] Blue Jay specifically stated that the CPUC has allowed companies seeking ETC designations to include the small LEC service areas within their proposed ETC designated service areas.[32]

Public Interest Determination:

Before recommending designation of a carrier as an ETC, CD staff must determine that doing so would be in the public interest for California consumers.[33] In the *Lifeline Order*, the FCC clearly states the importance of promoting universal service principles[34] and, in that context, the federal Lifeline program includes a public interest determination particularly for federal Lifeline-only ETCs where forbearance of the facilities-based requirement exists.[35] Since the federal Lifeline program adopted a technology-neutral definition for supported service, Blue Jay suggests that it will further universal service goals which benefits consumers by increasing customer choice of providers and offering prepaid low cost wireless service to low-income consumers, a frequently overlooked population. Advantages of Blue Jay's service offering include access to high quality service, mobility, and a set prepaid monthly cost that alleviates varying monthly charges.

Upon review, CD staff finds that Blue Jay meets the federal ETC criteria for public interest determination including providing the benefits of increased competitive choice, convenience, mobility, ability to purchase additional usage, and the ability to send and receive text messages in a prepaid plan.

Price Analysis:

When analyzing Lifeline plan pricing, CD staff relies on competitive forces to determine reasonable plan prices and compares proposed offerings to currently available federal

[31] AL 2, fn 2.
[32] *See* Blue Jay AL Supplement 2B at 9.
[33] *In the Matter of Federal-State Joint Board on Universal Service,* Report and Order, CC Dkt 96-45 (FCC 05-46), released Mar 17, 2005 ¶ 40 and CPUC Resolution T-17002, *Appendix A, Section II-G: Public Interest Determination.*
[34] 47 U.S.C. § 254(b)(c)(e)(2).
[35] *Lifeline Reform Order* at ¶¶ 219, 378, 362, and fn 968.

and California LifeLine plans and non-Lifeline, retail plan prices. Normally, CD staff would evaluate Blue Jay's proposed offerings using the expected monthly cost to a low-income consumer based on mobile average minutes of use (MOU),[36] however, Blue Jay's plans offer unlimited voice minutes and, therefore, the average MOU test is not necessary.

- *California Unlimited Voice & Text Plan - No charge to LifeLine participants with unlimited number of minutes and domestic messages;*
- *California Unlimited Voice & Text with 500 MB Data Plan – $15 monthly cost to LifeLine participants with unlimited number of minutes and domestic messages and 500 MB data; and*
- *California Unlimited Voice, Text with 5 GB Data Plan - $25 monthly cost to LifeLine participants with unlimited number of minutes and domestic messages and 5 GB data.*

The charts below compare the three unlimited voice and text plans[37] to similar existing plans.

Comparison of Blue Jay Wireless' Proposed Lifeline Wireless Plans to Other Prepaid LifeLine Wireless Plans in Service Area (Assuming Average Wireless MOU)

Utility# and Approving Authority	U-4451-C AL4 7/2/2015	U-4372-C AL6 6/2/2015	U-4387-C AL11 11/25/2014	U-4451-C AL5 12/29/2014	U-4412-C AL9 4/21/2015	U-4380-C AL10 11/21/2014	U-4327-C AL5A 6/18/2014	U-4442-C AL4 5/7/2015	U-4423-C AL5 7/7/2015	U-4411-C AL5 10/12/2015	U-4437-C AL2C 8/27/2015	U-4360-C AL4 1/16/2015
Comparable ETC w/CaLL Wireless Plans	AmeriMex Unlimited	i-wireless Unlimited Talk	Nexus dba Reachout Unlimited Talk & Text	AirVoice Unlimited Talk & Text	Budget Connect Unlimited	Telscape Unlimited	Virgin Assurance California FREEdom	Telrite California Unlimited	Global Connection Unlimited Talk & Text	TAG Mobile Unlimited Plan 1	BLUE JAY UNLIMITED TALK & TEXT	Total Call Unlimited Talk & Text
Imputed or Comparable Retail Plan Price	$ 21.90	$ 21.90	$ 34.45	$ 21.90	$ 40.00	$ 40.00	$ 21.90	$ 29.95	$ 40.00	$ 41.00	$ 21.90	$ 39.99
Federal Lifeline	$ 9.25	$ 9.25	$ 9.25	$ 9.25	$ 9.25	$ 9.25	$ 9.25	$ 9.25	$ 9.25	$ 9.25	$ 9.25	$ 9.25
Enhanced LL for Tribal Land residents	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
California LifeLine	$ 12.65	$ 12.65	$ 12.65	$ 12.65	$ 12.65	$ 12.65	$ 12.65	$ 12.65	$ 12.65	$ 12.65	$ 12.65	$ 12.65
Company Discount/Credit	$ -	$ -	$ 12.55	$ -	$ 18.10	$ 18.10	$ -	$ 8.05	$ 18.10	$ 19.10	$ -	$ 8.09
Plan Price to Federal Lifeline Customer per Advice Letter	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$10.00**
Basic Plan Minutes (allowance)	Unimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited
Texts included (texts:minutes)	Unimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unimited	Unlimited	Unlimited
Data included	-	-	-	-	-	-	-	-	-	-	-	-

[36] *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Dkt. No. 11-186 (FCC 13-34) (*Sixteenth Report on Mobile Competition).* The FCC annually issues a mobile competition report which reflects analysis of 2011 data submitted by carriers. CD staff analysis uses the 615 average minutes of use (MOU) for wireless voice as a base to evaluate Lifeline plan offerings (Table 38).
[37] Submitted in AL Supplement 2C (August 27, 2015).

Utility# and Approving Authority	U-4451-C AL4 7/2/2015	U-4451-C AL5 12/29/2014	U-4436-C AL6 11/3/2014	U-4387-C AL11 11/25/2014	U-4412-C AL9 4/21/2015	U-4411-C AL5 10/12/2015	U-4451-C AL5 12/29/2014	U-4372-C AL6 6/2/2015	U-4437-C AL2C 8/27/2015
Comparable ETC w/CaLL Wireless Plans	AmeriMex Unlimited 100 MB	AirVoice Unlimited Talk & Text w/100 MB	Boomerang Unlimited Talk & Text	Nexus dba Reachout Unlimited Talk & Text w/200 MB	Budget Connect Unlimited with Data	TAG Mobile Unlimited Plan 2	Air Voice Unlimited Talk, Text, & 500 MB	i-wireless Unlimited w/500 MB	BLUE JAY UNLIMITED TALK & TEXT w/500 MB
Imputed or Comparable Retail Plan Price	$ 21.90	$ 21.90	$ 42.40	$ 37.00	$45.00	$ 52.00	$ 30.00	$ 35.00	$ 39.99
Federal Lifeline	$ 9.25	$ 9.25	$ 9.25	$ 9.25	$ 9.25	$ 9.25	$ 9.25	$ 9.25	$ 9.25
Enhanced LL for Tribal Land residents	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
California LifeLine	$ 12.65	$ 12.65	$ 12.65	$ 12.65	$ 12.65	$ 12.65	$ 12.65	$ 12.65	$ 12.65
Company Discount/Credit	$ -	$ -	$ 0.50	$ -	$ 23.10	$ 30.10	$ -	$ 3.10	$ 3.09
Plan Price to Federal Lifeline Customer per Advice Letter	**$0.00**	**$0.00**	**$20.00**	**$15.10**	**$0.00**	**$0.00**	**$8.10**	**$10.00**	**$ 15.00**
Basic Plan Minutes (allowance)	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited
Texts included (texts:minutes)	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unimited	Unlimited	Unlimited	Unimited
Data included	100 MB	100 MB	100 MB	200 MB	250 MB	Unlimited (2G/3G)	500 MB	500 MB	500 MB

Utility# and Approving Authority	U-4451-C AL5 12/29/2014	U-4372-C AL6 6/2/2015	U-4387-C AL11 11/25/2014	U-4412-C AL9 4/21/2015	U-4451-C AL4 7/2/2015	U-4437-C AL2C 8/27/2015	U-4387-C AL11 11/25/2014	U-4360-C AL4 1/16/2015	U-4436-C AL6 11/3/2014
Comparable ETC w/CaLL Wireless Plans	Air Voice Unlimited Talk, Text, & 1 GB	i-wireless Unlimited w/2 GB	Nexus Unlimited Talk & Text w/2 GB	Budget Connect Unlimited Plus	AmeriMex Unlimited w/3 GB	BLUE JAY UNLIMITED TALK & TEXT w/5 GB	Nexus Unlimited Talk & Text w/5 GB	Total Call Unlimited Talk,Text, & Data	Boomerang Unlimited Talk, Text, & Data
Imputed or Comparable Retail Plan Price	$ 40.00	$ 50.00	$ 48.00	$ 50.00	$ 50.00	$ 49.25	$ 58.30	$ 49.99	$ 52.40
Federal Lifeline	$ 9.25	$ 9.25	$ 9.25	$ 9.25	$ 9.25	$ 9.25	$ 9.25	$ 9.25	$ 9.25
Enhanced LL for Tribal Land residents	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
California LifeLine	$ 12.65	$ 12.65	$ 12.65	$ 12.65	$ 12.65	$ 12.65	$ 12.65	$ 12.65	$ 12.65
Company Discount/Credit	$ -	$ 3.10	$ -	$ 0.50	$ -	$ 2.35	$ -	$ 8.09	$ 0.50
Plan Price to Federal Lifeline Customer per Advice Letter	**$18.10**	**$25.00**	**$26.10**	**$27.60**	**$28.10**	**$ 25.00**	**$36.40**	**$20.00**	**$30.00**
Basic Plan Minutes (allowance)	Unlimited	Unlimited	Unlimited	Unlimited	Unimited	Unlimited	Unlimited	Unlimited	Unlimited
Texts included (texts:minutes)	Unlimited	Unlimited	Unlimited	Unlimited	Unimited	Unimited	Unlimited	Unlimited	Unlimited
Data included	1 GB	2 GB	2 GB	3 GB	3 GB	5 GB	5 GB	Unlimited	Unlimited

Comparison of Blue Jay Wireless' Proposed LifeLine Wireless Plans to Non-Lifeline Retail Offerings Currently Available

	RETAIL ILEC MR Lifeline Plans				RETAIL Prepaid Wireless Plans								
	AT&T Lifeline MR (minimum)	AT&T Lifeline MR (maximum)	Verizon Lifeline MR (minimum)	Verizon Lifeline MR (maximum)	Virgin Mobile PayLo 1500	Nexus Reach Out Simple Plan 1000	Metro PCS Unlimited	AT&T Go Phone Unlimited Talk & Text	Sprint Basic Plus	Verizon Talk & Text 450	BLUE JAY UNLIMITED TALK & TEXT	BLUE JAY UNLIMITED TALK & TEXT w/500 MB	BLUE JAY UNLIMITED TALK & TEXT w/5 GB
Avg. MOU*	615	615	615	615	615	615	615	615	615	615			
Basic Plan Minutes (allowance)	146	146	146	146	1500	1000	Unlimited	Unlimited	Unlimited	450	Unlimited	Unlimited	Unlimited
Texts included	-	-	-	-	1500	-	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unimited	Unimited
Data included	-	-	-	-	30 MB	-	Unlimited	Unlimited	Unlimited	-	-	500 MB	5 GB
Avg. Excess MOUs**	469	469	469	469	-	-	-	-	-	165	-	-	-
Cost per Min in excess of allowance	$0.033	$0.033	$0.033	$0.033	$0	$0	$0	$0	$0	$0.45	-	-	-
Cost of excess minutes	**$15.48**	**$15.48**	**$15.48**	**$15.48**	$0	$0	$0	$0	$0	$74.25	-	-	-
Min. Lifeline Plan Cost (per D.10-11-033) or Cost per Plan	**$2.50**	**$3.66**	**$2.50**	**$3.66**	**$30.00**	**$20.00**	**$40.00**	**$45.00**	**$50.00**	**$59.99**	**$0.00**	**$ 15.00**	**$ 25.00**
Total GO 153 Cost to Customers	**$17.98**	**$19.14**	**$17.98**	**$19.14**	**$30.00**	**$20.00**	**$40.00**	**$45.00**	**$50.00**	**$134.24**	**$0.00**	**$ 15.00**	**$ 25.00**
Caller ID	$9.99	$9.99	$7.95	$7.95	-	-	-	-	-	-	-	-	-
Long Distance	$6.99*	$6.99*	$15.99	$15.99	-	-	-	-	-	-	-	-	-
Voicemail	N/A	N/A	$7.45	$7.45	-	-	-	-	-	-	-	-	-
Federal Excise Tax	$0.08	$0.11	$0.08	$0.11	-	-	-	-	-	-	-	-	-
Total Additional costs of vertical features	$17.06	$17.09	$31.47	$31.50	-	-	-	-	-	-	-	-	-
Total Cost to Lifeline Customers with 615 MOU and additional costs of vertical features	**$35.04**	**$36.23**	**$49.45**	**$50.64**	**$30.00**	**$20.00**	**$40.00**	**$45.00**	**$50.00**	**$134.24**	**$0.00**	**$ 15.00**	**$ 25.00**

Comparing the proposed plans, CD staff finds the Unlimited Plan for $0 per month and the Unlimited Plan with 5 GB for $25 per month reasonable. However, Blue Jay's $15 per month Unlimited Plan with 500 MB data costs more than TAG Mobile's unlimited data plan for $0 and comparable 500 MB plans currently offered by Air Voice ($8.10 per month), and i-wireless ($10 per month). CD staff recommends approving Blue Jay's unlimited text and talk plan and its unlimited text and talk with 5 GB data which have equal or better value based on comparable offerings and plan pricing for low-income customers.

Due Diligence Review:

An integral part of CD staff's review of an ETC designation request is a due diligence review to determine if the carrier has engaged in behavior that may call into question its fitness to be granted ETC designation to serve California consumers. The due diligence review includes, but is not limited to, conducting independent research about a carrier's past operations to provide the Commission with information that may be pertinent in deciding whether or not to grant the ETC designation request. Typical research methods include performing Lexis/Nexis legal resource searches, internet searches, reviewing industry and trade publications, querying other governmental agencies, contacting the FCC and USAC, reviewing a company's history of operations, and contacting the Commission's Safety and Enforcement Division and the Consumer Affairs Branch.

In the course of its research, CD found a significant issue with Blue Jay's federal Lifeline operations in Hawaii.[38] During 2014, Blue Jay reportedly oversubscribed Lifeline residents not eligible to receive Hawaiian Home Lands/Tribal lands status and Blue Jay filed federal subsidy reimbursement requests with the USAC based on questionable level of Hawaiian Home Lands subscriptions. USAC's federal Lifeline disbursements to Blue Jay from January to October 2014 showed that the carrier's reimbursement claims were six times higher than those claimed by the next highest Lifeline provider in Hawaii.[39] CD verified the information with the Hawaii Public Utilities Commission as accurate. The significant level of oversubscription suggested to CD that Blue Jay did not have internal controls and/or policies to assess the reasonableness of its tribal land enrollments.

CD issued data requests to clarify the status of the Hawaiian Homelands situation specifically to understand the cause of the problem, how Blue Jay discovered it and when, and the agencies involved that worked with Blue Jay to correct the problem. In a series of meetings and conference calls, Blue Jay explained to CD staff that the Hawaiian Homeland/Tribal land problem which it encountered is unique to Hawaii because receiving Hawaiian Homeland status depends upon the State's process of validating ancestry in combination with residing on identified Hawaiian Homeland property to certify a resident's status. Not all customers possessed certification. Coupled with that is the sole requirement under FCC rules for eligibility that a Tribal land resident needs only to self-certify that they are Tribal land-eligible.

Blue Jay's data request responses and additional discussions revealed that its original software system and enrollment practices did not warn there was a sign-up problem. Within the early months in 2014 of launching in Hawaii when it requested and received USAC reimbursements, Blue Jay suspected that the self-certifications of Hawaiian residents required further validation which led to its discovery that customers claiming to be eligible were, in fact, not qualified under the federal rules. Blue Jay contacted USAC to inform it of the problem. Blue Jay's next step was to develop a new design of its software program which it began using to input and validate customer eligibility to filter out ineligible participants in Hawaii. Blue Jay continues to pursue a complete resolution with USAC to put checks in place and to reconcile the disbursements received from the USF. Blue Jay states it is committed to operating within the rules and requirements of the federal Lifeline program.

Blue Jay does not request authority to offer federal Enhanced Lifeline service to tribal residents in California, and the potential for overpayment of $25 per month per customer from the federal Lifeline fund is not at issue. CD staff, therefore, does not consider this a reason to deny Blue Jay's request for ETC designation in California. However, the Commission may pursue an enforcement action which may include fines,

[38] http://www.slideshare.net/civilbeat/blue-jay-wireless-hawaii-letter, source letter from Yamamoto Caliboso law firm.
[39] http://www.usac.org/li/tools/disbursements/default.aspx. Narrow search results by choosing Study Area Code 629008, year 2014, all months, and state of Hawaii.

penalties, and the revocation of ETC designation, the California LifeLine authority, and/or wireless identification registration authority should substantive issues emerge after this ETC is approved which raise public interest questions about Blue Jay's wireless operations.

Safety Considerations:
CD staff has safety concerns in two main areas of wireless phone service: the coverage of wireless mobile phone service and the ability of emergency first responders to find the location of the caller when using a mobile phone.

Where there is a lack of coverage, poor signal strength, or atmospheric or terrain conditions that affect connections, emergency calls may not be completed. In rural areas, for example, with spotty connectivity or interference (e.g. due to geographic or structural obstacles), wireless mobile resellers of wholesale facilities service cannot guarantee full, accessible emergency connections for their own customers. An incomplete emergency call can have devastating results.

Given that safety and emergency communications are common concerns for all of California's wireless customers, CD staff recommends that Blue Jay be required to fully and clearly inform prospective federal Lifeline and California LifeLine participants that coverage limitations may affect wireless mobile phone service access to E-911 and/or 911 in the event of an emergency. Such disclosures include, but are not limited to, clear statements on marketing materials and conspicuous placement on the public website in the form of information content on webpages, footnotes, and/or listings on a frequently asked questions (FAQ) webpage.

Future Changes to ETC Designated Service Areas:
As a California LifeLine provider, it is authorized to provide California LifeLine services throughout the state without any geographic restrictions. However, regarding future changes that Blue Jay may want to make to its federal Lifeline service areas, CD staff recommends as follows:

1. For changes to its approved ETC-designated service area, the company should file a Tier 2 Advice Letter that describes the areas to be served, a list of the geographic service areas, and a map in Shapefile format of the proposed area.

2. To offer federal Enhanced Lifeline service on Tribal lands, Blue Jay should file a Tier 2 advice letter demonstrating compliance with C.F.R. 54.202(c) and provide with the advice letter the respective tribe's responses or a declaration in the event a tribe did not respond to the company's notification. The advice letter should describe the specific Tribal lands to be served and include maps in Shapefile format of the proposed Tribal lands. If Blue Jay intends also to claim California state support for any service plans it intends to offer on Tribal

lands, then it should demonstrate compliance with the California LifeLine Program's rules.

Conclusion:

CD staff recommends approval for Blue Jay to be designated as an Eligible Telecommunications Carrier and authorization as a California LifeLine Provider to offer prepaid wireless telephone services supported by both the federal Lifeline program and the California LifeLine Program throughout California where its underlying carriers, Sprint and T-Mobile, provide coverage, excluding federally recognized Tribal lands.

CD staff recommends approval of the following California LifeLine prepaid wireless service plans:

- *California Unlimited Voice & Text Plan - No charge to LifeLine participants with unlimited number of minutes and domestic messages; and*
- *California Unlimited Voice, Text with 5 GB Data Plan - $25 monthly cost to LifeLine participants with unlimited number of minutes and domestic messages and 5 GB data.*

CD staff recommends that Blue Jay file a Tier 2 advice letter to demonstrate that it meets the "All Plans Requirement" within 30 days of offering California LifeLine or retail telecommunications services to California residents. CD staff recommends that Blue Jay use a Tier 2 Advice Letter to request approval for any future changes including, but not limited to, terms and conditions and to the approved California LifeLine wireless service plans.

CD staff recommends approval of Blue Jay's request for a waiver of the pre-qualification requirement only for its prepaid telephone service plans.

CD staff recommends that Blue Jay submit its terms and conditions, disclosures, and marketing materials, including scripts used by customer service representatives, for review and approval by CD staff before dissemination and/or availability to the public. Additionally, CD staff recommends that Blue Jay clearly label the two wireless telephone service plans for which CD staff recommends approval as *California LifeLine wireless service plans*, and refer to the California LifeLine Program, where applicable, in Blue Jay's terms and conditions, disclosures, and marketing materials.

CD staff finds that Blue Jay's provisioning process and the terms and conditions for "Service Initiation" are consistent with both the Administrator's Status Code 53 Process and the FCC's requirement.

CD staff recommends that Blue Jay notify the Administrator and obtain approval of any proposed changes to Blue Jay's provisioning process and operations including, but not limited to, Blue Jay's pre-screening process and service activation method.

As conditions of providing its federal Lifeline and California LifeLine supported wireless operations in California, Blue Jay must comply with all of the following:

- File required annual reports and compliance reports with the FCC and the Commission;
- Comply with 47 C.F.R. § 54.401(d) by filing the required information directly with USAC to certify that its federal Lifeline wireless plans meet federal requirements under the USAC administration. Within 30 days of receipt of certification from USAC, Blue Jay shall send a letter to the Director of the Communications Division with a copy of the information submitted to USAC and a copy of USAC's certification;
- Continue to comply with CPUC User Fee and universal service public purpose program surcharge requirements. Failure to comply with fee and surcharge remittance and reporting requirements may lead to enforcement action including, but not limited to, revocation of Blue Jay's ETC designation, wireless identification registration, and/or authority to operate as a federal Lifeline and California LifeLine provider;
- Post safety related information about wireless telephone service coverage limitations on distributed terms and conditions, disclosures, marketing materials, including scripts used by customer service representatives, and on its company website;
- Abide by all applicable state and federal consumer protection, including CPUC General Order 168, which is the *Consumer Bill of Rights Governing Telecommunications Services*, and comply with the CTIA-The Wireless Association's *Consumer Code for Wireless Service*, as it is amended, and comply with directions to carriers regarding unlocking of phones.

Comments

In compliance with P.U. Code § 311(g), the Commission emailed a notice letter on October 5, 2015, informing all parties on the Eligible Telecommunications Carrier service list and Rulemaking 11-03-013 service list for the California LifeLine proceeding of the availability of this Resolution for public comments at the Commission's website www.cpuc.ca.gov.

In the original Resolution, CD staff recommended that the Commission deny Blue Jay's request for federal ETC designation and California LifeLine authority due to the ineligible Tribal land subscription problem which occurred in Hawaii. Staff initially believed that, under the circumstances, Blue Jay did not have adequate safeguards in place to avoid the oversubscription of residents who did not have eligibility.

Blue Jay submitted comments on October 26, 2015, objecting to staff's recommendations to deny Blue Jay its ETC designation request. Blue Jay stated that the draft Resolution contained erroneous findings, failed to base conclusions on record evidence, and sought to impose arbitrary requirements that have not been applied previously to ETC applicants.

In light of these comments, CD staff met with Blue Jay to discuss the objections. Blue Jay provided staff with additional information about its contact with USAC regarding the over-subscription of Hawaiian Tribal land residents. From those discussions and with the subsequent documentation submitted, CD re-examined the evidence relative to the federal and California state programs. As discussed previously in the due diligence section, CD determined that, since Blue Jay had not requested to offer federal Enhanced Lifeline to Tribal lands in its advice letter, the Hawaiian issue was not a basis to deny this ETC request.

On October 26, 2015, CGM Telecom Strategy Development and Helping Hands Hawai'i submitted letters of support for Blue Jay each stating their positive experiences working with Blue Jay and encouraging this Commission to approve Blue Jay's ETC designation.

Consequently, due to the substantive revisions to the previously released draft Resolution, the Commission released this Resolution for a second round of public comments. In compliance with P.U. Code § 311(g), the Commission emailed a notice letter on December 28, 2015, informing all parties on the Eligible Telecommunications Carrier service list and the California LifeLine proceeding service list of the availability of this Resolution for public comments at the Commission's website www.cpuc.ca.gov. The notice letter also informed parties that the Commission will post the adopted conformed Resolution at this same website.

FINDINGS AND CONCLUSIONS

1. Blue Jay Wireless, LLC, with corporate offices at 4240 International Parkway, Suite 140, Carrollton, TX 75007, is a California reseller of commercial mobile radio service registered with the Commission under its authority U-4437-C granted on October 19, 2012.
2. On April 15, 2014, Blue Jay Wireless, LLC submitted Advice Letter 2 (AL 2) to the CPUC requesting Eligible Telecommunications Carrier (ETC) designation for the purposes of receiving federal Lifeline support and authorization to be a California LifeLine provider to offer discounted prepaid wireless telephone services to eligible households in California, except for Tribal lands. Blue Jay Wireless, LLC proposed two wireless plans to which it would apply both the $9.25 federal support amount and $12.65 of California LifeLine support.
3. Blue Jay Wireless, LLC commits to comply with the CPUC's rules, orders, and decisions, including General Order 153 and Decision 14-01-036, and the California Public Utilities Code.
4. On November 13, 2014, Blue Jay Wireless, LLC filed AL Supplement 2A modify the activation fee for both plans from $0 to "a one-time initial phone activation fee of $39.00 in connection with its provision of California LifeLine wireless service," which the company would assess on its retail services.

5. On April 29, 2015, Blue Jay Wireless, LLC submitted AL Supplement 2B, which included modifications of its terms and conditions and its proposed consumer disclosures, clarified Blue Jay's provisioning process, and revised its proposed wireless telephone service plans.
6. In AL Supplement 2C filed August 27, 2015, Blue Jay Wireless, LLC clarified how the company would assess the activation fee for California LifeLine participants because the California LifeLine Program reimbursement of non-recurring charges for California LifeLine wireless telephone services expired at the end of June 2015.
7. The Communications Division recommends that Blue Jay Wireless, LLC's ETC designation request be contingent on the following:
    a) Blue Jay Wireless, LLC should adhere to applicable state and federal consumer protection and service quality standard requirements and to the CTIA - The Wireless Association's *Consumer Code of Conduct*, as amended from time to time;
    b) Blue Jay Wireless, LLC should file required federal reports annually with the FCC, USAC, and the Commission, as directed;
    c) Blue Jay Wireless, LLC should submit to the Communications Division Director a copy of the information submitted to USAC and a copy of Blue Jay Wireless, LLC's certification of approval from the USAC within 30 days of receipt from USAC of its compliance with 47 C.F.R. § 54.401(d) related to its federal Lifeline wireless plans; and,
    d) Blue Jay Wireless, LLC should clearly post safety related information about wireless telephone service coverage limitations on distributed terms and conditions, disclosures, marketing materials, including scripts used by customer service representatives, and on its company website.

8. Blue Jay Wireless, LLC should comply with CPUC User Fee and universal service public purpose program surcharge remittance and reporting requirements.

9. Failure to comply with CPUC user fee and surcharge remittance and reporting requirements may lead to enforcement action including, but not limited to, revocation of Blue Jay Wireless, LLC's ETC designation wireless identification registration, and/or authority to operate as a California LifeLine Provider, and denial and/or suspension of California LifeLine reimbursements.

10. Blue Jay Wireless, LLC does not propose to offer federal Enhanced Lifeline service to eligible tribal residents at this time.

11. Blue Jay Wireless, LLC does not currently provide service in California.

12. Blue Jay Wireless, LLC should file a Tier 2 advice letter to demonstrate that it meets the California LifeLine "All Plans Requirement" within 30 days of offering

California LifeLine or of retail telecommunications services to California residents.

13. Blue Jay Wireless, LLC should use a Tier 2 advice letter to request approval for any future changes including, but not limited to, terms and conditions and to the approved California LifeLine wireless service plans.

14. In D.14-01-036, the Commission exempted prepaid telephone service plans from the California LifeLine pre-qualification requirements.

15. It is reasonable to grant a waiver of the California LifeLine pre-qualification requirement for Blue Jay Wireless, LLC's California LifeLine wireless plans because these will be offered on a prepaid basis.

16. Blue Jay Wireless, LLC will require consumers to make an outbound call to activate their service.

17. Blue Jay Wireless, LLC's proposed service activation method and provisioning process are consistent with the California LifeLine Administrator's process and the FCC's service activation rule.

18. Blue Jay Wireless, LLC should provide to CPUC California LifeLine staff all terms and conditions, disclosures, and marketing materials including, but not limited to, customer service representative scripts, internet marketing, and posters and brochures, for review and approval prior to publication and distribution.

19. Blue Jay Wireless, LLC should label clearly the two wireless plans approved in this Resolution as *California LifeLine wireless service plans* and refer to the California LifeLine Program, where applicable, in Blue Jay Wireless, LLC's terms and conditions, disclosures, and marketing materials.

20. Blue Jay Wireless, LLC commits to comply with the California LifeLine Program's enrollment process, including all eligibility rules and validation checks, and to provide the Administrator all required information for the Administrator to determine eligibility.

21. Blue Jay Wireless, LLC's prepaid wireless plans have equal or better value based on comparable offerings and plan pricing for low-income customers:

    - *California Unlimited Voice & Text Plan - No charge to LifeLine participants with unlimited number of minutes and domestic messages; and*
    - *California Unlimited Voice, Text with 5 GB Data Plan - $25 monthly cost to LifeLine participants with unlimited number of minutes and domestic messages and 5 GB data*

22. Communications Division conducted due diligence review to determine Blue Jay Wireless, LLC's fitness as it relates to business practice behavior and customer protection that may call into question its fitness to be granted ETC designation to serve California consumers. Communications Division found no fitness issues.

23. The Commission may pursue an enforcement action which may include fines, penalties, and the revocation of ETC designation and/or wireless identification registration authority should substantive issues emerge after this ETC is approved which raise public interest questions about Blue Jay Wireless, LLC's operations.

24. For public safety reasons, Blue Jay Wireless, LLC shall clearly inform Lifeline customers that coverage limitations may affect wireless mobile service including E-911/911 emergency calls. Disclosures shall include, but are not limited to, clear statements on all marketing materials and the company website.

25. Blue Jay Wireless, LLC shall file a Tier 2 advice letter to request approval to change its federal Lifeline service area including a description of the area(s) to be served, a list of the geographic areas, and a map(s) in Shapefile format of the proposed area. As a California LifeLine provider, it is authorized to provide California LifeLine services throughout the state without any geographic restrictions.

26. To offer federal Enhanced Lifeline service to tribal residents, Blue Jay Wireless, LLC should file a Tier 2 advice letter demonstrating compliance with 47 C.F.R. § 54.202(c) and provide with the advice letter the respective tribe's responses or a declaration in the event a tribe did not respond to the company's notification. The advice letter should describe the specific Tribal lands to be served and include maps in Shapefile format of the proposed Tribal lands. If Blue Jay Wireless, LLC intends also to claim California state support for any service plans it intends to offer on Tribal lands, then it should demonstrate compliance with the California LifeLine program's rules.

27. On October 5, 2015, the Commission emailed a draft of this Resolution to the Eligible Telecommunications Carrier service list for public comments.

28. Blue Jay Wireless, LLC filed comments on October 26, 2015, recommending that the Commission reject staff's recommendation to deny Blue Jay its ETC designation. Blue Jay stated that the draft Resolution made erroneous findings, failed to base conclusions on a record of evidence, and sought to impose arbitrary requirements not previously applied to ETC applicants.

29. On October 26, 2015, CGM Telecom Strategy Development and Helping Hands Hawai'i submitted letters of support for Blue Jay Wireless, LLC as an ETC.

30. On December 28, 2015, the Commission emailed a revised draft of this Resolution to the Eligible Telecommunications Carrier service list and Rulemaking 11-03-013 service list for the California LifeLine proceeding for public comments.

THEREFORE, IT IS ORDERED that:

1. The Commission conditionally approves Blue Jay Wireless, LLC to be designated as an Eligible Telecommunications Carrier and authorized as a California LifeLine Provider to offer prepaid wireless telephone services supported by both the federal Lifeline program and the California LifeLine Program throughout California where its underlying carriers, Sprint and T-Mobile, provide coverage, excluding federally recognized Tribal lands.

2. Blue Jay Wireless, LLC's ETC designation approval shall be contingent upon the following requirements:
   a) Blue Jay Wireless, LLC shall adhere to applicable state and federal consumer protection and service quality standard requirements and to the CTIA - The Wireless Association's *Consumer Code of Conduct*, as amended from time to time;
   b) Blue Jay Wireless, LLC shall file required federal reports annually with the FCC, USAC, and the Commission, as directed;
   c) Blue Jay Wireless, LLC shall submit to the Communications Division Director a copy of the information submitted to USAC and a copy of Blue Jay Wireless, LLC's certification of approval from the USAC within 30 days of receipt from USAC of its compliance with 47 C.F.R. § 54.401(d) related to its federal Lifeline wireless plans; and,
   d) Blue Jay Wireless, LLC shall clearly post safety related information about wireless telephone service coverage limitations on distributed terms and conditions, disclosures, marketing materials, including scripts used by customer service representatives, and on its company website.

3. Blue Jay Wireless, LLC shall be authorized to offer two California LifeLine prepaid wireless service plans:
   - *California Unlimited Voice & Text Plan - No charge to LifeLine participants with unlimited number of minutes and domestic messages; and*
   - *California Unlimited Voice, Text with 5 GB Data Plan - $25 monthly cost to LifeLine participants with unlimited number of minutes and domestic messages and 5 GB data.*

4. This Commission approves Blue Jay Wireless, LLC's request for a waiver of the pre-qualification requirement only for its prepaid telephone service plans.

5. Blue Jay Wireless, LLC shall continue to comply with CPUC User Fee and universal service public purpose program surcharge requirements. Failure to comply with fee and surcharge remittance and reporting requirements may lead to enforcement action including, but not limited to, revocation of Blue Jay Wireless, LLC's ETC designation and/or wireless identification registration authority.

6. Blue Jay Wireless, LLC shall file a Tier 2 advice letter to request approval to changes to its approved ETC-designated service area. The request shall include a list of the geographic areas and a map(s) in Shapefile format of the proposed service area.

7. Blue Jay Wireless LLC shall file a Tier 2 advice letter to demonstrate that it meets the California LifeLine "All Plans Requirement" within 30 days of offering California LifeLine or of retail telecommunications service to California residents.

8. Blue Jay Wireless, LLC shall use a Tier 2 advice letter to request approval for any future changes including, but not limited to, terms and conditions and to the approved California LifeLine wireless service plans.

9. Blue Jay Wireless, LLC shall comply with General Order 153 and the California LifeLine Administrator's enrollment and de-enrollment processes, including, but not limited to validation checks, transmission requirements, and efforts to prevent waste, fraud, and abuse.

10. Blue Jay Wireless, LLC shall submit its terms and conditions, disclosures, and marketing materials, including scripts used by customer service representatives, for review and approval by Communications Division before dissemination and/or availability to the public. Additionally, that Blue Jay Wireless, LLC shall clearly label the two wireless telephone service plans approved by this Resolution as *California LifeLine wireless service plans*, and refer to the California LifeLine Program, where applicable, in Blue Jay Wireless, LLC's terms and conditions, disclosures, and marketing materials.

11. Blue Jay Wireless, LLC shall notify the California LifeLine Administrator and obtain prior approval from Communications Division of any changes to Blue Jay Wireless, LLC's provisioning process and operations including, but not limited to, its pre-screening process and service activation method.

12. Blue Jay Wireless, LLC shall comply with all California Public Utilities Commission rules, orders, decisions, and resolutions, the California Public Utilities Code, and federal Eligible Telecommunications Carrier and Lifeline rules. Failure to do so may result in penalties, fines, denial, suspension, and/or

revocation of its Eligible Telecommunications Carrier designation, and/or authority to operate as a California LifeLine provider in California and denial and/or suspension of its California LifeLine reimbursements.

This Resolution is effective today.

I certify that the California Public Utilities Commission adopted this Resolution at its regular meeting held on January 14, 2016, with the following Commissioners voting favorably thereon:

_____

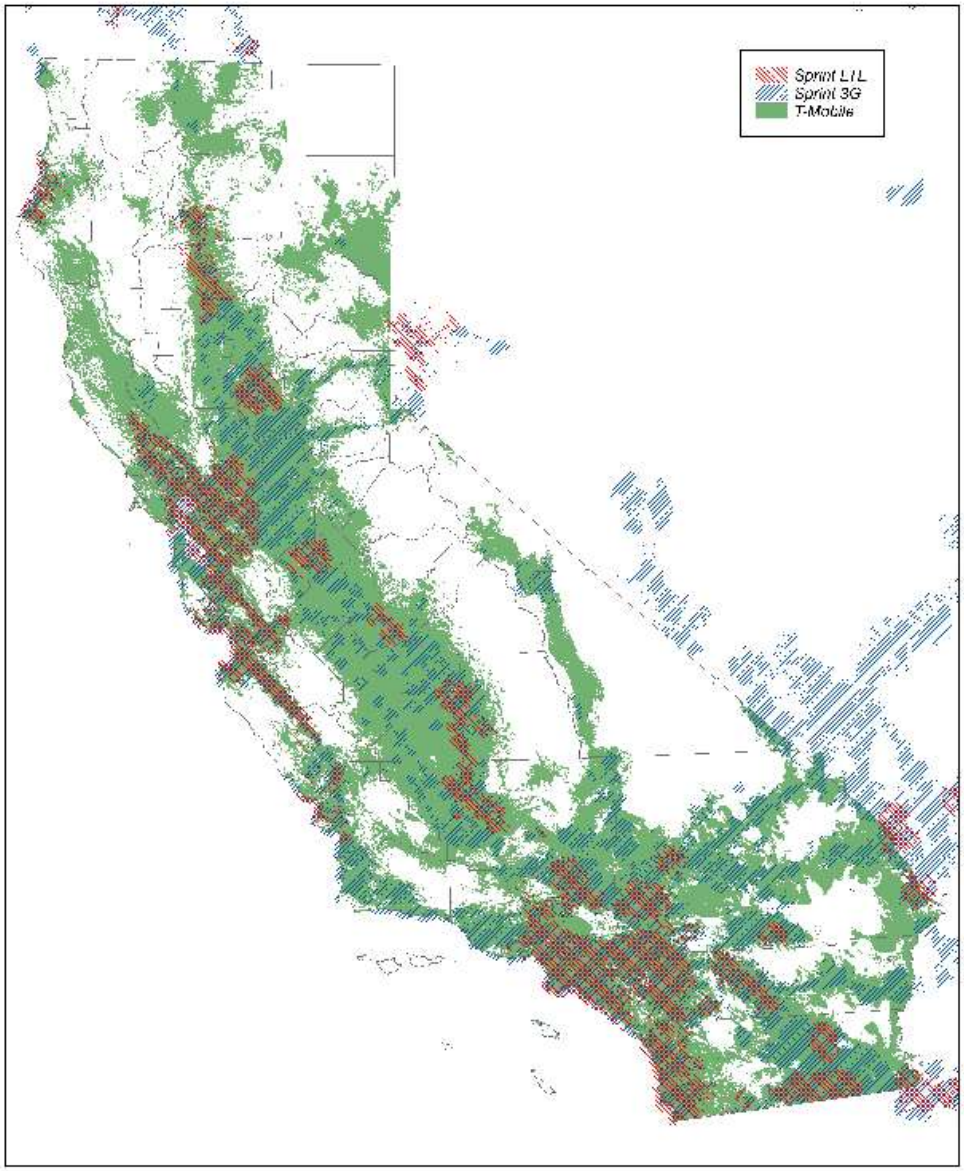
TIMOTHY J. SULLIVAN
Executive Director

Attachment A

Attachment A
Resolution T-17473
Blue Jay Wireless, LLC

Proposed Service Area for Federal ETC Lifeline and California LifeLine Wireless Service in California

BLUE JAY WIRELESS SERVICE AREA



End of Attachment A