

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**Communications Division  
Carrier Oversight & Programs Branch**

**RESOLUTION T- 17473  
November 5, 2015**

**R E S O L U T I O N**

Resolution T-17473. This Resolution denies Blue Jay Wireless, LLC's Advice Letter 2 requesting designation as an Eligible Telecommunications Carrier to provide federal Lifeline and California LifeLine wireless service in California.

**Summary**

By this Resolution, the California Public Utilities Commission (CPUC or Commission) denies the request of Blue Jay Wireless, LLC (Blue Jay) (U-4437-C), a wireless carrier, to be designated as an Eligible Telecommunications Carrier (ETC) to provide federal Lifeline and California LifeLine wireless service to qualifying customers in California.

**Background**

The Federal Communications Commission (FCC) established universal service support mechanisms to ensure that "[q]uality services [are] available at just, reasonable, and affordable rates" for consumers throughout the nation.<sup>1</sup> The FCC's and the CPUC's Lifeline programs further this goal by providing discounts to eligible low-income consumers on their monthly telephone services provided by ETC-designated carriers.

**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, as amended (the Act), states that "only an eligible telecommunications carrier designated under section 214(e) of this title shall be eligible to receive specific Federal universal service support."<sup>2</sup>

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).<sup>3</sup> Section 214(e)(1) provides that, a common carrier designated as an ETC must offer services

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<sup>1</sup> 47 U.S.C. § 254(b)(1).

<sup>2</sup> 47 U.S.C. § 254(e).

<sup>3</sup> 47 U.S.C. § 214(e)2.

supported by the federal Universal Service Fund (USF) throughout the designated service area either by using its own facilities or a combination of its own facilities and resale of another carrier's services.<sup>4</sup> Other ETC requirements include carrier certifications of compliance with rules of the Lifeline program, submission of 5-year improvement plans, remaining functional in emergencies, commitment to consumer and service quality standards, demonstration of financial and technical capability, explanation of methods to advertise, and details of customer terms and conditions Lifeline customers.<sup>5</sup> Finally, 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, through the oversight of the Universal Service Administrative Company (USAC), reimburses ETCs for providing discounts to eligible low-income customers of \$9.25 per month and provides additional reimbursements for serving customers living on Tribal lands.<sup>6</sup>

### **California Public Utilities Commission ETC Designation Requirements**

A carrier requesting an ETC designation from the CPUC must also comply with the CPUC's ETC rules pursuant to Resolution T-17002 (May 25, 2006) which set forth procedures and guidelines for ETC designation and reporting requirements consistent with federal requirements. Carriers are required to demonstrate compliance with financial and technical obligations of providing service, and commitment to consumer protections at the time of filing.

In addition, ETC designation requests must comply with General Order 153, which contains California LifeLine program requirements, and include attestation to submit CPUC User Fees and public purpose program surcharges.

### **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. No protests were filed.

### **Discussion**

#### **Company Overview**

Blue Jay Wireless, LLC has corporate offices at 5010 Addison Circle, Addison, TX 75001. 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 wireless services to eligible

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<sup>4</sup> 47 U.S.C. § 214(e)1.

<sup>5</sup> 47 C.F.R. § 54.202(a).

<sup>6</sup> 47 C.F.R. § 54.403.

low-income households in these carriers' service territories throughout California. Blue Jay does not request authority to provide federal Lifeline or California LifeLine service on Tribal lands at this time.

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 households in California. Blue Jay submitted AL Supplement 2A on February 10, 2015, AL Supplement 2B on April 30, 2015, and AL Supplement 2C on August 31, 2015.

### **Due Diligence Review**

An integral part of Communications Division (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.<sup>7</sup> During 2014, Blue Jay reportedly oversubscribed Lifeline residents ineligible to receive Hawaiian Home Lands/Tribal lands status and filed federal subsidy reimbursement requests with the USAC based on the inflated subscriptions. USAC's federal Lifeline disbursements to Blue Jay from January to October 2014 show that the carrier's reimbursement claims were six times higher than those claimed by the next highest Lifeline provider in that state.<sup>8</sup> CD verified the information with the Hawaii Public Utilities Commission as accurate.

At this time, CD does not recommend that the Commission grant Blue Jay ETC designation or authority to offer California LifeLine service. The issue of oversubscribing ineligible Hawaiian Home Lands residents is substantive and raises questions about Blue Jay's ability to administer the Lifeline program in compliance with federal and state rules and requirements.

To be considered for ETC designation in California, CD recommends that Blue Jay resolve the Hawaiian Home Lands issue with USAC and/or the FCC and be required to

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<sup>7</sup> <http://www.slideshare.net/civilbeat/blue-jay-wireless-hawaii-letter>, source letter from Yamamoto Caliboso law firm.

<sup>8</sup> <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.

provide retail (non-Lifeline) wireless service for a minimum of one (1) year in California to demonstrate compliance with CPUC rules such as, but not limited to, paying CPUC universal service surcharges and User Fees, and not have a pattern of customer abuse.

### **Safety Considerations**

There are no safety concerns to address with the denial of the ETC designation.

### **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 of the availability of this resolution for public comments at the Commission's website [www.cpuc.ca.gov](http://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 5010 Addison Circle, Addison, TX 75001, 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.
3. Blue Jay Wireless, LLC submitted AL Supplement 2A on February 10, 2015, AL Supplement 2B on April 30, 2015, and AL Supplement 2C on August 31, 2015.
4. Communications Division found that Blue Jay Wireless, LLC significantly oversubscribed customers under Hawaiian Home Lands/Tribal lands status. The matter remains unresolved between Blue Jay Wireless, LLC, the Universal Service Administrative Company and/or the Federal Communications Commission.
5. Communications Division recommends the Commission deny Blue Jay Wireless, LLC's request for ETC designation as a provider of federal Lifeline and California LifeLine wireless services.
6. Communications Division recommends that Blue Jay Wireless, LLC be required to offer wireless service in California on a retail basis (non-Lifeline) for a minimum of one (1) year under its wireless identification registration authority U-4437-C to establish a record of operations. Blue Jay Wireless, LLC may re-submit

an advice letter to request ETC designation after one (1) year of retail (non-Lifeline) wireless operation and the conclusion of the Hawaiian Home Lands/Tribal lands issue with the Universal Service Administrative Company and/or the Federal Communications Commission.

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

**THEREFORE, IT IS ORDERED** that:

1. The Commission denies Blue Jay Wireless, LLC's (U-4437-C) Advice Letter 2 requesting Eligible Telecommunications Carrier designation to provide federal Lifeline and California LifeLine wireless service throughout California.
2. Blue Jay Wireless, LLC may re-submit an advice letter to request Eligible Telecommunications Carrier designation when it:
  - resolves with the Universal Service Administrative Company and/or the Federal Communications Commission the oversubscription of ineligible Hawaiian Home Lands/Tribal lands residents; and
  - offers wireless service in California on a retail basis (non-Lifeline) for a minimum of one (1) year under its wireless identification registration authority U-4437-C.

This Resolution is effective today.

I certify that the California Public Utilities Commission adopted this resolution at its regular meeting held on November 5, 2015, with the following Commissioners voting favorably thereon:

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TIMOTHY J. SULLIVAN  
Executive Director