

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

IN THE MATTER OF THE AMENDED PETITION OF BLUE JAY WIRELESS, LLC FOR LIMITED DESIGNATION AS A WIRELESS ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STATE OF WASHINGTON	Docket No. UT-121455
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**AMENDED PETITION OF BLUE JAY WIRELESS, LLC FOR
LIMITED DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER**

Blue Jay Wireless, LLC (Blue Jay or the Company), by its counsel, respectfully submits this Amended Petition for limited Designation as an Eligible Telecommunications Carrier (ETC) pursuant to section 214(e)(2) of the Communications Act of 1934, as amended (the Act), section 54.201 *et seq.* of the rules of the Federal Communications Commission (FCC) and WAC 480-123-030. Blue Jay requests that the Washington Utilities and Transportation Commission (Commission) grant it designation as a wireless ETC in Washington for the sole purpose of receiving federal universal service Lifeline support in the geographic areas specified in this Petition. The Company does not request ETC status for the purpose of receiving support from any of the other federal Universal Service Funds (USF). Finally, as discussed in more detail below, Blue Jay requests that the Commission grant it an exemption from the requirements of WAC 480-123-030(1)(d), (f) and (g).

As discussed in more detail below, Blue Jay meets the statutory and regulatory requirements for designation as an ETC and is able and prepared to offer the Lifeline-supported services throughout the State of Washington. Granting ETC status to Blue Jay will benefit the public interest by making the Company's services available to a broad range of low-income

consumers. Because the availability of Blue Jay's services so clearly serves the interests of Washington consumers, Blue Jay respectfully requests that the Commission grant this Petition expeditiously. In support of this Petition, Blue Jay provides the following information:

I. THE APPLICANT

Blue Jay is a Texas limited liability company with principal offices at 4240 International Parkway, Suite 140, Carrollton, TX 75007.¹ The Company is registered with the Washington Secretary of State as a foreign limited liability company operating in Washington,² but is not yet operational in the state. The name under which the petitioner will be providing telecommunications service in Washington is Blue Jay Wireless, LLC.

Blue Jay has been granted ETC designation in Arizona, California, Colorado, Hawaii, Kentucky, Michigan, Minnesota, Missouri, Nevada, North Dakota, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Texas, Utah and Wisconsin. Additionally, the Company has applications pending for ETC designation in the following states: New Jersey, New Mexico and South Dakota. Moreover, Blue Jay is awaiting designation as an ETC by the FCC in the states of Alabama, Connecticut, Delaware, Florida, New Hampshire, New York, North Carolina, Tennessee, and Virginia, as well as the District of Columbia.³ Further, the Company is preparing to file petitions for ETC designation in additional states. None of Blue Jay's petitions for ETC designation have been denied.

Blue Jay operates as a common carrier, providing wireless mobile phone services to more than 225,000 consumers across the United States. Blue Jay will provide domestic and

¹ An organizational chart showing Blue Jay's corporate structure and a list of the company's members and affiliated entities are attached as Exhibit A.

² A copy of Blue Jay's registration with the Washington Secretary of State is attached hereto as Exhibit B.

³ Blue Jay also may add Maine to its Federal ETC petition.

international voice and data services, primarily to low-income consumers. As a reseller of wireless services, Blue Jay will purchase wireless network service from Sprint and T-Mobile on a wholesale basis and resell these services to its customers.⁴ Blue Jay will provide affordable prepaid mobile phone and broadband service, including calling, text messaging, and broadband Internet access along with user-friendly handsets and high quality customer service. Blue Jay's products and plans will be specially geared toward serving lower income communities, and its service models and pricing plans will reflect this mission. The Company will not require service contracts from its customers and it will always ensure competitive low pricing for its services and products. By providing affordable service, Blue Jay can reach out to those who are often ignored by traditional carriers.

Blue Jay will manage and market all aspects of the customer experience, including setting service pricing, handset selection, marketing materials, and live customer service. The Company's prepaid, budget-friendly pricing will give many low-income consumers the option of having mobile phone and broadband service without the burden of hidden costs, varying monthly charges, or contractual commitments. Customers will be able to customize their mobile service to suit their needs with Blue Jay's pay-as-you-go rechargeable mobile phone plans.

Blue Jay's customer base will likely be low-income consumers and the majority are unlikely to have phone service of any kind prior to enrollment. Blue Jay's customers will depend on and benefit greatly from Blue Jay's inexpensive and flexible pricing plans. Blue Jay will not impose credit checks nor will it require any deposits or contractual commitments. Most of Blue Jay's customers will likely turn to Blue Jay because they cannot afford the postpaid services provided by traditional wireless carriers. Blue Jay will affirmatively reach out to the

⁴ Blue Jay purchases the services of Sprint and T-Mobile through an intermediary, Prepaid Wireless Group.

low-income sector of the consumer base to offer attractive and affordable communications options. As such, Blue Jay will contribute to the expansion of mobile wireless services for low-income consumers and intends to seek ETC designation in additional states and territories so that it may continue to expand the service options for low-income consumers.

II. BLUE JAY'S PROPOSED ETC OPERATIONS AND QUALIFICATIONS

1. Authority for Designation of Eligible Telecommunications Carriers.

Section 214(e)(2) of the Act provides that, upon request and consistent with the public interest, convenience and necessity, the Commission may designate more than one common carrier as an ETC in areas served by a rural telephone company and shall do so with respect to all other areas, provided that the requesting carrier (i) offers the services that are supported by federal universal service support mechanisms; and (ii) advertises the availability of such services.⁵ Commission rules, as well as those of the FCC, impose additional requirements on a carrier requesting ETC designation. As demonstrated below, Blue Jay more than satisfies each of these requirements.

2. Blue Jay Will Operate as a Common Carrier.

Blue Jay will operate as a common carrier as defined in 47 U.S.C. § 153(10) and thus is eligible for designation as an ETC. The FCC has consistently held that providers of wireless services are to be treated as common carriers for regulatory purposes. Moreover, section 332(c)(1)(A) of the Act states that CMRS providers will be regulated as common carriers.⁶

⁵ 47 U.S.C. §214(e)(2). *See also* 47 C.F.R. § 54.201(d).

⁶ *See* 47 U.S.C. § 332(c)(1)(A).

3. Blue Jay Will Provide the Services Designated for Support

The FCC has identified the following as supported voice services, which are to be offered by an ETC and will be supported by the federal USF program:

- voice grade access to the public switched network
- local usage
- access to emergency services
- toll limitation for qualifying low-income consumers⁷

Upon receiving the requested designation as an ETC, Blue Jay will provide each of these required services, as described in more detail below, throughout its designated service area. Blue Jay will also offer broadband Internet access service throughout its designated service area.⁸

The Company will provide service via resale of underlying carrier services provided by T-Mobile and Sprint. Section 214(e)(1)(A) of the Act provides that an ETC must provide services “using its own facilities or a combination of its own facilities and resale of another carrier’s services.”⁹ Pursuant to the FCC’s 2012 decision reforming the Lifeline program, however, resellers are granted blanket forbearance from this facilities requirement, subject to conditions, in connection with limited ETC designation to participate in the Lifeline program.¹⁰ The FCC conditioned blanket forbearance on the petitioner’s provision of 911 service and the

⁷ See 47 C.F.R. § 54.101(a)(1).

⁸ See 47 C.F.R. § 54.101(a)(2).

⁹ 47 U.S.C. § 214(e)(1)(A).

¹⁰ See *Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training*, WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, WC Docket No. 12-23, Report and Order and Further Notice Of Proposed Rulemaking, FCC 12-11, ¶ 368 (Feb. 6, 2012) (2012 Lifeline Reform Order). Blue Jay is also aware of the recent rule changes adopted by the FCC in its Lifeline Modernization Order. See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, ¶ 374 (rel. Apr. 27, 2016) (Lifeline Modernization Order). The Company will comply with the requirements of that order when they become effective.

petitioner having obtained an approved compliance plan.¹¹ Blue Jay is committed to comply with those 911 service requirements with regard to its voice Lifeline services and obtained approval from the FCC's Wireline Competition Bureau of its Compliance Plan on December 26, 2012.¹²

A copy of this plan and a copy of the FCC Public Notice approving the Company's Compliance Plan and the associated Erratum are appended as **Exhibit C**.¹³ As a result of the FCC's approval of its compliance plan, Blue Jay is not required to meet the "own facilities" requirement of section 214(e)(1)(A). Consequently, the Company's proposal to operate as an ETC in Washington using resold services will be entirely compliant with FCC requirements.

Pursuant to its ETC designation, Blue Jay will provide supported services as follows:

Voice Grade Access

The FCC has stated that voice-grade access consists of the ability for a user to make and receive telephone calls within a specified bandwidth.¹⁴ Blue Jay will provide this via resale of T-Mobile and Sprint mobile services to low-income customers in its designated service area.

Local Usage

The FCC's rules require an applicant for ETC designation to demonstrate that its proposed local usage plan is comparable to one offered by the ILEC in the same designated

¹¹ 2012 Lifeline Reform Order ¶¶ 368, 373.

¹² See *Wireline Competition Bureau Approves the Compliance Plans of Airvoice Wireless, Amerimex Communications, Blue Jay Wireless, Millennium 2000, Nexus Communications, PlatinumTel Communications, Sage Telecom, Telrite, and Telscape Communications*, WC Docket Nos. 09-197, 11-42, Public Notice, DA 12-2063 (2012). The FCC does not require companies to continually update their compliance plans. Blue Jay's Compliance Plan, while not updated since 2012, provides a "snapshot" of the Company's Lifeline compliance practices in order to ensure the Commission that Blue Jay takes reasonable steps to adhere to the Lifeline rules.

¹³ The FCC notice approving Blue Jay's Compliance Plan misstated the date on which the Company made final revisions. An Erratum was issued to correct this error.

¹⁴ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, First Report and Order, 12 FCC Rcd 8776, 8810-11 (May 8, 1997).

service area. The determination of comparability requires a case-by-case review, taking into account value-added capabilities and services included within a service plan.

Beginning on December 2, 2016 (or following Commission approval of this petition, whichever is later), Blue Jay will offer the following Lifeline service packages throughout its designated service area in Washington:

- **500 MB of mobile broadband data, 250 anytime prepaid minutes and unlimited text messages per month**, without rollover, at no charge.¹⁵
- **500 MB of mobile broadband data, 500 anytime prepaid minutes, and unlimited text messages per month**, without rollover, for \$3.50 per month.
- **Tribal Resident Lifeline 1 GB, Unlimited Voice and Text Plan.** Each month the customer will receive 1 GB of mobile broadband data, unlimited anytime voice minutes and text messages at no charge. There are no rollover minutes with this plan as minutes are unlimited. This plan will only be available to Tribal residents.¹⁶

All plans will include nationwide domestic long-distance at no extra per minute charge, as well as Caller ID, Voice Mail, Call Waiting and Three-Way Calling. Therefore, Blue Jay's usage plans are different from but comparable to one offered by the ILEC in the same designated service area. Customer service (611) and emergency (911) calls will all be free, regardless of

¹⁵ Blue Jay's plans are consistent with the minimum voice and broadband service requirements adopted in the Lifeline Modernization Order when they become effective. *See* Lifeline Modernization Order ¶¶ 69-113. Should the Commission approve this petition prior to December 2, 2016, the Company will temporarily offer a plan to non-Tribal subscribers in Washington that includes 250 anytime prepaid minutes plus 250 text messages per month, without rollover, at no charge. Any subscribers enrolled in this plan will be transitioned to a plan that meets at least one of the minimum service standards by December 2, 2016. Blue Jay's enhanced Tribal plan will be available before December 2, 2016 without the 1 GB of data.

¹⁶ In order to verify that applicants seeking to enroll in Blue Jay's Tribal Lifeline plan are eligible to receive the enhanced Tribal Lifeline benefit, Blue Jay will deploy its proprietary geo-mapping tool in Washington. Pursuant to the FCC's current rules, ETCs are not required to verify a Tribal applicant's self-certification of residence on Tribal lands and Tribal residents are not required to prove their residence on Tribal lands. Therefore, prior to the implementation of the geo-mapping tool, the only mechanism available to Blue Jay for determining whether a subscriber resided on Tribal land was to rely on the self-certification made at the time of enrollment. This geo-mapping tool allows Blue Jay to identify verify whether a customer resides on Tribal lands before enrolling them in the Lifeline program with the enhanced Tribal benefit. Blue Jay has worked cooperatively with the FCC to ensure that the agency is comfortable with its geo-mapping tool and the process used for ensuring that only subscribers who are eligible for an enhanced Lifeline benefit get it.

service activation or availability of minutes, and will not count against the customer's airtime. Directory assistance calls (411) will be free; however, they will count as airtime minutes of usage. Lifeline customers can purchase the following additional bundles of minutes, text messages and/or data:¹⁷

- 1,000 voice or text units - \$10.00
- 1 GB - \$10.00
- 500 MB unlimited minutes and unlimited text messages – \$15.75

Airtime and data “top-ups” will be available for purchase at the Company's retail locations,¹⁸ by calling Blue Jay's customer service department, and on its website.

In addition to free voice services, customers can select either a free wireless handset (including smartphones for the broadband plans) or purchase an upgraded phone.¹⁹ Free handsets are new, not refurbished, which separates Blue Jay from some other competitors in the market. For those customers with smartphones, data can be added to any phone plan

Additional information regarding the Company's plans, rates and services can be found on its website www.bluejaywireless.com. The terms and conditions for Blue Jay's service are readily available at <http://www.bluejaywireless.com/terms/>.

Access to emergency services

The Company will provide access to emergency services provided by local government or public safety officials, including 911 and E911 where available and will comply with any FCC or Commission requirements regarding E911-compatible handsets. As discussed further in Blue

¹⁷ These top up prices reflect a recently-implemented pricing structure that will be in effect on December 2, 2016.

¹⁸ Blue Jay customers may purchase “top-ups” from customer service representatives or at Ace Cash locations.

¹⁹ Blue Jay is prepared to comply with the hotspot and Wi-Fi capability requirements for handsets adopted in the Lifeline Modernization Order upon the effective date of that requirement. *See* Lifeline Modernization Order ¶ 378.

Jay's enclosed Compliance Plan, Blue Jay will comply with the FCC's forbearance grant conditions relating to the provision of 911 and E911 services and handsets. Calls to 911 emergency services will always be free and will be available regardless of service activation status or availability of minutes.

Toll limitation for qualifying low-income consumers

In its initial operations, Blue Jay will not provide toll limitation service (TLS). Like most wireless carriers, Blue Jay does not differentiate domestic long distance usage from local usage and all usage is paid for in advance. Pursuant to the 2012 Lifeline Reform Order, subscribers to such "all-distance" services are not considered to have voluntarily elected to receive TLS.²⁰ If, in future, Blue Jay should offer a Lifeline service that differentiates between local usage and long distance usage, the Company commits to provide TLS to customers of that service.

4. Advertising the Availability of Blue Jay's Universal Service Offerings

Blue Jay will advertise the availability of its service and charges in a manner reasonably designed to reach Lifeline-eligible consumers and will comply with the FCC's rules regarding information to be included in advertisements.²¹ The Company intends to advertise its Lifeline services using media such as the Internet and social media, newspapers of general circulation, and radio and television, as well as through in-person enrollments, as a means of reaching those consumers that are likely to qualify for Lifeline services. Blue Jay will use these advertising media to advertise the availability of its services to Lifeline customers and will expand its advertising efforts if necessary to ensure that Lifeline-eligible customers are aware of the service

²⁰ See 2012 Lifeline Reform Order ¶ 230.

²¹ 47 C.F.R. §§ 54.201(d)(2), 54.405(b).

offerings.²² Blue Jay will ensure that all of its Lifeline advertising materials comply with the FCC's rule section 54.405(c). Specifically, Blue Jay's advertising materials will state, in easily understood language, that: (i) the service is a Lifeline service; (ii) Lifeline is a government assistance program; (iii) the service may not be transferred to someone else; (iv) consumers must meet certain eligibility requirements before enrolling in the Lifeline program; (v) the Lifeline program permits only one Lifeline discount per household; (vi) that documentation is necessary for enrollment; and (vii) Blue Jay is the provider of the services. In addition, Blue Jay's application/certification form will state that subscribers who willfully make a false statement in order to obtain the Lifeline benefit can be punished by fine or imprisonment or can be barred from the program. An example of the type of advertising materials that Blue Jay intends to use in Washington is attached as **Exhibit D**.

5. Compliance with Additional ETC Obligations

*Blue Jay has the ability to remain functional in emergency situations.*²³

As discussed herein, Blue Jay will utilize the Sprint and T-Mobile networks to provide Blue Jay's mobile services. The Company has access to the extensive and well-established Sprint and T-Mobile networks and facilities and believes that the Sprint and Verizon Wireless networks are capable of managing traffic spikes that may occur during emergency situations and can reroute traffic in the event of damaged facilities. Blue Jay also understands that Sprint and T-Mobile have sufficient back-up power to ensure functionality if an external power supply is unavailable.

²² See 47 C.F.R. § 54.405(b).

²³ See, e.g., 47 C.F.R. § 54.202(a)(2); see also Lifeline Modernization Order ¶ 282.

Blue Jay will satisfy applicable consumer protection and service quality standards.

The FCC has stated that a wireless applicant's commitment to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service (CTIA Consumer Code) will satisfy this consumer protection and service quality requirement. Blue Jay complies with applicable consumer protection requirements and the CTIA Consumer Code. Blue Jay agrees to continue to comply with the CTIA Consumer Code to ensure it offers its subscribers the highest level of protection and quality service.²⁴ Blue Jay's pledge to provide quality service and voluntarily to comply with this code evidences its commitment to satisfying all of the applicable consumer protection and service quality standards. The Company will make every effort to resolve complaints received by the Commission and will designate a specific contact person to work with Commission staff to resolve any complaints or other compliance issues.

Blue Jay is financially and technically capable of providing Lifeline services in compliance with the FCC's rules

The FCC's rules require ETC petitioners to demonstrate financial and technical capability to comply with the FCC's Lifeline service requirements.²⁵ Among the factors to be considered are: a carrier's prior offering of service to non-Lifeline subscribers, the length of time the carrier has been in business, whether the carrier relies exclusively on Lifeline reimbursement to operate, whether the carrier receives revenues from other sources and whether the carrier has been the subject of an enforcement action or ETC revocation proceeding.

As demonstrated in the key officer resumes attached as **Exhibit E**, Blue Jay's core team has extensive experience in the wireless sector, and as such has the technical capability to

²⁴ See, e.g., 47 C.F.R. § 54.202(a)(3); see also Lifeline Modernization Order ¶ 282.

²⁵ See, e.g., 47 C.F.R. § 54.202(a)(4).

provide Lifeline services in compliance with the FCC's rules. A copy of Blue Jay's most recent financial statements is attached as **Exhibit F** (filed under seal).

Further, the Company has provided local and long distance voice services, without interruption, for nearly four years, broadband service for nearly three years and Lifeline services since June 2013. Currently, the Company provides voice and/or broadband service to more than 225,000 subscribers including nearly 15,000 non-Lifeline subscribers. In addition, Blue Jay has developed a technology distribution platform designed to disrupt the traditional wireless reseller model and provide more value to consumers than traditional wireless resale offerings. Blue Jay has partnered two types of mobile application partners to deliver a portfolio of apps that advance its mission. The first type of mobile application partner provides a service that enables customers to earn additional value (e.g., additional voice minutes and data), including through a lock-screen application, an "offer wall," and a transportation application. The second type of mobile application partner provides a social benefit to our customers, including telehealth services, jobs applications, and education and training resources. The Blue Jay mobile app ecosystem enables customers to earn additional value while achieving its social mission to help customers receive vital access to healthcare, jobs, program needs and education and to other social services.

Blue Jay's financial and technical ability to provide Lifeline service will not be materially compromised by the Consent Decree that Blue Jay reached with the Commission on July 15, 2016.²⁶ Blue Jay entered into a settlement and consent decree with the Commission's Enforcement Bureau that closed an investigation and an audit appeal involving the Company's provision of Lifeline services to eligible subscribers in Hawaii. The agreement:

²⁶ *Blue Jay Wireless*, File No. EB-IHD-14-00017212, Order, DA 16-790 (rel. July 15, 2016) (Blue Jay Consent Decree).

- Contained no finding or admission of wrongdoing by Blue Jay, and affirmed Blue Jay's good standing as an ETC.
- Did not involve a fine or civil penalty and instead allowed Blue Jay to make good on a prior commitment to "make the Fund whole" for enhanced Lifeline benefits provided based on self-certifications of residency on Hawaiian Home Lands made by the subscribers that were later determined by Blue Jay to be inaccurate.
- Memorialized Blue Jay's unique process for verifying self-certifications of subscribers seeking the enhanced Lifeline benefit available to residents of Hawaiian Home Lands, through the use of its own geo-mapping tool. In an audit, the Universal Service Administrative Company (USAC) concluded that this process was "conservative to the Fund" because FCC rules require only applicant self-certification.

Blue Jay began development of a geo-mapping tool after an informal inquiry by a staff employee of the Hawaii Public Utilities Commission in May of 2014 about the number of Blue Jay subscribers self-certifying residency on Hawaiian Home Lands. As the settlement notes, there are no official population figures available that measure eligible Lifeline subscribers residing on Hawaiian Home Lands.²⁷

Going above and beyond the requirements of the rules, Blue Jay created a geo-mapping tool to confirm that a Tribal applicant's address is located on Hawaiian Home Lands. Without this tool, it would have been impossible to fairly verify which subscribers were accurately self-certifying residency on Hawaiian Home Lands.

After testing the geo-mapping tool, Blue Jay applied it to its existing subscriber base in June of 2014, which resulted in a number of Tribal self-certifications that could not be confirmed. As required by the Lifeline rules, Blue Jay gave subscribers 30 days to rebut the presumption created by the tool, and in the absence of additional proof, moved subscribers to a standard Lifeline benefit plan. This process was completed in August of 2014. Prior to that

²⁷ See Blue Jay Consent Decree ¶ 8.

time, consistent with FCC rules, Lifeline benefits were provided and reimbursement requests were made based on the subscribers' self-certifications.

The entire process of creating the geo-mapping tool, applying it to Blue Jay's subscribers, and transitioning subscribers to standard Lifeline plans was completed prior to any inquiries by USAC or the Enforcement Bureau, which began in October of 2014.

Blue Jay made the commitment to make the Fund whole because it did not want to be seen as benefiting in any way from erroneous self-certifications made by subscribers. Blue Jay was pleased to have successfully concluded this FCC inquiry and USAC audit in this manner. Blue Jay is committed to leading the industry in compliance and self-regulates to maintain the highest standards of compliance across all aspects of its business.

Certification and Verification Issues

Blue Jay is aware of the FCC's current requirements regarding certification and verification of a customer's qualification for Lifeline service and has implemented procedures to ensure the requirements are met. As described in Blue Jay's FCC-approved compliance plan, Blue Jay has detailed and comprehensive procedures in place to address customer certification and verification requirements as well as those requirements addressing de-enrollment and duplication of service. These procedures comply with the FCC's customer certification and verification requirements.²⁸ Blue Jay also will comply with the FCC's annual certification and reporting requirements as well as the FCC's measures to prevent waste, fraud and abuse of Lifeline services.²⁹ In particular, Section E of Blue Jay's Compliance Plan discusses steps that

²⁸ 47 C.F.R. § 54.410.

²⁹ 47 C.F.R. §§ 54.416, 54.422; *See also Telecommunications Carriers Eligible for Universal Service Support; Virgin Mobile USA, L.P. Petition for Designation as an Eligible Telecommunications Carrier in the State of*

the Company will take to ensure activation of service and to implement de-enrollment in the event of inactivity for a period of sixty days.³⁰ To carry out these commitments, Blue Jay conducts extensive training for all of its employees and enrollment agents. Blue Jay intends to carry forth this model for Lifeline enrollments in Washington.

Other ETC Compliance Obligations

Blue Jay will not collect service deposits for its plans and will not charge a number-portability fee for Lifeline accounts.³¹ Blue Jay will timely pay all applicable federal, state, and local regulatory fees, including universal service and E911 fees.³²

Finally, Blue Jay will comply with all operational and compliance requirements for wireless ETCs contained in Washington state law and Commission Rules and Decisions, consistent with the FCC's rules.

6. Request for Exemption from Specified Provisions of WAC 480-123-030

Blue Jay respectfully requests that the Commission exempt it from compliance with certain provisions of WAC 480-123-030 that are demonstrably inapplicable to Blue Jay's proposed operations in Washington. WAC 480-123-030(1)(d) instructs an ETC applicant to submit a "substantive [investment] plan" for federal support received in the first two years – a requirement intended to track investment of high-cost support in carriers' networks. As noted above, Blue Jay does not seek to receive federal or state high-cost support (and the Lifeline subsidies that it does seek offset discounts provided to customers). WAC 480-123-030(1)(f)

Alabama, et al., DA 10-2433, ¶ 24 (2010) (2010 Virgin Mobile ETC Order). Blue Jay will also communicate with Washington social service agencies and the National Lifeline Accountability Database (NLAD) to verify Lifeline customers' eligibility.

³⁰ Blue Jay will comply with the amended non-usage rules adopted in the Lifeline Modernization Order.

³¹ See 47 C.F.R. §§ 54.401(c), (e).

³² Blue Jay specifically commits that it will remit the Washington 911 excise tax.

requires an ETC applicant to submit detailed network maps including current and future locations of cell sites and WAC 480-123-030(1)(g) requires submission of network infrastructural details supporting the applicant's ability to remain functional in an emergency. Both of these requirements contemplate a facilities-based ETC operation. Blue Jay, however, is a pure wireless reseller that does not own its own facilities and does not have access to this data for its underlying carriers. For this reason, Blue Jay requests that the Commission exempt the Company from compliance with these provisions, to the extent appropriate, consistent with its recent decisions.³³

7. The Public Interest Will Be Served by Grant of This Petition

Designation of Blue Jay as an ETC for Lifeline purposes will further the Commission's universal service goals and thus benefit Washington consumers. Specifically, the Company will offer prepaid low cost wireless service to low-income consumers, thereby increasing consumer choice by enabling the entry of a provider offering affordable voice and broadband services to low-income consumers. Further, grant of the Petition will provide consumers with access to high quality service and the benefits of a mobile service.³⁴ The mobility of the service will be particularly attractive to Lifeline-eligible consumers who may frequently change residences or work in migratory jobs. Wireless service therefore offers a stable contact method where

³³ *Petition of TracFone Wireless, Inc. for Exemption from WAC 480-123-030(1) (d), (f) and (g); and Designation as an Eligible Telecommunications Carrier for the Purpose of Receiving Lifeline Support from the Federal Universal Service Fund*, Docket UT-093012, Order 03, Final Order Adopting Settlement Agreement; Granting on Condition, Designation as an Eligible Telecommunications Carrier and Exemption from Provisions of WAC 480-123-030; Granting WITA's Petition to Withdraw Intervention (June 24, 2010) (granting TracFone's request for exemption from these three provisions). Similarly, Virgin Mobile was granted exemption from compliance with WAC 480-123-030(1)(d) because the company did not seek receipt of high-cost support. *Petition of Virgin Mobile USA, L.P. for an Exemption from WAC 480-123-030(1)(d) and Designation as an Eligible Telecommunications Carrier*, Docket UT-100203, Order 01, Order Granting the Exemption From Provisions of WAC 480-123-030(1)(d), Investment Plan, and Designation as an Eligible Telecommunications Carrier (Nov. 10, 2010) (Virgin Mobile Washington ETC Order).

³⁴ As discussed above, Blue Jay will comply with the Consumer Code for Wireless Service of CTIA – The Wireless Association.

traditional landline service would be unavailable or not a viable option. Blue Jay's prepaid wireless service is an especially attractive option for low-income consumers because it alleviates customer concerns regarding hidden costs, varying monthly charges and long term contract issues.

Many consumers in Washington are faced with making difficult choices about how to allocate and spend their limited resources. The ability to meet their communications needs while at the same time anticipating and controlling the associated costs is critical. Blue Jay's prepaid service offerings and rechargeable mobile phone plans will enable customers to tailor their wireless services to their needs and budgets and the prepaid nature of the service also will provide an alternative for "unbanked" consumers. Further, Blue Jay will not impose credit checks thereby providing an alternative for those low-income consumers unable to obtain credit for post-paid services provided by traditional carriers.

Blue Jay's prepaid mobile calling service packages will provide low-income consumers in Washington with a generous number of anytime minutes at low cost to the consumers as well as 911 emergency calling. These low-cost minutes and services are an invaluable resource for cash-strapped consumers who may be seeking employment and need a means to contact potential employers. The packages are also useful for those consumers that need the ability to stay in touch with children or other family members as well as to contact 911 emergency services when needed. Blue Jay's services will provide consumers with a valuable alternative for obtaining telephone service and this competition in turn could spur other service providers to improve their service options.

Further, as described above, Blue Jay will enhance competition in the market in Washington by providing attractive service plans and high-quality devices and customer service.

Unlike some other Lifeline providers, Blue Jay does not provide refurbished handsets to subscribers who choose a free phone option – all handsets are new. Moreover, because of Blue Jay’s extensive training for employees and enrollment agents, the Company will have a consistent and reliable enrollment process that will enhance the customer experience.

Finally, designation of Blue Jay as an ETC in Washington will not significantly burden the federal USF. Blue Jay recognizes the Commission’s concerns in this regard; however, the FCC has repeatedly observed that designation of ETCs for Lifeline services only should not impose an undue burden on the USF and, moreover, that such impact as does occur is outweighed by the benefits to consumers in urgent need of such assistance.³⁵ Similarly, this Commission has recognized the need to make additional wireless Lifeline plans available to Washington consumers.³⁶ Furthermore, as part of the Lifeline Modernization Order, the FCC adopted budget mechanism in a new rule, section 54.423, that sets an initial annual budget of \$2.25 billion beginning January 1, 2017, indexed to inflation.³⁷ As discussed elsewhere in this Petition, Blue Jay commits to fully comply with those reform efforts.

8. Proposed Service Area

Sections 214(e)(2) and 214(e)(5) of the Act provide that ETC designations shall be made for a “service area,” defined as a geographic area established by the state commission. The Company seeks certification to operate as an ETC in the geographic service areas where its

³⁵ See, e.g., *Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A); Petitions for Designation as an Eligible Telecommunications Carrier in the States of New York, North Carolina, Pennsylvania, Tennessee and Virginia*, Order, pp.11-12 (rel. Mar. 5, 2009).

³⁶ See, e.g., *Virgin Mobile Washington ETC Order*.

³⁷ See *Lifeline Modernization Order*, ¶ 400.

underlying carriers, Sprint and T-Mobile, provide coverage within the State of Washington.³⁸ A list of the exchanges in Washington where Blue Jay seeks ETC designation is attached as

Exhibit G.

III. LEGAL AUTHORITY

The Washington Utilities and Transportation Commission has jurisdiction of this matter pursuant to the provisions of 47 U.S.C. § 214.

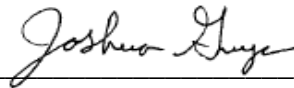
³⁸ Consistent with FCC holdings, there is no need for a “creamskimming” analysis in connection with Blue Jay’s Petition because the Company is seeking ETC designation only for purposes of receiving federal low-income support. *See, e.g., Virgin Mobile USA, L.P.*, Order, 24 FCC RCD 3381, ¶ 39 n. 101 (2009).

IV. CONCLUSION

Blue Jay respectfully requests that the Commission expeditiously issue an order designating the Company as an ETC in Washington throughout the service area specified above for the purpose of receiving federal support and reimbursement for provision of low-income communications services on a wireless basis to qualified low-income customers.

Respectfully Submitted,

BLUE JAY WIRELESS, LLC

By 

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Relationship to Party: Counsel

Dated: November 7, 2016

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

IN THE MATTER OF THE AMENDED		Docket No. UT-121455
PETITION OF BLUE JAY WIRELESS, LLC		
FOR LIMITED DESIGNATION AS A		
WIRELESS ELIGIBLE		
TELECOMMUNICATIONS CARRIER IN THE		
<u>STATE OF WASHINGTON</u>		

VERIFICATION OF DAVID WAREIKIS

I, David Wareikis, do hereby certify under penalty of perjury under the laws of the State of Washington, as follows:

I am the Chief Executive Officer of Blue Jay Wireless, LLC (“Blue Jay”), a Texas limited liability company, with principal offices at 4240 International Parkway, Suite 140, Carrollton, TX 75007.

I have reviewed the foregoing Petition requesting designation of Blue Jay as an Eligible Telecommunications Carrier in Washington pursuant to 47 U.S.C. § 214(e) and attest that the facts stated therein are true and correct to the best of my knowledge.

Executed at Carrollton, Texas, on November ____, 2016.

David Wareikis
Chief Executive Officer
Blue Jay Wireless, LLC

List of Exhibits

Exhibit A – Organizational Chart, List of Members, List of Affiliated Entities

Exhibit B – Washington Secretary of State Registration

Exhibit C – FCC Compliance Plan (filed December 19, 2012; approved December 26, 2012)

Exhibit D – Sample Advertisement

Exhibit E – Manager Resumes

Exhibit F – Financial Statements (filed under seal)

Exhibit G – Exchange list

Exhibit A

Organizational Chart, List of Members, List of Affiliated Entities

Exhibit B

Washington Secretary of State Registration

Exhibit C

FCC Compliance Plan (filed December 19, 2012; approved December 26, 2012)

Exhibit D

Sample Advertisement

Exhibit E

Manager Resumes

Exhibit F

Financial Statements

(CONTENTS CONFIDENTIAL PURSUANT TO WAC 480-07-160)

Exhibit G

Exchange list