

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

Draft Resolution T-17473

October 26, 2015

**COMMENTS OF BLUE JAY WIRELESS, LLC (U-4437-C)  
ON DRAFT RESOLUTION T-17473**

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**I. INTRODUCTION**

Pursuant to Rule 14.5 of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, Blue Jay Wireless, LLC (U-4437-C) (“Blue Jay”) respectfully submits these comments on Draft Resolution T-17473 (“Draft Resolution”).<sup>1</sup> Blue Jay has demonstrated a commitment to the Lifeline market by forging strong relationships within the communities it serves.<sup>2</sup> Blue Jay intends to do the same in California and its proposed California LifeLine service offerings will provide competitive choices to LifeLine-eligible consumers throughout the state.

The Draft Resolution makes erroneous findings regarding Blue Jay’s federal Lifeline service, fails to base its conclusions on record evidence, and seeks to impose arbitrary requirements that have no bearing on Blue Jay’s proposed federal Lifeline and California LifeLine service and have never before been applied by the Commission to an ETC applicant. For these reasons, the recommendations that the Communications Division (“CD”) makes in the Draft Resolution must be rejected and Blue Jay’s Advice Letter 2 requesting designation as an eligible telecommunications carrier (“ETC”) to provide federal Lifeline and California LifeLine wireless service in California should be approved.

**II. DISCUSSION**

**A. CD’s Finding that Blue Jay “Oversubscribed” Customers in Hawaii Is Erroneous and Must Be Rejected**

In the Draft Resolution, CD’s finding that during 2014 Blue Jay “significantly oversubscribed customers under Hawaiian Home Lands/Tribal lands status” is simply wrong.<sup>3</sup> As an initial matter, the Federal Communications Commission’s (“FCC’s”) Lifeline rules require only that Lifeline applicants

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<sup>1</sup> Draft Resolution T-17473, available at: <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M154/K556/154556602.PDF>

<sup>2</sup> Blue Jay has been granted ETC designation in 16 jurisdictions, has ETC designations pending in an additional 16 states and has been denied in none. See **Exhibit A** (Blue Jay ETC Designations).

<sup>3</sup> Draft Resolution, Findings and Conclusions 4.

self-certify that they reside on Tribal lands to receive enhanced Tribal Lifeline benefits.<sup>4</sup> Therefore, in keeping with the FCC's rules regarding Tribal Lifeline enrollments, during 2014, Blue Jay provided enhanced Lifeline benefits to all Lifeline-eligible Hawaiians who self-certified residence on Hawaiian Home Lands ("HHL").<sup>5</sup>

Neither the FCC's Wireline Competition Bureau ("Bureau") nor the Universal Service Administrative Company ("USAC") have found any of the required self-certifications to be missing.<sup>6</sup> Indeed, the only entity to make a determination that any of the HHL subscribers enrolled during 2014 were not eligible for enhanced Lifeline benefits was Blue Jay itself.<sup>7</sup> Those determinations were made for the first time in August 2014 based on Blue Jay's voluntary development and implementation of a verification process that involved application of a geo-mapping tool and requisite 30-day notice to subscribers seeking proof of residency to rebut the presumption made when the geo-mapping tool failed to verify a HHL residency self-certification.<sup>8</sup> Blue Jay continues to use its geo-mapping tool to verify self-certifications of residency on HHL during its real-time, in-person enrollment process.

Because Blue Jay has not received enhanced Lifeline reimbursements for any subscribers who did not self-certify to residence on HHL and therefore were not eligible for enhanced benefits, CD's conclusion that Blue Jay "oversubscribed" customers on HHL is erroneous and must be rejected.

#### **B. CD Fails to Base its Conclusions on Record Evidence**

The Draft Resolution states that the "Communications Division *found* that Blue Jay Wireless, LLC significantly oversubscribed customers under Hawaiian Home Lands/Tribal lands status."<sup>9</sup> From a

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<sup>4</sup> See 47 C.F.R. § 54.410. This rule was reconfirmed in 2012. 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 Nos. 11-42, 03-109, 12-23, CC Docket No. 96-45, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11, ¶ 166 (2012) (2012 Lifeline Reform Order) ("we clarify that, pursuant to section 54.410 of the Commission's amended rules, consumer self-certification is sufficient to meet the residency requirement of Tribal lands Lifeline support" and rejecting a USAC finding that an ETC must verify such self-certifications). Hawaii has no additional or different requirements for Tribal Lifeline enrollments.

<sup>5</sup> See Exhibit A to Blue Jay's Compliance Plan, submitted as Exhibit C to Blue Jay's Advice Letter 2, filed April 14, 2014. This Exhibit depicts an example of Blue Jay's Lifeline Application and Certification form and clearly provides the Tribal self-certification.

<sup>6</sup> Neither the Bureau nor USAC has raised concerns regarding an over-reporting of Lifeline-eligible subscribers by Blue Jay. Rather, the issue raised relates to the self-certifications of residency on HHL and the receipt of the enhanced "Tribal" benefit by certain Lifeline-eligible subscribers.

<sup>7</sup> See **Exhibit B** (Blue Jay HHL Timeline).

<sup>8</sup> See **Exhibit C**, Blue Jay's Response to the Yamamoto Caliboso law firm letter, sent to Civil Beat on Nov. 25, 2014. Also available at: <http://www.slideshare.net/civilbeat/blue-jay-response?related=1>.

<sup>9</sup> Draft Resolution, Findings and Conclusions 4 (emphasis added).

due process perspective, however (and putting aside the question of whether staff can even act as a trier of fact), before CD can reasonably and fairly make the type of finding that is included in the Draft Resolution, it needs to carefully weigh and consider verifiable, objective documentary evidence. Although Blue Jay appreciates staff's efforts to conduct due diligence, it appears from the Draft Resolution that careful consideration did not occur in this instance. In particular, it appears that CD did not give adequate consideration to the more than 100 pages of information, documents, and exhibits that Blue Jay provided in response to Data Requests regarding its Lifeline enrollments in Hawaii, including information regarding the FCC's Tribal self-certification rule, and the steps Blue Jay voluntarily took to verify self-certifications made by its HHL Lifeline subscribers in Hawaii.<sup>10</sup> Instead, CD relies solely on a single, unsubstantiated source and an erroneous premise, both of which the Commission should reject.

First, the letter filed by the Yamamoto Caliboso law firm ("Yamamoto Letter") upon which staff relies<sup>11</sup> is a collection of dubious and unproven allegations made by a law firm serving an unidentified client filed in November 2014, well after Blue Jay implemented its self-certification verification process. Indeed, the letter concedes that "under the FCC's rules and orders consumer self-certification is sufficient to meet the residency requirement for Tribal Lands Lifeline support" and concludes that "we are unable to make a final determination on these issues ourselves."<sup>12</sup> Staff at the Hawaii Public Utilities Commission ("Hawaii PUC") has reviewed Blue Jay's response to this letter<sup>13</sup> and has since indicated its satisfaction with Blue Jay's responses and declined to investigate further.

Second, CD states that from January to October 2014 Blue Jay's "reimbursement claims were six times higher than those claimed by the next highest Lifeline provider in that state."<sup>14</sup> CD provides no legal basis for its apparent view that size in relation to competitors can serve as a proxy for non-compliance. This is because none exists. At most, the "six times" figure illustrates Blue Jay's success

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<sup>10</sup> See Exhibits B and C.

<sup>11</sup> See Draft Resolution at 3.

<sup>12</sup> Yamamoto Letter at 3. The Yamamoto Letter also based its request for a Hawaii PUC investigation on misleading information regarding the number of potentially eligible Lifeline subscribers residing on HHL. In particular, the Yamamoto Letter cites to 2010 U.S. Census data that there were only 7,294 households in HHL. However, in January 2015, the Department of Hawaiian Home Lands itself informed Blue Jay that it estimates there are approximately 45,000 people residing on HHL, many of whom reside in multi-family dwellings, and between 27,000 and 28,000 native Hawaiians eligible to reside on HHL on a wait list. Within this population, it is reasonable to assume the possibility of multiple "households," as defined under the FCC's rules that far exceed the number of "households" referenced in the Yamamoto Letter.

<sup>13</sup> See Exhibit C.

<sup>14</sup> See Draft Resolution at 3. This information is also taken from the Yamamoto Letter.

in reaching Lifeline-eligible subscribers Hawaii,<sup>15</sup> which provides no basis upon which to deny its ETC application in California.

Finally, CD's findings and conclusions regarding Blue Jay's Tribal Lifeline subscribers in Hawaii are not only erroneous, they are also irrelevant. As is noted in the Draft Resolution, "Blue Jay does not request authority to provide federal Lifeline or California LifeLine service on Tribal lands at this time."<sup>16</sup> Moreover, in California, subscriber eligibility for California LifeLine service, including enhanced Tribal support for subscribers on Tribal lands, is determined by the California LifeLine Administrator, not Blue Jay or any other ETC. Therefore, designation of Blue Jay as an ETC would not raise the risk that federal Tribal Lifeline funds would be provided to ineligible consumers. That said, if and when Blue Jay seeks authority to provide service on Tribal lands in California, it will offer to commit to voluntarily develop and use a geo-mapping tool in California (similar to the tool in uses in Hawaii) to aid the third-party administrator in determining eligibility for enhanced tribal support.<sup>17</sup>

**C. CD Seeks to Impose Arbitrary and Capricious Requirements on Blue Jay that Have No Bearing on Blue Jay's Proposed California LifeLine Service**

Inexplicably, CD recommends that Blue Jay be required to provide retail (non-LifeLine) wireless service for a minimum of one year in California to demonstrate compliance with Commission rules before being considered again for ETC designation.<sup>18</sup> This recommendation is both arbitrary and capricious. As an initial matter, CD provides no explanation how a retail presence in California relates in any way to Lifeline enrollments on Tribal lands in another state. More importantly, however, CD fails to cite to any precedent where it has required similar requirements of other ETCs. This is because no such precedent exists.

The Commission has approved many wireless LifeLine providers in California – including many with no established regulatory track record in the state – and none have been required to provide retail service for any period of time or to demonstrate a pattern of regulatory compliance before being approved to provide federal or California LifeLine service. Indeed, contrary to penalizing applicants for unknown results of inquiries, this Commission has respected due process and approved carriers with pending inquiries, including FCC Notices of Apparent Liability ("NAL"). In all of these cases, the Commission saw fit to grant these ETCs' Lifeline or LifeLine designations *concurrent* with the

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<sup>15</sup> A state that has, until recently, suffered one of the lowest Lifeline participation rates in the nation.

<sup>16</sup> See Draft Resolution at 3.

<sup>17</sup> See Response to Communications Division Staff's Request for Information – Data Request 3 (DR 3 Response), filed July 8, 2015, at 3.

<sup>18</sup> See Draft Resolution, Findings and Conclusions 6.

requirement to offer retail service. Blue Jay asserts that the same requirement, to which it has already committed in its Advice Letter 2, should be applied in this case.

**D. Blue Jay Has Demonstrated a Commitment to the Communities it Serves and Plans to Do the Same in California**

Blue Jay’s keen awareness of its customers’ needs steers its commitment to them and the communities in which they live. In fact, Blue Jay has received recognition for working within the communities it serves to provide employment opportunities to those who need them the most. Blue Jay intends to expand this commitment to California through its “Samaritan Program” under which Blue Jay hires sales representatives locally with a specific focus on hiring sales employees who have disabilities or are military Veterans. Blue Jay also has plans for an extensive network of stores and permanent kiosks throughout the state to ensure that its California LifeLine customers will have convenient access to Blue Jay Samaritans. Additionally, Blue Jay plans to continue its work with community anchor organizations, as it has done in other states, to promote the benefits of and expand awareness for the California LifeLine program. Through its unique approach to outreach and its compelling California LifeLine and non-LifeLine service offerings, Blue Jay hopes to deliver in California and for Californians on its mission to connect disadvantaged citizens with employers, family and friends.<sup>19</sup>

**III. Conclusion**

Because CD has provided no rational basis upon which to deny Blue Jay’s Advice Letter, their recommendation should be rejected. The Commission should grant Blue Jay’s request to be designated as an ETC to provide federal Lifeline and California LifeLine wireless service in California because Blue Jay’s Advice Letter meets all of the federal and California ETC designation requirements and because Blue Jay will provide numerous benefits to California’s LifeLine-eligible consumers.

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<sup>19</sup> Blue Jay’s Mission Statement is available on Blue Jay’s website: <http://www.bluejaywireless.com>.

Respectfully submitted this 26<sup>th</sup> day of October, 2015,

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