

**BEFORE THE
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION**

Petition of Blue Jay Wireless, LLC)
For Designation as an Eligible)
Telecommunications Carrier for the) **Docket No.** _____
Purpose of Offering Lifeline Service)
on a Wireless Basis)

PETITION OF BLUE JAY WIRELESS, LLC

Blue Jay Wireless, LLC (“Blue Jay” or the “Company”), by its counsel, respectfully submits this Petition for 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 South Dakota Administrative Rule (“ARSD”) 20:10:32:42. Blue Jay requests that the South Dakota Public Utilities Commission (“Commission”) grant it designation as a wireless ETC in South Dakota for the sole purpose of receiving federal universal service Lifeline support in the geographic areas specified in this Petition. Blue Jay does not request ETC status for the purpose of receiving support from any of the other Universal Service Funds (“USF”).

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 Lifeline-supported services throughout its designated service area in South Dakota. 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 serves the interests of South Dakota consumers, Blue Jay respectfully requests that the Commission grant this Petition expeditiously. In support of this Petition, Blue Jay provides the following information:

I. OVERVIEW OF PETITIONER AND SERVICE OFFERINGS.

Blue Jay is a Texas limited liability company with principal offices at 5010 Addison Circle, Addison, TX 75001. The Company registered with the South Dakota Secretary of State as a foreign limited liability company operating in South Dakota on August 20, 2012.

Blue Jay has been granted ETC designation in Arizona, Colorado, Hawaii, Minnesota, Missouri, Nevada, 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: California, Kentucky, Michigan, New Mexico, and Washington. 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.¹ A list of docket numbers for Blue Jay's pending and approved applications is attached as **Exhibit A**. Further, the Company is preparing to file petitions for ETC designation broadly in additional states. None of Blue Jay's petitions for ETC designation have been denied. Blue Jay has not had any verification audits by the FCC.

Blue Jay currently operates as a common carrier, providing wireless mobile phone services to consumers in Texas, Arizona, Colorado and several other states. Blue Jay plans to operate as a common carrier in many other states, including South Dakota. In South Dakota, Blue Jay will provide domestic (and potentially international) voice and data services, primarily to low-income consumers. As a reseller of wireless services, Blue Jay will purchase wireless network infrastructure and wireless transmission facilities from Sprint, T-Mobile, and Verizon

¹ Blue Jay also plans to add Maine to its federal ETC petition.

Wireless on a wholesale basis and resell these services to its customers.² Blue Jay will provide affordable prepaid mobile phone service, including calling and text messaging, 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 offer its services in both rural and non-rural areas of South Dakota as well as tribal and non-tribal service offerings.

Blue Jay will manage 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 basic mobile phone service without the burden of hidden costs, varying monthly charges, or contractual commitments. Customers will be able to customize their mobile phone service to suit their needs with Blue Jay's pay-as-you-go rechargeable mobile phone plans.

Blue Jay's customer base likely will 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 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

² Blue Jay currently purchases the services of Sprint, T-Mobile, and Verizon Wireless through intermediaries – such as Natel Networks, LLC, Telecom Service Bureau, and Prepaid Wireless Group, LLC.

low-income sector of the consumer base—through co-branded storefronts and advertisements in media of general distribution—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 for Lifeline service in additional states and territories so that it may continue to expand service options for low-income consumers.

II. BLUE JAY SATISFIES THE COMMISSION’S AND THE FCC’S REQUIREMENTS FOR ETC DESIGNATION.

The Commission has the authority to perform the limited ETC designation requested in this Petition. Under Section 214(e) of the Act, state public utility commissions have the “primary responsibility” for the designation of ETCs. Further, pursuant to ARSD 20:10:32:42, petitioners seeking ETC designation in South Dakota are evaluated under the standards set by the FCC.³ 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 services that are supported by federal universal service support mechanisms and (ii) advertises the availability of such services.⁴ FCC rules and the Commission’s rules impose additional requirements on a carrier requesting ETC designation. As demonstrated below, Blue Jay satisfies each of these requirements.

1. 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

³ See ARSD 20:10:32:42.

⁴ See 47 U.S.C. §214(e)(2); see also 47 C.F.R. § 54.201(d).

wireless services are to be treated as common carriers for regulatory purposes. Moreover, Blue Jay is a commercial mobile radio service (“CMRS”) provider. Section 332(c)(1)(A) of the Act states that CMRS providers will be regulated as common carriers.⁵ Further, Blue Jay filed an FCC Form 499-A registration with the Universal Service Administrative Company, which permits it to provide domestic telecommunications service.

2. Blue Jay Will Provide the Services Designated for Lifeline Support.

The FCC has determined that “voice telephony services” shall be supported by the federal USF program.⁶ Eligible voice telephony services must provide:

- voice grade access to the public switched network;
- local usage;
- access to emergency services; and
- toll limitation for qualifying low-income consumers.

Upon receiving the requested designation as an ETC, Blue Jay will provide each of these required services throughout its designated service area, as described in more detail below. Blue Jay’s Lifeline service offerings will be provided pursuant to the Company’s established rates, as provided in this Petition, and its terms and conditions of service, which are available at Blue Jay’s website at <http://www.bluejaywireless.com/terms/>. Blue Jay will offer Lifeline subscribers attractive voice telephony service plans. The Company’s Lifeline subscribers will be eligible to receive the same service plans that Blue Jay generally makes available to the public.

Further, in compliance with ARSD 20:10:32:43:01, Blue Jay will commit to providing services throughout its proposed service area to all customers who make a reasonable request for service. However, Blue Jay respectfully requests that the Commission either find that the

⁵ See 47 U.S.C. § 332(c)(1)(A).

⁶ 47 C.F.R. § 54.101(a).

certification requirements of ARSD 20:10:32:43:01(2) do not apply to this Petition, or find that those requirements are waived.⁷ As Blue Jay is a Lifeline-only ETC provider that relies on the networks of underlying service providers, it is not possible for Blue Jay, as a non-facilities-based reseller, to make the improvements set forth in ARSD 20:10:32:43:01(2) to the underlying Sprint, T-Mobile and Verizon Wireless networks, or to extend certain facilities to reach customers outside of the existing network coverage area.

If designated as a wireless ETC, Blue Jay certifies that it will abide by all service requirements applicable to Lifeline-support funding, as set forth in this Petition and its FCC Compliance Plan addressed further below. Accordingly, Blue Jay respectfully requests that the Commission either find that requirements of ARSD 20:10:32:43:01(2) are inapplicable to the instant Petition, or that the requirements are waived.

A. Means of providing Lifeline service.

The Company will provide service via resale of underlying carrier services provided by Sprint, T-Mobile, and Verizon Wireless. 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.”⁸ Pursuant to the FCC’s *Lifeline Reform Order*, 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.⁹

⁷ The Commission has previously granted a waiver of ARSD 20:10:32:43:01(2) in its approval of the ETC application of Budget Prepay, Inc. See Order Granting Designation as Lifeline Only Eligible Telecommunications Carrier, *In the Matter of the Application of Budget Prepay, Inc., DBA Budget Mobile, for Designation as a Lifeline-only Eligible Telecommunications Carrier in Non-Rural Areas*, TC12-125, at 2 (Sept. 24, 2012) (“Budget Prepay Order”).

⁸ 47 U.S.C. § 214(e)(1)(A).

⁹ 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-

The FCC conditioned blanket forbearance on the reseller's compliance with certain ETC obligations, including providing 911 and E911 service regardless of activation status and prepaid minutes available, providing E911-compliant handsets, and replacing E911 non-compliant handsets at no charge to the Lifeline customer.¹⁰ In addition, the reseller must adhere to an FCC-approved compliance plan that includes specific information about the reseller's service offerings and that outlines the measures that the reseller will take to implement the obligations established in the *Lifeline Reform Order*.¹¹

Blue Jay commits to compliance with all of these conditions. To this end, on May 11, 2012, Blue Jay submitted to the FCC a compliance plan that meets the requirements of the *Lifeline Reform Order*. On December 19, 2012, Blue Jay filed its final revised compliance plan with the FCC. A copy of this revised plan ("Compliance Plan") is appended as **Exhibit B**. On December 26, 2012, Blue Jay's revised compliance plan was approved by the FCC.¹² Therefore, 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 South Dakota using resold services is entirely compliant with FCC requirements.

45, WC Docket No. 12-23, Report And Order and Further Notice Of Proposed Rulemaking, 27 FCC Rcd 6656, ¶ 368 (2012) ("*Lifeline Reform Order*").

¹⁰ See *id.* ¶ 373.

¹¹ See *id.* ¶ 368.

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 Dkt. Nos. 09-197, 11-42, Public Notice, DA 12-2063 (Dec. 26, 2012) ("Public Notice"). The FCC Public Notice was intended to approve the final revised version, submitted December 19, 2012, however, the Appendix of the Public Notice erroneously referenced an earlier revised version, filed on November 30, 2012. An Erratum was issued on January 2, 2013 by the FCC, clarifying that the December 19th version is approved. The Public Notice and Erratum are included in **Exhibit C**.

Blue Jay resells the services of Sprint, T-Mobile, and Verizon Wireless through intermediaries. Blue Jay does not own any facilities and has availed itself of this blanket forbearance from the facilities requirement from the FCC. Blue Jay has resale agreements with its intermediaries and not directly with the primary carriers. Blue Jay does not have any interconnection agreements. Blue Jay does not currently have access to Sprint, T-Mobile, or Verizon Wireless licenses.

On April 15, 2013, the FCC granted forbearance from the requirement that the service area for a competitive ETC conform to the service area of any rural telephone company serving the same area, for the limited purpose of providing Lifeline support.¹³ The FCC's order became effective on June 7, 2013.¹⁴ As relevant to Blue Jay's South Dakota petition, we have included both rural and non-rural study areas in the proposed service area.

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

B. 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 bandwidth of 300 to 3,000 Hertz.¹⁵ Blue Jay will

¹³ See *Telecommunications Carriers Eligible for Support, Lifeline and Link Up Reform, Virgin Mobile USA, L.P. Petition for Forbearance, Cox Communications, Inc. Petition for Forbearance, Time Warner Cable, Inc. Petition for Forbearance, i-wireless, LLC Petition for Forbearance, Q Link Wireless, LLC Petition for Forbearance, Global Connection Inc. of America Petition for Forbearance*, WC Docket Nos. 09-197, 11-42, Memorandum Opinion and Order, FCC 13-44, ¶¶ 1-2, 25 (rel. Apr. 15, 2013) (“April 15th Service Area Redefinition Forbearance Order”).

¹⁴ See Federal Communications Commission, *Telecommunications Carriers Eligible for Support; Lifeline and Link Up Reform and Several Petitions for Forbearance*, 78 Fed. Reg. 26705, 26705 (May 8, 2013).

¹⁵ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, First Report and Order, 12 FCC Rcd 8776, 8810-11 (1997).

provide this service via resale of Sprint, T-Mobile, and Verizon Wireless mobile services to low-income customers in its designated service area.

C. Local Usage.

ARSD 20:10:32:43.05 requires a petitioner for ETC designation to demonstrate that its proposed local usage plan is comparable to one offered by the incumbent local exchange carrier (“ILEC”) in the same designated 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.

Blue Jay will offer two basic Lifeline service packages throughout its designated service area in South Dakota, except for Tribal areas within the Company’s service area, where the Company will offer two plans that are only available to Tribal residents. The Company’s basic Lifeline programs are listed below.

- **125 anytime prepaid minutes per month**, with rollover, and with text messaging assessed at a rate of one (1) minute per text message for sending and one (1) minute per text message for receiving text messages. This plan will be available throughout the Company’s South Dakota service area except in Tribal areas.
- **250 anytime prepaid minutes per month**, without rollover, and with text messaging assessed at a rate of one (1) minute per text message for sending and one (1) minute per text message for receiving text messages. This plan will be available throughout the Company’s South Dakota service area except in Tribal areas.
- **Tribal Resident Lifeline 1000 Plan.** Each month the customer will receive 1,000 anytime voice minutes or 1,000 text messages for \$1.00 per month plus fees and taxes. Text messaging will be assessed at a rate of 1 minute per text message for sending and 1 minute per text message for receiving text messages. There are no rollover minutes with this plan. Unused minutes will expire each month on the service expiration date. This plan will only be available to Tribal residents.
- **Tribal Resident Lifeline Unlimited Plan.** Each month the customer will receive unlimited anytime voice minutes for \$5.00 per month plus fees and taxes. Text messaging will not be available with the unlimited talk plan. There are no

rollover minutes with this plan as minutes are unlimited. This plan will only be available to Tribal residents.

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 plan is different from, but comparable to, one offered by the ILEC in the same designated service area.

With these plans, customer service (611) and emergency (911) calls will be free, regardless of 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 additional bundles of minutes for as low as \$0.04/minute depending on the minute package purchased. For example, customers can purchase a 500-minute package for \$20.00. Airtime "top-up" minutes will be available for purchase at the Company's retail locations and on its website.

In addition to free voice services, customers can select either a free wireless handset or purchase an upgraded phone, such as a smartphone.¹⁶ For those customers choosing to upgrade to a smartphone, data can be added to any phone plan starting at \$0.10 per megabyte – a price that can be reduced on a "per megabyte" basis when the customer purchases multiple megabytes of data. In this way, the Company will enable low-income customers to add affordable data usage to their free voice/text minutes, thereby supporting greater smartphone utilization, consistent with the FCC's goal of promoting broadband access to all Americans.

Blue Jay has the ability to block roaming outside of the Sprint/T-Mobile/Verizon Wireless networks so that no additional charges are incurred by the end user. This block is on

¹⁶ Although customers may select a free wireless handset, customers must pay for replacement handsets.

the end user plans in other states and is intended to be used for South Dakota as well. If it should not be blocked, then Blue Jay will not charge the end user.

Blue Jay operates under its own name and does not use a d/b/a or separate brand. Thus, Blue Jay will be doing business and will be making its Lifeline offering available in South Dakota under the name “Blue Jay.”

Additional information regarding the Company’s plans, rates and services can be found on its website, <http://www.bluejaywireless.com>. The terms and conditions for Blue Jay’s service are readily available at <http://www.bluejaywireless.com/terms/> and are attached hereto as **Exhibit D**. The terms and conditions contain standard limitation of liability and arbitration provisions, which are in the public interest because they promote prompt and speedy resolution of disputes through binding arbitration by a neutral arbiter, addressing the unique facts and issues with respect to each individual consumer complaint, unlike a class action or other such mass litigation.

D. 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. As noted, calls to 911 emergency services will always be free and will be available regardless of service activation status or availability of minutes. In addition, Blue Jay will comply with any FCC or Commission requirements regarding customer access to 911 and E-911 services as well as the provision of E911-compatible handsets, specifically including those obligations imposed as part of the FCC’s forbearance grant conditions.

E. 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 *Lifeline Reform Order*, subscribers to such “all-distance” services are not considered to have voluntarily elected to receive TLS.¹⁷ If, in the future, Blue Jay should offer a Lifeline service which differentiates between local usage and long distance usage, the Company commits to provide TLS to customers of that service.

F. 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 throughout South Dakota where its underlying carriers, Sprint, T-Mobile, and Verizon Wireless, provide coverage.¹⁸ If any of Blue Jay’s underlying carriers extend service to currently unserved areas, Blue Jay may seek required approval to extend its service to those areas as well. Further, as required by ARSD 20:10:32:43(3), Blue Jay includes a map and a listing of the relevant wire centers in the coverage area for which designation is sought, attached hereto as **Exhibit E**.

¹⁷ See *Lifeline Reform Order* ¶ 230.

¹⁸ Consistent with FCC holdings, there is no need for a “cream skimming” 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).

3. Blue Jay Will Advertise its Lifeline Service Offerings.

Blue Jay will advertise the availability of its services and charges in a manner reasonably designed to reach Lifeline-eligible consumers, as required by Section 54.201(d)(2) and 54.405(b) of the FCC Rules.¹⁹ The Company intends to advertise its Lifeline services using media of general distribution, including community newspapers and free circulars in lower-income communities that will particularly benefit from the Lifeline program and Blue Jay's service offerings.²⁰ Blue Jay will expand its advertising efforts as necessary to ensure that Lifeline-eligible customers are aware of the service offerings.²¹

In addition, Blue Jay will comply with the FCC's revised rules regarding information to be included in marketing materials, including FCC revised rule section 54.405(c). Specifically, Blue Jay's marketing 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) documentation is necessary for enrollment; and (vii) Blue Jay is the provider of the services. Moreover, Blue Jay's Lifeline application/certification form will state that Lifeline is a federal benefit and that consumers who willfully make a false statement in order to obtain the Lifeline benefit can be punished by fine or imprisonment or can

¹⁹ See 47 C.F.R. §§ 54.201(d)(2), 54.405(b).

²⁰ See 47 C.F.R. § 214(e)(1)(B) and 47 C.F.R. § 54.201(d)(2).

²¹ See 47 C.F.R. § 54.405(b).

be barred from the program.²² Blue Jay's Compliance Plan contains an example of the type of advertising materials that Blue Jay intends to use in South Dakota.

4. Blue Jay Complies with the Commission's and the FCC's Additional Obligations for ETCs.

A. Blue Jay certifies that it will comply with the applicable FCC service requirements.

Per the requirements of 47 C.F.R. § 54.202(a)(1)(i), Blue Jay certifies that it will comply with the service requirements applicable to the low-income support it receives as a result of designation as an ETC for the purposes of receiving Lifeline service.

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

Blue Jay's Lifeline services will remain functional in emergency situations. As discussed herein, Blue Jay will utilize the extensive and well-established Sprint, T-Mobile, and Verizon Wireless networks and facilities to provide Blue Jay's mobile services. The Company believes that the Sprint, T-Mobile, 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 each company has sufficient back-up power to ensure functionality if its external power supply is unavailable. Indeed, the companies have repeatedly certified to the FCC that their networks function in emergency situations.²⁴ Sprint, T-

²² 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, Erratum, ¶ 63 (rel. May 16, 2012) (citing *Lifeline Reform Order*, ¶ 275).

²³ See, e.g., 47 C.F.R. § 54.202(a)(2); ARSD 20:10:32:43:03.

²⁴ See, e.g., *Sprint Nextel Corporation Verified Filing in Compliance with 47 C.F.R. § 54.209*, CC Docket No. 96-45, at 6 (filed Sept. 30, 2011); *Petitions for Designation as an Eligible Telecommunications Carrier for Purposes of Participation in Mobility Fund Phase I*, WC Docket No. 09-197, *Petition of T-Mobile For FCC Designation as an Eligible Telecommunications Carrier for Mobility Fund Phase I (Auction 901)*, AU

Mobile, and Verizon Wireless will provide the same functionality to Blue Jay and Blue Jay's customers as these carriers provide to themselves and their own customers. As Blue Jay relies on the networks of other carriers, Blue Jay asks the Commission to find that this satisfies the requirement under ARSD 20:10:32:43.03 for an applicant to demonstrate "ability to remain function in emergency situations."²⁵ In the alternative, Blue Jay asks the Commission to grant Blue Jay a waiver of the demonstration of network reliability requirements of ARSD 20:10:32:43.03, as Blue Jay is a non-facilities-based provider.

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

The FCC's rules require the petitioner to demonstrate that it satisfies applicable consumer protection and service quality standards. The FCC has stated that a wireless petitioner's commitment to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service ("CTIA Consumer Code") will satisfy this requirement. Blue Jay commits to comply with the CTIA Consumer Code to ensure that the Company offers its subscribers the highest level of protection and quality service.²⁶ In addition, Blue Jay intends to fully comply with the consumer protection and service quality standards articulated in ARSD 20:10:32:43.04 to the extent they are applicable to wireless providers.

Blue Jay's pledge to provide quality service, and to comply with the CTIA Consumer Code and applicable South Dakota rules on consumer protection and service quality, evidences Blue Jay's commitment to satisfy all of the applicable consumer protection and service

Docket No. 12-25, Order, DA 12-1014, ¶ 19 (rel. July 3, 2012); *Alltel Communications, LLC d/b/a Verizon Wireless 2011 Eligible Telecommunications Carrier Certification and Annual Report for the State of Georgia / Study Area Code (SAC) 229004*, WC Docket No. 09-197, at 7-9 (filed Sept. 30, 2011).

²⁵ ARSD 20:10:32:43.03.

²⁶ *See, e.g.*, 47 C.F.R. § 54.202(a)(3).

quality standards. The Company will make every effort to resolve expeditiously 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.

The Company will make every effort to resolve expeditiously complaints received by the Commission. As required, Blue Jay will provide a regulatory contact, to whom to address any complaints, to the Consumer Affairs Divisions (“CAD”) within 30 days of the issuance of an order granting this Application.

Blue Jay has also implemented a handset return policy for its customers. Mobile devices purchased or received for free directly from Blue Jay may be returned for a full refund or replacement at a Blue Jay authorized location within 90 days of activation, provided that the subscriber returns the complete mobile device in the same condition it was received at the time of activation with original contents and packaging. Mobile devices that are visibly damaged will not be covered under the 90-day return policy. Almost all handsets sold or provided by Blue Jay are now new and all will be new within the next few months (before Blue Jay would be providing Lifeline service in South Dakota). Mobile device models may vary. Blue Jay reserves the right to replace mobile devices with various models at its sole discretion. All mobile devices purchased directly from Blue Jay include a 90-day warranty from Blue Jay. Subscribers that experience a mobile device malfunction may contact Blue Jay Wireless customer service.

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

The FCC’s rules, as revised,²⁷ require ETC petitioners to demonstrate financial and technical capability to comply with the FCC’s Lifeline service requirements.²⁸ Among the

²⁷ See, e.g., revised 47 C.F.R. § 54.202(a)(4).

²⁸ See *Lifeline Reform Order* ¶¶ 387-388 (revising 47 C.F.R. § 54.202(a)(4)).

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 biographies attached as **Exhibit F**, Blue Jay's core team has extensive experience in the wireless sector, and as such has the technical capability to provide Lifeline services in compliance with the FCC's rules. In addition, through its affiliates, Blue Jay has provided marketing services, including those directed to low-income customers, since 2004. One of the Company's affiliates, Splash Media, LP, is among the largest providers of full-service social media marketing services in the world. Splash Media has substantial revenues with long-term profitability, is in good standing with all of its vendors and has been providing customers with services for nine (9) years. A Blue Jay subsidiary (formerly an affiliate), Link Distributors, LLC, was a leading distributor of wireless handsets and Lifeline enrollment for ETCs, but is no longer doing business as the corporate focus has shifted to Lifeline enrollment through Blue Jay as an ETC. As a core part of its marketing strategy, Blue Jay will be actively marketing to non-Lifeline customers, targeting the prepaid, credit challenged and underbanked sector. Consequently, Blue Jay will not be relying exclusively on Lifeline reimbursement for the Company's operating revenues. Blue Jay also has access to other financial resources including substantial cash reserves from its owners. The Company has not been subject to enforcement sanctions or ETC revocation proceedings in any state.

E. Blue Jay will comply with FCC requirements on certification and verification.

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 Compliance Plan, Blue Jay has detailed and comprehensive procedures in place to address customer certification and verification requirements as well as requirements concerning de-enrollment and duplication of service. These procedures comply with the FCC's recently-revised customer certification and verification requirements and, in fact, go beyond those requirements.²⁹ Blue Jay also will comply with the FCC's annual certification and reporting requirements, audit requirements, as well as with the FCC's additional measures to prevent waste, fraud and abuse of Lifeline services.³⁰ Blue Jay attaches financial statements to support its assertion of financial capability, attached hereto as **Exhibit G**.

i. Policy.

Blue Jay will comply with the uniform eligibility criteria established in new section 54.409 of the FCC's rules. Therefore, all subscribers will be required to demonstrate eligibility based at least on: (1) household income at or below 135% of the Federal Poverty Guidelines for a household of that size; or (2) the household's participation in one of the federal assistance programs listed in new sections 54.409(a)(2) or 54.409(a)(3) of the FCC's rules. In addition, through the certification requirements described below, Blue Jay will confirm that the subscriber is not already receiving a Lifeline service and no one else in the subscriber's household is subscribed to a Lifeline service.

ii. Eligibility Determination.

Blue Jay will qualify and enroll Lifeline customers through five primary input channels including: 1) Internet/Web Form Transaction, 2) Store and Field Form Transaction, 3) Toll-Free Facsimile Form Transaction, 4) USPS Mail Form Transaction, and 5) Voice/IVR Form

²⁹ See 47 C.F.R. § 54.410.

³⁰ See 47 C.F.R. §§ 54.416, 54.420, 54.422.

Transaction. Regardless of which channel the customer uses to apply for service, each customer will receive the same disclosures, will be required to supply the same information and will make the same certifications via Blue Jay's standard application/certification form (a South Dakota application/certification form is provided in **Exhibit H**, attached hereto).

Initially, Blue Jay will enroll the vast majority of its Lifeline customers in-person at Blue Jay branded storefronts. Through its affiliate relationships, including Agency Matrix, a provider of agency management insurance software, Blue Jay has thus far identified access to ten storefronts in South Dakota that can be co-branded to sell Blue Jay wireless Lifeline service.

1. Process.

As part of its enrollment process, Blue Jay will route all enrollment documentation through a common validation backbone that will perform five relevant verification checks in real-time before approving qualifying subscribers for Lifeline service. These five checks are: (1) Service Availability Verification (validates the availability of service of qualifying subscribers through a database of approved Blue Jay service areas); (2) Service Address Verification (validates the service address of qualifying subscribers through USPS and/or Melissa databases); (3) Non-Duplicate Subscriber Verification (confirms internal non-duplicate status of qualifying subscribers by a combination of name, address, telephone number, date of birth and last four digits of Social Security number); (4) Identity Verification (validates the identity of qualifying subscribers through viewing photo identification or Lexis Nexis); and (5) Eligibility Verification (where available, validates the eligibility of qualifying subscribers through state-specific and program-specific databases). Blue Jay also validates the eligibility and non-duplication of qualifying subscribers through the National Lifeline Accountability Database ("NLAD").

2. Training.

The manner in which sales will be made will be slightly different, but the obligations imposed by the new FCC rules will be addressed directly by Blue Jay in a consistent and comprehensive manner. All employees will be thoroughly trained on the enrollment process to ensure all five relevant verification checks are made before approving qualified subscribers for Lifeline service.

If Blue Jay cannot determine a prospective subscriber's eligibility for Lifeline by accessing income databases or program eligibility databases, Blue Jay personnel will review documentation establishing eligibility pursuant to the Lifeline rules.³¹ All personnel who interact with current or prospective customers will be trained to assist Lifeline applicants in determining whether they are eligible to participate based on the federal and South Dakota income-based and/or program-based criteria. These personnel will be trained to answer questions about Lifeline eligibility, and will review required documentation to determine whether it satisfies the *Lifeline Reform Order*.

3. Proof of Eligibility.

Blue Jay personnel will be trained on acceptable documentation required to establish income-based and program-based eligibility.³² Acceptable documentation of program eligibility includes: (1) the current or prior year's statement of benefits from a qualifying state, federal or Tribal program; (2) a notice letter of participation in a qualifying state, federal or Tribal program; (3) program participation documents (e.g., the consumer's Supplemental Nutrition Assistance Program (SNAP) electronic benefit transfer card or Medicaid participation

³¹ See *Lifeline Reform Order*, ¶ 100; 47 C.F.R. §§ 54.410(b)(1)(i)(B), 54.410(c)(1)(i)(B).

³² See *Lifeline Reform Order*, ¶ 101; see also USAC Guidance available at <http://www.usac.org/li/telecom-carriers/step06/default.aspx>.

card (or copy thereof)); or (4) another official document evidencing the consumer's participation in a qualifying state, federal or Tribal program.³³

Acceptable documentation of income eligibility includes the prior year's state, federal, or Tribal tax return; current income statement from an employer or three consecutive months of paycheck stubs; a Social Security statement of benefits; a Veteran's Administration statement of benefits; a retirement/pension statement of benefits; an Unemployment/Workmen's Compensation statement of benefits; federal or Tribal notice letter of participation in General Assistance; or a divorce decree, child support award, or other official document containing income information.³⁴ If the documentation of income does not cover a full year, the applicant must present the same type of documentation covering 3 consecutive months within the previous 12 months.

Blue Jay personnel will examine this documentation for each Lifeline applicant, and will record the type of documentation used to satisfy the income- or program-based criteria by checking the appropriate box on the application form.³⁵ In addition, Blue Jay personnel will fill in, where available, the last four digits of an account or other identifying number on the proof document, the date of the proof document and the expiration of the proof document. For customers enrolled via the Internet, Toll-Free Facsimile, USPS Mail, or Voice/IVR, the customer will be required to fax, mail or e-mail proof of eligibility documentation to Blue Jay. Proof will be reviewed by Blue Jay personnel prior to providing a handset to the customer and activating the customer's Lifeline service. Where Blue Jay personnel conclude that proffered documentation is insufficient to establish such eligibility, Blue Jay will deny the associated

³³ See *Id.* and 47 C.F.R. § 54.410(c)(1)(i)(B).

³⁴ See *Lifeline Reform Order* ¶101; 47 C.F.R. § 54.410(b)(1)(i)(B).

³⁵ See *Lifeline Reform Order* ¶101; 47 C.F.R. §§ 54.410(b)(1)(iii), 54.410(c)(1)(iii).

application and inform the applicant of the reason for such rejection. In the event that Blue Jay personnel cannot ascertain whether documentation of a specific type is sufficient to establish an applicant's eligibility, the matter will be escalated to supervisory personnel at Blue Jay corporate headquarters.³⁶ In addition, a Blue Jay employee that is not paid a commission for enrolling customers will be responsible for overseeing and finalizing every Lifeline enrollment prior to activating Lifeline services and including that customer on an FCC Form 497 for reimbursement.

Further, Blue Jay will not enroll customers at retail locations where Blue Jay does not have an agency agreement with the retailer. Blue Jay will require an agent retailer to have any employees involved in the enrollment process go through the standard Blue Jay training process, just as it would for any other agent. By establishing agency relationships with all of its Blue Jay personnel, including future retail outlets, Blue Jay meets the "deal directly" requirement adopted in the TracFone Forbearance Order.³⁷

Where customers are enrolled at retail locations, agents that may be paid a commission will be responsible for collecting the customer's application and ensuring that it is completed in its entirety. Then, the agent will write his or her agent identification on the back of the form and scan the form (front and back) along with the customer's required identification and proof of program eligibility. This scanned form will be transmitted to Blue Jay corporate headquarters, where a Blue Jay employee that is not paid based on commission will manually process and verify the customer's application. Where an application is incomplete, the reviewing Blue Jay employee will notify the agent to have the customer complete the form, or, where appropriate, reject the application as incomplete. If the application is complete, the

³⁶ See *Lifeline Reform Order* ¶101.

³⁷ See *Petition of TracFone Wireless, Inc. for Forbearance* from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), CC Docket No. 96-45, Order, FCC 05-165, ¶19 (Sep. 8, 2005).

reviewing Blue Jay employee will send the application to data entry staff, which will input the application information and verify customer eligibility pursuant to the process described above in Section II.4.E.ii. If the customer is eligible to receive Lifeline benefits, the reviewing Blue Jay employee will notify the retail agent, who will notify the applicant that he or she has been approved and will provide a handset to activate.

4. De-Enrollment for Ineligibility.

If the Company has a reasonable basis to believe that one of its Lifeline subscribers no longer meets the eligibility criteria, the Company will notify the subscriber of impending termination in writing and give the subscriber 30 days to demonstrate continued eligibility.³⁸ A demonstration of eligibility must comply with the annual verification procedures below and found in new rule section 54.410(f), including the submission of a certification form. If a customer contacts the Company and states that he or she is not eligible for Lifeline or wishes to de-enroll for any reason, the Company will de-enroll the customer within five business days. Customers can make this request by calling the Company's customer service number and will not be required to submit any documents.

iii. Subscriber Certifications for Enrollment.

The Company will implement certification policies and procedures that enable consumers to demonstrate their eligibility for Lifeline assistance to Company personnel as detailed in the *Lifeline Reform Order*.³⁹ The Company shares the FCC's and the Commission's concern about abuse of the Lifeline program and is thus committed to the safeguards stated herein, with the belief that these procedures will prevent the Company's customers from engaging in such abuse of the program, inadvertently or intentionally. Every applicant will be

³⁸ See *Lifeline Reform Order* ¶ 143; 47 C.F.R. § 54.405(e)(1).

³⁹ See *Lifeline Reform Order* ¶ 61; 47 C.F.R. § 54.410(a).

required to complete an application/certification form containing disclosures, and the Company will collect certain information and certifications as discussed below.⁴⁰

Applicants that seek to enroll based on income eligibility will be referred to a worksheet showing the Federal Poverty Guidelines by household size.⁴¹ Applicants that do not complete the application/certification form in person will be required to return the signed application/certification to the Company by mail, facsimile, electronic mail or other electronic transmission. In addition, Company personnel will verbally explain the certifications to consumers when they are enrolling in person or over the phone.⁴²

1. Disclosures.

The Company's application and certification forms will include the following disclosures: (1) Lifeline is a federal benefit and willfully making false statements to obtain the benefit can result in fines, imprisonment, de-enrollment or being barred from the program; (2) only one Lifeline service is available per household; (3) a household is defined, for purposes of the Lifeline program, as any individual or group of individuals who live together at the same address and share income and expenses; (4) a household is not permitted to receive Lifeline benefits from multiple providers; (5) violation of the one-per-household limitation constitutes a violation of the FCC's and Commission's rules and will result in the applicant's de-enrollment from the program; and (6) Lifeline is a non-transferable benefit and the applicant may not transfer his or her benefit to any other person.⁴³

⁴⁰ See **Exhibit H** - South Dakota Application/Certification Form. See Public Notice at 3.

⁴¹ See **Exhibit I** - Income Eligibility Worksheet (updated for 2014 from the version included as Exhibit B of Compliance Plan).

⁴² See *Lifeline Reform Order* ¶ 123.

⁴³ See *id.* ¶ 121; 47 C.F.R. § 54.410(d)(1).

Applications and certification forms will also state that: (1) the service is a Lifeline service, (2) Lifeline is a government assistance program, and (3) only eligible consumers may enroll in the program.⁴⁴

In addition, the Company will notify the applicant that the prepaid service must be personally activated by the subscriber and the service will be deactivated and the subscriber de-enrolled if the subscriber does not use the service for 60 days.⁴⁵

2. Information Collection.

The Company will also collect the following information from the applicant in the application/certification form: (1) the applicant's full name; (2) the applicant's full residential address (P.O. Box is not sufficient⁴⁶); (3) whether the applicant's residential address is permanent or temporary; (4) the applicant's billing address, if different from the applicant's residential address; (5) the applicant's date of birth; (6) the last four digits of the applicant's Social Security number (or the applicant's Tribal identification number, if the subscriber is a member of a Tribal nation and does not have a Social Security number); (7) if the applicant is seeking to qualify for Lifeline under the program-based criteria, the name of the qualifying assistance program from which the applicant, his or her dependents, or his or her household receives benefits; and (8) if the applicant is seeking to qualify for Lifeline under the income-based criterion, the number of individuals in his or her household.⁴⁷

⁴⁴ See 47 C.F.R. § 54.405(c).

⁴⁵ See *Lifeline Reform Order* ¶ 257.

⁴⁶ See *id.* ¶ 87.

⁴⁷ See 47 C.F.R. § 54.410(d)(2).

3. Applicant Certification.

Consistent with FCC rule section 54.410(d)(3), the Company will require the applicant to certify, under penalty of perjury, in writing or by electronic signature or interactive voice response recording,⁴⁸ the following: (1) the applicant meets the income-based or program-based eligibility criteria for receiving Lifeline; (2) the applicant will notify the Company within 30 days if for any reason he or she no longer satisfies the criteria for receiving Lifeline including, as relevant, if the applicant no longer meets the income-based or program-based criteria for receiving Lifeline support, the applicant is receiving more than one Lifeline benefit, or another member of the applicant's household is receiving a Lifeline benefit; (3) if the applicant is seeking to qualify for Lifeline as an eligible resident of Tribal lands, he or she lives on Tribal lands; (4) if the applicant moves to a new address, he or she will provide that new address to the Company within 30 days; (5) if the applicant provided a temporary residential address to the Company, the applicant will be required to verify his or her temporary residential address every 90 days; (6) the applicant's household will receive only one Lifeline service and, to the best of the applicant's knowledge, the applicant's household is not already receiving a Lifeline service; (7) the information contained in the applicant's certification form is true and correct to the best of the applicant's knowledge; (8) the applicant acknowledges that providing false or fraudulent information to receive Lifeline benefits is punishable by law; and (9) the applicant acknowledges that the applicant may be required to re-certify his or her continued eligibility for Lifeline at any time, and the applicant's failure to re-certify as to the applicant's continued eligibility will result in de-enrollment and the termination of the applicant's Lifeline benefits pursuant to the de-enrollment policy included below and in the FCC's and Commission's rules.

⁴⁸ See *Lifeline Reform Order* ¶¶ 168-69; 47 C.F.R. § 54.419.

In addition, the applicant will be required to authorize the Company to access any records required to verify the applicant's statements on the application/certification form and to confirm the applicant's eligibility for the Company Lifeline credit. The applicant must also authorize the Company to release any records required for the administration of the Company Lifeline credit program, including to USAC to be used in a Lifeline program database.⁴⁹

a. Annual Verification Procedures.

Blue Jay will annually re-certify all subscribers by querying the appropriate eligibility databases or obtaining a signed certification from each subscriber consistent with the certification requirements above and section 54.410(d) of the FCC's rules. This certification will include a confirmation that the applicant's household will receive only one Lifeline service and, to the best of the subscriber's knowledge, the subscriber's household is receiving no more than one Lifeline service.⁵⁰ Further, the verification materials will inform the subscriber that he or she is being contacted to re-certify his or her continuing eligibility for Lifeline and if the subscriber fails to respond, he or she will be de-enrolled from the program.⁵¹

⁴⁹ See 47 C.F.R. § 54.404(b)(9). The application/certification form will also describe the information that will be transmitted, that the information is being transmitted to USAC to ensure the proper administration of the Lifeline program and that failure to provide consent will result in the applicant being denied the Lifeline service.

⁵⁰ See *Lifeline Reform Order* ¶ 120.

⁵¹ See *id.* ¶ 145.

b. Activation.

Blue Jay will not consider a prepaid subscriber activated, and will not seek reimbursement for Lifeline for that subscriber, until the subscriber activates the Company's prepaid service by completing an outbound call. An outbound call must be made in order for the service to be activated and for Blue Jay to seek Lifeline reimbursement for that customer. Although Blue Jay may, in some cases ship phones to Lifeline applicants that apply in-person, in almost all cases the phones are provided to applicants in-person, and the customer is required to complete an outbound call to customer service in front of the representative upon taking possession of the phone in order to complete the enrollment process.⁵² Where phones are mailed to the customer's address, the customer must dial an activation code, which will connect them to a customer service representative. The customer then has to provide the customer service representative with identification information and confirm Lifeline service was ordered.

4. Cessation of Services.

Blue Jay offers two plans free of charge. For these plans, no refund will be provided to customers upon termination. For its prepaid for-cost plans, Blue Jay commits to providing thirty (30) days' notice prior to termination. As such, no refund will be required if Blue Jay ceases services in South Dakota.

5. Additional Measures to Prevent Waste, Fraud and Abuse.

To supplement its verification and certification procedures, and to better ensure that customers understand the Lifeline service restrictions with respect to duplicates, the

⁵² Although Blue Jay was at one time providing most phones to enrolled Lifeline customers by mail, it now provides most phones in person at the time of enrollment because the National Lifeline Accountability Database requires ETCs to activate and assign a telephone number at the time of enrollment through NLAD.

Company will implement measures and procedures to prevent duplicate Lifeline benefits from being awarded to the same household. These measures entail additional emphasis in written disclosures as well as live due diligence.

In addition to checking the FCC's duplicates database (NLAD), Company personnel will emphasize the "one Lifeline phone per household" restriction in their direct sales contacts with potential customers. Training materials will include a discussion of the limitation to one Lifeline phone per household, and the need to ensure that the customer is informed of this restriction. All Company personnel interacting with existing and potential Lifeline customers will undergo training regarding the eligibility and certification requirements in the *Lifeline Reform Order* and the Compliance Plan.

Blue Jay Company personnel that will interact with existing and potential Lifeline customers will be required to complete a rigorous training program upon commencing employment and prior to performing other duties for the Company. During this program, Company personnel are thoroughly trained on compliance practices, policies and procedures including, among other areas, a thorough training on the enrollment process. For example, Company personnel that will perform customer enrollment are trained on how to use the Blue Jay's office support systems, to read aloud the appropriate disclosures to prospective customers such as the "one-per-household" and activation and non-usage requirement disclosures, request additional documentation proving identity and address verification and what constitutes proof of eligibility, among other important practices.

Company personnel are also trained to display Blue Jay approved marketing materials and banners and wear Blue Jay branded t-shirts with name badges and pictures when performing in-person enrollment. Blue Jay will have a designated employee compliance training

manager who is accessible to Company personnel for questions after training. Company personnel are also trained what to do in the event they suspect fraud or any violation. The Company has a whistleblower policy for Company personnel to immediately report any violation of compliance policies and procedures. If Company personnel violates any of the Company's or program's compliance policies and procedures, the terms and conditions of his or her employee or vendor agreement, or engages in any illegal, fraudulent, deceptive, or unethical business conduct, Blue Jay will invoke immediate disciplinary action and may contact appropriate authorities.

6. Database.

Now that the NLAD is available, the Company complies with the requirements of FCC rule section 54.404.⁵³ The Company will query the NLAD to determine whether a prospective South Dakota subscriber is currently receiving a Lifeline service from another ETC and whether anyone else living at the prospective subscriber's residential address is currently receiving Lifeline service.⁵⁴

⁵³ The NLAD is currently available for "live" checks in South Dakota as of March 27, 2014. See <http://www.usac.org/li/tools/nlad/nlad-migration.aspx>.

⁵⁴ See *Lifeline Reform Order* ¶ 203. Blue Jay will also transmit to the NLAD the information required for each new and existing Lifeline subscriber. See *Lifeline Reform Order* ¶¶ 189-195; 47 C.F.R. § 54.404(b)(6). Further, the Company will update each subscriber's information in the NLAD within ten business days of any change, except for de-enrollment, which will be transmitted within one business day. See 47 C.F.R. §§ 54.404(b)(8),(10).

7. One-Per-Household.

Blue Jay will implement the requirements of the *Lifeline Reform Order* to ensure that it provides only one Lifeline benefit per household⁵⁵ through the use of its application and certification forms, database checks and its marketing materials. Upon receiving an application for Lifeline service, Blue Jay will search its own internal records to ensure that it does not already provide Lifeline-supported service to someone at the same residential address.⁵⁶ If so, and the applicant lives at an address with multiple households, Blue Jay will require the applicant to complete and submit a written USAC household worksheet.⁵⁷

In addition, Blue Jay will inform each Lifeline applicant that he or she may be receiving Lifeline support under another name, and facilitate the applicant's understanding of what constitutes "Lifeline-supported services," and ability to determine whether he or she is already benefitting from Lifeline support, by informing the consumer that Lifeline services may not be currently marketed under the name Lifeline. Finally, at the time of enrollment, Blue Jay will check each applicant against any available pooled duplicates database established by CGM, LLC.

⁵⁵ A "household" is any individual or group of individuals who are living together at the same address as one economic unit. A household may include related and unrelated persons. An "economic unit" consists of all adult individuals contributing to and sharing in the income and expenses of a household. An adult is any person eighteen years or older. If an adult has no or minimal income, and lives with someone who provides financial support to him/her, both people shall be considered part of the same household. Children under the age of eighteen living with their parents or guardians are considered to be part of the same household as their parents or guardians. *See Lifeline Reform Order* ¶ 74; 47 C.F.R. § 54.400(h).

⁵⁶ *See Lifeline Reform Order* ¶ 78.

⁵⁷ *Id.* The USAC worksheet is available at <http://www.usac.org/li/tools/reference-area.aspx> (last visited Apr. 29, 2013).

iv. Annual Company Certifications.

The Company will annually report to the FCC, USAC, and Commission and Tribal government as appropriate,⁵⁸ the company name, names of the company's holding company, operating companies and affiliates, and any branding (such as a "dba" or brand designation) as well as relevant universal service identifiers for each entity by Study Area Code.⁵⁹ The Company will report annually information regarding the terms and conditions of its Lifeline plans for voice telephony service offered specifically for low-income consumers during the previous year, including the number of minutes provided and whether there are additional charges to the consumer for service, including minutes of use and/or toll calls.⁶⁰

In addition, the Company will provide the results of its annual re-certifications/verifications on an annual basis on January 31 to the FCC, USAC, and the Commission as well as the relevant Tribal governments (for subscribers residing on Tribal lands).⁶¹ Further, the Company will report annually to the FCC and the Commission the number of subscribers de-enrolled for non-usage by month.⁶²

F. Blue Jay will comply with Commission and FCC requirements on fees, charges, reports, and company certifications.

Blue Jay will comply with all applicable Commission and FCC requirements with respect to fees, charges, reports, and company certifications. The Company will not collect

⁵⁸ See 47 C.F.R. § 54.422(c).

⁵⁹ See *Lifeline Reform Order* ¶¶ 296, 390; 47 C.F.R. § 54.422(a). This is the FCC Form 481.

⁶⁰ See *Lifeline Reform Order* ¶ 390; 47 C.F.R. § 54.422(a)(2).

⁶¹ See *Lifeline Reform Order* ¶¶ 132, 148; 47 C.F.R. § 54.416(b). This is the FCC Form 555.

⁶² See *Lifeline Reform Order* ¶ 257; 47 C.F.R. § 54.405(e)(3).

service deposits for its plans and will not charge a number-portability fee for Lifeline accounts.⁶³ Blue Jay will timely pay all applicable federal, state, and local regulatory fees, including applicable universal service and E911 fees.

Furthermore, Blue Jay complies with the FCC's annual reporting requirements for ETCs as set forth in Section 54.422 of the FCC's Rules.⁶⁴

G. Blue Jay will comply with Commission and FCC requirements on relinquishment of ETC designation.

If at some point in the future, Blue Jay seeks to relinquish its ETC designation, Blue Jay will comply with the requirements of ARSD 20:10:32:48 and 47 C.F.R. § 54.205.

H. Blue Jay requests a waiver of the Commission's requirement that applicants submit a two-year improvement plan

The Commission requires, in ARSD 20:10:32:43:02, that applicants seeking ETC designation submit "a two year plan that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area." The FCC has recently clarified that Lifeline-only applicants are no longer subject to service improvements plan requirements.⁶⁵ Blue Jay similarly believes that the high-cost reporting requirements set forth in the Commission's rules should not apply to a request for Lifeline-only ETC designation. As such, and consistent with the Commission's prior orders, Blue Jay respectfully requests that the Commission either determine that the high-cost support requirements of ARSD 20:10:32:43:02 do not apply to this application, or are waived.⁶⁶

⁶³ See 47 C.F.R. § 54.401(c), (e).

⁶⁴ See 47 C.F.R. § 54.422.

⁶⁵ See 47 C.F.R. § 54.422(b); *Lifeline Reform Order*, § 389.

⁶⁶ The Commission has previously granted a waiver of ARSD 20:10:32:43:02 in its approval of the ETC application of Budget Prepay, Inc. See *Budget Prepay Order* at 2.

- I. *Blue Jay will provide equal access to long distance carriers if no other ETC is providing equal access within the service area*

Under ARSD 20:10:32:43:06, ETC applicants must certify that, where no other ETC is providing equal access within the proposed service area, the applicant “will be able to provide equal access to long distance carriers.” Blue Jay respectfully notes that the FCC no longer requires that ETCs provide equal access as described. Moreover, equal access obligations are generally inapplicable in the context of wireless resale operations.

III. INFORMATION REQUIRED BY ARSD 20:10:32:43.

In accordance with ARSD 20:10:32:43 subpart (1) through (6), Blue Jay provides the following information:

- A. The legal name, address and telephone number of the Company and its designated contact person is:

Blue Jay Wireless, LLC
5010 Addison Circle
Addison, TX 75001
(972) 788-8860
Designated contact person: David Wareikis, Chief Executive Officer

The contact information for the Company’s attorney is as follows:

Brett Koenecke
Kara Semmler
May, Adam, Gerdes & Thompson LLP
503 S. Pierre Street
PO Box 160
Pierre, SD 57501
(605) 224-8803

- B. The proposed effective date of the designation of eligibility to receive universal service support is upon grant of this Petition.

- C. As required by ARSD 20:10:32:43(3), the service area for which designation is sought, the local exchange carrier(s) servicing that area, and whether the Company

considers any identified local exchange carrier to be a rural telephone company is presented in Section II above and identified in Exhibit D.

D. Pursuant to ARSD 20:10:32:43(4), Blue Jay has provided, in Part II above, “[a] statement supporting the petition which specifies why the requested designation satisfies the requirements for eligible telecommunications designation and receiving federal universal service support under 47 C.F.R. § 54.201.”

E. The Company’s commitment to comply with the service quality requirements articulated in ARSD 20:10:32:10 and ARSD 20:10:32:15 (including those federal standards incorporated by reference), insofar as applicable to wireless resale operations, is provided in Section II above.

IV. GRANT OF THIS PETITION WILL SERVE THE PUBLIC INTEREST.

Pursuant to ARSD 20:10:32:43(6), Blue Jay provides the following statement specifying why its proposed designation as a Lifeline-only ETC is in the public interest. Designation of Blue Jay as an ETC for Lifeline purposes will further the Commission’s universal service goals and thus benefit South Dakota consumers. Specifically, the Company will offer prepaid low cost wireless service to low-income consumers, thereby increasing consumer choice. In addition, increasing customer choice will spur wireless ETC providers to compete for eligible customers by providing the highest value (*e.g.*, higher quality handsets, customer service). Further, grant of the Petition will provide consumers with access to high quality service and the benefits of a mobile service.⁶⁷ The mobility of the service will be particularly attractive to Lifeline-eligible consumers who may frequently change residences or work in migratory jobs.

⁶⁷ As discussed above, Blue Jay will comply with the Consumer Code for Wireless Service of CTIA – The Wireless Association, and applicable South Dakota consumer protection and service quality standards.

Wireless service offers a stable contact method where 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 South Dakota are faced with making difficult choices about how to allocate and spend their limited resources.⁶⁸ 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. The prepaid nature of the service also will provide an alternative for "unbanked" consumers. Further, Blue Jay will not require 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 South Dakota 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 to stay in touch with children or other family members as well as contact 911 emergency services when needed. Blue Jay's services will provide consumers with a valuable alternative for obtaining telephone service. This competition, in turn, could spur other service providers to improve their service options.

⁶⁸ The Universal Service Administrative Company estimates that, as of 2011, South Dakota has an estimated participation rate of 10 to 20 percent of the low-income population in the Lifeline program. See <http://www.usac.org/li/about/getting-started/participation-rate.aspx> (last visited Apr. 28, 2014).

Importantly, Blue Jay's designation as an ETC solely for the purpose of receiving Lifeline support also would not unduly burden the USF or otherwise reduce the amount of funding available to other carriers. Blue Jay is seeking reimbursement for federal Lifeline services only, whereas the vast majority of federal USF expense arises from high-cost fund subsidies. The FCC has confirmed that the advantages of adding Lifeline-only ETCs outweigh any potential disadvantages, including the effect on the USF.⁶⁹ Further, Lifeline subsidies are subscriber-specific and remain the same irrespective of which carrier provides the service. As such, should a subscriber transfer from another provider to Blue Jay, the associated Lifeline reimbursement amount—and the expense to the USF—will not change.

Moreover, Blue Jay's service presents unique advantages for low-income consumers in South Dakota. Although Blue Jay's service offering may be similar to that offered by other ETCs in South Dakota and Blue Jay plans to market its Lifeline services through media of general distribution similarly to other ETCs, Blue Jay also plans to market and distribute Lifeline services primarily through a retail storefront presence in South Dakota. Through its affiliate relationships, including Agency Matrix, a provider of agency management insurance software, Blue Jay has thus far identified access to ten storefronts in South Dakota that can be co-branded to sell Blue Jay wireless Lifeline service. Low-income consumers will see Blue Jay branded stores in their communities and will know that if they are eligible and enroll in a Lifeline service with Blue Jay, they can return to the local store with questions or customer service issues. Further, Blue Jay has access to the low-income consumer market through its affiliates, like Drivers Insurance and Agency Matrix, that primarily serve low-income consumers

⁶⁹ See *TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45, Order, FCC 08-100, ¶ 16 n.47 (Apr. 11, 2008).

or support businesses that do so. These affiliations differentiate Blue Jay's level of familiarity with, and access to, low-income consumers in South Dakota.

Furthermore, as stated above, Blue Jay will satisfy the FCC's and the Commission's consumer protection and quality of service standards, adhering to the CTIA Consumer Code and all other requirements.

V. CONCLUSION

Blue Jay respectfully requests that the Commission expeditiously issue an order designating the Company as an ETC in South Dakota 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.

BLUE JAY WIRELESS, LLC

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Attorneys for Blue Jay Wireless, LLC
Date: May 19, 2014

VERIFICATION

STATE OF TEXAS)
) ss.
County of Dallas)

I, David A. Wareikis, being first duly sworn upon oath, depose and say that I am the Chief Executive Officer of Blue Jay Wireless, LLC, and as such am authorized to make this verification on its behalf; that I have read the foregoing Petition; that I know the contents thereof; and that the facts set forth in the foregoing Petition are true and correct to the best of my knowledge, information and belief.

Subscribed and sworn to before me this _____ day of May, 2014.

Notary Public

My Commission expires: _____