

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BLUE JAY WIRELESS FOR)
DESIGNATION AS AN ELIGIBLE) CASE NO.
TELECOMMUNICATIONS CARRIER IN THE) 2013-00377
COMMONWEALTH OF KENTUCKY)

O R D E R

On October 17, 2013, Blue Jay Wireless, LLC ("Blue Jay"), a reseller of Commercial Mobile Radio Service, also known as a Mobile Virtual Network Operator, filed an application under 47 U.S.C. § 214(e)(2) seeking designation as an Eligible Telecommunications Carrier ("ETC"). Blue Jay seeks to receive both federal low-income and state Universal Service Fund ("USF") support for wireless services.¹ Blue Jay seeks ETC designation only for the purpose of participation in the Lifeline program. Blue Jay does not seek high-cost support.

The application states that: (1) Blue Jay meets all the requirements for designation as an ETC to serve the designated areas in the state of Kentucky;² (2) Blue Jay requests designation in the underlying carrier's licensed service areas in Kentucky;³ (3) in accordance with 47 U.S.C. § 214(e)(2), Blue Jay seeks to be designated as an

¹ Blue Jay requests ETC designation in the service area of its underlying carriers, Sprint, T-Mobile, and Verizon Wireless, including both rural and non-rural exchanges of the incumbent carriers. App. at Footnote 2.

² *Id.* at pp. 4-14.

³ *Id.* at p. 9.

ETC solely to provide Lifeline service to qualifying customers in Kentucky;⁴ and (4) designation of Blue Jay as an ETC for the designated areas served in Kentucky will serve the public interest.⁵

Consumers will be enrolled in person, through a toll-free telephone number, fax, by mail, or on the company's website.⁶ Blue Jay will require that prospective customers complete the Lifeline Application and certify that they meet eligibility criteria to participate in Lifeline.⁷ Company personnel will verify the customer's eligibility by using databases and reviewing documentation.⁸

Blue Jay has stated in its application that it will comply with all the rules and regulations that the Commission may impose on the provision of wireless service.⁹ The Commission requires that the Kentucky Universal Service support and the Kentucky Telecommunications Relay Service and Telecommunications Access Program support be collected for each wireless customer. Blue Jay states that it will register with the Kentucky Commercial Mobile Radio Services Board for the purpose of reporting and remitting the statewide wireless 911 fee for wireless carriers.¹⁰ Blue Jay states it will not provide toll-limitation services, since its calling plans do not charge any fees for toll calls.¹¹

⁴ *Id.* at p. 1.

⁵ *Id.* at pp. 14-16.

⁶ *Id.* at Exhibit A, p. 5.

⁷ *Id.*

⁸ *Id.* at Exhibit A, pp. 7-8.

⁹ App. at pp. 13-14.

¹⁰ *Id.* at p. 2.

¹¹ *Id.* at 8-9.

Discussion

Pursuant to 47 U.S.C. § 254(e), “only an eligible telecommunications carrier designated under 47 U.S.C. § 214(e) shall be eligible to receive specific federal universal service support.” Pursuant to 47 U.S.C. § 214(e)(1)(A) and (B), a common carrier designated as an ETC must offer the services supported by the federal universal service support mechanisms, using either its own facilities or a combination of its own facilities and resale of another carrier’s services throughout its designated service area, and it must advertise the availability and charges for those services. Pursuant to 47 U.S.C. § 214(e)(2), state commissions bear the primary responsibility for performing ETC designations. Under the same section, the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, as long as the requesting carrier meets the requirements of 47 U.S.C. § 214(e)(1). Also, before designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.

Requirements for ETC Designation by the Federal Communications Commission (“FCC”)

In 1997, the FCC issued a Public Notice setting forth the procedures a carrier must use when requesting designation as an ETC from the FCC.¹² The Commission likewise collects similar information pursuant to that Notice. A carrier seeking ETC designation must file a petition providing the following: (1) a certification that the

¹² *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, 12 FCC Rcd 22947, 22948 (1997) (Section 214(e)(6) Public Notice).

petitioner offers all services designated for support by the Commission pursuant to 47 U.S.C. § 254(c); (2) certification that the petitioner offers the supported services using either its own facilities or a combination of its own facilities and resale of another carrier's services;¹³ (3) a description of how the petitioner advertises the availability of the supported services and the charges therefore using media of general distribution; and (4) if the petitioner is not a rural telephone company, a detailed description of the geographic service area for which it requests designation as an ETC from the Commission.¹⁴

In addition, the FCC's rules require that in order to be designated as an ETC, a petitioner must: (1) certify that it will comply with the service requirements applicable to the support that it receives; (2) demonstrate its ability to remain functional in emergency situations; (3) demonstrate that it will satisfy applicable consumer-protection and service-quality standards; (4) demonstrate that it is financially and technically capable of providing the Lifeline service; and (5) submit information describing the terms and conditions of any voice telephony plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan.¹⁵

¹³ *Lifeline Reform Order*, FCC 12-11 at ¶ 368 (adopting a blanket forbearance of the facilities requirement of 47 U.S.C. § 214(e)(1)(A) for non-facilities based carriers that seek limited ETC designation to participate in the Lifeline program) ("Lifeline Reform Order"). In the Matter of Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42; Lifeline and Link Up, WC Docket No. 03-109; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Advancing Broadband Availability Through Digital Literacy Training, WC Docket No. 12-23; Report and Order and Further Notice of Proposed Rulemaking, Adopted: January 31, 2012; Released: February 6, 2012.

¹⁴ 47 U.S.C. § 214(e)(6).

¹⁵ 47 C.F.R. § 54.202(a).

Prior to designating an ETC pursuant to 47 U.S.C. § 214(e)(6), the Commission must determine whether such designation is in the public interest.¹⁶ In determining the public interest, the Commission historically has considered the benefits of increased consumer choice and the unique advantages and disadvantages of the petitioner's service offering.

The federal universal service Lifeline program is designed to reduce the monthly cost of telecommunications service for qualifying consumers. The Lifeline program reimburses ETCs for providing qualifying low-income consumers with discounts of \$9.25 off the monthly cost of their telephone service.¹⁷ The Kentucky Lifeline program provides additional reimbursement to ETCs for providing eligible consumers with discounts of up to an additional \$3.50 off the monthly cost of their telephone service.¹⁸

As described below, Blue Jay has provided the Commission with the information required for designation as an ETC in the service area at issue. We find that the public interest supports such designation, subject to Blue Jay's compliance with the representations and commitments made by Blue Jay in its application and the FCC's rules. Blue Jay must also comply with the conditions set forth in its compliance plan.¹⁹

Offering the Services Designated for Support

Petitioners for ETC designation must certify that they offer all services designated for support by the Commission pursuant to 47 U.S.C. § 254(c).²⁰ Blue Jay

¹⁶ 47 U.S.C. § 214(e)(6); and 47 C.F.R. § 54.202(b).

¹⁷ 47 C.F.R. § 54.403(a)(1).

¹⁸ Administrative Case No. 360, An Inquiry into Universal Service and Funding Issues (Ky. PSC May 22, 1998), at 37, determining Kentucky USF support of \$3.50 per line per month.

¹⁹ App. at Ex. A.

²⁰ See 47 U.S.C. § 214(e)(1)(A); Section 214(e)(6) Public Notice, 12 FCC Rcd at 22948, ¶ 2.

has demonstrated through the required certifications and related filings that it now offers, or will offer upon designation as a limited ETC, the voice telephony services supported by the Lifeline program. Blue Jay certifies that it now provides, or will provide throughout its designated service area, the services and functionalities enumerated in 47 C.F.R. § 54.101(a) throughout the licensed service areas of its underlying carrier.²¹

Offering the Supported Services Using a Carrier's Own Facilities

Generally, petitioners for ETC designation must certify that they will offer the supported services using either their own facilities or a combination of their own facilities and the resale of another carrier's services.²² In its *Lifeline Reform Order*,²³ the FCC decided to forbear, on its own motion, from applying the facilities requirement of 47 U.S.C. § 214(e)(1)(A) to any telecommunications carrier that seeks limited ETC designation to participate in the Lifeline program, conditioned on the ETC's compliance with certain 911 requirements and the ETC's filing with and approval by the FCC of a compliance plan describing the ETC's adherence to certain protections prescribed by the FCC. Blue Jay opted to pursue forbearance. On December 26, 2012, the FCC

²¹ Specifically, Blue Jay certifies that it provides voice telephony services supported by federal universal service support mechanisms, as set forth in 47 C.F.R. § 54.101, which includes: (1) voice-grade access to the public switched telephone network; (2) local usage; (3) access to emergency services; and (4) Lifeline service plans that do not distinguish between toll and non-toll calls in the pricing of service. See application at pp. 4-8. In the *Lifeline Reform Order*, the FCC adopted rules that provide that toll-limitation service is no longer necessary for any Lifeline service that does not distinguish between toll and non-toll calls in the pricing of service. See *Lifeline Reform Order* at ¶ 49.

²² 47 U.S.C. § 214(e)(6) Public Notice, 12 FCC Rcd at 22949; See also 47 U.S.C. § 214(e)(1)(A); *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, 20 FCC Rcd 15095 (2005) ("TracFone Forbearance Order").

²³ See generally *Lifeline Reform Order*.

approved Blue Jay's Compliance Plan ("Compliance Plan").²⁴ A copy of the approved Compliance Plan was included with the application as Exhibit A.

Blue Jay, in its provision of wireless services, will offer resold services which Blue Jay will obtain from its underlying wireless providers, Verizon, T-Mobile, and Sprint Wireless. This service area footprint of its underlying carrier allows Blue Jay to provide coverage throughout many markets where eligible consumers need service. Through its service arrangements, Blue Jay has shown it is able to offer all of the services and functionalities supported by the universal-service program, as detailed in 47 C.F.R. § 54.101(a), throughout its service area.

Advertising Supported Services

Petitioners for ETC designation must advertise the availability of the supported services and the charges thereof using media of general distribution and provide a description of how they will do so.²⁵ Blue Jay has committed to advertise the availability of the supported services using media of general distribution.²⁶ In addition, Blue Jay has committed to advertising and promoting the availability of Lifeline services in a manner reasonably designed to reach those likely to qualify for Lifeline.²⁷ To increase accountability within the program and to target support where it is needed most, the FCC has adopted rules requiring ETCs to explain in their marketing materials that Lifeline service is a government benefit, that the individual must be eligible to receive the benefit, and that the consumer may receive no more than one benefit at a time from

²⁴ *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Public Notice, DA 12-1286 (December 26, 2012).

²⁵ 47 U.S.C. § 214(e)(1)(B); Section 214(e)(6) Public Notice, 12 FCC Rcd at 22949, ¶ 4.

²⁶ App. at pp. 9-10.

²⁷ *Id.*

the program.²⁸ Blue Jay has demonstrated its commitment to comply with these FCC rules regarding marketing of Lifeline service.²⁹

Designated Service Areas

Petitioners for ETC designation must provide a detailed description of the geographic service area for which they seek designation.³⁰ In its application, Blue Jay seeks designation as a limited ETC, eligible only for Lifeline support, in the rural and non-rural exchanges of the incumbent local exchange carrier of its underlying carriers Verizon, T-Mobile, and Sprint Wireless.³¹

Compliance with Applicable Service Requirements

Petitioners for ETC designation must certify that they will comply with all service requirements applicable to the support they receive.³² Blue Jay has done so and has demonstrated its commitment to comply with the FCC's Lifeline rules, and specifically to comply with the rules regarding consumer enrollment and certification of eligibility.³³ We also find that Blue Jay's sample Lifeline certification forms used for consumer enrollment, and attached as exhibits to its application, satisfy the FCC's rules.³⁴

²⁸ *Lifeline Reform Order* at ¶¶ 274-77; 47 C.F.R. § 54.405.

²⁹ App. at pp. 9-10.

³⁰ Section 214(e)(6), Public Notice, 12 FCC Rcd at 22949, ¶ 5.

³¹ App. at p. 9 and Footnote 2.

³² 47 C.F.R. § 54.202(a)(1)(i).

³³ App. at p. 13 and Ex. A.

³⁴ App. Ex. A; 47 C.F.R. § 54.410 (setting forth the Commission rules on subscriber eligibility determination and certification); and *Lifeline Reform Order* at Appendix C (setting forth certification requirements for Lifeline subscribers).

Ability to Remain Functional in Emergency Situations

Petitioners for ETC designation must demonstrate their ability to remain functional in emergency situations.³⁵ Blue Jay provides service to its customers through another carrier; therefore, it is able to provide to its customers the same ability to remain functional in emergency situations as is currently provided by its underlying wireless provider to its respective customers. Such service includes access to a reasonable amount of back-up power to ensure functionality without an external power source, re-routing of traffic around damaged facilities, and the capability of managing traffic spikes resulting from emergency situations. The Commission finds that Blue Jay has demonstrated its ability to remain functional in emergency situations.³⁶

Satisfaction of Applicable Consumer Protection and Service-Quality Standards

Petitioners for ETC designation must demonstrate that they will satisfy applicable consumer-protection and service-quality standards.³⁷ Blue Jay has committed to providing applicable consumer-protection and service-quality standards, including compliance with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service.³⁸

The Commission finds that Blue Jay's commitments provide sufficient consumer protection and service quality to consumers.

³⁵ 47 C.F.R. § 54.202(a)(2).

³⁶ App. at pp. 10-11.

³⁷ 47 C.F.R. § 54.202(a)(3).

³⁸ App. at p.11; *See also* 47 C.F.R. § 54.202(a)(3).

Financial and Technical Capability

Petitioners for ETC designation must demonstrate that they are financially and technically capable of providing Lifeline-supported services.³⁹ Blue Jay states that through its affiliates, it has been providing marketing services, since 2004. One of its affiliates is Splash Media, L.P., a large provider of social media marketing that has substantial revenues and has been profitable for nine years. Another affiliate, Link Distributors, LLC was a leading distributor of wireless handsets and Lifeline enrollment for ETCs, but currently is focusing on Blue Jay and its Lifeline business.⁴⁰ Blue Jay is designated as an ETC in Arizona, Colorado, Missouri, Puerto Rico, South Carolina, Texas, and Wisconsin.⁴¹ Based on the foregoing, the Commission finds that Blue Jay is financially and technically capable of providing Lifeline-supported services.

Information Regarding the Terms and Conditions of Lifeline Plans

Petitioners for ETC designation must submit information regarding the terms and conditions of any voice telephony plans they offer to Lifeline subscribers.⁴² Blue Jay plans to offer two wireless Lifeline plans, each providing a free phone; nationwide coverage; voice mail; call waiting; caller ID; and three-way calling. Plan one will provide to eligible customers at no cost 125 monthly local and long-distance minutes or text messages (one text equals one minute) that carry over at the end of each month. Plan two will provide to eligible customers at no cost, 250 monthly local and long-distance minutes or text messages (one text equals one minute) which may not be carried over

³⁹ 47 C.F.R. § 54.202(a)(4); *See also Lifeline Reform Order* at ¶ 387.

⁴⁰ App. at p. 12.

⁴¹ *Id.*

⁴² 47 C.F.R. § 54.202(a)(5).

to the next month. Lifeline customers will have the option to purchase additional minutes, such as 200 minutes for \$10.00 or 500 minutes for \$20.00.⁴³ Calls to 911 emergency services and customer service are free, regardless of service activation or availability of minutes.⁴⁴

Blue Jay will offer both plans to non-Lifeline customers. Each plan will cost \$9.25 per month. This is the same amount that Blue Jay will receive from the federal USF for each Lifeline subscriber. Blue Jay does not propose to provide any enhanced service or additional minutes of use for Kentucky Lifeline subscribers. Blue Jay is requesting ETC status for the purpose of receiving support from the Kentucky USF.⁴⁵ The Commission will require that Blue Jay offer a unique plan designed for Kentucky Lifeline subscribers that is commensurate with the amount of support provided by the Kentucky USF.

Based on the foregoing, the Commission finds that, subject to offering a specific Kentucky plan, Blue Jay offers plans that will serve Lifeline customers.

Public Interest Analysis

Prior to designating an ETC, the Commission must determine whether such designation is in the public interest.⁴⁶ We find that Blue Jay offers Lifeline plans that will provide a variety of benefits to Lifeline-eligible consumers, including increased consumer choice, high-quality service offerings, and mobility. New entrants in the

⁴³ App. at p. 7-8.

⁴⁴ *Id.* at p. 7.

⁴⁵ *Id.* at p. 1.

⁴⁶ See 47 U.S.C. § 214(e)(6); and 47 C.F.R. § 54.202(b).

Lifeline service market should incent existing ETCs to offer better service and terms to their subscribers.

Blue Jay will provide competitive wireless services throughout its service area in Kentucky. Blue Jay is a reseller of commercial mobile radio service, and will offer all of the services and functionalities detailed in 47 C.F.R. § 54.101(a), ensuring that Blue Jay can provide services to customers throughout the service area.⁴⁷

The Commission recognizes that the designation of Blue Jay as an ETC also creates competitive pressure for other wireline and wireless providers within the proposed service areas. In order to remain competitive in low-income markets, all providers will have greater incentive to improve coverage and customer service, increase service offerings, and lower prices. Consistent with federal law, the designation benefits consumers by allowing Blue Jay to offer the services designated for support at rates that are “just, reasonable, and affordable.”⁴⁸ Blue Jay plans to offer an easy-to-use, competitive, and affordable wireless telecommunications service, which it will make available to qualified consumers who either have no other service alternatives or who choose a wireless prepaid solution in lieu of more traditional services.⁴⁹

In order to promote public safety and safeguard against waste, fraud, and abuse in the Lifeline program, we find it necessary to require Blue Jay to comply with certain conditions. The designation of Blue Jay as a limited ETC is conditioned on Blue Jay’s compliance with: (1) the representations and commitments made by Blue Jay in its ETC

⁴⁷ App. at pp. 4-14.

⁴⁸ 47 U.S.C. § 254(b)(1).

⁴⁹ App. at pp. 14-15.

application and its Compliance Plan; and (2) the FCC rules, including those adopted by the FCC in the Lifeline Reform Order.⁵⁰

Subject to the above-stated conditions, we find that designating Blue Jay as an ETC eligible only to receive Lifeline support is in the public interest.

Regulatory Oversight

Under 47 U.S.C. § 254(e), petitioners are required to use the specific universal-service support they receive “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”⁵¹ An ETC receiving Lifeline support uses that support as intended when it reduces the price of its telecommunications services by the amount of the support for the eligible consumer.⁵²

As previously noted, Blue Jay has an approved compliance plan that currently governs its provision of Lifeline service.⁵³ In providing Lifeline services pursuant to the conditional ETC designation granted herein, Blue Jay must comply with the measures described in its existing compliance plan and in its application, as well as the FCC’s rules.

Finally, we note that the Commission or the FCC may institute an inquiry on its own motion to examine the petitioner’s records and documentation to ensure that the universal-service support it receives is being used for the purpose intended.⁵⁴ The

⁵⁰ See generally *Lifeline Reform Order*.

⁵¹ 47 U.S.C. § 254(e). We note that because petitioners are not eligible to receive federal universal service high-cost support, they are not required to file reports and certifications pursuant to 47 C.F.R. § 54.313.

⁵² See *TracFone Forbearance Order*, 20 FCC Rcd at 15105-06, ¶ 26.

⁵³ *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Public Notice, DA 12-828 (December 26, 2012).

⁵⁴ 47 U.S.C. §§ 220, 403.

petitioner is required to provide such records and documentation to the Commission, the FCC, or Universal Service Administration Company ("USAC") upon request. We further emphasize that, if the petitioner fails to fulfill the requirements of the Act, the FCC's rules, or the terms of this Order after it begins receiving universal-service support, the Commission may exercise its authority to revoke such petitioner's ETC designation.⁵⁵ The FCC also may assess forfeitures for violations of FCC rules and orders.⁵⁶

Annual Certification and Verification

Each year Blue Jay will require all Lifeline subscribers to recertify their head of household status, certify that only one Lifeline discount is received at their household, and document their continued program eligibility for Lifeline in accordance with the annual Lifeline Certification and Verification for USAC that is due annually.⁵⁷ The Commission finds that Blue Jay's plan to meet the annual certification and verification requirements is in accordance with the FCC's requirements.

The Commission, having reviewed the evidence of record and having been otherwise sufficiently advised, HEREBY ORDERS that:

1. The designation of Blue Jay as a limited ETC is conditioned on Blue Jay's compliance with: (1) the representations and commitments made by Blue Jay in its ETC application and its Compliance Plan; and (2) the FCC rules, including those adopted by the FCC in the Lifeline Reform Order.

⁵⁵ See *Federal-State Joint Board on Universal Service; Western Wireless Corp. Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, Declaratory Ruling, 15 FCC Rcd 15168, 15174, ¶ 15 (2000); See also 47 U.S.C. § 254(e).

⁵⁶ See 47 U.S.C. § 503(b).

⁵⁷ Administrative Case No. 2012-00146, Lifeline Reform (Ky. PSC May 1, 2012).

2. Blue Jay is designated as an ETC for the purpose of offering Lifeline service only in the underlying carrier's licensed service area in Kentucky.

3. During the current certification period, Blue Jay shall be eligible to receive federal USF support for Lifeline. Blue Jay shall also be eligible to receive Kentucky USF support for Lifeline subject to the submission of and approval by the Commission for a Kentucky specific Lifeline plan for Kentucky subscribers which provides benefits commensurate with the amount of Kentucky USF support.

4. Blue Jay shall advertise the availability of and charges for these services using media of general distribution.

5. Blue Jay shall comply with the FCC's annual certification process for Lifeline customers.

6. Blue Jay is a utility under the definitions contained in KRS 278.010(3), and shall include revenue generated from the sale of intrastate wireless service, including Lifeline revenues, in its reports filed pursuant to KRS 278.140.

7. A copy of this Order shall be served upon the FCC and the USAC.

By the Commission

ENTERED
MAY 19 2014
KENTUCKY PUBLIC SERVICE COMMISSION

ATTEST

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