

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

_____)	
In the Matter of the Petition of BLUE JAY)	
WIRELESS, LLC)	
)	Docket No. 12-2559-01
for Designation as an Eligible Telecommunications)	
Carrier in the State of Utah)	
_____)	

STIPULATION AND SETTLEMENT AGREEMENT

BLUE JAY WIRELESS, LLC (“Blue Jay”), the Division of Public Utilities (“DPU”), and the Office of Consumer Services (“OCS”) (collectively the "Stipulating Parties" or the “Parties”), through their undersigned representatives, enter into this Stipulation and Settlement Agreement ("Stipulation") regarding the Petition filed by Blue Jay in the instant docket. The Parties submit this Stipulation for approval by the Public Service Commission of Utah (the “Commission” or the “PSC”) pursuant to the Commission’s Rules of Practice and Procedure, R746-100-10.

PRELIMINARY STATEMENT

1. On May 8, 1997, the Federal Communications Commission ("FCC") issued its Universal Service Report and Order, 12 FCC Rcd 8776 (1997) ("Universal Service Order") implementing the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Federal Act"). The FCC provided further guidance on Eligible Telecommunications Carrier (“ETC”) designation in its Lifeline and Link Up Reform Order released February 6, 2012, Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42, WC Docket No. 03-

109, CC Docket No. 96-45, WC Docket No. 12-23, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11.¹

2. The Universal Service Order provides that only ETCs designated by a state public utilities commission (“State Commission”) shall receive federal universal service support.² Under 47 U.S.C. § 214(e), a State Commission shall, upon its own motion or upon request, designate a common carrier that meets the requirements set forth by the FCC as an ETC for a service area designated by the State Commission. The FCC defines a service area as a geographic area established by a State Commission for the purpose of determining universal service obligations and support mechanisms.

3. To be designated as a federal ETC under the Federal Act, a carrier must: (1) be a common carrier; (2) demonstrate an intent and ability to provision the supported services set forth in 47 C.F.R. § 54.101(a) throughout its designated service areas; and (3) demonstrate an intent and ability to advertise its universal service offerings and the charges therefore, using media of general distribution. *See* 47 U.S.C. § 214(e); Universal Service Order, 12 FCC Rcd at 8791.

4. The FCC's supported services set forth in 47 C.F.R. § 54.101(a) are:

- a. voice grade access to the public switched telephone network or its functional equivalent;
- b. minutes of use for local service provided at no additional charge to end users;

¹ *See In the Matter of Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training, WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, WC Docket No. 12-23, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012) (“Lifeline and Link Up Reform Order”).*

² Section 214(e)(6) of the Federal Act states that the FCC shall designate ETCs where the carrier is not subject to the jurisdiction of the state commission.

- c. access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local governments in an eligible carrier's service area have implemented 911 or enhanced 911 systems; and
- d. toll limitation services to qualifying low-income consumers.

5. In areas served by a rural telephone company, 47 U.S.C. § 214(e)(2) further requires the Commission to determine that the designation of an additional ETC is in the public interest.

6. On October 24, 2012, Blue Jay filed a Petition seeking Designation as an ETC in the State of Utah, Docket Number 12-2559-01. Blue Jay seeks designation throughout the coverage areas of Sprint and Verizon Wireless, as identified by the list of wire centers submitted as Exhibit A to the Direct Testimony of David Wareikis, submitted on January 29, 2013.

7. Blue Jay, the DPU, and the OCS engaged in settlement discussions in an attempt to resolve any issues raised by Blue Jay's Petition. The Utah Rural Telecom Association (URTA), and Salt Lake Community Action Program (SLCAP) were invited to participate.

8. The Parties have now reached agreement on the issues raised in this docket, as set forth herein. The Parties agree this Stipulation should have no legal effect outside of the instant docket.

AGREEMENT

WHEREFORE, based on their review of all discovery, testimony and exhibits submitted and upon their settlement discussions, the Parties hereby stipulate and agree as follows:

1. Blue Jay is a wireless reseller of the networks of Sprint Nextel (Sprint) and Verizon Wireless.
2. Blue Jay seeks ETC designation for the limited purpose of providing universal service low-income Lifeline service in Utah. Blue Jay will not be seeking universal service high-cost support in its service area, nor will Blue Jay seek to provide universal service low-income Link Up service.
3. Blue Jay's Lifeline program furthers the statutory goal that basic service be available and affordable to all citizens of the state of Utah.
4. Blue Jay's Lifeline product offering will constitute an additional choice of providers offering service for low-income consumers, which represents a benefit for those consumers and is in the public interest.
5. Blue Jay is a commercial mobile radio service ("CMRS") provider, and a common carrier as defined by 47 U.S.C. § 332(c)(1)(A).
6. Blue Jay provides each of the supported services set forth in 47 C.F.R. § 54.101(a) and has shown an intent and ability to offer those services once designated throughout its requested service areas.³
7. Blue Jay submitted its original Compliance Plan to the FCC on May 11, 2012 and submitted subsequent revised drafts on July 5, July 23, August 14, November 30, and December 19, 2012, respectively. Blue Jay's Compliance Plan outlines the measures it will take to

³ In its initial operations, Blue Jay will not provide toll limitation service ("TLS"). Blue Jay's proposed Lifeline services offer a set amount of minutes and do not differentiate domestic long distance usage from local usage. Moreover, subscribers to such "all-distance" services are not considered to have voluntarily elected to receive TLS. As a result, Blue Jay currently is not required to provide TLS to its Lifeline subscribers. *See, e.g., Lifeline and Link Up Reform Order* ¶¶ 49, 230 and 367. If, in 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.

implement the conditions imposed by the FCC.⁴ The FCC approved Blue Jay's Compliance Plan, as amended, on December 26, 2012.

8. Blue Jay will make available Lifeline service to qualifying low-income consumers. Blue Jay will not offer Link Up service.

9. Blue Jay will offer two (2) non-tribal Lifeline plans, consisting, respectively, of (i) 125 free monthly minutes or texts with rollover; and (ii) 250 free monthly minutes or texts without rollover. Blue Jay also will offer two (2) tribal Lifeline plans, consisting, respectively, of (i) 1,000 monthly minutes, usable for voice or texts, for a payment of \$1.00 per month; or (ii) unlimited voice-only service for \$5.00 per month. Lifeline customers will be able to purchase additional bundles of minutes for as low as \$0.04/minute depending on the minute package purchased. All Blue Jay Lifeline 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. Blue Jay will not charge its customers for "roaming." Customer service (611) and emergency (911) calls will be free, regardless of service activation or availability of minutes, and will not count against a customer's airtime. Directory assistance calls (411) will count as airtime minutes of usage, but no additional charges will apply.

10. In addition to free voice services, customers can select either a free wireless handset or purchase an upgraded phone, such as a smartphone. 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.

⁴ See Lifeline and Link Up Reform Order.

11. Blue Jay agrees that it will seek the \$9.25 non-tribal and \$34.25 tribal federal reimbursements from the Universal Service Administrative Company (“USAC”).

12. The Parties stipulate and agree that designating Blue Jay as an ETC in the wire centers set forth as Exhibit A to the Direct Testimony of David Wareikis, filed in this docket on January 29, 2013, serves the public interest, convenience and necessity, as defined in 47 U.S.C. § 214(e)(2).

13. The Parties stipulate and agree that Blue Jay shall provide its ETC Lifeline universal service offerings in Utah pursuant to this Stipulation (including attachments). The Parties recommend that Blue Jay’s provision of its universal service offering as an ETC be governed by the following additional requirements:

- A. Blue Jay will use a Utah-specific fact sheet that provides customers concise and complete information about the services they will receive. Such fact sheet is attached hereto as Attachment 1. Blue Jay agrees to promptly update the fact sheet anytime it changes its Utah Lifeline program offerings.
- B. Blue Jay is not currently seeking any Utah USF funding.
- C. If Blue Jay seeks Utah USF funding in the future, Blue Jay will file a separate application requesting such state support.
- D. Blue Jay will comply with all state service quality and consumer protection requirements.
- E. Blue Jay acknowledges that approval of its Petition will be conditioned upon the verified payment of all applicable state and local regulatory fees, including, but not limited to, universal service fees, emergency services, and relay services.

- F. Blue Jay agrees to adopt any changes to the certification and verification process developed within Docket No. 10-2528-01.
- G. Blue Jay meets the requirements for federal ETC designation.
- H. Upon implementing any changes to its Lifeline offerings, Blue Jay will timely file a notice with the DPU and OCS describing the changed plans.

GENERAL PROVISIONS

1. The Parties stipulate to the admission into evidence in this docket of Blue Jay's Petition, supplemental correspondence, pre-filed Testimony and exhibits and response to Office of Consumer Services first Data Request. This stipulation to the admission of the Testimony does not represent an agreement by the Parties as to any positions taken in such Testimony.

2. Not all Parties agree that each aspect of this Stipulation is warranted or supportable in isolation. Utah Code Ann. § 54-7-1 authorizes the Commission to approve a settlement so long as the settlement is just and reasonable in result. While the Parties are not able to agree that each specific component of this Stipulation is just and reasonable in isolation, all of the Parties agree that this Stipulation as a whole is just and reasonable in result and in the public interest.

3. All negotiations related to this Stipulation are confidential, and no Party shall be bound by any position asserted in negotiations. Except as expressly provided in this Stipulation, and in accordance with Utah Admin. Code R746-100-10.F.5, neither the execution of this Stipulation nor the order adopting it shall be deemed to constitute an admission or acknowledgment by any Party of the validity or invalidity of any principle; nor shall they be construed to constitute the basis of an estoppel or waiver by any Party; nor shall

they be introduced or used as evidence for any other purpose in a future proceeding by any Party except in a proceeding to enforce this Stipulation.

4. The Parties agree that no part of this Stipulation or the formulae and methodologies used in developing the same or a Commission order approving the same shall in any manner be argued or considered as precedential in any future case except with regard to issues expressly called-out and resolved by this Stipulation. This Stipulation does not resolve and does not provide any inferences regarding, and the Parties are free to take any position with respect to any issues not specifically called-out and settled herein.

5. The Parties request that the Commission hold a hearing on this Stipulation. Blue Jay, the DPU, and the OCS shall make one or more witnesses available to explain and offer further support for this Stipulation. The Parties shall support the Commission's approval of this Stipulation. As applied to the DPU and the OCS, the explanation and support shall be consistent with their statutory authority and responsibility.

6. The Parties agree that if any person challenges the approval of this Stipulation or requests rehearing or reconsideration of any order of the Commission approving this Stipulation, each Party will use its best efforts to support the terms and conditions of this Stipulation. As applied to the DPU and the OCS, the phrase "use its best efforts" means that they shall do so in a manner consistent with their statutory authority and responsibility. In the event any person seeks judicial review of a Commission order approving this Stipulation, no Party shall take a position in that judicial review proceeding in opposition to the Stipulation.

7. Except with regard to the obligations of the Parties under the four immediately preceding paragraphs of this Stipulation, this Stipulation shall not be final and binding on

the Parties until it has been approved without material change or condition by the Commission.

8. This Stipulation is an integrated whole, and any Party may withdraw from it if it is not approved without material change or condition by the Commission or if the Commission's approval is rejected or materially conditioned by a reviewing court. If the Commission rejects any part of this Stipulation or imposes any material change or condition on approval of this Stipulation or if the Commission's approval of this Stipulation is rejected or materially conditioned by a reviewing court, the Parties agree to meet and discuss the applicable Commission or court order within five business days of its issuance and to attempt in good faith to determine if they are willing to modify the Stipulation consistent with the order. No Party shall withdraw from the Stipulation prior to complying with the foregoing sentence. If any Party withdraws from the Stipulation, any Party retains the right to seek additional procedures before the Commission, including presentation of testimony and cross-examination of witnesses, with respect to issues resolved by the Stipulation, and no party shall be bound or prejudiced by the terms and conditions of the Stipulation.

9. This Stipulation may be executed by individual Parties through two or more separate, conformed copies, the aggregate of which will be considered as an integrated instrument.

WHEREFORE, the Parties respectfully submit this Stipulation and Settlement Agreement for approval by the Commission and request that the Commission grant such approval.

Dated this 6th day of May, 2013.

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ATTACHMENT 1

Blue Jay Wireless, LLC's Utah-specific Fact Sheet

IMPORTANT INFORMATION ABOUT YOUR BLUE JAY WIRELESS LIFELINE SERVICE

BLUE JAY WIRELESS LIFELINE SERVICE is brought to you by Blue Jay Wireless, LLC and includes the provision of a free E911-compliant wireless handset. This government sponsored Lifeline telephone service is subject to continuing eligibility and annual recertification. Only one Lifeline subsidy per household is allowed; your participation in this program requires that you do not receive Lifeline subsidy on any other phone, either wireless or wireline. If you no longer participate in qualifying low-income assistance programs or your income exceeds the Lifeline qualification amount, you must notify Blue Jay Wireless. As a recipient of Lifeline service you may not give away or sell this free phone.

- Your enrollment in the program will be on a continuing monthly basis, subject to (i) a change in your eligibility status; (ii) your selection of a different carrier; (iii) your failure to respond to Company contacts after non-use of your phone for 60 consecutive days; or (iv) your failure to annually recertify eligibility.
- If you are not a tribal resident, you will receive either 125 free minutes or texts each month (with rollover) or 250 free minutes or texts each month (without rollover), depending on the Blue Jay Lifeline plan that you choose. If you are a tribal resident, you may select between a plan with 1,000 monthly minutes for voice and/or text, for a monthly payment of \$1.00, or a plan with unlimited monthly minutes for voice only, for a monthly payment of \$5.00. Changes to these plans will be subject to state and federal law and Blue Jay will inform you of any changes that will affect your Lifeline service.
- Minutes will be charged for both outgoing and incoming calls.
 - Note: Calls to directory assistance and time you are on hold will also count as minutes used.
 - Emergency calls to 911 will not count against your minutes
 - Calls to or from Blue Jay customer service will not count against your minutes.
 - Partial minute usage is rounded up.
 - Text messages are charged at one minute per incoming or outgoing text.
- To contact Blue Jay customer service, please dial 611 from your Blue Jay handset or dial Blue Jay's toll-free number: (855) 425-8529. You can also contact Blue Jay customer service representatives via the "Contact Us" page on Blue Jay's website www.bluejaywireless.com.
- Emergency calls to 911 CAN be made even if you have NO remaining minutes.
- Additional ("top-up") minutes can be added by calling Blue Jay customer service, via Blue Jay's website, at a Blue Jay storefront or at a number of other retail locations, including Walgreens and Dollar General. Current top-up packages:
 - 100 Minutes or Texts – \$5.00
 - 200 Minutes or Texts – \$10.00
 - 500 Minutes or Texts – \$20.00
- You may select either a free wireless handset or purchase an upgraded phone, such as a smartphone. If you choose to purchase a smartphone, data can be added to your phone plan starting at \$0.10 per megabyte – a price that can be reduced on a "per megabyte" basis when you purchase multiple megabytes of data.
- You must annually recertify your eligibility for Lifeline service.
- If you have purchased additional airtime and have remaining minutes and days of service at the end of your Lifeline eligibility, you will be subject to the terms and conditions of Blue Jay's retail wireless services.

**YOU ARE ENCOURAGED TO READ YOUR WELCOME KIT CAREFULLY
FOR COMPLETE DETAILS REGARDING YOUR BLUE JAY WIRELESS LIFELINE SERVICE.**