

Hamre, John G.

From: Melissa Slawson <msslawson@bluejaywireless.com>
Sent: Monday, August 01, 2016 5:33 PM
To: Prescott, Julie S.
Cc: Guyan, Joshua; Wainwright, Jennifer
Subject: Blue Jay Wireless - FCC Consent Decree
Attachments: BLUE JAY WIRELESS CONSENT DECREE PRESS RELEASE (JULY 15 2016).pdf; Blue Jay Consent Decree Summary.7.18.16.pdf; Blue Jay Hawaii Order and Consent Decree DA-16-790.pdf

Dear Ms. Prescott,

As you may already be aware, on July 15 Blue Jay Wireless entered into a settlement and consent decree with the FCC regarding its enrollment of tribal Lifeline subscribers in Hawaii. This consent decree contains no finding or admission of wrongdoing by Blue Jay, affirms Blue Jay's good standing as an ETC, and memorializes Blue Jay's unique process for verifying self-certifications of subscribers seeking the enhanced Lifeline benefit available to residents of Hawaiian Home Lands, through the use of its own geo-mapping tool.

The outcome of this consent decree is not a penalty or a fine, but instead an agreed-upon solution reached between the FCC's Enforcement Bureau and the Company. The USF repayment you see reflected in the consent decree is designed primarily to "make the Fund whole" with respect to enhanced Lifeline benefits provided based on applicant self-certifications of residency on Hawaiian Home Lands that were later determined by Blue Jay to be inaccurate. We believe that the consent decree tells the story of a company taking voluntary actions above and beyond the requirements of the rules to root out potential fraud in the program. This is an example of proactive and voluntary efforts by a provider to protect the Lifeline Program. Blue Jay made the commitment to make the Fund whole because it did not want to be seen as benefitting in any way from erroneous self-certifications made by subscribers.

Provided for your convenience are links to and copies of the consent decree (http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0715/DA-16-790A1.pdf) and Blue Jay's press release (<https://www.bluejaywireless.com/news/pressreleases/blue-jay-wireless-closes-fcc-investigation-with-commitments-to-preserve-and-protect-the-integrity-of-the-lifeline-program/>). These are also attached, as well as a one-pager with additional context.

If you have any questions, please don't hesitate to reach out to me. Thank you very much.

Melissa Slawson
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29 PU-14-720 Filed: 8/1/2016 Pages: 18
E-mail re Consent Decree Summary

Blue Jay Wireless, LLC
Melissa Slawson, General Counsel

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BLUE JAY WIRELESS CLOSES FCC INVESTIGATION WITH COMMITMENTS TO PRESERVE AND PROTECT THE INTEGRITY OF THE LIFELINE PROGRAM

Dallas, Texas - 7.15.2016

Today, Blue Jay Wireless entered into a settlement and consent decree with the Federal Communications Commission's Enforcement Bureau that closes an investigation and an audit appeal involving the company's provision of Lifeline services to eligible subscribers in Hawaii. The settlement memorializes Blue Jay's process for verifying self-certifications of subscribers seeking the enhanced Lifeline benefit available to residents of Hawaiian Home Lands, which included voluntarily building its own geo-mapping tool.

In a recently concluded audit, USAC concluded that this process was "conservative to the Fund" because FCC rules require only applicant self-certification. The settlement also allows Blue Jay to make good on a prior commitment to "make the Fund whole" for enhanced Lifeline benefits provided based on applicant self-certifications of residency on Hawaiian Home Lands that were later determined by Blue Jay to be inaccurate. These determinations were made by Blue Jay prior to the commencement of any FCC investigation. Blue Jay CEO David Wareikis explained that "Blue Jay made the commitment to make the Fund whole because it did not want to be seen as benefiting in any way from erroneous self-certifications made by subscribers." Wareikis also noted that the agreement reached "contains no finding or admission of wrongdoing by Blue Jay, and affirms Blue Jay's good standing as an ETC." In addition, he explained that "the financial terms of the settlement do not involve a fine or a civil penalty, and instead allow Blue Jay to reduce its future payments from the Fund."

Blue Jay is pleased to have successfully concluded this FCC inquiry and USAC audit in this manner and acknowledges the cooperation of the Enforcement Bureau, Wireline Competition Bureau and USAC in bringing the investigation and the audit appeal to closure in a manner that preserves and protects the Lifeline program and avoids potential litigation. Mr. Wareikis further affirmed, "Blue Jay is committed to leading the industry in compliance and self-regulates to maintain the highest standards of compliance across all aspects of its business. The consent decree shows that Blue Jay took voluntary proactive efforts to protect against possible fraud and would never turn a blind eye to potential fraud in the program."

For additional information contact:

press@bluejaywireless.com

<http://www.bluejaywireless.com>

**Blue Jay Wireless, LLC Closes FCC Investigation with Commitments to
Preserve and Protect the Integrity of the Lifeline Program**

July 18, 2016

On Friday, July 15, 2016, Blue Jay Wireless, LLC entered into a settlement and consent decree with the Federal Communications Commission's Enforcement Bureau that closes an investigation and an audit appeal involving the company's provision of Lifeline services to eligible subscribers in Hawaii.

The agreement:

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

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

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

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

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

Blue Jay made the commitment to make the Fund whole because it did not want to be seen as benefiting in any way from erroneous self-certifications made by subscribers. Blue Jay is pleased to have successfully concluded this FCC inquiry and USAC audit in this manner and acknowledges the cooperation of the Enforcement Bureau, Wireline Competition Bureau and USAC in bringing the investigation and the audit appeal to closure in a manner that preserves and protects the Lifeline program and avoids potential litigation. Blue Jay is committed to leading the industry in compliance and self-regulates to maintain the highest standards of compliance across all aspects of its business.

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
Blue Jay Wireless, LLC)

File No.: EB-IHD-14-00017212
FRN: 0021937875

ORDER

Adopted: July 14, 2016

Released: July 15, 2016

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has entered into a Consent Decree to resolve its investigation into whether Blue Jay Wireless’s (Blue Jay) Tribal enrollments in Hawaii from November 2013 through August 2014 violated the rules (Rules) of the Lifeline program.

2. As part of the Universal Service Fund (USF), the Lifeline program assists qualified consumers in obtaining the opportunities and security that phone service brings, including connecting to jobs, family members, and emergency services. An Eligible Telecommunications Carrier (ETC), like Blue Jay, may receive \$9.25 per month for each qualifying low-income consumer receiving Lifeline service (Basic Support), and up to an additional \$25 per month if the qualifying low-income consumer resides on Tribal Lands, which includes the Hawaiian Home Lands (Enhanced Support).¹ Before receiving such support reimbursements, however, an ETC must meet stringent requirements under the Commission’s Lifeline Rules.² For example, pursuant to Section 54.410(d)(3) of the Rules, the eligible consumer must certify under penalty of perjury to his/her eligibility as a qualifying low-income consumer and separately certify under penalty of perjury to his/her residency on Tribal Lands.³

3. In response to concerns about Blue Jay’s participation in the Lifeline program and the high number of Tribal consumers that it had reported on Hawaiian Home Lands, the Enforcement Bureau’s USF Strike Force conducted an extensive investigation into the company’s compliance with the Commission’s Rules in the State of Hawaii, including the accuracy of the Tribal consumer data Blue Jay provided in support of its USF reimbursement

¹ See 47 CFR § 54.403(a); 47 CFR § 54.400(a), (e). See also 47 CFR § 54.409.

² See 47 CFR §§ 54.400–54.422.

³ See 47 CFR § 54.410(d); see also 2012 Lifeline Reform Order, 27 FCC Rcd at 6709–6713, paras. 111-24.

requests. In addition, the Wireline Competition Bureau (WCB) directed the Universal Service Administrative Company (USAC) to freeze \$918,010 in Lifeline disbursements to Blue Jay for the State of Hawaii.

4. This settlement ensures a total of \$2,002,000 in reimbursements by Blue Jay to the Universal Service Fund, including the company's forfeiture of the \$918,010 in Lifeline disbursements that WCB had previously frozen. Blue Jay also will develop and implement a compliance plan to ensure appropriate procedures are incorporated into its business practices to prevent the enrollment of ineligible Tribal consumers, including the use of any USAC-approved software tool to identify and verify the accuracy of consumers' self-certification of their residency on Tribal Lands.

5. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the referenced investigation of Blue Jay.⁴

6. In the absence of material new evidence relating to this matter, we do not set for hearing the question of Blue Jay's basic qualifications to hold or obtain any Commission license or authorization.⁵

7. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i), and 503(b) of the Act⁶ and the authority delegated by Sections 0.111 and 0.311 of the Rules,⁷ the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

8. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED**.

⁴ Investigation means the investigation commenced by the Bureau's USF Strike Force in File No. EB-IHD-14-00017212.

⁵ See 47 CFR § 1.93(b).

⁶ 47 U.S.C. §§ 154(i), 503(b).

⁷ 47 CFR §§ 0.111, 0.311.

9. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Mr. David Wareikis, President and CEO, Blue Jay Wireless, LLC, 4240 International Parkway, Suite 140, Carrollton, TX 75007 and its counsel, John Heitmann, Esq., Kelley Drye & Warren, LLP, 3050 K Street, NW, Washington, D.C. 20007-5108.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief
Enforcement Bureau

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)

Blue Jay Wireless, LLC)

File No.: EB-IHD-14-0017212

FRN: 0021937875

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and Blue Jay Wireless, LLC, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation, as defined below, into whether Blue Jay Wireless, LLC violated Sections 54.407, 54.409, and 54.410 of the Commission's rules governing the provision of Lifeline service to low-income Tribal consumers in the State of Hawaii,¹ from November 2013 through April 2015.

DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended.²
 - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Basic Support" means Lifeline support of \$9.25 per month for eligible Lifeline consumers.
 - (d) "Blue Jay" or "Company" means Blue Jay Wireless, LLC and successors in interest.
 - (e) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (f) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (g) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Blue Jay is subject by virtue of its business activities.
 - (h) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 20.

¹ See 47 CFR §§ 54.407, 54.409, 54.410.

² 47 U.S.C. § 151, *et seq.*

- (i) “Covered Employees” means all employees of Blue Jay who perform, or supervise, oversee, or manage the performance of, duties that relate to Blue Jay’s responsibilities under the Lifeline Rules.
- (j) “Covered Third Party” means any non-employee Person, as defined herein, that performs services involving the enrollment and de-enrollment of Lifeline consumers, or any duties that relate to the Lifeline eligibility and de-enrollment rules, pursuant to a contractual relationship or agreement with Blue Jay, including any person performing work related to the Lifeline Rules on behalf of Blue Jay.
- (k) “Effective Date” means the date by which both the Bureau and Blue Jay have signed the Consent Decree.
- (l) “Enhanced Support” means Lifeline Tribal support up to an additional \$25 per month for an eligible Lifeline Tribal consumer.
- (m) “ETC” means an eligible telecommunications carrier designated under, or operating pursuant to, Section 214(e) of the Communications Act, as amended, 47 U.S.C. §214(e), as eligible to offer and receive support for one or more services that are supported by the federal universal support mechanisms.
- (n) “Investigation” means the investigation commenced by the Bureau in File No. EB-IHD-14-00017212 regarding whether Blue Jay violated the Lifeline Rules in the State of Hawaii.
- (o) “Lifeline Rules” means Title 47, Code of Federal Regulations, Sections 54.400-54.422, Section 254 of the Act, and Commission orders related to Lifeline service to low-income consumers.
- (p) “LOI” means the Letter of Inquiry issued by the Bureau to Blue Jay on October 3, 2014, in the Investigation
- (q) “Operating Procedures” means the standard internal operating procedures and compliance policies established by Blue Jay to implement the Compliance Plan.
- (r) “Parties” means Blue Jay and the Bureau, each of which is a “Party.”
- (s) “Person” shall have the same meaning defined in Section 153(39) of the Communications Act, as amended, 47 U.S.C. § 153(39).
- (t) “Tribal” means Hawaiian Home Lands, which are areas held in trust for Native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920 July 9, 1921, 42 Stat. 108, *et. seq.*, as amended.³
- (u) “USAC” means the Universal Service Administrative Company, which serves as the administrator for the federal Universal Service Fund.⁴

³ See 47 CFR § 54.400(e).

⁴ See 47 CFR § 54.701.

BACKGROUND

3. Lifeline is part of the federal Universal Service Fund (USF or the Fund) program and helps qualified consumers have the opportunities and security that essential communications service brings, including being able to connect to jobs, family members, and emergency services.⁵ Lifeline service is provided by ETCs designated pursuant to the Act.⁶ An ETC may seek and receive reimbursement from the USF for revenues it forgoes in providing the discounted services to eligible consumers in accordance with the Rules. Section 54.403(a) of the Lifeline Rules specifies that an ETC may receive \$9.25 per month in Basic Support for each qualifying low-income consumer receiving Lifeline service, and up to an additional \$25 per month in Enhanced Support if the qualifying low-income consumer resides on Tribal lands.⁷

4. The Lifeline Rules establish explicit requirements that ETCs must meet to receive Lifeline support reimbursements.⁸ Section 54.407(b) of the Lifeline Rules provides that “[a]n eligible telecommunications carrier may receive Universal Service support reimbursement for each qualifying low-income consumer served.”⁹ An ETC may receive both Basic Support for each qualifying low-income consumer who meets the eligibility criteria set forth in Section 54.409 and Enhanced Support for a qualifying low-income consumer who certifies that he or she resides on Tribal lands, which includes Hawaiian Home Lands.¹⁰

5. The Lifeline Rules prohibit an ETC from seeking reimbursement for providing Lifeline service to a consumer unless the ETC has confirmed the consumer’s eligibility to receive Lifeline service.¹¹ Section 54.410 requires an ETC to receive a certification of eligibility from a subscriber demonstrating that the consumer meets the income-based or program-based eligibility criteria for receiving Lifeline service prior to seeking reimbursement from the USF. If Enhanced Support is requested, an ETC must also obtain the subscriber’s certification under penalty of perjury as an eligible resident of Tribal lands.¹² An eligible consumer, pursuant to Section 54.410(d)(3) of the Lifeline Rules, must certify under penalty of perjury his/her eligibility as a qualifying low-income consumer and residency on Tribal lands.¹³ The Commission has determined that, pursuant to Section 54.410, consumer self-certification is

⁵ See *Lifeline and Link Up Reform and Modernization et al., Report and Order and Further Notice of Proposed Rulemaking*, WC Dkt. No. 11-42 *et al.*, FCC Rcd 6656, 6662-6666, paras. 11-17 (2012) (*2012 Lifeline Reform Order*); see also 47 CFR §§ 54.400–54.422.

⁶ See 47 U.S.C. § 254(e) (providing that “only an eligible telecommunications carrier designated under section 214(e) of this title shall be eligible to receive specific Federal universal service support”); see also 47 U.S.C. § 214(e) (prescribing the method by which carriers are designated as ETCs).

⁷ See 47 CFR § 54.403(a).

⁸ See 47 CFR §§ 54.400–54.422.

⁹ See 47 CFR § 54.407(b).

¹⁰ See 47 CFR § 54.400(a), (e); see also 47 CFR § 54.409.

¹¹ See 47 CFR § 54.410(b), (c).

¹² See 47 CFR § 54.410(b)-(d).

¹³ See 47 CFR § 54.410(d)(3); see also *2012 Lifeline Reform Order*, 27 FCC Rcd at 6709–6713, paras. 111-24.

sufficient to meet the residency requirement of Tribal lands Lifeline support.¹⁴ The Lifeline Rules require ETCs to provide thirty (30) days' notice to subscribers prior to terminating Lifeline services if the ETC has a reasonable basis to believe that a Lifeline subscriber no longer meets the criteria to qualify as low-income consumer.¹⁵

6. ETCs that provide qualifying low-income consumers with Lifeline discounts file a Form 497 with USAC to request reimbursement for providing service at the discounted rates. Section 54.407(d) provides that an ETC may receive reimbursement from the Fund if the ETC certifies as part of its reimbursement request that it is in compliance with the Lifeline Rules and, to the extent required under that subpart, has obtained valid certifications for each consumer for whom the ETC seeks reimbursement.¹⁶ An ETC may revise its Form 497 data upward or downward within 12 months after the data is submitted.¹⁷ The 12-month period to file an original or revised Form 497 provides sufficient time for ETCs to ensure their requests for support contain accurate and complete consumer data and all other relevant information supporting the claim.¹⁸

7. Blue Jay is an ETC designated to provide wireless Lifeline service in Hawaii. Blue Jay offered eligible low-income Lifeline consumers a plan that allowed it to seek Basic Support reimbursements from the Fund. In addition, Blue Jay offered eligible low-income consumers who lived on Hawaiian Home Lands a plan that allowed it to seek Enhanced Support reimbursements from the Fund. In November 2013, Blue Jay began providing Lifeline service to Hawaiian consumers, including Tribal consumers residing on Hawaiian Home Lands.

8. By May 2014, Blue Jay was providing Lifeline service in Hawaii to several thousand consumers for whom it requested and received Enhanced Support reimbursements from the Fund. On or about May 2, 2014, Blue Jay was contacted by a staff employee of the Hawaii Public Utilities Commission (PUC) questioning the number of subscribers self-certifying to residency on Hawaiian Home Lands. The staff employee's inquiry was about Blue Jay's Tribal subscriber counts in Hawaii. Although there is no official population figure available that measures eligible Lifeline subscribers residing on Hawaiian Home Lands, the staff employee referred to publicly available United States Census data for Hawaiian Home Lands.

9. Blue Jay obtained self-certifications of residency on Tribal lands from each subscriber prior to requesting and receiving Enhanced Support reimbursements from the Fund. After speaking with the PUC staff employee, Blue Jay voluntarily began work on the development of a new process to verify subscriber self-certifications of residency on Hawaiian Home Lands. In May and June 2014, Blue Jay developed a geo-mapping software tool to enable Blue Jay's enrollment audit staff to view the geographic location of a Tribal applicant's address

¹⁴ See 47 CFR § 54.410(d)(3)(iii); see also 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, ¶ 166 (2012) (*2012 Lifeline Reform Order*).

¹⁵ See 47 CFR § 54.405(e)(1).

¹⁶ See 47 CFR § 54.407(d).

¹⁷ See *2012 Lifeline Reform Order*, 27 FCC Rcd at 6788, para. 305.

¹⁸ See *id.*

to verify, based on street address and geographic information assembled by Blue Jay, that the address was located in Hawaiian Home Lands.

10. In June 2014, Blue Jay began using the geo-mapping tool for new Hawaii enrollments. After a successful test run with new enrollments, Blue Jay applied the geo-mapping tool to the Company's existing base of subscribers certifying residency on Hawaiian Home Lands, which resulted in a large number of Tribal residence certifications that could not be verified through use of the geo-mapping tool. In July 2014, Blue Jay initiated a process to provide thirty (30) days' notice to these subscribers via text message to their mobile devices that they would need to provide proof of their residence on Hawaiian Home Lands within 30 days in order to rebut the presumption created by application of the geo-mapping tool and to retain the enhanced Lifeline benefit. In the absence of the receipt, within 30 days, of proof to rebut the tool's inability to verify the residency self-certification, Blue Jay advised subscribers that they would be transitioned to a standard Lifeline benefit plan. This two-step verification process was completed in August 2014. Blue Jay developed and implemented this process prior to any inquiries from USAC or the Bureaus. On April 3, 2015, Blue Jay filed a revised Form 497 for the August 2014 data month that resulted in approximately \$258,990.75 being reduced from its request for reimbursement from the Fund.

11. On October 3, 2014, the Bureau issued an LOI to Blue Jay. On October 9, 2014, the Wireline Competition Bureau (WCB) issued a letter to Blue Jay informing the Company of the Bureau's concerns regarding the number of enhanced Lifeline subscribers enrolled in Hawaii. Blue Jay responded to WCB's letter on November 7, 2014.²¹ Blue Jay provided information about the geo-mapping tool and notification process the Company developed to verify Hawaiian Home Lands residency self-certifications and the steps it took to convert to the standard Lifeline benefit those who were unable to rebut the presumption created by application of the geo-mapping tool.²³

12. On July 21, 2015, USAC issued a letter to Blue Jay notifying the Company of USAC's determination that Blue Jay received certain amounts "in erroneous overpayments of USF Lifeline Program support." Blue Jay timely filed with USAC a request for review of the Determination Letter with USAC on September 21, 2015. USAC denied Blue Jay's request on January 13, 2016. Blue Jay timely filed a request for review with WCB on March 14, 2016.¹⁹ Between May and August 2014, and at all other times, Blue Jay certified the accuracy of the number of Tribal consumers it reported to USAC and its compliance with the Lifeline Rules, including those subscribers who were later determined by Blue Jay to not reside on Hawaiian Home Lands.

13. The parties negotiated the following terms and conditions of settlement and hereby enter into this Consent Decree as provided below.

¹⁹ In connection with this proceeding, USAC has held \$918,010.

²⁰ See 47 CFR § 1.93(b).

TERMS OF AGREEMENT

14. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

15. **Jurisdiction.** For purposes of this Consent Decree, Blue Jay agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

16. **Effective Date.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order adopted by the Commission.

17. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Blue Jay agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Blue Jay concerning the matters that were the subject of the Investigation. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any proceeding, formal or informal, or to set for hearing the question of Blue Jay's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations.²⁰

18. **Admission.** Blue Jay admits for the purpose of this Consent Decree and for the Commission's civil enforcement purposes, and in express reliance on the provisions of paragraph 17, that for the period from May 2014 through August 2014, Blue Jay certified on Form 497s that it obtained Tribal certifications from subscribers, including for subscribers who, after an inquiry by a staff employee of the Hawaii PUC, were later determined by Blue Jay to not reside on Hawaiian Home Lands.

19. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Blue Jay shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Blue Jay complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Lifeline Rules prior to assuming his/her duties. Any vendor that Blue Jay uses to perform tasks associated with compliance with the Lifeline Rules will be subject to the Compliance Officer's oversight.

20. **Compliance Plan.** For purposes of settling the matters set forth herein, Blue Jay agrees that it shall, within approximately ninety (90) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Lifeline Rules and with the terms and conditions of this Consent Decree. With respect to the Lifeline Rules, Blue Jay will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within ninety (90) calendar days after the Effective Date, Blue Jay shall establish Operating Procedures that all Covered Employees and Covered Third Party Employees must follow to help ensure Blue Jay's compliance with the Lifeline Rules. Blue Jay's Operating Procedures shall include internal procedures and policies specifically designed to ensure that enrollment and de-enrollment of Tribal consumers shall comply with Lifeline Rules. Blue Jay shall also develop a Compliance Checklist that describes the steps a Covered Employee and Covered Third Party Employee must follow to ensure compliance with the Lifeline eligibility rules for Tribal consumers. The Operating Procedures implemented by Blue Jay shall also include, at a minimum, the following items.
- i. At the request of the WCB, Blue Jay shall demonstrate to USAC's satisfaction the effectiveness and accuracy of any software program it uses or has used to identify and verify Lifeline consumers' residency on Tribal lands. Blue Jay shall update any software verification tool it uses as necessary to ensure compliance with the Lifeline Rules. If at any time USAC is not satisfied with the software verification tool, Blue Jay shall cease using it or modify it so that USAC is satisfied with it; and
 - ii. Unless USAC is not satisfied by the effectiveness and accuracy of any software program Blue Jay uses to identify and verify Tribal consumers, Blue Jay shall continue the use of the software program in determining the eligibility of all prospective Tribal consumers who apply to receive Lifeline service and current Tribal consumers who notify Blue Jay of a change in their residential address during the duration of the Compliance Plan, as provided in paragraph 23 herein.
- (b) **Compliance Manual.** Within ninety (90) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees and Covered Third Parties. The Compliance Manual shall explain the Lifeline Rules and set forth the Operating Procedures that Covered Employees and Covered Third Party Employees shall follow to help ensure Blue Jay's compliance with the Lifeline Rules. Blue Jay shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. Blue Jay shall distribute any revisions to the Compliance Manual promptly to all Covered Employees and Covered Third Party Employees.

- (c) **Compliance Training Program.** Blue Jay shall establish and implement a Compliance Training Program on compliance with the Lifeline Rules, including eligibility and self-certification requirements for low-income Lifeline consumers residing on Tribal lands, and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Blue Jay's obligation to report any noncompliance with the Lifeline Rules under paragraph 21 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees and Covered Third Party Employees shall be trained pursuant to the Compliance Training Program within ninety (90) calendar days after the Effective Date, except that any person who becomes a Covered Employee or Covered Third Party Employee at any time after the initial Compliance Training Program shall be trained within fourteen (14) calendar days after the date such person becomes a Covered Employee or Covered Third Party Employee. Blue Jay shall repeat compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

21. **Reporting Noncompliance.** Blue Jay shall report any noncompliance with the Lifeline Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that Blue Jay has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that the Blue Jay has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to Director, Universal Service Fund Strike Force, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Loyaan.Egal@fcc.gov; Rakesh.Patel@fcc.gov; and Dangkhhoa.Nguyen@fcc.gov.

22. **Compliance Reports.** Blue Jay shall file compliance reports with the Commission one-hundred and twenty (120) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of Blue Jay's efforts during the relevant period to comply with the terms and conditions of this Consent Decree. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Blue Jay, stating that the Compliance Officer has personal knowledge that Blue Jay: (1) has established and implemented the Compliance Plan; (2) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (3) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 21 of this Consent Decree.

- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with Section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.²¹
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Blue Jay, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (1) each instance of noncompliance; (2) the steps that Blue Jay has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (3) the steps that Blue Jay has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to Director, Universal Service Fund Strike Force, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Loyaan.Egal@fcc.gov; Rakesh.Patel@fcc.gov; and Dangkhoa.Nguyen@fcc.gov.

23. **Termination Date.** The requirements set forth in paragraphs 19 through 22 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

24. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to Section 208 of the Act²² against Blue Jay or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by Blue Jay with the Communications Laws.

25. **Universal Service Fund Repayment.** In addition to the \$258,990.75 Blue Jay has already repaid to the Fund,²³ Blue Jay agrees to settle this matter for a further repayment to the Universal Service Fund in the amount of \$1,743,010. The further repayment will be structured as follows:

- (a) Blue Jay will repay \$825,000 to the Universal Service Fund in installments of \$75,000 per month beginning with the requests covering services provided in August 2016 and continuing for 11 months;

²¹ 47 CFR § 1.16

²² 47 U.S.C. § 208.

²³ This correction and payment was made by Blue Jay on April 3, 2015.

- (b) Blue Jay will withdraw and not pursue its pending appeal presently before WCB related to claims involving \$918,010 in Lifeline reimbursements.

26. **Waivers.** As of the Effective Date, Blue Jay waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. Blue Jay shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither Blue Jay nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Blue Jay shall waive any statutory right to a trial *de novo*. Blue Jay hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act²⁴ relating to the matters addressed in this Consent Decree.

27. **Severability.** The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

28. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

29. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Blue Jay does not expressly consent) that provision will be superseded by such Rule or Order.

30. **Successors and Assigns.** Blue Jay agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

31. **Final Settlement.** In furtherance of settlement, and subject to the other terms of this Consent Decree, the Parties agree as follows:

- (a) The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation;
- (b) Blue Jay agrees to withdraw and not to pursue its pending appeal presently before WCB related to claims involving \$918,010 in Lifeline reimbursements including, but not limited to, its March 14, 2016 Request of Blue Jay Wireless for Review of January 13, 2016 Decision of the Universal Service Administrative Company; and

²⁴ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

- (c) Blue Jay agrees not to initiate any additional actions or proceedings, including before any court or tribunal, seeking payments for Lifeline services provided in Hawaii that are the subject of the Investigation.

32. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

33. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

34. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

35. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

Travis LeBlanc, Chief
Enforcement Bureau

Date

David Wareikis
Chief Executive Officer
Blue Jay Wireless, LLC

Date