

STATE OF MICHIGAN

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission’s own motion, )  
directing Blue Jay Wireless, LLC to show cause )  
why it should not be found in violation of Federal and )  
State requirements for designation as an eligible )  
telecommunications carrier for purposes of offering )  
Lifeline service on a wireless basis. )

Case No. U-20744

**NOTICE OF PROPOSAL FOR DECISION**

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on September 17, 2020.

Exceptions, if any, must be filed with the Michigan Public Service Commission, 7109 West Saginaw, Lansing, Michigan 48917, and served on all other parties of record on or before October 1, 2020, or within such further period as may be authorized for filing exceptions.

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

MICHIGAN OFFICE OF ADMINISTRATIVE  
HEARINGS AND RULES  
For the Michigan Public Service Commission

**Sharon L.  
Feldman**

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September 17, 2020  
Lansing, Michigan

Sharon L. Feldman  
Administrative Law Judge

STATE OF MICHIGAN  
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Case No. U-20744

**PROPOSAL FOR DECISION**

I.

**PROCEDURAL HISTORY**

In its June 10, 2020 Show Cause Order opening this docket, the Commission reviewed Commission Staff (Staff) determinations that Blue Jay Wireless, LLC (Blue Jay) may be in violation of provisions of federal and state law, including the federal Communications Act of 1934, 47 USC 214(e); the Code of Federal Regulations, 47 CFR 54.400 et seq.; and the Michigan Telecommunications Act, MCL 484.2316 and 484.2316(a). The Commission also reviewed Staff determinations that Blue Jay may be in violation of several Commission orders implementing statutory and/or regulatory requirements for Blue Jay to retain designation as an eligible telecommunications carrier (ETC) for purposes of offering Lifeline service to wireless customers, including the Commission’s June 6, 2014 order in Case No. U-17502; December 27, 2017 order

in Case No. U-18490; December 17, 2018 order in Case No. U-20357; and April 18, 2018 order in Case No. U-20064.

The Commission found that it should order Blue Jay to show cause why it should not be found in violation of these statutory and regulatory requirements and Commission orders. It directed Blue Jay to file a response by June 23, 2020, to be accompanied by prefiled direct testimony, exhibits, work papers, and affidavits supporting the veracity of its response prepared by a person with actual knowledge of the circumstances. It further directed Blue Jay to appear with counsel at a prehearing conference on July 1, 2020.

Blue Jay did not file any response in this docket. As reflected in the e-docket, the prehearing conference in this case was converted to a video/teleconference hearing in light of the ongoing pandemic. Notwithstanding Blue Jay's failure to file a response as directed by the Commission, the ALJ provided participation information to the contact information on file with the Commission for Blue Jay.

At the July 1, 2020 prehearing, only Staff appeared, and a schedule was set for the filing of Staff testimony and an evidentiary hearing. In keeping with that schedule, Staff filed the testimony of Barry Harmon on July 29, 2020, and an evidentiary hearing was held as a video/teleconference hearing on August 13, 2020. The evidentiary record is described below.

## II.

### **OVERVIEW OF THE RECORD**

The evidentiary record consists of the testimony of Staff witness Mr. Harmon, contained in 28 transcript pages and 7 exhibits, Exhibits S-1 through S-7. Mr. Harmon

is a Senior Auditor in the Rates and Financial Analysis Section of the MPSC's Telecommunications Division. His qualifications are further detailed at 2 Tr 15-17. Mr. Harmon testified that Blue Jay Wireless has failed to comply with federal ETC requirements and with several Commission orders. He described the reporting requirements in 47 CFR 54.422 for ETCs that receive low-income support, and testified that the reporting requirements are satisfied by the filing of FCC Form 481, which is due by July 1 of each year. Among the information to be included on the form is: the company name and the names of any holding company, operating company, and affiliates; and a description of the terms and conditions of voice telephone service plans offered to Lifeline subscribers, including details on the number of minutes provided, additional charges for toll calls, and a summary for the public regarding the plan rates. Mr. Harmon testified that Blue Jay has not filed a Form 481 since 2017. See 2 Tr 18.

Mr. Harmon explained that the form is a requirement for the annual recertification of a carrier's ETC designation. He testified that each year by October 1, the MPSC must recertify a carrier's ETC status: "If an ETC is not recertified, they will not be able to receive any federal support as it relates to providing Lifeline service." See 2 Tr 19. After identifying key docket numbers for Blue Jay's initial ETC designation and most recent recertification, Mr. Harmon testified that the 2018 program year was the last year Blue Jay was eligible for reimbursement from Universal Service Funds.

Mr. Harmon also testified that Blue Jay has not complied with a series of Commission orders. He noted that in its June 6, 2014 order in Case No. U-17502, Blue Jay received its ETC designation conditioned on: 1) quarterly reporting on the number of its Lifeline customers and the amounts paid to Michigan counties and the State of

Michigan for 9-1-1 services; 2) advertisement of its Lifeline product in media of general distribution, with a copy of each advertisement to the Commission; 3) notification to the Commission of any changes to the rates, terms, or conditions of low-income service offerings; and 4) recertification of ETC status annually. Mr. Harmon testified that Blue Jay is in violation of all four of these requirements.

First, he testified that Blue Jay has not filed quarterly reports since 2018. Second, he testified that Staff discovered Blue Jay has discontinued its website, with no publicly available information regarding its offerings. Third, he testified, Blue Jay has provided no notices of any changes to rates, terms, or conditions of service since September 19, 2017, when it notified the Commission it had transferred its entire customer base to Stand Up Wireless. He testified that because the federal minimum service standards have changed several times since that date, Blue Jay should have had service changes to report during that time period. Fourth, he testified, Blue Jay has not recertified for ETC status since 2017. See 2 Tr 20-21.

Mr. Harmon also testified that Blue Jay failed to comply with the Commission's directive in Case No. U-18216 that certified ETCs must file information identifying the areas of the State they actually serve. He testified that the first such filing was due in conjunction with the Form 481 report on July 15, 2017, but Blue Jay has never submitted such a filing or contacted Staff regarding its obligation. See 2 Tr 21.

Mr. Harmon testified that Blue Jay also failed to respond to the Commission's April 18, 2018 order in Case No. U-20064. He explained that in that order, the Commission directed all ETCs to indicate whether they would be willing and able to ensure that all eligible customers within their service area currently being served by

AT&T Michigan would continue to receive the federal Lifeline discount. He testified that an individual named Oscar H. Morris, Jr. made a filing on July 13, 2018 purporting to be on behalf of Blue Jay, but that “this filing was not signed, dated, nor is it on any type of company letterhead,” and that Mr. Oscar H. Morris’s name also did not appear on the filing or indicate his association with the company. See 2 Tr 21-22.

Mr. Harmon went on to explain that in early 2018, he contacted the former representative of Blue Jay, Greg Cole. Mr. Cole informed Mr. Harmon that he no longer represented Blue Jay and provided contact information for Haynes Morris.<sup>1</sup> Mr. Harmon testified that he then attempted to contact Haynes Morris, to introduce himself and raise Staff’s outstanding compliance issues with the company. He testified he was not able to ascertain Haynes Morris’s relationship to Blue Jay, and that Staff has no other contacts for the company. See 2 Tr 22.

Asked directly whether Staff has made attempts to communicate with Blue Jay, Mr. Harmon testified that “Staff has made numerous attempts to contact Blue Jay Wireless representatives by telephone, e-mail, U.S. postal service (including certified mail) with minimal to no success.” See 2 Tr 23. He elaborated on the emails and mailed notices that had been sent, citing Exhibits S-1 through S-5 and Exhibit S-7. He testified that the last correspondence received from Blue Jay, Exhibit S-6, was dated August 15, 2018, and came from Haynes Morris, who represented that his staff would be taking care of all compliance issues. See 2 Tr 24. All further efforts to contact Blue Jay or Mr. Morris were unsuccessful. See 2 Tr 24.

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<sup>1</sup> Presumably, Oscar H. Morris, Jr. goes by the name Haynes Morris, but Blue Jay has never provided this information.

Mr. Harmon testified that Staff followed its standard protocol regarding the handling of non-compliance and communication with Blue Jay, as it does for all other ETCs. He testified that Staff “has been more than patient and has provided numerous opportunities for Blue Jay Wireless to correct the outstanding issues and resolve concerns, but they continue to fail to do so.” See 2 Tr 25. He testified that it is difficult for Staff to justify why Blue Jay should maintain ETC status in Michigan in light of its unresponsiveness and noncompliance issues, which have taken substantial Staff time to address. He also noted the FCC has highlighted the importance of combating waste, fraud and abuse. See 2 Tr 24. He recommended that Blue Jay’s ETC designation be rescinded or revoked and thus that Blue Jay be disallowed to continue as a provider of Lifeline service in the State of Michigan.

Mr. Harmon’s exhibits document various notices to and communications with Blue Jay. Exhibit S-1 contains: a December 27, 2017 email and notice of filing obligation for Case No. U-18490, directed to all ETCs; a December 17, 2018 email and notice of filing obligation for Case No. U-20357, directed to all ETCs; and a December 17, 2019 email and notice of filing obligation for Case No. U-20673.

Exhibit S-2 is a copy of the MPSC website as of July 20, 2020 for ETC filings, explaining Universal Service fund (USF) requirements for ETCs and listing the required filings and deadlines. Exhibit S-3 contains a June 1, 2018 Memorandum from the Director of the Telecommunications to all ETCs, with the subject line: “Reminder of state Certification of Proper Use of Federal Universal Service Funds.” The memo explains the filings ETCs are required to make by July 2, 2018 in the docket for Case No. U-18490, including the federal Form 481. A subsequent email dated June 13, 2018

indicates the deadline had been extended to July 16, 2018; an email dated June 27, 2018 reminds ETCs of information that must be included with their Form 481 recertification filings. Similar communications were sent in June 2019 and June 2020 regarding the annual Form 481 filing requirement.

Exhibit S-4 contains a copy of Mr. Harmon's August 6, 2018 email to Mr. Morris with the MPSC's August 6, 2018 "Final Notice" as an attachment, which was directed to Blue Jay ("Attn: Mr. Haynes Morris). This Final Notice references that a June 22, 2018 letter was sent to Blue Jay both by email and by certified mail "regarding numerous past due compliance issues" with the Commission, and includes the June 22, 2018 letter as an attachment. Both the June 22 and August 6 letters indicate past due filings from Blue Jay and other compliance issues.

Exhibit S-4 also contains an August 15, 2018 email from Haynes Morris to Mr. Harmon, asking him for a copy of the last Form 481 filed by Blue Jay and the accompanying map. Mr. Harmon's response, also an August 15, 2018 email, contains links to previous Blue Jay filings and lists the actions Blue Jay needs to take "to ensure Blue Jay keeps in good standing as an ETC with the Michigan Public Service Commission."

Exhibit S-5 contains multiple communications and notices. First is Mr. Harmon's April 24, 2018 introductory email communication to Haynes Morris, indicating there are several outstanding issues regarding Blue Jay, and his May 3 and May 11, 2018 emails reminding Blue Jay that its first-quarter reports are overdue. This exhibit also contains Mr. Harmon's June 6, 2018 email to Mr. Morris, noting that Mr. Morris had responded on May 14, 2018 stating that he would get the overdue reports filed, but indicating the



required reports are overdue and that Blue Jay is in violation of the Commission's order granting Blue Jay the ETC designation. This exhibit also contains the June 22, 2018 "Past Due Notice" to Blue Jay from the MPSC, under the signature of the Director of the Commission's Telecommunications Division at that time, Robin Ancona. This notice indicates that several attempts have been made to contact Blue Jay regarding past due compliance issues, and identifying Blue Jay's noncompliance with Commission orders dating back to June 6, 2014.

The next document in Exhibit S-5 contains a communication from Haynes Morris. In his July 3, 2018 email, Mr. Morris states that he and his staff "are attempting to get all of the required filings and other obligations concluded as soon as possible." The email asked for an extension until July 13, 2018, which Mr. Harmon granted in his return email of July 5, 2018. In granting that extension, Mr. Harmon stated: "It is imperative that you provide all required information, as explained in the June 22, 2018 letter, by close of business on July 13, 2018."

Following this communication in Exhibit S-5 is Mr. Harmon's June 27, 2018 email providing notice of information due to be filed in Case No. U-18490. Then on July 19, 2018, Mr. Harmon addressed Mr. Morris's July 13, 2018 filings in Case Nos. U-17502 and U-20064, asking for a cover letter, on letterhead and signed, describing the contents of the filings. Next is Mr. Harmon's August 1, 2018 email indicating Blue Jay's quarterly reports in Case No. U-17502 were overdue, and offering assistance.

The next document in Exhibit S-5 is the August 6, 2018 "Final Notice" to Blue Jay, detailing compliance issues, signed by Ms. Ancona. The identified docket with

outstanding reporting obligations are the following: Case Nos. U-17502, U-18490, U-20064, and U-18216.

The final document in this exhibit contains the August 15, 2018 email from Haynes Morris and Mr. Harmon's response of the same date. The email from Mr. Morris states that he is attempting to file the required documents, and asks for copies of prior filings. Mr. Harmon responded with a chronicle of past due filings as well as links to prior filings.

Exhibit S-6 contains Mr. Harmon's November 2018 communications to Mr. Morris indicating that Blue Jay's quarterly reports were overdue in Case No. U-17502, culminating in the November 20, 2018 "Past Due Notice" signed by Ms. Ancona, which was both emailed to Mr. Morris and sent via certified mail.

Exhibit S-7 contains the certified mail receipt for the MPSC's June 22, 2018 "Past Due" notice to Blue Jay Wireless contained in Exhibit S-5.

In its closing argument, Staff argues that Mr. Harmon's testimony supports Staff's request that Blue Jay's ETC designation be rescinded and that it no longer be authorized to provide Lifeline service. A discussion containing findings of fact and conclusions of law follows, recommended that the relief requested by Staff be granted.

### III.

#### **DISCUSSION**

The Commission has clear jurisdiction in this matter to enforce the provisions of the Michigan Telecommunications Act, 1991 PA 179 as amended, as well as the applicable provisions of the federal Communications Act of 1934 as amended. Section 201 of the Michigan Telecommunications Act states:

(1) Except as otherwise provided by this act or federal law, the commission has the jurisdiction and authority to administer this act and all federal telecommunications laws, rules, orders, and regulations that are delegated to the state, including, but not limited to, the authority to arbitrate and enforce interconnection agreements and to establish rates in accordance with the standards set forth by applicable law.

(2) The commission shall exercise its jurisdiction and authority consistent with this act and all federal telecommunications laws, rules, orders, and regulations.

Section 203 permits the Commission to act on its own motion. See MCL 484.2203.

The Commission's order initiating this docket also cited two additional State statutory provisions that provide the Commission with authority regarding Lifeline services. Section 316 of the Michigan Telecommunications Act addresses lifeline service requirements for providers of basic local exchange service, mandating them "to offer certain low-income customers the availability of basic local exchange service and access service at reduced rates as described in subsections (2) and (3)" of that section. See MCL 484.2316(1). MCL 484.2316a provides for an intrastate universal service fund for any telecommunications carrier, and contains the following definitions:

(a) "Affordable rates" means, at a minimum, rates in effect on January 1, 2006 or as determined by the commission.

(b) "Intrastate universal service fund" means a fund created by the commission to provide a subsidy to customers for the provision of supported telecommunication services provided by any telecommunication carrier.

(c) "Supported telecommunication services" means primary residential access lines and a minimum level of local usage on those lines, as determined by the commission.

(d) "Universal service" shall mean the provision of supported telecommunication services by any carrier.

Subsection 4 provides:

(4) Eligibility for customers to receive intrastate universal service support under subsection (3) shall be consistent with the eligibility guidelines of section 254(e) of the telecommunications act of 1996 and the rules and regulations of the federal communications commission. The state fund shall be administered by an independent third-party administrator selected by the commission.

Subsection 7 provides:

(7) This section does not apply if an interstate universal service fund exists on the federal level unless otherwise approved by the commission.

Turning to federal law, 47 USCA § 214(e) provides for the designation of ETCs to provide Lifeline services:

(1) Eligible telecommunications carriers

A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 of this title and shall, throughout the service area for which the designation is received—

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefor using media of general distribution.

(2) Designation of eligible telecommunications carriers

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible

telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

(3) Designation of eligible telecommunications carriers for unserved areas  
If no common carrier will provide the services that are supported by Federal universal service support mechanisms under section 254(c) of this title to an unserved community or any portion thereof that requests such service, the Commission, with respect to interstate services or an area served by a common carrier to which paragraph (6) applies, or a State commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof. Any carrier or carriers ordered to provide such service under this paragraph shall meet the requirements of paragraph (1) and shall be designated as an eligible telecommunications carrier for that community or portion thereof.

#### (4) Relinquishment of universal service

A State commission (or the Commission in the case of a common carrier designated under paragraph (6)) shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the State commission (or the Commission in the case of a common carrier designated under paragraph (6)) of such relinquishment. Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the State commission (or the Commission in the case of a common carrier designated under paragraph (6)) shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The State commission (or the Commission in the case of a common carrier designated under paragraph (6)) shall establish a time, not to exceed one year after the State commission (or the Commission in the case of a common carrier designated under paragraph (6)) approves such relinquishment under this paragraph, within which such purchase or construction shall be completed.

(5) "Service area" defined

The term "service area" means a geographic area established by a State commission (or the Commission under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c) of this title, establish a different definition of service area for such company.

(6) Common carriers not subject to State commission jurisdiction

In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.

Federal requirements for Lifeline services are codified at 47 CFR 54.01 et seq. 47 CFR 54.201(a)(1) provides that "only eligible telecommunications carriers designated under this subpart shall receive universal service support," while 47 CFR 54.201(b) makes clear that state commissions are responsible for ETC certification:

(b) A state commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (d) of this section as an eligible telecommunications carrier for a service area designated by the state commission.

The standards in subsection d, 47 CFR 54.201(d), provide:

(d) A common carrier designated as an eligible telecommunications carrier under this section shall be eligible to receive universal service support in accordance with section 254 of the Act and, except as described in paragraph (d)(3) of this section, shall throughout the service area for which the designation is received:

(1) Offer the services that are supported by federal universal service support mechanisms under subpart B of this part and section 254(c) of the Act, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(2) Advertise the availability of such services and the charges therefore using media of general distribution.

(3) Exception. Price cap carriers that serve census blocks that are identified by the forward-looking cost model as low-cost, census blocks that are served by an unsubsidized competitor as defined in § 54.5 meeting the requisite public interest obligations specified in § 54.309, or census blocks where a subsidized competitor is receiving federal high-cost support to deploy modern networks capable of providing voice and broadband to fixed locations, are not required to comply with paragraphs (d)(1) and (2) of this section in these specific geographic areas. Such price cap carriers remain obligated to maintain existing voice telephony service in these specific geographic areas unless and until a discontinuance is granted pursuant to § 63.71 of this chapter.

(e) For the purposes of this section, the term facilities means any physical components of the telecommunications network that are used in the transmission or routing of the services that are designated for support pursuant to subpart B of this part.

Subsection (h), 47 CFR 54.201(h), provides:

A state commission shall not designate a common carrier as an eligible telecommunications carrier for purposes of receiving support only under subpart E of this part unless the carrier seeking such designation has demonstrated that it is financially and technically capable of providing the supported Lifeline service in compliance with subpart E of this part.

Federal requirements for Lifeline services for low-income customers are codified at Subpart E of Part 54, 47 CFR 54.400 et seq. 47 CFR 54.416 addresses annual requirements for ETCs:

(a) Eligible telecommunications carrier certifications. Eligible telecommunications carriers are required to make and submit to the Administrator the following annual certifications, under penalty of perjury, relating to the Lifeline program:

(1) An officer of each eligible telecommunications carrier must certify that the carrier has policies and procedures in place to ensure that its Lifeline subscribers are eligible to receive Lifeline services. Each eligible telecommunications carrier must make this certification annually to the Administrator as part of the carrier's submission of annual re-certification data pursuant to this section. In instances where an eligible telecommunications carrier confirms consumer eligibility by relying on income or eligibility databases, as defined in § 54.410(b)(1)(i)(A) or (c)(1)(i)(A), the representative must attest annually as to what specific data sources the eligible telecommunications carrier used to confirm eligibility.

(2) An officer of the eligible telecommunications carrier must certify that the carrier is in compliance with all federal Lifeline certification procedures. Eligible telecommunications carriers must make this certification annually to the Administrator as part of the carrier's submission of re-certification data pursuant to this section.

(3) An officer of the eligible telecommunications carrier must certify that the carrier is in compliance with the minimum service levels set forth in § 54.408. Eligible telecommunications carriers must make this certification annually to the Administrator as part of the carrier's submission of re-certification data pursuant to this section.

(b) All eligible telecommunications carriers must annually provide the results of their re-certification efforts, performed pursuant to § 54.410(f), to the Commission and the Administrator. **Eligible telecommunications carriers designated as such by one or more states pursuant to § 54.201 must also provide, on an annual basis, the results of their re-certification efforts to state commissions for subscribers residing in those states where the state designated the eligible telecommunications carrier.** Eligible telecommunications carriers must also provide their annual re-certification results for subscribers residing on Tribal lands to the relevant Tribal governments.



(c) States that mandate Lifeline support may impose additional standards on eligible telecommunications carriers operating in their states to ensure compliance with state Lifeline programs. (emphasis added)

47 CFR 54.422 provides for additional reporting obligations:

(a) In order to receive support under this subpart, an eligible telecommunications carrier must annually report:

(1) The company name, names of the company's holding company, operating companies and affiliates, and any branding (a "dba," or "doing-business-as company" or brand designation) as well as relevant universal service identifiers for each such entity by Study Area Code. For purposes of this paragraph, "affiliates" has the meaning set forth in section 3(2) of the Communications Act of 1934, as amended; and

(2) Information describing the terms and conditions of any voice telephony service 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. To the extent the eligible telecommunications carrier offers plans to Lifeline subscribers that are generally available to the public, it may provide summary information regarding such plans, such as a link to a public Web site outlining the terms and conditions of such plans.

(b) In order to receive support under this subpart, a common carrier that is designated as an eligible telecommunications carrier under section 214(e)(6) of the Act and does not receive support under subpart D of this part must annually provide:

(1) Detailed information on any outage in the prior calendar year, as that term is defined in 47 CFR 4.5, of at least 30 minutes in duration for each service area in which the eligible telecommunications carrier is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect

(i) At least ten percent of the end users served in a designated service area; or

(ii) A 911 special facility, as defined in 47 CFR 4.5(e).

(iii) Specifically, the eligible telecommunications carrier's annual report must include information detailing:

- (A) The date and time of onset of the outage;
  - (B) A brief description of the outage and its resolution;
  - (C) The particular services affected;
  - (D) The geographic areas affected by the outage;
  - (E) Steps taken to prevent a similar situation in the future; and
  - (F) The number of customers affected.
- (2) The number of complaints per 1,000 connections (fixed or mobile) in the prior calendar year;
  - (3) Certification of compliance with applicable minimum service standards, as set forth in § 54.408, service quality standards, and consumer protection rules;
  - (4) Certification that the carrier is able to function in emergency situations as set forth in § 54.202(a)(2).
- (c) All reports required by this section must be filed with the Office of the Secretary of the Commission, and with the Administrator. **Such reports must also be filed with the relevant state commissions and the relevant authority in a U.S. territory or Tribal governments, as appropriate.** (emphasis added)

Mr. Harmon correctly described a series of orders the Commission issued to implement these provisions. Mr. Harmon testified that Blue Jay has not complied with the applicable requirements, and provided numerous examples. The emails and final notices included in Staff's exhibits show numerous attempts by the MPSC, by Mr. Harmon and Ms. Ancona in particular, to bring Blue Jay into compliance with the ETC filing requirements, to no avail.

Blue Jay applied for an ETC designation on November 8, 2013, in Case No. U-17502, citing section 214(e)(2) of the federal Communications Act. Its application was conditionally approved by the Commission by its order of June 6, 2014 in that docket.

Among the conditions of approval was compliance with quarterly reporting requirements. See June 6, 2014 order, Case No. U-17502, pages 5-6.

Mr. Harmon's testimony establishes that Blue Jay has not complied with filing requirements that were a condition of Blue Jay's original certification in Case No. U-17502. As noted above, the filings were required quarterly. Blue Jay last made a filing in that docket on July 13, 2018, after Staff prodding and offers of assistance, and did not correct the omissions even in that filing when they were brought to Blue Jay's attention.

Mr. Harmon's testimony establishes that Blue Jay failed to comply with the requirement to file information on the geographic availability of Lifeline service and location of Lifeline customers currently served in Case No. U-18216. Mr. Harmon presented the notice that went to Blue Jay regarding its obligations to file that information in Case Nos. U-18490 and U-20357 in Exhibits S-3, S-4, and S-5, yet Blue Jay filed nothing in either docket. Regarding the obligation to file in Case No. U-18490, Mr. Harmon's June 26, 2018 email is in Exhibit S-3, his July 5, 2018 email is in Exhibit S-5, and his August 15, 2018 email is in Exhibits S-4 and S-5.

Mr. Harmon's testimony establishes that Blue Jay failed to comply with the simple requirement in Case No. U-20064 to indicate whether Blue Jay would be willing to serve Lifeline customers then being served by AT&T. In its April 18, 2018 order in that case, the Commission directed ETCs as follows:

Air Voice Wireless, LLC, d/b/a FeelSafe Wireless; American Broadband and Telecommunications Company; AmeriMex Communications Corp., d/b/a SafetyNet Wireless; Blue Jay Wireless, LLC; Boomerang Wireless, LLC, d/b/a enTouch Wireless; Global Connection Inc. of America; Global Connection Inc. of America, d/b/a Stand Up Wireless; i-wireless LLC (Access Wireless); Q Link Wireless, LLC; TAG Mobile, LLC; Telrite Corporation, d/b/a Life Wireless; Tempo Telecom, LLC; TracFone Wireless, Inc., d/b/a Safelink Wireless; and Virgin Mobile USA, LP, d/b/a

Assurance Wireless shall submit comments no later than 5:00 p.m. on June 1, 2018, indicating whether they are willing and able to ensure that all customers currently served by AT&T Michigan in their respective service areas will continue to be served with the federal Lifeline discount if the customer is eligible.

While Haynes Morris did file something on July 13, 2018, after prodding from Staff, as Mr. Harmon testified, it was unsigned, making it unsuitable for the Commission to rely on in evaluating AT&T's request in that docket. Blue Jay failed to respond to the MPSC's request for a signed statement on company letterhead.

This PFD takes official notice that no additional filings have been made by Blue Jay since the July 13, 2018 incomplete filings in Case Nos. U-17502 and U-20064. It takes official notice that no additional filings have been made by Blue Jay in Case Nos. U-18490 or U-20357.

In addition to Blue Jay's failure to comply with the certification requirements in Case No. U-17502, and its failure to comply with MPSC filing requirements implemented as part of its administration of the ETC program as documented by Mr. Harmon's testimony and exhibits, this PFD also finds that Blue Jay did not comply with the Commission's order in this docket, and indeed failed to respond in any way. This PFD finds that the Commission and Staff made reasonable efforts to bring Blue Jay into compliance, as described by Mr. Harmon, to no avail. The Commission is authorized to require these filings by provisions of State and federal law.

Based on these findings, this PFD concludes that the relief Staff seeks is appropriate, and thus recommends that Blue Jay's ETC designation in Michigan be rescinded or revoked and that Blue Jay be precluded from continuing as a provider of Lifeline in the State of Michigan.

IV.

**CONCLUSION**

For the reasons set forth above, this PFD recommends that the Commission adopt Staff's recommendation in this matter and rescind or revoke Blue Jay's ETC designation in Michigan.

MICHIGAN OFFICE OF ADMINISTRATIVE  
HEARINGS AND RULES  
For the Michigan Public Service Commission

**Sharon L.  
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Sharon L. Feldman  
Administrative Law Judge

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