

**BEFORE THE
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION**

Petition of Blue Jay Wireless, LLC)	
For Designation as an Eligible)	
Telecommunications Carrier for the)	Docket No. TC14-019
Purpose of Offering Lifeline Service)	
on a Wireless Basis)	

MOTION TO BIFURCATE

The Petitioner, Blue Jay Wireless, LLC, by and through its undersigned attorney of record, respectfully requests the Public Utilities Commission enter an Order to Bifurcate Petitioner’s Application for Designation as an Eligible Telecommunications Carrier. Specifically, the Petitioner requests the Commission address and rule on the Petition as it pertains to non-rural service and reserve all action on the Petition as it pertains to rural service. In support hereof, Petitioner states as follows:

1. Petitioner filed an application with the Public Utilities Commission on May 23, 2014.
2. In its Petition, Blue Jay Wireless sought to provide its service via resale of Sprint, T-Mobile and Verizon Wireless mobile services to low-income customers in all areas of the State served by the above listed companies.
3. On June 13, 2014, the South Dakota Telecommunication Association intervened and expressed concern regarding Blue Jay’s Petition to provide Lifeline service in rural areas of South Dakota.
4. SDCL 15-6-42 (b) provides for separate trials of claims or issues “in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy . . .”

5. A discussion of when bifurcation is appropriate is found in Union Bank of Avira v. Belk, 510 F.Supp. 1117, 1121, (W.D.N.C. 1981) wherein the court analyzed the federal counterpart of SDCL 15-6-42(b). Plaintiff submits that the following Belk factors are met and bifurcation should be granted:

- a. *Are the issues sought to be separately tried significantly different from one another?*

The issues are significantly different.

The Federal Communications Commission (“FCC”) is currently contemplating changes to the “Connect American Fund” as it pertains to rate-of-return carriers and whether it should allow support for broadband services when a customer does not also receive voice service. Without such changes, SDTA argues that approval of a Lifeline only ETC carrier in rural areas is not in the State’s best interest.

SDTA’s argument does not apply with respect to service in non-rural areas. SDTA’s position or argument may change if the FCC takes action on the Connect American Fund issue before it.

- b. *Does the status of the pretrial discovery as to respective issues suggest that they should or should not be tried separately?*

Blue Jay Wireless engaged in discovery with Commission Staff and completed the same. However, SDTA has unique concerns that were not necessarily addressed by Commission Staff. As such SDTA did make a separate discovery request. That discovery was not completed, and is not necessary at this time. If the FCC does act on the Connect America Fund issue, discovery with SDTA would likely become unnecessary.

The different issues to be addressed by discovery suggests the Petition as it pertains to non-rural areas and rural areas should be heard separately.

- c. *Will the separate issues require the testimony of different witnesses and different proof?*

The separate issues pertaining to rural and non-rural areas require different witnesses and different demonstrations. There would be no material efficiencies gained by addressing both issues together.

- d. *Will the party opposing severance be prejudiced if it is granted?*


Blue Jay Wireless is specifically aware that SDTA supports this Motion to Bifurcate. No party to this proceeding will be prejudiced in any way by the grant of this Motion. To the contrary, the parties and the Commission will be best served to wait to determine whether the FCC will take action. A hearing regarding service in rural areas would likely require the dedication of significant resources from Commission Staff and the parties involved. Such a hearing could be a wasteful exercise if ultimately the FCC does act on the Connect American Fund issue before it.

WHEREFORE, Petitioner requests the Public Utilities Commission,

Enter an Order to Bifurcate the Blue Jay Wireless Petition such that the Commission considers Blue Jay Wireless's Petition only as it pertains to the non-rural areas and reserve any ruling or decision which pertains to rural service.

DATED this 16 day of January, 2015.

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CERTIFICATE OF SERVICE

I, Kara C. Semmler, hereby certify that on this the 16 day of January, 2015, I electronically filed and served the foregoing with the Public Utilities Commission and e-mail notification of such filing will go to the following counsel at their last known address:

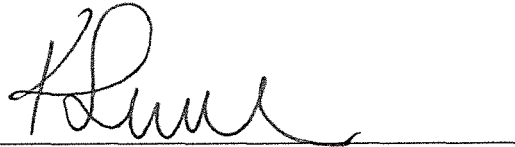
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