
**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

**IN THE MATTER OF THE PETITION OF BLUE JAY WIRELESS, LLC FOR DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER**

**STAFF MEMORANDUM PERTAINING TO THE
APPLICATION FOR NON-RURAL CENTURYLINK AREAS**

DOCKET TC14-019

Commission Staff (Staff) submits this Memorandum for the petition of Blue Jay Wireless, LLC (Blue Jay or the Company), for designation as an Eligible Telecommunications Carrier (ETC) in the non-rural, CenturyLink, areas of South Dakota.

BACKGROUND

On May 23, 2014, Blue Jay filed a petition for designation as an eligible telecommunications carrier throughout a majority of South Dakota including both rural areas and non-rural areas for the purpose of receiving federal low-income universal service support for prepaid wireless services, specifically Lifeline services.

On June 13, 2014, the South Dakota Telecommunications Association (SDTA) filed a petition to intervene in the docket. On June 24, 2014, the Commission granted intervention to SDTA.

On January 16, 2015, Blue Jay filed a motion to bifurcate and on February 2, 2015, the Commission approved the motion to bifurcate. With the bifurcation, rural and non-rural portions of the applications will be addressed separately. The contents of this memorandum are directed to the non-rural, CenturyLink, portion of the application.

The company responded to 5 rounds of data requests from Staff, and in data request 3 Blue Jay provided updates to Exhibit D, Exhibit F, Exhibit I, and Exhibit G. Blue Jay has responded to all of Staff's data requests.

OVERVIEW

State and Federal rules have been implemented laying out the framework for which Staff followed to ensure Blue Jay meets the specific requirements and standards to be designated as an ETC in South Dakota. In this section Staff will discuss certain South Dakota rules and subparts of the rules that Staff feels need to be specifically pointed out and discuss the company's responses to those rules.

Authority to Designate an ETC

The State Commission is given authority to decide in this matter by the FCC in USC §214(e)(2). USC §214(e)(2) also begins to lay the groundwork for what to consider when granting a company designation as an ETC.

ARSD 20:10:32:43(3)

This rule requires the company to identify the service area, including a detailed map, for which designation is sought. Exhibit E of the originally filed application provides a color coded map based on the underlying carrier's service territories which Blue Jay will use. This map covers both the rural and non-rural portion of the application. Also included is the list of relevant wire centers. For the sake of the non-rural portion, which this memorandum is meant to cover, the wire centers to be included from Exhibit E are only those of the Qwest Corporation. All other wire centers listed on pages 3 through 7 will be included in the rural portion of the application.

As a result of including only non-rural, CenturyLink, areas in this portion of the application, some tribal areas will be considered in both the rural and non-rural portions. For example, in the non-rural, CenturyLink service territory portion, the wire centers in McIntosh and Flandreau are both on tribal lands and in the CenturyLink territories. Blue Jay does intend to provide Tribal Lifeline options in this application.

ARSD 20:10:32:43(6)

This rule is discussed below in the public interest portion.

ARSD 20:10:32:43.01(1)

With this rule, the company is required to, on a timely basis, provide service to all of the applicant's customers within the designated service area where the applicant's network, or in this case the Sprint, T-Mobile, and Verizon networks, already pass the potential customer's premise.

On page 5 of the application the company states, "Blue Jay will commit to providing services throughout its proposed service area to all customers who make a reasonable request for service."

Based on coverage maps available on the Sprint, T-Mobile, and Verizon websites, requests that cannot be fulfilled because of the network not passing a potential customer's premise should be very limited. The limited coverage areas Staff sees that could be of concern are in the north-central part of the state (Timber Lake, McIntosh, Morristown) and then west of Rapid City in the Black Hills region of the Century Link Territory. Wireless coverage by the underlying providers does not quite cover these entire regions. However, lack of perfect coverage has not been a barrier to the Commission's designation of wireless ETCs in the past.

ARSD 20:10:32:43.01(2)

Under this rule, if a customer is within the applicant's designated service area but outside the existing network, the company must provide service within a reasonable period of time as long as the service does not impose excessive or reasonable cost.

As stated on page 6 of the application, Blue Jay requests that the Commission either find that this section of the rules does not apply to this petition or waive the requirements.

Staff concurs that if the ETC designation petition is granted to Blue Jay, that this section of the rules either be deemed not applicable or be waived. Blue Jay proposes to resell the use of facilities of other companies, specifically Sprint, T-Mobile, and Verizon and therefore is unable to meet the requirement of extending service facilities under this rule.

ARSD 20:10:32:43.02

This rule requires the submission of a two-year plan by any company granted ETC designation and lays out the required information to be included in the plan.

As stated on page 33 of the application, Blue Jay requests that the commission either find that this section of the rules does not apply to this petition or waive the requirements.

Staff agrees that the requirement for submission of a two-year plan be waived for this petition. Blue Jay has submitted a compliance plan in its place which has been approved by the FCC. Exhibit B attached to the petition contains the compliance plan.

ARSD 20:10:32:43.03

This rule requires that Blue Jay demonstrate that it is able to remain functional in emergency situations.

As Blue Jay discusses on pages 14 and 15 of the petition, they believe they satisfy the requirements of this rule because they will utilize the established networks of Sprint, T-Mobile, and Verizon and their facilities. Blue Jay believes that all three of these companies are capable to handle traffic spikes that may occur in emergency situations and can reroute traffic if need be. Blue Jay also believes that all the companies have sufficient backup power to ensure that the network remains operational if the primary power source goes down. Blue Jay also states on page 14 of the petition, "the companies have repeatedly certified to the FCC that their networks function in emergency situations."

Blue Jay also states on page 15 of the petition that they request a waiver of ARSD 20:10:32:43.03 if the Commission deems necessary as they are not a facility based provider.

Staff feels that although they are not a facilities base provider, they have demonstrated that the underlying companies are sound and capable of remaining functional in emergency situations. Staff feels that all three underlying companies are credible and very well established, and that they will be able to handle any of their own traffic plus the traffic that Blue Jay may impose on their systems in the event of an emergency. Staff believes that Blue Jay has sufficiently demonstrated that they have the ability to remain functional in emergency situations but since they are not a facilities based provider the company requests a waiver, which is recommended below.

ARSD 20:10:32:43.04

The requirement under this rule is to demonstrate the ability to satisfy consumer protection and service quality standards. 47 CFR §54.202(a)(3) states "Demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis."

On pages 15-16 of the petition, Blue Jay made a pledge and commitment to comply with the CTIA Consumer Code and all of the applicable rules pertaining to consumer protection in South Dakota.

Blue Jay has also stated that within 30 days of the issuance of an order granting the petition, for non-rural areas in this instance, they will provide the commission with a regulatory contact for which complaints can be directed to. Staff has included this on the conditions to be applied to Blue Jay if granted designation which is included as Attachment A to this memo.

ARSD 20:10:32:43.05

Under this rule Blue Jay must demonstrate that it offers as local usage plan comparable to those offered by the ILEC. In this case the ILEC would only be CenturyLink since this portion of the petition applies to just the CenturyLink territories.

Blue Jay has stated multiple times throughout the petition and data requests that their plans are different but comparable to the ILEC. One major difference between the plans of Blue Jay and CenturyLink is that Blue Jay offers a free plan, and after Staff talked with CenturyLink via telephone and looking at their website, it does not appear that CenturyLink has a free offering.

The lowest cost plan Staff found for CenturyLink was \$21.25 per month and that included unlimited local calling but did not include any extra free calling features and did not include long distance calling.

The next lowest price option Staff found for CenturyLink was \$35.00 per month. This plan included unlimited local calling, 11 calling features and for an extra \$0.05 per minute, long distance calling.

Staff attempted to discuss with CenturyLink via telephone what the cost of a Lifeline specific plan was and what plan options are available, but was not able to get any of the plan or cost information without trying to apply to become a Lifeline customer. Therefore Staff was not able to determine precisely the specific lifeline plans and costs. So the plans as stated above are just the least cost, publicly available plans Staff could find on the website.

As noted in the petition on pages 9 and 10, Blue Jay offers 2 non-tribal plans and 2 additional tribal plans. The 2 non-tribal plans are as follows:

- 125 anytime prepaid minutes per month, with rollover, with text messaging assessed at a rate of 1 minute per text received and 1 minute per text sent.
- 250 anytime prepaid minutes per month, without rollover, with text messaging assessed at a rate of 1 minute per text received and 1 minute per text sent.

As noted in response to DR5-3, the cost of the 250 minute plan is free to eligible Lifeline customers and \$9.95 to retail customers, and the 125 minute plan is also free to eligible Lifeline customers and \$9.95 to retail customers.

The 2 tribal plans are as follows:

- Tribal Resident Lifeline 100 Plan. Each month the customer will receive 1,000 anytime voice minutes or 1,000 text messages for \$1.00 per month plus fees and taxes. Text messaging will be assessed at a rate of 1 minute per text message for sending and 1 minute per text message for receiving text messages. There are no rollover minutes with this plan. Unused minutes will expire each month on the service expiration date.
- Tribal Resident Lifeline Unlimited Plan. Each month the customer will receive unlimited anytime voice minutes for \$5.00 per month plus fees and taxes. Text messaging will not

be available with the unlimited talk plan. There are no rollover minutes with this plan as minutes are unlimited.

As stated by Blue Jay in the response to Staff's data Request 1-3, they are willing to provide the 1,000 minute and Unlimited Anytime Plans at no cost to eligible South Dakota Residents.

All plans also include nationwide domestic long distance at no extra charge, caller ID, voicemail, call waiting, and three-way calling.

ARSD 20:10:32:43.06

Under this rule, a company seeking designation as an ETC must certify that it will provide equal access to long distance carriers if no other ETC is providing equal access within the service area.

Blue Jay notes on page 34 of the petition that the FCC no longer requires than an ETC provide equal access. Also they state that equal access obligations are typically not applicable in wireless resale operations.

In response to Staff's data request 5-1, Blue Jay provided the specific FCC ruling that pertains to pure resellers eligible for Lifeline support. Staff agrees that this rule, based on the ruling from the FCC in the TracFone case provided in data request 5-1, is not applicable to Blue Jay as they are strictly a resale operation.

Additional FCC Requirements

47 CFR §54.202(a)(4) states, "For common carriers seeking designation as an eligible telecommunications carrier for purposes of receiving support only under subpart E of this part, demonstrate that it is financially and technically capable of providing the Lifeline service in compliance with subpart E of this part."

In Staff's first and second data requests the company provided financial information to Staff. In Staff's third data request the company updated the financial information that was provided in the first two staff data requests.

As noted in response to data request 2-6, Blue Jay made the transition to becoming a wireless Lifeline ETC in 2012 and 2013. While the net income shown on the updated profit and loss sheet in revised Exhibit G from data request three is significantly negative, it looks like a major part of the expenses are non-recurring expenses related to sales & marketing and handset costs. As shown on the revised Exhibit G, if you remove these significant non-recurring costs the company is in fact profitable. Staff does not believe that costs related to sales & marketing and handsets will fully disappear over time, but the large expense amounts in the first few years starting the business and getting it running will most likely be larger than what one could consider "normal" moving forward once a customer base has been established and the large, bulk, investments for handsets are not needed. Staff believes the company will still have expenses related to sales & marketing and handsets going forward but it will be much less than what is typically involved with high initial startup costs. With the responses to Staff's data requests, the filed financial data, and the fact that Blue Jay is still incurring expenses related to business startup, Staff feels that Blue Jay is financially capable as required in 47 CFR §54.202(a)(4).

Blue Jay has also provided information regarding their technical capabilities. Exhibit F was originally filed with the petition and this exhibit details key officers and provides information about their background

and work history. In response to data request three, Blue Jay submitted a revised Exhibit F. This revision removed the biography for Jeff Johnson and added two biographies, one for Melissa Slawson and another for Lauren Moxley.

Contained within the biographies and the petition, Staff feels that sufficient information showing adequate technical capabilities do exist. Key staff within Blue Jay have accumulated a number of years of experience and held various positions within the telecommunications industry throughout their careers. Within the petition Blue Jay states multiple times that they will use the underlying facilities of Verizon, T-Mobile, and Sprint. All three of these companies are well known within the industry and have demonstrated adequate technical capabilities by having large footprints throughout the nation and the length of time each has been in service.

With a combination of the work experience and history of the key officers and the use of the facilities owned and operated by three reputable wireless companies, Staff feels that Blue Jay has shown sufficient technical capabilities as required under 47 CFR §54.202(a)(4).

ARSD 20:10:32:43(6) and ARSD 20:10:32:43.07

These two rules require the company to explain why their services are in the public interest and lay out the guidelines for the Commission to consider when making their decision on if the petition to grant designation as an eligible telecommunications carrier is in fact in the public interest.

Staff respectfully defers to the Commission the matter of public interest determination for this docket but provides information for the public interest standard determination as described in ARSD 20:10:32:43.07 below.

Benefits of Increased Customer Choice

One thing to consider when deciding on the public interest standard is the benefits of increased customer choice. Approving the petition by Blue Jay will increase the Lifeline choices offered in South Dakota in the CenturyLink territories. One benefit that Blue Jay points out on page 35 of its petition is “increasing customer choice will spur wireless ETC providers to compete for eligible customers by providing the highest value (e.g., higher quality handsets, customer service).” Another benefit of wireless Lifeline service that Blue Jay includes on page 35 of the petition is “Further, grant of the Petition will provide consumers with access to high quality service and the benefits of a mobile service. The mobility of the service will be particularly attractive to Lifeline-eligible consumers who may frequently change residences or work in migratory jobs.”

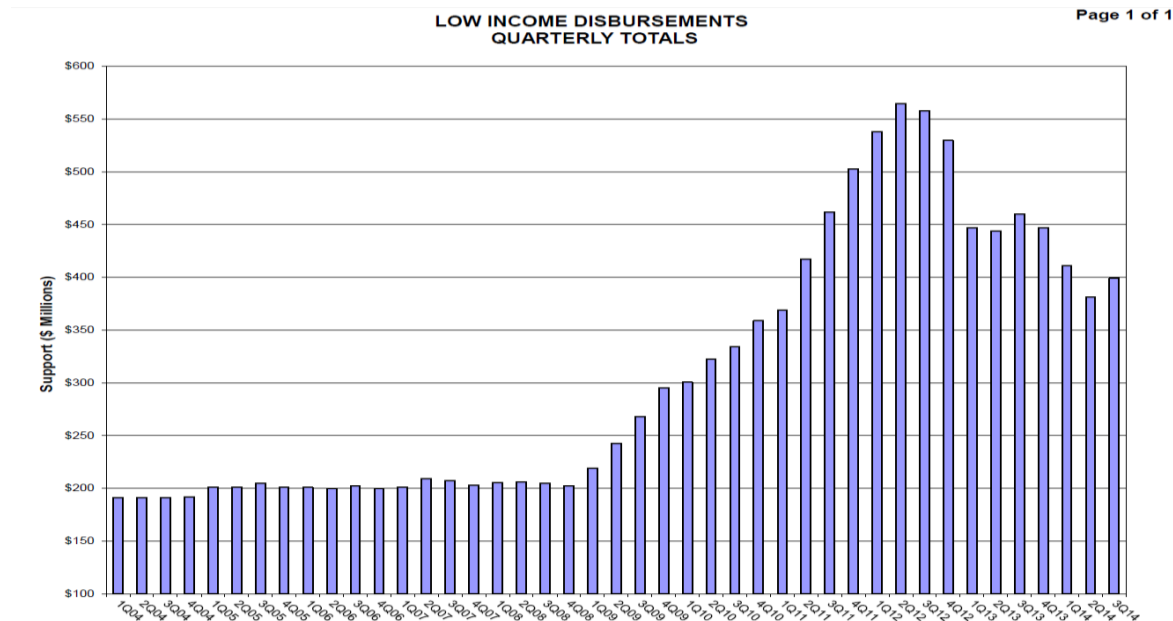
Currently there is only one wireless ETC, Budget Prepay, designated in South Dakota to operate in all non-rural, CenturyLink, wire centers. Long Lines wireless operates in only a select few exchanges in South Dakota, and in their 2014 ETC filing they noted in a data request that they will not be refiling to maintain their ETC designation since they were bought out at the end of 2013. James Valley Wireless only operates out of the Aberdeen exchange.

Budget Prepay uses Sprint and Verizon as its underlying carriers. Long Lines Wireless and James Valley Wireless utilize their own networks. Blue Jay has stated in its petition that it would use Sprint, Verizon and T-Mobile as its underlying carriers.

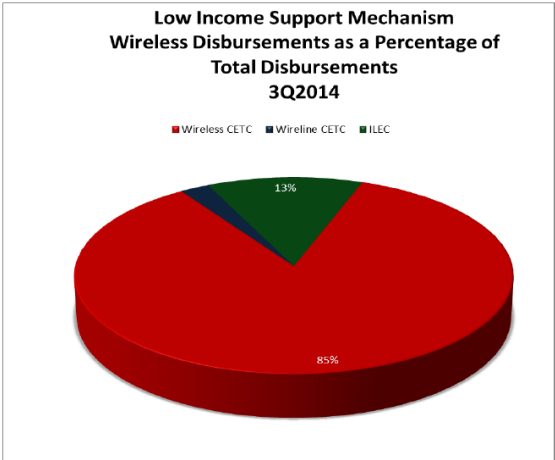
Impacts on the USF

In recent history there have been multiple new reports and studies detailing fraud, waste, and abuse taking place within the Lifeline Program. In January of 2014 the National Lifeline Accountability Database (NLAD) went into effect nationwide thus reducing the ability for a company or customer to commit fraud, waste, and abuse the Lifeline program.

As you can see from the graph below from the USAC website, (<http://www.usac.org/res/documents/about/pdf/quarterly-stats/LI/Disbursements-Quarterly-Totals.pdf>) since the NLAD was implemented in 1Q14, 1st quarter of 2014, there has been a decline in the quarterly low income disbursements.



The following pie chart from the USAC website (<http://www.usac.org/res/documents/about/pdf/quarterly-stats/LI/Wireless-Disbursements-as-a-Percentage-of-Total-Disbursements.pdf>) shows the percent of total disbursements between wireless CETCs, wireline CETCs, and ILECs. As you can see from this graph, 85% of disbursements in 3Q14 were to Wireless CETC's. So while the designation of Blue Jay could have an effect on the USF, it is hard to quantify how much of an effect given the large number of wireless CETC disbursements because it is hard to predict if Blue Jay will get customers from wireline CETCs or ILECs to switch to wireless with Blue Jay or if they will get other wireless CETC customers to switch to Blue Jay's service.



Advantages and Disadvantages of Blue Jay's Lifeline Offering

The tables below provide a side by side comparison between Blue Jay's offerings and the ILEC, CenturyLink, as well as other already approved ETC's offering wireless Lifeline services in South Dakota. The information for the companies other than Blue Jay comes directly from company websites.

	Blue Jay (Non-Tribal)	Blue Jay (Tribal)
Network Provider	Verizon/T-Mobile/Sprint	Verizon/T-Mobile/Sprint
Areas Offered	All Non-Rural CenturyLink Areas	All Non-Rural CenturyLink Areas
Basic voice plan	125 minutes or 125 text messages	1,000 minutes or 1,000 text messages
Price	Free	Free
Features	<ul style="list-style-type: none"> •caller ID •Call waiting •Call forwarding •3-way calling •free voicemail 	<ul style="list-style-type: none"> •caller ID •Call waiting •Call forwarding •3-way calling •free voicemail
Data Available	Yes, 50 MB for \$5 minimum	Yes, 50 MB for \$5 minimum
Other comments	Free Phone	Free Phone

	CenturyLink	Budget Prepay	James Valley
Network Provider	Own	Sprint/Verizon	Own
Areas Offered	Own	All Non-Rural CenturyLink Areas	Aberdeen
Basic voice plan	Unlimited Local Calling	250 minutes and 250 texts	600 local minutes, 60 nationwide minutes
Price	\$12.00 (\$21.25 plus a \$9.25 discount) (Enhanced lifeline discount offered for Tribal lands)	Free	\$15.70 (\$24.95 plus a \$9.25 discount)
Features	Options available at extra charge	<ul style="list-style-type: none"> •No Contracts •Nationwide Coverage •Caller ID •Call Waiting •Voicemail 	<ul style="list-style-type: none"> •900 call block •3-way calling •Call transfer •Consultation hold
Data Available	No	Yes, 100 MB for \$5	Yes, 3 GB for \$24.95
Other comments	Landline, No Long Distance	Free phone	\$0.40 per minute overage fee

Advantages of the Blue Jay plan include more options for the territories that overlap with other providers, free calling and texting plans, and different underlying carriers than some of the other companies.

The main disadvantage that Staff sees with the Blue Jay is the pricing of the data. The upgrade fee as noted in response DR3-6 is in the range of \$15-\$150. The minimum data purchase a customer can make is 50 MB for \$5. This equates to approximately \$100 per GB assuming a customer purchases data in 50 MB bunches, although the company does offer discounts if larger bundles of data are purchased. The lowest pricing listed in Exhibit D Terms and Conditions is 250 MB for \$20 which equates to about \$80 per GB.

Commitment to Provide Quality Telephone Services

In the petition on pages 15 and 16, Blue Jay explains that it will provide quality services to its customers. Blue Jay commits to comply with the Cellular Telecommunication and Internet Association’s Consumer Code for Wireless Service (CTIA Consumer Code). In addition, Blue Jay also commits to fully comply with the applicable consumer protection and quality standards in ARSD 20:10:32:43.04.

Blue Jay also states that within 30 days of the issuance of an order granting designation they will submit a name and contact information to whom complaints from customers can be sent to. Blue Jay also points out that it “will make every effort to resolve expeditiously complaints received by the Commission.” It is not specifically stated but could be inferred that the company will expeditiously resolve any and all complaints brought to them by customers as well.

Blue Jay has also included information about a handset return policy on page 16 of the petition. This section briefly describes how the returns are handled and touches on the requirements to getting a

handset replaced. As noted in response to data request 3-7, all handsets that Blue Jay now provides to customers are new. This fact should help simplify and expedite any handset returns a customer should have as there should be limited discrepancies on if a phone is or is not visibly damaged as described as a return condition on page 16.

Using an internet search, staff found only a few complaints against Blue Jay. The most common complaint identified by staff was customers who were signed up on a tribal plan but were later found to not be residing on tribal lands who had their plans switched to a non-tribal plan. The complaints stated that they never received notification that they were going to be switched while the company attests they did send text notifications to the customers. If granted designation, Staff would just recommend that the company remain diligent when verifying addresses so that any incorrect addresses and plan eligibilities be corrected as soon as possible and that customers are notified of any discrepancies or issues with their accounts prior to any changes to their accounts being made. Staff would also like to note that since some of the customers are claiming to have not received the text message notification that the company may want to include in their procedure to call the customer and if there is no answer by the customer to leave a voicemail stating the concerns. Staff feels this would alleviate the main complaints noticed via the internet complaint search.

One more note from Staff, Blue Jay has been a BBB accredited business since 7/14/2014, and on a scale of A+ to F are rated at an A-. As stated on the Better Business Bureau website, "BBB has determined that Blue Jay Wireless, LLC meets BBB accreditation standards, which include a commitment to make a good faith effort to resolve any consumer complaints."

Blue Jay's ability to Provide Supported Services throughout the Designated Service Area

On page 5 of the petition, Blue Jay asserts that it will provide the required services throughout its designated service area. Staff would mention that since Blue Jay is using Verizon, T-Mobile, and Sprint as its underlying carriers, the company is constrained to the reaches of those underlying companies' networks. If in the future one of these three underlying companies expands its network to cover a new expanded area, within the non-rural CenturyLink territory this portion of the docket covers, with the commitment to provide services and discussed starting on page 5 of the petition, Staff believes Blue Jay will also be required to offer the customers in the newly expanded areas an opportunity to sign up for their services, so long as they are within the borders of the designated non-rural CenturyLink territory.

Detrimental Effect on the Provisioning of Universal Service by the ILEC

The final portion to consider under ARSD 20:10:32:43.07 is whether designation of Blue Jay as an ETC will have a detrimental effect on the provisioning of universal service on the ILEC. One thing to note is that CenturyLink, the ILEC in the territory covered by this portion of the request and memo, did not petition to intervene in this docket. CenturyLink's non-intervention acknowledges that they do not believe this designation would have a detrimental impact to them. Based on that fact, Staff does not believe that designating Blue Jay as an ETC in the CenturyLink territories as described will have a detrimental impact on the ILEC.

Conclusion

As previously stated, this memo was meant to outline the South Dakota rules and the FCC requirements placed on Blue Jay's application for designation as an Eligible Telecommunications Carrier as it relates to

the non-rural, CenturyLink, wire centers. Staff feels that Blue Jay has provided all the necessary information and data, whether in the initial petition or through responses to Staff's data requests, as required by each applicable South Dakota and FCC rule, and that the information provided pursuant to each rule, with the exception to the rules pertaining to public interest, is sufficient to consider Blue Jay in compliance with the applicable Eligible Telecommunications Carrier petition requirements. One thing for the Commission to determine that Staff did not take a position on is if the requirements for determining the public interest standard have been met and if Blue Jay's designation is or is not in the public interest.

With this memo Staff submits Attachment A. Attachment A provides conditions that Staff feels need to be explicitly stated and put forward in the event that the Commission does grant Blue Jay's designation as an Eligible Telecommunications Carrier. Therefore, if the petition is granted and Blue Jay is then designated as an eligible telecommunications carrier for the purpose of providing wireless Lifeline the CenturyLink territories, Staff recommends that Blue Jay also be ordered to follow each condition Staff has listed on Attachment A.

Blue Jay has requested certain waivers of South Dakota rules. The requested waivers are as follows:

1. ARSD 20:10:32:43.01(2)
Under this section of the rule the applicant is required to demonstrate that "If the potential customer is within the applicant's proposed designated service area but outside its existing network coverage, provide service within a reasonable period of time, if the service does not impose excessive or unreasonable cost".
2. ARSD 20:10:32:43.02
This rule requires the applicant to submit a two-year plan to the commission.
3. ARSD 20:10:32:43.03
Under this rule the applicant is required to demonstrate that it has the ability to remain functional in emergency situations.
4. ARSD 20:10:32:43.06
This rule states that an applicant for an ETC must certify that it will provide equal access to long distance carriers if no other ETC is providing equal access in the service area.

For points 1, 2, and 3 the company has requested waivers for each rule on pages 6, 33, and 14-15, respectively, of the petition. For point 4, Blue Jay has requested this waiver via response to data request 2-5. Staff recommends granting the waivers of the rules noted above if the commission finds waivers necessary and finds that Blue Jay's application is in the public's interest. Staff also believes the Company has met all the requirements laid out by the FCC, and State Statutes and Rules with the exception that Staff has not taken a position on the public interest requirement to be decided by the Commission.