
TO: COMMISSIONERS AND ADVISORS

FROM: Amanda Reiss, Staff Attorney

RE: TC25-034

DATE: November 5, 2025

Commission Staff (Staff) submits this Memorandum for the Joint Application of Clarity Telecom, LLC dba Bluepeak (Bluepeak), Bluepeak BTS, and Bluepeak ABS, (Together, Applicants) for approval of Asset Transfer, Request for Transfer of and approval of a new COA, Request for Transfer of ETC Designation and Designation of a new ETC, and relinquishment of Bluepeak's ETC designation, and approval of tariff revisions to reflect the name changes.

BACKGROUND

On August 4, 2025, Applicants filed with the commission a Joint Application (Application) for:

- 1) Approval of Asset Transfer to Bluepeak BTS;
- 2) Approval of Asset Transfer to Bluepeak ABS;
- 3) Request to Transfer Bluepeak's Local and Interexchange Certificates of Authority to Bluepeak BTS;
- 4) Request to Grant new Local and Interexchange Certificates of Authority to Bluepeak ABS;
- 5) Request to Transfer Bluepeak's Eligible Telecommunications Carrier designation to Bluepeak BTS;
- 6) Request for new designation as an Eligible Telecommunications Carrier (ETC) for Bluepeak ABS in the state of South Dakota;
- 7) Request to Approve relinquishment of Bluepeak's Eligible Telecommunications Carrier Designation; and
- 8) Approve associated tariff revisions.

On August 7, 2025, the Commission published notice of the filing on its weekly electronic Listserv. Between August 20 and 22, 2025, the Commission published notice of the asset transfer in local newspapers pursuant to SDCL § 49-31-59. No petitions to intervene were filed and no comments were received.

On September 26, 2025, and October 9, 2025, Bluepeak filed responses to Staff's Data Requests. This Memorandum is based on the Petition and accompanying filings in Docket TC25-034, responses to Staff's Data Requests, and Staff's independent research.

Approval of Asset Transfers to Bluepeak BTS and Bluepeak ABS

SDCL § 49-31-59 establishes that any sale of a telephone exchange shall be approved by the commission, and, specifically that the commission shall publish notice of the proposed asset transfer in local newspapers within the exchange and that "the commission shall consider the protection of the public interest, and to the extent applicable, the adequacy of local telephone service, the reasonableness of

rates for local service, the provision of 911, enhanced 911, and other public safety services, the payment of taxes, and the ability and commitment of the local exchange company to provide modern, state-of-the-art telecommunications services.”

The statute does exempt nonasset sale transactions such as mergers, consolidations, stock sales, or financing transactions from requirement for notice and commission approval. In this case, it appears that the internal transfer of assets to BTS and ABS, as wholly owned indirect subsidiaries of Bluepeak, may be a nonasset sale transaction. However, Applicant preferred to obtain commission approval of these specific transactions.¹ Applicant listed the applicable exchanges as Parker, Hurley, Flyger, Irene, Wakonda, Alsen, Beresford, Worthing, and Lennox.²

After review of the Application, Applicant has shown that the BTS and ABS will provide adequate local telephone services, including the provision of 911 and enhanced 911 along with other public safety services.³ Because BTS and ABS will provide services under the same rates for local service as Bluepeak has been providing⁴ pursuant to commission approved tariffs. The provisions of the tariffs appear reasonable and non-discriminatory and the substance of the tariffs has been previously reviewed and approved by the Commission and are currently in effect for Bluepeak. Bluepeak BTS and Bluepeak ABS have each obtained SD and Federal tax numbers, for the payment of applicable taxes.⁵ The Application further explains BTS and ABS will enter into management contracts with Bluepeak for Bluepeak to continue to operate all aspects of communications services, including network facilities.⁶ Bluepeak has provided telecommunications services as an ILEC and CLEC in the exchange for over a decade, and Bluepeak’s continued management of the facilities and operations provides assurance that Bluepeak BTS and Bluepeak ABS have the ability and commitment to provide adequate and modern telephone services in the area and the Applicants asset the asset transfer will “facilitate financing arrangements that will allow it to expand its fiber network deployments and provide competitive, high-speed service to more South Dakota residents and businesses.”⁷

Staff respectfully defers to the Commission regarding the determination whether the requested asset transfers protect the public interest. However, because the proposed *pro forma* transfer is to wholly-owned indirect subsidiaries, and the Applicant has demonstrated that Bluepeak BTS and Bluepeak ABS will provide services consistent with those currently provided by Bluepeak and the transfer will Staff does not object to the requested transfer.

Approval of Transfer of Local and Interexchange Certificates of Authority to Bluepeak BTS and Approval of New Local and Interexchange Certificates of Authority to Bluepeak ABS

SDCL § 49-31-3 and § 49-31-69 require a telecommunications company obtain a Certificate of Authority prior to providing telecommunications services in the state. Applicant requests commission approval of a transfer of Bluepeak’s Local and Interexchange Certificates of Authority to Bluepeak BTS Bluepeak’s ILEC

¹ See PUC Docket TC14-073 and TC02-062

² See Application Page 16, Section 2.ii..

³ See Application page 6, section(c); Application page 11, section 11; See also Response to Staff’s DR 1-8.

⁴ See Application page 18, section VI.

⁵ See Supplemental Response to Staff’s DR 1-3.

⁶ See Application, page 5.

⁷ See Application, page 2.

and some CLEC areas, both to provide resold and facilities-based services. Applicant further seeks new Local and Interexchange Certificates of Authority for Bluepeak ABS for some CLEC areas previously served by Bluepeak. Specifically, Bluepeak BTS will initially serve the entirety of the geographic area of Bluepeak's ILEC territory, Study Area Code 391652, and the portions of Bluepeak's CLEC service territory not to be served by Bluepeak ABS.⁸ Bluepeak ABS will specifically serve the portions of Bluepeak's CLEC service area highlighted in red in Response to Staff's DR 1-5(b).

SDCL § 49-31-73 requires that an application proposing to provide service in the service area of a rural telephone company must satisfy the service obligations of an eligible telecommunications carrier as set forth in 47 U.S.C. § 214(e)(1). Per the application, Bluepeak is currently serving as an eligible telecommunications carrier in the proposed service areas of Bluepeak BTS and Bluepeak ABS and currently meets the requirements of 47 U.S.C. § 214(e)(1) and will continue to meet those requirements as both entities seek designation as eligible telecommunications carriers in the service area.⁹

The statutes provides the commission shall issue a certificate of authority for local exchange service if the applicant has demonstrated technical, financial, and managerial capabilities to provide the services described in the application.¹⁰ While Bluepeak BTS and Bluepeak ABS are new entities, the Application specifies both of these entities will contract with Bluepeak, an entity that has provided telecommunications services in this area for more than a decade, to continue operating and managing the networks and business.¹¹ Bluepeak has demonstrated it has the technical, financial and managerial capabilities to provide the services over the past years, and with the commitment that both Bluepeak BTS and Bluepeak ABS will continue to contract with Bluepeak to continue providing those services, Applicants have met the requirements to obtain the requested Certificates of Authority.

Staff recommends the Commission grant approval of the transfer of Bluepeak's Certificates of Authority to provide local and interexchange service to Bluepeak BTS, subject to the conditions that Bluepeak BTS file a continuous surety bond in the amount of \$25,000 or that, for retail purposes, Bluepeak BTS not offer any prepaid services including calling cards and not accept or require any deposits or advance payments without prior approval of the commission.

Staff further recommends the Commission grant new Certificates of Authority to provide local and interexchange service to Bluepeak ABS, subject to the conditions that Bluepeak ABS file a continuous surety bond in the amount of \$25,000 or that, for retail purposes, Bluepeak ABS not offer any prepaid services including calling cards and not accept or require any deposits or advance payments without prior approval of the commission.

Approval of Transfer of Bluepeak's ETC Designation to Bluepeak BTS and Approval of ETC Designation to Bluepeak ABS

Applicants request the transfer of Bluepeak's Eligible Telecommunications Carrier designation to Bluepeak BTS, and the granting of a new ETC designations to Bluepeak ABS. Bluepeak BTS and Bluepeak ABS each seek ETC designations throughout the entire geographic area where Bluepeak currently holds

⁸ See Response to Staff's DR 1-5(a).

⁹ See Application, page 12, section 15.

¹⁰ See SDCL § 49-31-3 and SDCL § 49-31-71

¹¹ See Application page 10, section 6.

ETC designation.¹² The PUC has been given authority to decide this matter by the FCC in 47 U.S.C. § 214(e)(2). 47 U.S.C. § 214(e)(2) also begins to lay the groundwork for what to consider when granting a company designation as an ETC.

Applicants confirmed they will provide the services required by 47 C.F.R. § 54.201(d) and that the carrier “offer the services that are supported by Federal universal service support mechanisms . . . either using its own facilities or a combination of its own facilities and resale of another carrier’s services.”¹³ Specifically, Bluepeak BTS and Bluepeak ABS will, provide resold and facilities-based services¹⁴ and provide 1) Voice Grade Access to the public switched network; 2) Local usage; 3) Dual tone multi-frequency signaling or its functional equivalent; 4) Single-party service or its functional equivalent; 5) Access to emergency services; 6) Access to operator services; 7) Access to interexchange services; 8) Access to directory assistance; and 9) Toll limitation for qualifying low-income consumers.¹⁵ Bluepeak BTS and Bluepeak ABS further confirmed on page 18 of the Application they will to continue offering the same plans as Bluepeak offered as an eligible telecommunications carrier.

ARSD § 20:10:32:43(1) requires the requesting company to provide “The name, address, and telephone number of the applicant and its designated contact person.” Applicants provided this information on page 15 of the Application.

ARSD § 20:10:32:43(3) requires the company to provide “identification of the service area, including a detailed map, for which the designation is sought.” Applicants request designation in the entirety of the area in which Bluepeak currently holds designation.¹⁶ Applicant listed the applicable exchanges as Parker, Hurley, Flyger, Irene, Wakonda, Alsen, Beresford, Worthing, and Lennox.¹⁷

ARSD § 20:10:32:43.01 requires “an applicant requesting designation as an eligible telecommunications carrier shall commit to providing service throughout its proposed designated service area to all customers making a reasonable request for service.” Also included in this rule is ways to remedy when a customer requests service but is outside of the coverage area. On page 17 of the Application, Bluepeak BTS and Bluepeak ABS certified they will comply with these requirements, and provided a list of ways to remedy requests is a potential customer is within the designated service area, but outside the designated network.¹⁸

ARSD § 20:10:32:43.02 requires that a two-year plan be submitted with the Petition. On page 17 of the Application, Bluepeak BTS and Bluepeak ABS certified each entity would adopt the five-year plan and the two-year plan as submitted by BluePeak in its annual certification docket, TC25-030.

ARSD § 20:10:32:43.03 requires that a requesting company provide a demonstration of ability to remain functional in emergency situations. Bluepeak BTS and Bluepeak ABS asserted they will have the same emergency capabilities currently offered by Bluepeak.¹⁹

¹² See Response to Staff’s DR 1-5 (c) and (d).

¹³ See 47 U.S.C. § 214(e)(1)(A).

¹⁴ See Application page 4, page 8, page 10, and page 11.

¹⁵ See Application page 16, section 2.i..

¹⁶ See Application Exhibit E; See also Response to Staff’s DR 1-5 and Exhibit B-Key for Service Area Maps

¹⁷ See Application Page 16, Section 2.ii..

¹⁸ See Application page 17, section 3.

¹⁹ See Application page 17, section 5.

ARSD § 20:10:32:43.04 requires an applicant requesting designation as an eligible telecommunications carrier shall demonstrate that it will satisfy applicable consumer protection and service quality standards. Bluepeak BTS and Bluepeak ABS confirmed each will comply with this rule and provide the same protections and standards Bluepeak currently provides.²⁰

ARSD § 20:10:32:43.06 requires an applicant requesting designation as an eligible telecommunications carrier shall certify that it will be able to provide equal access to long distance carriers if no other eligible telecommunications carrier is providing equal access within the service area. Applicants confirmed Bluepeak BTS and Bluepeak ABS will be able to provide equal access within their service areas in the same manner as Bluepeak.²¹

Public Interest Determination

Applicants appear to meet the applicable requirements outlined below for approval of ETC designation, however Staff respectfully defers to the Commission regarding a determination whether the requested designations are in the public interest.

ARSD § 20:10:32:43.07 provides that:

[p]rior to designating an eligible telecommunications carrier, the commission shall determine that such designation is in the public interest. The commission shall consider the benefits of increased consumer choice, the impact of multiple designations on the universal service fund, the unique advantages and disadvantages of the applicant's service offering, commitments made regarding the quality of the telephone service provided by the applicant, and the applicant's ability to provide the supported services throughout the designated service area within a reasonable time frame. In addition, the commission shall consider whether the designation of the applicant will have detrimental effects on the provisioning of universal service by the incumbent local exchange carrier. If an applicant seeks designation below the study area level of a rural telephone company, the commission shall also conduct a creamskimming analysis that compares the population density of each wire center in which the applicant seeks designation against that of the wire centers in the study area in which the applicant does not seek designation. In its creamskimming analysis, the commission shall consider other factors, such as disaggregation of support pursuant to 47 C.F.R. § 54.315 (January 1, 2006) by the incumbent local exchange carrier.

In this case, the requested designation essentially provides a replacement ETC designation from Bluepeak to Bluepeak BTS and Bluepeak ABS, instead of seeking an additional designation within the designated service area. This is particularly true in the areas in which Bluepeak has served as the ILEC, and no evidence has been presented that granting the requested ETC transfer and new designation will have a detrimental effect on either the universal service fund, or in provisioning of universal service by the incumbent local exchange carrier. Further, given Applicant's commitment to maintain current operations, management, and rates and provide the same services as Bluepeak currently provides, while pursuing additional opportunities to expand its fiber networks, it appears granting the ETC transfer to Bluepeak BTS and granting a new ETC designations may provide enhanced service options in the service area.

²⁰ See Application page 17, section 6.

²¹ See Applications page 18, section 8.

Approval of Bluepeak's Request to Relinquish ETC Designation

ARSD § 20:10:32:48 provides the commission may permit a telecommunications company to relinquish its eligible telecommunications carrier designation if at least one other eligible telecommunications carrier serves the area for which the relinquishment is sought, that the petitioning telecommunications company shall continue to meet its eligible telecommunications carrier obligations for the entire area for which it seeks to relinquish those obligations until the date specified in the commission's order approving the relinquishment, and that each customer served by the relinquishing carrier continues to be served, and receive sufficient notice of the relinquishment to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier.

In this case, Bluepeak requests to relinquish its eligible telecommunications designation. This request is coupled with the approval the designation of Bluepeak BTS and Bluepeak ABS as eligible telecommunications carriers. It is Staff's understanding that the designations of Bluepeak BTS and Bluepeak ABS will cover the entire area in which Bluepeak holds ETC designation, and that these new entities will be able to serve all of Bluepeak's customers in the area.

Subject to the Commission's approval of ETC designation to Bluepeak BTS and Bluepeak ABS, Staff recommends the commission grant Bluepeak's request for relinquishment upon closing of the asset transfer to Bluepeak BTS and Bluepeak ABS, and subject to the condition that Bluepeak provide written notice of the impending relinquishment to customers and the other ETC providers in the area within 30 days of the Commission's Order.

Approval of Transfer of Bluepeak's Tariffs to Bluepeak BTS and Approval of New Tariffs for Bluepeak ABS

Applicant further requests approval of any amendment to the South Dakota Access Tariff of Bluepeak to reflect that Bluepeak BTS and Bluepeak ABS will operate under these tariffs. SDCL 49-31-12 through 12.8 provide for the filing and approval of proposed new and amended tariffs. It is Staff's understanding that the only changes to the tariff will be the applicable name changes, and that all rates and other content will remain unchanged, and therefore Staff recommends approval of the tariffs.

Conclusion

After review of each request Applicant made in the Application, Staff recommends the Commission Approve the transfer of Bluepeak's Certificates of Authority to provide local and interexchange services to Bluepeak BTS, subject to the furnishing of a bond, or the condition that the company not offer any prepaid services including calling cards and not accept or require any deposits or advance payments without prior approval of the commission; approve new Certificates of Authority to Bluepeak ABS to provide local and interexchange services as requested and subject to the furnishing of a \$25,000 bond or the condition the company not offer any prepaid services including calling cards and not accept or require any deposits or advance payments without prior approval of the commission; approve the Transfer of Bluepeak's Tariff's to Bluepeak BTS, with updates to the company name; and approve new Tariff for Bluepeak ABS.

Staff respectfully defers to the Commission regarding the determination whether the requested asset transfers protect the public interest, but Staff has no objection to the Commission approving the transfer. Staff also defers to the Commission as to whether the transfer of Bluepeak's ETC designation to Bluepeak BTS and granting a new ETC designation to Bluepeak ABS is in the public interest, however, it

appears Applicants have met the other requirements to be granted ETC designation and Staff has no objection to such action. If the Commission does grant the requested ETC designations, Staff recommends granting Bluepeak's request to relinquish its ETC designation upon closing of both requested asset transfers, and subject to the requirement that Bluepeak provide written notice of the impending relinquishment to customers and other ETC providers in the service area within 30 days of the Commission Order.