

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

**IN THE MATTER OF THE JOINT APPLICATION)
OF CLARITY TELECOM, LLC DBA BLUEPEAK)
AND CERTAIN SUBSIDIARIES FOR APPROVAL)
OF ASSET TRANSFER, REQUEST FOR)
ELIGIBLE TELECOMMUNICATIONS CARRIER)
DESIGNATION, AND REQUEST FOR)
RELINQUISHMENT OF ELIGIBLE)
TELECOMMUNICATIONS CARRIER)
DESIGNATION)
)**

FINAL ORDER

TC25-034

On August 4, 2025, the South Dakota Public Utilities Commission (Commission) received an Application by Clarity Telecom, LLC dba Bluepeak (Bluepeak or Applicant) and Certain Subsidiaries for approval of: the pro forma asset transfer to transfer assets to two new wholly owned subsidiaries, Bluepeak BTS and Bluepeak ABS (jointly, Applicants); the request to transfer Bluepeak's Certificate of Authority to provide local and interexchange services to Bluepeak BTS; the request for a new Certificate of Authority to provide local and interexchange services to Bluepeak ABS; the request to relinquish Bluepeak's Eligible Telecommunications Carrier (ETC) designation and grant new ETC designation to Bluepeak BTS and Bluepeak ABS and to approve associated tariff pages. The requests all arise from a series of related, internal transfers of assets between Bluepeak and its wholly owned subsidiaries Bluepeak BTS and Bluepeak ABS.

On August 7, 2025, the Commission electronically transmitted notice of the filing and the intervention deadline of August 22, 2025, to interested individuals and entities on the Commission's PUC Weekly Filings electronic listserv. The Commission published notice of this docket in the newspapers of general circulation in each county in which Applicant provides service pursuant to SDCL 49-31-59.

Bluepeak submitted responses to staff's data requests of September 26, and October 9, 2025. On November 5, 2025, staff filed a memorandum. This matter came before the Commission on November 6, 2025, at which time the Commission deferred the matter, by order dated November 13, 2025, requesting Applicant provide additional information. On November 12, 2025, Bluepeak filed a supplemental response to questions raised by commissioners at the November 6, 2025, commission meeting. In its November 12 filing, Applicant also requested a limited waiver of ARSD 20:10:32:43.02.

The Commission has jurisdiction over this matter pursuant to 47 U.S.C. § 214(e), 47 C.F.R. § 54.201, and SDCL chapter 49-31, specifically including but not limited to 49-31-3, 49-31-59, 49-31-69, 49-31-70, 49-31-71, and 49-31-78.

At its regularly scheduled meeting of November 18, 2025, the Commission considered each of the requests. Commission Staff recommended the Commission approve the requests, subject to the conditions that, for retail purposes Bluepeak BTS and Bluepeak ABS not offer any prepaid services including prepaid calling cards and not accept or require any deposits or advance

payments without prior approval of the Commission or post a \$25,000 bond and be subject to rural safeguards.

The Commission unanimously voted to grant, subject to the condition that Bluepeak file specific maps within one month of the Commission's order¹, Bluepeak's Application and approve the pro forma asset transfer, grant the transfer of Bluepeak's Certificate of Authority for local and interexchange services to Bluepeak BTS, grant a Certificate of Authority for local and interexchange services to Bluepeak ABS, approve the relinquishment of Bluepeak's Eligible Telecommunications Carrier designation, and grant Eligible Telecommunications Carrier designations to Bluepeak BTS and Bluepeak ABS, with the clarification that the designations for the Sioux Falls and Vermillion areas are Lifeline-only; and that the Commission grant the waiver of ARSD 20:10:32:43.02, as requested and approve the associated switched access tariffs.

GENERAL FINDINGS

A. Transfer of Assets

SDCL 49-31-59 sets forth the criteria for a sale or transfer of assets. The statute requires the Commission to "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."

This transfer is a *pro forma* transfer to wholly owned indirect subsidiaries of Applicant.

Applicant has been providing telecommunication services as an incumbent local exchange carrier and competitive local exchange carrier for over a decade.

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.²

With respect to protection of the public interest, the Commission finds that Applicant, as the parent company, will manage and control Bluepeak BTS and Bluepeak ABS. Applicant will continue to manage the network by entering into management contracts with Bluepeak ABS and Bluepeak BTS.³ Therefore, service quality and continuity of service will not be affected. The Commission finds that there will be no discontinuance, reduction, or impairment of any of the services currently offered by Applicant.

BTS and ABS will provide services under the same rates for local service as Bluepeak has been providing.⁴

Therefore, with respect to the reasonableness of rates for local service, the Commission

¹ The Commission notes that these maps were filed on November 21, 2025. Therefore, this condition had been satisfied.

² See, Application at page 6.

³ See November 12 filing at page 1.

⁴ See Application at page 18, Section VI.

finds that there will be no change in rates for local telephone service resulting from this transfer of assets.

With respect to the payment of taxes, Applicant will be subject to the same methods of calculating and paying taxes to the State of South Dakota as those to which Applicant is currently subject.⁵ Bluepeak BTS and Bluepeak ABS have each obtained SD and Federal tax numbers, for the payment of applicable taxes.⁶

Therefore, there has been no showing that there will be an impact to the payment of taxes.

After consideration of the criteria set forth in SDCL 49-31-59 and the information presented in this docket, the Commission finds that Applicants have shown that the sale is in the public interest.

B. Certificates of Authority and Switched Access Tariffs

SDCL 49-31-3 and 49-31-69 require a telecommunications company to obtain a certificate of authority in order to provide telecommunications services in this state.

Applicant currently holds local exchange and interexchange certificates of authority (COA) from this Commission. Applicant requested to transfer its current local and interexchange COAs to Bluepeak BTS.⁷ In addition, in this Application, Bluepeak ABS is applying for a new COA to provide resold and facilities-based local exchange and interexchange services in this state.⁸

Applicants filed in the docket on November 12, 2025, a map of the proposed service area for Bluepeak BTS and Bluepeak ABS.⁹

Because the relevant COAs will be transferred to Bluepeak BTS along with Applicant's existing switched access tariff, the Commission finds there is good cause to approve of the request to amend the existing tariff language to reflect the name change to Bluepeak BTS. Specifically, the amended tariffs are Applicant's Tariff No. 1, Tariff No. 2, and Tariff No. 3.¹⁰

Bluepeak ABS seeks to serve the Vermillion and Sioux Falls CLEC areas.¹¹

The Commission finds that Bluepeak ABS has met the legal requirements established for the granting of a COA. The Commission also finds that Bluepeak ABS has demonstrated sufficient technical, financial, and managerial capabilities to offer telecommunications services in South Dakota.

Applicant clarified in its November 12 Response that Bluepeak ABS proposes to adopt

⁵ See Application at page 7.

⁶ See Applicant's Supplemental Response to Staff Data Request 1-3.

⁷ See Application at page 8.

⁸ Id.

⁹ See Applicant's Exhibits 3-4 of November 12 filing.

¹⁰ See Applicant's November 12 Response at page 5.

¹¹ See Id. at page 3.

Bluepeak's intrastate switched access tariff for the Sioux Falls and Vermillion CLEC territory, Tariff No. 3.¹² The Commission finds there is good cause to approve of the switched access tariff for Bluepeak ABS.

C. Eligible Telecommunications Carrier designations and relinquishment.

Through its November 12 Response, Applicant clarified that Bluepeak BTS seeks ETC designation for the proposed service areas shown in the map filed as Exhibit 2 to the November 12 filing. This includes all of the Bluepeak's ILEC territory, all of Bluepeak's CLEC territory in western South Dakota, and Bluepeak's CLEC territory in eastern South Dakota excluding Sioux Falls and Vermillion. Bluepeak BTS seeks Lifeline-only designation in the CLEC areas of eastern South Dakota.¹³

Bluepeak filed two-year and five-year plans as part of its annual Universal Service certification request in Docket No. TC25-030 for study area codes 391652 (ILEC) and 399006 (CLEC)). In this docket, Bluepeak BTS has committed to assuming all of Bluepeak's buildout obligations, including those detailed in Docket No. TC25-030.¹⁴

ARSD 20:10:32:43.02 requires new ETC applicants to detail expected improvements in service quality and provide timelines. Because this information was provided in Docket No. TC25-030 and Bluepeak BTS has adopted those commitments, Applicant seeks a limited waiver of this rule. The Commission finds that the waiver is appropriate.

The Commission finds that with respect to Bluepeak BTS, the request for ETC designation is unique in that it involves a designation substantially similar to that of the existing Bluepeak ETC designation. Therefore, the transition will be seamless and there will be no discontinuance, reduction, or impairment of any services currently offered by Applicant. The Commission finds that the ETC designation of Bluepeak BTS is in the public interest.

Bluepeak ABS seeks designation as a Lifeline-only ETC in the Sioux Falls and Vermillion areas.¹⁵ These areas are not part of the Bluepeak's existing ETC designations.

In order to be designated a Lifeline-only ETC, a carrier must offer voice telephony service or broadband Internet access service as the supported service, using its own facilities or a combination of its own facilities and resale of another carrier's services, throughout the service area for which the designation is received and advertise the availability of, and the charges for, those services throughout the service area. 47 U.S.C. § 1214(e); 47 C.F.R. § 54.401 (a)(2). Bluepeak ABS is a facilities-based provider with network assets consisting of fiber cables, associated conduits, wires, poles, other outside plant facilities, and the equipment to operate the network.¹⁶

The Federal Communications Commission (FCC) has designated the following voice telephony services for support by federal universal service support mechanisms: (1) voice grade access to the public switched network or its functional equivalent; (2) minutes of use for local

¹² Id.

¹³ Id. at page. 4.

¹⁴ Id. at page 3.

¹⁵ Id.

¹⁶ Id. at page 2.

service provided at no additional charge to end users; (3) access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and (4) toll limitation services to qualifying low income consumers. 47 C.F.R. § 54.101 (a). Bluepeak ABS has committed to providing the supported services.

The carrier must also advertise the availability of such services and the charges for the services using media of general distribution. 47 U.S.C. § 214(e)(1)(B). Applicant committed in its Application to satisfying this requirement.¹⁷ The Commission finds that Applicant has demonstrated that it will meet the advertising requirement.

Pursuant to ARSD 20:10:32:43.01, an applicant for ETC status must commit to providing service to customers making a reasonable request for service in the service area. Applicant has not requested a waiver of this rule. The Commission finds that Applicant will satisfy this requirement.

Pursuant to ARSD 20:10:32:43.03, an applicant must demonstrate its ability to remain functional in emergency situations including a demonstration that it has a reasonable amount of back-up power to remain functional in emergency situations without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations. In its Application, Bluepeak ABS and Bluepeak BTS committed to providing the same emergency capabilities as currently offered by Bluepeak. Therefore, the Commission finds that Applicant has satisfied this requirement.

Pursuant to ARSD 20:10:32:43.04, an applicant must demonstrate that it will satisfy applicable consumer protection and service quality standards. In its Application, Bluepeak has committed to satisfying this requirement.¹⁸

In order to designate an applicant as an ETC, the Commission must determine whether such designation is in the public interest pursuant to ARSD 20:10:32:43.07. The Commission finds that the designation of Bluepeak ABS as a Lifeline-only provider in the Sioux Falls and Vermillion CLEC areas is in the public interest. As a Lifeline-only ETC it would serve the needs of low-income customers by increasing customer choice and offering a zero-cost option for Lifeline customers. After evaluating the public interest considerations, the Commission finds that the designation of Bluepeak ABS will bring the benefits of increased consumer choice and it has committed to providing quality services to the designated service area. The Commission finds the designation of Bluepeak ABS as a Lifeline-only ETC is in the public interest.

Pursuant to 47 C.F.R. § 54.201 (h), a state commission may not designate a Lifeline-only ETC "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." Based upon the filings in the docket and representations made by Applicant on the record at the Commission meetings, as well as the Commission's familiarity with the parent company as previously stated, the Commission finds that Bluepeak ABS has demonstrated that it is financially and technically capable of providing the supported Lifeline service in compliance with subpart E.

¹⁷ See Application at page 16.

¹⁸ Id. at 17.

In conjunction with the requests for ETC designation of Bluepeak BTS and Bluepeak ABS, Applicant has requested to relinquish the existing ETC designations of Bluepeak. Pursuant to ARSD 20:10:32:48, 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." In addition, the carrier requesting relinquishment "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."

Because the Commission, through this Order, has approved of the ETC designation of Bluepeak BTS, which includes all commitments made in Docket No. TC25-030, the Commission finds that all customers will continue to be served and that the transition will be seamless.

ORDER

As the Commission's final decision in this matter, it is therefore

ORDERED, that the *pro forma* asset transfer of assets from Bluepeak to two new wholly owned subsidiaries, Bluepeak BTS and Bluepeak ABS is hereby approved. It is further

ORDERED that the request to transfer Bluepeak's Certificate of Authority to provide local and interexchange services to Bluepeak BTS is hereby granted. It is further

ORDERED that the request for a new Certificate of Authority to provide local and interexchange services to Bluepeak ABS is hereby granted, subject to all rural safeguards. It is further

ORDERED, that the request to amend the switched access tariffs to reflect the name of Bluepeak BTS is hereby granted and those tariffs are granted as part of the *pro forma* asset transfer. It is further

ORDERED, that the request for approval of the switched access tariff of Bluepeak ABS is hereby approved. It is further

ORDERED, that Applicant's request for a waiver of ARSD 20:10:32:43.02 is granted and the request to designate Bluepeak BTS and Bluepeak ABS as Eligible Telecommunications Carriers as detailed in this Order is hereby granted. It is further

ORDERED, that Applicant's request to relinquish the existing Eligible Telecommunications Carrier designations for Bluepeak is hereby granted. It is further

ORDERED, that this order constitutes Bluepeak BTS's Certificate of Authority as described above. It is further

ORDERED, that this order constitutes Bluepeak ABS's Certificate of Authority as described above.

Dated at Pierre, South Dakota, this 26th day of November 2025.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically.

By: Anthony M. Reiss

Date: 11/26/2025

BY ORDER OF THE COMMISSION:

Chris Nelson

CHRIS NELSON, Chairman

Kristie Fiegen

KRISTIE FIEGEN, Commissioner

Gary Hanson

GARY HANSON, Commissioner