

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application	)	Application No. C-3469
of Budget Phone, Inc.,	)	
Shreveport, Louisiana, seeking	)	GRANTED
Designation as an Eligible	)	Entered: February 22, 2006
Telecommunications Carrier (ETC)	)	
in the state of Nebraska.	)	

APPEARANCES:

For the Applicant:  
Deonne Bruning  
2901 Bonacum Drive  
Lincoln, NE 68502

For the Intervenor:  
James Overcash  
Woods & Aitken LLP  
301 South 13<sup>th</sup> Street  
Suite 500  
Lincoln, NE 68508

For the Commission:  
Nichole Underhill  
300 The Atrium  
1200 N Street  
Lincoln, NE 68508

BY THE COMMISSION:

On August 16, 2005, an application was filed with the Nebraska Public Service Commission (Commission) by Budget Phone, Inc., Shreveport, Louisiana (Budget or Applicant), seeking designation as an Eligible Telecommunications Carrier (ETC) so it may receive federal universal service support. Notice of this application was published in The Daily Record, Omaha, Nebraska, on August 19, 2005. A Petition of Formal Intervention was timely filed by the Rural Independent Companies (RIC)<sup>1</sup>.

A hearing on the application was held on January 31, 2006, in the Commission Hearing Room, Lincoln, Nebraska. Appearances at the hearing are indicated above.

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<sup>1</sup> RIC is composed of the following companies: Arlington Telephone Company, Blair Telephone Company, Cambridge Telephone Co., Clarks Telephone Co., Consolidated Telephone Company, Consolidated Telco Inc., Consolidated Telcom, Inc., Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K & M Telephone Company, Inc., Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telephone Co., Inc., and Three River Telco.

## E V I D E N C E

In support of its application the Applicant presented one witness, Ronald Munn, Director of Regulatory and Revenue Assurance for Budget. Applicant offered into evidence Exhibit No. 3 an amended application, which was received into evidence without objection. Mr. Munn testified to one change to the amended application. Budget asked to strike any reference to Nebraska ETC status. Budget intends to only apply for federal ETC designation at the present time.

Mr. Munn testified that Budget is unique among common carriers as Budget operates on a pre-paid basis, offering service to primarily credit impaired consumers. Budget offers service to customers that otherwise would most likely not be able to receive telephone service due to their inability to pass a credit check. According to Mr. Munn, Budget provides service without credit checks, deposits, or contracts. Budget customers receive service on a month-to-month basis. Mr. Munn indicated that he had read the Commission ETC interim policy set forth in Docket No. C-3415 and expressed Budget's willingness to abide by the Commission rules.

Applicant next offered Exhibit No. 5, Budget's five-year plan, which was received into evidence with no objection. Budget's five-year plan is divided into three phases corresponding to three geographical areas in Nebraska designated zones one, two and three. Zone one corresponds with the high population density areas in Qwest's service area; zone two with medium density areas and zone three consists of the smallest wire centers in rural exchanges, or the low-density areas. Budget's plan is to launch phase one in the fall of 2006. Zone two improvements are to commence in 2007 and zone three improvements are scheduled to begin in 2008. Mr. Munn testified that Budget would be willing to accelerate deployment in Zone 3 if the Commission desired and would work with the Commission as far as timing of deployment of all three phases in all three zones.

Finally, Mr. Munn testified Budget provides service in over 40 states to approximately 150,000 customers. Budget takes pride in offering telephone service to customers who would most likely not have any telephone service if not for Budget.

Upon cross-examination by Mr. Overcash, Mr. Munn testified that Budget offers a basic dial tone plan that doesn't have any custom calling features. Customers have the option to add different features. Budget's basic plan costs customers \$29.95 per month. Mr. Munn further testified on cross-examination that Budget is currently serving 101 customers in Nebraska, all in zone one.

During cross examination by Ms. Underhill, Mr. Munn indicated he was aware that the Lifeline and Link-up programs in Nebraska are under one program entitled the Nebraska Telephone Assistance Program or NTAP, which is governed by the Nebraska Universal Service Fund (NUSF) Department. Mr. Munn testified that Budget had encountered state specific requirements in other states and follows those state requirements. Mr. Munn further indicated that Budget would abide by Nebraska's state specific rules and regulations.

Upon questioning by Commissioner Boyle, Mr. Munn testified that the monthly \$29.95 basic plan includes unlimited local usage. In response to questions on plan specifics by Commissioner Rod Johnson, Mr. Munn explained that Budget has local agents that sign up customers on a month-to-month basis. Customers then receive a bill reminding them that their service will end if next month's payment is not received by a certain date. Applicant encourages customers to pay the local agent to extend their service instead of remitting through the mail; however, money paid via mail is accepted.

Mr. Munn testified that Budget has its own call center for customer service staffed by trained Budget employees and is committed to customer service. Mr. Munn went on to testify that the basic plan offered by Budget includes toll blocking except for 800 numbers allowing customers to use pre-paid long distance calling cards. Budget does not restrict interexchange traffic. Budget also offers a deluxe plan, which offers customers different options including long distance service.

Upon further cross examination by Commissioner Rod Johnson, Mr. Munn stated that service is not immediately cut off from a customer if payment is not received exactly on the due date. A fifteen-day grace period is given to all customers. After that period, if payment is still not received, the service is suspended and not finally disconnected entirely until five days later.

## O P I N I O N     A N D     F I N D I N G S

Budget was granted a Certificate of Public Convenience and Necessity to provide local exchange and interexchange telecommunications services in Application No. C-2771 on September 11, 2002. According to its application, Budget seeks ETC status for the areas in which it has been certificated as a local exchange carrier in Application No. C-2771. Accordingly, Budget seeks federal ETC designation only in areas served by Qwest Corporation.

Section 214(e) of the Telecommunications Act of 1996 (the Act) initially set forth the standards and processes for a state commission to grant carriers the designation of eligible telecommunications carrier. The three general requirements listed in Section 214(e) are that: (1) the carrier must be a common carrier; (2) the carrier must offer the "services" that are supported by the federal fund; and (3) the carrier must advertise the availability of those services. In addition, the carrier must fulfill these criteria throughout the service area for which the designation is received.

The "services" supported by the federal fund as provided by 47 C.F.R. § 54.101(a) are as follows:

- a. Voice-grade access to the public switched telephone network;
- b. Local usage;
- c. Dual tone multi-frequency signaling or its functional equivalent;
- d. Single-party service or its functional equivalent;
- e. Access to emergency services;
- f. Access to operator services;
- g. Access to interexchange service;
- h. Access to directory assistance;
- i. Toll limitation for qualifying low-income consumers.

Budget provided evidence that it will fulfill the requirements of 47 C.F.R. § 54.101(a) and confirmed that it will provide all of the above-referenced services. Further, Budget demonstrated it would offer the above-mentioned supported services via its own facilities in combination with resale of another carrier's services. The Applicant intends to offer supported services through the use of switched port/loop combination unbundled network elements (UNEs). The Federal Communications Commission (FCC) has defined "own facilities" to include facilities obtained as UNEs in 47 C.F.R. § 54.201(f).

Budget confirmed it would participate in and offer Lifeline and Link-Up programs and publicize such availability in a manner reasonably calculated to reach those most likely to qualify for the services. Budget currently advertises the supported services and corresponding charges through various media of general distribution including television, print ads, and marketing at targeted retail locations. Budget confirmed that it would continue advertising supported services using media of general distribution if they are designated as an ETC in Nebraska.

The initial requirements for ETC designation under the Act were supplemented and clarified by the FCC in its March 17, 2005 Report and Order. The Commission adopted the initial and supplemental requirements as interim policy guidelines to receive ETC designation for federal support in Nebraska in Docket No. C-3415 on June 28, 2005.

Commission guidelines under Docket No. C-3415 require in addition to the three listed above that an applicant:

- a. Demonstrate its ability and willingness to provide supported services;
- b. Commit to providing supported services throughout its designated area to each customer requesting such service within the designated area and reasonably outside the service area;
- c. Submit a five-year plan;
- d. Demonstrate its ability to remain functional in emergency situations;
- e. Demonstrate it will satisfy applicable consumer protections and service quality standards;
- f. Demonstrate it offers a local usage plan comparable to one offered by the incumbent Local Exchange Carrier (LEC);
- g. Certify to the Commission that it is aware it may be required by the FCC to provide equal access to long distance carriers.

Applicant offered evidence that it had negotiated and executed agreements with the incumbent LEC, Qwest, to allow Budget to provide supported services to all requesting customers within the requested designation area. Such agreements demonstrate the Applicant's commitment and ability to provide supported services throughout the designated area.

The Commission guidelines set forth in Docket No. C-3415 require applicants to submit five-year plans detailing 1)

improved coverage; 2) the projected start and completion dates for each improvement and estimated investment for each; 3) the specific geographic areas for each improvement; and 4) the estimated population that will be served as a result of such improvements. Budget submitted a five-year plan outlining all of the above-mentioned requirements. We find Budget's five-year plan to be sufficiently detailed to meet the requirements of our guidelines.

The Applicant provided evidence of its ability to remain functional during emergency situations. Budget leases UNEs from Qwest, therefore, it provides its customers with the same protections as Qwest, including back-up power, rerouting of traffic around a damaged facility, and the capability to manage traffic spikes. Budget, through its agreements with Qwest, provides these same services to its customers.

The Applicant confirmed its intention of meeting consumer protection and service quality standards by committing to the Commission to comply with all applicable Nebraska statutes and rules and regulations of the Commission regarding the filing of reports including consumer complaints report, the annual ETC report, and reports on any outages lasting over 30 minutes in duration.

Budget provided evidence of its local usage plans and provided rates and plan comparisons to the LEC. Budget currently offers residential basic flat rate local exchange service. We find that the Applicant offers comparable local usage plans as the incumbent LEC.

Applicant acknowledges that the FCC may require the Applicant to provide equal access to long distance carriers if no other ETC is providing access in the designated areas.

Budget indicated that its designation as an ETC would be consistent with the public interest, convenience, and necessity. We find the increased consumer choice and Applicant's unique pre-paid services meet this requirement. Applicant's business will meet the needs of arguably an underserved population in Nebraska, specifically those with credit problems or an inability to commit to a long-term contract for services or pay a deposit up front to secure such service.

The Applicant is not seeking a designation as an ETC in areas served by a rural telephone company and will only offer supported services in Qwest territory in what is classified as non-rural areas. Consistent with the interim guidelines, the Commission finds it does not need to perform an analysis on

increased consumer choice. The Commission does not have any concerns regarding cream skimming here.

Applicant has demonstrated that it meets the standards set forth in 47 U.S.C. § 214(e), the supplemental requirements set out in the FCC's March 17, 2005 Report and Order and adopted by the Commission in Docket No. C-3415, and applicable federal law for the designation of eligible telecommunications carriers in the proposed geographic area.

However, this granting of ETC designation does not trigger qualification for NUSF support. Prior to receiving NUSF support, Applicant must have applied for a designation as a Nebraska eligible telecommunications carrier (NETC).

Finally, the Commission has jurisdiction and authority to ensure that Budget continues to meet the ETC criteria set forth in Section 214(e) of the Act and Docket No. C-3415. Nothing prevents the Commission from, on its own motion, modifying, suspending, or revoking Budget's ETC designation if it at any time fails to meet the obligations of the Act, applicable federal rules, Commission rules and regulations, or if it fails to provide the supported services within a reasonable time frame.

#### O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the application of Budget Phone, Inc., to be designated as an Eligible Telecommunications Carrier shall be, and is hereby, granted.

IT IS FURTHER ORDERED that Budget Phone, Inc., shall file information with the Commission evidencing it is advertising through media of general distribution on or before July 1st each year hereafter.

IT IS FURTHER ORDERED that Budget Phone, Inc., is hereby declared to be an Eligible Telecommunications Carrier for the purpose of receiving federal universal service support in the areas served by Qwest Corporation.

IT IS FURTHER ORDERED that Budget Phone, Inc., will need to file a separate application and receive a designation by the Commission as a Nebraska Eligible Telecommunications Carrier in order to be eligible for state universal service support.

MADE AND ENTERED at Lincoln, Nebraska this 22<sup>nd</sup> day of February, 2006.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director