

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-4507/NUSF-82
of Budget Prepay, Inc. d/b/a)
Budget Mobile, Bossier City,) GRANTED
Louisiana, seeking a limited)
designation as a Lifeline-Only)
Eligible Telecommunications)
Carrier within the State of) Entered: February 20, 2013
Nebraska.

APPEARANCES:

For the Applicant:

Loel Brooks
Brooks, Pansing Brooks
984 Wells Fargo Center
Lincoln, NE 68508

For the Commission:

Shana Knutson
300 The Atrium
1200 N Street
Lincoln, NE 68508

BY THE COMMISSION:

On August 3, 2012 an application was filed by Budget Prepay, Inc. d/b/a Budget Mobile ("Budget" or "Applicant"), of Bossier City, Louisiana, seeking designation as an Eligible Telecommunications Carrier (ETC) so it may receive available support from the federal and Nebraska universal service funds for the Lifeline and Nebraska Telephone Assistance Programs. Notice of this application was published in the Daily Record, Omaha, Nebraska, on August 8, 2012. No other party protested the application or filed a Petition seeking Formal Intervention.

A hearing on the application was held on December 18, 2012, in the Commission Hearing Room, Lincoln, Nebraska. Appearances at the hearing are indicated above. Budget presented one witness in support of its application.

Summary of Testimony and Evidence

Budget, a Louisiana corporation headquartered in Bossier City, was formed in 1996. Budget stated it is a common carrier that provides digital wireless services. Budget provided a copy of its registration to do business in the State of Nebraska.

Budget presented one witness, David Donahue, Chief Financial Officer for Budget, who described how Budget satisfies each of the applicable federal and state prerequisites for designation as a competitive ETC for Lifeline, known in Nebraska as the Nebraska Telephone Assistance Program (NTAP), services throughout the Company's requested service areas in Nebraska. Budget is not seeking eligibility for high-cost support from the state or federal universal service funds.

Budget's application and witness testimony provided that Budget provides digital wireless service on a common carrier basis, offering customers unlimited calling at flat rates without requiring a fixed-term contract. Budget's Lifeline customers will be able to choose between a free plan and a plan that provides 4,000 combined texts and minutes. Budget will provide its services by resale of Sprint's and Verizon Wireless' underlying services.

Budget stated it does not charge an activation fee and does not require customers to sign long-term contracts. A free handset is provided, and its service offerings include a variety of telephone features at no additional charge, including caller ID, call waiting, and voicemail. Budget stated its customers are never obligated to pay for a period of service that exceeds 30 days.

Budget further stated it provides service to hundreds of thousands of wireless customers. To date, Budget has been designated as a low-income wireless ETC in 25 states including: Arizona, Arkansas, Colorado, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Nevada, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Washington, West Virginia, Wisconsin and Wyoming.

Budget seeks a Lifeline-only ETC and NETC designation in the Nebraska non-rural wire centers listed in the appendix to this order. Budget does not seek a designation for high-cost support.

Budget stated that it satisfies all of the applicable requirements for ETC and NETC designation in Nebraska. Budget demonstrated it is a common carrier as defined by the FCC and provides all of the services and functionalities supported by the universal service program. Budget also committed to advertise the availability of these services using media of general distribution. Finally, Budget agreed to comply with Nebraska-specific ETC and NETC requirements including but not limited to audit and reporting requirements.

Budget has obtained forbearance of the facilities requirement by meeting the requisite criteria laid out by the

FCC.¹ On May 1, 2012, Budget submitted a Compliance Plan with the FCC in WC Docket No. 09-197 and WC Docket No. 11-42.² The Compliance Plan details the verification, certification and other anti-fraud measures Budget will take to comply with state and federal requirements and ensure that Lifeline support is provided only to consumers who are truly eligible. Budget's Compliance Plan was submitted as Exhibit 1 to Budget's application. On May 25, 2012, the FCC issues a Public Notice that it had approved Budget's Compliance Plan.

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

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.

In its *Lifeline Reform Order*, the FCC revised 47 C.F.R. § 54.101(a) to read as follows:

- (a) Services designated for support. Voice telephony services shall be supported by federal universal service support mechanism. Eligible voice telephony services must provide voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911 systems. . .; and toll limitation to qualifying low-income consumers as provided in subpart E of this part.³

¹ See *In the Matter of Lifeline and Link UP Reform and Modernization*, WC Docket Nos. 09-197 and 11-42 (rel. Feb. 6, 2012) (*Lifeline Reform Order*).

² See Budget Prepay, Inc. Compliance Plan, WC Docket Nos. 09-197 and 11-42 (filed May 1, 2012).

³ 47 C.F.R. § 54.101(a) (April 2, 2012).

Federal law also requires the Commission to determine that the ETC is financially and technically capable⁴ of providing the supported Lifeline service and that the designation of an ETC would be consistent with the public interest.⁵ 47 U.S.C. § 214(e)(2). The FCC offered additional guidance on the public interest question through its past decisions.⁶

To implement the forgoing federal requirements and FCC guidance, the Commission has adopted regulations governing the application process and ETC designation requirements in the State of Nebraska ("ETC designation rules"). The Commission's ETC designation rules are found at Neb. Admin. Code, Title 291, Ch. 5, §§ 009.01-009.02C. The Commission's annual reporting rules are codified at Neb. Admin. Code, Title 291, Ch. 5, §§ 009.03-009.04B.

Common Carrier

Upon review of the Application and testimony presented, the Commission finds that Budget is a common carrier for purposes of ETC designation. The Act defines a common carrier as a person engaged as a common carrier on a for-hire basis in interstate communications utilizing either wire or radio technology. 47 U.S.C. § 153(10). The FCC's Rules also specifically provide that CMRS is a common carrier service. 47 C.F.R. § 54.20.9(a).

Supported Services

We further find that Budget has demonstrated the ability and commitment to provide the Supported Services listed above using its own network facilities or a combination of its own facilities and the resale of another carrier's services. Budget's Application states it will make service available to consumers through underlying carriers including Verizon, AT&T and Sprint. Budget also has switching infrastructure located in

⁴ See 47 C.F.R. § 54.201(h).

⁵ See 47 U.S.C. § 214(e)(2); see also 47 C.F.R. § 54.201(c).

⁶ See *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket 96-45, Memorandum Opinion and Order, FCC 03-338 (rel. Jan 22, 2004) ("Virginia Cellular"); *In the Matter of Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket 96-45, Memorandum Opinion and Order, FCC 04-37 (rel. April 12, 2004) ("Highland Cellular"); and *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, Report and Order, FCC 05-46 (rel. March 17, 2005) ("March 2005 Order").

Louisiana and Texas. All facilities are equipped with both AC and DC battery backup as well as generators. All critical equipment is supplied with two separate power sources, namely primary and redundant power feeds.

Voice Grade Access

Budget stated its subscribers will receive voice grade access. Budget will provide its customers with the ability to make and receive calls on the public switched telephone network.

Local Usage

Budget stated that it will provide its Lifeline customers with minutes of use for local service at no additional charge. Though Budget may eventually expand the number of Lifeline service plan options available to eligible Lifeline customers, Budget intends to initially offer qualifying customers an "active user talk & text" wireless plan that will provide 4,000 minutes of combined local usage and texting. Budget will also offer a 300 free minute local usage plan. We find that Applicant meets the local usage requirement.

Access to Emergency Services

The Applicant provided evidence of its ability to remain functional during emergency situations. Budget demonstrated that it was capable of delivering automatic numbering information (ANI) and automatic location information (ALI) over its existing network, and otherwise satisfies applicable Nebraska and federal E-911 requirements. Further, Budget stated it pays all applicable E-911 fees in a timely manner. Budget further provided it will continue to work with local public safety answering points (PSAPs) within its ETC service areas to make 911 and E-911 service available to its customers.

Toll Limitation

Budget will provide toll limitation services at no cost to qualifying low-income customers.

In sum, we find 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.

Advertising

We find that Budget has provided sufficient evidence of its commitments to advertise the availability of and charges for the Supported Services using media of general distribution. The Application provided that Budget will advertise through a combination of media channels such as television and radio, newspaper, magazine and other print advertisements, outdoor advertising, direct marketing, and the Internet.

Designated Service Areas

We find that Budget has properly identified the service areas in which it is requesting ETC designation. Budget seeks to be designated as an ETC throughout each of the non-rural telephone company service areas identified in Exhibit 7 to its Application for the purpose of receiving Lifeline/NTAP support only.

Provision of Service to Requesting Customers

Pursuant to Section 009.02A5 of the Commission's ETC designation rules, an Applicant must demonstrate its commitment to provide service throughout its designated service area to customers who make a reasonable request for service. Budget demonstrated it was capable of providing service and committed to providing service dedicated to support as defined in 47 C.F.R. § 54.101. We find Budget has sufficiently demonstrated its commitment to provide service throughout its designated service area to customers making a reasonable request for service.

Ability to Function During Emergencies

Pursuant to Section 009.02A7 of the Commission's ETC designation rules, applicants must demonstrate an ability to remain functional during emergency situations. Although this requirement applies to carriers seeking high-cost support which Budget is not, Budget demonstrated it satisfies this requirement. Budget maintains switching infrastructure in two locations. This network design is in an effort to eliminate a single isolated power incident from affecting traffic on Budget's network. Budget maintains a reasonable amount of back-up power to ensure the functionality of its service without an external power source, it able to re-route traffic and is capable of managing traffic spikes resulting from emergency situations.

Public Interest

Public interest considerations may include the benefits of increased consumer choice and the unique advantages of the Applicant's service offering. In support of this requirement, Budget stated that its designation will serve the public interest and the needs of low-income consumers. Further, Budget states it has specifically tailored its wireless service plans to the needs of underserved customers by offering a limited voice service for free and an expanded plan at affordable rates. Budget has adopted the CTIA Consumer Code for Wireless Service and has committed to using its best efforts to resolve complaints received by the Commission. In addition, Budget confirmed its intention of meeting consumer protection and service quality standards by committing to comply with all applicable Nebraska statutes and rules and regulations and paying all applicable federal, state, and local regulatory fees, including universal service and E-911 surcharges. Based on the particular facts before us, we find Budget's business plan provides a unique advantage to low-income consumers that would serve the public interest. We conclude Budget demonstrated that its designation as an ETC would be consistent with the public interest, convenience, and necessity.

Applicant has demonstrated that it meets the standards set forth in 47 U.S.C. § 214(e), the supplemental requirements set out in the *Lifeline Reform Order*, and applicable state and federal law for the designation of eligible telecommunications carriers in the proposed geographic area.

Lifeline Certification and Verification Requirements

The Commission utilizes a coordinated enrollment process to initially enroll and certify Lifeline/NTAP subscriber eligibility. The Commission maintains an agreement with the Nebraska Department of Health and Human Services (NDHHS) to determine whether a subscriber participates in a number of qualifying programs. In addition, all ETCs are required to utilize the Commission's NTAP Application form for the enrollment of potential subscribers. At the hearing, Budget committed to comply with the Commission's requirements relative to Lifeline/NTAP certification and verification. Budget will also be required, on a monthly basis, to provide the Commission with a list of all subscribers added or removed and a full report of all Lifeline/NTAP subscribers twice annually. Budget committed to following these requirements.

Past Noncompliance

We note that in the past, Budget Phone Inc. was found to be in violation of the Commission's rules for failure to timely file the required remittance worksheets and remittance payments to the Nebraska Universal Service Fund. An Order to Show Cause was filed by the Commission on January 15, 2008, followed by an Order Sustaining the Complaint on March 25, 2008 assessing a penalty of Five Thousand Dollars. In lieu of paying the penalty, on February 14, 2008, Budget Phone Inc. filed an application to withdraw its authority to operate as a local exchange and interexchange carrier of telecommunications services in the State of Nebraska. The Commission granted Budget Phone Inc.'s request to withdraw its authority on April 30, 2008 in Docket C-3912.

Subsequently, Budget has paid all penalties assessed to the company. Specifically, on November 8, 2012, Budget remitted payment of Five Thousand Dollars (\$5,000) in settlement of its existing penalties for the Company's prior wireline operations in the State.

Budget stated that it has internally reviewed this issue and states that it will respond to any complaints or inquiries from the Commission in a timely and professional manner and will take all steps necessary to address any problems with Budget's Nebraska operations that may arise in the future.

In consideration of the steps Budget has taken to resolve past compliance issues with the Commission, the Commission finds that Budget has appeared to make several changes which may result in more responsiveness to the Commission and adherence to its rules. The Commission therefore finds Budget should be designated as an ETC and NETC for Lifeline/NTAP purposes only. However, we caution Budget that any future violation will not be taken lightly. Any future violation of Commission rules, regulations or orders will be considered along with past violations and may constitute grounds for revocation of this designation.

Continuing Jurisdiction

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 the Commission's rules and regulations. 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 Prepay Inc. d/b/a Budget Mobile to be designated as an Eligible Telecommunications Carrier for the limited purpose of receiving low-income program (Lifeline/NTAP) universal service support shall be, and is hereby, granted.

IT IS FURTHER ORDERED that Budget Prepay Inc. d/b/a Budget Mobile 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 Prepay Inc. d/b/a Budget Mobile is hereby declared to be an Eligible Telecommunications Carrier for the purpose of receiving low-income program (Lifeline/NTAP) universal service support in the wire centers identified in **Appendix A** to this Order.

IT IS FINALLY ORDERED that Budget Prepay Inc. d/b/a Budget Mobile shall file a copy of this Order with the Universal Service Administrative Company ("USAC") and the FCC to commence its receipt of federal universal service support effective as of the date of this Order.

MADE AND ENTERED at Lincoln, Nebraska, this 20th day of February, 2013.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director

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 Prepay Inc. d/b/a Budget Mobile to be designated as an Eligible Telecommunications Carrier for the limited purpose of receiving low-income program (Lifeline/NTAP) universal service support shall be, and is hereby, granted.

IT IS FURTHER ORDERED that Budget Prepay Inc. d/b/a Budget Mobile 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 Prepay Inc. d/b/a Budget Mobile is hereby declared to be an Eligible Telecommunications Carrier for the purpose of receiving low-income program (Lifeline/NTAP) universal service support in the wire centers identified in **Appendix A** to this Order.

IT IS FINALLY ORDERED that Budget Prepay Inc. d/b/a Budget Mobile shall file a copy of this Order with the Universal Service Administrative Company ("USAC") and the FCC to commence its receipt of federal universal service support effective as of the date of this Order.

MADE AND ENTERED at Lincoln, Nebraska, this 20th day of February, 2013.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Tim Schram

Red [unclear]

Frank E. Landis

Anne C. Boyle

Chair

ATTEST:

Steve Meradith

Executive Director

//s//Anne C. Boyle
//s//Frank E. Landis