

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BUDGET PREPAY, INC. FOR) CASE NO.
DESIGNATION AS A NON-RURAL WIRELESS) 2011-00169
ELIGIBLE TELECOMMUNICATIONS CARRIER)

O R D E R

On May 10, 2011, Budget Prepay, Inc. d/b/a Budget Phone (“Budget Phone”), a Commercial Mobile Radio Service (“CMRS”) resale provider, filed an application under 47 U.S.C. § 214(e) seeking designation as an Eligible Telecommunications Carrier (“ETC”) to receive federal universal service support in Kentucky.¹ Budget Phone provides service using Sprint and Verizon as its underlying carriers.² Budget Phone seeks ETC designation only for the purposes of participation in the Lifeline Program. Budget Phone does not seek high-cost support.

The application states that: (1) Budget Phone meets all the requirements for designation as an ETC to serve the designated areas in the state of Kentucky;³ (2) Budget Phone requests designation throughout each of the designated areas within

¹ Budget Phone requests ETC designation throughout the areas served by BellSouth Telecommunications, Inc. d/b/a/ AT&T Kentucky, Cincinnati Bell Telephone Company, and Windstream Kentucky East, LLC. Application at 1.

² Budget Phone’s response to Commission Staff’s First Request for Information, No. 21.

³ Application at 3-11.

its service coverage;⁴ (3) in accordance with 47 U.S.C. § 214(e)(2), Budget Phone seeks to be designated as an ETC in non-rural wirecenters;⁵ and (4) designation of Budget Phone as an ETC for the designated areas served in Kentucky will serve the public interest.⁶

Budget Phone's "unlimited talk & text" wireless prepaid service provides unlimited local and domestic long distance calling, unlimited texting, caller ID, call waiting, and voicemail. Customers can add international long distance at \$5.00 intervals and data/pic packages for \$15.00. Customers will receive a free handset or can purchase an upgraded handset from Budget Phone. Service payments will be made at participating Budget Phone agent retail outlets frequented by low-income customers through the designated service area.⁷

The Free 250 prepaid service provides 250 minutes of local and domestic long distance calling, caller ID, call waiting and basic voicemail. Customers will receive a free handset or can purchase an upgraded handset from Budget Phone. Customers can add additional airtime in denominations and at the rates indicated below. Customers also can purchase international long distance at \$5.00 intervals, data/pic packages at \$15.00 and unlimited texting at \$10.00. Service payments will be made at participating Budget Phone agent retail outlets frequented by low-income customers through the

⁴ Id. at 3-4 and Exhibit A.

⁵ Id.

⁶ Id. at 11-13.

⁷ Id. at 14.

designated service area.⁸ The Free 250 plan will not provide roll-over minutes and does not allow texting. Budget Phone's Lifeline customers using the Free 250 plan will be able to send and receive text messages if they purchase a texting plan. A text will be equivalent to one minute of use.⁹ Minutes will not be deducted for 911 calls, but will be deducted for customer service calls. Budget Phone will provide free minutes for company-initiated text messages so there is no negative impact on customers.¹⁰

Budget Phone will offer Link-Up Service Assistance under the Link-Up program in the form of a reduction in the carrier's customary charge for commencing telecommunications service for a single telecommunications connection. Budget Phone's customary charge of \$60.00 for service will be reduced by half. Qualifying subscribers will have the option of deferring the reduced activation charge over a twelve-month period with no interest, allowing subscribers to obtain service without being required to pay any up-front fees to activate service with Budget Phone.¹¹

In an effort to prevent waste, fraud, and abuse of the program, Budget Phone has implemented the following non-usage policy: If no usage appears on a Lifeline Subscriber's account during any continuous 60-day period, Budget Phone shall promptly notify the customer that the customer is no longer eligible for Budget Phone's Lifeline service, subject to a 30-day grace period. During the 30-day grace period, the customer's account will remain active, but Budget Phone shall engage in outreach

⁸ Id.

⁹ Budget Phone's response to Commission Staff's First Request for Information at No. 22 and 23.

¹⁰ Id. at 24.

¹¹ Id. at 15 and 25.

efforts to determine whether the customer desires to remain on Budget Phone's Lifeline service. If the prepaid customer's account does not show any customer-specific activity during the grace period (such as making or receiving a voice call, receiving or sending a text message, downloading data or adding money to the account), Budget Phone shall deactivate Lifeline services for that customer.¹²

Budget Phone has stated in its responses to the Commission's data requests that it will submit to the Commission the Kentucky Universal Service Fund ("USF") fee and the Kentucky Telecommunications Relay Service and Telecommunications Access Program fees for each customer.¹³ Budget Phone also states that it will remit the statewide wireless 911 fee to the CMRS Board.¹⁴ Budget Phone, also in response to the Commission's information requests, states that it will be seeking funding from the Kentucky USF, and that it will not be seeking reimbursement from the Federal USF for toll limitation service.¹⁵

On June 24, 2011, the Commission issued an information request to Budget Phone. Budget Phone filed its response on August 5, 2011. No party has requested a hearing in this matter and the Commission finds that this matter is now ripe for a decision.

¹² Id. at 26.

¹³ Id. at 5 and 6.

¹⁴ Id. at 7.

¹⁵ Id. at 12 and 15.

DISCUSSION

Pursuant to 47 U.S.C. § 254(e), “only an eligible telecommunications carrier designated under 47 U.S.C. § 214(e) shall be eligible to receive specific federal universal service support.” Pursuant to 47 U.S.C. § 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.

Pursuant to 47 U.S.C. § 214(e)(2), state commissions bear the primary responsibility for performing ETC designations. Under the same section, the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, as long as the requesting carrier meets the requirements of 47 U.S.C. § 214(e)(1). Also, before designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.

As outlined in 47 C.F.R. § 54.201(d), an ETC petition must contain the following: (1) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to 47 U.S.C. § 254(c); (2) a certification that the petitioner offers or intends to offer the supported services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services;” (3) a description of how the petitioner “advertise[s] the availability of [supported] services and the charges therefore [sic] using media of general distribution;” and (4) if the petitioner meets the definition of a “rural telephone company” pursuant to 47 U.S.C. § 153(37), the petitioner must identify its study area; or, if the petitioner is not a rural telephone

company, it must include a detailed description of the geographic service area for which it requests an ETC designation from the Commission.

OFFERING THE SERVICES DESIGNATED FOR SUPPORT

Budget Phone has demonstrated through the required certifications and related filings that it now offers, or will offer upon designation as an ETC, the services supported by the federal universal service mechanism. Budget Phone certifies that it now provides or will provide throughout its designated service area the services and functionalities enumerated in 47 C.F.R. § 54.101(a). Budget Phone has also certified that, in compliance with 47 C.F.R § 54.405, it will make available and advertise Lifeline service to qualifying low-income consumers.

OFFERING THE SUPPORTED SERVICES USING A CARRIER'S OWN FACILITIES

Consistent with the requirements of the 1996 Act, 47 U.S.C. § 214 (e)(6) and §§ 54.101 through 54.207 of the FCC rules, Budget Phone, in its provision of wireless services, will rely on a combination of resold services (which the company will obtain through agreements with its underlying wireless providers of Sprint and Verizon) and Budget Phone-owned facilities (which consist of switches and facilities located in Dallas, Texas and Shreveport, Louisiana). Budget Phone's own facilities and switches will be used to provide some of the supported services, including access to directory assistance, access to some interexchange services (for routing certain domestic and all non-domestic calls), the provision of toll limitation services and access to operator services, as that term is defined in 47 C.F.R § 54.101(a)(6). Budget Phone is able to offer all of the services and functionalities supported by the universal service program, as detailed in Section 54.101(a) of the FCC rules, throughout its service area.

As discussed previously in this Order, 47 C.F.R. § 54.201(d) defines the requirements that a carrier must fulfill in order to be granted ETC status. Under section (d), the carrier must provide the supported services by “either using its own facilities or a combination of its own facilities and resale of another carrier’s services (including the services offered by another eligible telecommunications carrier).” The next section, 47 C.F.R. § 54.201(e), defines the term “facilities” to mean “any physical components of the telecommunications network that are used in the transmission or routing of the service that are designated for support pursuant to subpart B of this part.” 47 C.F.R. § 54.201(f) provides that “the term ‘own facilities’ includes, but is not limited to, facilities obtained as unbundled network elements pursuant to part 51 of this chapter, provided that such facilities meet the definition of the term ‘facilities’ under this subpart.”¹⁶ The Commission finds that Budget Phone has demonstrated that it satisfies the requirement of 47 U.S.C. § 214(e)(1)(a) that it can offer the supported services using either its own facilities or a combination of its own facilities and resale of another carrier’s services.

ADVERTISING SUPPORTED SERVICES

Budget Phone has demonstrated that it satisfies the requirement of 47 U.S.C. § 214(e)(1)(b) to advertise the availability of the supported services and the charges therefor using media of general distribution. In its petition, Budget Phone states that it will publicize the availability of Lifeline and Link-Up in a manner reasonably designed to reach those likely to qualify for those services, as required by 47 C.F.R. §§ 54.405(b) and 54.411(d). Budget Phone shall also advertise each of the supported services on a

¹⁶ See, e.g., 47 C.F.R. §§ 51.307–51.318, which outlines the requirements for carrier access to and use of unbundled network elements.

regular basis in newspapers, magazines, television, and radio, in accordance with 47 C.F.R. § 54.201(d)(2).

RURAL AND NON-RURAL STUDY AREAS

The Federal Communications Commission (“FCC”) has previously found designation of additional ETCs in areas served by non-rural telephone companies to be in the public interest based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of 47 U.S.C. § 214(e)(1).¹⁷ Budget Phone is only requesting ETC Status in the service areas of non-rural telephone companies.

Designated Service Areas

The Commission finds that Budget Phone should be certified as an ETC in the requested service areas served by the non-rural telephone companies, BellSouth Telecommunications, Inc. d/b/a/ AT&T Kentucky (“AT&T Kentucky”), Cincinnati Bell Telephone Company (“Cincinnati Bell”), and Windstream Kentucky East, LLC (“Windstream”).

ANNUAL CERTIFICATION AND VERIFICATION

Each year, Budget Phone will require each Lifeline subscriber to recertify their head of household status, certify that only one Lifeline discount is received at that household, and document their continued program eligibility for Lifeline in accordance with the annual Lifeline Certification and Verification for USAC that is due annually at the end of August and in accordance with Kentucky Public Service Commission

¹⁷ See, e.g., Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier, Memorandum Opinion and Order, CC Docket No. 96-45, 16 FCC Rcd 39 (2000).

Administrative Case No. 360.¹⁸ The Commission finds that Budget Phone's plan to meet the annual certification and verification requirements is in accordance with the Commission's requirements.

The Commission, having reviewed the evidence of record and having been otherwise sufficiently advised, HEREBY ORDERS that:

1. Budget Phone is designated as an ETC for the purpose of offering Lifeline and Link-up service only in the exchanges of the non-rural telephone companies that correspond to AT&T Kentucky, Cincinnati Bell, and Windstream.

2. During the current certification period, Budget Phone shall be eligible to receive Federal Universal Service Fund Support for Lifeline and Link-Up.

3. Budget Phone shall offer low-income universal support services to consumers in its service area.

4. Budget Phone shall offer these services using its own facilities or a combination of its own facilities and resale of another carrier's services, including the services offered by another ETC.

5. Pursuant to 47 C.F.R. § 54.201(i), Budget Phone shall be precluded from offering universal service support exclusively through the resale of another carrier's services.

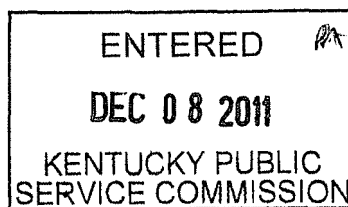
6. Budget Phone shall advertise the availability of and charges for these services using media of general distribution.

¹⁸ Administrative Case No. 360, An Inquiry Into Universal Service and Funding Issues (Ky. PSC May 24, 2007).

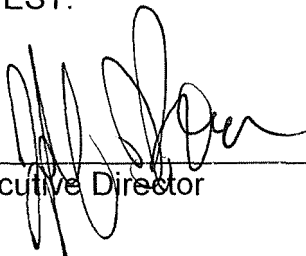
7. Budget Phone shall comply with the Commission's annual certification process for Lifeline customers in accordance with the requirements of Administrative Case No. 360.

8. A copy of this Order shall be served upon the FCC and the Universal Service Administrative Company.

By the Commission



ATTEST:



Executive Director

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