

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

In the Matter of the Application of Budget PrePay, Inc., d/b/a Budget Mobile, for Designation as an Eligible Telecommunications Carrier in South Dakota Pursuant to 47 U.S.C. § 214(e).))))))))))	DOCKET NO. TC12-_____ Petition of Budget PrePay, Inc., d/b/a Budget Mobile, for Designation as a Lifeline-Only Eligible Telecommunications Carrier
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Budget PrePay, Inc., d/b/a Budget Mobile, ("Budget PrePay" or "Company") submits this Petition for Designation as a Lifeline-Only Eligible Telecommunications Carrier ("ETC"), pursuant to Section 214(e) of the Communications Act of 1934, as amended (the "Act"),¹ Federal Communications Commission ("FCC" or "Commission") Rules, 47 C.F.R. §§ 54.101 *et seq.* (the "FCC Rules"),² and the South Dakota Public Utilities Commission's ("Commission") rules and regulations for designation as an ETC.³ In support of this Petition, the following is respectfully submitted:

I. NAME AND ADDRESS OF PETITIONER

Budget PrePay, Inc.
1325 Barksdale Boulevard
Bossier City, LA 71111

Contact Person:
David Donahue, CFO
318-671-5706
ddonahue@budgetprepay.com

II. PROPOSED EFFECTIVE DATE

The proposed effective date of the designation of ETC status is immediately upon the date the Commission approves the petition.

¹ 47 U.S.C. § 214(e).
² 47 C.F.R. § 54.101 *et seq.*
³ See ARSD 20:10:32:42; ARSD 20:10:32:43; ARSD 20:10:32:43.01 *et seq.*

III. SERVICE AREA

Budget PrePay seeks designation as a competitive ETC throughout the non-rural wire centers identified in **Exhibits A and B** solely for the limited purpose of receiving federal support for the provision of prepaid wireless Lifeline service to eligible South Dakota residents.

IV. BUDGET PREPAY'S PETITION SATISFIES THE REQUIREMENTS FOR AN ETC UNDER 47 C.F.R. § 54.201

As demonstrated herein, Budget PrePay meets all of the statutory and regulatory requirements for ETC designation under Section 214(e) of the Act and the Commission's rules. Consumers qualifying for the Lifeline discounts offered by Budget PrePay will receive the benefits of mobility, as well as the high-quality and high-value services offered by Budget PrePay at a substantially discounted price. Designating Budget PrePay as an ETC will serve the public interest generally and the needs of low-income customers in South Dakota in particular.

The FCC recently determined that it would grant blanket forbearance from the "own facilities" requirement of Section 214(e)(1)(A) of the Communications Act to Lifeline-only applications that comply with the conditions set forth in the *Lifeline Reform Order*.⁴ Specifically, carriers seeking forbearance must submit and obtain FCC approval of a comprehensive Compliance Plan.⁵ A copy of Budget PrePay's FCC-approved Compliance Plan is attached hereto as **Exhibit C**. The FCC approved Budget PrePay's Compliance Plan and granted Budget PrePay forbearance from the "own facilities" requirement on May 25, 2012.⁶ Budget PrePay will comply with all aspects of its Compliance Plan in providing Lifeline service in South Dakota.

⁴ *In the Matter of Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012) ("*Lifeline Reform Order*") at ¶ 368.

⁵ See *Lifeline Reform Order* at ¶ 368. See Budget PrePay, Inc. Compliance Plan, WC Docket Nos. 09-197 and 11-42 (filed May 1, 2012) ("Compliance Plan").

⁶ FCC Public Notice, WC Docket Nos. 09-197 and 11-42, DA 12-828 (rel. May 25, 2012) (see **Exhibit D**).

Accordingly, Budget PrePay respectfully requests that the Commission grant this Petition expeditiously so that qualified South Dakota residents can benefit from the high-quality and high-value services that the Company plans to offer.

V. BACKGROUND

A. Company Overview

Budget PrePay, based in Bossier City, Louisiana, has been in business since 1996.⁷ The Company provides both wireline and wireless services. For its wireless services, the Company resells the services of Sprint and Verizon Wireless. The Company has been designated as an ETC for wireless services in the states of Arkansas, Kentucky, Louisiana, Maryland, Rhode Island, Wisconsin, Nevada, Pennsylvania and Michigan, and is currently offering, or will begin offering, Lifeline service in each of these states.⁸ Budget PrePay operates its wireless business under the name Budget Mobile, and operates its wireline business under the name Budget Phone. Further information about the Company is set forth in Section VI.C below (Financial and Technical Qualifications).

A copy of the Company's Certificate of Authority to do business in South Dakota is attached as **Exhibit E**.

B. The Commission has Jurisdiction to Designate Budget PrePay as an ETC

The Commission has the requisite authority to perform the limited ETC designation requested herein. Pursuant to the provisions of Section 214(e)(2) of the Act, state commissions have primary responsibility for the designation of eligible telecommunications carriers.⁹

⁷ Budget PrePay was organized and incorporated in the State of Louisiana on May 1, 1996.

⁸ Budget PrePay also has been designated as an ETC for wireline services in Tennessee, Oklahoma, Alabama, Florida, Nebraska, Maryland, Louisiana, Mississippi, Arkansas, Kentucky, Michigan, Missouri, North Carolina, and South Carolina. The Company does not seek ETC designation for its wireline services in this Petition.

⁹ 47 U.S.C. §214(e)(2).

Specifically, Section 214(e)(2) provides that a State commission "shall ... upon request designate a common carrier that meets the requirements of paragraph 1 [of Section 214(e)] as an eligible telecommunications carrier for a service designated by the State commission."¹⁰

C. Budget PrePay's Lifeline Service Offerings

The details of Budget PrePay's current Lifeline offerings are set forth in Exhibit 3 to its Compliance Plan (attached hereto as **Exhibit C**), and reflect the new federal Lifeline subsidy support amounts that will soon be made available to qualified ETCs.¹¹

All of Budget PrePay's Lifeline plans will include a free handset and the following custom calling features: Caller ID, Call Waiting, and Voicemail. Budget PrePay does not impose credit checks or long-term service contracts on its prepaid customers. Customers are not bound by a local calling area requirement. All Budget PrePay plans come with domestic long distance at no extra per minute charge. There are no roaming charges. Customers can purchase extra minutes by telephone and online. Additional minutes will be loaded electronically. Calls to 911 emergency services are always free, regardless of service activation or availability of minutes.

VI. BUDGET PREPAY SATISFIES THE STATUTORY AND REGULATORY REQUIREMENTS TO BE DESIGNATED AS A LIFELINE-ONLY ETC

A. Budget PrePay Offers the Services and Functionalities Supported by the Federal Low-Income Universal Service Program [47 C.F.R. § 54.201(d)]

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

§ 54.101. Supported Services for rural, insular and high cost areas.

- (a) Services designated for support. Voice telephony services shall be supported by federal universal service support mechanisms. 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

¹⁰ *Id.*

¹¹ See *Lifeline Reform Order* at ¶ 58 (setting a flat interim rate of \$9.25 per line per month).

public safety organizations, such as 911 and enhanced 911 systems ...; and toll limitation services to qualifying low-income consumers as described in subpart E of this part.

Budget PrePay provides each of the services supported by federal universal service support mechanisms, as set forth in Sections 54.101 *et seq.* of the FCC's new rules, and will offer these supported services in South Dakota upon designation as an ETC, as follows:

Voice Grade Access. Eligible voice telephony services must provide voice grade access to the public switched network or its functional equivalent. "Voice grade access" permits a telecommunications user to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal that there is an incoming call. Budget PrePay will provide its customers with "voice grade access" by enabling such customers to make and receive calls on the public switched telephone network.

Minutes of Use for Local Service at No Additional Charge. Budget PrePay will provide its Lifeline customers with minutes of use for local service at no additional charge. Each of the Lifeline plans to be offered by Budget PrePay will provide local usage at no additional charge to customers.

Access to Emergency Services. Budget PrePay will provide access to emergency services in conformance with the FCC's requirements. All of the phones that Budget PrePay will distribute to subscribers will be capable of delivering automatic numbering information ("ANI") and automatic location information ("ALI"), and otherwise satisfy applicable enhanced-911 requirements.

Toll Limitation. Toll limitation service does not need to be offered for any Lifeline service that does not distinguish between toll and non-toll calls in the pricing of its service. Because the plans offered by Budget include an established number of minutes with no

distinction between the pricing for local and toll calls, Budget's customers will not be subjected to unexpected bills for telecommunication toll services, and Budget's services satisfy the requirements for a toll limitation service.

B. Scope of Budget PrePay's ETC Designation Request

Budget PrePay seeks ETC designation only for the limited purpose of receiving Lifeline support. The Company requests ETC designation in the non-rural wire centers listed in **Exhibit A** and set forth in the map at **Exhibit B**. Budget PrePay's authorized service area covers the service territories of Qwest in the state.

C. Financial and Technical Qualifications

As part of the *Lifeline Reform Order*, the FCC amended its rules to require a carrier seeking designation as a Lifeline-only ETC to demonstrate that it is financially and technically capable of providing the supported Lifeline service in compliance with all of the low-income program rules.¹² Budget PrePay satisfies these criteria.

Budget PrePay, based in Bossier City, Louisiana, has been in business since 1996. Budget PrePay currently derives the majority of its revenue from selling low-cost prepaid telephone services on a nationwide basis to tens of thousands of customers and employs approximately 340 people nationally. Budget PrePay owns and operates its own switching facilities in Dallas, Texas and Shreveport, Louisiana. In addition, Budget PrePay has invested millions of dollars in software development, including its own customized, user friendly point-of-sale software.

Budget PrePay has not been subject to any enforcement action at the FCC or in any state. No ETC designations held by Budget PrePay have been rescinded, revoked or terminated by the FCC or by any state.

¹² See *Lifeline Reform Order* at ¶ 387.

VII. BUDGET PREPAY SATISFIES THE STATUTORY AND REGULATORY PREREQUISITES FOR DESIGNATION AS AN ETC

Budget PrePay satisfies each of the statutory and regulatory prerequisites set forth in the Act and the FCC's rules:

A. Budget PrePay Is a Common Carrier

Section 3(10) of the Act, 47 U.S.C. § 153(10), defines a common carrier as "any person engaged as a common carrier for hire, in interstate or foreign communications by wire or radio...." Budget PrePay meets the definition of a person, offers interstate communications by radio, and is a common carrier for hire.

B. Budget PrePay Will Provide the Supported Services Through Resale

Budget PrePay operates as a reseller for the supported services, purchasing them on a wholesale basis from Sprint and Verizon Wireless, both of which are national service providers.

C. Functionalities

In addition to those requirements set forth in Section 54.201 of the FCC's Rules, Budget PrePay will satisfy other ETC requirements adopted by the Commission and FCC, as applicable.

In particular:

1. Demonstration of commitment to provide service [ARSD

20:10:32:43.01]. Consistent with ARSD 20:10:32:43.01 and the attached certification from Budget PrePay (see **Exhibit F**), Budget PrePay certifies that it will commit to providing service throughout its proposed designated service area to all customers making a reasonable request for service.

Further, Budget PrePay certifies that it will provide service on a timely basis to requesting customers within Budget PrePay's proposed designated service area where the applicant's underlying service provider's network already passes the potential customer's premises.

Budget PrePay respectfully requests that the Commission either find that the certification requirements of 20:10:32:43.01(2) are inapplicable to this Petition, or waive the requirements. The version of the FCC's Rules (i.e., 47 C.F.R. § 54.202) in effect through December 28, 2011, required that carriers provide service within a reasonable period of time to customers outside its existing network coverage if service could be provided at a reasonable cost by modifying or replacing the customer's equipment, deploying a roof-mounted antenna, adjusting network facilities and using other methods. As set forth in ARSD 20:10:32:43.01(2), the South Dakota rules impose a similar requirement to modify or extend network facilities.

47 C.F.R. § 54.202 has recently been significantly amended by the FCC to remove the requirements above. Moreover, as a Lifeline-only ETC provider that relies on the networks of underlying service providers, such as Sprint and Verizon Wireless, it is not possible for Budget PrePay (as opposed to a facilities-based provider) to make the modifications set forth in ARSD 20:10:32:43.01(2) to the underlying network, or to extend certain facilities, in order to reach a customer outside of its existing network coverage.

If designated as a wireless ETC, Budget PrePay certifies that it will comply with all service requirements applicable to Lifeline support funding, as detailed herein and in its Compliance Plan. Budget PrePay believes that it satisfies the intent of the South Dakota rules to serve all customers making a reasonable request for service within its proposed ETC designation area. Budget PrePay respectfully requests that the Commission either find that the requirements of 20:10:32:43.01(2) inapplicable to this Petition, or waive the requirements.

2. *Submission of two-year plan [ARSD 20:10:32:43.02].* As set forth in ARSD 20:10:32:43.02, an ETC applicant is required to submit a two-year plan that describes with specificity their proposed improvements or upgrades to the ETC applicant's network on a

wire center-by-wire center basis throughout its proposed designated service area. ARSD 20:10:32:43.02 is focused on the network improvements that will be implemented as a result of an ETC applicant receiving high-cost support.

The FCC has recently clarified that carriers seeking only Lifeline support are no longer subject to service improvement plan requirements.¹³ Similarly, Budget PrePay believes the high-cost reporting requirements set forth in the Commission's rules are inapplicable to a request for ETC designation for only Lifeline support. Budget PrePay respectfully requests that the Commission either find that the high-cost support requirements of 20:10:32:43.02 are inapplicable to this Application, or waive the requirements.

3. *Ability to Remain Functional in Emergency Situations [ARSD 20:10:32:43.03].* Budget PrePay has the ability to remain functional in emergency situations in accordance with ARSD 20:10:32:43.03. Budget PrePay has geographically located its switching infrastructure in two locations. This network design is in an effort to eliminate a single isolated power incident from affecting traffic on Budget PrePay's network. All facilities are equipped with both AC and DC battery backup as well as generators. All critical equipment is also supplied with two separate power sources (or primary and redundant power feeds).

Budget PrePay maintains multiple paths to reach its network. This is accomplished by using multiple IP transit providers for all IP connectivity and an N+1 configuration for all TDM connectivity. Once the origination traffic reaches the Budget network all elements are setup with the same N+1 configuration. The configuration allows each element a primary and redundant path to terminate the traffic without service interruption. In the event the main element fails or that element reaches maximum capacity, Budget PrePay has designed

¹³ 47 C.F.R. § 54.422(b); Lifeline Reform Order ¶ 389.

the network to advance the traffic to one of three other elements in the same N+1 configuration that is listed above.

Budget PrePay has built the voice network to be self-sustaining in the event of a failure. The switching infrastructure will advance to the next termination carrier in route in the event of a failure on any termination carrier's route.

Budget PrePay has redundant, geographically separated call centers with the capability to route incoming calls as needed, and additional data processing capacity at each of its three data centers that can accommodate extra workload as needed in the event of a systems outage. With daily GFS backups, monthly offsite tape backup, and a tertiary optical backup of critical SQL databases, data can be quickly restored in the event of a key systems failure.

Budget PrePay maintains 24x7x365 support agreements on all key systems, with four-hour-maximum response time specified where possible, so that technical support is always available.

In the event of a service-impacting event, an initial investigation and impact analysis should determine whether the affected services can be restored within the timeframe of the MTO (Maximum Tolerable Outage). If it is uncertain that services can be restored within the MTO, a disaster is declared and a detailed incident investigation ensues. Based upon the results, Budget PrePay will either correct the affected service(s) or invoke disaster recovery activities, such as routing all calls to the alternate call center and rerouting data and/or voice traffic to servers and equipment in the unaffected data centers while the affected service is restored.

Budget PrePay's underlying wireless providers, Sprint and Verizon Wireless, have indicated that they implement best practices in business continuity and have very robust emergency response and disaster recovery capabilities which enable quick restoration of impacted services following a disaster and mitigates congestion risks through traffic

management algorithms to handle the overload surges in traffic. Additionally, their disaster recovery response teams proactively monitor congestion and performance of the wireless network and determine the appropriate course of action. This may include performing parameter changes, adding additional capacity to the network via radio installations to cellsites and/or by adding additional backhaul. Cellsite On-Wheels ("COW") and Satellite Cellsite On-Light-Trucks ("SatCOLT") may also be used to replace and/or expand Budget PrePay's underlying provider's foot print or add additional capacity to the network. In addition, both Sprint and Verizon Wireless are ETCs and have certified to the FCC that they are both able to function in emergency situations in accordance with 47 C.F.R. 54.202(a)(2).¹⁴

4. *Satisfaction of Applicable Consumer Protection and Service Quality Standards [ARSD 20:10:32:43.04].* Budget PrePay will comply with all applicable state and federal consumer protection and service quality standards. Further, as set forth in its Compliance Plan, Budget PrePay will abide by CTIA's Consumer Code for Wireless Service ("CTIA Code"). In particular, Budget PrePay will use its best efforts to resolve any complaint received by the Commission or the FCC and designates the following contact person to resolve any complaints or other compliance matters:

Robin Enkey
Compliance Manager
Budget PrePay, Inc.
1325 Barksdale Boulevard
Bossier City, Louisiana 71111
E-mail: robine@budgetprepay.com

¹⁴ See e.g., Sprint Nextel Corporation Verified Filing in Compliance with 47 C.F.R. § 54.209, CC Docket No. 96-45, at 6 (filed Oct. 1, 2010); see also Alltel Communications, LLC d/b/a Verizon Wireless 2010 Eligible Telecommunications Carrier Certification and Annual Report for the State of Georgia, pursuant to 47 U.S.C. § 254(e), 47 C.F.R. §§ 54.313, 54.314, 54.202(a) and 54.209(b), WC Docket No. 09-197, at 8-9 (filed Sept. 30, 2010).

5. *Offering of comparable local usage plan [ARSD 20:10:32:43.05].*

ARSD 20:10:32:43.05 requires that an ETC applicant demonstrate that it offers a local usage plan comparable to the one offered by the incumbent ("ILEC") in the proposed designated service area. Budget PrePay is committed to offering a calling plan that is comparable to those offered by the ILEC in its service area.

Budget Prepay offers a high-quality, high-value Lifeline service. One of Budget PrePay's offerings would be completely free to Lifeline users who select it. Budget PrePay's Active User Talk & Text Plan Lifeline offering would provide a large number of monthly minutes and texts – 4,000 minutes and texts – at a customer charge of only \$25.00. Each of Budget PrePay's Lifeline offerings include, at no extra charge, several popular features for which ILECs typically charge separately: local and domestic long distance calling, caller ID, call waiting and voicemail. Furthermore, Budget PrePay's Lifeline customers are not subject to credit check or deposit requirements. Budget PrePay does not charge a service activation fee for its Lifeline offerings. Customers are not required to bundle their service with any other to obtain favorable rates. Budget PrePay's Lifeline customers can have the benefits of mobility offered by wireless service but are not bound to a two-year contract term, as is commonly required for wireless service.

As such, Budget PrePay's calling plans provide customers with local usage that are comparable to the ILEC's calling plans.

6. *Provisioning of equal access [ARSD 20:10:32:43.06].* Consistent with ARSD 20:10:32:43.06, Budget PrePay certifies 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.

7. *Lifeline Certification and Verification [47 C.F.R. § 54.410].* Budget

PrePay will certify and verify consumer eligibility to participate in the Lifeline program in accordance with its Compliance Plan and all applicable FCC and/or Commission rules.

D. Budget PrePay Will Advertise the Availability of and Charges for Its Universal Service Qualifying Offerings [47 C.F.R. § 54.201(d)(2)]

Budget PrePay will advertise the availability of the supported services detailed above, and the corresponding rates and charges in a manner designed to inform the general public within South Dakota. This advertising will occur through a combination of media channels, such as television and radio, newspaper, magazine and other print advertisements, outdoor advertising, direct marketing, and the Internet. The Company's advertising will be targeted to low-income consumers.

Attached as **Exhibit G** is a sample advertisement of Budget PrePay.

VIII. DESIGNATING BUDGET PREPAY AS A COMPETITIVE ETC FOR LIFELINE-ONLY SERVICES WILL SERVE THE PUBLIC INTEREST

One of the principal goals of the Act, as amended by the Telecommunications Act of 1996, is "to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies" to all citizens, regardless of geographic location or income.¹⁵ The primary purpose of universal service is to ensure that consumers—especially low-income consumers— receive affordable and comparable telecommunications services. A 2008 study has found such services to be a vital economic resource for low-income consumers that leads to improved wage levels and personal

¹⁵ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

safety.¹⁶ Given this context, designating Budget PrePay as an ETC would serve the public interest generally, and the needs of low-income customers in South Dakota in particular.

The public interest benefits associated with the Company's wireless service include nationwide calling areas (as compared to traditional wireline carriers' local calling areas) and the convenience and personal security afforded by mobile telephone service. Wireless service greatly benefits consumers who routinely drive long distances to attend work or school or to accomplish everyday tasks such as shopping or attending community and social events.

Budget PrePay will offer a unique pre-paid option that is designed to provide consumers who, due to credit or deposit requirements, may not be able to obtain the safety and convenience of telephone service from traditional providers, and Budget PrePay customers are never obligated to pay for a period of service that exceeds 30 days. Because Budget PrePay's service is provided with no credit check, deposit requirement, minimum service periods, or early termination fees, the service will be an attractive and affordable alternative to qualified low-income consumers without regard to age, residency or creditworthiness. Unlike many wireless providers, one of Budget PrePay's service offerings is a high-value wireless service that includes nearly unlimited local and domestic long distance calling and text messaging, caller ID, call waiting and voicemail, all without any of the credit check, deposit and contract requirements imposed by the more traditional wireline and wireless service providers.

Because of these benefits, Budget PrePay expects that many eligible consumers will select its wireless Lifeline service in lieu of the more traditional wireline or wireless services available from competing providers. Budget PrePay will fulfill a critical role in the marketplace

¹⁶ See Nicholas P. Sullivan, "Cell Phone Provide Significant Economic Gains for Low-Income American Households: A Review of Literature and Data from Two New Surveys," April 2008, accessed at http://www.newmillenniumresearch.org/archive/Sullivan_Report_032608.pdf.

by ensuring that many Americans who cannot qualify for, or afford, the services provided by other wireless providers can still enjoy the benefits of wireless telecommunications.

Designation of Budget PrePay as an ETC would also promote competition. Budget PrePay will bring the same entrepreneurial spirit that has reinvigorated the wireless industry to the Lifeline market in South Dakota, helping to redefine the wireless experience for many low-income consumers in the state. Other carriers, therefore, will have the incentive to improve their existing service offerings and tailor their service plans to offer service terms and features appealing to low-income customers. Budget PrePay has emphasized customer service as a pillar of its marketplace success since service launch.

Wireless ETC designation in South Dakota would enable Budget PrePay to offer appealing and affordable service offerings to low-income South Dakota customers to ensure that they are able to afford wireless services on a consistent and uninterrupted basis. Prepaid wireless services have become essential for lower-income customers, providing them with value for their money, access to emergency services on wireless devices, and a reliable means of contact for prospective employers, social service agencies or dependents.

There is no possibility for cream skimming in this application. Budget PrePay is not targeting particular areas based on the possibility of receiving uneconomic levels of support. On the contrary, Budget PrePay is only seeking ETC designation in this application in areas that cover the entirety of the incumbent LEC service area and it does not seek designation below the study level area of a rural telephone company. Thus, it believes its application does not raise concerns regarding cream skimming.

IX. CONCLUSION

Based on the foregoing, Budget PrePay has demonstrated its eligibility for designation as a Lifeline-only ETC. Accordingly, Budget PrePay respectfully requests that the Commission grant this Petition expeditiously.

Dated this 10th day of August 2012.

BANTZ, GOSCH & CREMER, L.L.C.

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