

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

IN THE MATTER OF THE APPLICATION OF)	ORDER GRANTING)
BUDGET PREPAY, INC., DBA BUDGET)	DESIGNATION AS A)
MOBILE, FOR DESIGNATION AS A LIFELINE-)	LIFELINE-ONLY ELIGIBLE)
ONLY ELIGIBLE TELECOMMUNICATIONS)	TELECOMMUNICATIONS)
CARRIER IN NON-RURAL AREAS)	CARRIER)
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)	TC12-125

On August 10, 2012, the Public Utilities Commission (Commission) received an application from Budget PrePay, Inc., dba Budget Mobile (Budget) requesting to be designated as an eligible telecommunications carrier (ETC) throughout non-rural wire centers pursuant to SDCL § 49-31-78 and Section 214(e) of the Federal Communications Act of 1934, as amended, for the limited purpose of receiving federal support for the provision of prepaid wireless Lifeline service to eligible South Dakota residents. Budget also requested that the Commission find the certification requirements of ARSD 20:10:32:43.01 and the service improvement plan requirements of ARSD 20:10:32:43.02 are inapplicable, or that the Commission waive the requirements.

On August 16, 2012, the Commission electronically transmitted notice of the filing and the intervention deadline of August 31, 2012, to interested individuals and entities. No parties filed to intervene. On August 29, 2012, Budget filed its responses to staff's data request. On September 7, 2012, Budget filed its responses to staff's second data request.

At its September 11, 2012, meeting, the Commission considered this matter. The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 49-31, and 47 U.S.C. § 214. Commission Staff recommended approval, and granting waivers of ARSD 20:10:32:43.01 and 20:10:32:43.02. The Commission voted unanimously to approve the petition and to grant the waivers.

In order to be designated an ETC, a carrier must offer the supported services, 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. 47 U.S.C. § 214(e). However, the Federal Communications Commission (FCC) recently granted blanket forbearance from the "own facilities" requirement to Lifeline-only carriers if the carriers comply with certain conditions. *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 at ¶ 368 (rel. Feb 6, 2012) ("*Lifeline Reform Order*"). The conditions include 911 requirements and the approval by the FCC of a compliance plan. The compliance plan must provide specific information regarding the Lifeline-only carrier's service offerings and the measures the Lifeline-only carrier will take to implement the obligations contained in the Lifeline Reform Order and any other safeguards against waste, fraud, and abuse that the FCC may find necessary. Budget filed its revised Compliance Plan that it had submitted to the FCC as Exhibit C. Budget also filed the FCC notice that approved Budget's Compliance Plan as Exhibit D. Budget provides its wireless service by

reselling the services of Sprint and Verizon Wireless. Budget's proposed service area covers the service territories of Qwest Corporation. The wire centers are listed in Budget's Exhibit A and a map of the wire centers is Exhibit B.

The FCC has determined that "[e]ligible 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, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers as provided in subpart E of this part." 47 C.F.R. § 54.101(a). In its filing, Budget stated that it will offer all of the supported services. Budget stated that it will provide voice grade access to the public switched network. Budget stated its Lifeline service plans will provide local usage at no additional charge. Budget stated it provides access to emergency service in conformance with the FCC requirements and provides its customers with phones capable of delivering automatic numbering information and automatic location information. In addition, its plans include a set number of minutes with no distinction in pricing between local and toll calls. The Commission finds that Budget is able to offer the supported services.

The carrier must also advertise the availability of such services and the rates for the services using media of general distribution. 47 U.S.C. § 214(e)(1)(B). Budget stated that it will meet this requirement "through a combination of media channels, such as television and radio, newspaper, magazine, and other print advertisements, outdoor advertising, direct marketing, and the Internet." Petition at 13. Budget stated that its advertising will be targeted to low-income customers. The Commission finds that Budget 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. Budget stated that it commits "to providing service throughout its proposed designated service area to all customers making a reasonable request for service." Petition at 7. However, it stated that as a Lifeline-only ETC, the requirements of ARSD 20:10:32:43:01(2) regarding modifications or extension of facilities are not possible for a Lifeline-only ETC that relies on the networks of other service providers. The Commission finds that to the extent that a requirement of ARSD 20:10:32:43.01(2) is not feasible for a carrier designated as a Lifeline-only ETC that has received forbearance from the "own facilities" requirement, that requirement is waived.

Pursuant to ARSD 20:10:32:43.02, an applicant must provide a two year plan that explains upgrades or improvements the applicant will make in each wire center. Budget stated that as a Lifeline-only ETC applicant, service improvement plans relating to the receipt of high-cost funds are inapplicable. The Commission finds that this rule is not applicable to a Lifeline-only ETC that has received forbearance from the "own facilities" requirement and waives its requirements.

Pursuant to ARSD 20:10:32:43.03, an applicant must demonstrate its ability to remain functional in emergency situations. Budget stated that it has switching infrastructure in two locations and has battery backup and generators and maintains multiple paths to reach its network. It states it has redundant, geographically separated call centers. In addition, Budget stated that its underlying wireless providers have robust emergency response and disaster recovery capabilities.

Pursuant to ARSD 20:10:32:43.04, an applicant must demonstrate that it will satisfy applicable consumer protection and service quality standards. Budget stated that it will comply with all applicable state and federal consumer protection and service quality standards and will abide by CTIA's consumer Code for Wireless Service.

Pursuant to ARSD 20:10:32:43.05, an applicant must demonstrate that it offers a local usage plan comparable to the one offered by the incumbent carrier. Budget stated that it is committed to offering a calling plan that is comparable to the calling plans offered by the incumbent local exchange carrier in its service area.

Pursuant to ARSD 20:10:32:43.06, an applicant must certify that it will be able to provide equal access to long distance carriers if no other ETC is providing equal access within the service area. Budget certified that it would be able to meet this requirement.

Based on the foregoing, the Commission finds that Budget has met the requirements of ARSD 20:10:32:43.01 through 20:10:32:43.06, with the exception of those requirements that the Commission has waived as set forth above.

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 Budget's application to become a wireless Lifeline-only ETC in non-rural areas served by Qwest Corporation in South Dakota is in the public interest. Budget has stated that as a Lifeline-only ETC it would serve the public interest generally, and the needs of low-income customers in particular. Budget stated that it offers "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." Petition at 14. One of Budget's offerings is free to Lifeline customers and includes a free phone, 250 voice minutes, and no activation fee. No evidence was presented that there were disadvantages to Budget's service offerings. Budget stated that cream skimming is not a concern with its application as it is not "targeting particular areas based on the possibility of receiving uneconomic levels of support." Petition at 15. Budget stated that it is seeking ETC designation only in "areas that cover the entirety of the incumbent LEC service and it does not seek designation below the study level area of a rural telephone company." Petition at 15. There were no allegations of any detrimental effects that designation of Budget as a Lifeline-only ETC would have on the provisioning of universal service by the incumbent local carrier, Qwest. In addition, there was no indication that designation of Budget as a Lifeline-only ETC would have detrimental impacts on the universal service fund. The Commission further notes that Budget has stated that it will provide service throughout the requested service area to all customers making a reasonable request for service.

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." In response to a staff data request, on August 29, 2012, Budget provided additional information regarding its financial and technical capabilities, including financial statements and the biographies of its president and chief financial officer. The Commission finds that Budget has demonstrated that it is financially and technically capable of providing Lifeline service.

It is therefore

ORDERED, that Budget is granted waivers of ARSD 20:10:32:43:01(2) and ARSD 20:10:32:43.02 as set forth above. It is further

ORDERED, that Budget is designated as an ETC for the areas as listed in its Exhibit A, which is attached.

Dated at Pierre, South Dakota, this 24th day of September, 2012.

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: _____

Date: _____

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Chris Nelson

CHRIS NELSON, Chairman

Kristie Fiegen

KRISTIE FIEGEN, Commissioner

Gary Hanson

GARY HANSON, Commissioner