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April 25, 2012

**VIA WUTC WEB PORTAL**

Mr. David Danner

Executive Director

Washington Utilities and Transportation Commission

1300 S. Evergreen Park Drive, S.W.

Olympia, WA 98504-7250

**Re: UT-111570 Request for Update with Regard to Budget PrePay, Inc.'s ETC Petition in Washington**

Dear Mr. Danner:

On behalf of Budget PrePay, Inc. ("Budget PrePay"), this letter responds to the letter of April 9, 2012 from the Washington Utilities and Transportation Commission ("WUTC") requesting additional information in connection with Budget PrePay's pending Petition for Designation as an ETC ("Petition").[[1]](#footnote-1) As set forth in the responses below, Budget PrePay believes that it has demonstrated its eligibility for designation as an ETC and respectfully requests that the WUTC grant its Petition accordingly.

Budget PrePay responds to the questions raised in the April 9, 2012 Letter as follows:

**1. If you already filed a compliance plan with the FCC, please notify the Commission and provide the date of your filing.**

See Question 3, below**.**

**2. If you have not filed a compliance plan but you intend to file in the near future, please notify the Commission and provide an estimated timeline; once you submit the compliance plan to the FCC, please provide the Commission with the actual filing date.**

Not applicable**.**

**3. Please provide an update to the Commission once your compliance filing is approved by the FCC.**

*Answer:*

As the WUTC is aware, the FCC has decided to forbear from applying the Communications Act's facilities requirement of § 214(e)(1)(A) for all telecommunications carriers that seek limited ETC designation to participate in the Lifeline program, if such carriers demonstrate compliance with certain 911 requirements and the carrier submits a "compliance plan" to the FCC demonstrating compliance with certain new Lifeline rules. As indicated in the letter supplement of March 8, 2012 to the WUTC,[[2]](#footnote-2) out of an abundance of caution, Budget PrePay filed a Compliance Plan with the FCC on March 1, 2012 even though the company continues to believe that such forbearance is not required because, as set forth below, Budget PrePay satisfies the facilities requirement of 47 U.S.C. § 214(e)(1)(A). On April 17, 2012, Budget PrePay made minor revisions to its Compliance Plan and filed a modified Compliance Plan with the FCC. A copy of the current version of the company's Compliance Plan is attached (Attachment A) to this response. Budget PrePay will continue to keep the WUTC informed of the progress of its Compliance Plan with the FCC.

Although the company's Compliance Plan remains pending at the FCC, Budget PrePay continues to seek grant of its Petition by the WUTC on the basis that the company continues to satisfy the "own facilities" requirements for ETC designation under 47 U.S.C. § 214(e), despite the FCC’s recent modifications to the list of services eligible for support. As demonstrated by the attached order (Attachment B), the pending status of Budget PrePay's Compliance Plan with the FCC was not a bar to granting the company's ETC Petition in Wisconsin. Indeed, Budget PrePay's facilities were found by the Public Service Commission of Wisconsin ("Wisconsin PSC") to sufficiently satisfy the "own facilities" requirements of the Communications Act and, accordingly, the company was recently designated as an ETC in that state.[[3]](#footnote-3) Budget PrePay respectfully encourages the WUTC to reach a similar conclusion regarding its pending ETC Petition in Washington.

Budget PrePay meets all criteria under federal and state law that are required to obtain a federal only ETC designation, *see* 47 U.S.C. § 214(e)(1), including the facilities requirement set forth in 47 U.S.C. § 214(e)(1), in the FCC Order on Reconsideration dated December 23, 2011, *In the Matter of Connect America Fund, et al.*, WC Docket No. 10-90 ("*CAF Order on Reconsideration*"), and in the Report and Order and Further Notice of Proposed Rulemaking dated January 31, 2012, *In the Matter of Lifeline and Link-Up Reform and Modernization, et al.*, WC Docket No. 11-42, FCC 12-11 ("*Lifeline Reform Order*").

Budget PrePay provided the WUTC with a description of how it uses its own facilities to satisfy this requirement in its ETC Petition. *See* Petition, pp. 4-7. Budget PrePay will rely on a combination of resold services, which the company has obtained through agreements with Sprint and Verizon Wireless, both of which hold commercial mobile wireless service licenses in Washington, and Budget PrePay's own facilities to provide its prepaid wireless services throughout the state of Washington. As set forth in the Petition, Budget PrePay will rely on its switches located in Dallas, Texas, and Shreveport, Louisiana, to provide the supported services enumerated in the FCC's new Lifeline rules, *i.e.*, 47 C.F.R. § 54.101, including voice grade access to the PSTN, 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 its proposed ETC service area has implemented 911 or enhanced 911 systems, providing minutes of use for local service provided at no charge to end users, and the provision of toll limitation services.[[4]](#footnote-4)

Moreover, the switches described by Budget PrePay in its application are used by Budget PrePay to facilitate the origination and termination of voice calls in numerous origination and termination configurations. For example, a wireless Budget PrePay customer in Washington who places a call to a wireline Budget PrePay customer in Texas would originate the call over wireless facilities from an underlying carrier and terminate the call to a Budget PrePay wireline customer in Texas over leased AT&T UNEs, using Budget PrePay's own switching facilities in Texas. The use of Budget PrePay's switches to provide voice telephony service satisfies the federal facilities requirements. *See* 47 C.F.R. § 54.201(f).

Budget PrePay also meets the federal facilities requirement through the use of its call center facilities. For example, Budget PrePay uses its call center facilities with respect to the provision of the services identified under 47 C.F.R. § 54.101(a), including "…toll limitation services to qualifying low-income consumers as provided in subpart E of this part." [[5]](#footnote-5)

**4. If your company acquired new facilities since you filed the ETC petition in Washington and is now able to qualify as a facility-based carrier, please amend your original ETC petition with the Commission, providing detailed description of your new facilities.**

*Answer:*

Budget PrePay has not acquired any new relevant facilities since it filed its ETC Petition in Washington. However, in light of the FCC’s recent rule changes, Budget PrePay offers further details about its facilities herein to assist the Commission in fully understanding the basis of its Petition.

Budget PrePay outlined the changes to its Petition in its March 8th Letter Supplement. In addition to including a copy of its Compliance Plan, the March 8th Letter Supplement also included supplements to the Petition related to: (1) deleting Link Up support from the Petition; (2) additional details on Budget PrePay's Lifeline service offerings; (3) a demonstration of how Budget PrePay provides the requisite supported services set forth in the revised FCC Rules; (4) changes to the company's procedures for initial, as well as on-going, certification and verification of consumer eligibility for participation in the Lifeline program; and (5) a showing that Budget PrePay is financially and technically capable of providing the Lifeline service.[[6]](#footnote-6)

No further changes or adjustments to the company's facilities, or its Petition, are contemplated at this time.

**5. If your company is not facility-based and you do not intend to file a compliance plan with the FCC, or if your company intends to withdraw your ETC petition in Washington, please notify the Commission as soon as possible.**

*Answer:*

Budget PrePay does not intend to withdraw its Petition for ETC designation. As set forth above, it believes that the Petition is ripe for grant by the WUTC.

\* \* \*

Budget PrePay believes that it has demonstrated its eligibility for designation as an ETC in Washington and respectfully requests that the WUTC grant its Petition accordingly.

Respectfully submitted,



Brooks E. Harlow

Todd B. Lantor

*Counsel for Budget PrePay, Inc.*

Cc: Mr. William Weinman (via email, with attachments)

Ms. Jing Liu (via email, with attachments)

Attachments

1. *See* Letter from William Weinman, Asst. Dir., WUTC to Brooks Harlow and Todd B. Lantor, Counsel for Budget PrePay (April 9, 2012) ("April 9, 2012 Letter"). [↑](#footnote-ref-1)
2. *See* Letter Supplement from Brooks E. Harlow, Counsel for Budget PrePay, to WUTC (March 8, 2012) ("March 8th Letter Supplement"). [↑](#footnote-ref-2)
3. *See Final Decision, Application of Budget PrePay, Inc. for Designation as an Eligible Telecommunications Carrier*, Docket No. 826-T1-101 (April 3, 2012)("*Wisconsin Order"*)(designating Budget PrePay as an ETC, statewide, for the purpose of receiving Lifeline support from the federal USF); *see also Wisconsin Order* at 4 ("Budget indicates that it provides services using its own facilities pursuant to 47 C.F.R. § 54.201(f) which includes leasing exclusive Unbundled Network Elements (UNEs) from AT&T Wisconsin to originate and terminate calls within the state of Wisconsin. . . .Given Budget's compliance with the federal requirements, the Commission designates Budget as an ETC for the purpose of receiving Lifeline support."). [↑](#footnote-ref-3)
4. Using a combination of its own facilities and those of other facilities-based providers, Budget PrePay will comply with each of the conditions for supported services set forth in the FCC's Report and Order, including 47 C.F.R. § 54.101. [↑](#footnote-ref-4)
5. Toll limitation services are one of the supported services identified under 47 C.F.R. § 54.101. [↑](#footnote-ref-5)
6. *March 8th Letter Supplement* at 2 - 4. [↑](#footnote-ref-6)