

Agenda Date: July 27, 2012
Item Number: A7

Docket: UT-111570
Company Name: Budget PrePay, Inc.

Staff: Jing Liu, Regulatory Analyst
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Recommendation

Grant the exemption from Washington Administrative Code 480-123-030(1)(d), (f) and (g), which requires the filing of a substantive investment plan, wireless network maps and certification on back up power capabilities, respectively; and designate Budget Prepay, Inc. as an Eligible Telecommunications Carrier for the purpose of receiving Low Income Support (Lifeline) from the federal Universal Service Fund in service areas specified in Attachment 1 and subject to the conditions in Attachment 2.

I. Background

On August 29, 2011, Budget PrePay, Inc. (Budget or company) filed a petition with the Washington Utilities and Transportation Commission (UTC or commission) requesting designation as an Eligible Telecommunications Carrier (ETC) pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (the Act), and Washington Administrative Code (WAC) 480-123-030. Budget seeks ETC designation in Washington for the purpose of receiving the federal Low Income Support (Lifeline and Link Up) support that subsidizes monthly charges and the initial connection charges for basic telephone service for qualified low-income households. Lifeline and Link Up supports are part of the federal Universal Service Fund (USF). Budget seeks ETC designation for exchanges listed in Attachment 1. The company will not withdraw funds from the state Lifeline program, Washington Telephone Assistance Program (WTAP).

Budget is based in Bossier City, Louisiana and was founded in 1996. It provides wireline and wireless prepaid telephone services. Currently it has close to 400,000 wireless customers nationwide. For wireless services, it is primarily a resale-based provider utilizing Verizon and Sprint's network. It is designated as an ETC in Arkansas, Kentucky, Louisiana, Maryland, Michigan, Nevada, Pennsylvania, Rhode Island, and Wisconsin.

Budget filed four amendments to its original petition. On September 19, 2011, the company filed a supplement, including a commitment statement to deal with customers directly, a Certificate of Authority and a Certificate of Existence/Authorization issued by the Washington Secretary of State and a revised handset replacement policy. On March 8, 2012, the company filed an amendment to clarify some issues. It informed the commission it submitted a Compliance Plan to the Federal Communications Commission (FCC) to seek forbearance from the "own facilities" requirement under 47 U.S.C. § 214(e)(1)(A). It clarifies that it no longer seeks Link Up support from the federal Low Income Program. It also stated its compliance with the revised federal rules

on the Lifeline program implemented in the FCC's *Lifeline and Link Up Reform Order*.¹ On May 30, 2012, the company informed the commission that the FCC approved its Compliance Plan, hence granting the company forbearance from the "own facilities" requirement under 214(e)(1)(A) of the Act. On June 25, 2012, Budget amended its petition to update its Lifeline rate plans and ETC status in other states. It also clarified its handset replacement policy and free 611 customer care service.

The commission has jurisdiction over ETC petitions. Section 214 (e) of the Act authorizes state regulatory commissions to designate a qualified common carrier as an ETC for the purpose of receiving federal Universal Service Fund.² By rule, WAC 480-123-040, the commission has the authority to approve petitions from carriers requesting ETC designation. The commission's authority to grant or deny petitions for ETC designation includes the authority to impose conditions.³

II. Discussion

Commission staff (staff) finds that Budget qualifies for ETC designation with the proposed conditions in Attachment 2. Pursuant to 47 U.S.C. § 214(e)(2), state commissions may designate more than one carrier as an ETC in an area if such designation is "consistent with the public interest, convenience, and necessity" and the carrier seeking designation as an ETC meets the two requirements of 47 U.S.C. § 214(e)(1):

- (A) offer the services that are supported by federal universal service support mechanisms under section 254(c), 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); and
- (B) advertise the availability of such services and the charges therefore using media of general distribution.

Budget is a common carrier. It is a wireless service reseller that relies on its underlying network provider's facilities to offer services supported by federal universal service mechanisms, as defined in 47 C.F.R. § 54.101(a). Based on the FCC's *Lifeline and Link Up Reform Order*, the FCC forbears from applying the Act's facilities-based requirement to all carriers that seek limited ETC designation to participate in the Lifeline program on the condition that the FCC's Wireline Competition Bureau approves such ETC applicant's Compliance Plan.⁴ The Compliance Plan must demonstrate the ETC applicant's commitment to fight waste, fraud and abuse in the Lifeline program and describe its adherence to the revised federal Lifeline rules. Budget has met the forbearance condition. Its Compliance Plan was approved by the FCC on

¹ *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 and Link Up Reform Order*").

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

³ *In the Matter of the Petition of TracFone Wireless, Inc. for Exemption from WAC 480-123-030(1)(d),(f) and (g); and Designation as an Eligible Telecommunications Carrier for the Purpose of Receiving Lifeline Support from the Federal Universal Service Fund*, Order 03 (June 24, 2010), UT-093012, ¶ 78.

⁴ *Lifeline and Link Up Reform Order*, ¶¶ 361 - 381.

May 25, 2012.⁵ The company also commits that it will advertise the availability of Lifeline services.

The company meets the requirements of the Washington rule on ETC designation, WAC 480-123-030, except subsections (1)(d), (f) and (g). WAC 480-123-030(1)(d) requires an ETC petitioner to provide a “substantive plan of the investments to be made with initial federal support during the first two years in which support is received and a substantive description of how those expenditures will benefit customers.” Budget requests an exemption from the requirement because the company seeks only Lifeline support, not federal High Cost Support. It does not have the obligation to use federal USF for infrastructure investment. WAC 480-123-030(1)(f) requires a wireless ETC petitioner to provide “a map in .shp format of proposed service areas (exchanges) with existing and planned locations of cell sites and shading to indicate where the carrier provides and plans to provide commercial mobile radio service signals.” WAC 480-123-030(1)(g) requires a wireless ETC to have “at least four hours of back up battery power at each cell site, back up generators at each microwave hub, and at least five hours back up battery power and back up generators at each switch.” Budget requests an exemption from the subsections (1)(f) and (1)(g) because it does not have access to its underlying carriers’ coverage map, nor did it have control over its underlying carriers’ emergency power back up facilities. Staff supports the company’s request for exemption from the three requirements under WAC 480-123-030. The exemption is consistent with the public interest, the purposes underlying regulation, and applicable statutes. Granting the exemption will also be consistent with the commission’s designations of other Lifeline-only ETCs such as TracFone Wireless, Inc. (TracFone), Virgin Mobile USA, L. P. (Virgin Mobile), YourTel American, Inc. (YourTel) and Cricket Communications, Inc. (Cricket).

Budget’s Lifeline service plans are very similar to TracFone, Virgin Mobile and YourTel’s. It offers two Lifeline rate plans. The first one is called “Active User Talk & Text,” which includes a combined 4000 voice minutes and text messages. Each text message counts as one minute of voice service. The plan is priced at \$34.25 per month for non-Lifeline customers plus taxes and fees, \$25.00 per month for Lifeline customers plus taxes and fees, and free for tribal Lifeline customers. The second plan is “250 Minute Talk,” which includes 250 voice minutes. It is priced at \$9.25 per month for non-Lifeline customers (including taxes and fees) and free for Lifeline customers. Budget will provide customers with a refurbished wireless handset with a 30 day replacement policy. No activation fee will be charged. Additional voice minutes and text messages can be purchased separately.

Staff reviewed the company’s technical and financial capabilities to provide the supported Lifeline service and carefully considered relevant factors suggested in the FCC’s recent Lifeline and Link Up Reform Order.⁶ Based on the company’s operational history and its financial statements in recent years, staff concludes that the company is technically and financially

⁵ *Wireline Competition Bureau Approved the Compliance Plans of American Broadband & Telecommunications, Budget PrePay, Consumer Cellular, Global Connection, Terracom and Total Call*, FCC Public Notice, WC Docket Nos. 09-197 and 11-42, DA 12-828 (rel. May 25, 2012).

⁶ *Lifeline and Link Up Reform Order*, ¶¶ 388.

capable of providing the supported Lifeline service in compliance with all the low-income program rules.

In the proceedings involving the ETC petitions of TracFone, Virgin Mobile, YourTel and Cricket, staff recommended additional conditions to ensure that the companies would provide Lifeline services in a manner consistent with the public interest. Staff recommends that the commission apply a similar set of conditions to Budget's ETC designation. Given the recent implementation of uniform Lifeline eligibility criteria by the FCC, staff recommends the commission require Budget to use the federal default eligibility criteria in 47 C.F.R. § 54.409(2).⁷ As with all other similarly situated Lifeline-ETCs in Washington, Staff encourages Budget to work with the Department of Social and Health Services (DSHS) to gain access to their beneficiary verification query database to verify the eligibility of those customers whose qualification is based on their participation in Medicaid, Supplemental Nutrition Assistance Program, Supplemental Security Income and Temporary Assistance for Needy Families. For customers who qualify based on their participation in the three additional federal assistance programs that are not in the DSHS database, or for customers who qualify based on income-based criteria, the company must review relevant proof documentations, as specified in 47 C.F.R. § 54.410. Budget is also required to provide its relevant customer records to the commission and the DSHS at least on an annual basis for the purpose of identifying ineligible customers or customers who receive duplicate Lifeline benefits from the company and a wireline Lifeline provider. This condition will be in place until the FCC's National Accountability Database and the National Lifeline Eligibility Database are fully functional.

III. Conclusion

Based on the above analysis, staff believes that Budget meets all the federal and state rules for ETC designation in proposed service areas. Designating Budget as an additional Lifeline-only ETC will deliver competitive benefits to low-income households in Washington. Staff recommends the commission issue an order granting the exemption from WAC 480-123-030 (1)(d), (f) and (g), which requires the filing of an substantive investment plan, wireless network maps and certification on back up power capabilities, respectively. Staff recommends the commission designate Budget PrePay, Inc. as an Eligible Telecommunications Carrier for the purpose of receiving Low Income Support (Lifeline) from the federal Universal Service Fund in the service areas specified in Attachment 1 and subject to the conditions specified in Attachment 2.

Attachments – 2

⁷ The rationale is detailed in staff memo on Cricket Communications, Inc.'s ETC designation petition in Docket UT-111534.