

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Mark Sievers, Chairman
Thomas E. Wright

In the Matter of the Petition of Budget Prepay,)
Inc. for Designation as a Non-Rural Wireless) Docket No. 12-BGPT-752-ETC
Eligible Telecommunications Carrier.)

**ORDER GRANTING ELIGIBLE TELECOMMUNICATIONS CARRIER STATUS IN
KANSAS**

NOW, the above-captioned matter comes before the State Corporation Commission of the State of Kansas ("Commission") for consideration and decision. Having reviewed its files and records and being duly advised in the premises, the Commission makes the following findings:

1. On April 11, 2012, Budget Prepay, Inc. ("Budget") filed an Application with the Commission requesting designation as an Eligible Telecommunications Carrier ("ETC") in the state of Kansas. ETC status is necessary to receive Lifeline funds from the Federal Universal Service Fund ("FUSF") and the Kansas Universal Service Fund ("KUSF"). Budget's initial Application sought both KUSF and FUSF funds. However, Budget amended its Application on June 12, 2012 to state that it is only seeking FUSF Lifeline funds. Budget specifically seeks ETC designation to provide low-income Lifeline-Only service to qualifying consumers in specific Southwestern Bell Telephone Company d/b/a AT&T Kansas ("AT&T Kansas") wire centers.

2. In order to receive low-income Lifeline wireless ETC designation from the Commission, the requesting carrier must make showings required under federal law. Pursuant to

47 U.S.C. § 214(e)(1)-(2), § 254(c), and 47 C.F.R. § 54.101(a), the carrier must make the following showings:

- a. The carrier will offer the services supported by federal universal service support mechanisms under 47 U.S.C. § 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 ETC) throughout the service area for which designation is received.¹
 - b. The carrier will advertise the availability of such service and the charges therefore using media of general distribution.
 - c. Designation would be consistent with the public interest, convenience, and necessity.²
3. Pursuant to Federal Communications Commission ("FCC") orders, Commission

orders, and Kansas law, the carrier requesting low-income Lifeline wireless ETC designation must also show:

¹The supported services are codified in 47 C.F.R. § 54.101(a), which reads as follows:

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 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). Carriers who receive forbearance from the "own-facilities" requirement for federally-supported universal service still need to meet the "own facilities" requirement in order to be eligible for Kansas Universal Service Fund ("KUSF") support. "Service area" is defined in 47 U.S.C. § 214(e)(5). In determining whether "minutes of use for local service is provided at no additional charge to end users," the Commission will consider the comparability of a competitive Eligible Telecommunications Carrier's ("ETC's") offering to the incumbent local exchange carrier's offering. *See* Docket No. 06-GIMT-446-GIT, Order Addressing Comments Regarding Revisions to Eligible Telecommunications Carrier Certification Forms, October 2, 2007. The Commission will evaluate the total service package, "including the local calling scope, included features, and usage that might otherwise be considered long distance." *Id.* The Commission will also consider whether an ETC applicant offers unlimited calling to government, social service, health facilities, educational institutions and emergency numbers when considering comparability. *Id.*

²The Commission will weigh certain factors to determine whether it is in the public interest to grant another carrier ETC status. Those factors include a) benefits of increased competitive choice; b) the impact of multiple ETC designations on the KUSF; c) the unique advantages and disadvantages of the carrier's service offering; d) commitments made regarding quality of telephone service provided by competing providers; and e) the carrier's ability to provide the supported services throughout the designated service area within a reasonable time frame. *See* Docket No. 04-RCCCT-338-ETC, Order No. 14 Order Granting ETC Designation and Addressing Additional Issues, September 30, 2004. The Commission will also take into account any other relevant factors in determining whether ETC designation is in the public interest.

- a. Lifeline customers will be able to apply the Lifeline discount to any calling plan offered by the carrier.³ Additionally, the entirety of the Kansas Lifeline Service Program ("KLSP") discount will be passed along to the end user consumer.⁴ If the carrier offers the same service plans in other states that do not have additional support on top of federal Lifeline subsidies, the carrier will offer a plan in Kansas that justifies the additional Lifeline funds from the KLSP.⁵
- b. The carrier will use the Kansas Lifeline Credit Application to enroll eligible customers in the KLSP or their own Credit Form which must contain all the data found in the Kansas Lifeline Credit Application.⁶
- c. The carrier is financially and technically capable of providing the supported Lifeline service in compliance with all of the low-income program rules.⁷
- d. The carrier has received approval of its Compliance Plan with the FCC (if applicable).
- e. The carrier undertakes efforts to eliminate waste, fraud, and abuse in the Lifeline program.
- f. The carrier, in its advertising, will use "meaningful language so that consumers will understand what they can expect from an ETC," and include contact information for the Commission's Office of Public Affairs and Consumer Protection ("PACP"), the Kansas Corporation Commission, and the Kansas Relay Center for the hearing or speech impaired.
- g. The carrier has sufficient back-up power to remain functional without external power in emergency situations, is able to reroute traffic around damaged facilities, and can manage emergency traffic spikes.⁸

³See Docket No. 06-GIMT-446-GIT, Order Adopting Requirements for Designations of Eligible Telecommunications Carrier, October 2, 2006.

⁴See Docket No. 10-GIMT-658-GIT, Order Addressing Issues Concerning The Kansas Lifeline Service Program, August 17, 2011.

⁵This only applies if the carrier is seeking Kansas Lifeline Service Program ("KLSP") funds.

⁶See Docket No. 10-GIMT-658-GIT, Order Requiring Eligible Telecommunications Carriers to Comply With New Lifeline Requirements and Requesting Comments, March 27, 2012; 47 C.F.R. § 54.410(d).

⁷See 47 § C.F.R. 54.201, 54.202; Docket No. 10-GIMT-658-GIT, Order Requiring Lifeline-Only ETC Applicants to Provide Kansas-Specific Information and Requesting Comments on AT&T Refund Issue, June 21, 2012. The FCC has stated that relevant considerations for such a showing include: a) Whether the Applicant previously offered services to non-Lifeline consumers; b) How long the Company has been in business; c) Whether the Applicant intends to rely exclusively on USF disbursements to operate; d) Whether the Applicant receives or will receive revenue from other sources; and e) Whether the Company has been subject to enforcement action or an ETC revocation proceeding in any state. In Docket No. 10-GIMT-658-GIT, the Commission also stated that lifeline-only ETC applicants should provide Kansas-specific information regarding technical and financial capacity similar to the information provided in the carrier's FCC Compliance Plan.

⁸See Docket No. 06-GIMT-446-GIT, Order Adopting Requirements for Designations of Eligible Telecommunications Carrier, October 2, 2006.

- h. The carrier is properly registered with the Kansas Secretary of State's Office.
- i. The carrier will provide service throughout its designated service area to all customers making a reasonable request for service.
- j. The carrier will comply with all applicable federal and state laws, rules, regulations, and orders. The carrier will inform the Commission of any changes in service made to comply with updated laws, rules, regulations, and orders.

4. Commission Staff ("Staff") submitted a Report and Recommendation in regards to the Application on August 10, 2012 attached hereto and made a part hereof by reference. Staff thoroughly examined Budget's Application and made detailed findings in the Report and Recommendation. A summary of those findings will be noted in this order. For a detailed account of Budget's evidentiary showings, refer to the Report and Recommendation.

5. Staff found that Budget is properly registered with the Kansas Secretary of State's Office and is in "*active and good standing*." Staff found that Budget demonstrated its ability to provide the services and functionalities supported by the federal universal service support mechanisms throughout its designated service areas. Staff found that Budget will allow Lifeline subscribers to choose any standard service plan and apply the available Lifeline credit. Staff found that Budget is technically and financially capable of providing Lifeline service, will apply the Lifeline discount to any selected service package, and will use the Kansas Lifeline Credit Application to enroll eligible customers. Staff found that Budget's Compliance Plan has been approved by the FCC and Budget has demonstrated its efforts to eliminate waste, fraud, and abuse in the Lifeline program. Staff found that Budget will properly advertise its services with meaningful language and include required contact information. Staff found that Budget has sufficient back-up power to remain functional without external power in emergency situations, is able to reroute traffic around damaged facilities, and can manage emergency traffic spikes.

Finally, Staff found that designating Budget as a wireless Lifeline-Only ETC for FUSF purposes would be consistent with the public interest, convenience, and necessity.

6. Staff, satisfied with Budget's showings, recommends approval of Budget's Application for designation as a wireless Lifeline-Only ETC for FUSF low-income purposes in the following AT&T exchanges: Abilene, Almena, Arkansas City, Basehor, Chanute, Cheney, Cherryvale, Clinton, Coffeyville, Colby/Gem, DeSoto, Dodge City, El Dorado, Ellsworth, Emporia, Erie, Eudora, Garden City, Garden Plain, Goodland, Great Bend, Halstead, Hays, Humboldt, Hutchinson, Independence, Iola, Kingman, Kinsley, Larned, Lawrence, Leavenworth/Lansing, Lindsborg, Lyons, Manhattan, McPherson, Medicine Lodge, Neodesha, Newton, Nickerson, Norton, Oakley, Parsons, Phillipsburg/Kirwin, Pittsburg, Plainville, Pratt, Salina, Smith Center, Tonganoxie, Towanda, Winfield, and the Kansas City, Topeka and Wichita Metropolitan Exchanges.

7. The Commission finds Staff's analysis, findings, and recommendations to be reasonable and hereby adopts the same.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. Budget's Application for Lifeline-Only ETC designation in specific Kansas exchanges is approved.

B. Budget shall utilize Lifeline support for its intended purpose and comply with other certification requirements developed by the Commission in Docket No. 05-GIMT-112-GIT and developed in any future proceedings. Future decisions made by the Commission regarding additional ETC requirements must also be followed to continue to receive support.


C. The parties have fifteen (15) days, plus three (3) days if service of this order is by mail, from the date this order was served in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118b; K.S.A. 77-529(a)(1).

D. The Commission retains jurisdiction over the subject matter and parties for the purpose of issuing such further order, or orders, as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Sievers, Chmn.; Wright, Com.

Dated: AUG 22 2012


ORDER MAILED AUG 22 2012
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MRN

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Mark Sievers, Chairman
Thomas E. Wright, Commissioner

Sam Brownback, Governor

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

STATE CORPORATION
COMMISSION

AUG 13 2012

TO: Chairman Mark Sievers
Commissioner Thomas E. Wright

PATRICE PETERSEN-KLEIN
EXECUTIVE DIRECTOR

FROM: Hal Baumhardt
Paula Artzer

DATE: August 10, 2012

DATE SUBMITTED TO EXECUTIVE DIRECTOR: 8/13/12

DATE SUBMITTED TO LEGAL: 8/13/12

DATE SUBMITTED TO COMMISSIONERS: _____

RE: Docket No. 12-BGPT-752-ETC

In the Matter of the Petition of Budget Prepay, Inc. for Designation as a Non-Rural Wireless Eligible Telecommunications Carrier.

EXECUTIVE SUMMARY:

Budget Prepay, Inc. (Budget) has filed an Application for designation as a wireless Eligible Telecommunications Carrier (ETC) in the state of Kansas. Budget is a pre-paid wireless telecommunications service provider to consumers using its underlying carriers: Sprint and Verizon Wireless.

Budget seeks ETC designation to provide low-income Lifeline-Only service to qualifying consumers in specific Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T Kansas) wire centers. Staff recommends approval of Budget's request for designation as a wireless Lifeline-Only ETC for Federal Universal Service Fund (FUSF) purposes in the requested service areas.

BACKGROUND:

On April 11, 2012, Budget filed an Application requesting designation as an ETC for the purpose of receiving low-income Lifeline FUSF support within the state of Kansas. Budget's Application indicates it is not seeking to receive high-cost support, only low-income Lifeline support. In this initial Application, Budget requests ETC designation in specific AT&T Kansas wire centers.

On March 1, 2012, Budget availed itself to the FCC's blanket forbearance from the facilities requirement in Section 241(e)(1)(A) and also filed its Compliance Plan with the FCC. On April 17, 2012, Budget submitted an amended Compliance Plan with the FCC that included a sample Lifeline Application and certification form and sample marketing brochure as supplements to its Compliance Plan.

On May 1, 2012, Budget filed a second amended Compliance Plan that provided specific details regarding its customer enrollment procedures. On May 25, 2012, FCC Public Notice DA 12-828 confirmed approval of Budget's second amended Compliance Plan.

On June 12, 2012, Budget filed with the Kansas Corporation Commission (KCC) an Amendment to Petition for Designation as a Wireless Eligible Telecommunications Carrier withdrawing its request for designation as a wireless ETC for low-income only support from the Kansas Universal Service Fund (KUSF). Budget seeks designation for only low-income support from the federal USF.

Budget is a reseller of Commercial Mobile Radio Service (CMRS), specifically Sprint and Verizon, which were acknowledged as CMRS providers in Kansas in January 2000. Budget is headquartered in Bossier City, Louisiana, and its President and is R. Daniel Hyde III.

ANALYSIS:

Budget is a Foreign for Profit Corporation organized under the laws of the state of Louisiana. Budget is authorized to conduct business as a Foreign for Profit Corporation in the state of Kansas. Budget is properly registered with the Kansas Secretary of State's Office and its status is "*active and in good standing*".

Federal ETC Requirements

Pursuant to 47 U.S.C. § 214(e)(1), a common carrier designated as an eligible telecommunications carrier shall be eligible to receive universal service support in accordance with Section 254 of the Federal Act and shall, throughout the service area for which the designation is received – (A) offer the services that are supported by federal universal service support mechanisms under Section 254(c) of the Federal Act, 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 service and the charges therefore using media of general distribution.¹

Congress empowers the states to designate a common carrier as an ETC. Federal law, 47 U.S.C. § 214 (e)(2), states that "Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and *shall*, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission." (emphasis added).

¹ 47 U.S.C. § 254.

Service or Functionalities

The FCC identifies the services or functionalities that shall be supported by the federal universal service support mechanisms, pursuant to 47 U.S.C. § 254 (c). The supported services are codified in 47 C.F.R. § 54.101(a),

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 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.

In its Application, Budget provided the following explanations of how it proposes to provide Voice Telephony services.

Voice-grade access to the public switched network – *the Company will provide its customers with “voice grade access” by enabling such customers to make and receive calls on the public switched telephone network.*

Local usage – *Budget will provide its Lifeline customers with minutes of use for local service at no additional charge. Both of the Lifeline plans² to be offered by Budget will provide local usage at no additional charge to customers.*

Access to emergency services – *Budget will provide access to emergency services in conformance with the FCC’s requirements. All of the phones that Budget 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. Budget commits to remit 911 revenues to local authorities. The Company commits to pay in a timely manner all applicable federal, state and local regulatory fees, including but not limited to universal service and E-911 fees.*

Toll limitations for qualifying low-income consumers – *There is no need for Budget to offer a toll limitation feature to qualifying low-income customers. Since Budget is a prepaid service provider, customers cannot be disconnected for failure to pay toll charges, nor are there additional charges for exceeding minutes. Additionally, because Budget’s services are prepaid, there is no danger that low-income customers will incur large charges for heavy toll (or other) calling and no risk that they will be disconnected for nonpayment. Further, the Company does not differentiate domestic long distance toll usage from local usage, and all usage is paid for in advance. Pursuant to the Lifeline Reform Order, subscribers to such services are not considered to have voluntarily elected to receive toll limiting service (TLS).³*

² Lifeline offerings are Active User Talk and Text and 250 Minute Talk.

³ See Lifeline Reform Order §54.401(a)(2). 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 the service.

Budget will make available to consumers two Lifeline offerings: 1) Active User Talk & Text and 2) 250 Minutes Talk, with any additional minutes to be loaded electronically. The Active User Talk & Text for Lifeline subscriber is \$25.00 after applying the Lifeline credit of \$9.25 and includes a combination of 4,000 voice minutes and text messages.⁴ The 250 Minute Talk plan is free to Lifeline subscribers and only \$9.25 for non-Lifeline subscribers.⁵ All of Budget's Lifeline plans will include a free handset and the following custom calling features: Caller ID, Call Waiting, and Voicemail. Budget 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 plans come with domestic long distance at no extra per minute charge. Calls to 911 emergency services are always free, regardless of service activation or availability of minutes. The "Plan Additions" are options offered to Budget's customers, see chart below for additional details.

Plan Additions	Retail Rates*
Additional Minutes for 250 Minute Talk	
50 Minutes	\$ 5.00
100 Minutes	\$ 10.00
150 Minutes	\$ 15.00
Text Message Add-on for 250 Minute Talk**	\$ 10.00
* Applicable taxes and government fees are accessed to the above Plan Additions	
** The Text Message Add-on provides 1000 text messages	

On May 24, 2012, Staff submitted Request for Information (RFI) 1.4 asking several clarifying questions regarding Budget's Lifeline offerings such as monthly invoicing for either the non-Lifeline or Lifeline plans and whether customers pay extra for additional minutes under the "Plan Additions" illustrated in its Exhibit [A].

In response to Staff's RFI 1.4, Budget stated that Lifeline customers enrolled in the 250 Minute Talk Plan do not pay a monthly charge and therefore are not billed. Active User Lifeline customers, as well as Active Use and 250 Minutes Talk non-Lifeline customers, are required to prepay services prior to starting their 30 day service cycle. Budget does not issue bills to wireless customers. Customers may pay for services at any Budget retail location, by mailing in the amount due, or by calling Customer Service. Budget further stated that whether a Lifeline or non-Lifeline customer elects to purchase additional minutes under either plan offerings, the customer will be charged accordingly.

The Commission determined in its October 2, 2006, Order in Docket No. 06-GIMT-446-GIT [446 Docket] ("October 2nd Order") that it would follow the FCC's guidance and evaluate local usage by considering the comparability of a Competitive Eligible Telecommunications Carrier's (CETCs) offering on a case-by-case basis "by evaluating the total service package, including the

⁴ Each text message counts as one minute of voice service.

⁵ Although Budget Prepay must pay taxes or government fees in certain states, these taxes or government fees are not assessed to Lifeline customers subscribing to the 250 Minute Talk Plan.

local calling scope, included features and usage that might otherwise be considered long distance.” The Commission further stated that it would consider whether an ETC Applicant offers unlimited calling to government, social service, health facilities, educational institutions and emergency numbers when considering comparability.¶¶7-8.

AT&T Kansas’ monthly rate for a residential access line is \$21.00 in the requested AT&T Kansas exchanges before the federal Lifeline discount is applied. The local calling scope is the exchange, but local calls are unlimited.

Staff does not believe the local usage that will be offered in Budget’s Lifeline Offerings is clearly comparable, but rather, Staff believes in this case local usage comparability would depend on the usage pattern of the particular customer. A customer that completes calls primarily within their exchange may not find the amount of local usage offered by Budget to be comparable to the offering of the incumbent. However, a customer that completes calls outside of their exchange may find that the local usage is comparable. When one considers the calling scope, usage that might otherwise be considered long distance and mobility, a consumer may find Budget’s plans comparable to the incumbent’s service offering.

Staff is satisfied that Budget has demonstrated an ability to provide “voice telephony service” in the requested service areas.

Lifeline Calling Plan Rule

In the Commission’s October 2nd Order, the Commission determined that, among other things, ETCs must apply the Lifeline discount to the service plan a qualifying Lifeline customer chooses. The Commission specifically ordered the following:

ETCs are required to allow Lifeline customers to choose a calling plan and to apply the Lifeline discount to the plan selected by the customers. Any ETC that does not allow customer selection at this time must do so within 180 days of the date of this Order.⁶

On June 21, 2012, Staff submitted RFI 5.1 to ensure that Budget will comply with the October 2nd Order, specifically ¶ 65 that requires carriers offer all Budget plans to a Lifeline customer if they choose the calling plan.

In response to Staff’s RFI 5.1, Budget stated that it will comply with ¶ 65 of the Commission’s Order Adopting Requirement for Designation of Eligible Telecommunications Carriers; whereby, Lifeline subscribers may choose any standard Budget service plan and apply the available Lifeline credit.

⁶ In the Matter of a General Investigation Addressing Requirements for Designation of Eligible Telecommunications Carriers, Docket No. 06-GIMT-446-GIT, Order Adopting Requirements for Designations of Eligible Telecommunications Carrier, October 2, 2006, (446 Docket), ¶ 77e.

Consumer Eligibility and Enrollment

In the Report and Order and Further Notice of Proposed Rulemaking,⁷ the FCC comprehensively reformed and began the modernization of the Universal Service Fund's Lifeline program. Part of that reform was the establishment of uniform eligibility criteria application information in all states.⁸ The Lifeline Credit Application is used to collect specific customer information on either of two qualifying programs (Income-Based or Program-Based) to make certain that the Lifeline subscriber is eligible to receive the Lifeline service. On May 1, 2012, Budget filed an amended Compliance Plan with the FCC, which included Budget's Lifeline Credit Application template as Exhibit [1].

When Budget filed its Application to be designated an ETC in the state of Kansas, the Company included its Lifeline Credit Application identified as a generic Lifeline Credit Application. However, Staff's analysis found that the Lifeline Credit Application failed to meet the Kansas Lifeline program parameters for both Income-Base and Program-Base criteria. Furthermore, the form requested the customer's full social security number rather than only the last four digits as the FCC has adopted.⁹

On May 24, 2012, Staff submitted RFI 3.1 addressing that the Program-Based criteria was missing three Kansas eligible programs and that the Income-Based annual amounts listed on Budget's submitted Lifeline Credit Application were at 135% of the Federal Poverty Level (FPL) rather than 150% of FPL¹⁰. Therefore, Budget's Lifeline Credit Application, as filed, was not in compliance with the Commission's 06-446 Docket.

In response to Staff's RFI 3.1, Budget revised its Kansas Lifeline Credit Application, which now conforms to the 150% FPL and lists all available Kansas eligible Program-Base criteria. Staff is satisfied that Budget's Kansas Lifeline Credit Application now meets the Kansas Lifeline program parameters.

Technically and Financially Capable

1. Requirements

The FCC, in its Lifeline Reform Order, amended sections 54.201 and 54.202 of its rules, governs ETC designation by states to require a carrier seeking designation as a wireless 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. Therefore, in order to ensure wireless Lifeline-Only ETCs are financially and technically capable to provide Lifeline service, the FCC included an explicit requirement to both 54.202 and 54.203 for a common carrier seeking to be designated as a Lifeline-Only ETC demonstrate its technical and financial capability to provide the supported service.

⁷ See FCC R&O and FNPM, FCC12-11, released February 6, 2012.

⁸ 47 C.F.R. §§54.410(a), (b)(1), (c)(1), 54.410(d)(1), (d)(2), (d)(3)

⁹ See §54.410(d)(2)(vi)

¹⁰ Kansas Lifeline Program guidelines adopted a 150% of FPL. See *Commission Order* in Docket No. 00-GIMT-910-GIT, filed January 12, 2003.

The FCC stated that among the relevant considerations for such a showing are:

- a) Whether the Applicant previously offered services to non-Lifeline consumers;
- b) How long the Company has been in business;
- c) Whether the Applicant intends to rely exclusively on USF disbursements to operate;
- d) Whether the Applicant receives or will receive revenue from other sources; and
- e) Whether the Company has been subject to enforcement action or ETC revocation proceeding in any state.

The Commission requested comment in its March 27, 2012, Order in Docket No. 10-GIMT-658-GIT on what additional information should be provided by wireless Lifeline-Only ETCs to demonstrate their technical and financial capacity. After reviewing the Comments filed, the Commission determined in its June 21, 2012, Order that:

The FCC requires Lifeline-only ETC applicants to provide, in their Compliance Plan, a detailed description of how the carrier offers service, the geographic areas in which it offers service, and a description of the carrier's various Lifeline service plan offerings, including subscriber rates, number of minutes included and types of plans available. Lifeline-only ETC applicants should file Kansas-specific information regarding technical and financial capacity similar to the information provided in the carrier's FCC Compliance Plan when filing for Lifeline-only ETC status in Kansas.

2. Budget's Demonstration of Technical and Financial Capacity

In Budget's Application and Compliance Plan, the Company states the following regarding the five considerations of its financial and technical capabilities:

- a) Budget Prepay operates its wireline business as a competitive local exchange carrier (CLEC) in 46 states under the name of Budget Phone offering local and long distance residential phone service. The Company also owns 100% of the affiliate Silver Creek Long Distance, Inc.
- b) Budget is based in Bossier City, Louisiana, and has been in business since 1996.
- c) Budget will not need to rely exclusively on USF support to provide wireless Lifeline services.
- d) Budget 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.
- e) Budget has not been subject to any enforcement action at the FCC or in any state, and no ETC designation held by Budget has been rescinded, revoked or terminated by the FCC or by any state.

Staff is satisfied that Budget meets the FCC's rules pursuant to section 54.202 as being financially and technically capable to offer Lifeline-Only support in its requested service areas.

Types of Facilities Used to Provide Service

Budget is a prepaid reseller that is designated as a wireline ETC in 14 states and as a wireless ETC in six other states; however, Budget is requesting ETC designation only in its wireless operations. Budget states in its Application that CMRS providers are treated as common carriers for regulatory purposes.¹¹

On May 25, 2012, the FCC approved Budget's Compliance Plan, which was filed as a condition of Budget's FCC blanket forbearance, where the FCC in the *Lifeline Reform Order* found that a grant of blanket forbearance of the facilities requirement, subject to certain public safety and compliance obligations, is appropriate for carriers seeking to provide Lifeline-Only service.¹²

There are six conditions that Budget is required to implement to prevent waste, fraud and abuse in the Lifeline program. They are as follows:

1. Providing a certification to Universal Service Administrative Company (USAC) that the Company has procedures in place to review customer's documentation of income- and program-based eligibility. That certification will also confirm that Budget is in compliance with all federal Lifeline certification procedures and Lifeline program rules, and that Budget has obtained a valid certification form for each Lifeline customer;
2. Providing the FCC and USAC each year with general information regarding the terms and conditions of the Lifeline plans that the Company offered during the previous year, including the number of minutes provided, and whether there are additional charges to consumers for service, including minutes of use and/or toll calls;
3. Providing the state Public Utility Commissions (PUC), the FCC or USAC, upon request, with data that will enable that state, the FCC or USAC to determine whether some consumers are enrolled in more than one Lifeline program. Specifically, the Company agrees to make available state-specific customer data, including name and address, upon request to each state PUC where it operates, the FCC or USAC for the purpose of permitting the PUC, FCC or USAC to determine whether an existing Lifeline customer receives Lifeline service from another carrier, and will participate in such a duplicate resolution process, provided that costs for participation are reasonable or defrayed through the universal service contribution mechanism;
4. Promptly investigating any notification that it receives from a state PUC, the FCC or USAC that one of its customers already receives Lifeline service from another carrier;
5. Immediately deactivating a customer's Lifeline service and no longer report that customer on USAC Form 497, if the Company's investigation, a state, the FCC or USAC concludes that the customer receives Lifeline services from another carrier in violation of the Commission's regulations and that the Company's Lifeline service should be

¹¹ *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1425 ¶ 37, 1454-55 ¶ 102 (1994) (wireless resellers are included in the statutory "mobile services" category, and providers of cellular service are common carriers and CMRS providers); 47 U.S.C. § 332(c)(10)(A) ("mobile services" providers are common carriers; *see also PCIA Petition for Forbearance for Broadband PCS*, WT Docket No. 98-100, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 16857, 16911 ¶ 111 (1998)) ("We concluded [in the *Second Report and Order*] that CMRS also includes the following common carrier services: cellular service, ...all mobile telephone services and resellers of such services.")

¹² See *Lifeline Reform Order*, FCC 12-11 at ¶¶ 368-381.

- discontinued such as a de-enrollment notification pursuant to the FCC's June 17, 2011, Report and Order (Section III, B.); and
6. Complying with all audit requirements set forth in the *Lifeline Reform Order*.

Staff is satisfied that Budget has applied for, and received approval of, its Compliance Plan with the FCC. The eight aforementioned conditions in Budget's Compliance Plan demonstrate its efforts to eliminate waste, fraud, and abuse in the Lifeline program, an objective that both the FCC and state Commissions are striving to achieve.

Service Areas

Section 214(e)(5) of the Federal Act defines "service area" as:

The term "service area" means a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the [Federal Communications] Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), established a different definition of service area for such company.

"Service areas" or "operating areas" are defined by the state act in K.S.A. 66-1,187(k), and provides that:

- (1) In the case of a rural telephone company, operating area or service area means such company's study area or areas as approved by the federal communications commission; and
- (2) in the case of a local exchange carrier, other than a rural telephone company, operating area or service area means such carrier's local exchange service area or areas as approved by the commission.

AT&T Kansas is considered a non-rural telephone company for federal support purposes. Therefore, the wire center/exchange is the designated service area for AT&T Kansas.

Budget has requested ETC designation for the following AT&T Kansas exchanges: Abilene, Almena, Arkansas City, Basehor, Chanute, Cheney, Cherryvale, Clinton, Coffeyville, Colby/Gem, DeSoto, Dodge City, El Dorado, Ellsworth, Emporia, Erie, Eudora, Garden City, Garden Plain, Goodland, Great Bend, Halstead, Hays, Humboldt, Hutchinson, Independence, Iola, Kingman, Kinsley, Larned, Lawrence, Leavenworth/Lansing, Lindsborg, Lyons, Manhattan, McPherson, Medicine Lodge, Neodesha, Newton, Nickerson, Norton, Oakley, Parsons, Phillipsburg/Kirwin, Pittsburg, Plainville, Pratt, Salina, Smith Center, Tonganoxie, Towanda, Winfield, and the Kansas City, Topeka and Wichita Metropolitan Exchanges.

Staff believes Budget is capable of providing Lifeline services to the requested AT&T wire centers. Consequently, Staff believes Budget is eligible to be granted ETC designation in the requested AT&T Kansas exchanges, if the Commission deems it is in the public interest.

Advertising

Eligibility for federal universal service support is addressed by Section 214(e) of the Federal Act. Section 214(e)(1) of the Federal Act states as follows:

(1) ELIGIBLE TELECOMMUNICATIONS CARRIERS – A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with Section 254 and shall, throughout the service area for which the designation is received –

(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.

Regarding its advertising, Budget states it currently does and will continue to advertise the availability of services supported by the universal service mechanisms throughout its serving area. The methods of advertising used may include radio, newspaper, magazine, and other print advertisements, outdoor advertising, direct marketing, and the Internet. Budget will use the media to advertise its universal service offerings and will comply with any advertising requirements adopted by the Commission or the FCC.

Staff notes that the Commission required CETCs to develop "meaningful language so that consumers will understand what they can expect from an ETC" and provide it to Staff to review within 90 days from the date of the October 2nd Order ¶12. In addition, the Commission determined that all CETCs shall include contact information for the Commission's Office of Public Affairs and Consumer Protection (PACP) in its advertisements to make sure that customers know where to turn with questions and complaints.

Budget's Application provided Staff with advertising language Budget intends to use for its Lifeline wireless customers. Moreover, Budget stated in its Application that it recognizes that the Commission, in Docket No. 06-GIMT-446-GIT paragraph 12, requires all competitive ETCs to develop meaningful advertising language, so all customers will understand what they can expect from a CETC. Below is that advertising language provided to Staff for review.

As a designated telecommunications carrier eligible to receive universal service support, Budget is proud to offer the Lifeline programs in the state of Kansas. We will provide discounts off service activation (if applicable) and on basic monthly service for residential customers who qualify for income-assisted programs. To determine if you qualify for Kansas Lifeline service, customers must apply in person at a Budget store. To activate service, customers can call (888) 424-5588. For unresolved questions or complaints, you may contact the Kansas Corporation Commission, Office of Public Affairs and Consumer Protection, at KCC – Consumer Protection, 1500 SW Arrowhead Road, Topeka, KS 66604 or toll-free 1.800.662.0027 or in Topeka 785.271.3140. Hearing or speech impaired TDD Kansas Relay Center 1.800.766.3777.

Staff sent RFI 7.1 requesting revised advertising literature since the sample provided in its Kansas Application related to Las Vegas, NV, and Staff was concerned that Budget's advertising for Kansas Lifeline customers did not meet Commission guidelines. In response to Staff's RFI 7.1, Budget provided a revised sample advertising that will be used in Kansas reflecting the aforementioned advertising language. Staff is satisfied that Budget will meet the advertising requirement.

Public Interest

The FCC, in its Virginia Cellular Order,¹³ made new findings regarding determination of the public interest. While the FCC's decision is not binding on this Commission, the Commission found in its ALLTEL and RCC Minnesota Orders that examination of the additional factors enumerated in the FCC's Order is reasonable.

In Budget's Application, the Company provided the following explanations of how it meets the guidelines that the FCC suggested for evaluation in the Virginia Cellular Order:

- **Benefits of Increased Competitive Choice** – *the FCC has determined that while designation of CETCs promotes and benefits consumers by increasing customer choice, designation must include "an affirmative determination that such designation is in the public interest regardless of whether the Applicant seeks designation in an area served by a rural or non-rural carrier."*¹⁴ Budget is seeking ETC designation on a wireless basis which will provide an additional valuable alternative to the existing telecommunications services currently available in these areas and will promote availability and facilitate the provision of advanced communications services to low-income residents of Kansas.

The FCC has long acknowledged the benefits to consumers of being able to choose from a variety of telecommunications providers and the resulting variety of telecommunications services they provide. This is of particular interest in cases where wireless providers, such as Budget, seek to provide services as alternatives to those of the traditional ILEC. In the Highland Cellular¹⁵ case, the FCC recognized and affirmed that some households may not have access to the public switched network as provided by the incumbent local exchange carrier. The wireless service offered by Budget will provide these consumers with a convenient and affordable alternative to traditional telecommunications service that can be used while at home and away from home.

One of the principal goals of the 1996 Act was to "promote competition and reduce regulation in order to secure lower prices and high-quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies."¹⁶ Competition for customers increases facilities and

¹³ See *In the Matter of Federal State Joint Board on Universal Service: Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, Released: January 22, 2004, ("Virginia Cellular Order"), FCC Docket No. DA 03-338.

¹⁴ See *Federal-State Joint Board on Universal Service*, 20 FCC Rcd 6371, ¶ 42 (2005).

¹⁵ *Federal-State Joint Bd. On Universal Serv., Highland Cellular, Inc.*, Memorandum Opinion and Order, 19 F.C.C.R. 6422 (2004).

¹⁶ See 1996 Act (preamble).

spurs development of advanced communications as carriers vie for a consumer's business. Budget's introduction of wireless service focused on low-income customers is motivated by a competitive desire to tap an under-served market. Budget submits that, if it is designated as an ETC and is able to compete for local exchange customers, it will spur a competitive response from affected ILECs as they seek to retain and attract customers. By offering customers new choices, the incumbent LECs will have an incentive to introduce new, innovative, or advanced service offerings.

Budget believes that providing discounted wireless service is consistent with the public interest, providing consumers with increased competitive choice through the offering of a unique service at rates that are just, reasonable, and affordable. The public interest benefits associated with Budget's wireless service include larger local calling area (as compared to traditional wireline carriers), the convenience and security afforded by mobile telephone service, the opportunity for customers to control cost by receiving a preset amount of monthly airtime at no charge, the ability to purchase additional usage at flexible and affordable amounts in the event that included usage has been exhausted, 911 service and, where available, E911 service in accordance with current FCC requirements.

Added together, the Company expects these additional competitive advantages to create an atmosphere that will cause many qualified consumers, at their option, to select the Company's low-income wireless Lifeline service in lieu of the more traditional wireline or wireless services.

- **Competitive ETC's Ability to Provide the Support Services Throughout the Designated Service Area Within a Reasonable Time Frame** – *Budget commits to provide universal service in a timely manner to all customers who make a reasonable request for service. Budget's underlying carrier is already operational in Kansas and thus the Company will be able to quickly provide service upon a favorable recommendation from the Commission.*
- **Impact of Multiple Designations on the Universal Service Fund** – *Budget reiterates that it is applying for ETC designation solely for the purpose to provide Lifeline discounts to qualified low-income consumers and to seek reimbursement for the same and will not seek or accept High Cost support. Since Lifeline support is designed to reduce the monthly cost of telecommunication services for eligible consumers, is distributed on a per-customer basis, and is directly reflected in the price that the eligible customer pays, it is assured that all support received by the carrier is used to provide Lifeline services to consumers, thus promoting Lifeline and the availability of telephone service to low-income users, which is clearly in the public interest. In addition, designation of the Company as an ETC will not pose any adverse effect in the growth in the high cost portions of the USF, nor will it create or contribute to an erosion of high cost funding from any rural or non-rural telephone company.¹⁷*

¹⁷ On July 14, 2012, Staff submitted RFI 6.1 to obtain Budget's specific impact to the federal USF from a Kansas perspective. In response to Staff's RFI 6.1, Budget stated while each state is different, based on Budget's recent experience under the FCC Compliance Plan procedures, Budget anticipates acquiring, on average, 2,500-5,000

- **Unique Advantages and Disadvantages of the Competitor's Service Offering –** *Budget's offerings provide the opportunity for customers to select from various options including a high value wireless plan that provides a significant number of minutes for local and domestic long distance and texting. The ability of the customer to select plans with a significant number of unlimited local and domestic calling minutes or limited minutes free plans reduces the risk of any customer becoming burdened with large and unexpected toll charges and unexpected overage charges.*

Budget's unique prepaid options are 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 a Budget customer is never obligated for more than thirty (30) days. Unlike many wireless providers, one of Budget's service offerings is a high value wireless service that includes a significant number of unlimited local and domestic long distance calling and text minutes, caller ID, call waiting, and voicemail, all without the requisite credit check, deposit, and contract requirements of the more traditional wireline and wireless service providers. Because Budget'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.

- **Commitments Made Regarding High-quality Telecommunications Services By Company –** *Budget acknowledges that under applicable federal guidelines it must satisfy certain consumer protection and service quality standards.¹⁸ As mentioned above, the Company is committed to following the provisions of the Cellular Telecommunications and Internet Association (CTIA) Consumer Code for Wireless Service.*

The Commission determined in its October 2nd Order that an ETC Applicant shall demonstrate that it has sufficient back-up power to remain functional without external power in emergency situations, is able to reroute traffic around damaged facilities, and can manage emergency traffic spikes. In Budget's Application, the Company stated that it commits to remain functional pursuant to Section 54.202(a)(2) of the FCC rules. Budget further states that because the Company's service will be provided at least in part through resale, they will be as reliable and provide all of the back-ups and contingency plans of Budget's underlying wireless service providers, which include back-up battery power at cell sites to ensure functionality in emergency situations. The back-up power estimates will be the same as the underlying carrier provides at its wireless sites. Additionally, Budget will have the ability to provide for the rerouting of traffic around damaged facilities and management of traffic spikes resulting from emergency situations through its wireless service provider and its own facilities.

Also, in the October 2nd Order, the Commission requires all CETCs to file two-year Service Quality Improvement Plans demonstrating progress, including maps and, if targets were not met, an explanation of why on an annual basis beginning in August 2007. Because Budget is not

new activations a month totaling 30,000 to 60,000 activations over the course of a twelve month period. Based on these calculations Budget anticipated impacting the USF by \$277,500 to \$555,000 (penetration multiplied by \$9.25). This assumes all customers are new Lifeline customers.

¹⁸ 47 C.F.R. §54.202(a)(3), 62 Fed. Reg. 15,978 at ¶ 28.

seeking high-cost support for its wireless service, certain requirements¹⁹ concerning ETC Applications specific to high-cost support are inapplicable, and Budget seeks waiver of those requirements. Budget states no public utility will be affected by this waiver and good cause exists to waive the stated requirements as Budget's Petition is limited to seeking only low-income federal USF support. Staff recommends the Commission grant Budget's request for a waiver from this filing requirement since Budget leases facilities from Sprint and Verizon and is not seeking high-cost support and granting such a waiver is not prejudicial to any other eligible telecommunications carrier. Staff also finds that customers should not be affected by this waiver.

After reviewing Budget's Application and its responses to Staff RFIs, Staff believes that Budget has demonstrated that it is in the public interest to designate it as a wireless Lifeline-Only ETC for federal USF purposes in the requested service areas.

RECOMMENDATION:

Staff recommends approval of Budget's request for designation as a wireless Lifeline-Only ETC for FUSF low-income purposes in the following AT&T exchanges: Abilene, Almena, Arkansas City, Basehor, Chanute, Cheney, Cherryvale, Clinton, Coffeyville, Colby/Gem, DeSoto, Dodge City, El Dorado, Ellsworth, Emporia, Erie, Eudora, Garden City, Garden Plain, Goodland, Great Bend, Halstead, Hays, Humboldt, Hutchinson, Independence, Iola, Kingman, Kinsley, Larned, Lawrence, Leavenworth/Lansing, Lindsborg, Lyons, Manhattan, McPherson, Medicine Lodge, Neodesha, Newton, Nickerson, Norton, Oakley, Parsons, Phillipsburg/Kirwin, Pittsburg, Plainville, Pratt, Salina, Smith Center, Tonganoxie, Towanda, Winfield, and the Kansas City, Topeka and Wichita Metropolitan Exchanges.

Budget should be advised that support received must be used for its intended purpose each year and the Company must comply with other certification requirements developed by the Commission in Docket No. 05-GIMT-112-GIT and in any future proceedings. Additionally, Budget should be reminded that any future decisions made by the Commission resulting from the October 2nd Order, and any future decisions made by the Commission regarding additional ETC requirements may impact the Company and the Company may be required to follow these to continue to receive support.

cc: Patrice Petersen-Klein, Executive Director
Jeff McClanahan, Director of Utilities
Christine Aarnes, Chief of Telecommunications

¹⁹ See C.F.R. §54.202(a)(1)(ii)

PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET TO THE FOLLOWING:

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
ROBIN ENKEY BUDGET PREPAY, INC. D/B/A BUDGET PHONE 1325 BARKSDALE BLVD SUITE 200 BOSSIER CITY, LA 71111		
MICHAEL NEELEY, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD ROAD TOPEKA, KS 66604-4027 ***Hand Delivered***		
LISA A. GILBREATH, ATTORNEY SNR DENTON US LLP 4520 MAIN STREET STE 1100 KANSAS CITY, MO 64111-7700		
MARK P. JOHNSON, PARTNER SNR DENTON US LLP 4520 MAIN STREET STE 1100 KANSAS CITY, MO 64111-7700		

ORDER MAILED AUG 22 2012

The Docket Room hereby certified that on this _____ day of _____, 20_____, it caused a true and correct copy of the attached ORDER to be deposited in the United States Mail, postage prepaid, and addressed to the above persons.