



## **The Application**

Budget is a Louisiana corporation authorized to conduct business within Idaho. Budget states that it “currently derives the majority of its revenue from selling low-cost prepaid telephone services on a nationwide basis to thousands of customers and employs approximately 340 people nationally.” Application at 8. Budget is a competitive local exchange carrier that provides basic local exchange services and long-distance services in 42 states. *Id.* at 2. Budget asserts that it meets all of the requirements of Section 214(e)(1) of the federal Telecommunications Act to be designated as an ETC.<sup>1</sup> *Id.* at 5. More specifically, Budget asserts it is able to provide the support services required for ETC designation, including access to the public switch telephone network, local calling services, access to emergency services, as well as access to operator services and directory assistance.<sup>2</sup>

## **Budget’s Lifeline Service Offerings**

Budget intends to initially offer qualifying Lifeline customers a choice of two prepaid calling plans. The first plan is a “talk & text” wireless plan that provides 4,000 minutes of combined local/toll voice services and texting for \$25. Each text will count as one voice minute. The second plan is offered at no cost to the customer but limited to 250 minutes of local/toll usage. Under the second plan customers may purchase additional minutes of usage. Application at 16-17. Budget also proposes to offer its eligible Lifeline customers toll blocking and toll control services. While such toll limitation services do not need to be offered for Lifeline services, these services allow Budget’s customers to protect against unexpectedly larger bills. *Id.* at 6.

If approved for ETC designation, Budget intends to offer services through the resale of another carrier’s facilities.<sup>3</sup> In addition, it intends to advertise the availability of its services and related charges using media of general distribution. *Id.* at 7.

Budget’s proposed ETC service area for Idaho is comprised of wire centers for both non-rural and rural incumbent local exchange carriers (“ILECs”). More specifically, Budget

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<sup>1</sup> 47 U.S.C. § 214(3).

<sup>2</sup> In December 2011, the FCC amended the list of required services for ETC designation by removing dual tone signaling, single-party service, and access to operator services, interexchange services, and directory assistance. *In the Matter of Lifeline and Link Up Reform and Modernization, Report and Order and Further Notice of Proposed Rulemaking* (“the Order”), 27 F.C.C. Rcd. 6656 at ¶ 365 (Feb. 6, 2012).

<sup>3</sup> Budget’s underlying wireless providers are Sprint and Verizon Wireless. Application at 13.

proposes to provide ETC services in the CenturyLink and Frontier service areas, as well as in the wire centers of several rural ILECs. *Id.* Exh. 2.

Budget asserts that its ETC designation will be in the public interest. In particular, Budget believes that providing “discounted wireless service in both rural and urban areas is consistent with the public interest.” *Id.* at 20. Budget’s Lifeline plans will be provided to eligible telecommunications customers “without the requisite credit check, deposit, service activation fees, minimum service periods and contract requirements of the more traditional wireless service providers.” *Id.* at 21. Budget also commits to complying with any applicable Lifeline eligibility requirements developed by the Federal Communications Commission (“FCC”), this Commission, or the Idaho Legislature. *Id.* at 24-25. Consequently, Budget requests that the Commission designate it as a wireless ETC throughout Idaho for the purpose of receiving federal USF support for Lifeline only services. Budget also requests that the Commission “either find inapplicable or waive [reporting] requirements related solely to high-cost funding, including initial and annual provision of a network improvement plan, provision of related progress reports, and [usage] certification . . . of high-cost funds.” *Id.* at 25-26.

### **The Federal Lifeline and Link Up Reform and Modernization Order**

On February 6, 2012, the FCC released a Report and Order (“the Order”) to comprehensively reform the low-income program of the federal USF. The Order substantially strengthens protection against waste, fraud, and abuse; improves program administration and accountability; improves enrollment and consumer disclosures; initiates modernization of the program for broadband; and constrains the growth of the program in order to reduce the burden on all who contribute to the USF.<sup>4</sup> The Order also establishes specific requirements for ETCs to obtain customer certifications to prevent duplication of lifeline benefits.

To conform to the Order, Budget outlines how it will guard against potential fraudulent use of Lifeline service by establishing procedures for “one-per-household rule,” deactivation for non-usage, obtaining proof of documentation to determine eligibility by access to an electronic

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<sup>4</sup> See *Lifeline and Link Up Reform and Modernization et al*, WC Dkt No. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 at ¶ 361-38, Appendix A (Feb. 6, 2012).

database, certification forms with penalty for perjury language, and distribution of Lifeline services directly to its Lifeline customers. *Id.* at 23-24.

### **Budget's Compliance Plan**

The FCC approves compliance plans pursuant to the Order as a condition of obtaining forbearance from the facilities requirement of the Communications Act of 1934, as amended, for the provision of Lifeline service.<sup>5</sup> In the Order, the FCC 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.”<sup>6</sup> Therefore, the FCC conditionally granted forbearance from the Act’s facilities requirement to all telecommunications carriers seeking Lifeline-only ETC designation, subject to the following conditions: (1) compliance with certain 911 and enhanced 911 (E911) public safety requirements; and (2) Bureau<sup>7</sup> approval of a compliance plan providing specific information regarding the carrier and its service offerings and outlining the measures the carrier will take to implement the obligation contained in the Order. Thus, Budget’s compliance plan was reviewed and approved by the FCC on May 25, 2012.<sup>8</sup>

### **STAFF ANALYSIS**

Staff has reviewed Budget’s Application along with the Company’s FCC-approved Compliance Plan. Staff has conducted an analysis of the Company’s fulfillment of the federal Telecommunications Act of the 1996, the *Lifeline and Link Up Reform and Modernization Order* and of Commission Order No. 29841. In addition, Staff has reviewed Budget’s request for ETC designation in the 136 non-rural and rural wire centers identified in Exhibit 2 of the Application.

### **Public Interest Considerations**

When applying the public interest test in an Application for ETC designation, Staff believes there are two primary considerations that merit discussion.

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<sup>5</sup> *Id.* at ¶ 379-380 (Feb. 6, 2012).

<sup>6</sup> FCC Public Notice DA 12-828, WC Docket Nos. 09-197 and 11-42 at 1-2 (May 25, 2012).

<sup>7</sup> The FCC’s Wireline Competition Bureau.

<sup>8</sup> *See supra* n. 2 at 2.

1. Contribution to Idaho Programs. As in the more recent TracFone (pre-paid wireless service provider) ETC Application, the Commission considered the carrier's contribution to the Idaho Telephone Service Assistance Program ("ITSAP") fund and to the Idaho Emergency Communications Act ("IECA") fund and determined that it was in the public interest to require an ETC to contribute to these funds. *See* Order No. 32301 at 9. Budget states that it will contribute to the ITSAP and the IECA funds. *Id.* at 22. The Company does not have current customers in Idaho and, as a result, does not yet remit any ITSAP or IECA fees. *See* Response to Production Request No. 3. Staff, therefore, believes Budget meets this public interest test.

2. Cream Skimming analysis. The Commission weighs whether the potential benefits of ETC designation outweigh the potential harms. One consideration is the Applicant's commitment to provide universal service throughout the rural areas or, if not, whether the potential for "cream skimming" exists.

Budget believes that providing discounted wireless service in both rural and urban areas is consistent with the public interest, convenience, and necessity. The Company supports this position by stating, that it will "provide consumers with increased competitive choice through the offering of a unique service at rates that are just, reasonable and affordable," and "this will further federal legislative goals of ensuring that all Idahoans have access to affordable basic telephone service." *Id.* at 20.

As in the Virgin Mobile ETC Application, Staff believes that the Company's exclusion of high-cost support in its Application makes this cream skimming analysis moot, as well as the rural versus non-rural service area considerations. *See* Order No. 32645 at 3. Staff, however, believes that Budget's ETC designation should not include the entire state, but instead the Company's ETC designation should be limited to those exchanges listed in its Exhibit 2.

### **Network Improvement Plan**

In the Idaho ETC Designation Order, the two-year network improvement and progress report is required of all ETCs receiving high-cost support. *See* Order No. 29841 at 18. However, as with the Cricket Communications, Inc.'s ETC Application, the Commission determined that a two-year network improvement plan was not applicable to Lifeline-only ETCs and granted Cricket's ETC designation. *See* Order No. 32501.

In its Order, the FCC amended section 54.202 to clarify that a common carrier seeking designation as a Lifeline-only ETC is not required to submit a five-year network improvement

plan as part of its application for designation as an ETC. In the *USF/ICC Transformation Order and FNPRM*, the FCC included a new requirement in section 54.202, requiring a common carrier seeking to be designated as an ETC by the Commission to submit a five-year plan describing its proposed network improvements and upgrades. However, as Lifeline-only ETCs are not receiving funds to improve or extend its networks, the FCC stated that it “saw little purpose in requiring such plans as part of the ETC designation process.”<sup>9</sup> Budget’s Application seeks only low-income USF support as a limited ETC designation. Thus, the requirement to provide a network improvement plan does not apply to this Application. Therefore, Staff believes Budget is exempt from Idaho’s two-year network improvement plan requirement as well.

### **Ability to Remain Functional in Emergencies**

Budget states that it has the ability to remain functional in emergency situations in accordance with the Idaho ETC Order and section 54.202(a)(2) of the FCC’s Rules. 47 C.F.R. § 54.202(a)(2). Budget discloses that: 1) it designed its geographically located switching infrastructure in an effort to eliminate a single isolated power incident from affecting traffic on its network; 2) all facilities are equipped with both AC and DC battery backup as well as generators; 3) all critical equipment is supplied with two separate power sources; 4) its network is maintained with multiple primary and redundant paths; and 5) the voice network switching infrastructure is designed to advance to the next termination carrier in route should a failure occur. In addition, Budget maintains 24X7X365 support agreements on all key systems. Budget will also rely on the Company’s underlying wireless carriers’ access to Cell Site On-Wheels and Satellite On-Light-Trucks. Application at 11-13. Staff believes Budget satisfies this requirement.

### **Other ETC Designation Requirements**

Additional requirements for ETC designation are detailed in Appendix 1 of Order No. 29841 and are discussed in more detail below.

1. Common Carrier Status. Budget is a common carrier as defined in U.S.C. Title 47. *Id.* at 5.

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<sup>9</sup> See *Lifeline and Link up Reform and Modernization et al*, WC Dkt No. 11-42, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 at ¶ 386.

2. Provide the Universal Services. Budget will provide each of the supported services identified in Section 54.101 of C.F.R. Title 47, as amended by the FCC on December 23, 2011 and February 6, 2012, throughout its designated service area. *Id.* at 6.

3. Advertising. Budget will advertise the availability and rates for its services described in the Application through media of general distribution. *Id.* at 7.

4. The Commitment and Ability to Provide Supported Services. Consistent with the requirements of 47 C.F.R. § 54.201(d)(1), Budget states that it is able to offer all of the services and functionalities supported by the federal USF throughout its designated service area. Budget also notes that the FCC has provided a blanket forbearance authorizing the Company to provide Lifeline services without use of its “own facilities” so long as it meets E911 access requirements and, therefore, satisfies the requirements of Section 214(e)(1)(A) of U.S.C. Title 47 and 47 C.F.R. 54.201(d). *Id.* at 9.

5. A commitment to Consumer Protection and Service. Budget states it has complied with the Cellular Telecommunications and Internet Association’s (CTIA) Consumer Code for Wireless Service. “Through the use of resold services and its own facilities, Budget will be able to provide the same quality and reliability as that currently provided by the [underlying carriers].” *Id.* at 14.

6. Description of the Local Usage Plan. Budget states that it will offer two prepaid wireless service plans as well as a Tribal Lifeline offering. These plans include a combination of local and domestic long distance calling and texting as described earlier under Budget’s Lifeline Service Offering. *Id.* at 16-17.

7. Tribal Notification. The Company will provide Tribal notifications. The applicable tribal areas include those of the Nez Perce Tribe, the Shoshone-Bannock Tribe, and the Coeur d’Alene Tribe. *Id.* at 18

Staff believes Budget meets the aforementioned ETC designation requirements where applicable for a Lifeline-only ETC designation.

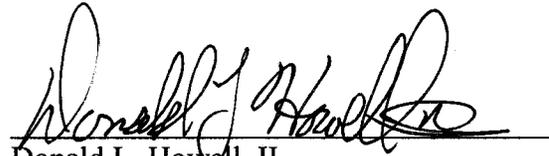
#### **STAFF RECOMMENDATION**

Staff has reviewed the Application of Budget PrePay, Inc. dba Budget Mobile for designation as a Lifeline-only ETC. Staff believes that the Application demonstrates the Company’s commitment to fulfill the obligations of an ETC in Idaho. The Company will provide all universal services supported by the federal USF throughout its service territory; it has

addressed all of the public interest questions that accompany an ETC Application; the Company's compliance plan has been approved by the FCC; and Budget will provide multiple pricing plans which will increase customer choice for low-income service in Idaho. Budget also states it will contribute to the ITSAP and IECA.

Staff believes Budget's Application for designation as an ETC is in the public interest and should be approved for those wire centers listed in Exhibit 2.

Respectfully submitted this 10<sup>th</sup> day of January 2013.



Donald L. Howell, II  
Deputy Attorney General

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i:umisc/comments/bppt12.1dhgs comments

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 10<sup>TH</sup> DAY OF JANUARY 2013, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. BPP-T-12-01, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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CERTIFICATE OF SERVICE