



COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

D.T.C. 11-12

March 5, 2013

Petition of Budget PrePay, Inc. for Limited Designation as a Lifeline-Only Eligible Telecommunications Carrier

ORDER APPROVING PETITION

I. INTRODUCTION

In this Order, the Department of Telecommunications and Cable (“Department”) grants Budget PrePay, Inc.’s (“Budget” or “the Company”) petition (“Petition”) for limited designation as an Eligible Telecommunications Carrier (“ETC”) pursuant to 47 U.S.C. § 214(e)(2). Budget requests limited designation as an ETC in order to permit it to offer prepaid wireless Lifeline services throughout Massachusetts and to receive universal service fund (“USF”) support for such services. The Department grants Budget’s Petition, subject to the conditions set forth below, because the Company meets the Federal Communications Commission’s (“FCC”) ETC requirements; the procedures and requirements of the *Lifeline Reform Order*;¹ the Department’s ETC requirements, and such designation is in the public interest.

II. PROCEDURAL HISTORY

Budget filed its initial petition for limited designation as a facilities-based ETC for the purposes of receiving Lifeline and Link Up support from the USF (“2011 Petition”) on

¹ *In the Matter of Lifeline & Link Up Reform & Modernization, et al.*, WC Docket No. 11-42, et al., *Rep. & Order & Further Notice of Proposed Rulemaking*, FCC 12-11 (rel. Feb. 6, 2012).

September 19, 2011. 2011 Petition. On November 9, 2011, the Department opened this proceeding, established a procedural schedule, and issued its First Set of Information Requests to Budget. *In the Matter of Petition of Budget PrePay, Inc. for Ltd. Designation as a Lifeline-Only Eligible Telecomms. Carrier*, D.T.C. 11-12 (“D.T.C. 11-12”). The Department received Budget’s responses to these information requests on December 5, 2011. *Id.*

Also on December 5, 2011, the Department suspended the procedural schedule in this case due to then pending action by the FCC on several issues concerning the Lifeline program, including those affecting ETC designations in Massachusetts. D.T.C. 11-12, *Hearing Officer Order Suspending Procedural Schedule* (Dec. 5, 2011).

The FCC issued the *Lifeline Reform Order* on February 6, 2012, in which it made material changes to the USF’s Low-Income Program. *See Lifeline Reform Order*, ¶ 1. Among other things, the FCC, acting on its own motion, established a process for forbearance from the facilities requirement of section 214(e)(1)(A) of the Communications Act of 1934, as amended (“Act”), to telecommunications carriers seeking limited ETC designation to participate in the Lifeline program. *Id.*, ¶ 368. The FCC conditioned forbearance upon its approval of a carrier’s compliance plan.² On March 1, 2012, the Department dismissed the 2011 Petition, but granted leave to amend and re-file the application if the Company availed itself of the FCC’s blanket forbearance provisions and received FCC approval of its compliance plan. D.T.C. 11-12, *Order of Dismissal Without Prejudice* (Mar. 1, 2012). The FCC approved Budget’s compliance plan on

² The FCC stated that the compliance plan must provide “specific information regarding the carrier’s service offerings” and must outline “the measures the carrier will take to implement the obligations contained in [the Lifeline Reform] Order as well as further safeguards against waste, fraud and abuse the Bureau may deem necessary.” *Lifeline Reform Order*, ¶ 368.

May 25, 2012. *In the Matter of Lifeline & Link Up Reform & Modernization, et al.*, WC Docket No. 11-42, et al., *Pub. Notice* (rel. May 25, 2012) (“*FCC Compliance Plan Approval*”).³

Budget re-filed its petition for limited designation as a Lifeline ETC on June 15, 2012. Petition at 1. On July 30, 2012, the Department issued its Second Set of Information Requests. Budget filed its responses on August 21, 2012.

On September 25, 2012, the Department held a public hearing and an evidentiary hearing. No comments were received during the public hearing. David Donahue, Chief Financial Officer for Budget, offered testimony during the evidentiary hearing. Evidentiary Hearing Transcript (“Tr.”) at 10. During the evidentiary hearing, the Department reviewed Budget’s Petition and its responses to the Department’s information requests. At the evidentiary hearing, the Department issued 14 records requests to Budget. *See* Tr. at 92. Budget filed its responses to Record Requests 1A, 1B, 3, 4A, 4B, 10, 11, and 12 on October 17, 2012. *See* RR 1A, 1B, 3, 10, 11, 12. Budget filed the remaining responses on October 24, 2012. *See* RR 2A, 2B, 5, 6, 7, 8, 9, 13, 14. The evidentiary record consists of Budget’s 2011 Petition; Budget’s responses to the Department’s First Round of Information Requests (“IR 1-1” through “IR 1-37”); the Petition; Budget’s responses to the Department’s Second Round of Information Requests (“IR 2-1” through “IR 2-24”); Budget’s Supplemental Responses to the Department’s information requests; the curriculum vitae of David Donahue (“Hearing Ex. 1”); Budget’s Corporate Retail Overview (“Hearing Ex. 5”); a draft of Budget’s Massachusetts Lifeline Application/Certification Form (“Hearing Ex. 6”); the testimony at the evidentiary hearing; Budget’s proof of publication; and Budget’s responses to the Department’s record requests (“RR 1” through “RR 14”).

³ Budget stated in its compliance plan that it would follow the FCC’s Lifeline requirements and all requirements in the compliance plan in all states in which it provides Lifeline service. Petition at Attachment 1.

III. ANALYSIS AND FINDINGS

State regulatory commissions, upon request and consistent with the public interest, convenience, and necessity, shall designate more than one common carrier as an ETC for a service area designated by the state commission if the carrier meets the requirements of the Act. 47 U.S.C. § 214(e). The FCC emphasized in its *Universal Service Order*⁴ that state regulatory commissions should conduct a rigorous ETC designation process. *Universal Service Order*, ¶ 58. Accordingly, the Department conducts its review of the Petition while applying the FCC's ETC requirements, the procedures and requirements of the *Lifeline Reform Order*, the Department's ETC requirements, and in consideration of the public interest. The Department finds that Budget has met these standards.

A. ETC Requirements

Under applicable law, only a carrier designated as an ETC is eligible to receive USF support⁵ for a designated service area. 47 U.S.C. §§ 214(e), 254(e); 47 C.F.R. § 54.201. In Massachusetts, the Department exercises jurisdiction over carriers pursuant to G. L. c. 159, § 12. *See also Investigation by the Dep't on its Own Motion into the Lifeline and Link-Up Programs for Mass. Tel. Customers*, D.T.C. 10-3, *Order Opening Investigation* (Sept. 17, 2010); *In the Matter of TracFone Wireless, Inc., Annual Verification of SafeLink Wireless Lifeline Subscribers*, D.T.C. 09-9, *Order* (June 30, 2010). The Department has broad power to regulate telephone service, including the designation of a carrier as an ETC. 47 U.S.C. § 214(e)(2); G. L. c. 159, § 12. Accordingly, it is the Department's responsibility to determine whether a carrier such as Budget meets the ETC service requirements.

⁴ *In the Matter of Fed.-State J. Bd. on Universal Serv.*, CC Docket No. 96-45, *Rep. & Order*, FCC 05-46 (rel. Mar. 17, 2005).

⁵ USF support is in turn categorized as high cost; low-income; rural health care; and schools and libraries. *See* 47 C.F.R. § 54.701(b).

In order for the Department to grant ETC designation, Budget must meet the following requirements:

- 1) Budget is a “common carrier” as defined by the Federal Telecommunications Act of 1996, § 3(10). 47 U.S.C. § 214(e)(1); 47 C.F.R. §§ 20.9, 54.201(d).
- 2) Budget will offer the required supported services (47 U.S.C. § 214(e)(1)(A); 47 C.F.R. §§ 54.101(a), 54.201(d)(1))⁶ to qualifying low-income consumers (47 C.F.R. § 54.405(a)), throughout its designated service area. 47 U.S.C. § 214(e)(1)(A); 47 C.F.R. § 54.201(d)(1).
- 3) Budget’s compliance plan has been approved by the FCC’s Wireline Competition Bureau and Budget will provide its Lifeline subscribers with 911 and E911 access, regardless of activation status and availability of minutes, as well as E911-compliant handsets. *See Lifeline Reform Order*, ¶ 373. In addition, Budget will replace, at no additional charge to the subscriber, noncompliant handsets of Lifeline-eligible subscribers who obtain Lifeline-supported services. *See* 47 U.S.C. § 214(e)(1)(A); *Lifeline Reform Order*, ¶¶ 368-381.⁷
- 4) Budget will advertise the availability of supported services and “the charges therefor using media of general distribution” throughout its designated service area (47 U.S.C. § 214(e)(1)(B); 47 C.F.R. § 54.201(d)(2)), and “[p]ublicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.” 47 C.F.R. § 54.405(b).⁸
- 5) Budget is financially and technically capable of providing the supported services. 47 C.F.R. § 54.201(h).
- 6) Budget will comply with additional FCC requirements;⁹ the procedures and requirements set forth in the *Lifeline Reform Order* in accordance with established

⁶ The FCC modified the required supported services in 47 C.F.R. § 54.101 in the *USF/ICC Transformation Order*, ¶¶ 76-78, n.114, and affirmed the modification in its *Order on Reconsideration*. *In the Matter of Connect Am. Fund, et al.*, WC Docket No. 10-90, et al., *Order on Reconsideration*, FCC 11-189 (rel. Dec. 23, 2011). These supported services include: 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 emergency services (911 or enhanced 911 (“E911”)), to the extent implemented; and toll limitation services for qualifying low-income consumers if the carrier distinguishes between toll and non-toll calls in pricing of the service. *See* 47 C.F.R. § 54.401(a)(2).

⁷ As noted above, Budget has availed itself of the FCC’s blanket forbearance from the “own facilities” requirement of 47 U.S.C. § 214(e)(1)(A), subject to these conditions.

⁸ ETCs must disclose on all materials describing Lifeline service that the ETC is offering the service; the offer is a Lifeline service; Lifeline is a government program; the service is non-transferable; only eligible consumers may enroll in the program; and the program is limited to one discount per household. *See* 47 C.F.R. § 54.405(c), (d).

⁹ These additional requirements include: certifying that Budget will comply with the service requirements applicable to the support it receives; demonstrating Budget’s ability to remain functional in emergency situations; demonstrating that Budget will satisfy applicable consumer protection and service quality

effective dates;¹⁰ and additional requirements imposed by the Department, as discussed below.

- 7) Finally, Budget's designation as an ETC must be consistent with the public interest, convenience, and necessity. 47 U.S.C. § 214(e)(2); 47 C.F.R. § 54.202(b).

B. The Department's Analysis

Based on its review of the evidentiary record, the Department finds that Budget satisfies requirements (1) through (7) above. Furthermore, the Department finds that Budget's designation as an ETC is consistent with the public interest, convenience, and necessity. Accordingly, the Department grants Budget ETC designation for the reasons discussed below.

1. *Budget is a common carrier.*

To meet the first ETC requirement, Budget must establish that it is a common carrier. 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d). "Common carrier" is defined as "any person engaged as a common carrier for hire, in interstate or foreign communications by wire or radio" 47 U.S.C. § 153(11). Budget states that it offers interstate communications by radio and is a common carrier for hire. Petition at 7; Tr. at 13. The Department agrees, finding that Budget is a Commercial Mobile Radio Service ("CMRS") provider and therefore a "common carrier." *See* 47 U.S.C. § 332(c)(1)(a); 47 C.F.R. § 20.9; *In the Matter of the Application of Virgin Mobile*

standards; and submitting information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers. *See id.* § 54.202(a)(1)(i), (2), (3), (5). A carrier need not provide a five-year plan describing proposed improvements to its network if it is only seeking low cost support. *Id.* § 54.202(a)(1)(ii).

¹⁰

These procedures and requirements include:

- 1) screening applicants using the National Lifeline Accountability Database to be established as set forth in 47 C.F.R. §§ 54.404(b)(1)-(10);
- 2) complying with the carrier's obligations to offer Lifeline, including de-enrollment requirements, as established in 47 C.F.R. §§ 54.405(a)-(e)(1)-(4);
- 3) certifying that it is prepared to comply with the subscriber eligibility and determination and certification requirements established in 47 C.F.R. §§ 54.410(a)-(g) to the extent applicable;
- 4) complying with annual certifications required by ETCs established in 47 C.F.R. §§ 54.416(a), (b);
- 5) complying with record keeping requirements established in 47 C.F.R. § 54.417;
- 6) complying with audit requirements, to the extent applicable, established in 47 C.F.R. § 54.420; and
- 7) complying with annual reporting requirements established in 47 C.F.R. § 54.422.

USA, L.P.’s Petition for Ltd. Designation as an Eligible Telecomms. Carrier, D.T.C. 10-11, *Order Approving Petition* at 6 (Sept. 9, 2011) (“*Virgin Mobile ETC Order*”) (finding that CMRS services satisfy the definition of common carrier).

2. *Budget will offer the supported services to eligible low-income consumers throughout its Designated Service Area.*

Budget must demonstrate that it will offer the supported services to eligible low-income consumers throughout its Designated Service Area. 47 U.S.C. § 214(e)(1)(A); 47 C.F.R.

§§ 54.101(a), 54.201(d)(1), 54.405(a). Because Budget has availed itself of the FCC’s forbearance from the “own facilities” requirement of section 214(e)(1)(A), it is unnecessary for Budget to provide the supported services using any of its own facilities. *See* 47 U.S.C.

§ 214(e)(1)(A); *Lifeline Reform Order*, ¶¶ 368-381; *FCC Compliance Plan Approval*.

“Supported services” include 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 emergency services (911 or E911), to the extent implemented; and toll limitation services for qualifying low-income consumers if the carrier distinguishes between toll and non-toll calls in pricing of the service. *See* 47 C.F.R. §§ 54.101, 54.401(a)(2).

Budget has stated that it will offer each of the services supported by the Lifeline program through resale of Sprint PCS’s and Verizon Wireless’s networks throughout the Commonwealth.¹¹ *Petition* at 4-6. Specifically, Budget asserts that it is committed to offering to eligible Lifeline customers a basic voice plan that includes all of the supported services. *Petition* at 4-5; *Tr.* at 12. Budget’s basic Lifeline plan, called “250 Minute Talk,” is free¹² to eligible

¹¹ Specifically, Budget asserts that its Designated Service Area covers the service territories of Verizon New England, Inc., Granby Telephone and Telegraph Company, Inc. of Massachusetts, Richmond Telephone Company, and Taconic Telephone Company. *Petition* at 6.

¹² After the \$9.25 flat rate Lifeline subsidy. *See Lifeline Reform Order*, ¶ 58.

Lifeline customers.¹³ Petition at Attachment 1, Ex. 3; Ex. 2-9. The 250 Minute Talk plan includes a combined 250 voice minutes and/or text messages that may be used at anytime, but do not rollover. Petition at Attachment 1, Ex. 3; Ex. 2-9; *see also* Tr. at 6. The plan also includes the following equipment and features at no cost to the consumer: a handset, voicemail, caller ID, call waiting, customer service, E911 access, domestic long distance, and roaming.¹⁴ Petition at 4, Attachment 1, Ex. 3. Additional voice minutes are available in the following increments: \$5.00 for 50 minutes; \$10.00 for 100 minutes; and \$15.00 for 150 minutes.¹⁵ *Id.* at 4. Subscribers may also purchase 1,000 additional text messages for \$10.00, as well as 200 MB of data and unlimited picture messaging for \$15.00. *Id.*; Ex. 2-9. The plan is offered without a service contract, activation fees, late fees, or early termination fees.¹⁶ Petition at 12, Attachment 1, Ex. 3; IR 2-6; Ex. 2-9; Tr. at 65. Budget also plans to offer an “Active User Talk & Text” plan to Lifeline customers for \$25.00 (after application of the \$9.25 monthly Lifeline subsidy), plus taxes and mandatory government fees, on a 30-day cycle.¹⁷ Petition at Attachment 1, Ex. 3; Ex. 2-9. This plan includes a combined 4,000 voice minutes and/or text messages that may be used at anytime. Petition at Attachment 1, Ex. 3; Ex. 2-9. The above-referenced data/picture messaging add-on is also available under the Active User Talk & Text Plan. Ex. 2-9.

The Department finds that Budget’s proposed Lifeline plans satisfy the “supported services” requirements of 47 C.F.R. § 54.401(a)(2). The Department further finds that Budget has demonstrated that it will offer the supported services to eligible low-income customers

¹³ The 250 Minute Talk plan is available to non-Lifeline customers at a cost of \$9.25, plus applicable taxes and fees, per 30-day cycle. Petition at Attachment 1, Ex. 3.

¹⁴ Budget will provide Lifeline customers with 911 or E911 access even if their plan minutes are exhausted or expired or their service is inactive. No fee will be imposed for this service. *Id.* at 4.

¹⁵ Prices for minute add-ons do not include taxes and mandatory government fees.

¹⁶ Budget agrees to comply with the Massachusetts State 911 Department’s surcharge obligation and will not pass that surcharge on to Lifeline subscribers enrolled in Budget’s free Lifeline plan. Tr. at 64-65.

¹⁷ ETCs may allow eligible Lifeline customers to apply the Lifeline discount to bundled packages of voice and data services and family shared calling plans. *Lifeline Reform Order*, ¶ 315.

throughout its Designated Service Area in satisfaction of 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. §§ 54.101(a), 54.201(d). *See* Petition at 4-5.

3. *Budget's compliance plan has been approved by the FCC and Budget will provide its Lifeline subscribers with 911 and E911 access.*

The FCC approved Budget's compliance plan on May 25, 2012. *FCC Compliance Plan Approval*. Budget states that it will provide, at no additional charge, 911/E911-compliant handsets to its Lifeline subscribers. Petition at Attachment 1. In addition, Budget states that it will provide its Lifeline subscribers with 911 and E911 access regardless of whether the account associated with the handset is active. *Id.* Budget also will provide such access regardless of availability of minutes. *Id.* The Department finds that Budget has met the FCC requirements necessary to receive forbearance from the "own facilities" requirement of 47 U.S.C. § 214(e)(1)(A).

4. *Budget will advertise the availability of the supported services in accordance with regulatory requirements.*

Budget must advertise the availability of supported services and charges thereof in media of general distribution throughout its Designated Service Area. 47 U.S.C. § 214(e)(1)(B); 47 C.F.R. § 54.201(d)(2). Budget must also "[p]ublicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service." 47 C.F.R. § 54.405(b). Finally, Budget must disclose on all materials describing the service that: Budget is the service provider; the offer is a Lifeline service; Lifeline is a government program; the service is non-transferable; only eligible consumers may enroll in the program; and the program is limited to one discount per household. *Id.* §§ 54.405(c), (d).

The Department determines that Budget will satisfy these requirements. Budget states it will advertise the availability of, and rates and charges for, its Lifeline service offerings using

media of general distribution. Petition at 10; IR 1-18; Tr. at 16-17, 80. Specifically, Budget plans to advertise its Lifeline services through a variety of media, including brochures, banners, direct mail, television, radio, newspaper, magazine, and the Internet. IR 1-18(a); Tr. at 16-17, 80. Budget has disclosed its advertising budget anticipated in its first year of operations in Massachusetts in its first year after ETC designation to the Department. Confidential Ex. 2-15 (*confidential*). Budget also states that it will build and maintain three to five retail stores in the Commonwealth. Petition at 13; IR 2-17; IR 2-18(e); Tr. at 82. Budget plans to site these stores in communities where those likely to be Lifeline-eligible reside. Tr. at 58 (*confidential*). Finally, Budget states that it will hold community outreach events to increase consumer awareness of Budget's Lifeline service offerings and assist eligible consumers. *See id.* at 79-81.

The Department finds that Budget has demonstrated that it will advertise the availability of supported services in media of general distribution throughout the Commonwealth. Budget plans to use a variety of mass media to target low-income individuals throughout Massachusetts. Budget's advertising campaign and other outreach will increase awareness of the Company's Lifeline offerings and promote the Lifeline program in Massachusetts. The Department directs Budget to provide to the Department copies of all advertising and marketing materials distributed in Massachusetts to promote Lifeline services. *See Virgin Mobile ETC Order* at 9-10 ("ETCs must provide the Department with copies of all advertising and marketing materials distributed in Massachusetts to promote Lifeline services."); 2011 Petition at 9; Tr. at 79.

5. *Budget is financially and technically capable of providing the supported services.*

A state commission may not designate a common carrier as an ETC unless the carrier has demonstrated that it is financially and technically capable of providing the supported services. 47 C.F.R. § 54.201(h). The Department finds that Budget has met these requirements.

The relevant considerations for a showing of financial and technical capability include: “whether the applicant previously offered services to non-Lifeline consumers, how long it has been in business, whether the applicant intends to rely exclusively on USF disbursements to operate, whether the applicant receives or will receive revenue from other sources, and whether it has been subject to enforcement action or ETC revocation proceedings in any state.” *Lifeline Reform Order*, ¶ 388. Budget has shown that it is financially and technically capable of providing the supported services in Massachusetts. Budget has provided telephone service as a competitive local exchange carrier (“CLEC”) to non-Lifeline customers since 1996, and has provided prepaid calling cards in Massachusetts since 2006. Petition at 6; Tr. at 6, 19-20. Budget is a registered CLEC in Massachusetts and is currently up to date with its annual report and revenue statement filings. RR 1A, 1B. While Budget is seeking ETC designation as a reseller, it does operate its own switching facilities in Texas and Louisiana, which is evidence of the Company’s internal technical capabilities. Petition at 6. In addition, Budget has been providing consumer wireless service for approximately three years. Tr. at 6, 19. In addition, Budget does not rely exclusively on USF support, as it receives revenue from its non-USF subscribers, and this increased diversity in revenue sources bolsters the Company’s financial stability. See Tr. at 23-26 (*confidential*); Confidential Ex. 2-10(a) and (b) (*confidential*); Petition at 6.

Budget is currently designated as a Lifeline ETC in 17 states. Tr. at 17. Budget states that it is capable of providing Lifeline service to Massachusetts consumers within 30 days of receiving ETC designation. See Tr. at 82-83; Donahue Aff., Dec. 2, 2011. In addition, Budget states that it has not been subject to any enforcement action at the FCC or in any state, and that none of its ETC designations have been rescinded, revoked, denied, or terminated by the FCC or

by any state. Petition at 6. Finally, in the event that Budget ceases to provide Lifeline in Massachusetts, the Company agrees to provide 30 days' advance notice to its customers and to the Department, and certifies that it will comply the Mass Migration Requirements. RR 11; Tr. at 81; *see* D.T.E. 02-28, *Order* (Aug. 7, 2002). Thus, the Department finds that Budget has demonstrated that it is financially and technically capable of providing the supported services in compliance with 47 C.F.R. § 54.201(h).

6. Budget will comply with additional FCC requirements; the procedures and requirements set forth in the Lifeline Reform Order; and additional requirements imposed by the Department.

The Department determines that Budget is prepared to comply with additional FCC requirements, the procedures and requirements set forth in the *Lifeline Reform Order*, and additional requirements that the Department imposes.

a. Additional FCC Requirements

Additional FCC requirements include that the carrier: (1) certify it will comply with the service requirements applicable to the support it receives; (2) demonstrate its ability to remain functional in emergency situations; (3) demonstrate it will satisfy applicable consumer protection and service quality standards; and (4) submit information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers. 47 C.F.R. §§ 54.202(a)(1)(i), (2), (3), (5).

Budget states it will offer service to all consumers within its Designated Service Area and will certify, as necessary, compliance with the service requirements applicable to the low-income support it receives, consistent with 47 C.F.R. § 54.202(a)(1)(i). Petition at 2, 4-5, Attachment 1. At the Department's request, Budget will not offer Lifeline service to any consumer known by the Company to reside in an area where Budget is unable to provide wireless coverage. Tr. at 69.

In addition, subscribers have 30 days within which to obtain a refund if they are dissatisfied with Budget's service. *Id.* at 68-69.

Budget also asserts that it has the ability to remain functional in emergency situations. Petition at 8-9; IR 1-22, 1-23, 2-13; Tr. at 13. Budget states that it is able to provide its Lifeline subscribers the same ability to remain functional in emergency situations as its underlying providers, Sprint PCS and Verizon Wireless, currently provide to their own subscribers. Tr. at 81; *see also* IR 2-13. Budget asserts that Sprint PCS and Verizon Wireless are ETCs and that each has certified to the FCC that it is able to function in emergency situations in accordance with 47 C.F.R. § 54.202(a)(2).¹⁸ Petition at 9; IR 1-23, 2-13. In addition, Budget's facilities have battery backup as well as generators to ensure functionality without an external power source consistent with 47 C.F.R. § 54.202(a)(2). Petition at 8. Finally, Budget's call centers are in Louisiana and Minnesota, and this geographic separation creates a redundancy whereby incoming calls can be rerouted should one call center lose functionality in an emergency. Petition at 9; *see also* IR 2-13(d).

Budget asserts it will satisfy applicable state and federal consumer protection and service quality standards in accordance with 47 C.F.R. § 54.202(a)(3). Petition at 7-8; *see also* IR 2-3. Budget states that it abides by CTIA's Consumer Code for Wireless Service and designates a specific contact person to resolve consumer complaints. Petition at 8-9, 11; IR 1-24. Budget agrees to provide quarterly reporting of consumer complaints to the Department regarding its Lifeline service and to participate in dispute resolution by the Department's Consumer Division. Petition at 11; IR 2-16. Budget also agrees to include the Department's contact information and notice of the Department's dispute resolution process with its Lifeline application, Lifeline

¹⁸ The Department notes that Verizon is a wireline-only ETC in Massachusetts. *See Investigation by the Dep't on its own motion into New England Tel. & Tel. Co.'s participation in the federally subsidized Lifeline Tel. Assistance & Link Up Am. programs*, D.P.U. 89-57, Order (Mar. 21, 1989).

subscriber receipts, Lifeline terms and conditions, and marketing materials for Lifeline service. Petition at 11; Tr. at 15, 77.

Consistent with 47 C.F.R. § 54.202(a)(5), Budget has submitted to the Department detailed information describing the terms and conditions of the Lifeline service plans it intends to offer in Massachusetts. Petition at Attachment 1, Ex. 3; Ex. 2-5. Further, Budget will notify the Department at least 30 days in advance of any expected changes to the rates, terms, or conditions of its Lifeline service offerings. Tr. at 77.

In light of Budget's representations and commitments, the Department finds that the Company is prepared to comply with the additional FCC requirements.

b. Lifeline Reform Order Procedures and Requirements

Procedures and requirements established by the FCC in the *Lifeline Reform Order* include:

- 1) screening applicants using the National Lifeline Accountability Database to be established as set forth in 47 C.F.R. §§ 54.404(b)(1)-(10);
- 2) complying with the carrier's obligations to offer Lifeline, including de-enrollment requirements, as established in 47 C.F.R. §§ 54.405(a)-(e)(1)-(4);
- 3) certifying that it is prepared to comply with the subscriber eligibility and determination and certification requirements established in 47 C.F.R. §§ 54.410(a)-(g) to the extent applicable;
- 4) complying with annual certifications required by ETCs established in 47 C.F.R. §§ 54.416(a), (b);
- 5) complying with record keeping requirements established in 47 C.F.R. § 54.417;
- 6) complying with audit requirements, to the extent applicable, established in 47 C.F.R. § 54.420; and
- 7) complying with annual reporting requirements established in 47 C.F.R. § 54.422.

Budget states that it will comply with these procedures and requirements. *See* Petition at 10, 11, n. 15, Attachment 1; IR 1-30. In view of the record, the Department finds that Budget will comply with the *Lifeline Reform Order*. At its evidentiary hearing, Budget agreed to change its policy about accepting documentation of income eligibility at only its retail locations. Tr. at 91-92. Accordingly, the Department directs Budget to accept documentation of a consumer's income-based eligibility using the same methods as the Company accepts documentation of a consumer's program-based eligibility. *See* Tr. at 91-92; Hearing Ex. 6.

c. Department Requirements

Budget has also agreed to “satisfy all Massachusetts-specific ETC requirements.” Petition at 10; IR 2-16; *see* Tr. at 13. Budget has represented to the Department that it will comply with the relevant requirements established by the Department in the *Virgin Mobile ETC Order* and the *T-Mobile ETC Order*. Petition at 10; IR 2-16; Tr. at 85; *see In the Matter of T-Mobile Ne. LLC Petition for Ltd. Designation as an Eligible Telecomms. Carrier*, D.T.C. 12-4, *Order Approving Petition* (Aug. 30, 2012). In particular, Budget has agreed to:

- 1) Provide quarterly reports to the Department of customer accounts terminated for inactivity (Petition at 11).
- 2) Provide quarterly reports of subscriber complaints to the Department regarding the Company's Lifeline service and participating in dispute resolution by the Department's Consumer Division (*id.*).
- 3) Provide reports to the Department of USF support received for Massachusetts subscribers (*id.*).
- 4) File with the Department, within 60 days of the approval of its Petition, its terms and conditions of service, applicable to qualifying Lifeline service customers (*id.*).
- 5) Notify the Department of any future changes to its Lifeline rates, terms, or conditions 30 days prior to implementing such changes (Tr. at 77).
- 6) Include the Department's contact information for consumer complaints in its marketing materials for its Lifeline service (*id.*).

- 7) Provide Public Safety Answering Points self-certification to the Department (*id.*).
- 8) Provide annual Company certifications that the Company (a) has policies and procedures in place to review consumers' documentation of income- and program-based eligibility; (b) is in compliance with all federal Lifeline certification procedures; and (c) has obtained a valid certification form for each subscriber for whom the carrier seeks Lifeline reimbursement (IR 2-16).¹⁹

The Department concludes that Budget is prepared to comply with the additional FCC requirements, the procedures and requirements set forth in the *Lifeline Reform Order*, and the additional requirements imposed by the Department.

7. *Budget's designation as an ETC is consistent with the public interest, convenience, and necessity.*

Prior to designating a common carrier as an ETC, the Department must make an affirmative finding that such designation is "consistent with the public interest, convenience and necessity." *Universal Service Order*, ¶ 40; *Virgin Mobile ETC Order* at 10; *Petition of VCI Co. for designation as an eligible telecomms. carrier in Mass. pursuant to Sections 214(e)(2) & 214(e)(6) of the Commc'ns Act of 1934, as amended, D.T.E./D.T.C. 07-8, Order* at 11-12 (May 21, 2008) ("*VCI Order*"). Budget bears the burden of proving that its designation as a limited ETC is in the public interest. See *Universal Service Order*, ¶ 44. For the reasons discussed below, the Department finds that granting Budget limited ETC designation is in the public interest.

"In analyzing whether a petition for ETC designation is in the public interest, the Department considers multiple factors, including the benefits of increased consumer choice and the unique advantages and disadvantages of the carrier's service offering." *Virgin Mobile ETC Order* at 10; see also *Universal Service Order*, ¶¶ 40-44. This test must be applied in a

¹⁹ This information must also be provided to the FCC and USAC under 47 C.F.R. § 54.416(a).

consistent manner with the principles of preserving and advancing universal service and ensuring that quality services are available at just, reasonable, and affordable rates. 47 U.S.C.

§ 254(b)(1)-(2). Other factors that may be relevant in analyzing whether ETC designation is in the public interest include: the availability of new choices for customers, affordability, quality of service, service to unserved or underserved customers, comparison of benefits relative to public cost, and considerations of material harm. *See Universal Service Order*, ¶ 40, n.111; *Virgin Mobile ETC Order* at 10.

The Department has recognized “the importance of Lifeline [] services for low-income Massachusetts residents, and [it] considers increased competition for Lifeline [] customers to be a worthy goal.” *VCI Order* at 15. New ETCs in a state generally encourage existing ETCs to offer better service and terms to their subscribers. *See In the Matter of i-wireless, LLC Amended Petition for Designation as an Eligible Telecomms. Carrier*, WC Docket No. 09-197, *Order*, ¶ 27 (rel. June 13, 2012) (“*i-wireless Order*”). However, as the FCC notes, “the value of increased competition, by itself, is unlikely to satisfy the public interest test.” *Universal Service Order*, ¶ 44. As each petitioner seeking ETC designation will likely be unique, the Department’s exercise is necessarily fact-specific to each petition. *Id.*, ¶ 46. Accordingly, the Department evaluates the particular advantages or disadvantages of the services offered by Budget, their affordability, and considerations of material harm in determining whether designating Budget as an ETC is in the public interest. *Id.*

Budget asserts that it satisfies the public interest standard by providing low-income consumers a unique, competitive alternative to both traditional wireline and wireless carriers and Massachusetts ETCs. *See* Petition at 11-13; IR 2-17. Budget states that “Public reception to its [Lifeline offerings in other states] has been incredibly positive[.]” Tr. at 7. Budget’s 250 Minute

Talk plan is free to eligible Lifeline customers, offering a combined 250 voice minutes and/or text messages that may be used at anytime. Petition at Attachment 1, Ex. 3; Ex. 2-9; Tr. at 6. The plan includes the standard features of a traditional wireless plan, including voicemail, caller ID, call waiting, domestic long distance, and roaming, as well as a free handset. Petition at 4. Indeed, the 250 Minute Talk plan also includes nationwide calling areas and the convenience of a mobile phone, neither of which are offered by traditional wireline carriers. *Id.* at 4, 12. Budget states that, in contrast with traditional carriers, it provides its Lifeline service—including its Active User Talk & Text plan, which provides a combined 4000 anytime voice minutes and/or text messages for \$25.00—without service contracts, credit checks, or security deposits, offering wireless service to low-income individuals who may not be able to obtain service from traditional carriers. *Id.* at 12, Attachment 1, Ex. 3; Ex. 2-9.

Budget also contends that its Lifeline offerings provide a competitive alternative in Massachusetts. Petition at 13; IR 2-17. Specifically, Budget asserts that, if the Petition is granted, other ETCs will have the incentive to improve their service offerings as a result of increased competition. Petition at 13. Moreover, Budget maintains that it places a specific emphasis on customer service. *Id.* In addition to providing a free handset to Lifeline subscribers at the point-of-sale, Budget offers a 30-day warranty for defective handsets. IR 2-8(d). Budget states that even after the warranty period, “[t]he only time there would be a charge [for a replacement Lifeline handset] is if a person happened to lose multiple phones within, say, a 30-day period.” Tr. at 74. Budget also states that in most cases it will resolve consumer complaints within 24 hours, and response to inquiries from the Department within 48 hours. *Id.* at 79.

Finally, Budget intends to establish three to five physical storefronts in Massachusetts if its Petition is granted. *Id.* at 82; *see also* Petition at 13; IR 2-17. Budget plans to locate its stores

in low-income communities, making it more convenient for low-income individuals to obtain Lifeline service and address customer service needs. IR 2-17; Tr. at 11; *see also* Hearing Ex. 5.

The Department finds that Budget's designation as an ETC is consistent with the public interest, convenience, and necessity. *See* 47 U.S.C. § 214(e)(2); 47 C.F.R. § 54.202(b).

Budget's 250 Minute Talk plan is a free offering, enabling the Company to expand wireless service to low-income consumers throughout the Commonwealth at no cost to those consumers. Petition at Attachment 1, Ex. 3; *see* 47 U.S.C. § 254(b)(1). Significantly, Budget is committed to offering a free Lifeline service offering to eligible consumers, without service contracts or fees of any kind, on an ongoing basis. Tr. at 65. Budget is also committed to offering the same services and benefits to Massachusetts Lifeline subscribers as the Company offers in other jurisdictions. *Id.* at 72-73. Additionally, the availability of Budget's Active User Talk & Text plan will enhance customer choice for low-income consumers in Massachusetts. *See* Petition at Attachment 1, Ex. 3.

Budget's retail stores in Massachusetts will provide a unique and valuable customer experience for low-income consumers. Budget will be the first wireless ETC in Massachusetts to offer a free Lifeline plan from ETC-owned and operated physical storefronts in low-income Massachusetts communities. Budget plans to open its first retail store in Massachusetts within 30 days of the release of this *Order*. Tr. at 82-83. The stores will enable consumers without Internet or telephone access to sign up for Lifeline, pay for additional minutes, and get "one-on-one assistance with their devices." IR 2-17; *see also* Tr. at 11. In addition, Budget states that each store will create new jobs in Massachusetts. *See* Confidential Ex. 2-19 (*confidential*); Tr. at 77-78 (indicating that Budget will hire employees in Massachusetts for its proposed retail stores upon ETC designation). Where Budget uses agents for Lifeline distribution, the Company

accepts full responsibility for those agents and their actions and compliance with all FCC and Department Lifeline rules and regulations. Tr. at 85.

Finally, the additional consumer option that Budget's presence will provide in Massachusetts will benefit low-income consumers. The Department finds that Budget's presence should encourage other wireless ETCs to more narrowly tailor their service offerings to meet consumer demand on account of increased competition. *See Virgin Mobile Order* at 11. Further, Budget plans to enter new areas of the Commonwealth where it claims that it believes are unserved or underserved by current wireless ETCs. Tr. at 93-94. The Department finds that this is a benefit of Budget's presence in Massachusetts as it may provide service to eligible consumers not yet enrolled in the Lifeline program. Importantly, Budget will not offer Lifeline service to a consumer if the Company determines that it is unable to provide wireless coverage at the consumer's residential address. *Id.* at 69. Finally, if Budget Lifeline subscribers purchasing the Active User Talk & Text plan are not satisfied with their wireless service quality for whatever reason, Budget will offer a full refund within 30 days of activation. *Id.* at 68-69.

Upon examination of the record, the Department finds that Budget's Lifeline offerings and the additional competitive choice created thereby are consistent with the public interest. Accordingly, Budget has met its obligation to establish that its ETC designation is consistent with the public interest, convenience, and necessity.

C. Conclusion

Based on its review of the evidentiary record, the Department finds that Budget has satisfied the requirements for limited designation as a Lifeline-only ETC, and such designation is consistent with the public interest, convenience, and necessity.

IV. ORDER

Accordingly, after notice, hearing, and consideration, it is hereby

ORDERED: Consistent with the above, and subject to the aforementioned conditions, the Department hereby GRANTS Budget PrePay, Inc.'s Petition for Limited Designation as Lifeline-Only Eligible Telecommunications Carrier for Purposes of Low-Income Support Only;

FURTHER ORDERED: In accordance with 47 C.F.R. § 54.401(d), Budget PrePay, Inc. must file information with the Universal Service Administrative Company demonstrating that Budget PrePay, Inc.'s plans meet the criteria set forth in 47 C.F.R. § 54.401 and describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plans, additional charges, if any, for toll calls, and rates for such plans.

By Order of the Department:

/s/
Geoffrey G. Why
Commissioner

RIGHT OF APPEAL

Appeals of any final decision, order, or ruling of the Department of Telecommunications and Cable may be brought pursuant to applicable state and federal laws.