

**BEFORE THE
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

Investigation by the)	
Department on Its Own Motion into the)	
Implementation in Massachusetts of the)	D.T.C. 13 - 4
Federal Communications Commission's)	
Order Reforming The Lifeline Program)	

COMMENTS OF BUDGET PREPAY, INC.

Budget PrePay, Inc. d/b/a Budget Mobile ("Budget PrePay") files these comments in response to the *Request for Comment and Notice of Public Hearing* ("Request for Comment") issued April 1, 2013 by the Department of Telecommunications and Cable (the "Department") in the above-captioned proceeding.¹

Budget PrePay applauds the Department for undertaking a comprehensive review of its procedures and requirements governing Lifeline service providers. Budget PrePay supports the Department's proposal to create a "single, uniform set of procedures and requirements applicable to all Massachusetts ETCs seeking Lifeline support."² Budget PrePay supports expanding the eligibility criteria to include additional qualifying programs such as the Women, Infants, and Children ("WIC") program and appropriate income-based Veterans Services programs, and to extend the Lifeline-qualifying income level from an annual household income level of 135% or below of the Federal Poverty Guidelines ("FPG") to 150% or below of the FPG.

Budget PrePay submits that it is unnecessary to require ETCs to: (1) notify existing subscribers of changes in ETC eligibility programs or criteria, or (2) update marketing materials

¹ Together with its *Request for Comment*, the Department also issued an *Exhibit to Request for Comments and Notice of Public Hearing* ("Exhibit") and an *Order Opening Investigation* ("Order").

² *Exhibit* at 1.

within a prescribed period of time. Budget PrePay does, however, support a requirement to update application forms within sixty (60) days to reflect program eligibility changes. Budget PrePay opposes any requirement that carriers must offer a 90-day handset warranty. The length of carrier's warranty, like a carrier's rate plans (and included minutes), is a commercial decision, and an area of competition among carriers. Budget PrePay submits that the Department is pre-empted by the Communications Act from adopting a requirement that carriers must offer Massachusetts customers the same services and benefits that it offers in any other state.³ In all events, if the Department adopts such a requirement, it should be appropriately circumscribed so that it does not apply to states in which the Lifeline carrier receives additional state USF support. Finally, Budget PrePay requests that the Department clarify certain reporting deadlines.

I. The Department Should Adopt Uniform Requirements Applicable to All Lifeline ETCs.

Budget PrePay supports the Department's proposal to create a "single, uniform set of procedures and requirements applicable to all Massachusetts ETCs seeking Lifeline support."⁴ At present, Lifeline providers have different conditions attached to their designation orders. This creates unnecessary confusion and differing burdens on such providers. Uniform requirements will resolve this problem. Budget PrePay suggests that the Department clarify that the uniform procedures and requirements adopted in this proceeding supersede the conditions adopted in individual ETC designation orders, except such conditions that are unique to a specific carrier.

³ Section 332(c)(3)(A) of the Communications Act expressly provides that "no State or local government shall have any authority to regulate the entry or the rates charged by any commercial mobile service" 47 U.S.C. § 332(C)(3)(A).

⁴ *Exhibit* at 1.

II. The Department Should Expand Program and Income Eligibility Requirements

The Department seeks comment on whether to expand eligibility requirements to include additional qualifying programs such as the Women, Infants, and Children (“WIC”) program and appropriate income-based Veterans Services programs.⁵ The Department also seeks comment on whether to extend the Lifeline-qualifying income amount from an annual household income level of 135% or below of the Federal Poverty Guidelines (“FPG”) to 150% or below of the FPG.⁶

Budget supports the proposed expansion of program eligibility requirements. Adding programs such as WIC will serve the public interest by enabling more struggling families to obtain essential telecommunications services.⁷ Similarly, adding income-based Veterans Services programs will enable more veterans to obtain essential telecommunications services.

Budget PrePay also supports increasing the income threshold level to 150% of the FPG. Increasing the eligibility threshold is appropriate for several reasons. The proposed increase is relatively modest, but would provide a substantial benefit to low-income consumers in the state. Currently, the gross annual income of a family of four at 135% of the FPG is \$31,793, while annual income at 150% of the FPG is \$35,325. Even at 150% of the FPG, it is by no means clear that a family of four would find basic telecommunications services affordable. Raising the Lifeline threshold from 135% to 150% of the FPG would help these low-income families. Telecommunications services, and in particular wireless telecommunications services, have become essential for lower-income customers, providing them with access to emergency services, and a reliable means of contact for prospective employers, social service agencies and dependents. The Department should modify its regulations so that more low-income consumers

⁵ *Exhibit at 5.*

⁶ *Id.*

⁷ Other states, such as Alaska and California, include WIC as a qualifying program for Lifeline.

in the state can obtain access to the Lifeline program, and accordingly, gain access to critical telecommunications services.

Raising the income threshold for the Lifeline program would hardly be unprecedented; other states already use an income threshold over 135% of the FPG. For example, Michigan, Kansas and Texas currently apply a threshold of 150% of the FPG for the Lifeline program in their states.⁸ Nevada's Lifeline program currently allows incumbent LECs the ability to offer Lifeline services to residents with an income threshold of 175% of the FPG, while other carriers in the state may offer Lifeline services to residents whose income does not exceed 150% of the FPG.⁹ For individuals over the age of 65 in Vermont, the income threshold for the Lifeline program is 175% of FPG.¹⁰ Consistent with other states that have sought to maximize the impact of the Lifeline program for their low-income residents, the Department should also raise its income threshold level for the Lifeline program.

III. The Department Should Not Adopt Mandatory Requirements to Notify Consumers of Changes in Eligibility Criteria.

Budget PrePay submits that it is unnecessary to require ETCs to: (1) notify existing subscribers of changes in ETC eligibility programs or criteria; or (2) update marketing materials within a prescribed period of time. Existing subscribers, by definition, have already qualified for Lifeline and are enjoying the benefits of participating in the Lifeline program. Notification to such subscribers will only serve to confuse them as to whether they are still eligible for Lifeline or must take some further action in order to remain eligible. Budget PrePay believes that it is

⁸ See http://www.michigan.gov/documents/mpsc/lifeline_396290_7.pdf;
<http://www.kcc.state.ks.us/pi/lifeline.pdf>;
<http://puc.texas.gov/consumer/lowincome/Assistance.aspx>

⁹ See NAC 704.680474.

¹⁰ See <http://publicservice.vermont.gov/consumer/link-up-lifeline.html>.

important to limit the number of required notifications to subscribers. The fewer the required notifications, the more likely it is that the customer will pay heed to critical notifications requiring action on the part of the customer. The most important of these notifications is the message (or messages) notifying the customer of the annual re-certification process. If a customer does not respond to re-certification notifications, that customer must be de-enrolled from Lifeline.

A requirement to update marketing materials to include expanded eligibility criteria within a fixed period of time is also unnecessary. It is in the self-interest of carriers to modify their marketing materials accordingly. A carrier that lags in this process is likely to lose prospective new customers to competing carriers. Budget PrePay supports the proposed requirement that carriers update their application forms within 60 days of a change in the state's Lifeline eligibility criteria. It is important that an application for new Lifeline service be accurate.

IV. The Department Should Not Impose a Minimum 90-Day Warranty Period or Return Policy for Refurbished Handsets Provided to Lifeline Subscribers.

Budget PrePay opposes any regulation that would require Lifeline providers to offer a minimum 90-day warranty or return policy for refurbished phones provided to Lifeline subscribers.¹¹ As the Department noted in the *Exhibit*, Budget provides a 30-day warranty on its handsets.¹² Budget PrePay strives to provide its customers with the best possible wireless service at the lowest prices. In order to provide highly desirable calling plans with desirable handsets, Budget PrePay has made a business decision that a 30-day warranty is appropriate.

¹¹ *Exhibit* at 8.

¹² *Id.* at 8 n. 13.

The length of carrier's warranty, like a carrier's rate plans (and included minutes), is a commercial decision, and an area of competition among carriers. Further, Budget PrePay offers handsets at no charge to customers, and Budget PrePay does not require a contract. As a result, a dissatisfied customer can terminate service at any time, without penalty, and move to a competitor.

Budget PrePay notes that the CTIA Consumer Code for Wireless Service does not specify any warranty period, and specifies a 14-day no obligation return policy only for postpaid customers.¹³ Budget PrePay has committed to abide by the CTIA Consumer Code, and expects that most, if not all, Lifeline providers have also made such a commitment. The Department should not go beyond the requirements of the CTIA Consumer Code, particularly with regard to prepaid, no-contract Lifeline providers.

V. The Department Should Limit Any Requirement for Lifeline Providers to Offer the Same Service and Benefits to Subscribers in the Commonwealth that are Offered to Subscribers in Other Jurisdictions.

Budget PrePay submits that the Department is pre-empted by the Communications Act from adopting a requirement that carriers must offer Massachusetts customers the same services and benefits that it offers in any other state.¹⁴ Such a requirement amounts to rate regulation, and the Communications Act prohibits the states from regulating a wireless carrier's rates.¹⁵ Apart from the statutory prohibition, there are important business considerations. Some carriers,

¹³ CTIA Consumer Code for Wireless Services, Article IV, Allow a Trial Period for New Services: "When a customer initiates postpaid service with a wireless carrier, the customer will be informed of and given a period of not less than 14 days to try out the service. The carrier will not impose an early termination fee if the customer cancels service within this period, provided that the customer complies with applicable return and/or exchange policies. Other charges, including usage charges, may still apply."

¹⁴ *Exhibit* at 9.

¹⁵ Section 332(c)(3)(A) of the Communications Act expressly provides that "no State or local government shall have any authority to regulate the entry or the rates charged by any commercial mobile service" 47 U.S.C. § 332(C)(3)(A).

including Budget PrePay, are able to offer different plans (*e.g.* more minutes for the same price) in certain states because the carrier is eligible for and collecting additional state USF subsidies and state USF amounts vary by state. In all events, if the Department adopts such a requirement, it should be appropriately circumscribed so that it does not apply to states in which the Lifeline carrier receives additional state USF support. Such support alters the pricing calculations of carriers.

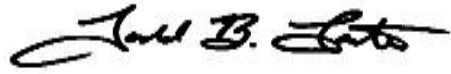
VI. The Department Should Clarify Certain Reporting Deadlines.

Most, if not all, Lifeline ETCs, including Budget PrePay, are required to file several quarterly reports. However, the ETC designation orders do not specify what date these reports must be filed. Budget PrePay suggests that the quarterly reports be filed on or before May 1, August 1, November 1, and February 1 each year, one month plus one day after the end of each calendar quarter.

VII. Conclusion.

Budget PrePay applauds the Department for undertaking a comprehensive review of its procedures and requirements governing Lifeline service providers. Budget PrePay supports many of the Department's proposals, including the creation of uniform rules and expansion of the eligibility criteria. Budget PrePay does not support the Department's proposals that would interfere with key business decisions of ETCs and/or impose unnecessary requirements, including the mandatory notification to existing subscribers of changes in ETC eligibility programs or criteria, mandatory updating of marketing materials within a prescribed period of time, a mandatory handset warranty, and any requirement that carriers must offer Massachusetts customers the best rate plan that it offers in any other state, unless such requirement is appropriately circumscribed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Todd B. Lantor". The signature is fluid and cursive, with the first name "Todd" being more prominent.

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