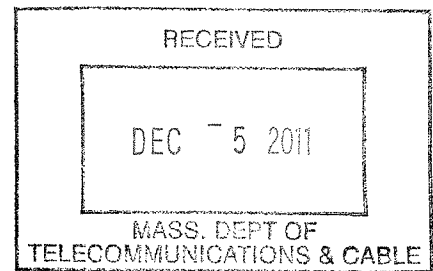


**Budget PrePay, Inc.**  
**DTC Docket No. 11-12**  
**Responses to DTC Set 1**  
**December 2, 2011**

## Exhibit 1-3





Handwritten signatures and initials: [Signature], [Signature], DW H, [Signature]

INDIANA UTILITY REGULATORY COMMISSION

IN RE: PETITION OF BUDGET PHONE, INC.)  
FOR DESIGNATION AS AN ELIGIBLE )  
TELECOMMUNICATIONS CARRIER )

CAUSE NO. 41052-ETC-48

MAY 31 2006

**BY THE COMMISSION:**

David E. Ziegner, Commissioner  
Lorraine Hitz-Bradley, Administrative Law Judge

On July 12, 2005, Budget, Inc., (“Budget”) filed its petition requesting that the Indiana Utility Regulatory Commission (“Commission”) designate it an eligible telecommunications carrier (“ETC”) pursuant to 47 U.S.C. § 214(e). On August 31, 2005, Budget filed a *Motion for Leave to File Amended Petition* in order to reduce the territory in which ETC certification was requested to include only those exchanges served by SBC/Ameritech (“AT&T Indiana”) and Verizon. Leave was granted to Budget to amend its petition by docket entry dated September 8, 2005.

On August 24, 2005, United Telephone Company of Indiana, Inc. d/b/a Sprint (“Sprint”) filed a *Petition for Leave to Intervene* in this matter.

Pursuant to proper notice as provided for in 170 I.A.C. 1-1.1-15, a Prehearing Conference was held in Room E-306 of the Indiana Government Center South, Indianapolis, Indiana, at 10:00 a.m. on August 25, 2005. At the Prehearing Conference, the Presiding Officer granted Sprint’s *Petition to Intervene* on the Record and the parties engaged in an informal discussion that resulted in an agreement concerning various procedural aspects of this proceeding. That agreement of the parties was incorporated into a *Prehearing Conference Order* approved by the Commission on August 31, 2005.

On October 31, 2005, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed a *Motion for Extension of Procedural Schedule*, which Motion was granted by the Presiding Officers in a docket entry dated November 1, 2005. On November 3, 2005, the Presiding Officers issued a docket entry posing questions to Budget, to which Budget responded in writing on November 18, 2005.

On September 8, 2005, SBC Indiana filed its *Petition to Intervene* in this proceeding, which intervention was granted by the Presiding Officers in a docket entry dated October 11, 2005.<sup>1</sup>

On January 19, 2006, the Presiding Officers issued a docket entry posing another

<sup>1</sup> The corporate merger between AT&T Indiana Corporation and SBC Indiana’s parent became effective prior to the close of the evidentiary record in this proceeding. Accordingly, all subsequent references shall be to “AT&T Indiana.”

question to Budget, to which Budget timely responded on January 23, 2006.

On January 25, 2006, pursuant to notice duly published according to law in accordance with the procedural schedule established by the Commission, as amended, an Evidentiary Hearing was convened in Room E-306 of the Indiana Government Center South, 302 West Washington, Indianapolis, Indiana. At the Evidentiary Hearing, Budget, the OUCC and AT&T Indiana appeared and participated. No members of the general public were present or sought to testify at the Evidentiary Hearing.

The Commission, having examined all the evidence of record and being duly advised in the premises, now finds as follows:

1. **Notice and Jurisdiction.** Proper, legal, and timely notice of the hearing in this Cause was given and published by the Commission as provided for by law. The proofs of publication of the notice of the hearing have been incorporated into the record of this proceeding. Pursuant to the Telecommunications Act of 1996, 47 U.S.C. §§ 151, *et seq.*, (the "Act"), applicable Federal Communications Commission ("FCC") rules in 47 C.F.R. §§ 54.201 and 54.203, the Commission is authorized to designate ETCs, thereby enabling those so designated to apply for universal service support under 47 U.S.C. § 254 in accordance with generic Commission orders in Cause Nos. 40785, 41052, and 42067. The Commission, therefore, has jurisdiction over the parties and the subject matter of this Cause.

2. **Budget's Characteristics.** Budget is a "telecommunications carrier" as defined by 47 U.S.C. § 153(44) and Ind. Code § 8-1-2-88<sup>2</sup>. Budget seeks designation as an ETC under 47 U.S.C. § 214 in certain of the wire centers of Indiana Bell Telephone Company, Incorporated ("AT&T Indiana") and Verizon North, Inc. ("Verizon"), both non-rural Incumbent Local Exchange Carriers ("ILECs") in Indiana, as identified in Exhibit E appended to Budget's amended petition. Budget's evidence indicates that it is a provider of prepaid local exchange service and that it is authorized to provide such service within the State of Indiana as a bundled reseller and as a facilities-based provider, pursuant to authority granted by the Commission in Cause Nos. 42062 and 42296, respectively.

3. **Requirements for ETC Designation.** In Cause No. 40785, the Commission adopted the FCC's original eligibility requirements for designation of ETCs within the State of Indiana. Accordingly, each Indiana ETC receiving Federal Universal Service ("USF") support is required by 47 C.F.R. § 54.101(b) to offer the following nine universal services or functionalities, which are described more fully in 47 C.F.R. § 54.101(a):

- (1) Voice grade access to the public switched network;

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<sup>2</sup> The recent passage of HEA 1279 has greatly modified the Commission's statutory powers regarding telecommunications. We apply those meanings and definitions in this context with regard for the fact that the definition was extant when evidence was submitted in this cause. Under the revised statute, the Commission has been accorded specifically denominated powers regarding the certification of eligible telecommunications carriers. See, I.C. 8-1-2.6-13(d)(5).

- (2) Local usage;
- (3) Dual tone multi-frequency signaling or an equivalent;
- (4) Single-party service or its functional equivalent;
- (5) Access to emergency services;
- (6) Access to operator services;
- (7) Access to interexchange service;
- (8) Access to directory assistance; and
- (9) Toll limitation for qualifying low-income customers.

In addition to offering the above nine universal services, ETCs are required by 47 C.F.R. §§ 54.405 and 54.411 to offer qualifying low-income customers “Lifeline” and “Link Up” (“LL/LU”) discounts as a condition precedent to receiving USF support. 47 C.F.R. § 54.201(d)(2) also requires ETCs receiving USF support to publicize the availability of the nine supported services, LL/LU and the corresponding charges, using media of general distribution throughout the service areas for which designation is requested. Pursuant to the Commission’s November 5, 1997 Order in Cause No. 40785, carriers seeking ETC designation in Indiana must also file proposed LL/LU tariffs and boundary maps depicting the areas for which ETC designation is sought.

On March 17, 2005, the FCC released an order setting forth additional ETC eligibility guidelines. These guidelines mandated that further designations of any ETC must include a public interest analysis, although the depth and specificity of that analysis will differ depending on whether it is a rural or non-rural area that is proposed to be served. *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 05-46, ¶¶ 42-43 (rel. March 17, 2005) (hereafter the “2005 FCC ETC Order”). We adopted the FCC’s additional eligibility requirements in our Order dated June 8, 2005 in a competitive ETC (“CETC”) designation case filed by SprintCom, Inc. and WirelessCo., L.P. (“Sprint Wireless”), Cause No. 41052-ETC-47. Generally speaking, the requirements described in the 2005 FCC ETC Order require an ETC applicant to:

- (1) Demonstrate a commitment and ability to provide the supported services to all requesting customers in the designated service area;<sup>3</sup>
- (2) Submit a Five Year Plan showing how the funds will be used to improve coverage, signal strength, or capacity;
- (3) Demonstrate a commitment to meet customer protection and service quality standards as determined on a case-by-case basis;<sup>4</sup> and
- (4) Offer a local usage plan comparable to that offered by the ILEC in the

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<sup>3</sup> 2005 FCC ETC Order at ¶21-23.

<sup>4</sup> 2005 FCC ETC Order at ¶28.

service area for which designation is sought.<sup>5</sup>

The FCC found that compliance with the above ETC eligibility requirements would not in itself satisfy the public interest test.<sup>6</sup> The *2005 FCC ETC Order* also requires a fact-specific public interest analysis.<sup>7</sup> The FCC recommended that states consider a number of factors when analyzing whether the public interest supports granting an ETC designation request, including increased customer choice, advantages and disadvantages of the applicant's offering, potential cream skimming, and the impact on the fund.<sup>8</sup> The FCC did not prohibit consideration of other relevant factors.<sup>9</sup> Rather, the FCC properly recognized that the entity performing a public interest analysis would need freedom to identify and weigh relevant public interest factors on a case-by-case basis.<sup>10</sup>

4. **Evidence Presented.** Evidence was prepared and prefiled by Budget, AT&T Indiana and the OUCC, all of which was admitted into the record of this proceeding at the January 25, 2006, evidentiary hearing. By agreement of the parties, Budget and AT&T Indiana waived cross-examination of each other's witnesses, but cross-examination was conducted at the evidentiary hearing by both the OUCC and by Budget.

A. **Budget's Case-in-Chief.** Budget presented direct testimony from Ron Munn, its Director of Regulatory and Revenue Assistance. Mr. Munn is responsible for executing agreements between Budget and various ILECs, while working with state and federal regulatory agencies to ensure regulatory compliance. Mr. Munn testified that Budget holds a certification from the Commission to provide local exchange telecommunications service as a bundled reseller and as a facilities-based provider pursuant to the Commission's Orders in Cause Nos. 42062 and 42296, respectively. Mr. Munn testified that Budget currently provides prepaid local exchange service to customers in Indiana in accordance with the terms of those CTAs. He stated that Budget currently contributes to the funding of federal universal service as a function of federal regulations, but is unable to draw from those universal service funds to support its services in Indiana because it is not designated as an ETC.

Mr. Munn testified that ETC designation will assist Budget in improving its existing services and would allow Budget to introduce advanced service offerings more quickly. He testified that any universal service funding obtained as a result of the ETC designation would be used only to support the provision, upgrading, and maintenance of Budget's network in the areas where ETC designation is granted. Mr. Munn noted that

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<sup>5</sup> *Id.* at ¶32.

<sup>6</sup> *Id.* at ¶ 42.

<sup>7</sup> "... [W]e agree with the Joint Board's recommendation and decline to provide more specific guidance at this time on how this balancing should be performed.... The specific determination, and the relative weight of the relevant considerations, must be evaluated on a case-by-case basis." *Id.* at ¶ 46.

<sup>8</sup> *Id.* at ¶ 41.

<sup>9</sup> The FCC identified several factors to consider and balance "...as part of [an] overall analysis regarding whether the designation of an ETC will serve the public interest." *Id.* at ¶ 44 (emphasis added).

<sup>10</sup> *Id.* at ¶ 46.

some of the universal service funds would be used to reduce the cost of unbundled network elements (“UNEs”) obtained from AT&T Indiana and Verizon and would speed the testing and deployment of advanced services such as wireless broadband to consumers in Indiana.

Mr. Munn testified that among the benefits of ETC designation would be the ability for Budget to hold its prices steady for Indiana customers. He explained that Budget had not raised its prices in Indiana, despite the fact that Budget’s costs to provide service had dramatically increased as a result of the FCC’s decisions in the Triennial Review Order and the Triennial Review Remand Order (“TRRO”).

Mr. Munn testified that the Act and the FCC’s administrative rules establish specific directives for the Commission to follow in evaluating whether to make an ETC designation. He set out the eligibility criteria in § 214(e)(1) of the Act, in which ETCs:

- (A) Offer the services that are supported by 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 therefor using media of general distribution.

*Munn Direct*, at p. 4, *citing* 47 U.S.C. § 214(e)(1).

Mr. Munn also clarified that Budget only seeks designation as an ETC in specific non-rural ILEC wire centers of AT&T Indiana (formerly “SBC”) and Verizon, and not within the study area of any Indiana rural ILECs. Mr. Munn confirmed that Budget has currently effective commercially negotiated agreements (“CNAs”) on interconnection with both AT&T Indiana and Verizon.

Mr. Munn stated that he believes Budget is entitled to ETC designation since it has demonstrated that it is capable of meeting all of the obligations imposed by § 214(e) of the Act, along with the additional requirements established by the *2005 FCC ETC Order*. Mr. Munn testified that Budget is a “common carrier” because it is “engaged as a common carrier for hire” in interstate or foreign communications utilizing either wire or radio technology consistent with the definition found in 47 U.S.C. § 153(10).

With regard to the nine services and functionalities required to be offered by ETC designees, Mr. Munn testified that Budget’s present network can provide all of these services and functionalities to consumers in Indiana. Mr. Munn originally testified that Budget has not provided operator services (“OS”) or directory assistance (“DA”) in the past, because those services are charged on an as-used basis that is traditionally billed in arrears to the customers that use them, which is inconsistent with Budget’s prepaid service offerings. However, Mr. Munn later corrected his prefiled testimony to reflect that Budget currently can and does provide access to both OS and DA to interested

customers, and that those services are billed in arrears.<sup>11</sup>

Mr. Munn's original prefiled testimony also explained how Budget was developing OS and DA service offerings that could be prepaid, consistent with Budget's current business model. Specifically, Mr. Munn testified that Budget anticipated an arrangement whereby a customer wishing to make use of DA or OS would elect that option and would prepay an amount into an "escrow" account from which those charges would be deducted as they were used. Mr. Munn later updated his original testimony to confirm that the escrow method he previously envisioned was in development and would permit the Budget to make OS and DA services available on a pre-paid basis, in addition to Budget's current OS/DA arrangements. He noted that there was no technical or operational reason why those services could not be deployed on a prepaid basis using Budget's existing network assets. Mr. Munn also confirmed that toll limitation would be offered to low-income customers eligible for the federal "Lifeline" program.

Mr. Munn explained that Budget currently provisions supported services either: (1) on a facilities basis, through the purchase from ILECs of switched port/loop combinations (commonly referred to as the unbundled network element platform or "UNE-P" until the FCC relieved ILECs of some of the responsibilities the FCC previously assigned to them under Sec. 251 of the Act);<sup>12</sup> or (2) through the resale of telecommunication services purchased from other carriers. Mr. Munn also testified that low-income universal service support would be the only type of support available for lines served on a straight resale basis. In contrast, all types of universal service support (not just low-income support) would be available for lines Budget served under UNE-P arrangements with the underlying ILEC. Mr. Munn clarified that the specific blend of UNEs or resale services used to provide supported services would vary depending upon the nature of the customer service request and the customer's precise location. Mr. Munn confirmed that universal service funding other than low-income support would only be requested for lines served using UNEs, consistent with the FCC's rules.

Mr. Munn testified that Budget would provide all services and functionalities supported by the federal universal service program throughout the service area for which it seeks ETC designation in Indiana, subject to finalizing platforms necessary to offer OS and DA services on a pre-paid basis. He also testified that Budget would offer LL/LU programs to qualifying low-income customers and would publicize the availability of those services consistent with the federal rules. Mr. Munn noted that copies of Budget's proposed LL/LU tariffs were attached to the verified petition. He also explained that Budget would advertise the availability of the supported services and its charges for those services through several different media of general distribution that target qualifying low-income customers, including advertisements in magazines and newspapers and marketing materials displayed at specific types of retail establishments, such as rent-to-own centers.

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<sup>11</sup> The corrections were contained in the *Notice of Errata* filed by Budget with the Commission on October 17, 2005.

<sup>12</sup> *In the Matter of Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338 (rel. 2-4-05), commonly referred to as the *Triennial Review Remand Order* ("TRRO").

Mr. Munn also testified that Budget would comply with the additional requirements established by the FCC in its *2005 FCC ETC Order*. Mr. Munn's prefiled testimony included a copy of Budget's Five-Year Plan, as now required by the FCC. He observed that Budget provides prepaid, toll-blocked local service that is inherently different from the underlying ILECs' standard basic local service offerings. However, he testified that Budget provides unlimited local usage that is comparable to the underlying ILECs' basic local service offerings. Mr. Munn confirmed Budget's commitment to comply with all recordkeeping and reporting requirements applicable to ETCs. He also testified that Budget is requesting ETC designation for the Verizon and AT&T Indiana service areas identified in the map attached to his prefiled testimony. Mr. Munn added that Budget already provides telecommunication services in all of the non-rural ILEC service areas for which it seeks ETC designation.

Mr. Munn testified that the public interest would be served by the designation of Budget as an ETC, because such a designation would promote additional deployment of Budget's unique prepaid local service offerings to high cost areas currently served by AT&T Indiana and Verizon. Mr. Munn also discussed Budget's unique niche market. He noted that most of Budget's customers are unable to obtain wire line local exchange service from other LECs because of the customers' inability to meet traditional "creditworthiness" tests commonly used by other carriers. Accordingly, Mr. Munn stated that the public interest would be served by allowing Budget to further the deployment of its unique service in a greater area at current rates.

Mr. Munn estimated that Budget would qualify for \$59,652 of support each year from the Federal Universal Service Interstate Access Support Fund, based on a calculation multiplying the number of subscribers in each study area/zone by the rate of support for those areas, based on information the ILECs previously filed with the Universal Service Administration Company ("USAC.") Mr. Munn explained that Budget would establish necessary protocols to separately track the receipt and use of universal service funds received from USAC for its Indiana ETC service areas consistent with the tracking requirements established by the Commission in prior CETC designation cases.<sup>13</sup> Mr. Munn acknowledged that the subsidizing of competitive services by non-competitive services is prohibited in the provision of universal service, and that Budget would comply with all Commission requirements for the use of USF. Finally, Mr. Munn reiterated that following its designation as an Indiana ETC, Budget's universal service funding obtained would be used only to support the provision, upgrading, and maintenance of its network in Indiana and that Budget plans to offer a reduced rate universal service package to subscribers eligible for Lifeline support as required by federal rules. He testified that there would be no discernible financial impact on the universal service fund or the federal universal service fund surcharge paid by Indiana end users if Budget's ETC designation request is granted.

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<sup>13</sup> See, e.g., the Commission's final Order in Cause No. 41052-ETC-43, Nextel's Indiana ETC designation case.

**B. AT&T Indiana's Case-in-Chief.** Intervenor AT&T Indiana submitted the prefiled testimony of James Stidham, Jr., an Associate Director in the Regulatory Planning and Policy Group of AT&T Indiana Services, Inc., one of AT&T Indiana's subsidiaries, as its case-in-chief. Mr. Stidham testified that Budget did not meet its burden of proving that ETC designation would be in the public interest based on the analytical framework established in the *2005 FCC ETC Order*.

Mr. Stidham stated AT&T Indiana's position that both the *2005 FCC ETC Order* and the Act require an evaluation of the public interest standard to all ETC applications, whether rural or non-rural. Mr. Stidham explained that the FCC had identified certain factors to be used in evaluating the public interest in the *2005 FCC ETC Order*. Mr. Stidham expressed his belief that those public interest criteria, as listed below, are appropriate and reasonable for this Commission to consider when performing public interest analyses of ETC designation requests:

- (1) The benefits of increased consumer choice;
- (2) The impact of an additional ETC designation on the universal service fund;
- (3) The unique advantages and disadvantages of any new service offerings; and
- (4) The potential for "cream skimming."

Mr. Stidham testified that Budget had not met its burden of proving that the public interest would be served by granting its ETC designation request because Budget's Five-Year Plan had not demonstrated that the universal service support would be used for the provision, maintenance, and upgrading of facilities and service, rather than for sales and marketing purposes. Mr. Stidham also criticized Budget's failure to offer a rate plan "comparable to that of the ILEC," and its failure to provide sufficient information on how the policy goals of the Act would be furthered through its designation as an ETC. While Mr. Stidham acknowledged that Budget's witness Munn provided some information that would assist the Commission in making a determination of public interest, he testified that the information provided required clarification. Specifically, Mr. Stidham criticized Mr. Munn's testimony that universal service funding would be used to speed the testing and deployment of advanced services such as wireless broadband. Mr. Stidham testified that advanced services were not included in the list of services eligible for USF support and that if Budget used USF funding for those purposes, it would not be in compliance with § 254(e) of the Act.

Mr. Stidham also criticized Budget's Five-Year Plan because it did not include any planned technology upgrades, infrastructure deployment schedules, or network build-out plans. He contended that the "build-out plan" described in the federal rule is "generally understood in the communications industry" to require a description of physical facilities deployment or improvements - not a description of how the ETC applicant will expand its marketing activities. Mr. Stidham criticized Budget for seeking access to USF support to be used only for marketing purposes, not for network build-outs or improvements.

As to unique advantages or disadvantages of Budget's service offerings, Mr. Stidham testified that there was little distinction between services offered by the ILECs and those offered by Budget. He explained that, like Budget, AT&T Indiana requires payment in advance for telecommunications services. He stated that AT&T Indiana also allows for pre-payment of toll calls similar to the way Budget requires its customers to purchase bundled toll on a prepaid basis or use a "dial around" service. Mr. Stidham also said that Budget did not consider intermodal competition in an effort to demonstrate that its service was unique. Mr. Stidham pointed out that some wireless providers also offer service on a prepaid basis, therefore making Budget's service offering not "unique."

Mr. Stidham criticized Budget for not being able to offer Lifeline service immediately upon the grant of its ETC designation as required by the federal rule. He explained that the provision of LL/LU programs to qualifying low-income customers is a "condition precedent" to receiving federal universal service support.

Mr. Stidham also testified that Budget failed to meet the "local usage plan" criteria identified in the *2005 FCC ETC Order*, and asserted that an ETC applicant is required to provide a local usage plan with comparable service, local usage, and rates as offered by the underlying ILEC, which would include AT&T Indiana. He indicated that Budget's inability to immediately provide OS and DA was fatal to its request for ETC designation. Mr. Stidham also criticized Budget for not providing intra-LATA toll dialing parity in its local service offerings, as required in the Commission's November 26, 1996, Order in Cause No. 40284.

Mr. Stidham also pointed out that Budget had not demonstrated its ability to remain functional in emergency situations, nor had it addressed how consumer protection and service quality standards would be met, as required under the FCC's *2005 FCC ETC Order*.

Based on his analysis, Mr. Stidham concluded that Budget had not met all of the eligibility requirements for ETC designation and recommended that Budget's application be denied.

**C. OUCC's Case-in-Chief.** The OUCC presented direct testimony from its Director of Telecommunications, Ronald L. Keen. He reviewed the specific statutory requirements for ETC eligibility set forth in 47 U.S.C. § 214(e)(1) obligating the applicant to publicize, offer, and provide universal telecommunications service to any and all eligible customers located in its proposed ETC service territory. Like Budget's witness, Mr. Keen reviewed the nine services included in the FCC's current definition of "universal service." See 47 C.F.R. § 54.201. He also observed that, once certified as an ETC, a carrier must offer federal LL/LU discounts to qualifying low-income consumers and publicize the availability of those discounts.

Mr. Keen testified that the Commission had already designated at least one ETC for each portion of the State of Indiana, employing the framework established in IURC Cause No. 40785 to review applications filed under sub-dockets of Cause No. 41052. He explained that the only carriers to initially seek ETC status in Indiana were ILECs, and

that those initial designations collectively covered the entire State of Indiana. Mr. Keen added that the Commission had granted CETC status to Hancock Communications, Nextel, Centennial, and Sprint Wireless in recent proceedings. He pointed out that each of those four CETCs submitted evidence of planned expansions of, or improvements to, their network coverage, with some improvements also permitting the applicants to offer enhanced telecommunications services in new parts of the state. Mr. Keen testified that the Commission imposed detailed reporting requirements on each of those ETC designees to ensure that any federal universal service funds received were used for their intended purpose, as documented in capital improvement plans the Commission required each carrier to submit. Mr. Keen also testified that the Commission engaged in a "public interest" analysis for the non-rural service areas covered by Sprint Wireless' CETC designation request, which the Commission granted after the FCC issued its March 17, 2005, ETC Order.

Mr. Keen testified that Budget's current CETC request differs from those of previous CETC applicants, because Budget has not invested in any telecommunications network infrastructure used to provide federally supported universal service inside its proposed CETC service area, and it has no plans to do so in the foreseeable future. He explained that, unlike previous applicants, Budget operated as a bundled reseller and an UNE-P (or, post-TRRO, "UNE-P-like") local service provider in Indiana. Mr. Keen testified that the OUCC would not support approval of Budget's ETC designation unless Budget committed to deploying or improving network facilities in Indiana. Mr. Keen also observed that Budget has no business office or employees in Indiana.

Mr. Keen testified that under § 214(e) of the Act, ETC status is directly tied to universal service concepts of ensuring ubiquitous availability of quality telephone service at rates that are both "comparable and affordable." Mr. Keen testified that 47 U.S.C. § 254(b)(1) requires quality services to be available at "just, reasonable, and affordable" rates. He indicated that Budget's business plan is limited to the provision of month-to-month, prepaid, toll-blocked local service offerings, at basic local service ("BLS") rates significantly higher than those charged by the underlying ILEC-ETCs. Mr. Keen therefore questioned whether Budget would further those universal service goals. Mr. Keen also questioned whether Budget's BLS rates met the consumer protection requirements in 47 U.S.C. § 254(i), that rates be "just, reasonable, and affordable."

Mr. Keen also discussed 47 U.S.C. § 254(b)(3), which requires the provision of access to, among other things, "interexchange services ... that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas." Mr. Keen expressed concern that Budget's local service offering might not meet that requirement. He explained that Budget does not currently offer presubscribed access to interexchange service with "1+" long-distance dialing as part of its prepaid local exchange service offerings. Mr. Keen acknowledged that Budget sells prepaid long distance calling cards that require users to dial toll-free access numbers and enter personal identification information before obtaining access to the long-distance network. However, Mr. Keen observed that such prepaid, long-distance calling cards are not comparable to the "1+" presubscribed access to long distance service that Indiana telephone consumers have

come to expect and that this Commission has required under generic orders previously issued in Cause No. 40284.

Mr. Keen reviewed Congress' definition of "universal service" in § 254(c) of the Act. Specifically, 254(c)(1)(B) indicates that a supported universal service offering includes services that "have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers...." The OUCC questioned whether Budget's month-to-month, prepaid, toll-blocked local service offering could satisfy that part of the federal statutory definition of "universal service," given the pricing differentials and service limitations discussed above. Mr. Keen testified that he would not expect Budget's BLS offering to have wide-spread market appeal.

Mr. Keen also expressed concern that Budget's business model included only bundled resale and a UNE-P-like platform currently leased through voluntary, commercially-negotiated service arrangements ("CNAs") with Verizon and AT&T Indiana. He questioned whether Budget's wholesale CNAs with those ILECs satisfied the "facilities ownership" requirement in 47 C.F.R. § 54.201(f) – a prerequisite for ETC designation. Mr. Keen cautioned that, based on the FCC's treatment of the UNE-P in the TRRO, Budget might be "forced back into" a bundled resale service model when its existing wholesale arrangements expire, thereby rendering Budget ineligible for continued ETC status under federal law.

Mr. Keen testified that, in reviewing requests for ETC designation, the Commission should also consider whether granting the request would expand the availability of universal service and whether it would help competition develop in Indiana. He also recommended that the Commission consider the extent to which granting an ETC designation request would maximize the effective use of available federal universal service funding.

Mr. Keen testified that Indiana might receive greater amounts of federal universal service funding if more than one ETC is designated in a given service area. However, Mr. Keen also expressed his concern that if that approach were used on a nation-wide basis, the total USF commitment would increase, resulting in higher USF line item surcharges on consumer's monthly telephone bills. He testified that, theoretically, consumers might also enjoy increased service options, improved service quality, new service packages, and more favorable options than those currently available if more than one carrier were designated as an ETC in a given service area. However, Budget's basic local service offering is priced significantly higher than those of the underlying ILEC-ETCs – especially in light of the fact that it requires customers to accept toll-blocking, thereby precluding "1+" dialing for long distance calls.

Mr. Keen questioned Budget's commitment to continue to provide universal service in Indiana, since it has operated in Indiana for a number of years without investing in network facilities or hiring any Indiana employees. Mr. Keen questioned the extent to which there would be widespread demand for Budget's BLS offerings given the comparative price of its service offerings. Mr. Keen emphasized that Budget serves only a small niche market of consumers who are unable or unwilling to obtain traditional BLS

from ILEC-ETCs and are, therefore, willing to pay higher rates to obtain a limited form of BLS.

Mr. Keen criticized Budget's Five-Year Plan because it fails to address the deployment of new telecommunications facilities or improvements to existing network facilities. He testified that the OUCC was reluctant to encourage ETC designation based on a UNE-P-like business model because of its concern that if all carriers adopted such a model, the USF's intended benefits of new or improved infrastructure, more jobs, and new business opportunities could not occur. Mr. Keen testified that, if no network improvements or expansions are contemplated, the public interest would not be well-served because Indiana's consumers would not receive "the best value for their universal service dollars."

Mr. Keen testified that, while Budget had not been denied ETC designation in any states, it had withdrawn requests for ETC status filed in at least ten different states. At the time Mr. Keen's testimony was prefiled, petitions for ETC designation were still pending in nineteen states, with only three states having approved Budget's ETC designation requests at that time.

Mr. Keen recommended that, if the Commission were to approve Budget's ETC designation request, the order be made subject to the following conditions:

1. That no designation be approved until Budget demonstrates its full and complete compliance with all applicable requirements under the federal rules;
2. That Budget be required to submit an infrastructure investment plan for extensions and improvements before ETC designation is approved; and
3. That Budget prove its willingness to provide universal service to all business and residential customers located inside its proposed ETC service territory.

**D. Budget's Rebuttal Evidence.** Budget's witness Munn presented testimony in rebuttal to the evidence presented by OUCC witness Keen and AT&T Indiana witness Stidham. Mr. Munn disagreed with the OUCC's position that a carrier must be facilities-based in order to receive ETC designation because that requirement is absent from, and inconsistent with, the ETC criteria established by the FCC and adopted by the Commission. He noted that OUCC witness Keen had previously objected to a CETC designation request of NPCR, Inc., but that the Commission had awarded Nextel an ETC designation despite Mr. Keen's contrary recommendations.

Mr. Munn also stated that the *2005 FCC ETC Order* rejected the notion that the Five-Year Plan required of ETC Applicants requires additional construction of network facilities – which contradicts Mr. Keen's recommendation that Budget be required to file an infrastructure investment plan for network extensions or improvements before

granting its request for ETC designation. Mr. Munn also disagreed with Mr. Stidham's position that the Five-Year Plan must constitute an infrastructure "build-out" or network facilities improvement plan in order to comply with the *2005 FCC ETC Order*.

Mr. Munn was also critical of Mr. Keen's concern that Budget's ability to provide universal service was tenuous, since the FCC recently relieved ILECs of their prior duty to provide the UNE-P at Total Element Long Run Incremental Cost ("TELRIC")-based rates under 47 U.S.C. § 251. Mr. Munn pointed to AT&T Indiana and Verizon's willingness to provide UNE-P-like arrangements to the Budget under CNAs that have not yet expired. Since Mr. Keen's concerns couldn't materialize until existing CNAs have expired, Mr. Munn argued that the voluntary nature of existing CNAs and any questions concerning the continued availability of the UNE-P should not influence this Commission's review of Budget's request for ETC designation.

Mr. Munn testified that 47 C.F.R. § 54.201(f) defines the phrase "own facilities" to include "facilities obtained as unbundled network elements pursuant to part 51 of this chapter, provided that such facilities meet the definition of the term 'facilities' under this subpart." Mr. Munn stated that Budget's UNE-P-like service arrangements meet that requirement. Mr. Munn testified that while the name of the agreement under which the facilities are provided has changed from an Interconnection Agreement to a Commercial Agreement, the individual network elements that make up DS0 UNEs still consist of unbundled local switching and an unbundled copper loop – combinations of "facilities" that ILECs were originally "obligated" to provide "nondiscriminatory access to" under 47 C.F.R. § 54.307(a). He testified that, despite the impact of the TRRO on ILECs' obligation to provide access to the UNE-P at TELRIC rates, the character of the underlying facilities did not change simply because they are now being provided on a voluntary basis according to a negotiated commercial arrangement. Mr. Munn believed that if the FCC had intended the reading of the TRRO proposed by Mr. Keen, it would have said so.

Mr. Munn disagreed with Mr. Keen's policy recommendation that network infrastructure deployment or improvements be required for Indiana CETC status. Mr. Munn believed such a requirement would conflict with the FCC's long-stated commitment to "competitive neutrality" in the provision of universal service. Mr. Munn testified that both the FCC's *2005 FCC ETC Order* and its *First Universal Service Report and Order* adopted the principle that, pursuant to 47 U.S.C. § 254(b)(7), Federal Universal Service support mechanisms should be competitively neutral, neither unfairly advantaging nor disadvantaging particular service providers or technologies. Therefore, Mr. Munn concluded that, had the FCC intended the interpretation advanced by Mr. Keen, it would not have included in its definition of "own facilities" a provision that includes CLECs providing service through the use of unbundled network elements. (See 47 C.F.R. § 54.201(f).)

Mr. Munn also challenged Mr. Keen and Mr. Stidham's testimony that Budget's rates are higher than those of the underlying ILECs and might not be just, reasonable, and affordable as required under the Act. Mr. Munn testified that Budget's rates are "just"

within the meaning of the federal rule because they are reflective of Budget's own costs. Mr. Munn disagreed with Mr. Keen and Mr. Stidham's focus on BLS rates, indicating that the relevant analysis of Budget's rates should involve a comparison of the rates for services provisioned using UNEs, since those are the only services for which universal service funding will be sought. For Budget, the only services offered via UNEs (and for which universal service funding is sought), are Budget's packaged services, including the Deluxe and Bonus packages, which include vertical features as well as toll-blocked local service). Mr. Munn testified that since Budget's stand-alone basic local service ("BLS") is provisioned via resale – for which most universal service funding is not available – Mr. Keen's comparison of stand-alone BLS rates is irrelevant. He testified that a properly conducted comparison reveals that Budget's rates are within a few dollars of the ILECs' retail offerings for identical or substantially similar packages.

Mr. Munn's rate analysis compared rates for Budget's "Bonus Plan" and "Deluxe Plan" with rates charged for comparable service packages offered by AT&T Indiana and Verizon. He indicated that no extra value was assigned for Budget's elimination of credit qualification and customer deposit requirements like those used by Verizon and AT&T Indiana. Mr. Munn offered this rate comparison to show that Budget's monthly rates for bundled service packages are within, and in some cases below comparable ILEC rates. He concluded that Budget's rates were therefore "reasonable" and not "significantly higher" than the ILEC's bundled service rates. Mr. Munn concluded that Budget had satisfied its burden of proof that granting its ETC designation request would serve the public interest, convenience, and necessity.

Mr. Munn testified that one of the chief goals of the universal service program is to bring local telephone service to a small segment of the market that has previously gone without that service. He therefore stated that it would be inappropriate and inconsistent with the purpose of universal service to require "widespread demand" for its services before Budget's ETC application was granted. Mr. Munn explained that it was not Budget's goal to become a dominant provider, but was rather to offer a desirable service to a small segment of the market that is generally underserved by other carriers.

Mr. Munn testified that, although Budget does not have any direct employees in Indiana, it has more than 350 agents located here that rely on revenue they receive as authorized Budget agents. He noted that the financial impact of this arrangement was significant within the State, and that the revenues produced had been instrumental in allowing many of its agents to open satellite locations, even though Budget does not have any of its own business offices in Indiana. Mr. Munn explained that Budget's arrangement with its agents provided an additional benefit to Budget's customers -- a payment center that is close and convenient, something not typically offered by AT&T Indiana or Verizon. Mr. Munn testified that this customer access was vital for many low-income customers that do not have personal transportation and need a payment center that is close and that can be easily reached by public transportation, and who rely on the availability of a local payment center to allow them to pay their bills at virtually the last minute, thereby keeping them from losing their service.

Mr. Munn challenged Mr. Keen and AT&T Indiana witness Stidham's testimony on the issue of access to IXC service and characterized their position as "well worn and rejected." Mr. Munn testified that the *2005 FCC ETC Order* does not require IXC presubscription, but rather recognizes that the use of current technologies, including a variety of dial-around access codes, allow consumers to retain access to their IXC of choice without having to rely on presubscription. He testified that Budget routinely employs "1+" blocking, but never restricts access to toll free numbers, thus ensuring and preserving a customer's ability to directly dial their IXC of choice. In his rebuttal testimony, Mr. Munn stated that Budget offers a pre-paid long distance platform that allows subscribers to place long distance calls without having to purchase calling cards. Mr. Munn further stated that the Commission had already rejected Mr. Keen's proposal to require "1+" access to all long distance service providers as a precondition to ETC designation in the *Nextel* proceeding, Cause No. 41052-ETC-43. Mr. Munn opined that any remaining concern about the designation of multiple ETCs for a given service area was without merit, having been previously rejected by both the FCC and this Commission.

Mr. Munn disagreed with Mr. Stidham's contention that Budget had not demonstrated how it would comply with consumer protection and customer service standards. He noted that its bills comply with the Commission's rules for billing detail, other than with respect to the requirements (such as delinquent bill data) which he testified are not applicable to prepaid carriers like Budget. He added that the Commission's rule on disconnection was inapplicable to CLECs providing service through the purchase of UNEs, and that as a practical matter Budget's customers are never disconnected because their service is always pre-paid. Mr. Munn also noted that if customers are not satisfied with Budget's service quality, they will not continue to subscribe and Budget will not receive the USF funding associated with their service. He testified that Budget is committed to complying with applicable customer service rules and standards and with the additional customer service standards cited by the Commission in its June 8, 2005 Order in the Sprint Wireless ETC case, Cause No. 41052-ETC-47.

Mr. Munn testified that the withdrawal of Budget's ETC Petitions in several other states should not raise any questions about Budget's commitment to serve. Mr. Munn stated that the decision to withdraw those petitions was based on economic factors or timing considerations, and that Budget expected to file new requests for ETC designations in each of those states in the future. He added that Budget had been granted ETC designation in each of the five states where it had not withdrawn its ETC designation requests. Mr. Munn also observed that the characteristics of Budget and its services are remarkably similar to those of TracFone, a pre-paid reseller of wireless telephone service that was granted ETC designation (albeit somewhat limited) by the FCC in a proceeding that employed Federal-State Joint Board standards similar to those adopted by the FCC in its *2005 FCC ETC Order*. Mr. Munn stated that Budget meets the criteria set forth in 47 C.F.R. § 54.201 – the first condition recommended in OUC witness Keen's testimony. However, he urged the Commission to reject the second two conditions recommended in Mr. Keen's testimony regarding infrastructure investment

and willingness to serve all customers located in Budget's proposed ETC service areas. Mr. Munn testified that those additional conditions amounted to the imposition of a new facilities deployment requirement inconsistent with the federal standards previously adopted by this Commission.

Mr. Munn's rebuttal testimony also responded to the testimony of AT&T Indiana witness Stidham. He testified that contrary to Mr. Stidham's claim, Budget not only had acknowledged it was subject to the public interest standard under the *2005 FCC ETC Order*, but had presented sufficient evidence to demonstrate compliance. He testified that Budget's evidence demonstrated it will use universal service funding in a manner that is entirely consistent with the requirements of the Act to help expand its offerings to presently unserved areas and to reduce the price of Lifeline service by the amount of federal support received. According to Witness Munn, contrary to Mr. Stidham's testimony, Federal Universal Service funds would not be used for "sales and marketing employees instead of . . . the requirements of Section 254(e) of the Act."

In response to Mr. Stidham's allegation that Budget's evidence was inconsistent because it discussed the testing and deployment of wireless broadband, Mr. Munn countered that Budget never asserted that such services were properly the subject of USF support. He explained that by offsetting the cost of providing its local voice product through the receipt of USF dollars, Budget would free up capital for its broadband project. He noted that the *2005 FCC ETC Order* specifically found that the public interest aspects of a particular ETC designation should be analyzed in a manner consistent with the purposes of the Act, including the fundamental goal of "promoting the deployment of advanced telecommunications and information service to all regions of the nation...." Mr. Munn therefore concluded that his reference to Budget's future broadband deployment plans did not hinder, but rather supported, Budget's ETC designation request.

Mr. Munn disagreed with Mr. Stidham's conclusion that Budget's product was not unique. He pointed out that, unlike AT&T Indiana or other ILECs, Budget does not require its customers to submit to a credit check or to pay a deposit for service. Mr. Munn found Mr. Stidham's criticism of Budget's pre-paid OS and DA services to be "puzzling" because the pre-payment was not a deposit to secure payment, but rather the pre-paid money was applied directly to its customers' bills. Mr. Munn stated that the FCC had recognized that the benefits of increased competition and choice should be considered when weighing the public interest. He testified that, since Budget uses UNE-P-like wholesale service arrangement instead of straight resale, Budget is able to fashion its own unique retail service offerings, without being limited to retail service options already offered by underlying ILECs.

Mr. Munn disputed that the federal rules prohibit a "ramp-up" period after ETC designation to start offering Lifeline or Link-Up discounts. However, Mr. Munn stated that Budget would wait until it is ready to provide Lifeline and Link-Up discounts to eligible consumers before applying for USF funding. Mr. Munn also challenged Mr. Stidham's contention that Budget failed to demonstrate that its network would continue to function in an emergency, because Budget has secured a reasonable amount of back-up

power through its Commercial Agreements with AT&T Indiana and Verizon, and because those Agreements provide for re-routing of traffic due to damaged facilities and to manage traffic spikes. Mr. Munn stated that requiring UNE-based ETC applicants to have duplicate facilities for emergency purposes would conflict with the FCC's goal of competitive and technological neutrality, because it would effectively foreclose any carrier other than a facilities-based carrier from receiving ETC designation. He also said that Budget has contracts in place that already allow it to provide service to any requesting customer within each of the designated service areas for which it seeks ETC designation and, contrary to Mr. Stidham's claim, Budget would provide service to any customer located in those service areas.

Mr. Munn recommended that the Commission reject arguments presented by the OUCC and AT&T Indiana and find that: (1) Budget meets all ETC eligibility requirements; (2) Budget's ETC designation would further the public interest and potentially increase Indiana subscribership to federal Lifeline and Link-Up programs; and (3) such designation would expand choices for certain customers who lack the requisite creditworthiness to secure traditional wireline phone service.

#### **5. Commission Discussion and Findings.**

Universal service funds are provided in four areas: (1) funds to support service to high cost areas; (2) provision of discounted telecommunications and Internet access to eligible schools and libraries (also known as the "E-rate" program); (3) funds to assist low-income customers by provision of a monthly discount on telecommunications costs and a credit towards connection for service (the Lifeline and Link-up programs); and (4) provision of discounted service to rural health providers. *In the Matter of Comprehensive Review of Universal Service Management, Administration, and Oversight*, 20 FCC Rcd 11308, ¶5 (released June 14, 2005). High cost support is made up of five different components: high cost loop support, local switching support, interstate access support, forward-looking, or model, support for non-rural carriers, and interstate common line support for rate-of-return carriers. *Id.* at ¶45 (footnotes omitted.)

Although Budget has met the nine required services criteria for ETC designation as contained in 47 U.S.C. § 214(e)(1) and related FCC rules and orders, it does not meet its burden of proving that granting its request for ETC status would satisfy the public interest analysis this Commission is required to perform under the *2005 FCC ETC Order*, as more fully discussed below.

**A. Common Carrier Status.** Budget is a "common carrier" for purposes of obtaining ETC designation under 47 U.S.C. § 214(e)(1) because it is a "person engaged as a common carrier for-hire" in interstate or foreign communications utilizing either wire or radio technology within the meaning of the definition set forth in 47 U.S.C. § 153(10). There was no evidence of record from any party questioning Budget's status as a common carrier.

**B. Lifeline/Link-Up Service Offering Requirements.** Budget's witness Munn provided testimony concerning Budget's planned LL/LU service offerings, and attached a copy of Budget's proposed LL/LU tariff as Exhibit A to the amended petition.

Budget has agreed to comply with all applicable LL/LU requirements if its request for ETC designation is granted, and has agreed not to seek reimbursement from the USF until it is ready to provide federal LL/LU discounts to eligible consumers. We discuss the pricing and eligibility issues of LL/LU more below.

**C. Advertising Requirements.** Mr. Munn testified that Budget will advertise the availability of its LL/LU and generally supported universal service offerings as well as the corresponding charges for those services in a manner that informs the general public within the designated service area. He stated that Budget will advertise its service through several different media of general distribution, including newspapers and in locations such as rent-a-centers that low-income customers likely to take advantage of Budget's services may frequent. There is no evidence in the record to contradict Budget's testimony; we thus find that Budget has met its burden of demonstrating that it will advertise its products and services in a manner consistent with the federal rules. We discuss the issue of marketing vis a vis Budget's proposed use of USF funds in greater detail below.

**D. Budget's Designated ETC Service Area.** 47 C.F.R. § 54.207(a) defines a "service area" as a "geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms." For an area served by a non-rural ILEC, an ETC's designated service area can be established on a wire-center basis under 47 U.S.C. § 214(e)(5). Budget seeks designation as an ETC for certain of the wire centers of AT&T Indiana and Verizon, both non-rural ILECs in Indiana. A map of the proposed service area was attached to the amended verified petition as Exhibit E. We also note that Budget is already authorized to provide prepaid local exchange service throughout the non-rural ILEC service areas for which ETC designation is sought in this proceeding.

**E. Provision of Supported Services.** The evidence supports the conclusion that Budget provides or is in a position to provide the supported services identified by the FCC in 47 C.F.R. § 54.101(a), as follows:

**i. Voice Grade Access to the Public Switched Telephone Network.** The FCC has concluded that voice-grade service means the ability to make and receive phone calls within a specified band width frequency range. Budget meets this requirement by providing voice-grade access to the public switched telephone network by virtue of Budget's interconnection arrangements with AT&T Indiana and Verizon. No evidence was presented that Budget's customers are not able to make and receive telephone calls on the public switched telephone network in accordance with the federal rules.

**ii. Local Usage.** ETCs must include local usage beyond the provision of simple access to the public switched telephone network as part of an eligible universal service offering. The evidence established that Budget's prepaid local plans each include unlimited local calling in addition to access to the public switched network. We also note that Budget's unlimited local calling on a prepaid basis is consistent with the Commission's requirement that local exchange carriers offer an unlimited local calling plan as part of their tariffed service offerings.

iii. Dual Tone, Multi-Frequency ("DTMF") Signaling, or its Functional Equivalent. DTMF is a method of signaling that facilitates the transportation of call set-up and call detail information. The evidence established that Budget provides DTMF signaling consistent with this requirement.

iv. Single-Party Service or its Functional Equivalent. There is no evidence in the record from which to conclude that Budget does not meet the requirement of single-party service by providing a dedicated message path for the length of all customer calls.

v. Access to Emergency Services. The ability to reach a public emergency service provider by dialing 911 is a required element in any universal service offering. The evidence established that Budget provides its subscribers with access to 911 emergency service throughout the area for which ETC designation is sought in this proceeding, consistent with applicable law.

vi. Access to Operator Services. Access to operator services is defined as any automatic or live assistance provided to a consumer to arrange for the billing or completion, or both, of a telephone call. Because of the nature of Budget's prepaid services, our discussion of access to operator services is consolidated with the following discussion of access to directory assistance service.

vi. Access to Directory Assistance. ILEC operator services and directory assistance are generally provided at an additional fee per transaction as part of an ILEC's local service offering. As explained by Budget's witness Munn, the prepaid nature of Budget's service offering dictates that OS and DA be provided differently. Mr. Munn explained that Budget does currently offer OS and DA access on a billed-in-arrears basis in its prepaid calling plans. Mr. Munn also testified that Budget intends to offer those services on a pre-paid basis in the future. Budget clarified that it does not currently block access to DA and that it will make OS available to all customers upon designation as an ETC. Therefore, we find the criticism by AT&T Indiana and the OUCC to be moot.

vii. Toll Limitation for Qualifying Low-Income Consumers. Budget's evidence indicated that it has the technical ability to block access to presubscribed toll service and routinely does so under its pre-paid business model. ETCs are only required to offer one type of toll limitation – either toll blocking or toll control. The evidence supports the conclusion that Budget routinely provides toll blocking to its local service customers and that Budget is willing to continue to provide toll blocking to qualifying low-income consumers at no additional charge upon designation by the Commission as an ETC. Accordingly, we find that Budget has shown that it satisfies applicable toll limitation requirements.

viii. Access to Interexchange Service. In order to qualify for ETC designation, Budget must establish that its customers have the ability to make and receive interexchange calls. Budget's witness Munn testified that Budget offers a number of prepaid interexchange plans that allow customers to make and receive interexchange calls up to the dollar amount of the prepaid interexchange service. However, none are offered on a direct dial (i.e., "1+") presubscribed basis. In addition, Mr. Munn testified that

Budget subscribers are free to use any toll-free number to access their interexchange carrier of choice.

We are mindful of the convenience associated with "1+" presubscribed interexchange service employed by Indiana's ETCs. The Commission adopted a "1+" inter-exchange access dialing parity requirement years ago in Cause No. 40284, recognizing a clear consumer preference in Indiana for "1+" access to long distance service. Although Indiana LECs are free to offer toll-blocking to interested customers, toll-blocking has never been mandatory, even for eligible Lifeline customers. The FCC has held that if there are multiple ETCs, only one ETC is required to offer "equal" access to all long distance service providers. If the CETC were to become the only ETC in a given service area, it would be required to provide equal, presubscribed (i.e., "1+") access to all interexchange carriers. However, that is not the case here. The FCC could impose a requirement of 1+ access should an ETC become the sole carrier in an area, as expressed in the *2005 FCC ETC Order*. If the FCC had imposed the obligation definitively, it would not have couched the *2005 FCC ETC Order* in such a fashion. We recognize the concerns and positions on the issue of all parties. However, we need not, and will not, make a blanket statement that all ETCs in a given area have to provide 1+ access. It is sufficient to say that the FCC has indicated that ETCs *could be* required to do so in the future.

#### **F. Public Interest Considerations**

Budget seeks to be designated as an additional ETC in non-rural service areas in Indiana. No public interest review was necessary in the designation of an ETC in a non-rural area until March 2005, when the FCC announced that future designations of *any* ETC must include a public interest analysis. *2005 FCC ETC Order*, ¶¶42-43.

In beginning our analysis, we note that AT&T Indiana recommended denial of Budget's application based primarily on public interest factors; OUCC witness Keen also presented a public interest analysis and recommended that Budget be required to meet several conditions before obtaining ETC status.

An ETC designation confers both benefits and burdens on a carrier. While designation gives the provider the right to apply for USF funds, it also imposes a requirement that such support be used "only for the provision, maintenance, and upgrading of facilities and services for which support is intended." 47 U.S.C. 254(e). In the absence of specific statutory strictures for evaluating the public interest, the FCC has recommended that ETC designations be analyzed "in a manner that is consistent with the purposes of the Act itself, including the fundamental goals of preserving and advancing universal service; ensuring the availability of quality telecommunication services at just, reasonable, and affordable rates; and promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high-cost areas." *2005 FCC ETC Order*, ¶ 40, p.19.

The 2005 FCC ETC Order encouraged states to include factors previously considered in the *Virginia Cellular* ETC designation Order,<sup>14</sup> and recognized that public interest assessments would vary from case to case. 2005 FCC ETC Order, ¶¶ 43, 44 and 58-62. It also set more stringent requirements for the tracking of expenditures, improvements to services, and service quality. All ETCs are now subject to these requirements, regardless of the date of their certification, and they must submit to the FCC on an annual basis the following:

- (1) progress reports on the ETC's five-year service quality improvement plan, including maps detailing progress towards meeting its plan targets, an explanation of how much universal service support was received and **how the support was used to improve signal quality, coverage, or capacity**; and an explanation regarding any network improvement targets that have not been fulfilled. The information should be submitted at the wire center level;
- (2) detailed information on any outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities that it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in a designated service area, or that potentially affect a 911 special facility (as defined in subsection (e) of section 4.5 of the *Outage Reporting Order*.) An outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network. Specifically, the ETC's annual report must include: (1) the date and time of onset of the outage; (2) a brief description of the outage and its resolution; (3) the particular services affected; (4) the geographic areas affected by the outage; (5) steps taken to prevent a similar situation in the future; and (6) the number of customers affected;
- (3) the number of requests for service from potential customers within its service areas that were unfulfilled for the past year. The ETC must also detail how it attempted to provide service to those potential customers;
- (4) the number of complaints per 1,000 handsets or lines;
- (5) certification that the ETC is complying with applicable service quality standards and consumer protection rules, e.g., the CTIA Consumer Code for Wireless Service;
- (6) certification that the ETC is able to function in emergency situations;

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<sup>14</sup>*Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45 (rel. 1-22-04).

- (7) certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and
- (8) certification that the carrier acknowledges that the [FCC] may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

2005 FCC ETC Order at ¶69 (footnotes omitted, emphasis added); 47 C.F.R. §54.209.

As noted above, we adopted these guidelines in the Sprint CETC designation case, and announced that current Indiana ETCs will be required to submit such information as part of their annual certification. This requirement achieves the stated intention of both the FCC and this Commission to achieve uniformity and technological neutrality in the certification process.

*i. Impact on the Federal USF.* The FCC has acknowledged that “given the size of the fund – approximately \$3.8 billion per year – it is unlikely that any individual ETC designation would have a substantial impact on the overall size of the fund.” 2005 FCC ETC Order, ¶54, at p. 26. By Budget’s admission, its service offering is targeted to a small segment of consumers and is not intended to command a significant market share in the service areas where designation is sought. See Munn Rebuttal, at p. 13. This limited impact on the fund would, in general, be viewed as a positive piece of evidence in Budget’s favor. However, in the absence of other factors, the lack of impact on the fund does not add positive weight in our analysis.

*ii. Creamskimming.* The FCC identified creamskimming as an appropriate factor to consider in “areas where an ETC applicant seeks designation below the study area level of a rural telephone company.” That analysis is unnecessary in instances such as this, where the Budget seeks ETC designation only in non-rural areas served by non-rural ILECs. 2005 FCC ETC Order, ¶41, at p. 19.

*iii. Willingness to Serve All Customers Located in Budget’s Proposed ETC Service Areas.* The 2005 FCC ETC Order’s parameters are part of the FCC’s assurance plan that all ETCs are able to provide services to all requesting customers within the designated service area. *Id.* at ¶21. When a customer requests service within an ETC applicant’s licensed service area but outside its existing network coverage, the ETC should provide service within a reasonable time if it can be provided at reasonable cost.<sup>15</sup> *Id.* at ¶22.

ETC designation requires acceptance of all requirements set forth by the FCC, including the willingness and ability to serve all customers within a given service territory. Indeed, a failure to accommodate a request for service creates an additional

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<sup>15</sup> Measures suggested by the FCC to provision such service include modifying or replacing the customer’s equipment; deploying a roof-mounted antenna or other equipment; adjusting the nearest cell tower; adjusting network or customer facilities; using resold services from another carrier to provide service; employing, leasing, or building another cell site, repeater, or other equipment. *Id.* at ¶22.

affirmative duty of reporting to the FCC, and an explanation of the actions taken in the attempt to provide service. See, *2005 FCC ETC Order*, ¶69 (3). Budget has stated that they are willing and able to provide such service, although this was a matter of some contention and debate. As we are denying Budget's request based on the sum of public interest factors, we will merely state that Budget must be prepared, should it petition again, to provide service to all in the requested territory.

*iv. Increased Customer/Competitive Choice.* Increased customer/competitive choice are necessary factors to be examined in a determination of ETC designation. Budget asserts that granting it certification will ensure "competitive choice" for consumers, by providing access to a provider that does not require a deposit or credit check. Tr. at 46-47. Mr. Munn stated that denial of Budget's petition "would not serve the state or its consumers well because it would restrict competitive choice and it would also deny a certain segment of the market that basically don't have telephone service the ability in many instances to get telephone service." Tr. at p. 46, lines 15-21.

The evidence shows that Budget is already providing service in all the areas where it seeks designation, and is therefore already available as a choice for consumers. Budget does not intend to expand its service territory if granted ETC designation, and has stated that denial of its petition would not cause it to stop offering any services in Indiana. Applying these two factors to the competitive "map," we find that denial of the petition will not result in a consumer being deprived of access to Budget's services. Likewise, granting Budget the requested designation will not result in any increase in competitive choice for consumers. This results in something of a zero-sum game, and therefore cannot constitute an "increase" to competitive choice in our public interest review.

*v. Affordable Rates.* We must also consider whether designation will "ensur[e] the availability of quality telecommunication services at just, reasonable, and affordable rates[.]" *2005 FCC ETC Order*, ¶ 40, p.19. The rate for basic service from Budget is \$39.95, which if not paid promptly, increases to \$49.95.<sup>16</sup> Tr. at p.12, lines 11-22. Mr. Munn testified that Budget's rates for BLS would not be changed if it received ETC status. *Id.* Because BLS lines are provided via resale, Mr. Munn also acknowledged that they "are not eligible for any type of support, so no support would be received on those lines[.]"<sup>17</sup> *Id.* Mr. Munn testified that universal service support could only be obtained on those lines provisioned as UNEs, and that Budget does not offer BLS via UNEs. Tr. at p. 17, lines 7-25.

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<sup>16</sup> In response to data requests from the Presiding Officers, Budget stated that it intended to revise its Lifeline tariff so that BLS would be available for \$24.95 in SBC (AT&T Indiana) exchanges and \$29.95 in Verizon exchanges. However, it is unclear whether these amounts already contain the LL discount of \$10.00 per month. See, *Budget Phone, Inc.'s Responses to the Presiding Officers' Data Requests Dated November 3, 2005*, Q. 9, p.4-5.

<sup>17</sup> However, Mr. Munn also stated that despite the ban on high cost support for resale lines, Lifeline/Link-up funds were available, regardless of how the line was provisioned. Tr. at 20, lines 5-15. We will not attempt to reconcile this conflicting testimony, and will review LL/LU eligibility in its own separate section.

Budget touts its competitive prices for services offered via UNE lines. Tr. at 49-50. However, as pointed out by the OUCC, those *bundled* services are not eligible for USF. Tr. at 50 – 51. Mr. Munn acknowledged this fact in his statement that support is only available for BLS, and not for vertical services such as call waiting, etc. Tr. at 16, lines 2-7. Therefore, an apples-to-apples comparison of Budget's deluxe plans with the ILECs' similar packages is useful only for those consumers comparing plans with vertical features – not for a Lifeline-eligible customer. We also note the testimony from Mr. Munn that any USF funds obtained for the “UNE-like” lines will be used to “maintain our prices as they are.” Tr. at 45, lines 19. Mr. Munn stated that this would allow Budget to keep its prices at their current level, despite the increase in costs to Budget in a post-Triennial Review Remand Order (“TRRO”) world. *Id.*; *Petitioner's Exhibit 1, Testimony of Ronald Munn*, p. 3-4.

Any increase in the choice for LL/LU-eligible customers by granting Budget designation would be mitigated by the high overall price Budget charges. Even calculating a reduction for LL support received, the price for Budget's monthly BLS would be significantly higher than the price charged for the ILEC's BLS, with or without toll-blocking, and before the reduction for LL.<sup>18</sup> In the public interest review, then, these prices do not add any positive evidence, and we therefore find that Budget has not provided evidence that their prices are “affordable” in this context.

vi. Unique Advantages & Disadvantages of Budget's Local Service Offerings.

We concur with the position of both AT&T Indiana and the OUCC that the service offerings from Budget are not unique. Budget's prepaid local exchange model has not factored in pre-paid wireless offerings. When intermodal competition is added to the equation, any uniqueness on the part of Budget's service is diminished. Therefore, the claim of uniqueness by Budget is ineffective and does not add positive weight in our public interest review.

vii. The “Own Facilities” Requirement. The OUCC argues that the commercially negotiated agreements by which Budget provides service may not comport with the FCC rules stating that an ETC's “own facilities” may include UNEs. Mr. Keen correctly noted that the “own facilities” requirement in the FCC's ETC rules permits companies that do not actually own network facilities to meet the ETC facilities ownership requirement by leasing facilities as UNEs. Budget has stated that it does not intend to deploy any of its own network facilities in Indiana, stating that the service offered through DS0 switch combination port and loop UNEs constitute its “own facilities by definition of law[.]” Tr. at 37, lines 5-22.

The FCC still requires certain UNEs to be made available by ILECs at TELRIC based rates under 47 U.S.C § 251 and 47 C.F.R. §§ 51.1, *et seq.* However, the TRRO made it clear that the UNE-P is not one of them. Since UNE-P is no longer required to be offered under federal law, Budget *may* not be able to rely on such wholesale service

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<sup>18</sup> The reduction for Lifeline is 10.00 per line, per month; Link-up reduces installation costs by up to \$30.00. See, *In the Matter of Federal-State Joint Board on Universal Service; Petition of TracFone Wireless, Inc., for Forbearance from 47 U.S.C. §214(e)(1)(A) and 47 C.F.R. §54.201(i)*, CC Docket No. 96-45, FCC 05-165, ¶4 (released September 8, 2005) (“TracFone.”)

arrangements voluntarily entered into by AT&T Indiana and Verizon through commercially negotiated agreements (“CNAs.”) In turn, this limitation *could* hinder their ability to satisfy the “own facilities” requirement in 47 U.S.C. § 54.201(f).

Given the speculative nature of these two premises, we decline to determine whether the CNAs meet the “own facilities” requirement. Our focus is instead a more general examination of a potential ETC’s commitment of resources, as set forth in the next section.

*viii. Deployment of, or Improvements to, Indiana Network Facilities.* Mr. Keen recommended that we consider whether granting ETC status to a provider that has not deployed any network facilities in Indiana would provide Indiana residents with the “best value for their universal service dollars.” Mr. Keen urged the Commission to consider whether it served the public interest to provide universal service funding to a company when the funds would not be used to deploy or improve telecommunications infrastructure in Indiana.

We find it appropriate and prudent for this Commission to consider as part of its public interest analysis the likelihood that the designation of an additional ETC for a given service area will spur additional capital investment in Indiana or create new jobs for Indiana residents. It is widely accepted that additional telecommunications facilities deployment or upgrades will favorably impact Indiana consumers and the state’s economy. We agree that new deployment of, or improvements to, existing network facilities should help further Congress’ goal of ensuring the continued universal availability of quality telecommunications services in this State. We also agree that the granting of an ETC designation to a company that has no contemplated or existing Indiana investments does not well serve Indiana consumers, who are asked to cover the cost of universal service programs through line item surcharges on their retail service bills.

We reject Budget’s claim that it would violate principles of competitive neutrality to consider such factors in a public interest analysis. Beyond the stated intent not to install facilities is Budget’s intent not to invest in *any* of the expected accoutrements of business in Indiana: no offices, no sales force, no customer service facility, and no independent stores. Tr. at 56-65. Instead, Budget’s services are marketed through rent-to-own centers and other outlets, with no Budget-dedicated staff on-site, and verification for LL/LU eligibility done through Budget’s home office. Tr. at 65. In addition, Budget plans to maintain its existing service footprint.

Taken together, we find the OUCC’s concern well-taken. Certainly, in making a determination of *public* interest, the *public* must be considered. It seems an equitable position that if we are to grant designation, we should expect that Indiana consumers will benefit, especially since they are the ones who will pay. We have not found any increase in customer choice; there is no low price to incent us; the service packages are not extraordinary in their unique offerings. We thus find that Budget’s stated intent not to invest in Indiana an additional element that mitigates against a public interest showing.

We reject Budget's contention that this is an imposition of a facilities ownership on the ETC designation process. We do not view our determination in such a light and make no such finding that an ETC must own facilities to be designated. In the first instance, as we noted above, the issue of whether or not CNAs are equivalent to UNES for the purposes of the "own facilities" requirement is a determination that we cannot make, as it is beyond the scope of this proceeding. It therefore follows that absent such a determination, we cannot have declined to designate Budget based on a failure to meet the "own facilities" requirement.

*ix. Eligibility for LL/LU.* The first USF order flatly stated that "a carrier that serves customers by reselling wholesale service may not receive universal service support for those customers that it serves through resale alone." *In the Matter of Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 8873 ¶174 (released May 7, 1997.) The FCC elaborated that "resellers should not be entitled to receive universal support directly from federal universal service mechanisms because the universal service support payment received by the underlying provider of resold services is reflected in the price paid by the reseller to the underlying provider." *Id.* at ¶178. Parsing further, the FCC stated that "carriers that provide service to some customer lines through their own facilities and to others through resale are eligible for support only to those lines they serve through their own facilities." *Id.* at ¶290.

The FCC spent considerable time defining those elements of rates that should be credited, waived, or otherwise taken into account when determining the mechanics of LL/LU funding. Notably, the FCC stated that in certifying CLECs as ETCs, it had required that those carriers mirror the ILECs in charging a subscriber line charge ("SLC.") *Id.* at n. 922. This is relevant because, as the FCC noted, CLECs:

do not participate in the formal separations process that our rules mandate for ILECs and hence do not charge SLCs nor distinguish between the interstate and intrastate portion of their charges and costs. With respect to these carriers, we conclude that Lifeline support must be passed through directly to the consumer in the form of a reduction in the total amount due.... [resellers can purchase] Lifeline service at wholesale rates that include the Lifeline support amounts and can pass these discounts through to qualifying customers....we find that we can rely on the states to ensure that at least one [ETC] is certified in all areas. As a result, low-income consumers always will have access to a Lifeline program from at least one carrier.

*Id.* at ¶¶366, 370.

Recently, the FCC granted ETC status to a wireless reseller for the purposes of providing LL/LU alone. *In the Matter of Federal-State Joint Board on Universal Service; Petition of TracFone Wireless, Inc., for Forbearance from 47 U.S.C. §214(e)(1)(A) and 47 C.F.R. §54.201(i)*, CC Docket No. 96-45, FCC 05-165 (released September 8, 2005) ("TracFone.") In *TracFone*, the FCC reviewed the 1<sup>st</sup> Report and Order's discussion on a reseller's ability to receive USF. It noted that the FCC "considered only that the underlying carrier was an incumbent LEC, subject to price-

regulated resale obligations,” and that “allowing pure resellers to receive universal service support would result in double recovery.” *Id.* at ¶5. However, the FCC noted that the *1<sup>st</sup> Report and Order* had not distinguished between the different types of universal service support programs. Specifically, no attention had been given to the issue of whether a pure wireless reseller could receive Lifeline support. *Id.*

The FCC granted forbearance from the requirement that TracFone use its own facilities in the provision of Lifeline service, on the grounds that doing so would impede competition. In doing so, the FCC stated:

Lifeline support, designed to reduce the monthly cost of telecommunications services for eligible consumers, is distributed in a per-customer basis and is directly reflected in the price that the eligible customer pays. Because it is customer-specific, a carrier who loses a Lifeline customer to a reseller would no longer receive the Lifeline support to pass through to that customer. Thus, a wireless reseller who serves a Lifeline-eligible customer and receives Lifeline support directly from the fund does not receive a double recovery. By comparison, where the wholesale carrier is an incumbent LEC subject to price-regulated resale under section 251(c)(4), the rate at which the reseller obtains the wholesale service is based on a state-mandated percentage discount off of the incumbent LEC’s retail rate for the service, and any Lifeline support received by the incumbent LEC would therefore be reflected in the price charged to the reseller. In this scenario, a reseller that also received Lifeline support could recover twice: first because the benefit of Lifeline support is reflected in the wholesale price and second because the reseller also receives payment directly from the fund for the Lifeline customer.

*Id.* at ¶12 (footnotes omitted.)

The FCC went on to note that such a scenario was not present with TracFone, because as a wireless reseller, TracFone purchased service from wholesale CMRS providers that are not subject to 251(c)(4) resale obligations. As a consequence, the resold CMRS services did not reflect a reduction for Lifeline services. The FCC stated that “[t]herefore, we find that allowing TracFone to receive Lifeline support directly from the fund would not result in double recovery to TracFone and that the logic of the *1997 Universal Service Order* does not apply here.” *Id.*

It is from this that we find that Budget is not entitled to LL/LU support. Mr. Munn testified that the lines on which Budget provisioned BLS were resale lines purchased from the ILECs (AT&T Indiana and Verizon.) See, Tr. at pp.12-13. He also stated that Budget does *not* provide BLS via its “UNE-like” lines. As such, Budget’s BLS lines, purchased from LECs, already contain an element of reduction for Lifeline service. To allow Budget to obtain LL/LU on these resold lines would constitute double recovery.<sup>19</sup> As we noted above, any increase in choice for LL/LU customers is mitigated

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<sup>19</sup> As noted above, BP does not provide BLS on its “UNE-like lines”. Budget only provisions “UNE-like” lines with vertical features, which are not eligible for LL/LU.

by the higher cost of Budget's BLS service. This inability to qualify for LL/LU is another important piece in our public interest examination.

*x. Provider of Last Resort Obligations.* Under federal law, when more than one ETC is designated in a given service area, the original ILEC-ETC can petition for leave to relinquish its ETC status. If the remaining ETC's ability to continue serving a given area depends entirely on its continued access to the exiting ILEC-ETC (which access can no longer be mandated under federal law), consumers in those areas will face risk.

Budget's reliance on UNE-P-like service arrangements places it in a more vulnerable position than other Indiana CETCs, who have the independent ability to continue to serve as providers of last resort if an ILEC-ETC decides to relinquish its ETC status. Indiana CETCs have independent networks and employees trained to maintain and extend them. Mr. Munn testified that Budget could be ready to take over as a provider of last resort if AT&T Indiana and/or Verizon decided to relinquish their ETC status in any or all of their designated ETC service territories. Based on Budget's stated intent not to install facilities, we are skeptical of that assessment of its ability to independently operate and maintain necessary network functionality. Even if Budget were able to take over as a provider of last resort, we agree with the OUCC's concerns that customers in those areas would face dramatic increases in BLS rates, while also losing access to "1+" long distance dialing. Tr. at 69.

We recognize how unlikely it is that the underlying ILEC-ETCs would withdraw and subject Budget to the provider of last resort obligations, as testimony indicated. Nonetheless, it is another negative factor in the public interest review that Budget has limited ability to undertake that obligation.

*xi. Advertising and Marketing of Services.* 47 C.F.R. § 54.201(d)(2) requires ETCs receiving federal universal service support to publicize the availability of the nine supported services, LL/LU and their corresponding charges, using media of general distribution throughout the service areas for which designation is requested.

Budget's plan for USF money is to market its product in the areas it already serves. In Budget's Exhibit RM-1, the Five Year Plan attached to Mr. Munn's direct testimony, Budget describes its plan thusly, under the heading "Marketing Plan":

Budget proposes to increase its coverage or capacity by making its unique pre-paid service available in the Indiana exchanges where Budget either has little or no presence by first targeting the low density (zone 3) exchanges in the Verizon service areas, **which includes the build out of an agent distribution and payment center network.**

Exhibit RM-1, p.2 (emphasis added.)

Budget follows this with the statement that it will similarly "build out" in other areas, either replacing or expanding agents for Budget's service. This will result in the

“build out of new exchanges to increase penetration of [Budget’s] pre-paid service to approximately .50% of the population for the exchanges, in which service has been made available, as a whole.” *Id.* Budget thus asserts that it has satisfied the FCC mandate of the 2005 FCC ETC Order that it account for how USF “support was used to improve signal quality, coverage, or capacity.” 2005 FCC ETC Order, ¶ 36, 3.

However, Mr. Munn testified that Budget’s service footprint is remaining static, even if ETC status is granted. Marketing makes known the availability of service, but does not assist in providing it. Likewise, marketing cannot “upgrade” or “maintain” a network, and cannot improve signal quality or capacity. As to “coverage,” we note that in *Newton’s Telecom Dictionary*, it is defined as follows:

*Coverage*: the percent of completeness with which a metal braid covers the underlying surface. *Coverage Area*: The geographic area served by a cellular system; that is, the area in which service is available to users of the system.

*Newton’s Telecom Dictionary*, 19<sup>th</sup> ed. (2003.)

Applying the second, more appropriate definition, then, coverage means the area currently covered by Budget’s footprint. Because Budget is not planning to increase the areas in which it serves, there cannot be achievement by Budget of the stated goal of “improving coverage.”

While marketing is *part* of USF requirements, it is not the *aim* of USF. If we were to find that marketing alone sufficed to satisfy the public interest requirements of USF, we would considerably dilute the purpose of USF without guaranteeing any increase in coverage and service offerings. Companies could use USF to ply their wares without ever increasing their outlay for service, whether through resale, “UNE-like” CNAs, or actual physical facility deployment.

We note that we have previously certified CETCs, and have welcomed them as valuable additions to the Indiana telecommunications marketplace. Their certifications have brought palpable improvements to the Indiana landscape in the form of competitive entries into previously-unserved markets, the increase of signal strength for the purpose of eliminating “dead spots” in cell coverage, and other improvements to Hoosier telecom service. We have embraced their entry into the ETC marketplace, while pursuing our stated intent to carefully review all applicants. It is in this spirit that we make our finding today.

We therefore find that, based on the facts presented, the public interest does not support granting ETC status to Budget at this time. Budget remains free to file a new request for ETC status after it has met all requirements in 47 U.S.C. § 214 and 47 C.F.R. § 54.201(f), and is ready to present sufficient evidence that the public interest would be served by granting Budget ETC status in this state.

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

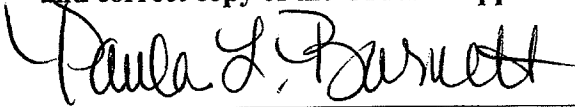
1. Budget Phone Inc.'s application for designation as an Eligible Telecommunications Carrier, as that term is defined in 47 U.S.C. § 214(e) and FCC Orders in WC Docket Nos. 97-157 and 96-45, for non-rural service areas located within the ILEC-ETC service territories of AT&T Indiana and Verizon, as identified in the Amended Petition, is hereby DENIED, without prejudice to Budget's ability to file a new petition for ETC status, consistent with the above findings.

2. This Order shall be effective on and after the date of its approval.

**HARDY, HADLEY, LANDIS, SERVER, AND ZIEGNER CONCUR:**

**APPROVED:      MAY 31 2006**

**I hereby certify that the above is a true  
and correct copy of the Order as approved.**



**Paula L. Barnett  
Acting Secretary to the Commission**