ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF BUDGET PREPAY, INC. FOR LIMITED DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STATE OF INDIANA FOR THE LIMITED PURPOSE OF OFFERING LIFELINE SERVICE TO QUALIFIED HOUSEHOLDS	)	CAUSE NO. 41052 ETC 63 APPROVED: SEP 26 2012

ORDER OF THE COMMISSION

Presiding Officers:
Larry S. Landis, Commissioner
Loraine L. Seyfried, Chief Administrative Law Judge

On April 25, 2012, Budget PrePay, Inc. d/b/a/ Budget Mobile ("Budget" or "Petitioner") filed its Verified Petition for Limited Designation as an Eligible Telecommunications Carrier ("ETC") for the Purpose of Low Income Support Only ("Petition") with the Indiana Utility Regulatory Commission ("Commission"). In its Petition, Budget sought designation as an ETC pursuant to Section 214(e)(2) of the Federal Communications Act of 1934, as amended, ("Act") solely to provide wireless services supported by the Federal Universal Service Fund's ("USF") Lifeline program. Petitioner did not seek authority to provide services supported by the USF's high-cost program.

On April 25, 2012, Petitioner pre-filed its direct testimony and exhibits, which was supplemented with its Notification of FCC Compliance Plan Approval on May 29, 2012. On June 21, 2012, the Indiana Office of Utility Consumer Counselor ("OUCC") filed its Notice of Intent Not to Pre-File Testimony. Budget also responsed to questions propounded by the Presiding Officers in a Docket Entry dated July 30, 2012.

On August 9, 2012, pursuant to notice duly published according to law, an evidentiary hearing was convened at 1:30 p.m. in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, Budget and the OUCC appeared and participated. No members of the general public were present or sought to testify. The testimony and exhibits of Petitioner were admitted into evidence without objection.

The Commission, having examined 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 Act, 47 U.S.C. § 151 *et seq.*, and applicable Federal Communications Commission ("FCC") Rules, 47 C.F.R. §§ 54.201 and 54.203, the Commission is authorized to

designate ETCs, thereby enabling those so designated to apply for federal universal service support under Section 254 of the Act and in accordance with the Commission's Orders in Cause Nos. 40785, 41052 and 42067. The Commission also has jurisdiction pursuant to Ind. Code § 8-1-2.6-13(d)(5)(B). The Commission therefore has jurisdiction over Petitioner and the subject matter of this Cause.

2. Petitioner's Characteristics. Petitioner is a prepaid wireline and wireless carrier operating in Indiana pursuant to Certificates of Territorial Authority issued by the Commission. Budget was certificated as a bundled reseller and a facilities based provider. Petitioner is also a common carrier as defined by 47 C.F.R. § 20.9 and a telecommunications carrier as defined by 47 U.S.C. § 153.

3. Requirements for ETC Designation. The Commission's November 5, 1997 Order in Cause No. 40785 ("40785 Order") adopted the FCC's original eligibility requirements for designation of ETCs within the State of Indiana. Accordingly, each Indiana ETC receiving federal universal service support is required by 47 C.F.R. § 54.101(b) to offer the universal services or functionalities set out in 47 C.F.R. § 54.101(a). We note that the FCC modified the list of supported services that must be offered by ETC designees in the *USF/ICC Transformation Order*.[1] We also note that on February 6, 2012, the FCC released its *Lifeline Reform Order*,[2] which is discussed in more detail below. In addition to offering the delineated universal services, to be eligible for designation as an ETC, applicants are required by 47 C.F.R. § 54.405 to offer qualifying low-income customers Lifeline programs. The Petition seeks only a limited designation and thus is presented for the limited purpose of participating in the USF's Lifeline program as a wireless carrier. If the Petition is approved, 47 C.F.R. § 54.201(d)(2) will require Petitioner as an ETC receiving federal universal support for Lifeline to publicize the availability and cost of the supported services and the Lifeline programs using media of general distribution throughout the service areas for which the designation is requested. Pursuant to the 40785 Order, carriers seeking ETC designation in Indiana are also required to file proposed tariffs and boundary maps depicting the area(s) for which ETC designation is sought.

On March 17, 2005, the FCC released ETC eligibility guidelines mandating that future ETC designations would require a public interest analysis for applicants regardless of whether the proposed designation area is served by a rural or non-rural carrier. *Federal-State Joint Board on Universal Service*, 20 FCC Rcd. 6371, 6389-6390 (2005) ("*2005 FCC ETC Order*"). The Commission adopted the FCC's new eligibility guidelines by its June 8, 2005 Order in Cause No. 41052 ETC 47. On November 10, 2010, the Commission issued the first "Lifeline-only" ETC designation to Virgin Mobile in Cause No. 41052 ETC 55 ("Virgin Mobile ETC Order"). Subsequently, we granted Lifeline-only ETC designations to TracFone Wireless, Inc. in Cause No. 41052 ETC 54; i-Wireless, LLC in Cause No. 41052 ETC 56; TerraCom, Inc. in Cause No 41052 ETC 60; Telrite Corporation in Cause No. 41052 ETC 58; and T-Mobile Central LLC and Powertel/Memphis, Inc. in Cause No. 41052 ETC 61. In each of these Orders, we imposed certain requirements and reporting obligations as a condition of the ETC designation.

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[1] *Connect America Fund*, 26 FCC Rcd 17663 (2011) ("*USF/ICC Transformation Order*")

[2] *Lifeline and Link Up Reform and Modernization*, 27 FCC Rcd 6656 (2012) ("*Lifeline Reform Order*").

Through the *USF/ICC Transformation Order* and the *USF/ICC Clarification Order,*[3] the FCC revised the ETC designation eligibility requirements by: (1) eliminating the requirement to offer dual tone multi-frequency signaling, single party service, access to operator service, access to interexchange service, and directory assistance from the supported services found in 47 C.F.R. § 54.101(a) to be included in universal service offerings; (2) requiring carriers to certify compliance with the service requirements applicable to the support received, consistent with 47 C.F.R. § 54.202(a)(1)(i); (3) eliminating the additional requirement of offering local usage and providing equal access found in 47 C.F.R. § 54.202; and (4) eliminating the requirement that Lifeline-only applicants submit a 5-year service improvement plan pursuant to 47 C.F.R. § 54.202.

The FCC's *Lifeline Reform Order*[4] is designed to:

> ...substantially strengthen protections against waste, fraud, and abuse; improve program administration and accountability; improve enrollment and consumer disclosures; initiate modernization of the program for broadband; and constrain the growth of the program in order to reduce the burden on all who contribute to the Universal Service Fund.

The *Lifeline Reform Order* changed the requirements pertaining to state ETC designations found in 47 C.F.R. § 54.201(h). In the Order, the FCC concluded that "in order to ensure Lifeline-only ETCs, whether designated by the [FCC] or the states, are financially and technically capable of providing Lifeline services, we now include an explicit requirement in section 54.202 that a common carrier seeking to be designated as a Lifeline-only ETC demonstrate its technical and financial capacity to provide the supported service."[5] Relevant considerations for such a showing include whether the applicant previously offered services to non-Lifeline consumers, how long it has been in business, whether the applicant intends to rely exclusively on USF disbursements to operate, whether the applicant receives or will receive revenue from other sources, and whether it has been subject to enforcement action or ETC revocation proceedings in any state.[6]

The *Lifeline Reform Order* modified and added new requirements for ETC designation that apply to ETC applications filed with state commissions that specifically adopt the additional requirements. The requirement to demonstrate financial and technical capability was added in 47 C.F.R. § 54.202(a)(4). The requirement to offer a Lifeline plan comparable to the incumbent local exchange carrier ("ILEC") in the service areas for which it seeks designation was replaced with 47 C.F.R. § 54.202(a)(5), which requires ETC applicants to explain the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan. Additionally, once designated by this Commission as a Lifeline ETC, the designee's Lifeline offerings must reflect a uniform $9.25 per month federal reimbursement of the Lifeline discount; include specific disclosures in advertising and outreach;

[3] *Connect America Fund,* 27 FCC Rcd 605(2012) ("*USF/ICC Clarification Order*").
[4] *Lifeline Reform Order* at 6659.
[5] *Id.* at 6819.
[6] *Id.*

include required processes for determining initial and ongoing eligibility; and comply with the reporting and compliance obligations set forth herein. In keeping with the Commission's past practice of adopting the FCC's ETC guidelines, we adopt the guidelines and requirements set forth in the *Lifeline Reform Order*, as well as the requirements of the *USF/ICC Transformation Order* and the *USF/ICC Clarification Order*, in addressing the Petitioner's requested relief.

4. **Evidence Presented.** David Donahue, Budget's Chief Financial Officer, testified in support of the Petition. He began by describing Budget's family ownership and stated that Petitioner's financial, managerial, and technical qualifications were previously detailed in Commission proceedings involving Budget's request for Certificates of Territorial Authority. Mr. Donahue explained that Budget's petition in this proceeding differs from the petition for ETC designation filed by Budget Phone, Inc. in 2006 in Cause No. 41052 ETC 48 in that Budget's current petition seeks ETC designation in the non-rural ILEC service areas only for the federal USF low-income programs, specifically Lifeline support. Mr. Donahue stated that Budget provides nationwide prepaid home telephone services to over 60,000 customers through a system of more than 6,800 agents in 46 states. He stated Petitioner has been designated as an ETC for its wireless operations in Arkansas, Kentucky, Louisiana, Maryland, Nevada, Rhode Island, and Wisconsin. Mr. Donahue testified that currently, Budget serves only wireline residential and/or business customers in Indiana and plans to initiate wireless service throughout its designated service area shortly after obtaining its ETC designation. Mr. Donahue noted that as an exhibit to the Petition, Budget provided a list of wire centers and a map of the area where Budget is requesting ETC designation. Mr. Donahue stated Budget will market its wireless services to Indiana customers through a combination of media resources and mediums, such as point of sale materials, brochures, banners, onsite merchandising, direct mail, outdoor advertising, television, radio, newspaper, magazine and the Internet. Mr. Donahue included with his testimony a sample of Budget's Lifeline advertising.

Mr. Donahue testified Budget's services differ from other carriers' offerings in several ways. Budget does not subject its customers to credit checks, deposits, annual contracts, activation fees or roaming charges, which enables customers to enjoy the privilege of access to an attractive, comprehensive and high tech wireless service without having to meet traditional "creditworthiness" tests and without creating financial difficulties. Budget customers also will not receive any invoicing.

Mr. Donahue stated Budget will offer two affordable wireless prepaid plans to qualifying customers: the Active User plan, and the 250 Minute Talk plan. The 250 Minute Talk plan is free for Lifeline eligible customers, and provides 250 minutes of local and domestic long distance calling, a free handset, caller ID, call waiting and basic voicemail. The Active User plan is $25.00 per month for Lifeline eligible customers (after the Lifeline discount in applied) and provides for up to 4000 voice minutes, and also provides for a free handset, caller ID, call waiting and basic voicemail. Additional minutes for the 250 Minute Talk plan range from $5.00 for 50 minutes to $15.00 for 150 additional minutes. Text message add-on for the 250 Minute Talk plan provides 1,000 text messages for $10.00. Unlike others, Budget customers are able to choose a prepaid plan wherein they are charged only for the minutes they use. Mr. Donahue stated Budget customers may use their minutes to place calls anywhere in the United States as Budget does not restrict customers' use by imposing a local calling area requirement. Budget's customers will be able to initiate and receive calls from their wireless phones while incurring no roaming charges. Budget will not deduct calls to 911 from usage, and customers may track their minutes and usage at no charge by contacting customer service or accessing their mobile account online. Mr. Donahue provided as part of his testimony the Terms and Conditions of Budget's Indiana Lifeline offering and stated that Budget will submit tariff filings for any and all proposed Lifeline offerings, including changes in terms, conditions, or allocations of minutes. He noted that customers can contact Budget with questions, concerns, or complaints via its website, by mail, through a toll free number, or by dialing 611 from their Budget phone. In Budget's responses to the Presiding Officer's Docket Entry, Budget confirmed that minutes will not be deducted for customer calls to 611.

Mr. Donahue stated that based on its current plans, Budget is looking to invest in some 14 locations within Indiana, initially targeting Indianapolis, Gary and Fort Wayne. He indicated the stores will be located in areas that are accessible to qualified subscribers and, subject to market conditions, will employ as many as 73 Indiana employees.

Mr. Donahue testified Budget's systems are designed so that it will remit enhanced 911 ("E-911") fees in Indiana once it begins offering service. He stated Budget does contribute a portion of its revenues to the funding of federal universal service. He noted that, as a prepaid wireless service provider, Budget does not provide traditional monthly billing statements to its customers. Customers will purchase and subsequently replenish minutes in their accounts in advance - either online, on their handsets or at retail locations. Minutes of use will be deducted from customer accounts in real time rather than being invoiced to customers after the fact. Budget either collects applicable fees and surcharges at the point of sale (where permitted by state law) or remits applicable fees and surcharges on behalf of its customers. Mr. Donahue testified that Budget commits to paying all applicable fees, including the Indiana Telecommunications Relay Access Corporation ("InTRAC") fee pursuant to Ind. Code ch. 8-1-2.8; the public utility fee required under Ind. Code ch. 8-1-6, the Indiana USF fee established in Cause No. 42144; and the wireless E-911 fee required under Ind. Code § 36-8-16.5-30.5. Mr. Donahue confirmed that customers will have access to InTRAC services for speech and hearing impaired individuals. Mr. Donahue also testified that Budget can quantify the sales made in Indiana and determine which customer accounts remain open or have been closed.

Mr. Donahue addressed Budget's satisfaction of the requirements for ETC designation in Indiana. He stated Budget will provide prepaid wireless services to consumers through a combination of resold services which it obtains from underlying wireless providers that currently operate their own networks, and through Budget's own facilities. He noted that Budget requested the FCC forbear from applying the "own facilities" requirements of Section 214(e)(1)(A) of the Act, and that Budget filed a Compliance Plan with the FCC in connection with its forbearance request. Budget's approved Compliance Plan was admitted into evidence as Petitioner's Exhibit 2. Mr. Donahue also noted that upon designation as an ETC in Indiana, Budget will offer all of the services and functionalities required by 47 C.F.R. § 54.101, which were described in Budget's Petition as follows:

1. <u>Voice-grade access to the public switched telephone network</u>: Budget will provide voice-grade access to the public switched telephone network. All Budget customers are

able to transmit and receive calls on the public switched telephone network.

2. Local Usage: Budget will provide Lifeline customers with two Lifeline plans that include minutes of use for local service at no additional charge.

3. Access to emergency services: Budget will provide access to emergency services in conformance with the FCC's requirements. All of the phones that Budget will distribute to subscribers will be capable of delivering automatic numbering information and automatic location information, and otherwise satisfy applicable E-911 requirements.

4. Toll limitation for qualified low-income consumers: Budget will provide toll limitation services to qualifying low-income customers.

Mr. Donahue stated Budget is prepared to act as a Carrier of Last Resort in all areas in Indiana in which it has wireless coverage, to the extent that it is able to do so as a reseller. He noted that Budget expects to be offering Lifeline service in Indiana within 60 days of receipt of an ETC designation order from the Commission.

Mr. Donahue testified Budget is committed to offering the highest quality of prepaid wireless service possible. To demonstrate its commitment to high service quality, Budget committed to comply with the Cellular Telecommunications and Internet Association's ("CTIA") Consumer Code for Wireless Service. Additionally, where Budget owns, operates, leases, or otherwise uses facilities where an outage potentially affects at least ten percent of the end users in the designated service area, or potentially affects a 911 special facility, Mr. Donahue stated Budget is willing to annually report to the Commission:

(i) The date and time of onset of the outage;
(ii) A brief description of the outage and its resolution;
(iii) The particular services affected;
(iv) The geographic areas affected by the outage;
(v) Steps taken to prevent a similar situation in the future; and
(vi) The number of customers affected.

Mr. Donahue referenced the Compliance Plan submitted as part of its Petition in this proceeding and confirmed that Budget will certify and verify consumer eligibility to participate in the Lifeline program in accordance with FCC rules. Similarly, Mr. Donahue testified that as required by the *Lifeline Reform Order,* Budget will require every consumer enrolled in the Lifeline program to verify on an annual basis that he or she is the head of the household, receives Lifeline-supported service only from Budget and, to the best of his or her knowledge, no one else in the subscriber's household is receiving a Lifeline-supported service. Also, as required by the *Lifeline Reform Order*, Mr. Donahue stated that Budget will implement a non-usage policy (which was outlined in detail in Budget's Compliance Plan) whereby it will de-enroll Lifeline customers that have not used the Lifeline service for 60 consecutive days.

Mr. Donahue testified that Budget's ETC designation in Indiana serves the public interest in several ways. He noted the public interest benefits associated with the company's wireless service include larger local calling areas (as compared to traditional wireline carriers' calling areas), the convenience and personal security afforded by mobile telephone service, the opportunity for customers to receive a high-value wireless plan that provides local and domestic long distance minutes, and emergency services (911 and, where available, E-911 services) in accordance with FCC Rules. He also stated that the inclusion of unlimited domestic toll calling in one of Budget's wireless offerings will allow consumers to avoid the risk of being burdened with large and unexpected charges for the toll calling and unexpected overage charges. Additionally, he testified that wireless service greatly benefits consumers who routinely drive long distances to attend work or school or to accomplish everyday tasks such as shopping or attending community and social events.

Mr. Donahue stated that designation of Budget as an ETC would also promote competition. He stated Budget will bring the same entrepreneurial spirit that has reinvigorated the wireless industry to the Lifeline market in Indiana, helping to redefine the wireless experience for many low-income consumers in the State. Other carriers, therefore, will have the incentive to improve their existing service offerings and tailor service plans to contain service terms and features appealing to lower-income customers. According to Mr. Donahue, Budget has emphasized customer service as a pillar of its marketplace success since service launch.

Mr. Donahue noted that in the past, the Commission has considered the degree to which a carrier will invest in Indiana and contribute to the economic well-being of the State. He also noted that the OUCC has indicated the importance of a carrier's commitment to Indiana customers and Indiana communities. Subject to economic conditions, Mr. Donahue stated that Budget's business model calls for the development of a retail presence in the State. Because Budget is able to serve Indiana customers using its existing arrangements, he stated there are no current plans to deploy or construct network facilities in Indiana.

Mr. Donahue testified that designation of Budget as an ETC would not unduly burden the USF or otherwise reduce the amount of funding available to other ETCs. Budget seeks ETC designation solely to utilize USF funding to provide Lifeline service to qualified low-income consumers. It does not seek and will not accept high cost or Link Up support. According to the Universal Service Monitoring Report in 2010, Mr. Donahue stated that Lifeline funding totaled approximately $973 million in 2009 while high-cost program expenditures amounted to approximately $4.7 billion – nearly five times the amount of Lifeline funding. With Lifeline, ETCs only receive support for customers they obtain. The amount of support available to an eligible subscriber is exactly the same whether the support is given through a company such as Budget or the ILEC operating in the same service area. Mr. Donahue testified that designation of Budget as an ETC will very likely increase the Lifeline participation rate of qualified low-income individuals and further the goal of Congress to provide all individuals with affordable access to telecommunications service.

Mr. Donahue affirmed Budget's commitment to comply with all rules and regulations the Commission may lawfully impose upon Petitioner's provision of service contemplated by its Petition. He stated that Budget commits to comply with annual reporting obligations the Commission has imposed on other similar ETC designees and to provide the Commission with a copy of its annual Lifeline re-certification results, which is filed annually with the Universal

Service Administrative Committee ("USAC") by January 31. He stated Budget will also file with the Commission on a quarterly basis a report detailing the number of Lifeline customers enrolled each month, the number of deactivated Lifeline customers each month, and the reasons for deactivation. If required by the Commission, Budget will also annually report the number of complaints per 1,000 handsets or lines, as well as the number of requests for service from potential customers within Budget's designated area that were unfulfilled during the prior year, including detail of Budget's attempt to provide service to each potential customer. In the event the Indiana Lifeline Assistance Program ("ILAP") becomes law, and if required, he noted Budget will seek Commission approval of its Lifeline offering subject to the additional Indiana discount.

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 (4) provision of discounted service to rural health care providers. *Comprehensive Review of Universal Service Fund Management, Administration and Oversight*, 22 FCC Rcd 16372, 16374 (2007). Budget seeks ETC designation in Indiana for the limited purpose of offering wireless Lifeline service to low-income customers. Accordingly, Budget's application does not implicate the other three Universal Service fund programs. Based on the evidence in the record and the discussion below, we find Budget meets the eligibility criteria for ETC designation as contained in Section 214(e)(1) of the Act and related FCC rules for the limited purpose of offering Lifeline service in Indiana, and satisfies the public interest analysis the Commission is required to perform under the *2005 FCC ETC Order*.

A. **Common Carrier Status.** The first requirement for ETC designation is status as a common carrier under federal law. A common carrier is generally defined by 47 U.S.C. § 153(11) as any person engaged as a common carrier on a for-hire basis in interstate communication utilizing either wire or radio technology (except for radio broadcasters). As a provider of wireless telecommunications services, we find that Budget is a "common carrier" for purposes of obtaining ETC designation under 47 U.S.C. § 214(e)(1).

B. **Services Required to be Offered by an ETC.** The evidence confirms that upon designation as an ETC in Indiana, Budget will provide all of the functionalities required of an ETC in the *Lifeline Reform Order* and pursuant to 47 C.F.R. § 54.101(a) as follows:

i. *Voice-grade access to the public switched telephone network.* Pursuant to 47 C.F.R. § 54.101(a), eligible voice telephony services must provide voice grade access to the public switched network or its functional equivalent. No evidence was presented that Budget's customers would not be able to make and receive calls on the public switched telephone network in accordance with the federal rules. Accordingly, we find that Budget satisfies this requirement.

ii. *Local usage.* Eligible voice telephony services must provide minutes of use for local service at no additional charge to end users as part of a universal service offering. As the record demonstrates, Budget will offer users the ability to send and receive local phone calls wherever the Company offers service. Mr. Donahue noted that Budget intends to offer Lifeline customers access to a variety of other features at no cost, including voice mail, caller ID, call waiting services and call forwarding. Based on the evidence, we find that Budget's offering satisfies this requirement.

iii. *Access to Emergency Services.* As part of a universal service offering and as required by 47 C.F.R. § 54.101(a), eligible voice telephony services must provide access to the emergency services provided by local government or other public safety organizations, such as 911 and E-911, to the extent the local government in an eligible carrier's service area has implemented 911 or E-911 systems. Mr. Donahue testified that Budget will provide access to emergency services in conformance with the FCC's requirements. Based on the foregoing, we find Budget has satisfied this requirement.

iv. *Toll Limitation For Qualifying Low-Income Consumers.* Voice telephony services eligible for federal universal service support mechanisms must provide toll limitation services to qualifying low-income consumers. Budget indicates that it will provide toll limitation to Lifeline customers.[7] Accordingly, we find Budget satisfies this requirement.

C. Lifeline Service Offering Requirements. 47 C.F.R. § 54.202(a)(5) requires common carriers seeking designation as an ETC to submit information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan. Mr. Donahue provided evidence that Budget will offer Lifeline eligible customers with two plans: Active User, which provides up to 4,000 voice minutes and the 250 Minute Talk, which provides 250 minutes, both of which include calling features including free handset, call waiting, caller identification and voice mail. The evidence shows that Budget agrees to comply with all applicable Lifeline requirements upon designation as an ETC.

D. Functionality in Emergency Situations. FCC regulations require that applicants for ETC designation demonstrate their ability to remain functional in emergency situations. 47 C.F.R. § 54.202(a)(2). The evidence demonstrates that Budget provides nationwide access to 911 emergency services for all of its customers by virtue of its use of the Sprint and Verizon Wireless networks. As such, the Commission is satisfied that Budget is able to meet this requirement.

E. Advertising Requirements. Budget demonstrated that it will broadly advertise the availability and rates for its Lifeline services using a variety of media in conformance with state and federal regulations. Budget will implement an advertising plan that will reach consumers using varying media and distribution methods. Based on the foregoing, we

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[7] We noted that in the *Lifeline Reform Order*, the FCC clarified that it does not consider a subscriber who has a Lifeline calling plan that includes a set number of calling minutes available for either local or domestic long distance calls to have voluntarily elected to receive toll limitation support ("TLS"); therefore, TLS will not be provided to ETCs providing such plans. *Lifeline Reform Order* at 6756.

find that the evidence of record indicates Budget will comply with 47 U.S.C. § 214(e)(1)(B) and all applicable advertising requirements.

F. Petitioner's Designated ETC Service Areas. The FCC's rules define a "service area" as a "geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms." 47 C.F.R. § 54.207(a). Budget is authorized to provide telecommunications service throughout the State of Indiana, but only intends to offer Lifeline service in certain areas which are depicted on the map and in the list of wire centers Budget submitted. Budget's proposed ETC service area includes all non-rural ILEC wire centers within the state of Indiana where Budget has wireless coverage. Based upon the foregoing, we approve Budget's proposed service area for Lifeline ETC purposes.

G. Facilities-Ownership. Budget plans to provide prepaid service through the provision of resold wireless services. Budget requested and received from the FCC an order forbearing from the "own facilities" requirement of Section 214(e)(1)(A) of the Act. Budget has filed and received FCC approval of its Compliance Plan that outlines the measures the company will take to implement the conditions set forth in the *Lifeline Reform Order*. Petitioner's Exhibit 2. Accordingly, we find that Budget has secured the required forbearance from the FCC from the facilities ownership requirement.

In prior Orders granting ETC designation to wireless resellers, the Commission has required the reseller to obtain certification regarding 911 capabilities from each public safety answering point ("PSAP") in its proposed service area. This requirement was consistent with federal requirements. However, the FCC has since determined that resellers no longer need to obtain these certifications, but that states may impose a self-certification requirement. *Lifeline Reform Order* at 6815. In an effort to ensure the availability of information concerning the provision of, and access to, 911 and E911 services, it is necessary to have a clear understanding of where a wireless reseller ETC is obligated to provide 911 service and which facilities-based wireless carrier(s)' services an ETC is reselling. Therefore, in this instance, we find that it is in the public interest to require Budget to: (1) certify that it provides subscribers with 911 and E911 access by providing a letter from its underlying facilities-based wireless carrier(s) which affirms the facilities-based wireless carrier is the underlying carrier for the reseller, and it routes all 911 calls from the resellers' customers to the PSAP in the same manner that it routes 911 calls from its own customers; and (2) provide a self-certification that it is 911 compliant. The certifications shall be submitted to the Commission with copies to the OUCC and the Statewide 911 Board prior to offering Lifeline service in Indiana.

H. Public Interest Considerations. As noted above and in accordance with 47 C.F.R. § 54.202(b), the designation of Budget as an ETC requires a public interest analysis. *See also 2005 FCC ETC Order* at 6389-6390. In the absence of 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* at 6388.

i. <u>Use of Lifeline Funding</u>. The record indicates that Budget will use funds from the federal Lifeline program to provide supported services to Lifeline customers. Budget has met its burden of proof for the Lifeline program. We also note that Budget will be subject to federal recordkeeping and auditing requirements in 47 C.F.R. § 54.417 and 47 C.F.R. § 54.420 respectively. Accordingly, we find that Budget's plans are consistent with current FCC regulations on the use of such funds.

ii. <u>Impact on the Universal Service Fund</u>. We have previously recognized that the FCC has undertaken various steps to address the explosive growth in high-cost universal support disbursements. *Perry-Spencer Communications, Inc.,* Cause No. 41052 ETC 53, 2008 Ind. PUC LEXIS 510, at *33 (IURC July 24, 2008). Notably, Budget is not seeking access to funding from the federal USF to provide service to high-cost areas. However, we also recognize that costs for the low income portion of the universal service fund are increasing rapidly. While it is in the public interest that Lifeline-eligible customers get connected to affordable telecommunications service, preventing misuse of the Lifeline program is necessary to control unproductive growth of the fund and increased USF surcharges for all Indiana telecommunications customers.

We have historically underscored our concern that prepaid wireless providers may be especially vulnerable to misapplication of the program due to the appeal of free phones and free minutes. Therefore, we find as we did in the Virgin Mobile ETC Order that the public interest requires we impose certain safeguards on Budget. To ensure a prepaid Lifeline offering does not unnecessarily increase USF expenditures, we condition our approval on Budget's adoption of policies to control waste, fraud and abuse of the Lifeline program, such as terminating service to inactive customers after 60 days of inactivity as described in 47 C.F.R. § 54.405(e)(3); dealing directly with the customer; and obtaining documentation from the customer which demonstrates eligibility. Provided these requirements are satisfied, along with other conditions and safeguards enumerated in this Order and in FCC rules to deter waste, fraud and abuse, we find that Budget's Lifeline-only designation should not have an excessive impact on the universal service fund.

iii. <u>Consumer Protection</u>. One of the requirements established by the *2005 FCC ETC Order* was that, regardless of certification date, all ETCs must submit to the FCC, on an annual basis, certification that the ETC is complying with applicable service quality standards and consumer protection rules. 47 C.F.R. § 54.202(a)(3). Mr. Donahue stated that Budget is a supporter of, and abides by, the CTIA Consumer Code.

iv. <u>Creamskimming</u>. 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 company." *See* 47 CFR § 54.202(b). That type of analysis is unnecessary in this case since Budget seeks ETC designation to serve only the non-rural ILEC territories of AT&T and Frontier as indicated in Exhibit A attached to its Petition. *See 2005 FCC ETC Order*.

v. <u>Increased Customer Choice</u>. Currently in Indiana all ILECs are required to provide the Lifeline discount to eligible customers. In light of Indiana's low Lifeline take rate and the recent ETC relinquishments by other Indiana carriers, we find that Budget's Lifeline offering brings increased competitive choice to the Lifeline-eligible customers in Indiana and may further assist in reaching additional Lifeline-eligible customers. Based on the record, we find that Budget's designation as an ETC will increase the level of customer choice and may promote competition by expanding the availability of wireless services to qualifying Indiana customers, leading to lower prices.

vi. <u>*Affordable Rates*</u>. We must also consider whether designation as an ETC will "ensur[e] the availability of quality telecommunications services at just, reasonable, and affordable rates[.]" *2005 FCC ETC Order* at 6388. Budget presented evidence that one of its Lifeline offerings is free and the other offering is priced at $25.00 per month based upon respective non-discounted rates of $9.25 and $34.25 per month. The Lifeline offerings include up to 250 minutes (with the ability to purchase add-on minutes for $0.10 per minute in increments of $5.00) and up to 4,000 minutes per month, respectively. The Lifeline offerings include a free handset, call waiting, caller ID and voice mail. Budget allows qualified Lifeline subscribers to purchase certain optional features such text messaging and additional minutes. The OUCC did not dispute the affordability of Budget's rates. In addition, in its response to the Presiding Officers' Docket Entry, Budget indicated it would modify the terms and conditions of its tariff so that it is clear that there is no cost to the customer when the customer contacts Petitioner's customer care facility via their handset. Accordingly, we find that the designation of Budget as an ETC would serve the public interest by ensuring the availability of telecommunications services at just, reasonable and affordable rates. Therefore, Budget should file tariffs consistent with the testimony filed herein prior to offering Lifeline services in Indiana.

vii. <u>*Advantage & Disadvantages of the Offering*</u>. The record reflects that Budget's service offering is comparable to the Virgin Mobile and ILEC Lifeline plans. In addition, the record reflects Petitioner's service is provided with no credit check, deposit requirement, minimum service period or early termination fees. Accordingly, we find Budget has satisfied this criterion of our public interest inquiry.

viii. <u>*Deployment of or Improvement to Indiana Network Facilities*</u>. Budget stated that it does not currently plan to deploy network facilities in Indiana. Nonetheless, we find that given Budget's reliance on the networks of Sprint and Verizon Wireless, the arrangement will likely incentivize those carriers to expand facilities in our State. Based on this evidence, we conclude that this element of our inquiry has been satisfactorily met.

ix. <u>*Additional Public Interest Analysis*</u>. ETC designation confers both benefits and burdens upon the petitioning telecommunications service provider. Because the designation gives the provider the right to apply for federal universal service funds, it is essential that the provider comply with its obligations to contribute to public interest funds and not have a competitive advantage over other Indiana telecommunications carriers by avoiding such obligations. We find that it would not be competitively neutral to designate an ETC permitting it to collect public funds, yet not contribute appropriately to public interest funds from which its network and its customers benefit. Budget has testified to its willingness to comply with Indiana laws and policies regarding public interest funds for which the Commission has administrative oversight, including the public utility fee pursuant to Ind. Code ch. 8-1-6; the InTRAC fee pursuant to Ind. Code ch. 8-1-2.8; and the Indiana USF fee pursuant to the Commission's Order in *Commission Investigation of Universal Service Reform,* Cause No. 42144, 2004 Ind. PUC LEXIS 61 (IURC March 17, 2004) ("42144 Order"). Based on the foregoing public interest analysis, we conclude that designating Budget as an ETC will promote the public interest and further the goals of the Act.

6. Regulatory Oversight. The Commission has recognized certain specific regulatory requirements that competitive wireless ETC applicants must satisfy in order to secure and maintain their ETC status in Indiana. *See, e.g., NPCR, Inc. d/b/a Nextel Partners,* Cause No. 41052 ETC 43, 2004 Ind. PUC LEXIS 87, at *84 (IURC March 17, 2004). Such regulatory requirements stem from the FCC's mandate that state commissions certify federal USF support is being used "only for the provision, maintenance and upgrading of facilities and services for which the support is intended," consistent with 47 U.S.C. § 254(e). In order to satisfy its ETC certification requirements to the FCC, the Commission requires ETC applicants to file a tariff with the Commission and track its USF expenditures. *See* 40785 Order. The record reflects Budget's intention to comply with the Commission's Lifeline tariff filing requirement. Budget must also comply with USF tracking requirements the Commission previously established to ensure that funds received from USAC for Indiana are devoted to furthering universal service goals within Budget's designated service area. Accordingly, we find that Budget's terms and conditions of service should be incorporated into its Lifeline tariff for Indiana and filed with the Commission's Communications Division for review prior to Budget making its universal service offering available to eligible consumers in Indiana.

In previous ETC designations of prepaid wireless Lifeline providers, the Commission (and the FCC) imposed a condition that the ETC deal directly with the customer as an additional safeguard to prevent abuse of the Lifeline program. Budget committed in its testimony to comply with the condition that it deal directly with the customer. Budget further agreed to require each customer to self-certify under penalty of perjury that they are the only member of a household receiving the Lifeline discount and that they do not receive the Lifeline discount for any other phone. Budget indicated it will require Lifeline customers to provide copies of documentation demonstrating they are eligible for Lifeline based upon participation in one of the qualifying low income programs or based upon income. Budget will abide by the applicable regulations of the FCC and the Commission regarding certification and verification of customer eligibility.

7. Prospective ETC Reporting Requirements. Finally, we find that Budget should be required to meet the prospective reporting requirements consistent with new federal rules in 47 C.F.R § 54.422 which include reporting: (1) the ETC's holding company and operating names, any affiliate relationships, and branding as well as universal service identifiers; (2) information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan; (3) detailed information on any outages in the prior calendar year; (4) number of complaints per 1000 handsets; (5) certification of compliance with applicable service quality standards; and (6) certification that the carrier is able to function in emergency situations.

Budget's compliance filings shall be filed under this Cause at the same time it files its annual report pursuant to 47 C.F.R. § 54.422, unless otherwise directed by the Commission.

8. **<u>Conditions on Budget's Designation as an ETC</u>.** In accordance with the Commission's findings above, Budget shall be subject to the following conditions:

(a) Approval shall be subject to Budget's Compliance Plan approved by the FCC and subject to the Lifeline plans, rates, conditions and procedures set forth in the Compliance Plan.

(b) Consistent with 47 C.F.R. § 54.407, Budget shall not receive universal service support for a subscriber to lifeline service until the subscriber activates the service.

(c) Budget shall deactivate a Lifeline account if the customer has no usage for 60 consecutive days. Budget shall report annually the number of subscribers de-enrolled for non-usage under 47 C.F.R. § 54.405(e)(3). This de-enrollment information must be reported by month and must be submitted to the Commission at the time an eligible telecommunications carrier submits its annual certification report pursuant to 47 C.F.R. § 54.416.

(d) Budget is authorized to offer Lifeline-eligible customers the Lifeline packages set forth in Mr. Donahue's testimony, which shall include at least one plan with a minimum of 250 free minutes per month and additional minutes at no more than $0.10 per minute. Prior to providing Lifeline service in Indiana, Budget shall file a tariff of their proposed offering consistent with the Commission's findings herein and notify the Commission in the form of a new tariff if any terms, conditions or allocation of free minutes change.

(e) Budget shall provide its Lifeline customers with 911 and E-911 access regardless of activation status and availability of prepaid minutes as of the date it provides Lifeline services in Indiana.

(f) Budget shall provide its Lifeline customers with E-911 compliant handsets and replace, at no additional charge, noncompliant handsets of existing customers who obtain Lifeline supported services as of the date it provides Lifeline services in Indiana.

(g) Budget shall certify 911 compliance in accordance with Paragraph 5.G. above.

(h) Budget shall establish safeguards to prevent its customers from receiving multiple Lifeline subsidies at the same address as required by 47 C.F.R. § 54.405 and abide by the *Lifeline Reform Order* and the FCC's *2011 Duplicative Program Payments Order*[8], which requires ETCs to explain to consumers in plain, easily

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[8] *Lifeline and Link Up Reform and Modernization*, 26 FCC Rcd 9022, 9027-9028 (2011).

comprehensible language that they are not permitted to receive more than one Lifeline subsidy.

(i) On a quarterly basis Budget shall provide: (1) the number of Indiana Lifeline customers that it enrolled during the previous quarter, with the data listed separately for each month; (2) the number of deactivated Lifeline customers for each month in the previous quarter and the reasons for deactivation (e.g., no usage for 60 consecutive days, unsuccessful annual verification, or voluntary exit); and (3) an update on Budget's investment in establishing stores and hiring employees in Indiana. Quarterly reports shall be filed with the Commission no later than 30 days after the end of each quarter. Budget will continue to make such quarterly filings until otherwise instructed by the Commission.

(j) Budget shall certify the eligibility of Lifeline customers pursuant to 47 C.F.R. § 54.410 requiring prospective Lifeline customers to demonstrate that they are eligible for Lifeline based upon participation in one of the qualifying low income programs or based upon income.

(k) Pursuant to 47 C.F.R. § 54.410, Budget shall notify each Lifeline customer on an annual basis and request confirmation of continued eligibility by requiring that the customer re-certify continued eligibility for the discount based upon income or participation in a qualifying low income program. Such verification will be required in order for the consumer to continue to purchase prepaid airtime at the discounted rate. Consistent with the changes precipitated by the *Lifeline Reform Order* relating to the timing of verifications to USAC and the FCC, Budget shall provide the Commission with a copy of its Lifeline re-certification results that it files annually with USAC by January 31 each year.

(l) In the event the ILAP is fully implemented, Budget shall seek Commission approval of its new Lifeline offering subject to the additional Indiana discount.

(m) Budget shall contribute to the InTRAC Fund on a monthly basis in an amount equal to the Commission approved InTRAC monthly surcharge multiplied by the number of active Budget accounts during each month, consistent with the Commission's January 19, 2005 Order in Cause No. 39880 and Ind. Code ch. 8-1-2.8.

(n) Budget shall pay applicable fees, such as the public utility fee, pursuant to Ind. Code ch. 8-1-6; the InTRAC fee pursuant to Ind. Code ch. 8-1-2.8; the Indiana USF fee pursuant to the 42144 Order; the wireless emergency E-911 fee pursuant to Ind. Code § 36-8-16.5-30.5 and any other applicable fees.

We therefore find, based on the evidence presented, that Budget has met all of the ETC eligibility requirements and that the public interest supports granting ETC status to Budget for the limited purpose of participation in the Lifeline program. We find that making Budget's Lifeline service available to eligible customers will increase customer choice and will not adversely affect the USF. Budget has the financial and technical capability to provide Lifeline service in compliance with State and Federal law. Budget also has demonstrated it has the ability to satisfy the obligation to serve the designated service areas within a reasonable time frame. Finally, we note that the Commission has the statutory authority to investigate, as it deems necessary, Budget's compliance with this Order and its eligibility for ETC designation. We further find that Budget should be subject to the prospective reporting requirements and conditions set forth herein.

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

1. Budget's petition for designation as an Eligible Telecommunications Carrier for the limited purpose of participation in the Universal Service Fund's Lifeline program, for the service areas identified in Budget's evidence, shall be and hereby is granted.

2. Budget's request for authority to apply for or receive universal service funds from the Lifeline program pursuant to 47 U.S.C. § 254 shall be and hereby is granted, subject to Budget's compliance with the terms, conditions and reporting requirements of this Order and other applicable laws.

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

ATTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR:

APPROVED: SEP 26 2012

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

Brenda A. Howe

Brenda A. Howe
Secretary to the Commission