

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of Budget PrePay, Inc. d/b/a Budget)
Mobile's Petition for Limited Designation as a Non-)
Rural Wireless Eligible Telecommunications Carrier)
_____)

UTAH PUBLIC
SERVICE COMMISSION

Docket No. 12-2554-01
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STIPULATION AND SETTLEMENT AGREEMENT

Budget PrePay, Inc. d/b/a Budget Mobile ("Budget"), the Utah Division of Public Utilities ("DPU"), and the Utah Office of Consumer Services ("OCS") (collectively, the "Stipulating Parties" or the "Parties"), enter into this Stipulation and Settlement Agreement ("Stipulation") regarding the Petition filed by Budget in the instant docket. The Parties submit this Stipulation for approval by the Public Service Commission of Utah (the "Commission" or the "PSC") pursuant to the Commission's Rules of Practice and Procedure, R746-100-10. The Salt Lake Community Action Program, an intervening party, does not oppose this Stipulation.

PRELIMINARY STATEMENT

1. On May 8, 1997, the Federal Communications Commission ("FCC") issued its Universal Service Report and Order, 12 FCC Rcd 8776 (1997) ("Universal Service Order") implementing the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Federal Act"). The FCC provided further guidance on Eligible Telecommunications Carrier ("ETC") designation in its ETC Report and Order issued March 17, 2005, Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371, 6384 (2005).

2. The Universal Service Order provides that where states certify ETCs, such as is the case in Utah, only ETCs designated by a state public utilities commission ("State Commission") shall receive federal universal service support. Under 47 U.S.C. § 214(e), a State

Commission shall, upon its own motion or upon request, designate a common carrier that meets the requirements set forth by the FCC as an ETC for a service area designated by the State Commission. The FCC defines a service area as a geographic area established by a State Commission for the purpose of determining universal service obligations and support mechanisms.

3. To be designated as a federal ETC under the Federal Act, a carrier must: (1) be a common carrier; (2) demonstrate an intent and ability to provision the supported services set forth in 47 C.F.R. § 54.101(a) throughout its designated service areas; and (3) demonstrate an intent and ability to advertise its universal service offerings and the charges therefore, using media of general distribution. 47 U.S.C. § 214(e); Universal Service Order, 12 FCC Rcd at 8791.

4. The FCC's supported services, as set forth in 47 C.F.R. § 54.101(a), which were revised on December 23, 2011, are the following services:

- a. voice grade access to the public switched telephone network or its functional equivalent;
- b. minutes of use for local service without additional charge to the end user;
- c. access to emergency services; and
- d. toll limitation for qualifying low-income consumers.

5. On February 6, 2012, the FCC issued a Report and Order and Further Notice of Proposed Rulemaking, ("FCC 12-11 Lifeline Order")¹, in which it issued a blanket forbearance

¹ See In the Matter of Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability through Digital Literacy Training, WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, WC Docket 12-23, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012) ("FCC 12-11 Lifeline Order").

from a requirement that the supported services be offered, at least in part, over a carriers' own facilities. This forbearance is available to all carriers seeking limited ETC designation for the purpose of offering Lifeline service only.² Lifeline-only ETCs are now subject to the following conditions:

- a. provide Lifeline subscribers with 911/E911 access, regardless of activation status and availability of minutes;
- b. provide E911-compliant handsets and replace noncompliant handsets at no additional charge; and
- c. file a compliance plan with the FCC for approval that includes the procedures to enroll a subscriber in Lifeline service and for reimbursement for that subscriber, sample marketing materials, materials on initial and ongoing certification, how the carrier will offer service, the geographic areas in which it will offer service, and a detailed description of its Lifeline service plans including the rates, number of minutes and types of plans available to Lifeline customers.

6. The FCC 12-11 Lifeline Order further requires that a carrier seeking ETC designation for the purpose of offering Lifeline-only services must demonstrate its technical and financial capacity to provide the supported services.³

7. On July 5, 2012, Budget filed a Petition for Limited Designation as a Non-Rural Wireless Eligible Telecommunications Carrier (the "Petition") in this proceeding, Docket No. 12-1554-01. Budget is seeking ETC designation for the limited purpose of offering Lifeline

² *Id.* at ¶ 496.

³ *Id.* at ¶ 388.

service to low-income customers in Utah solely in areas served by the non-rural ILECs, as identified by wire centers in Exhibit B to its Petition. On August 10, 2012, Budget filed Direct Testimony of David Donahue (“Testimony”) in support of its Petition.

8. The Parties engaged in settlement discussions regarding issues raised by Budget’s Petition.

9. The Parties have now reached agreement on the issues raised in this proceeding, as set forth in this Stipulation. This Stipulation is entered into for the purpose of avoiding the costs and risks of litigation. The Parties agree this Stipulation shall only bind the parties hereto and shall not legally bind the Parties with respect to other Petitions and proceedings before the Commission other than in a subsequent proceeding to enforce the terms of this Stipulation.

AGREEMENT

WHEREFORE, based on their review of all testimony and exhibits submitted and upon their settlement discussions, the Parties hereby stipulate and agree as follows:

1. Budget seeks ETC designation for the limited purpose of offering low-income Lifeline service in Utah. Budget is not seeking any high-cost support in its service area.

2. Budget’s Lifeline program furthers the statutory goal that all citizens of the state of Utah have access to high-quality, affordable telecommunications services.

3. Budget’s Lifeline products provide additional consumer choices with regard to available Lifeline service options for low-income consumers, which is a significant benefit for those consumers and is in the public interest.

4. Budget is a reseller of wireless services, a commercial mobile radio service (“CMRS”) provider, and a common carrier as defined by 47 U.S.C. § 153(10) and 47 C.F.R. § 20.9(a)(7).

5. Budget has been granted ETC status to offer Lifeline wireless services in Arkansas, Kentucky, Louisiana, Maryland, Rhode Island, Wisconsin, and Nevada, among other states.⁴ Budget has not been subject to any enforcement action in any state. Budget offers non-Lifeline service in the form of prepaid wireless service to retail customers and has ample financial resources, including private funding, to expand its services to Utah.

6. Budget provides each of the supported services set forth in 47 C.F.R. § 54.101(a), as amended by the Lifeline Reform Order,⁵ and has shown an intent and ability, as well as technical and financial ability, to offer those services once designated an ETC throughout the service area described in Exhibit B to its Petition.

7. Budget shall initially offer a choice of two (2) prepaid Lifeline plans to eligible Lifeline customers, one of which will be completely free to qualifying consumers. Budget's Lifeline plans are available for enrollment via Budget's website (www.budgetmobile.com)⁶ or through Budget's agents at retail locations.

8. Budget's Lifeline plans are not offered on a distance-sensitive basis, and there is no additional charge for toll minutes of use. Toll limitation is not a concern because of the prepaid nature of Budget's Lifeline plans. Prepaid offerings, by their very construct, act as a toll limitation mechanism.

9. The FCC 12-11 Lifeline Order further requires each applicant seeking ETC designation to submit to the FCC for approval a Compliance Plan that contains the information

⁴ While this proceeding has been pending, Budget has continued to obtain wireless ETC designation in states other than those originally listed in its Petition, including Georgia, Iowa, Michigan, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, and Washington.

⁵ Effective April 2, 2012, published on March 2, 2012, in the Federal Register at 77 Federal Register 12952.

⁶ Budget is currently updating its website to describe Utah-specific requirements and to ensure its Lifeline program and Customer Service contact information are easily accessible for Lifeline customers.

as outlined in the Preliminary Statement above. Budget has filed with the FCC a Compliance Plan, which is provided as Exhibit D to its Petition, and has received the FCC's approval of Compliance Plan effective May 25, 2012. The approval is provided as Exhibit E to Budget's Petition.

10. Without waiving any of its positions stated in this proceeding, Budget has entered into this Stipulation with DPU and the OCS to settle this matter. Thus, the Parties stipulate and agree that Budget shall provide its ETC Lifeline universal service offerings in Utah pursuant to this Stipulation. As described in its Petition and its Compliance Plan, Budget will initially offer two Utah plans, a Free 250 Minute Talk Plan and a 4,000 minute Active User Talk & Text Plan.⁷ The Parties agree that Budget's provision of its universal service offerings in Utah as an ETC shall be governed by the following requirements:

- A. Upon implementing any changes to its Lifeline offerings, Budget shall timely file a notice with DPU and OCS describing the changed plans.
- B. Budget shall promptly update a Utah-specific page on its website (www.budgetmobile.com) any time it changes its Utah Lifeline offerings to ensure that its Utah customers have access to the most up-to-date state-specific product information.
- C. Budget shall advertise its Utah products using a Utah-specific fact sheet that provides customers concise and complete information about the services they will receive. A copy of Budget's Utah-specific fact sheet is attached hereto as Attachment 1 and shall be maintained on the Utah-specific page of the Budget website as discussed in paragraph B above.
- D. Budget affirms that it is not seeking any Utah universal service funding and shall file a separate petition in the event it does seek state support in the future.
- E. Budget commits to complying with all applicable Utah service quality and consumer protection requirements.

⁷ The Active User Talk & Text Plan will also be available to tribal customers at no cost to such customers.

- F. Budget shall pay all applicable state and local regulatory fees, including, but not limited to, universal service fees, emergency services, and relay services.
- G. Budget shall adopt any changes to the Lifeline certification and verification process developed by the Commission in Docket No. 10-2528-01.
- H. As demonstrated in its Petition, Budget meets the requirements for federal ETC designation.

GENERAL PROVISIONS

1. The Parties stipulate to the admission into evidence in this docket of Budget's Petition and pre-filed Testimony and exhibits. This stipulation to the admission of the Testimony does not represent an agreement by the Parties as to any positions taken in such Testimony.

2. Not all Parties agree that each aspect of this Stipulation is warranted or supportable in isolation. Utah Code Ann. § 54-7-1 authorizes the Commission to approve a settlement so long as the settlement is just and reasonable in result. While the Parties are not able to agree that each specific component of this Stipulation is just and reasonable in isolation, all of the Parties agree that this Stipulation as a whole is just and reasonable in result and in the public interest.

3. All negotiations related to this Stipulation are confidential, and no Party shall be bound by any position asserted in negotiations. Except as expressly provided in this Stipulation, and in accordance with Utah Admin. Code R746-100-10.F.5, neither the execution of this Stipulation nor the order adopting it shall be deemed to constitute an admission or acknowledgment by any Party of the validity or invalidity of any principle; nor shall they be construed to constitute the basis of an estoppel or waiver by any Party; nor shall

they be introduced or used as evidence for any other purpose in a future proceeding by any Party except in a proceeding to enforce this Stipulation.

4. The Parties agree that no part of this Stipulation or the formulae and methodologies used in developing the same or a Commission order approving the same shall in any manner be argued or considered as precedential in any future case except with regard to issues expressly called-out and resolved by this Stipulation. This Stipulation does not resolve and does not provide any inferences regarding, and the Parties are free to take any position with respect to any issues not specifically called-out and settled herein.

5. The Parties request that the Commission hold a hearing on this Stipulation. Budget, the DPU, and the OCS shall, and other Parties may, make one or more witnesses available to explain and offer further support for this Stipulation. The Parties shall support the Commission's approval of this Stipulation. As applied to the DPU and the OCS, the explanation and support shall be consistent with their statutory authority and responsibility.

6. The Parties agree that if any person challenges the approval of this Stipulation or requests rehearing or reconsideration of any order of the Commission approving this Stipulation, each Party will use its best efforts to support the terms and conditions of this Stipulation. As applied to the DPU and the OCS, the phrase "use its best efforts" means that they shall do so in a manner consistent with their statutory authority and responsibility. In the event any person seeks judicial review of a Commission order approving this Stipulation, no Party shall take a position in that judicial review proceeding in opposition to the Stipulation.

7. Except with regard to the obligations of the Parties under the four immediately preceding paragraphs of this Stipulation, this Stipulation shall not be final and binding on

the Parties until it has been approved without material change or condition by the Commission.

8. This Stipulation is an integrated whole, and any Party may withdraw from it if it is not approved without material change or condition by the Commission or if the Commission's approval is rejected or materially conditioned by a reviewing court. If the Commission rejects any part of this Stipulation or imposes any material change or condition on approval of this Stipulation or if the Commission's approval of this Stipulation is rejected or materially conditioned by a reviewing court, the Parties agree to meet and discuss the applicable Commission or court order within five business days of its issuance and to attempt in good faith to determine if they are willing to modify the Stipulation consistent with the order. No Party shall withdraw from the Stipulation prior to complying with the foregoing sentence. If any Party withdraws from the Stipulation, any Party retains the right to seek additional procedures before the Commission, including presentation of testimony and cross-examination of witnesses, with respect to issues resolved by the Stipulation, and no party shall be bound or prejudiced by the terms and conditions of the Stipulation.

9. This Stipulation may be executed by individual Parties through two or more separate, conformed copies, the aggregate of which will be considered as an integrated instrument.

WHEREFORE, the Parties respectfully submit this Stipulation for approval by the Commission and request that the Commission grant such approval.

Dated this 31st day of October, 2012.

For Budget PrePay, Inc. d/b/a Budget Mobile

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CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of October, 2012, an original and five (5) true and correct copies of the **STIPULATION AND SETTLEMENT AGREEMENT** were hand-delivered, and an electronic copy (in Word) of the foregoing was delivered, to:

Mr. Gary Widerburg
Commission Administrator
PUBLIC SERVICE COMMISSION OF UTAH
Heber M. Wells Building, Fourth Floor
160 East 300 South
Salt Lake City, Utah 84111
psc@utah.gov

I also certify that a copy was sent via electronic mail or hand delivery as indicated to the following:

Electronic Mail

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/s/ Leah N. Buchanan

In the Matter of Budget PrePay d/b/a Budget Mobile's Petition for Limited Designation as a
Non-Rural Wireless Eligible Telecommunications Carrier
Docket No. 12-2554-01

**Attachment 1
To Stipulation and Settlement Agreement**

Utah State-Specific Fact Sheet

IMPORTANT INFORMATION ABOUT YOUR BUDGET LIFELINE PLAN

Lifeline is a government-sponsored benefit program that grants eligible individuals a discount or subsidy each month on their phone bill. Only eligible consumers may enroll in the program, and proof of eligibility is necessary for enrollment.

You must contact Budget if you no longer receive low-income assistance, your income exceeds the qualifying amount, or you move to a new address. At least once a year, Budget will require you to verify that you are eligible for Lifeline benefits. If you fail to do so, you will be de-enrolled from the Lifeline program, and your Budget Lifeline benefits will be terminated.

Budget's Free 250 Minute Talk Plan includes 250 free voice minutes. It does not include text messaging or a data plan. Budget's Active User Talk & Text Plan upgrade includes 4,000 combined texts and voice minutes. It does not include a data plan.

All Budget Lifeline plans include local and domestic long distance calling, caller ID, call waiting and voicemail. Budget will provide you a free handset, or you may purchase an upgraded Budget handset. Additional minutes are available for all Budget Lifeline plans at an additional cost, as listed below:

50 Additional Minutes	\$ 5/month
100 Additional Minutes	\$10/month
150 Additional Minutes	\$15/month

To reach Budget customer service from your handset, call 611.

You will be able to make free emergency calls to 911 on your Budget handset even if you no longer have minutes remaining.

The name on the Lifeline account must match the name of the person who submitted the application for Lifeline benefits. You cannot transfer or sell your Lifeline benefit to any other person.

Lifeline can only be applied to ONE PHONE LINE PER HOUSEHOLD. Your participation in this program requires that you do not receive a Lifeline subsidy on any other phone, either wireless or wireline.

**YOU ARE ENCOURAGED TO READ AND UNDERSTAND ALL THE INFORMATION
BUDGET PROVIDES WITH YOUR ENROLLMENT.**