

**PUBLIC SERVICE COMMISSION OF WISCONSIN**

Application of Budget PrePay, Inc. for Designation as an Eligible  
Telecommunications Carrier

826-TI-101

**FINAL DECISION**

This is the Final Decision in the investigation to determine whether to designate Budget PrePay, Inc., (Budget), as an Eligible Telecommunications Carrier (ETC), pursuant to 47 U.S.C. § 214(e)(2) and Wis. Stat. § 196.218(4)(b). Designation as an ETC makes a provider eligible to receive federal and, sometimes, state Universal Service Fund (USF) monies. Budget sought designation solely for the purpose of receiving federal USF support for the Lifeline low-income program. This Final Decision addresses Budget's request for designation as a Lifeline-only ETC.

**Introduction**

Budget filed a petition for designation as an ETC on September 30, 2011.<sup>1</sup> This application was affected by changes to the underlying statutes affecting certain ETC designations and by Federal Communications Commission (FCC) actions during the pendency of the application. The Commission issued a notice requesting comments on February 29, 2012, with comments due on or before March 14, 2012. Only Budget filed comments.

Budget requested ETC designation statewide.

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<sup>1</sup> A copy of the application can be found on the Commission's Electronic Regulatory Filing System (ERF) under PSC REF # 154130. Additional application information can be found in ERF under docket number 826-TI-101.

### **Findings of Fact**

1. Budget is a commercial mobile radio service provider (wireless provider) serving portions of Wisconsin.
2. Budget will not seek high cost support from the federal USF.
3. Budget will not seek universal service support from the Wisconsin USF.
4. Budget has committed to providing voice grade service to all requesting customers, and to advertising the availability of its service, in the wire centers and throughout the exchanges in which it provides service, as required under 47 U.S.C. § 214(e).
5. Budget has requested designation as an ETC for the entire state. Therefore, issues of cream skimming and coverage of partial service territories do not arise.
6. Budget provides service, at least in part, over its own facilities.
7. It is reasonable to designate Budget as an ETC, statewide, for the purpose of receiving Lifeline support from the federal USF.

### **Conclusions of Law**

The Commission has jurisdiction and authority under Wis. Stat. §§ 196.016, 196.02 and 196.218; 47 U.S.C. §§ 214 and 254; other pertinent provisions of Wis. Stat. ch. 196; and the Telecommunications Act of 1996 to make the above Findings of Fact and to issue this Final Decision.

### **Opinion**

ETC status was created by the Telecommunications Act of 1996 and codified in 47 U.S.C. § 214(e)(2). Under federal statutes and FCC rules, 47 U.S.C. § 214(e)(2) and 47 C.F.R.

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§ 54.201(b), state commissions designate providers as ETCs. Designation as an ETC is required if a provider is to receive federal universal service funding.

Budget is requesting designation as an ETC under Wis. Stat. § 196.218(4)(b), which was created by 2011 Wisconsin Act 22 (Act 22). This section states:

(b) . . . if a commercial mobile radio service provider is designated or seeks designation as an eligible telecommunications carrier pursuant to 47 USC 214 (e) for the purpose of federal universal service funding and not for the purpose of state universal service funding, the commercial mobile radio service provider is not subject to any eligible telecommunications carrier requirements imposed by the commission and shall be subject only to the eligible telecommunications carrier requirements imposed by 47 USC 214 (e) (1) and regulations and orders of the federal communications commission implementing 47 USC 214 (e) (1).

Budget is the second company to request designation under this section of the statute. The language of the new statute is clear. Particular types of providers, namely wireless providers that are not seeking access to any state USF dollars, will not be subject to state-specific ETC rules, and will be subject only to the requirements imposed by the FCC.<sup>2</sup>

Budget is a wireless provider. Budget has stated that it will neither seek nor receive funding from the state USF. Budget therefore meets the requirements to be designated as an ETC under the provisions of Wis. Stat. § 196.218(4)(b).

The FCC has determined that an applicant should be designated as an ETC only where such designation serves the public interest, regardless of whether the area where designation is sought is served by a rural or non-rural provider.<sup>3</sup> The Commission finds, however, that the application of Wis. Stat. § 196.218(4)(b) renders the need for a public interest determination in this docket effectively moot.

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<sup>2</sup> The FCC has ETC designation requirements in its rules because, under some circumstances, the FCC designates ETCs rather than a state commission. The FCC's requirements are found at 47 C.F.R. § 54.201, *et seq.*

<sup>3</sup> *In the Matter of Federal-State Joint Board on Universal Service*, 20 F.C.C.R. 6371, 6373, ¶ 3 (2005).

Nonetheless, under Wis. Stat. § 196.218(4)(b), Budget is required to establish that it meets the requirements of 47 U.S.C. § 214(e)(1) and the regulations and orders implementing the federal statute. Budget has, in its filings to the Commission, shown that it meets the federal requirements for ETC designation, and has committed to abiding by the ongoing federal requirements placed on ETCs.<sup>4</sup>

Based on its applications and responses to the Commission's data requests, Budget indicates that it provides services using its own facilities pursuant to 47 C.F.R. § 54.201(f) which includes leasing exclusive Unbundled Network Elements (UNEs) from AT&T Wisconsin to originate and terminate calls within the state of Wisconsin.

Budget has requested designation as an ETC for the entire state of Wisconsin, and is requesting designation only for the purposes of Lifeline support. Considerations of cream-skimming and congruence with incumbent service territories do not, therefore, apply.

Given Budget's compliance with the federal requirements, the Commission designates Budget as an ETC for the purpose of receiving Lifeline support. This designation is contingent on Budget not requesting state universal service funding. If Budget seeks state funding, or no longer qualifies as a wireless provider, it will need to reapply for designation. This designation will continue in force until the Commission takes action on any such reapplication.

### **Order**

1. Budget is designated as an ETC, for the purpose of receiving Lifeline support, throughout the state of Wisconsin.

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<sup>4</sup> Budget identifies specific requirements in its application, some of which have been modified by more recent FCC action. *See, e.g.*, Report and Order and Further Notice of Proposed Rulemaking, *In the Matter of Lifeline and Link-Up Reform*, WC Docket No. 11-42 (Feb. 6, 2012). This Final Decision requires Budget to abide by federal requirements that may change from time to time, not necessarily those requirements that exist at the time of this Final Decision.

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2. Budget is an ETC within the meaning of 47 U.S.C. § 214(c), and is eligible to receive federal USF funding for Lifeline service pursuant to 47 U.S.C. § 254(e). This Final Decision constitutes the Commission's certification to that effect.

3. This designation is contingent on Budget not requesting state universal service funding, and on providing service as a wireless provider.

4. Jurisdiction is maintained.

5. This Final Decision is effective the day after mailing.

Dated at Madison, Wisconsin, April 3<sup>rd</sup>, 2010

By the Commission:

  
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Brian J. Rybarik  
Administrator, Telecommunications Division

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See attached Notice of Rights

PUBLIC SERVICE COMMISSION OF WISCONSIN  
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**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE  
TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE  
PARTY TO BE NAMED AS RESPONDENT**

The following notice is served on you as part of the Commission's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

*PETITION FOR REHEARING*

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Commission for rehearing within 20 days of mailing of this decision, as provided in Wis. Stat. § 227.49. The mailing date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The petition for rehearing must be filed with the Public Service Commission of Wisconsin and served on the parties. An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

*PETITION FOR JUDICIAL REVIEW*

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. In a contested case, the petition must be filed in circuit court and served upon the Public Service Commission of Wisconsin within 30 days of mailing of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of mailing of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an *untimely* petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Commission mailed its original decision.<sup>5</sup> The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised: December 17, 2008

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<sup>5</sup> See *State v. Currier*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.