

Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Date: June 8, 2017*Agenda Item #2

Company: Budget Pre-Pay, Inc. d.b.a. Budget Phone

Docket No. **P6402/RL-17-351**

In the Matter of the Petition of Budget Pre-Pay, Inc. d.b.a. Budget Phone to Relinquish its Eligible Telecommunications Carrier (ETC) Status in Minnesota

Issues: 1) How should the Commission act on the Petition?
2) Should the Commission take any other action to review customer notice, disconnection, and other customer protection issues with respect to Lifeline-only ETCs?

Staff: Michelle Rebholz.....651-201-2206
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Relevant Documents

Budget Prepay, Initial Filing..... May 4, 2017
Department of Commerce, Comments May 12, 2017

The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

This document can be made available in alternative formats (i.e., large print or audio) by calling (651) 296-0406 (voice). Persons with hearing loss or speech disabilities may call us through their preferred Telecommunications Relay Service.

Statement of the issues

- 1) How should the Commission act on the Petition?
- 2) Should the Commission take any other action to review customer notice, disconnection, and other customer protection issues with respect to Lifeline-only ETCs?

Background

Eligible Telecommunications Carriers (ETCs) are a designated type of carrier under federal law and Commission rules that help fulfill the goal of universal service. As the FCC states, “Universal service is the principle that all Americans should have access to communications services. Universal service is also the name of a fund and the category of FCC programs and policies to implement this principle.”¹

There are several pieces to the concept of universal service. Some of them are service to low income persons (in particular, the Lifeline program); service to rural and other high cost areas; and support for certain basic types of telecommunications service, at minimum service levels.

Federal statutes designate the Federal Communications Commission as the federal agency responsible for universal service, through a series of programs; those same federal statutes delegate to state commissions the responsibility to decide whether a carrier may become an ETC, the general standards for becoming an ETC (consistent with federal law), and when an ETC may relinquish its obligations and cease offering these supported services.

As part of its federal delegation, this Commission reviews and approves or rejects ETC petitions, approves or rejects the relinquishment of ETC status, and monitors compliance with the federal programs under which ETCs operate. This current docket concerns the Lifeline program to be offered by ETCs to low income consumers; the Commission also has additional authority and responsibilities for other aspects of ETC service, such as reviewing and certifying funds in the high cost program.

Some of the annual filings this Commission receives related to ETCs and universal service:

17-8	Annual certifications related to ETCs’ use of high cost support
17-20	FCC form 555, related to ETCs offering of Lifeline program
17-269	Biennial Lifeline audit report

To assist in the fulfillment of its duties delegated to it under federal law, the Commission promulgated Minnesota Rule 7812.1400, which generally sets up a framework for ETC applications and relinquishments. This rule is Attachment A to these briefing papers.

¹ www.fcc.gov/general/universal-service.

Summary of the parties' positions

Budget Prepay, Inc.

Budget Prepay, Inc. (“Budget” or “the carrier”) requested relinquishment of its ETC status, effective July 5, 2017. The carrier stated it is seeking relinquishment of its ETC designation due to changes in the wireless industry and proposed modifications to the Lifeline program.

Budget included a number of references to federal statute and rule which support its request for a relinquishment. Budget summarizes some of these requirements as follows:

The federal requirements for relinquishing ETC designation are: (1) there must be more than one ETC serving in the area of the ETC seeking relinquishment; (2) the ETC seeking relinquishment must provide advance notice to the Commission; (3) the customers served by the relinquishing ETC must continue to be served by an ETC; and (4) to the extent that additional facilities are required to serve any of the relinquishing ETC's customers, sufficient notice shall be provided to ensure that the construction or purchase can be timely completed. As shown below, all such requirements for relinquishing Budget's ETC designation are satisfied.²

The carrier also stated that it would notify customers of discontinuance via a text message. Budget stated that “text messages have historically been the mechanism by which Budget communicates with its customers, and they will be the most effective method of ensuring Budget’s customers receive this important information.”³

The notice Budget proposed is set forth below:

Budget Mobile plans to cease service in Minnesota on or about 7-5-2017.
To continue service, you will need to contact another Lifeline provider authorized by the Minnesota PUC.

Additional information is available from the Minnesota PUC at
<https://mn.gov/puc/consumers/telephone-discounts.jsp>

A list of Lifeline providers in Minnesota is available at
<http://www.lifelinesupport.org/Is/companies/companies.aspx>

For more information, please call 888-777-4007 or visit
www.budgetmobile.com⁴

² Budget Initial Filing, page 3.

³ Budget Initial Filing, pp. 4-5.

⁴ Initial Filing, p. 5.

Department of Commerce

The Department analyzed the relinquishment request. The Department noted that state and federal law permit the relinquishment of ETC status as long as other ETCs are available to serve such customers and that the carrier had a proposed customer notice.

The Department recommending granting the relinquishment request as of the proposed July 5, 2017 disconnection date, with the condition that Budget submit a follow up report to inform the Commission of the status of the 200 Lifeline customers as of the disconnection date. The Department stated, "...a follow up report would provide information as to whether any issues arise in the discontinuance process."⁵

Staff comment

Budget's filing appears to be a sincere attempt to provide closure in light of its relinquishment, and performed in good faith. The Department's review and recommendations, likewise, are logical in light of the Commission's past practice with respect to ETCs.

Staff, however, recommends some additional customer notice requirements and a larger look at customer-facing issues with respect to ETCs. As time has passed, the Commission and Department have gained more experience with ETCs. In addition, the FCC has issued a series of modifications to the Lifeline program. Not only has eligibility changed, but ETCs can forbear from offering Lifeline on broadband services.⁶ ETC applications and relinquishments are more frequent—meaning the pool of carriers offering Lifeline to low income populations is changing more often. Ensuring customers have accurate and up to date information from their carrier is becoming increasingly significant, and as the gatekeeper for the Lifeline program, the Commission should lead this dialogue in consultation with stakeholders.

Thus, it may be the appropriate time to have a more thoughtful look at the customer-facing issues with respect to ETCs—not only the outreach they perform after receiving ETC designation in Minnesota but the notice plan they have, or should have, in place if they choose to seek relinquishment in the state.

Staff notes that in Colorado, Budget will be notifying customers via text and U.S. Mail prior to discontinuing Lifeline service there. Budget will also be notifying, via mail, each affected county and to each affected city/town/municipality. A copy of the Colorado decision on notice is provided as Attachment B. Colorado's decision is insightful not only for the specific notice requirements on Budget, but to review how other states see notice obligations for ETCs.

⁵ Department Comments, page 4.

⁶ See, for example the FCC's order modifying Lifeline: "...we establish that such ETCs are also eligible to receive Lifeline support for broadband service and forbear from requiring such ETCs to offer Lifeline-supported broadband service, except in areas where the ETC commercially offers broadband pursuant to its high-cost obligations. For Lifeline Broadband Providers, we establish a streamlined relinquishment process that gives providers greater certainty while retaining the Commission's ability to protect consumers." *FCC Lifeline Modernization Order*, WC Docket No. 11-42, WC Docket 09-197, WC Docket No. 10-90, Section III.E.2.b.

Staff recommends a lighter set of customer notice obligations than those imposed in Colorado. Staff suggests the following:

- 1) A minimum of two text messages prior to the July 5, 2017 discontinuance;
- 2) At least one of those texts should provide contact information for the PUC's Consumer Affairs Office;
- 3) An e-mail to all Budget's Minnesota Lifeline customers providing the same information, for Minnesota customers for which Budget has e-mail addresses on file.

And as to reporting, staff suggests:

- Budget file a compliance filing within 15 days of its discontinuance of service in Minnesota providing proof that the messages were sent, and if a confirmation mechanism is in place, proof that recipients responded or received the messages.

Staff also agrees with the Department's reporting recommendation but slightly modifies the wording to specify the due date, as follows:

Approve the petition of Budget Pre-Pay, Inc d.b.a. Budget Phone to relinquish its ETC status and to cancel its informational tariff conditioned upon BPP submitting a follow up report by July 20, 2017 to inform the Commission....

Staff offers this suggestion only to offer clarity on the due date of the report and is not opposed to some other date the parties deem reasonable.

Further, staff suggests the Commission consider examining customer notice and outreach issues for ETCs, given the changes to the Lifeline program and the increased frequency of ETC applications and relinquishments. Another option is to request that the Department and other interested stakeholders develop a list of customer notice(s) and outreach requirements. Staff would also welcome a lead commissioner on this project, should there be an interest.⁷

To ensure that all ETCs are aware of this recommendation, staff has included other wireless ETCs on the service list for this matter.

Decision alternatives

Budget Prepay Petition

1. Approve the petition of Budget Pre-Pay, Inc. d.b.a. Budget Phone to relinquish its ETC status and to cancel its informational tariff conditioned upon BPP submitting a follow up report to inform the Commission of the status of its 200 Lifeline customers as of the July 5, 2017 disconnection date. (*Department initial recommendation*)
2. Approve the petition of Budget Pre-Pay, Inc. d.b.a. Budget Phone to relinquish its ETC status and to cancel its informational tariff conditioned upon the following:

⁷ State law allows the Commission to designate a lead commissioner "...for a docket, a type of docket, or for a particular subject area." Minn. Stat. §216A.03, subd. 9.

- a) BPP submitting a follow up report by July 20, 2017 to inform the Commission of the status of its 200 Lifeline customers as of the July 5, 2017 disconnection date;
- b) BPP sending a minimum of two text messages prior to its July 5, 2017 discontinuance;
- c) BPP including the Commission's Consumer Affairs Office contact in at least one text to Minnesota consumers;
- d) BPP sending an e-mail to all of its Minnesota Lifeline customers prior to the July 5, 2017 discontinuance, to the extent it has e-mail addresses on file. (*Staff alternative*)

Customer Notice and Communication by ETCs to Lifeline Consumers

3. Examine customer notice and communication issues concerning the applications and relinquishments of Lifeline-only ETCs in Minnesota. (*Staff note: this inquiry is narrow enough in scope that the Executive Secretary or a lead commissioner could also initiate this review without a vote by the full commission*) OR;
4. Request the Department of Commerce and other interested stakeholders develop a proposed list of customer notice and outreach requirements for ETCs offering Lifeline in Minnesota. Proposed requirements shall be filed with the Commission on a schedule to be determined by the Executive Secretary.
5. Designate a Lead Commissioner under Minn. Stat. §216A.03, subd. 9 to examine the issue of customer notice and communications by ETCs to Lifeline customers. (*Staff note: this option could be adopted in addition to or separately from decision options 3 and 4.*)

Staff Recommendation

Staff recommends Decision Option 2, and some combination of 3-5.

Attachment A: Minnesota Rules 7812.1400 (With staff mark up)**7812.1400 ETC DESIGNATION.**

Subpart 1.

Automatic designation of LECs.

On and after July 28, 1997, each local exchange carrier (LEC) operating in Minnesota shall be designated an eligible telecommunication carrier (ETC), eligible to receive universal service support throughout its service area existing on July 28, 1997, under both the federal support mechanism established pursuant to section 254 of the act and any state fund established pursuant to Minnesota Statutes, section 237.16, subdivision 9.

Subp. 2.

Designation of CLECs upon petition.

Upon request and consistent with the public interest, convenience, and necessity, the commission shall designate a competitive local exchange carrier (CLEC) as an ETC and eligible to receive universal service support from the federal universal service support mechanisms under section 254 of the federal act and any state universal service fund established under Minnesota Statutes, section 237.16, subdivision 9, if the CLEC qualifies as an ETC under part 7812.0100, subpart 15. A request for designation as an ETC eligible to receive universal service support must be filed and decided according to the requirements of subparts 3 to 13.

Subp. 3.

Determining applicable universal service area.

A decision on a petition for designation to receive universal service support under this part must include a determination of the applicable universal service area. The commission shall determine whether the LEC serving the area for which the CLEC seeks designation to receive universal service support is a rural telephone company if the competitive local exchange carrier's petition or another party's initial comments under subpart 8 assert that the LEC is a rural telephone company. If the applicable LEC has 50,000 or more subscribers and is not found by the commission to be a rural telephone company, the commission shall designate the local exchange carrier's exchange area as the universal service area unless the commission finds that a smaller geographic unit would be more appropriate, based on consideration of the relevant high-cost areas designated by the FCC and the public interest.

Subp. 4.

Petition information.

A competitive local exchange carrier's petition for designation as an ETC to receive federal universal service support under section 254 of the act, or any state universal service support under Minnesota Statutes, section 237.16, subdivision 9, must include:

A.

the legal name, address, and telephone number of the CLEC and its designated contact person;

B.

the name, address, and telephone number of the attorney, if the CLEC will be represented by an attorney;

C.

the proposed effective date of designation of eligibility to receive universal service support;

D.

the signature and title of the CLEC officer or representative authorizing the petition;

E.

identification of the service area for which designation is sought, the LEC serving that area and whether the petitioning CLEC considers that LEC to be a rural telephone company;

F.

a statement supporting the petition, which specifies why the requested designation satisfies the requirements for receiving universal service support under part 7812.0700.

(Staff note: Minnesota Rules 7812.0700 includes general service quality requirements, including compliance with the Commission's Rules in Chapter 7810.0100 to 7810.6100.)

Subp. 5.

Filing and service.

A local service provider (LSP) filing a designation petition under subpart 1 shall file an original and 15 copies of the petition with the commission, unless otherwise directed by the executive secretary. A copy of the petition must also be served on the department, the Office of Attorney General-Residential Utilities Division (OAG-RUD), those persons on the

applicable general service list, and on all other LSPs authorized to provide services in the area for which designation is sought.

Subp. 6.

Challenges to form and completeness.

A person wishing to challenge the form or completeness of a designation petition shall do so within ten days of its filing. The filing local service provider shall reply to the challenge within five days of its filing.

Subp. 7.

Rejection of filings.

The commission shall reject a designation petition found to be substantially out of compliance with this part. A filing under this part not rejected within 45 days of filing is considered accepted as in substantial compliance with applicable filing requirements.

Subp. 8.

Initial comments.

A person wishing to comment on a designation petition under this part shall file initial comments within 20 days of the filing. Initial comments must include a recommendation on whether the filing requires a contested case proceeding, expedited proceeding, or some other procedure, together with reasons for the recommendation.

Subp. 9.

Petition to intervene.

If a person who files initial comments is not entitled to intervene in a commission proceeding as of right and desires full party status, the person shall file a petition to intervene before the reply comment period expires. The intervention petition may be combined with comments on the filing.

Subp. 10.

Reply comments.

Commenting parties have ten days from the expiration of the original comment period to file reply comments. Reply comments must be limited in scope to the issues raised in the initial comments.

Subp. 11.

Nature of proceeding.

Unless all parties agree to the use of a different procedure or there are no unresolved issues of fact, the commission shall conduct an expedited proceeding under Minnesota Statutes, section [237.61](#), or refer the matter for a contested case proceeding.

Subp. 12.

Time frame for disposition.

The commission shall take final action within 180 days of the filing of the petition.

Subp. 13.

Unserved areas.

The commission may order an LSP to provide the services that are supported by a federal universal service support mechanism to an otherwise unserved area only as provided in section 102(a) of the act and consistent with Minnesota Statutes, sections [237.081](#) and [237.16](#).

Subp. 14.

Relinquishment of universal service.

A local service provider may relinquish its ETC designation and accompanying universal service obligations as provided in items A to C.

A.

A local service provider seeking to relinquish its ETC designation shall file a petition with the commission, specifying the service area for which it seeks to relinquish its designation, its proposed timetable for relinquishing its designation, and the identity of the other ETCs serving the service area. The petition to relinquish must be served on the department, the OAG-RUD, and all other local service providers serving the area for which the petitioner seeks to relinquish its ETC designation.

B.

The commission shall permit a local service provider to relinquish its ETC designation if at least one other ETC serves the area for which the relinquishment is sought.

C.

The petitioning ETC shall continue to meet its ETC obligations for the entire area for which it seeks to relinquish those obligations until the date specified in the commission's order approving the relinquishment. The commission shall specify the date upon which the local service provider may discontinue service based on the ability of other ETCs to serve the relinquishing provider's customers as provided in section 102(a) of the act.

Subp. 15.

Revocation.

The commission shall revoke a local service provider's ETC designation upon finding that the LSP does not qualify as an ETC under part [7812.0100](#), subpart 15.

Decision No. C17-0404-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 17A-0289T

IN THE MATTER OF THE APPLICATION OF BUDGET PREPAY, INC. TO RELINQUISH ITS ELIGIBLE TELECOMMUNICATIONS CARRIER DESIGNATION IN COLORADO AND WAIVER OF CERTAIN COMMISSION RULES AND FOR EXPEDITED TREATMENT.

**INTERIM DECISION GRANTING WAIVER
FOR SHORTENED NOTICE PERIOD AND
GRANTING, IN PART, A WAIVER OF
CUSTOMER NOTICE REQUIREMENTS**

Mailed Date: May 17, 2017

Adopted Date: May 17, 2017

TO THE PARTIES IN THIS MATTER AND ALL INTERESTED PERSONS, FIRMS, OR CORPORATIONS:

I. BY THE COMMISSION

A. Statement

1. On May 9, 2017, Budget Prepay Inc. (Budget) filed an application to relinquish its limited designation as a Lifeline-only Eligible Telecommunications Carrier (ETC) in Colorado pursuant to 4 *Code of Colorado Regulations* (CCR) 723-2-2188 of the Commission's Rules Regulating Telecommunications Providers, Services, and Products (Application).

2. Concurrent with the Application, Budget filed a motion requesting a variance of the customer notice requirements pursuant to Rule 2188(d) of 4 CCR 723-2. Budget also requests a waiver of the 30-day Commission notice and intervention period in Rule 1206(d) of the Rules of Practice and Procedure, 4 CCR 723-1.

3. Through this Decision, consistent with the discussion below, we grant, in part, the request to waive Rule 2188(d) of the Commission's Rules Regulating Telecommunications Providers, Services, and Products, 4 CCR 723-2. Budget shall provide customer notice consistent with the discussion below. In addition, we grant the request to waive Rule 1206 for a shortened notice and intervention period of two weeks. Notice and intervention periods shall be concurrent and shall conclude at **5:00 p.m., June 1, 2017.**

B. Background

4. Budget Prepay, Inc., requests relinquishment of its Lifeline-only ETC designation.

5. As a result of the relinquishment, Budget proposes a notice provided as attachment C to their Application. Budget requests a partial waiver of Rule 2188(d), which requires notice to customers through publication once each week for four consecutive weeks in a publication or publications of general circulation in the affected designated area, and via mail to the Board of County Commissioners of each affected county, and to the Mayor of each affected city, town, or municipality. Budget requests it be permitted to provide notice to customers via text message and via mail.

6. Budget also requests a waiver of the requirement in Rule 1206(d) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, requiring a 30-day notice and intervention period. Budget represents that it desires to finalize and transfer customers on or about July 7, 2017. Budget states each Lifeline customer will be sent at least one text message no later than May 10, 2017.

7. To avoid subscriber confusion and assist with a smooth transition process, Budget also requests Commission approval to stop accepting new Lifeline applications and advertising Lifeline service as of the filing date of this Application.

C. Discussion, Findings, and Conclusions

8. While the Commission is sympathetic to Budget's request for a partial waiver of Rule 2188(d) for cost and efficiency reasons, the Commission grants, in part, the requested waiver of 2188(d). The Commission agrees to waive the requirement of Rule 2188(d) to provide notice to customers through publication once each week for four consecutive weeks in a publication or publications of general circulation in the affected designated area. However, the Commission does not grant Budget's request for a waiver of the requirement to notify, via mail, the Board of County Commissioners of each affected county, and to the Mayor of each affected city, town, or municipality. We find that these requirements will help ensure that Lifeline customers are adequately notified of Budget's plans.

9. The Commission does agree that text messaging as an alternative form of notification, along with U.S. Mail, is appropriate.

10. The Commission also agrees to avoid subscriber confusion and assist with a smooth transition process. Budget shall be allowed to stop accepting new Lifeline applications and advertising Lifeline service as of the filing date of this Application.

11. The Application is available for public inspection at the Commission office located at 1560 Broadway, Suite 250, Denver, Colorado 80202, between 8:00 a.m. and 5:00 p.m., excluding weekends and state holidays. **This Decision is the notice that the Application seeking certain waivers of the Commission's Rules Regulating Telecommunications Providers, Services, and Products, 4 CCR 723-2 has been filed.**

12. We agree that timely review of the Application is appropriate, especially in light of customer notification via text messaging was initiated to all affected Lifeline customers by May 10, 2017. The Commission finds good cause to grant Budget's request for a shortened Commission notice and intervention period. The notice period for the Application shall extend

through and including **5:00 p.m. on June 1, 2017**. The intervention period will run concurrent with the notice period. Requests for intervention shall be due on **June 1, 2017**.

II. ORDER

A. It Is Ordered That:

1. The request within the application filed May 9, 2017 (Application), by Budget Prepay, Inc. (Budget) for a waiver of Rule 2188(d) of the Commission's Rules Regulating Telecommunications Providers, Services, and Products, 4 *Code of Colorado Regulations* (CCR) 723-2, regarding customer notice, is granted, in part, consistent with the discussion above.

2. Customer notice shall be provided through text messaging and U.S. Mail.

3. Notice shall be provided via mail to the Board of County Commissioners of each affected county, and to the Mayor of each affected city, town, or municipality.

4. Budget is not required to provide notice through publication once each week for four consecutive weeks in a publication or publications of general circulation in the affected designated areas.

5. The request within the Application, by Budget Prepay, Inc., for a waiver of Rule 1206 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, regarding shortened notice and intervention is granted.

6. The notice period for the Application shall extend through and including **5:00 p.m., June 1, 2017**.

7. Any person desiring to intervene or participate as a party in this proceeding shall file a petition for leave to intervene, or under the Commission's Rules of Practice and Procedure, file other appropriate pleadings to become a party by **5:00 p.m. on June 1, 2017**.

8. Alternatively, persons who do not wish to intervene or become a party, but desire to file comments, may send written comments addressed to the Public Utilities Commission, 1560 Broadway, Suite 250, Denver, Colorado 80202. All persons who file an objection, notice of intervention as of right, motion to permissively intervene, or any other appropriate pleading shall do so in accordance with the instructions set forth in the Commission’s Rules of Practice and Procedure and this Decision.

9. If a party does not meet the requirements of this Decision, the Commission may dismiss or strike the intervention upon motion filed by any other party, or upon the Commission’s own motion, unless good cause for failure to meet the requirements is shown.

10. Budget is permitted to stop accepting new Lifeline applications as of the filing date of this Application.

11. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS’ WEEKLY MEETING
May 17, 2017.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

WENDY M. MOSER

Commissioners