

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for designation as eligible
telecommunications carrier (ETC) by Budget
Phone, Inc.

DOCKET NO. 050483-TX
ORDER NO. PSC-05-1255-PAA-TX
ISSUED: December 27, 2005

The following Commissioners participated in the disposition of this matter:

RUDOLPH "RUDY" BRADLEY, Chairman
J. TERRY DEASON
LISA POLAK EDGAR
ISILIO ARRIAGA

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING IN PART
ELIGIBLE TELECOMMUNICATIONS CARRIER STATUS

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Case Background

On July 12, 2005, Budget Phone, Inc. (Budget) petitioned this Commission for designation as an Eligible Telecommunications Carrier (ETC) in the State of Florida. Specifically, Budget requested that it be granted ETC status in certain exchanges of BellSouth Telecommunications, Inc. (BellSouth), Sprint-Florida, Inc. (Sprint) and Verizon Florida (Verizon) for purposes of receiving federal universal service support. Budget's petition indicates that it is requesting ETC designation for approximately 93 wire centers in BellSouth's service area, 103 wire centers in Sprint's service area, and 27 wire centers in Verizon's service area. This is the second Competitive Local Exchange Carrier (CLEC) ETC petition to be brought before us for consideration.¹

Budget Phone is a certificated CLEC which provides local exchange and exchange access services in the BellSouth, Sprint, and Verizon service areas, using a combination of DSO UNE-P

¹ By Order PSC-05-0324-PAA-TX, issued March 21, 2005, Docket No. 041302-TX, In Re: Petition for Designation as Eligible Telecommunications Carrier by Knology of Florida, Inc., the Commission granted Knology of Florida, Inc. (Knology) Eligible Telecommunications Carrier status. Knology is a certificated CLEC which provides telecom service over its broadband network.

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replacement services (UNEs) and resale services provided by these companies. Upon designation as an ETC, Budget indicates that it will participate in and offer Lifeline and Link-Up programs to qualified low-income consumers. Additionally, Budget has committed to publicize the availability of Lifeline and Link-Up services in a manner reasonably designed to reach those likely to qualify for those services².

Budget Phone is headquartered in Shreveport, Louisiana, and was formed in 1996 to provide prepaid home phone service. Currently, Budget provides phone service to approximately 130,000 customers in 45 states. Budget has over 7,600 agents who market and sell various types of services, which include but are not limited to, long distance calling cards, wireless phones, wireless recharge minutes, debit cards and bill payment stations. Budget indicated that it has spent millions of dollars on innovative technology and has developed its own customized point-of-sale software.

Budget has filed for ETC designation in 25 states³. Budget has been granted ETC status in Maryland (granted August 31, 2005), Alabama (granted September 22, 2005), and Iowa (granted October 10, 2005). We note that Budget withdrew its ETC designation request in the State of Wyoming on September 23, 2005, but intends to refile its application at a later date.

Section 364.025(5), Florida Statutes, states: "Upon petition of a competitive local exchange telecommunications company, the commission shall have 120 days to vote on granting in whole or in part or denying the petition of the competitive local exchange company." On September 21, 2005, Budget waived this 120-day requirement in order to provide supplemental information to our staff. We are vested with jurisdiction in this matter pursuant to 47 CFR §54.201, and Section 364.025(5), Florida Statutes.

Decision

The Federal Communications Commission (FCC) rules provide that carriers designated as ETCs shall, throughout the designated service area: (1) offer the services that are supported by federal universal support mechanisms either using their own facilities or a combination of their own facilities and the resale of another carrier's services and, (2) advertise the availability of such services and the related charges therefore using media of general distribution. See CFR §54.201(d).

Budget has identified 93 BellSouth, 103 Sprint, and 27 Verizon wire centers it wishes to offer the services that are supported by federal universal support mechanisms. Budget must therefore meet CFR Rule 54.201(c) which addresses a state commission's responsibilities related to ETC designation, stating:

² See 47 C.F.R. §§ 54.401-54.417 – Universal Service Support for Low Income-Consumers

³ Budget is seeking ETC designation in the following states: Alabama, Arizona, Arkansas, California, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Maryland, Michigan, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, W. Virginia, Wisconsin

Upon request and consistent with the public interest, convenience, and necessity, the state commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the state commission, so long as each additional requesting carrier meets the requirements of paragraph (d) of this section. Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the state commission shall find that the designation is in the public interest.

With respect to Florida law, Section 364.025(5), Florida Statutes, states:

After January 1, 2001, a competitive local exchange telecommunications company may petition the commission to become the universal service provider and carrier of last resort in areas requested to be served by that competitive local exchange telecommunications company. Upon petition of a competitive local exchange telecommunications company, the commission shall have 120 days to vote on granting in whole or in part or denying the petition of the competitive local exchange company. The commission may establish the competitive local exchange telecommunications company as the universal service provider and carrier of last resort, provided that the commission first determines that the competitive local exchange telecommunications company will provide high-quality, reliable service. In the order establishing the competitive local exchange telecommunications company as the universal service provider and carrier of last resort, the commission shall set the period of time in which such company must meet those objectives and obligations.

To qualify as an ETC, Budget must provide nine services identified in CFR Rule 54.201(d)(1).

- (1) Voice grade access to the public switched network Voice grade access is defined as a functionality that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call;
- (2) Local Usage Local usage indicates the amount of minutes of use of exchange service, provided free of charge to end users;
- (3) Dual tone multi-frequency signaling or its functional equivalent Dual tone multi-frequency ("DTMF") is a method of signaling that facilitates the transportation of signaling through the network, thus shortening call set-up time;
- (4) Single-party service or its functional equivalent Single party service is telecommunications service that permits users to have exclusive use of a wireline

subscriber loop or access line for each call placed, or in the case of wireless telecommunications carriers, which use spectrum shared among users to provide service, a dedicated message path for the length of a user's particular transmission;

- (5) Access to emergency services Access to emergency services includes access to services, such as 911 and enhanced 911, provided by local governments or other public safety organizations;
- (6) Access to operator services Access to operator services is defined as access to any automatic or live assistance to a consumer to arrange for billing and/or completion, of a telephone call;
- (7) Access to interexchange service Access to interexchange service is defined as the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network;
- (8) Access to directory assistance Access to directory assistance is defined as access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings; and
- (9) Toll limitation for qualifying low-income consumers Toll limitation or Blocking restricts all direct dial toll access.

In addition to providing the above services, ETC's must advertise the availability of such services and the associated charges using media of general distribution.

New Certification and Reporting Requirements

The FCC's rules currently require all ETCs to make an annual certification, on or before October 1, that high-cost universal service support will be used for its intended purposes.⁴ By Order No. FCC 05-46, the FCC maintained and augmented this requirement. The FCC now requires every ETC designated by the FCC who desires high cost support to submit the following information on an annual basis starting October 1, 2006:

- (1) progress reports on the ETC's five-year service quality improvement plan, including maps detailing progress towards meeting its plan targets, an explanation of how much universal service support was received and how the support was used to improve signal quality, coverage, or capacity; and an explanation regarding any network improvement

4 47 C.F.R. §§ 54.313, 54.314.

targets that have not been fulfilled.⁵ The information should be submitted at the wire center level;

- (2) detailed information on any outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in a designated service area, or that potentially affect a 911 special facility (as defined in subsection (e) of section 4.5 of the *Outage Reporting Order*).⁶ An outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network.⁷ Specifically, the ETC's annual report must include: (1) the date and time of onset of the outage; (2) a brief description of the outage and its resolution; (3) the particular services affected; (4) the geographic areas affected by the outage; (5) steps taken to prevent a similar situation in the future; and (6) the number of customers affected;⁸
- (3) the number of requests for service from potential customers within its service areas that were unfulfilled for the past year. The ETC must also detail how it attempted to provide service to those potential customers;
- (4) the number of complaints per 1,000 handsets or lines;
- (5) certification that the ETC is complying with applicable service quality standards and consumer protection rules;
- (6) certification that the ETC is able to function in emergency situations;⁹
- (7) certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and

⁵ If an ETC had not previously submitted a network improvement plan to the Commission, it should do so with its first reporting compliance filing. An ETC that has not previously submitted a network improvement plan shall include a description of improvements or upgrades it has made since the date of its initial designation.

⁶ See New Part 4 of the Commission's Rules Concerning Disruptions to Communications, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 16830, 16923-24, § 4.5 (2004) (*Outage Reporting Order*).

⁷ See *Outage Reporting Order*, 19 FCC Rcd at 16925, § 4.9.

⁸ The FCC did not adopt the threshold established in the *Outage Reporting Order* that, for an outage to be included in a report, it must potentially affect 900,000 user minutes of either telephony or associated data. See *Outage Reporting Order*, 19 FCC Rcd at 16925, § 4.9. In particular, the FCC apparently believes that a user minute threshold may be insufficient for the purpose of determining ETC functionality during emergency situations in designated service areas because populations can vary. As a result, the FCC instead requires that ETCs report any outages that potentially affect 10% or more of their customers in a designated service area. Unlike the *Outage Reporting Order*, however, the FCC requires these reports annually instead of shortly after the outage occurs.

⁹ If an ETC had not previously submitted a plan demonstrating how it will remain functional in an emergency, it should do so with its first reporting compliance filing.

- (8) certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

This newly required information will initially be due on October 1, 2006, and thereafter annually on October 1 of each year, at the same time as the carrier's certification that the universal service funds are being used consistent with the Act.¹⁰ However, if the ETC does not seek high cost funding, this additional criterion is not required.

By Order No. PSC-05-0824-FOF-TL, issued August 15, 2005, Docket No. 010977-TL, In Re: State certification of rural telecommunications carriers pursuant to 47 C.F.R. 54.314, we adopted these new high-cost annual certification and reporting requirements established in Order No. FCC 05-46 for all FPSC designated ETCs desiring high cost support. In that Order, we noted that to the extent a Florida ETC believes it has already submitted a report or information to us that would comply with the list above, it may certify in its annual letter which proceeding and on what date such report or information was provided to us, in lieu of resubmitting the required information. However, if a company is not seeking high cost reimbursement, this additional criteria is not required.

III. Conclusion

Section 364.025, Florida Statutes, allows for CLECs to petition this Commission for ETC status. This authority stems from the Commission's statutory duty to exercise oversight over the transition from the monopoly provision of local exchange service to a competitive provision in order to protect consumers and provide for the development of a fair and effective telecommunications market.¹¹ Staff recognizes that there are dual goals of preserving the universal service system, while at the same time fostering competition.¹²

We initially had reservations regarding Budget's petition since Budget is a pre-paid telephone company. However, the FCC considers the provisioning of service through UNEs as meeting its requirement of using its own facilities. Budget has the ability to meet the nine-point list of services that are supported by federal universal support mechanisms using its own facilities (as defined/clarified by the FCC)¹³ or a combination of its own facilities and the resale of another carrier's services. Budget provided data indicating the number of customers being provided service through unbundled network elements, and also provided affidavits showing commercial agreements had been signed with BellSouth and Verizon. Budget has not signed an agreement with Sprint to serve customers in the Sprint service area. Currently Budget cannot serve customers via UNEs in Sprint's territory making it ineligible to receive ETC status in

¹⁰ See e.g., 47 C.F.R. § 54.313; 54.314.

¹¹ Section 364.025(5) addresses CLEC petitions to become a universal service provider and provide its fair share to the funding.

¹² Federal-State Joint Board on Universal Service, Order, CC Docket No. 96-45, 17 FCC Rcd 22642, para. 1 (2002) (Referral Order).

¹³ CC Docket No. 96-45 (Federal –State Joint Board on Universal Service) paragraph. 127, 169 and §54.201(f)

Sprint's area. However, Budget's petition is granted on the condition that it sign an agreement with Sprint to provide service via UNEs.

Budget has acknowledged the requirements of the Florida Lifeline program and has agreed to adhere to the program which provides qualified customers a total of \$13.50 in Lifeline assistance credits consisting of: \$6.50 in federal subscriber line charges, \$1.75 in federal support for states that have approved the credit, and \$1.75 which is a 50% match of federal support for having a state lifeline program requiring a \$3.50 credit under the Florida eligibility criteria. Budget indicates that it will provide the \$3.50 credit to qualified clients, advertise the availability of Lifeline, and begin offering these services within 60 days of receiving ETC status.

Budget commits to use federal universal support only for the provision and maintenance of facilities used for telecommunications services. We hold that Budget shall be required, at the time of annual ETC recertification, to demonstrate how it has used the universal service funds within Florida.

Based on the above, we find that Budget be granted ETC status in the Verizon and BellSouth wire centers (Shown in Attachment A). However, Budget shall not be granted ETC status in Sprint's service area until Budget signs an agreement with Sprint to serve customers via UNEs. Budget shall be required, at the time of annual ETC recertification, to demonstrate how it has used the universal service funds within Florida. Budget shall also adhere to the new certification and reporting requirements as detailed in staff's analysis.

In conclusion, if no person whose substantial interests are affected files a protest to the our Proposed Agency Action within 21 days of the issuance of this Order, then this docket shall be closed upon issuance of a consummating order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Budget Phone, Inc.'s Petition for Eligible Telecommunications Carrier designation is granted in BellSouth Telecommunications, Inc. and Verizon Florida territory as reflected in the body of this Order. It is further

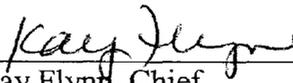
ORDERED that Budget Phone, Inc.'s (Budget) Petition for Eligible Telecommunications Carrier designation is granted in Sprint-Florida, Inc.'s territory to the extent Budget signs an agreement with Sprint to provide service via UNEs. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 27th day of December, 2005.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: 
Kay Flynn, Chief
Bureau of Records

(S E A L)

JLS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on January 17, 2006.

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In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.