

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

Staff of the Public Service Commission of the State	)	
of Missouri,	)	
	)	
Complainant,	)	
v.	)	Case No. TC-2007-0347
	)	
Budget Prepay, Inc. f/k/a/ Budget Phone, Inc.,	)	
	)	
Respondent.	)	

**AMENDED COMPLAINT**

**COMES NOW** the Staff of the Missouri Public Service Commission (Staff), pursuant to section 386.390.1 RSMo (2000) and Commission Rule 4 CSR 240-2.070 and for its first amended complaint against Budget Prepay, Inc f/k/a Budget Phone, Inc. (Budget), states:

***Introduction***

1. This Amended Complaint concerns violations of a Commission rule requiring Quality of Service Reports to be filed quarterly by companies providing basic local telecommunications service. This Complaint also concerns violations of a Commission rule setting out the procedure a company must follow to obtain Commission recognition of a change of that company's name.

***Complainant***

2. Complainant is the Staff of the Missouri Public Service Commission (Staff), acting through the Commission's General Counsel as authorized by Commission Rule 4 C.S.R. 240-2.070(1). A "Complaint may be made. . .in writing, setting forth any act or thing done or omitted to be done by any corporation. . .in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the Commission. . . ." Section 386.390.1 RSMo (2000).

***Respondent***

3. Budget is a telecommunications company certificated in Missouri by the Missouri Public Service Commission to provide basic local telecommunications service (Case No. CA-2003-0024), and is a telecommunications company as defined by section 386.020(51) RSMo (2000) (Supp. 2005).

4. Budget's business address is 6901 W. 70th St., Shreveport, Louisiana 71129.

5. The registered agent in Missouri for Budget is TCS Corporate Services, Inc., 222 Dunklin, Suite 102, Jefferson City, Missouri, 65101.

***Count I***

***Failure to File Quarterly Quality of Service Reports***

6. Complainant hereby adopts by reference and re-alleges the allegations set forth in Paragraphs 1 through 5, above.

7. Budget is offering and providing basic local exchange telecommunications service in Missouri, in the exchanges by Southwestern Bell, LP d/b/a AT&T Missouri, CenturyTel of Missouri, LLC, and Embarq Missouri, Inc.

8. Commission Rule 4 C.S.R. 240-3.550(5), requires that each company which provides basic local telecommunications service "file with the commission no later than forty-five days following the end of each quarter a report, referred to as the quarterly report [or Quarterly Quality of Service Report], of the quality of the telephone service provided to its customers."

9. Budget has not filed Quarterly Quality of Service Reports in compliance with 4 C.S.R. 240-3.550(5).

10. After numerous conversations attempting to bring Budget into compliance with reporting requirements, undersigned counsel sent a letter dated March 7, 2007, demanding that

Budget submit their Quarterly Quality of Service Reports in compliance with 4 C.S.R. 240-3.550(5) by close of business on March 21, 2007. To this date, Budget has not responded.

**WHEREFORE**, the Staff requests that the Commission find that Budget PrePay, Inc. f/k/a Budget Phone, Inc. has failed to file Quarterly Quality of Service Reports pursuant to Commission Rule 4 C.S.R. 240-3.550(5) for every quarter applicable.

### ***Count II***

#### ***Failure to Follow Procedure for Commission Recognition of Company Name Change***

11. Complainant hereby adopts by reference and re-alleges the allegations set forth in Paragraphs 1 through 10, above.

12. Budget Phone, Inc. has changed its name to Budget Prepay, Inc.

13. Commission Rule 4 C.S.R. 240-2.060(5) sets out the procedure a company must follow for Commission recognition of a name change.

14. Budget has not filed notice of its name change in compliance with 4 C.S.R. 240-2.060(5).

**WHEREFORE**, the Staff requests that the Commission find that Budget PrePay, Inc. f/k/a Budget Phone, Inc. has failed to file notice of its name change pursuant to Commission Rule 4 C.S.R. 240-2.060(5).

### ***Count III***

#### ***Authorization to Seek Penalties in Circuit Court***

15. Complainant hereby adopts by reference and re-alleges the allegations set forth in Paragraphs 1 through 14, above.

16. Section 386.570(1) RSMo (2000) provides:

Any corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or

provision thereof, of the commission in a case in which a penalty has not herein been provided for such corporation, person or public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.

17. Section 386.570(2) RSMo (2000) provides:

Every violation of the provisions of this or any other law or of any order, decision, decree, rule, direction, demand or requirement of the commission, or any part or portion thereof, by any corporation or person or public utility is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.

18. Section 386.600 RSMo (2000) provides:

An action to recover a penalty or a forfeiture under this chapter or to enforce the powers of the commission under this or any other law may be brought in any circuit court in this state in the name of the state of Missouri and shall be commenced and prosecuted to final judgment by the general counsel to the commission. No filing or docket fee shall be required of the general counsel. In any such action all penalties and forfeitures incurred up to the time of commencing the same may be sued for and recovered therein, and the commencement of an action to recover a penalty or forfeiture shall not be, or be held to be, a waiver of the right to recover any other penalty or forfeiture; if the defendant in such action shall prove that during any portion of the time for which it is sought to recover penalties or forfeitures for a violation of an order or decision of the commission the defendant was actually and in good faith prosecuting a suit to review such order or decision in the manner as provided in this chapter, the court shall remit the penalties or forfeitures incurred during the pendency of such proceeding. All moneys recovered as a penalty or forfeiture shall be paid to the public school fund of the state. Any such action may be compromised or discontinued on application of the commission upon such terms as the court shall approve and order.

19. The Missouri courts have imposed a duty upon the Public Service Commission to first determine matters within its jurisdiction before proceeding to those courts. As a result, “[t]he courts have ruled that the [Commission] cannot act only on the information of its staff to authorize the filing of a penalty action in circuit court; it can authorize a penalty action only after a contested hearing.” *State ex rel Sure-way Transp., Inc. v. Division of Transp., Dept. of Economic Development, State of Mo.*, 836 S.W.2d 23, 27 (Mo.App. W.D. 1992).

**WHEREFORE**, Staff requests that the Commission authorize the General Counsel of the Commission to bring an action in Circuit Court to recover from Budget PrePay, Inc. f/k/a Budget Phone, Inc., the maximum statutory forfeiture allowed by section 386.570 RSMo for each separate, distinct, and continuing violation.

***Summary of Relief Sought***

**WHEREFORE**, Staff requests that the Commission:

- a) find that Budget PrePay, Inc. f/k/a Budget Phone, Inc. has failed to file Quarterly Quality of Service Reports pursuant to Commission Rule 4 C.S.R. 240-3.550(5) for every quarter applicable,
- b) find that Budget PrePay, Inc. f/k/a Budget Phone, Inc. has failed to file notice of its name change pursuant to Commission Rule 4 C.S.R. 240-2.060(5), and
- c) authorize the General Counsel of the Commission to bring an action in Circuit Court to recover from Budget PrePay, Inc. f/k/a Budget Phone, Inc., the maximum statutory forfeiture allowed by section 386.570 RSMo for each separate, distinct, and continuing violation.

Respectfully submitted,

/s/ Jennifer Heintz  
Jennifer Heintz  
Assistant General Counsel  
Missouri Bar No. 57128

/s/ Sarah Kliethermes  
Sarah Kliethermes  
Rule 13 supervised by Kevin Thompson  
Missouri Bar No. 36288

Attorney for the Staff of the  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102  
(573) 751-5472 (Telephone)  
(573) 751-9285 (Fax)  
[jennifer.heintz@psc.mo.gov](mailto:jennifer.heintz@psc.mo.gov)  
[sarah.kliethermes@psc.mo.gov](mailto:sarah.kliethermes@psc.mo.gov)