

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

| | | |
|----------------------------------|---|------------------------|
| In the Matter of the Petition of |) | |
| Budget Phone, Inc |) | |
| For Designation as an Eligible |) | Case No . CO-2006-0085 |
| Telecommunications Carrier |) | |

**OFFICE OF THE PUBLIC COUNSEL'S MOTION TO DISMISS OR,
IN THE ALTERNATIVE, MOTION FOR EVIDENTIARY HEARING**

The Office of the Public Counsel asks the Missouri Public Service Commission to dismiss the Petition of Budget Phone, Inc. for Designation as An Eligible Telecommunications Carrier. In the alternative, Public Counsel asks the Commission to hold an evidentiary hearing on the application.

Public Counsel suggests that the Petition should be dismissed on two grounds:

- (1) the petition on its face does not show that it was filed by an attorney authorized to practice in Missouri or that it was filed by out of state attorney qualified under 4 CSR 240-2.040 (3) and violates 4 CSR 240-2.040 (Practice Before the Commission) (5) Practice by Non-attorneys. (A natural person may represent himself or herself. Such practice is strictly limited to the appearance of a natural person on his or her own behalf and shall not be made for any other person or entity.);
- (2) Budget Phone, Inc. is not eligible as a matter of law for ETC status in that the company fails to provide the essential and basic telephone services required for ETC status.

The Company's Tariff No. 2, Original Sheet No. 19, 2.4.4 (effective March 31, 2003) under "Rights and Responsibilities of Missouri Residential Telephone Customers," states

"Budget Phone provides basic residential telephone service only (including access to 911 and toll-free 800 services) and the custom calling service listed below **on a prepaid basis** and payment in full is due on your due date. Long distance service is not provided by Budget Phone, Inc. and **you will not have access to the following calls, which will be blocked by Budget Phone, Inc.: long distance, toll, third-number billed calls, incoming collect calls and local or long distance operator services, including local and long distance directory assistance.**" (emphasis added) The tariff charge for monthly local service is \$39.95

Budget Phone, Inc, does not provide all of the basic local services defined in Section 386.020 (34), RSMo but rather offers only a subset of the components of basic local service.

According to the statement of offered services and the disclaimer of services it does not offer described in its tariff, Budget Phone does not provide the "essential services" defined in 4 CSR 240-31.010 (5) for purposes of qualifying for state universal service fund support. It does not provide access to basic local operator services (Subsection (5) (C)), access to basic directory assistance (Subsection (5) (D)), and equal access to interexchange carriers consistent with rule and regulations of the FCC (Subsection (5) (F)). It does not offer all the basic services that the incumbent SBC offers.

Budget Phone blocks access to all direct dialed toll calls, collect calls, DA calls, operator-completed calls, 900 calls, and third party calls, according to its tariff.

It does not offer assistance programs for installation of, or access to, basic local telecommunications services for qualifying economically disadvantaged or disabled customers or both, including, but not limited to, lifeline services and link-up Missouri services for low-income customers or dual- party relay service for the hearing impaired and speech impaired.

Prepaid service providers, such as Budget Phone, do not offer the full scope of basic local service at a price and under similar terms and conditions that are offered by the incumbent or other "full service" CLECs. Prepaid service providers do not offer its services in the same manner or with comparable and substitutable quality as does the incumbent local exchange company. The prepaids offer an "inferior" service that has limitations and restrictions on the customer that are not placed on the typical (or standard) local customer of the incumbent. These restrictions include blocking the ability to dial 1+ and 0+ calls, blocking the ability to reach a presubscribed toll carrier via 1+ dialing parity, general toll blocking requiring use of prepaid calling cards obtained from third party telecom companies to make any toll calls from the customer's residence or place of business.

If Budget Phone intends to be an ETC it must offer quality services at affordable rates throughout the designated service area. Budget Phone's \$39.95 monthly charge for an inferior local service is inconsistent with affordable local rates and is not comparable with SBC's and the full service CLEC's basic local rates.

ETCs should be required to demonstrate their capability and commitment not only to provide service throughout the designated service area, but also to be ready, willing, and able to serve as a carrier of last resort. *See*, Section 254 of the Federal Telecommunications Act of 1996. The PSC should require formal build-out commitments and plans, backed by regular progress reports, to ensure that universal service support is used to provide the supported services and for the underlying infrastructure.

Request to rule on both grounds for dismissal

While the Commission could dispose of this motion by simply dismissing it on the basis of the lack of filing by an attorney, Public Counsel urges the Commission to consider and dismiss on both grounds for dismissal. The applicant (and perhaps other similarly situated prepaid providers) may consider a dismissal solely on the lack of an attorney as just a procedural deficiency and, after appropriate correction, the ETC application process can proceed.

For that reason, Public Counsel urges the PSC to include legal ineligibility based on the tariffed services offered by Budget Phone as grounds for dismissal so that there is no doubt of the PSC's application of the statutory definition of basic local services and the PSC's rule on essential services for purposes of USF.

In the alternative, Public Counsel asks the Commission to hold an evidentiary hearing on the application.

OFFICE OF THE PUBLIC COUNSEL

/s/ Michael F. Dandino

BY: _____
Michael F. Dandino (24590)
Senior Public Counsel
P.O. Box 2230
Jefferson City, MO 65102
(573) 751-4857
(573) 751-5559
Fax (573) 751-5562
email: mike.dandino@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed or hand delivered this 21st day of October 2005 to the following attorneys of record:

General Counsel
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

Faith M . Golding
Regulatory & Revenue Assurance
Budget Phone, Inc
6901 West 70th
PO. Box 19360
Shreveport, LA 71149
(318) 671-5000
Fax (318) 671-5023

/s/ Michael F. Dandino
