

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the)	Application No. C-4852/
Application of Boomerang)	NUSF-105
Wireless, LLC d/b/a enTouch)	
Wireless, Hiawatha, Iowa,)	
seeking designation as an)	
Eligible Telecommunications)	GRANTED
Carrier in the State of)	
Nebraska for the limited)	
purpose of offering)	
wireless lifeline service)	
to qualified households.)	Entered: February 7, 2017

APPEARANCES:

For the Applicant:

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For the Commission:

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Background

By application filed with the Nebraska Public Service Commission ("Commission"), Boomerang Wireless, LLC d/b/a enTouch Wireless, ("Boomerang" or "Company"), of Hiawatha, Iowa, seeks designation as an Eligible Telecommunications Carrier ("ETC") for the limited purpose of receiving federal and state universal service support for participating in the low income programs of the Federal Universal Service Fund ("USF"), the Lifeline program, and the Nebraska Universal Service Fund ("NUSF"), called the Nebraska Telephone Assistance Program ("NTAP"), on a wireless basis. Boomerang seeks designation pursuant to Section 214(e) of the Telecommunications Act of 1996, as amended (the "Act"), and provisions of Nebraska Administrative Code, Title 291, Chapter 5 and Chapter 10, ("Commission Rules"). Boomerang is not seeking USF or NUSF high-cost support. Notice of the application was published in The Daily Record, Omaha, Nebraska, on July 8, 2016. No protests or interventions were filed.

A hearing on the application was held on December 6, 2016, in the Commission Hearing Room, Lincoln, Nebraska, with appearances as shown above.

E V I D E N C E

Kimberly Lehrman, the President of Boomerang, testified at the hearing on behalf of the Company. Ms. Lehrman prefiled direct testimony in the proceeding and states in that testimony that the Company provides wireless mobile phone services through resale of underlying carriers, Verizon, Sprint, AT&T, and T-Mobile.¹ Ms. Lehrman testified at the hearing that Boomerang will have broad coverage in both urban and rural areas and the company focuses on areas outside of urban centers where fewer carriers serve and there is limited carriers available. Ms. Lehrman further testified that Boomerang was an early adopter of broadband offerings within the Lifeline program.² The Company's application states it meets all the statutory and regulatory requirements for designation as an ETC and a Nebraska ETC in the State of Nebraska. Ms. Lehrman states Boomerang's service is especially attractive to low-income consumers because Boomerang's focus on areas of the state with fewer Lifeline providers will make Lifeline discounts available to more Nebraska residents. She went on, testifying that Boomerang's service will serve the public interest as it will enable an increase of service options to low-income consumers, transient users, and other consumers who, due to restrictive credit criteria, deposit requirements and long-term commitments of traditional service providers, are off network and, without any viable alternative, and are likely to remain so.³

Boomerang's application states that it is an Iowa limited liability company with its principal offices located at 955 Kacena Road, Suite A, Hiawatha, Iowa.⁴ Boomerang has been designated a wireless ETC in 28 states, including Arizona, Arkansas, California, Colorado, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, North Dakota, Ohio, Oklahoma, Oregon, Nevada, Pennsylvania, Rhode Island, South Carolina, Texas, Washington, West Virginia, Wisconsin, and Wyoming.⁵

¹ Boomerang Application, Hearing Ex. 5, at pp. 2-3.

² Application No. C-4852/NUSF-105, Hearing Transcript, 10:21 - 11:17. (Hereinafter "TR page number:line number").

³ Boomerang Application, Hearing Ex. 5, at pp. 5-6.

⁴ Boomerang Application, Hearing Ex. 1, at p. 3.

⁵ Boomerang Application, Hearing Ex. 5, at p. 5.

Boomerang is a common carrier and prepaid reseller of commercial mobile radio services ("CMRS") it obtains from its underlying wireless providers, Sprint, Verizon, AT&T, and T-Mobile.⁶

Boomerang is registered with the Nebraska Secretary of State's office and has been duly authorized to conduct business in Nebraska. Boomerang has not been the subject of enforcement sanctions or ETC revocation proceedings in any state.⁷

The Company states in its application it is seeking statewide ETC designation in non-rural and rural service areas for the limited purpose of participating in the Lifeline and NTAP programs. A list of the exchanges in which Boomerang is requesting ETC and NETC designation are identified in Exhibit A attached to the Company's Application.⁸ Upon questioning at the hearing, Ms. Lehrman affirmed that Boomerang was seeking designation in the wire centers served by Sprint, Verizon, AT&T, and T-Mobile and therefore, would be in a position to serve nearly the entire state.⁹

The Company states its service offering will provide Lifeline customers with a choice of Lifeline Service Plans. Boomerang's Voice Minimum Standard Plan will provide 500 voice minutes, 100 texts, and 10 MB of data per month at no charge, with no rollover of minutes. Customers choosing this plan have different options available regarding handsets including using their own device or other discounts and promotions to purchase other devices. The Data Minimum Standard Plan includes 500 MB of data and 100 talk and text units per month with no rollover. Customers choosing this plan provide their own device. Boomerang will also have Tribal Plans available.¹⁰ All plans include voicemail, caller-ID, call waiting, customer service calls, 911 service, and domestic long distance. Each customer will also have the option of purchasing additional minutes.¹¹

Ms. Lehrman detailed that Boomerang advertises its service via materials in print, audio video, and on the web.¹² The company

⁶ *Id.* at 7.

⁷ Boomerang Data Request Responses, Hearing Ex. 4, at p. 2.

⁸ Boomerang Application, Hearing Ex. 1, Exhibit A.

⁹ TR 23:19 - 24:23.

¹⁰ Hearing Ex. 6.

¹¹ Boomerang Data Responses, Hearing Ex. 4, p. 4.

¹² Boomerang Application, Hearing Ex. 1, at pp. 13-14.

commits to fully comply with the requirements for Lifeline advertising in the FCC's Lifeline Reform Order.¹³

Boomerang stated that it satisfies both state and federal requirements to be designated as an ETC and NETC in Nebraska. Boomerang has received forbearance from the Federal Communications Commission ("FCC") from the requirement to use its own facilities at least in part contained in Section 214(e)(1)(A). The Company filed a Compliance Plan with the FCC that received approval on August 8, 2012.¹⁴ A copy of the approved Compliance Plan was included with the Company's application as Exhibit D.

Boomerang also states it demonstrated that it is a common carrier as defined by the FCC and provides all the required services and functionalities to participate in the Lifeline and NTAP program. Further, the Company committed to advertising the availability of supported services using media of general distribution. Finally, Boomerang committed to comply with all the Nebraska-specific requirements for ETCs and NETCs, including only using the approved NTAP enrollment form, not distributing handsets until eligibility was determined by the Commission and all NTAP reporting requirements.

O P I N I O N A N D F I N D I N G S

Section 214(e) of the Act sets forth the standards and processes for a state commission to grant carriers the designation of a federal eligible telecommunications carrier. Nebraska Administrative Code, Title 291, Chapter 5, §§ 009.01-009.02C and Chapter 10, § 004 of the Commission Rules contain the requirements for Commission designation of ETCs and NETCs. The Commission's rules largely reflect the FCC requirements. As Boomerang is only seeking ETC designation for purposes of participating in Lifeline and NTAP, the Commission will not consider the issues and requirements regarding high cost support.

The three general requirements listed in Section 214(e) are:
1) the carrier must be a common carrier; 2) the carrier must offer

¹³ *In the Matter of Lifeline and Link Up Reform and Modernization; Lifeline and Link Up; Federal-State Joint Board on Universal Service; Advancing Broadband Availability Through Digital Literacy Training*, Report and Order and Further Notice of Proposed Rulemaking, Docket Nos. 96-45, 03-109, 11-42, and 12-23, FCC 12-11 (rel. February 6, 2012) ("Lifeline Reform Order").

¹⁴ Boomerang Application, Hearing Ex. 1, at p. 12.

the services supported by the federal fund; and 3) the carrier must advertise the availability of those services. The carrier must also demonstrate the ability to fulfill the requirements throughout the service area for which the carrier is seeking ETC designation.

Common Carrier

The Act defines a common carrier as a person engaged as a common carrier on a for-hire basis in interstate communications utilizing either a wire or radio technology.¹⁵ The FCC's rules also specifically provide that CMRS providers, like the Applicant, are treated as common carriers.¹⁶ Upon review of the application and testimony presented, the Commission finds that Boomerang is a common carrier for purposes of ETC designation.

Supported Services

Chapter 47 C.F.R. Sections 54.101(a) and 54.202(a) of the FCC's Rules and Section 009.02A2 of the Commission Rules require an ETC to demonstrate that it will offer the services that are supported by federal universal service. The FCC's supported services were revised in its *Lifeline Reform Order* and are as follows:

- a. voice-grade access to the public switched network or its functional equivalent;
- b. minutes of use for local service without additional charge to the end user;
- c. access to emergency services; and
- d. toll limitation for qualifying low-income consumers.¹⁷

Voice Grade Access to the Public Switched Network

Boomerang provides voice grade access to the public switched network through the purchase of wholesale CMRS services from Sprint, Verizon, AT&T, and T-Mobile, its underlying carriers as required under 47 C.F.R. § 54.101(a).

Local Usage

¹⁵ See 47 C.F.R. § 153(10).

¹⁶ See 47 C.F.R. § 54.20.9(a).

¹⁷ See *Lifeline Reform Order* at pp. 207-208.

Boomerang's proposed low income wireless offering under its Lifeline Plan offers a choice of rate plans that provide customers with minutes of local use at no additional charge. Under Boomerang's plans, eligible subscribers will receive either 500 prepaid voice minutes and 100 texts or 500 MB of data and 100 talk/text unites per month at no charge and with no additional activation fees or other charges.¹⁸

Access to Emergency Services

The Company states that it complies with all FCC regulations governing the deployment and availability of E911 compatible handsets. The handsets provided to eligible customers, at no additional charge, are emergency service-compatible. Boomerang states it will provide its customers access to 911 or E911 services, and will comply with Commission requirements regarding E911-compatible handsets and the FCC's forbearance grant conditions relating to the provision of 911 and E911 services and handsets.¹⁹

Toll Limitation for Qualified Low-Income Customers

Regarding toll limitations, the FCC has found that toll limitation would no longer be deemed a supported service.²⁰ The FCC further found that ETCs that provide Lifeline customers with a set amount of minutes and do not distinguish between toll and non-toll calls are not required to provide toll limitation service.²¹ Boomerang provides prepaid wireless services, which by its very nature, provides effective toll limitation, providing a set amount of minutes and not distinguishing between toll and non-toll minutes.²²

Other Services

In addition to the required supported services Boomerang will also provide access to operator services, access to interexchange services, and access to directory assistance.²³

¹⁸ Hearing Ex. 6.

¹⁹ Boomerang Application, Hearing Ex. 1, at p. 11.

²⁰ See *Lifeline Reform Order* at ¶ 367.

²¹ *Id.* at ¶ 49.

²² Boomerang Data Responses, Hearing Ex. 4, p.6.

²³ Boomerang Data Responses, Hearing Ex. 4, p.4.

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Upon review of the application and testimony presented the Commission finds that Boomerang has the ability and has committed to provide the supported services listed above.

Facilities Requirement

Section 009.02A2 of the Commission Rules requires an ETC to demonstrate that it will offer the supported services above using either its own facilities or a combination of its own facilities and resale of another carrier's services.

However, the FCC, in its *Lifeline Reform Order* has granted blanket forbearance to all carriers seeking only Lifeline support. Carriers wishing to avail themselves of the forbearance must file a compliance plan with and receive FCC approval of such plan.²⁴ Boomerang states in its application that it has filed its Compliance Plan and received FCC approval on August 8, 2012.²⁵

We find that Boomerang, with the approval of its Compliance Plan by the FCC, has met the requirements of Section 009.02A2.

Advertising Supported Services

Section 009.02A3 of the Commission Rules requires an ETC to advertise the availability of supported services and related charges using media of general distribution. ETCs must also publicize the availability of Lifeline or NTAP services in a manner reasonable calculated to reach those that qualify for the service.

Based on the application, we find Boomerang has provided sufficient commitments to advertise the availability of such services and charges using media of general distribution and in a manner that is designed to reach those likely to qualify for such services. Boomerang's application states that the Company will specifically target its advertising so as to reach its intended market base of low-income consumers. The Company states its will utilize a wide variety of media print, audio visual and web-based outlets.²⁶

Designated Service Area

Boomerang's application seeks statewide authority and will serve areas served by Sprint, Verizon, AT&T, and T-Mobile.

²⁴ See *Lifeline Reform Order* at ¶¶ 368, 373, and 379.

²⁵ Boomerang Application, Hearing Ex. 1, at p. 12.

²⁶ *Id.* at pp. 13-14.

Boomerang's designation as an ETC shall be for the areas identified in Attachment A to Exhibit 1, the Company's application.

Provisioning of Continuous Service

Rule 009.02A4 of the Commission Rules requires that an ETC not only demonstrate the ability and commitment to providing the supported services listed above, but must also demonstrate the ability to continuously provide such services in its designated Service Area. We find upon our review of the application and testimony that Boomerang has demonstrated and committed to providing the supported services listed above continuously throughout its Service Area. This finding is subject to our findings and directions contained in the section below.

Provision of Service to Requesting Customers

Section 009.02A5 of the Commission's Rules require an ETC to demonstrate its commitment to provide service throughout the designated area to all customers who make reasonable request for service.

As demonstrated by Boomerang in the Company's application, the Company is currently able to provide the supported services throughout its requested service areas by reselling the service which it obtains from its underlying facilities-based providers Verizon, Sprint, AT&T, and T-Mobile.²⁷

However, as Boomerang is a wireless reseller, the Commission knows wireless service coverage in certain areas of Nebraska is less than ubiquitous. The Company stated it would provide service in zip codes with 50% or greater wireless coverage in that area.²⁸ With the latest FCC Lifeline Modernization Order instituting Port Freezes, customers who enroll in NTAP and find out they can't receive wireless service in the certain areas where they live or work, could be precluded from switching their NTAP benefit to another carrier for certain timeframes.²⁹ We are concerned about the hardships for customers this might create, especially in rural areas of Nebraska, with inconsistent wireless service coverage.

²⁷ *Id.* at p. 15.

²⁸ TR 24:6-23.

²⁹ *In the Matter of Lifeline and Link Up Reform and Modernization; Telecommunications Carriers Eligible for Universal Service Support; Connect America Fund, Third Report and Order, Further Report and Order, and Order on Reconsideration*, Docket Nos. 11-42, 09-197, and 10-90 (rel. April 27, 2016) ("Lifeline Modernization Order").

Ms. Lehrman discussed these concerns about coverage areas upon questioning at the hearing. She agreed that the Company would work with any customer who finds the network they chose doesn't work for them and assist them to find a different network that might better serve their needs.³⁰ She stated there would be no fees assessed to the customer experiencing these issues for switching networks.

We find the company shall abide by Ms. Lehrman's commitment to work with and assist Boomerang customers experiencing problems receiving wireless service from its underlying carriers. Further, we find the Company shall fully disclose to potential customers the coverage limitations in any zip code where the company's underlying carriers provide less than 100% coverage. In light of the limitations that the FCC Port Freeze provision places on customers once a carrier is chosen, we find that customers must be enabled to make fully informed decisions prior to applying for NTAP benefits.

With these additional directions, we find that Boomerang has demonstrated an ability and commitment to satisfy its obligation to provide service upon reasonable request throughout the Company's requested service areas.

Ability to Remain Functional in Emergency Situations

Section 009.02A7 of the Commission's Rules requires an ETC Applicant to demonstrate an ability to remain functional during emergency situations. This provision of the Rules only applies to companies seeking high-cost support; however, Boomerang in its application demonstrated that it will provide its customers with the same level of emergency functionality as its underlying providers. Boomerang, through its underlying carriers, will provide access to a reasonable amount of back-up power to ensure functionality without an external power source, reroute traffic around damaged facilities, and has the capability of managing traffic spikes resulting from emergency situations.³¹

Public Interest

Rule 009.02A1 of Chapter 5 of the Commission Rules requires any company seeking ETC designation to demonstrate that such designation is consistent with the public interest, convenience,

³⁰ TR 32:5-21.

³¹ *Id.* at p. 16.

and necessity. The public interest consideration may include the benefits of increased consumer choice and the unique advantages and disadvantages of the Applicant's service offerings.³²

In its application, Boomerang states the public interest benefits of the Company's wireless service include reaching more eligible Nebraska consumers furthering the goals of the Lifeline and NTAP programs. The Company will increase the choices available to low-income consumers, expanding the number of affordable telecommunications services available to low-income consumers. Further, Boomerang states a grant of its application will provide customers with access to high quality service and the benefits of a mobile service. The Company also states the public interest benefits of the Company's wireless service include a larger local calling area, the convenience and security afforded by a mobile telephone service, the opportunity for customers to have a stable contact method where traditional landline service would be unavailable or not a viable option. Boomerang's wireless service also allows the customer to control cost and avoid long term contracts.³³

Boomerang committed to comply with the Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service and further committed to satisfying all applicable state and federal guidelines related to consumer protection and service quality standards.³⁴ Additionally, Boomerang committed to comply with the applicable Rules and Regulations of the Commission. Based on the evidence before us, we conclude that Boomerang's service offerings will provide a public interest benefit and its business plan provides a unique advantage to low-income consumers. We find Boomerang has demonstrated that its designation as an ETC would be consistent with the public interest, convenience, and necessity.

Nebraska ETC Designation

Rule 004.04A and 004.04B of Chapter 10 of the Commission Rules requires carriers designated as ETC for purposes of receiving USF support to participate in NTAP and comply with Section 006 of Chapter 10 of the Commission Rules or the "NTAP Rules". Boomerang, in its application committed to complying with the Commission's

³² See 47 C.F.R. § 54.202(c).

³³ Boomerang Application, Hearing Ex. 1, at p. 18.

³⁴ Id. at p. 15.

orders, rules and regulations regarding NTAP including the requirement to use only the Commission approved NTAP Application Form, requirements regarding additions and removals of NTAP subscribers from the NTAP program and the semi-annual reporting of NTAP customer lists. Ms. Lehrman also expressed an understanding on behalf of the Company that all eligibility determinations of NTAP applicants are made exclusively by the Commission. Boomerang further committed to complying with those requirements adopted by the FCC in its *Lifeline Reform Order* to annually verify the eligibility of NTAP subscribers³⁵ in cooperation with NTAP Department of the Commission.

The Company further committed to cooperating with the NTAP Department prior to initiating service in Nebraska and ensuring all administrative issues are dealt with prior to beginning advertising and soliciting business in Nebraska. We find that Boomerang shall contact the NTAP Department prior to beginning any operations in Nebraska to deal with administrative and logistical issues, including getting Boomerang set up on the NTAP online form, NTAP reporting, and general procedures in NTAP. Further, Boomerang shall provide courtesy copies of any print advertising being utilized in Nebraska to the NTAP Department.

Finally, due to ongoing efforts to prevent fraud, waste and abuse in the NTAP and Lifeline programs, the Commission will closely scrutinize Boomerang's compliance with our rules and regulations and will take any and all administrative action it deems appropriate, including revocation of Boomerang's ETC designation, if it becomes evident the Company is not in full compliance. Failure by the Company to comply with its commitments made to the Commission during this proceeding will not be tolerated.

Conclusion

In summary, upon review of the application and evidence presented at the hearing, we find the Applicant has demonstrated that it meets the standards set forth in 47 U.S.C. § 214(e), the supplemental requirements set out in the *Lifeline Reform Order*, and applicable state and federal law for the designation of eligible telecommunications carriers in the proposed geographic area for the limited purpose of participation in the Lifeline and

³⁵ Lifeline Reform Order at pp. 240-242.

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Nebraska Telephone Assistance Program and the application should be approved.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-4852/NUSF-105, should be and it is hereby granted and Boomerang Wireless, LLC, d/b/a EnTouch Wireless, is designated as an eligible telecommunications carrier in the State of Nebraska for the limited purpose of receiving federal universal service support to participate in the Lifeline program as requested in the application consistent with the findings and conclusions made herein.

IT IS FURTHER ORDERED that Boomerang Wireless, LLC, d/b/a EnTouch Wireless, is hereby declared to be a Nebraska Eligible Telecommunications Carrier for the limited purpose of receiving state universal service support to participate in the Nebraska Telephone Assistance Program.

IT IS FURTHER ORDERED that Boomerang Wireless, LLC, d/b/a EnTouch Wireless, shall file information with the Commission evidencing it is advertising through media of general distribution on or before July 1st each year hereafter.

IT IS FURTHER ORDERED that Boomerang Wireless, LLC, d/b/a EnTouch Wireless shall file a copy of this order with the Universal Service Administrative Company ("USAC") and the FCC to commence its receipt of federal universal service support effective as of the date of this Order.

IT IS FURTHER ORDERED that Boomerang Wireless, LLC, d/b/a EnTouch Wireless shall fully comply with the Commission directions regarding disclosure of wireless service coverage areas as outlined above.

IT IS FINALLY ORDERED that Boomerang Wireless, LLC, d/b/a EnTouch Wireless shall contact the Nebraska Telephone Assistance Program Department prior to beginning any advertising or business in Nebraska and cooperate to ensure compliance with all administrative matters and procedures for initiating business and on-going participation in the Nebraska Telephone Assistance Program.

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ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 7th day
of February, 2017.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Mary Rude
Crystal Swales
Dee Fause

Tim Schram

Chairman

ATTEST:

Jeffrey L. Polg

Executive Director

//s//Frank E. Landis
//s//Tim Schram