

September 18, 2015

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place E. Suite 350
St. Paul, MN 55101-2147

RE: **Boomerang Wireless, LLC d/b/a enTouch Wireless' Petition for Expanded Service Area as a Wireless ETC in the State of Minnesota**
Docket No: P6894/M-15-782

Dear Mr. Wolf:

Attached are the comments of the Minnesota Department of Commerce in the above referenced matter.

The petition was filed on August 26, 2015 by:

Stanley Q. Smith
J. Andrew Gipson
Jones Walker, LLP
190 E. Capitol Street, Suite 800 (39201)
P.O Box 427
Jackson, MS 39205-0427

The Department recommends approval of the petition with conditions, and is available to answer any questions the Commission may have.

Sincerely,

/s/ ALIXANDRA COWMEADOW
Rates Analyst

/s/ KATHERINE DOHERTY
Rates Analyst

AC/KD/lt
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE

DOCKET NO. P6894/M-15-782

I. BACKGROUND

A. PROCEDURAL BACKGROUND

On August 26, 2015, Boomerang Wireless, LLC d/b/a enTouch Wireless (Boomerang) filed a petition seeking an expanded service area in which Boomerang is designated as an Eligible Telecommunications Carrier (ETC) in the state of Minnesota. Boomerang requests that the Commission approve its Expanded Service Area set forth in the petition for the purposes of receiving federal and state low-income universal support for prepaid wireless services, specifically Lifeline. Boomerang plans to offer Lifeline services in all areas in Minnesota that are served by its underlying carriers (Sprint, Verizon, T-Mobile and AT&T) and therefore requests designation statewide in all exchanges to the extent that its underlying carriers have facilities and coverage.

B. HISTORICAL BACKGROUND

On March 28, 2013, Boomerang was designated by the Commission as an ETC to the extent of the service area of its underlying carriers in Docket PT6894/M-12-969¹. Since the date of the Designation Order, the Company has obtained access to the AT&T network via its Mobile Virtual Network Enabler (MVNE) and therefore has expanded its coverage area throughout the state.

On April 19, 2013, Boomerang filed an informational tariff, among other compliance items, as required by the Boomerang Order.

¹ In the Matter of the Petition of Boomerang Wireless LLC for Designation as an Eligible Telecommunications Carrier in Minnesota, Docket No. P6824/M-12-969, Order Granting Petition for ETC Designation with Conditions, March 28, 2013. (*Boomerang Order*).

II. STATEMENT OF ISSUES

1. Whether Boomerang Wireless has demonstrated the intent and capability of providing and advertising the services required in 47 CFR section 54.101(a) throughout its proposed expanded service area.
2. Whether expanding Boomerang's ETC service area to include all areas served by its underlying carriers Sprint, Verizon, T-Mobile and AT&T is in the public interest.

III. APPLICABLE LAW

A. FEDERAL LAW

Pursuant to 47 U.S.C § 214 (e)(2), the Commission has the statutory authority to designate a common carrier as an ETC that offers the services supported by federal Universal Service Fund support mechanisms and advertises “ the availability of such services and the charges therefore using media of general distribution.”² As noted in Section 214 (e)(2) of the 1996 Act (the Act), the Commission has the authority to designate the service area for each ETC.

Title 47, Section 214(E)(2) of the U.S.C provides that:

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. 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 (1). 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.

Section 214(e)(1) of the Act³ provides:

A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section

² 47 C.F.R § 54.201(d)(2).

³ 47 U.S.C § 214(e)(1).

254 of this title and shall, throughout the service area for which the designation is received—

- (A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and
- (B) advertise the availability of such services and the charges therefor using media of general distribution.

FCC Rule C.F.R 54.201(d) requires that a common carrier designated as an eligible telecommunications carrier under this section shall be eligible to receive universal service support in accordance with section 254 of the Act and shall, throughout the service area for which the designation is received:

- (1) Offer the services that are supported by federal universal service support mechanisms under subpart B of this part and section 254(c) of the Act, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and
- (2) Advertise the availability of such services and the charges therefore using media of general distribution.

FCC Rule C.F.R 54.202 sets forth requirements for designation of ETCs, and states:

- a) In order to be designated an eligible telecommunications carrier under section 214(e)(6), any common carrier in its application must:
 - 1. i. Certify that it will comply with the service requirements applicable to the support it receives.
 - ii. Submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network throughout its proposed service area. Each applicant shall estimate the area and population that will be served as a result of the improvements.
 - iii. Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged

facilities, and is capable of managing traffic spikes resulting from emergency situations.

- iv. Demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.
 - v. For common carriers seeking designation as an eligible telecommunications carrier for purposes of receiving support only under subpart E of this part, demonstrate that it is financially and technically capable of providing the Lifeline service in compliance with subpart E of this part.
 - vi. For common carriers seeking designation as an eligible telecommunications carrier for purposes of receiving support only under subpart R of this part, submit information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of this plan, additional charges, if any, for toll calls, and rates for each such plan. To the extent the eligible telecommunications carrier offers plans to Lifeline subscribers that are generally available to the public it may provide summary information regarding such plans, such as a link to a public Web site outlining the terms and conditions of such plans.
- b). Public interest standard. Prior to designating an eligible telecommunications carrier pursuant to section 214(e) (6), the Commission determines that such designation is in the public interest.

IV. ANALYSIS

Boomerang's Capability and Intent to Offer Voice Telephony

The Commission determined, in designating Boomerang as an ETC throughout its current service area that Boomerang is capable of and willing to offer "voice telephony service,"

including voice grade access to the public switched network or its functional equivalent, minutes of use for local service provided at no additional charge to end users, toll limitation to qualifying low income consumers and access to 911 and enhanced 911 emergency services as required by FCC Rule 47 C.F.R. 54.101.⁴ Boomerang affirms, in its petition, its commitment to offer voice telephony throughout its expanded service area subject to the same terms and conditions set forth in the Boomerang Order.⁵

Boomerang's Requested Service Area

The informational tariff filed by Boomerang on April 19, 2013, included a list of Minnesota rural and non-rural zip codes and towns in which it proposes to offer prepaid wireless Lifeline service. In its current petition, Boomerang requests designation in all Minnesota exchanges to the extent that its underlying carriers, Sprint, Verizon, T-Mobile and AT&T provide wireless service. Boomerang has provided, with its petition, an updated list of the Minnesota wire centers and zip codes to reflect its newly expanded service area. The Department recommends that Boomerang be required to incorporate the list into its informational tariff.

Boomerang's Intent to Advertise the Supported Services throughout its Expanded Service Area

Boomerang has provided sample advertisements and market material that support its intent to advertise throughout its expanded service area.

As an ETC for the sole purpose of providing Lifeline service to low income customers, it is to Boomerang's benefit to advertise its offerings and engage in outreach efforts that will result in increased participation in the Lifeline program. Boomerang has provided sufficient information about its advertising plan and planned disclosures to consumers to demonstrate its intent to advertise the supported services throughout its expanded service area.

Boomerang's Willingness to Comply with the Applicable Service Requirements

The Department notes that Boomerang is bound by the service requirements codified in FCC Rules 54.405, 54.410, 54.416, 54/417, and 54.422, throughout its expanded service area, and has committed to comply with the conditions set forth in the Boomerang Order.⁶

⁴ Boomerang Order, page 3 and pages 5-6.

⁵ Boomerang Petition, page 5.

⁶ Specifically, Boomerang committed to 1) notify the Department and the Commission upon any changes to its Lifeline offering terms, conditions, or rates, or if seeks to withdraw its Lifeline offering or any portion thereof, and to amend its informational tariff or customer service agreement accordingly; and 2) notify the Department and the Commission in the event it is not able to fulfill a qualified customer's reasonable request for service within 10 days of making such a determination

Boomerang's Ability to Remain Functional in Emergency Situations

Boomerang is providing service to its customers through the use of facilities obtained from other carriers and as such is able to remain as functional in emergency situations as previously established carriers. This includes access to a reasonable amount of back-up power to ensure functionality without an external power source, re-routing of traffic around damaged facilities, and the capability of managing traffic spikes resulting from emergency situations.

The Department notes that Sprint has provided certification that its reasonable amounts of back-up power to ensure functionality without an external power source, the ability to reroute traffic around the damaged facilities and the ability to manage traffic spikes resulting from emergency situations, as well as additional specific information for the to support its claim in other ETC designation dockets.⁷ Verizon and T-Mobile have provided similar certifications in other dockets before the Commission. AT&T, however, has not provided said certification in the current docket, or, to the Department's knowledge, in other ETC dockets before the Commission. The Commission may wish to require that Boomerang (or AT&T on behalf of Boomerang) provide such certification to ensure that the service provided to Boomerang customers via AT&T will remain functional in a variety of emergency situations.

Service Quality, Consumer Protection, and Customer Service Commitments

Boomerang committed, in its initial petition for ETC designation, to comply with the Cellular Telecommunications and Internet Association (CTIA) Consumer Code, which the FCC has found to be an adequate commitment to consumer protection and service quality standards.

Boomerang's Lifeline Offerings

Boomerang describes its current Lifeline offerings on page 9 of its petition, stating that:

Under the Plan, qualified Lifeline customers who reside in Minnesota will be provided with 250 free anytime local and long distance minutes, including texting at 1 text per minute of use. The minutes do not roll over from one month to the next.

Qualified customers residing on tribal lands will be offered 1000 free minutes, including texting at the rate of 1 text per minute of use.

Boomerang notes that it is discontinuing offering the 125 minute plan described in its initial petition, stating that "[d]emand for this plan has been weak to non-existent in

⁷ See, for example, Docket No. P6863/11-314, DOC September 8, 2012 Comments, page 15 and Docket No. P6867/M-11-473 DOC October 29, 2012 comments, page 11-12.

Boomerang's experience. For example, in the state of Minnesota, there are no Lifeline customers enrolled in the 125 minute plan.⁸

Boomerang should be required to update its informational tariff to include the tribal offering and remove the 125 minute plan.

Public Interest

The Commission has already found designation of Boomerang as an ETC throughout its current service area to be in the public interest.⁹ There is no reason to find otherwise in the instant docket.

Designating Boomerang as an ETC throughout its proposed expanded service area will result in increased consumer choice, and may engender competition among Lifeline wireless ETCs within the expanded service area. Boomerang points out that “[i]n order to remain competitive in low-income markets..., all carriers will have greater incentives to improve networks, increase service offerings, and lower rates.”¹⁰

The Commission has found, in its consideration of other ETC applications, that, in general, the designation of qualified competitive ETCs in the public interest and comports with Minnesota's telecommunications goals of supporting universal service, maintaining just and reasonable rates, promoting customer choice, encouraging fair and reasonable competition for telephone service in a competitively neutral manner, maintaining or improving quality of service, and promoting customer choice.

V. COMMISSION ALTERNATIVES

1. Find that Boomerang has made a credible showing of its capability and intent to provide and advertise an affordable, quality Lifeline offering including “voice telephony” throughout its proposed service area, and that its designation for the provision of Lifeline is in the public interest. Grant Boomerang's petition for an expanded service area as an ETC for the purpose of providing Lifeline service to qualifying Minnesota customers.
2. Find that Boomerang has not made a credible showing of its capability and intent to provide and advertise an affordable, quality Lifeline offering, throughout its proposed

⁸ Boomerang petition, page 9, fn 13. The Department notes that on June 22, 2015, the FCC released its Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order in the Matter of Lifeline and Linkup Reform, *et al.*, in Docket WC Docket No. 11-42, *et al.*, which contemplates many changes to the Lifeline program, including establishing minimum service levels, which, if and when implemented, would impact Boomerang's offerings.

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¹⁰ Boomerang Petition, page 8.

- service area, or that its designation for the provision of Lifeline service is not in the public interest. Deny Boomerang's petition for an expanded service area.
3. Find that Boomerang has made a credible showing of its capability and intent to provide and advertise an affordable, quality Lifeline offering, throughout its proposed expanded service area, and that its designation for the provision of Lifeline service is in the public interest subject to some or all of the following conditions:
 - A. Require Boomerang to provide certification that, in the portions of its service area served by AT&T, AT&T has reasonable amounts of back-up power to ensure functionality without an external power source, the ability to reroute traffic around the damaged facilities and the ability to manage traffic spikes resulting from emergency situations; and that AT&T will provide the same level of service to Boomerang customers as it provides to its own customers.
 - B. Require Boomerang to incorporate the revised description of its service area (Exhibit A attached to Boomerang's petition) into its informational tariff.
 - C. Require that Boomerang update its informational tariff to remove the 125 minute plan, and to include the tribal plan.
 - D. Other conditions of the Commission's choosing.

VI. DEPARTMENT RECOMMENDATION

The Department recommends alternative 3, subject to conditions A, B, and C.

/lt

CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce
Comments**

Docket No. P6894/M-15-782

Dated this 18th day of September 2015

/s/Sharon Ferguson

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