

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BOOMERANG WIRELESS,)	
LLC FOR DESIGNATION AS AN ELIGIBLE)	CASE NO.
TELECOMMUNICATIONS CARRIER ON A)	2012-00422
WIRELESS BASIS (LOW-INCOME ONLY))	

ORDER

On September 14, 2012, Boomerang Wireless, LLC ("Boomerang"), a reseller of Commercial Mobile Radio Service, also known as a Mobile Virtual Network Operator, filed an application under 47 U.S.C. § 214(e)(2) seeking designation as an Eligible Telecommunications Carrier ("ETC"). Boomerang seeks to receive both federal low-income and Kentucky Universal Service Fund ("USF") support for wireless services.¹ Boomerang seeks ETC designation only for the purpose of participation in the Lifeline program. Boomerang does not seek high-cost support.

The application states that: (1) Boomerang meets all the requirements for designation as an ETC to serve the designated areas in the state of Kentucky;² (2) Boomerang requests designation throughout each of the licensed service areas within its service coverage;³ (3) In accordance with 47 U.S.C. § 214(e)(2), Boomerang seeks to be designated as an ETC in its wireless coverage area;⁴ and (4) Designation of

¹ Boomerang requests ETC designation throughout its licensed service area. App. at pp. 2 and 5.

² Id. at pp. 3-6.

³ Id. at pp. 2-3.

⁴ Id. at p. 3.

Boomerang as an ETC for the designated areas served in Kentucky will serve the public interest.⁵

Boomerang's planned wireless Lifeline offering will provide eligible customers with the following two alternative Lifeline plans: 125 units that roll over; or 250 units without roll over. One unit equals one minute or one text. Lifeline customers will receive a free handset and have the ability to purchase additional airtime. In addition to voice services, Lifeline customers also will have access to a variety of other standard features at no additional charge, including voicemail, call forwarding, three-way calling, caller I.D., and call-waiting services.⁶

Consumers will be enrolled in person or directed to a toll-free number, via company literature, collateral, or advertising, and to Boomerang's website, which will contain a link to information regarding its Lifeline service plans, including a detailed description of the program and state-specific eligibility criteria.⁷

Boomerang has stated in its response to Commission Staff's request for information that it will submit to the Commission the Kentucky USF fee and the Kentucky Telecommunications Relay Service and Telecommunications Access Program fee for each customer (although not billed directly to the customer because the customers do not receive bills.)⁸ Boomerang also states that it will remit the statewide wireless 911 fee to the Commercial Mobile Radio Services Board.⁹ Boomerang states it

⁵ Id. at p. 17.

⁶ App. Ex. C.

⁷ App. Ex. A, p. 8.

⁸ Response to Commission Staff's First Request for Information, filed Nov. 9, 2012, Items 1 and 2.

⁹ Id., Item 3.

will not provide toll-limitation services since its calling plans do not charge any fees for toll calls.¹⁰

DISCUSSION

Pursuant to 47 U.S.C. § 254(e), “only an eligible telecommunications carrier designated under 47 U.S.C. § 214(e) shall be eligible to receive specific federal universal service support.” Pursuant to 47 U.S.C. § 214(e)(1)(A) and (B), a common carrier designated as an ETC must offer the services supported by the federal universal service support mechanisms, using either its own facilities or a combination of its own facilities and resale of another carrier’s services throughout its designated service area, and it must advertise the availability and charges for those services.

Pursuant to 47 U.S.C. § 214(e)(2), state commissions bear the primary responsibility for performing ETC designations. Under the same section, the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, as long as the requesting carrier meets the requirements of 47 U.S.C. § 214(e)(1). Also, before designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.

¹⁰ App. at p. 10.

Requirements for ETC Designation by the Federal
Communications Commission ("FCC")

In 1997, the FCC issued a Public Notice setting forth the procedures a carrier must use when requesting designation as an ETC from the FCC.¹¹ The Kentucky Public Service Commission likewise collects similar information pursuant to that Notice. A carrier seeking ETC designation must file a petition providing the following: (1) A certification that the petitioner offers all services designated for support by the Commission pursuant to section 254(c) of the Telecommunications Act of 1996 ("the Act"); (2) Certification that the petitioner offers the supported services using either its own facilities or a combination of its own facilities and resale of another carrier's services;¹² (3) A description of how the petitioner advertises the availability of the supported services and the charges therefor using media of general distribution; and (4) If the petitioner is not a rural telephone company, a detailed description of the geographic service area for which it requests to be designated as an ETC from the Commission.¹³

In addition, the FCC's rules require that in order to be designated as an ETC, a petitioner must: (1) Certify that it will comply with the service requirements applicable to the support that it receives; (2) Demonstrate its ability to remain functional in emergency

¹¹ Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act, Public Notice, 12 FCC Rcd 22947, 22948 (1997) (Section 214(e)(6) Public Notice).

¹² Lifeline Reform Order, FCC 12-11 at ¶. 368 (adopting a blanket forbearance of the facilities requirement of section 214(e)(1)(A) for non-facilities based carriers that seek limited ETC designation to participate in the Lifeline program) ("Lifeline Reform Order"). In the Matter of Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42; Lifeline and Link Up, WC Docket No. 03-109; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Advancing Broadband Availability Through Digital Literacy Training, WC Docket No. 12-23; Report and Order and Further Notice of Proposed Rulemaking Adopted: January 31, 2012 Released: February 6, 2012.

¹³ Section 214(e)(6).

situations; (3) Demonstrate that it will satisfy applicable consumer-protection and service-quality standards; (4) Demonstrate that it is financially and technically capable of providing the Lifeline service; and (5) Submit information describing the terms and conditions of any voice telephony plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan.¹⁴

Prior to designating an ETC pursuant to section 214(e)(6), the Commission must determine whether such designation is in the public interest.¹⁵ In determining the public interest, the Commission historically has considered the benefits of increased consumer choice and the unique advantages and disadvantages of the petitioner's service offering.

The federal universal service Lifeline program is designed to reduce the monthly cost of telecommunications service for qualifying consumers. The Lifeline program reimburses ETCs for providing qualifying low-income consumers with discounts of \$9.25 off the monthly cost of their telephone service.¹⁶ The Kentucky Lifeline program provides additional reimbursement to ETCs for providing eligible consumers with discounts of up to an additional \$3.50 off the monthly cost of their telephone service.¹⁷

As described below, Boomerang has provided the Commission with the information required for designation as an ETC in the service area at issue.¹⁸ We find

¹⁴ 47 C.F.R. § 54.202(a).

¹⁵ 47 U.S.C. § 214(e)(6); and 47 C.F.R. § 54.202(b).

¹⁶ 47 C.F.R. § 54.403(a)(1).

¹⁷ Administrative Case No. 360, *An Inquiry into Universal Service and Funding Issues* (Ky. PSC May 22, 1998), at 37, determining Kentucky USF support of \$3.50 per line per month.

¹⁸ App. at p. 11 and footnote 1.

that the public interest supports such designation, subject to Boomerang's compliance with the representations and commitments made by Boomerang in its application and the FCC's rules. Boomerang must also comply with the conditions set forth in its compliance plan.¹⁹

OFFERING THE SERVICES DESIGNATED FOR SUPPORT

Petitioners for ETC designation must certify that they offer all services designated for support by the Commission pursuant to section 254(c) of the Act.²⁰ Boomerang has demonstrated through the required certifications and related filings that it now offers, or will offer upon designation as a limited ETC, the voice telephony services supported by the Lifeline program. Boomerang certifies that it now provides, or will provide throughout its designated service area, the services and functionalities enumerated in 47 C.F.R. § 54.101(a) throughout the licensed service areas of its underlying carriers.²¹

¹⁹ App. Ex. A.

²⁰ See 47 U.S.C. § 214(e)(1)(A); Section 214(e)(6) Public Notice, 12 FCC Rcd at 22948, ¶ 2.

²¹ Specifically, Boomerang certifies that it provides voice telephony services supported by federal universal service support mechanisms, as set forth in 47 C.F.R. § 54.101, which includes: (1) voice-grade access to the public switched telephone network; (2) local usage; (3) access to emergency services; and (4) Lifeline service plans that do not distinguish between toll and non-toll calls in the pricing of service. See application at pp. 9-10. In the Lifeline Reform Order, the FCC adopted rules that provide that toll-limitation service is no longer necessary for any Lifeline service that does not distinguish between toll and non-toll calls in the pricing of service. See Lifeline Reform Order at ¶ 49.

OFFERING THE SUPPORTED SERVICES USING A CARRIER'S OWN FACILITIES

In general, petitioners for ETC designation must certify that they will offer the supported services using either their own facilities or a combination of their own facilities and the resale of another carrier's services.²²

In its Lifeline Reform Order,²³ the FCC decided to forbear, on its own motion, from applying the facilities requirement of Section 214(e)(1)(A) to any telecommunications carrier that seeks limited ETC designation to participate in the Lifeline program, conditioned on the ETC's compliance with certain 911 requirements and the ETC's filing with and approval by the FCC of a compliance plan describing the ETC's adherence to certain protections prescribed by the FCC. Boomerang opted to pursue forbearance. On August 8, 2012, the FCC approved Boomerang's Compliance Plan ("Compliance Plan").²⁴ A copy of the approved Compliance Plan and the FCC Public Notice of Approval was included with the application as Exhibit A.

Boomerang, in its provision of wireless services, will offer resold services which Boomerang will obtain from its underlying wireless providers, Sprint and Verizon Wireless. This service area footprint through multiple carriers allows Boomerang to provide coverage throughout many markets where eligible consumers need service. Through its service arrangements, Boomerang has shown it is able to offer all of the

²² 47 U.S.C. § 214(e)(6) Public Notice, 12 FCC Rcd at 22949; See also 47 U.S.C. § 214(e)(1)(A); Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), CC Docket No. 96-45, Order, 20 FCC Rcd 15095 (2005) ("TracFone Forbearance Order").

²³ See generally Lifeline Reform Order.

²⁴ Lifeline and Link Up Reform and Modernization et al., WC Docket No. 11-42 et al., Public Notice, DA 12-1286 (August 8, 2012).

services and functionalities supported by the universal-service program, as detailed in 47 C.F.R. § 54.101(a), throughout its service area.

ADVERTISING SUPPORTED SERVICES

Petitioners for ETC designation must advertise the availability of the supported services and the charges thereof using media of general distribution and provide a description of how they will do so.²⁵ Boomerang has committed to advertise the availability of the supported services using media of general distribution.²⁶ In addition, Boomerang has committed to advertising and promoting the availability of Lifeline services in a manner reasonably designed to reach those likely to qualify for Lifeline.²⁷ To increase accountability within the program and to target support where it is needed most, the FCC has adopted rules requiring ETCs to explain in their marketing materials that Lifeline service is a government benefit, that the individual must be eligible to receive the benefit, and that the consumer may receive no more than one benefit at a time from the program.²⁸ Boomerang has demonstrated its commitment to comply with these FCC rules regarding marketing of Lifeline service.²⁹

²⁵ 47 U.S.C. § 214(e)(1)(B); Section 214(e)(6) Public Notice, 12 FCC Rcd at 22949, ¶ 4.

²⁶ App. at p. 12.

²⁷ Id.

²⁸ Lifeline Reform Order at ¶¶ 274-77; 47 C.F.R. § 54.405.

²⁹ App. at p. 11.

Designated Service Areas

Petitioners for ETC designation must provide a detailed description of the geographic service area for which they seek designation.³⁰ In its application, Boomerang seeks designation as a limited ETC, eligible only for Lifeline support, in the licensed service areas of its underlying carriers in Kentucky.³¹

Compliance with Applicable Service Requirements

Petitioners for ETC designation must certify that they will comply with all service requirements applicable to the support they receive.³² Boomerang has done so and has demonstrated its commitment to comply with the FCC's Lifeline rules, and specifically to comply with the rules regarding consumer enrollment and certification of eligibility.³³ We also find that Boomerang's sample Lifeline certification forms used for consumer enrollment, and attached as exhibits to its application, satisfy the FCC's rules.³⁴

Ability to Remain Functional in Emergency Situations

Petitioners for ETC designation must demonstrate their ability to remain functional in emergency situations.³⁵ Since Boomerang is providing service to its customers through the use of service obtained from other carriers, it is able to provide to its customers the same ability to remain functional in emergency situations as currently

³⁰ Section 214(e)(6) Public Notice, 12 FCC Rcd at 22949, ¶ 5.

³¹ App. at p. 11.

³² 47 C.F.R. § 54.202(a)(1)(i).

³³ App. at pp. 18-19 and Ex. A.

³⁴ App. at Ex. A; 47 C.F.R. § 54.410 (setting forth the Commission rules on subscriber eligibility determination and certification); and Lifeline Reform Order at Appendix C (setting forth certification requirements for Lifeline subscribers).

³⁵ 47 C.F.R. § 54.202(a)(2).

provided by the carriers to their own customers, including 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. We find that Boomerang has demonstrated its ability to remain functional in emergency situations.

Satisfaction of Applicable Consumer Protection and Service-Quality Standards

Petitioners for ETC designation must demonstrate that they will satisfy applicable consumer protection and service-quality standards.³⁶ Boomerang has committed to providing applicable consumer protection and service-quality standards.³⁷ Given that Boomerang has established a track record as a wireless voice service provider, we find that reliance on its commitments to meet these requirements is reasonable and consistent with the public interest and the Act.

Financial and Technical Capability

Petitioners for ETC designation must demonstrate that they are financially and technically capable of providing Lifeline-supported services.³⁸ Boomerang states that it generates substantial revenues from non-Lifeline services and has access to capital from its investors. Boomerang currently provides prepaid wireless services to more than 350,000 subscribers, including more than 50,000 retail customers. Consequently, Boomerang has not relied, and will not be relying, exclusively on Lifeline reimbursement for its operating revenues. Boomerang has not been subject to enforcement sanctions

³⁶ 47 C.F.R. § 54.202(a)(3).

³⁷ App. at pp. 13-14; See also 47 C.F.R. § 54.202(a)(3).

³⁸ 47 C.F.R. § 54.202(a)(4); See also Lifeline Reform Order at ¶ 387.

or ETC revocation proceedings in any state. We find that Boomerang is financially and technically capable of providing Lifeline-supported services.

Information Regarding the Terms and Conditions of Lifeline Plans

Petitioners for ETC designation must submit information regarding the terms and conditions of any voice telephony plans they offer to Lifeline subscribers.³⁹ Boomerang's planned wireless Lifeline offering will provide eligible customers with the following two alternative Lifeline plans: (1) 125 units that roll over; or (2) 250 units without roll over. One unit equals one minute or one text.

All low-income universal-service support will be used to allow Boomerang to provide the service with no monthly recurring charge, thus ensuring that the consumer receives 100 percent of all universal-service support funding for which Boomerang will seek reimbursement. In the event that all airtime has been used, Lifeline customers will also be able to purchase additional airtime in the denominations set forth on pages 22-23 of the Compliance Plan. Attached to the application as Exhibit C are Boomerang's standard customer terms and conditions in connection with its wireless service offering.

Airtime replenishment cards will be made available at many retail outlets frequented by low-income customers throughout the service area such as CVS, Dollar General, Walgreens, 7-Eleven, and Rite Aid, as well as from Boomerang's website.

The wireless plan will also include a free handset and the following custom calling features: caller ID, call waiting, call forwarding, 3-way calling, and voicemail. Wireless handsets will be delivered at no charge to qualifying customers, service will be activated, and the requisite number of minutes will be added upon certification of the

³⁹ 47 C.F.R. § 54.202(a)(5).

customer for Lifeline. A sample of handsets was provided in the application as Exhibit D.

Public Interest Analysis

We examine each carrier's service offerings in light of the requirement that, prior to designating an ETC, the Commission must determine whether such designation is in the public interest,⁴⁰ and we find that Boomerang offers a Lifeline plan that will provide a variety of benefits to Lifeline-eligible consumers, including increased consumer choice, high-quality service offerings, and mobility. New entrants in the Lifeline service market should incent existing ETCs to offer better service and terms to their subscribers.

Boomerang will provide competitive wireless services throughout its service area in Kentucky. Boomerang is a reseller of commercial mobile radio service, and will offer all of the services and functionalities detailed in Section 54.101(a) of the FCC Rules, and will provide competitive wireless services throughout its service area through resale of other carriers' services. The provision of services through resale of other carriers' services will ensure that Boomerang can provide services to customers throughout the service area.

Designation of Boomerang as an ETC also creates competitive pressure for other wireline and wireless providers within the proposed service areas. Therefore, in order to remain competitive in low-income markets, all providers will have greater incentives to improve coverage, increase service offerings, and lower prices. This results in improved consumer services and, consistent with federal law, benefits consumers by allowing Boomerang to offer the services designated for support at rates that are "just, reasonable, and affordable." Boomerang will offer an easy to use,

⁴⁰ See 47 U.S.C. § 214(e)(6); and 47 C.F.R. § 54.202(b).

competitive, and highly affordable wireless telecommunications service, which it will make available to qualified consumers who either have no other service alternatives or who choose a wireless prepaid solution in lieu of more traditional services.

In order to promote public safety and safeguard against waste, fraud, and abuse in the Lifeline program, we find it necessary to require Boomerang to comply with certain conditions. The designation of Boomerang as a limited ETC is conditioned on Boomerang's compliance with: (1) the representations and commitments made by Boomerang in its ETC application and its Compliance Plan; and (2) the FCC rules, including those adopted by the FCC in the Lifeline Reform Order.⁴¹

Subject to the above-stated conditions, we find that designating Boomerang as an ETC eligible only to receive Lifeline support is in the public interest.

Regulatory Oversight

Under section 254(e) of the Act, the petitioners are required to use the specific universal-service support they receive "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."⁴² An ETC receiving Lifeline support uses that support as intended when it reduces the price of its telecommunications services by the amount of the support for the eligible consumer.⁴³

As previously noted, Boomerang has an approved compliance plan that currently governs its provision of Lifeline service.⁴⁴ In providing Lifeline services pursuant to the

⁴¹ See generally Lifeline Reform Order.

⁴² 47 U.S.C. § 254(e). We note that because petitioners are not eligible to receive federal universal service high-cost support, they are not required to file reports and certifications pursuant to section 54.313 of the FCC's rules.

⁴³ See TracFone Forbearance Order, 20 FCC Rcd at 15105-06, ¶ 26.

⁴⁴ See supra ¶ 2.

conditional ETC designation granted herein, Boomerang must comply with the measures described in its existing compliance plan and in its application, as well as the FCC's rules.

Finally, we note that the Commission or the FCC may institute an inquiry on its own motion to examine the petitioner's records and documentation to ensure that the universal-service support they receive is being used for the purpose for which it was intended.⁴⁵ The petitioner is required to provide such records and documentation to the Commission, the FCC, or Universal Service Administration Company ("USAC") upon request. We further emphasize that, if the petitioner fails to fulfill the requirements of the Act, the FCC's rules, or the terms of this Order after it begins receiving universal-service support, the Commission may exercise its authority to revoke such petitioner's ETC designation.⁴⁶ The FCC also may assess forfeitures for violations of FCC rules and orders.⁴⁷

ANNUAL CERTIFICATION AND VERIFICATION

Each year Boomerang will require all Lifeline subscribers to recertify their head of household status, certify that only one Lifeline discount is received at their household, and document their continued program eligibility for Lifeline in accordance with the annual Lifeline Certification and Verification for USAC that is due annually.⁴⁸ The Commission finds that Boomerang's plan to meet the annual certification and verification requirements is in accordance with the FCC's requirements.

⁴⁵ 47 U.S.C. §§ 220, 403.

⁴⁶ See Federal-State Joint Board on Universal Service; Western Wireless Corp. Petition for Preemption of an Order of the South Dakota Public Utilities Commission, CC Docket No. 96-45, Declaratory Ruling, 15 FCC Rcd 15168, 15174, ¶ 15 (2000); See also 47 U.S.C. § 254(e).

⁴⁷ See 47 U.S.C. § 503(b).

⁴⁸ Administrative Case No. 2012-00146, Lifeline Reform (Ky. PSC May 1, 2012).

The Commission, having reviewed the evidence of record and having been otherwise sufficiently advised, HEREBY ORDERS that:

1. The designation of Boomerang as a limited ETC is conditioned on Boomerang's compliance with: (1) the representations and commitments made by Boomerang in its ETC application and its Compliance Plan; and (2) the FCC rules, including those adopted by the FCC in the Lifeline Reform Order.

2. Boomerang is designated as an ETC for the purpose of offering Lifeline service only in the underlying carriers' licensed service areas throughout the state.

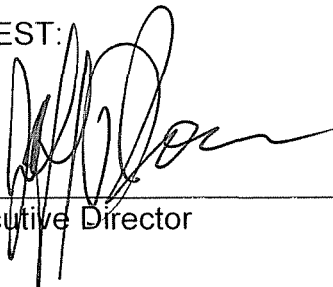
3. During the current certification period, Boomerang shall be eligible to receive federal and Kentucky USF support for Lifeline.

4. Boomerang shall advertise the availability of and charges for these services using media of general distribution.

5. Boomerang shall comply with the FCC's annual certification process for Lifeline customers.

6. A copy of this Order shall be served upon the FCC and the USAC.

By the Commission
ENTERED
JAN 22 2013
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Honorable Douglas F Brent
Attorney at Law
Stoll Keenon Ogden, PLLC
2000 PNC Plaza
500 W Jefferson Street
Louisville, KENTUCKY 40202-2828