



COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

D.T.C. 12-6

January 7, 2013

Petition of Boomerang Wireless, LLC for Limited Designation as a Lifeline-Only Eligible Telecommunications Carrier

AMENDED PROCEDURAL NOTICE

I. PROCEDURAL SCHEDULE

The Department of Telecommunications and Cable (“Department”) establishes the following procedural schedule:

The Department served the first set of information requests on Boomerang Wireless, LLC (“Boomerang”) on October 10, 2012.

Boomerang filed responses to the first set of information requests on November 7, 2012.

The Department served the second set of information requests on Boomerang on December 18, 2012.

Boomerang must file responses to the second set of information requests by January 7, 2013.

Witness and exhibit lists are due on February 5, 2013.

The public and evidentiary hearings will be held at 10:00 a.m. on February 12, 2013 in Hearing Room 1-F at 1000 Washington Street, Boston, MA 02118.

Deadlines for post-hearing briefs will be set at the hearings on February 12, 2013.

II. SERVICE LIST

A service list for D.T.C. 12-6 is attached to this Notice.

III. GROUND RULES

This proceeding shall be conducted in accordance with applicable provisions of G. L. c. 30A, 220 C.M.R. §§ 1.00 *et seq.*, and the following supplemental ground rules:

A. Filing of Documents

1. Address of Filings

The original of all filings must be filed with Catrice C. Williams, Secretary, Department of Telecommunications and Cable, 1000 Washington Street, 8th floor, Suite 820, Boston, MA 02118-6500. Submission of an electronic version of all filings to the Department Secretary and the service list by 5:00 p.m. on the applicable due date with overnight mail of the original to the Department is acceptable.

2. Format

All discovery and record request documents filed with the Department and all documents offered as exhibits shall be accurately punched to fit a standard three-hole binder. All documents shall be accompanied by a cover letter describing the filing and noting the distribution of copies.

Responses to information and record requests shall contain the following information: (1) set and request number; (2) recitation of request; (3) identity of person who will support the response; and, (4) if the response is three or more pages, the page numbers.

3. Number of Copies

Unless otherwise noted, the Department requires documents to be filed in the following manner:

One (1) original addressed to Catrice C. Williams;
Two (2) copies submitted to the Hearing Officer.

4. Electronic Filing

Copies of all nonproprietary documents that are filed with the Department, including letters, comments, pleadings and briefs, must also be submitted to the Department in electronic format using one of the following methods: (1) by e-mail attachment to dtc.efiling@massmail.state.ma.us and catrice.williams@state.ma.us; or (2) on a 3.5" floppy disk or CD-ROM. The text of the e-mail or the disk label must specify: (1) an easily identifiable case caption; (2) the docket number, D.T.C. 12-6; (3) the name of the party submitting the filing; and (4) the title of the document. The electronic filing should also include the name, title, and phone number of a person to contact in the event of questions about the filing. Electronic copies should be written as either Microsoft Word, or Adobe Acrobat compatible files. Data or spreadsheet responses should be compatible with Microsoft Excel. Documents submitted in electronic format will be posted on the Department's website, <http://www.mass.gov/dtc>. Electronic copies

must also be provided to all persons on the service list for this proceeding. Parties filing documents containing proprietary or other confidential materials shall submit electronic copies of the redacted public version of such documents. See rules on protected materials below.

B. Exchange of Materials

All documents filed with the Department shall also be served upon each party. Parties shall make arrangements for the expeditious exchange of materials, particularly discovery material, through the use of hand delivery, facsimile transmission (“fax”), e-mail, or other speedy means of delivery. Where material is exchanged by means of fax or other electronic means, a follow-up copy of the material must be delivered by mail or by hand. Service is effective upon receipt, not upon mailing. Fax or other means of electronic delivery are not substitutes for filing the original of materials that must be filed with Catrice C. Williams, Secretary of the Department.

Where information requests are sent to a party by means of fax, the fax must be accompanied by telephone notification of the transmission. Failure to make prompt telephone notification may affect the deadline for response by the receiving party.

C. Motions

Consistent with 220 C.M.R. § 1.04(5), any motion, unless made during a hearing, shall be made in writing. The moving party shall serve with the motion a statement of reasons, including the supporting authorities, why the motion should be granted. A statement of reasons may be included in the motion itself or may be contained in a separate document. Affidavits and other documents setting forth or evidencing facts on which the motion is based shall be served with the motion. A party opposing a motion may serve an opposition within: (1) seven (7) calendar days after service of a motion other than a motion for summary judgment; (2) twenty-one (21) calendar days after service of a motion for summary judgment; or (3) such additional time as is allowed by the Department upon a showing of good cause. With the opposition, the party may serve a statement of reasons, with supporting authorities, why the motion should not be allowed. Affidavits and other documents setting forth or evidencing facts on which the opposition is based shall be served with the opposition. Papers not served with the motion or opposition may be filed only with leave of the Hearing Officer.

D. Discovery

1. Responses

Parties shall provide responses to information requests within five (5) business days of issuance of the request unless otherwise indicated. Where the computed response date is a legal holiday, the response shall be due on the next Department business day.

2. Protected Materials

Where information or material is sought that is considered proprietary or protected by one party, the parties should discuss the use of a non-disclosure agreement before coming to the Department for protection or compelled submission. The Department will make a reasonable effort to extend protection where appropriate within the requirements of the law and in consideration of the policy interests regarding public access. *See* G. L. c. 25C, § 5; G. L. c. 66, § 10; G. L. c. 4, § 7, cl. twenty-sixth.

A party moving for confidential treatment must submit its request in writing and state the reasons therefor. The party seeking such treatment has the burden to demonstrate that the materials should be afforded the treatment requested in light of the presumption that such information is a public record. Even where a party proves such need for confidential treatment, the Department may protect only so much of that information as is necessary to meet the established need and may limit the term or length of time such protection will be in effect.

Any request for confidential treatment must include, in a sealed envelope, one unredacted copy of the materials for which protection is sought, clearly marked with the word "CONFIDENTIAL" on the outside envelope as well as on each page of the materials. Electronic copies of unredacted materials should be submitted on a 3.5" floppy disk or CD-ROM labeled "CONFIDENTIAL." The unredacted copy should be submitted directly to the Hearing Officer, not to the Secretary. A redacted copy of the materials (marked as such) for the public docket should be filed with the Department along with the request for confidential treatment.

3. Discovery Disputes

Counsel for each of the parties shall confer in advance of filing any discovery motion in a good faith effort to narrow areas of disagreement to the fullest possible extent. Counsel for the party who intends to file the motion shall be responsible for initiating the conference. All such motions shall contain a certificate stating that the conference was held, together with the date and time of the conference and the names of all participating parties. Motions unaccompanied by such certificate will be denied without prejudice.

All motions arising out of a party's response to, or asserted failure to comply with, an information or record request, shall be accompanied by a brief. With respect to each request for proprietary treatment or other information/record request at issue, the brief shall set forth separately and in the following order: (1) the text of the request, (2) the opponent's response, and (3) a specific legal and factual argument.

E. Hearing Exhibits

1. Format

Documents submitted as exhibits shall be pre-marked by the parties using the following format, in the upper right-hand corner of each exhibit:

D.T.C. 12-6
Exhibit:
Date:
H.O.: S. Carroll

Any exhibit offered in this proceeding must contain an internally consistent and usable form of referencing. Documents of three pages or more without a preexisting referencing system must be marked with consecutive page numbers before the document is offered as an exhibit or before it is otherwise distributed for use in the hearing. Where it is necessary to supply page numbers for an exhibit, the proponent of the exhibit should add the numbers in some way that differentiates the additions from the preexisting text and should identify the method of addition on the record upon presentation for marking. Documents without an acceptable referencing system will not be marked for identification and may not be used at the hearing.

2. Offering of Exhibits

One week prior to the evidentiary hearing, each party that offers exhibits shall submit a proposed exhibit list that presents (1) an exhibit number and (2) a description of the exhibit. The proponent of an exhibit must offer the Department the appropriate number of bench copies of the proposed exhibit (standard three-hole punch). Nonconforming documents will not be marked. If only a part of a document is offered for marking and another party wishes to use the omitted part(s) in questioning or on brief, then that party must enter the missing part(s) into the record. Before the close of hearings, each party that offers exhibits shall submit a listing for those exhibits that presents (1) the exhibit number and (2) a description of the exhibit.

F. Record Requests

Responses to record requests are written substitutes to oral answers where fault of memory or complexity of subject precludes a responsive answer by the witness at the hearing. 220 C.M.R. § 1.06(h). As such, they are part of the evidentiary record, unless challenged as unresponsive and stricken in whole or in part. Record requests shall not be used as a substitute for discovery or as a substitute for re-direct examination. Objections to record requests shall be made at the time the request is made and in no event later than the end of the next Department working day. The ordinary time for response to a record request will be the fifth business day following the day on which the request is made, unless otherwise indicated by the Hearing Officer.

These ground rules are deemed consistent with the orderly conduct of this proceeding. Exceptions to any ground rule may be made by the Hearing Officer for good cause shown.

/s/ Sean Carroll
Sean Carroll, Hearing Officer