

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Petition of Boomerang Wireless, LLC)
For Limited Designation as a Lifeline-)
Only Eligible Telecommunications Carrier) D.T.C. 12-6

POST-HEARING BRIEF OF BOOMERANG WIRELESS, LLC

Introduction

Pursuant to 47 U.S.C. § 214(e) and 47 CFR §§ 54.101 through 54.207, Boomerang Wireless, LLC (“Boomerang” or the “Company”) submits this Brief to the Department of Telecommunications and Cable (the “Department” or “DTC”) in support of its Petition (“Petition”) dated August 30, 2012 (received by the Department on August 31, 2012) for Designation as an Eligible Telecommunications Carrier (“ETC”) for purposes of receiving funding from the federal Universal Service Fund (“USF”), as amended and/or supplemented during the proceeding. Boomerang also has opted to avail itself of the Federal Communications Commission’s (“FCC’s”) grant of Blanket Forbearance and, accordingly, has requested and received FCC approval of its March 1, 2012 Compliance Plan, as amended, on August 8, 2012. See Exhibit 1 (Petition) at Appendix D (including final Compliance Plan and FCC release approving Boomerang’s Plan along with those of other carriers).

For the reasons discussed in the Petition, information responses, record responses, and the February 12, 2013 and May 6, 2013 hearing testimony of Mr. James

T. Balvanz, Boomerang's Chief Financial Officer,¹ Boomerang requests that this ETC designation be granted on a wireless basis and only for participation in low income federal USF programs. Exhibit 1 (Petition) at pp. 1-2.² Boomerang looks forward to introducing additional customer beneficial competition into the Massachusetts market for low income consumers. Accordingly, Boomerang requests that its ETC Petition, as supplemented, be approved in all material respects and that Boomerang be certified to collect Lifeline charges as proposed in the Petition.

In further support of its Petition, Boomerang relies on the following.

Background

Boomerang is a relatively new ETC, having commenced ETC operations only in October 2012. Tr. 1 at 57. It serves customers using the registered brand name enTouch Wireless powered by Boomerang. Tr. 1 at 34-35; see also Exh. 4 (Response to Record Request 1 - Massachusetts sample advertising materials).³ Notwithstanding the newness of its Lifeline business, Boomerang is one of the fastest growing wireless ETC companies, having been already approved as a wireless ETC in 16 states with pending filings in 21 additional states (including 10 before the FCC). Exh. 2 (Response to DTC 1-1 and 1-2; Tr. 1 at 10; Tr. 2 at 6. Favorable action also is anticipated shortly at the FCC for its 10 jurisdictions and in at least four of the state-regulated jurisdictions. Tr. 2 at 6. Furthermore, Boomerang benefits from robust wireless supplier agreements with

¹ Mr. Balvanz's hearing testimony is in the Transcripts of the February 12 and May 6, 2013 hearings (hereinafter "Tr. 1" and "Tr. 2", respectively). No members of the public testified at either hearing date. See Tr. 1 at pp. 4-6 (noting on the record Boomerang's satisfaction of the public hearing requirement); Tr. 2 at pp. 4-5. The Hearing Officer designated pages 35 to 66 of Tr. 2 as confidential.

² The Hearing Officer identified and admitted into evidence the Petition as Exhibit 1, the First Set of Information Responses as Exhibit 2, the Second Set of Information Responses as Exhibit 3, the Responses to Record Requests as Exhibit 4, and a USAC Disbursement Record for Boomerang offered by the Bench as Exhibit 5. Tr. 1 at 6-7; Tr. 2 at 5.

³ Note that, on occasion, enTouch Wireless is used without the accompanying "powered by Boomerang" phrase.

Verizon and Sprint. Tr. 1 at 64-65. The Company's Lifeline customer accounts went from zero to 20,000 by the time of the February 2013 hearing and had grown to approximately 30,000 by the early May hearing. Tr. 1 at 16; see also Exh. 4 (Confidential Response to Record Request 19 (confirming current subscriber count through April 2013)).

Boomerang is not exclusively an ETC provider and its sister companies generate substantial revenues from their varied operations. Boomerang has only begun to derive revenue from its new Lifeline customers. See Tr. 1 at 57-88, Exh. 4 (Response to Record Request 6 (percent of revenues from Lifeline reimbursements)). Nevertheless, the growth to 30,000-plus customers in short order will lead over time to significant revenues from Lifeline reimbursements. In addition, Boomerang and its sister companies within the HH Ventures family of companies generate significant revenues from non-Lifeline offerings. Tr. 1 at 46-48 (describing related businesses). This includes robust wholesale "pay as you go" sales of wireless services to Lifeline and non-Lifeline carriers with very substantial customer bases, pre-paid wireless retail service to non-Lifeline customers, and additional "top-up" minutes sold by Boomerang's affiliates to the Company's Lifeline customers. Exh. 1 (Petition), p. 9; Tr. 1 at 46-48, 55-56; Exh. 4 (Confidential Response to Record Request 5 – detailing scope of wholesale business operations). The Department had the opportunity to conduct a close review of the confidential financial records of Boomerang and its parent and sister companies in detail. See Exh. 2 (Confidential Response to Information Request 1-31 (consolidated financial statements from 2008 through 2012)); Exh. 4 (Confidential Responses to Record Requests 24-26) Tr. 2 at 36-67.

Argument

I. BOOMERANG MEETS ALL ETC DESIGNATION REQUIREMENTS

The requirements for ETC status are established in federal law at 47 U.S.C. § 214(e) and, in detail, at 47 CFR §§ 54.101-207. The process has been modified recently in connection with the FCC's recent Lifeline Reform Order.⁴ Boomerang meets all of the requirements for the reasons stated in detail in its Petition and amplified in discovery responses, hearing testimony and responses to record requests. Boomerang will not restate on Brief its detailed arguments for each statutory element.

II. THE PUBLIC INTEREST FAVORS BOOMERANG'S APPLICATION

The record in this proceeding overwhelmingly demonstrates that Boomerang's request for ETC status serves the public interest. 47 CFR § 54.201(c). Boomerang's entry into the Massachusetts low income market comports with the public interest with respect to qualified USF-subsidized and non-subsidized customers and the broader interests of the Commonwealth. Insofar as numerous Massachusetts-eligible customers have not yet obtained USF support, a significant opportunity exists for a strong competitor, such as Boomerang, which has flexible, portable, any distance wireless service offerings.

Moreover, Boomerang's business plan differs in several respects from most other ETC entrants in the Commonwealth, including maintaining a focus on extending Lifeline services into so-called Tier 2 cities (under 100,000 in population) (see Tr. 1 at 109-10),

⁴ 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, WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, WC Docket No. 12-23, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb 6 2012) ("Lifeline Reform Order").

relying heavily on neighborhood marketing events to drive sales (see Tr. 1 at 38-40, 110-12), and offering innovative ancillary products to Massachusetts low income consumers, such as the Netspend MasterCard (Record Response No. 23) and the soon-to-be-launched "Airfair" multi-provider top-up card. Tr. 2 at 7-8, 29-33, 69-75 (Confidential Response to Record Request Nos. 22, 27). Thus, Boomerang's entry will help increase the number of qualified low income consumers on USF-subsidized service and also introduce a strong competitor whose entry, over time, likely will trigger customer-beneficial competitive responses from existing ETCs and other carriers serving low income customers.

Finally, Boomerang's entry also would provide benefits to the Massachusetts economy and, thus, the public interest. Even though Boomerang has no plans to base any full time employees in the Commonwealth, employees will stay in Massachusetts for lengthy periods at a time conducting marketing events and Massachusetts retail outlets will receive revenues from sales of top-up minutes. Tr. 1 at 38-44, 110-13 (details of event activities); Tr. 2 at 7-8, 29-33, 69-75 (Airfair top-up card details).

III. SPECIFIC ISSUES REGARDING THE APPLICATION

Even though most issues regarding Boomerang's ETC request are addressed clearly on the face of the Petition, in responses to information and record requests and in Mr. Balvanz's hearing testimony, several issues merit separate discussion.

A. Boomerang Maintains Safeguards Against Waste and Abuse

The Petition and approved FCC Compliance Plan (see Exh. 1 (Petition) at Exhibit D) detail the significant additional efforts made and protections implemented by Boomerang in order to deter and root out customer duplication, fraud and abuse. Many

of these safeguards were reviewed and approved by the FCC in approving the Compliance Plan. See id. Other safeguards have been fleshed out in Boomerang's discovery responses, record request responses, and hearing testimony. Key provisions include:

Verification: Boomerang employs a multi-level approach to verify Lifeline eligibility and ensure one discount per household. Boomerang retains the industry respected firm CGM to assist with several aspects of the verification process, including developing the customized software that prompts in real time for Massachusetts identification and eligibility requirements at appropriate screens and provides a data base of nearly 2 million Lifeline customers to cross check against for duplication, both at initial sign up and during periodic audits. See Tr. 1 at 40-43; Exh. 4 (Response to Record Requests 17 (CGM audit fields) and 18 (list of other CGM client companies nationwide and in Massachusetts)). CGM's background and experience are discussed in some detail by Mr. Balvanz during the hearing and in record responses. See Tr. 1 at 53-55; Exh. 4 (Responses to Record Requests 17-18). Boomerang's compliance officer also conducts both random and focused sampling (such as, more attention is paid to newer employees) of online and paper submissions. Tr. 1 at 51-53.

Use of the Service: Misuse through Lifeline payments on unused phones are minimized by assuring that phones are, in fact, used by consumer. As Mr. Balvanz emphasized during hearings, Boomerang has very strong business reasons not to let service be lost due to customer lack of use, as that deprives Boomerang of the opportunity to recover handset and customer acquisition costs. Tr. 1 at 45-46; Tr. 2 at 17-18. The record makes clear that in the event a customer does not use the cell

phone service for 30 days, Boomerang sends texts informing the customer that he or she is required to use the service or contact Boomerang directly within 30 days or face termination. Response to Record Request No. 19. Lifeline service is suspended at 60 days and, if no efforts are made by such customers to use the service or contact Boomerang to provide affirmative acknowledgment that they wish to retain their Lifeline service, the service is subsequently disconnected. Tr. 1 at 46 (discussing Boomerang's efforts to "save" de-enrolled Lifeline customers at its own expense beyond 60 days); see Response to Record Request No. 19. Regardless, reimbursement is not requested from USAC for accounts that are closed for non-usage once 60 consecutive days of non-usage have occurred. Id.

Performance: Boomerang has never been subject to a USAC audit, so it does not yet have a clear picture of its performance relative to duplicate accounts. Tr. 2 at 67-68. Given the strong verification and audit safeguards discussed above, however, Boomerang expects that its overall experience will fall well within industry standards.

B. Clarification of Boomerang Service Offerings

The Department devoted many of its First and Second Set discovery requests and hearing questioning to soliciting details concerning the nature of Boomerang's service offerings and related consumer disclosures. The answers provided describe the reasonable nature of Boomerang's policies in light of operational, competitive and marketplace concerns. Key clarifications of Boomerang's offerings include the following: customer call and complaint procedures (Response to Record Requests 3 and 15 and Tr. 1 at 92-98); customer intake timelines (Response to Record Request 16); real time enrollment data base checking (Responses to Record Requests 17 and 18); activity alert

processes (Responses to Record Requests 19 and 20); Boomerang's use of enTouch as its name for marketing purposes (Tr. 1 at 33-35, 104-08); adjustments to application materials (Tr. 1 at 38 and Response to Record Request 1); and clarification of outage processes and safeguards during emergencies (Tr. 1 at 63-65).

C. Regulatory Commitments

During discovery and at hearing, Boomerang agreed, conditionally, to certain regulatory commitments requested by the Department, including agreement to provide 30 days advanced written notice of changes that reduce services to Massachusetts consumers. See Exh. 4 (Responses to Record Requests 7-14); Tr. 1 at 68-83. Boomerang will abide by commitments given by it on the record.

In addition, Boomerang is well aware that the Department's Lifeline regulatory scheme is under review in Docket 13-4. Boomerang acknowledges that its grant of ETC status is potentially subject to additional or revised ETC procedures to the extent they apply to Boomerang and all other similar carriers on a going forward basis.

D. Other Issues.

1. **Financials of Boomerang and its Parent and Affiliates.**

As discussed by Mr. Balvanz during the hearing, Boomerang submitted consolidated financial statements for its parent, HH Ventures, Boomerang and its sister companies for the Department's review. See Exh. 2 (Response to Information Request 1-31); see also Tr. 2 at 33-67. (Confidential record). For the reasons discussed in detail in the Exh. 2 (Supplemental Response to 1-31) financial statements and Mr. Balvanz's hearing testimony, all of which is confidential, the financial statements support Boomerang's application. In addition, as outlined in Confidential Record Responses,

Boomerang or its parent have secured reasonable and beneficial financing arrangements with the State of Iowa (see Response to Record Request 25) and have intangible assets that have retained substantial value subsequent to the original acquisition transaction. See Confidential Response to Record Request 26; Tr. 2 at 39-44 (Confidential).

2. New Customer Top-up Card Business.

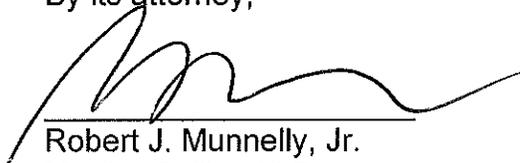
As discussed during both hearings, Boomerang's parent is finalizing a deal with a card processing company to create a new Airfair top-up card that would allow consumers to purchase top-up minutes from multiple ETC providers, including Boomerang. Tr. 2 at 7-8, 29-33, 69-75; see also Exh. 4 (Responses to Record Requests 22, 27). While being only indirectly relevant to Boomerang's Lifeline application, Boomerang views the innovative Airfair arrangement as demonstrating how, over time, more efficient business arrangements can be reached that should provide benefits for customers, retailers and ETCs.

Conclusion

Boomerang Wireless, LLC appreciates the Department's thorough review of its request for ETC status for Lifeline low income services in the Commonwealth. For the reasons discussed in the Petition, hearing testimony, information and record responses and herein, the Department should grant Boomerang's request for a wireless ETC designation for access to low income USF programs throughout the Commonwealth. The Department also should certify Boomerang to collect Lifeline charges as proposed in the Petition. Boomerang looks forward to offering customer-beneficial competition to low income customers within the Commonwealth and furthering the public interest.

BOOMERANG WIRLESS, LLC

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