

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Investigation by the Department on its)
Own Motion into the Implementation in)
Massachusetts of the Federal)
Communications Commission's Order)
Reforming the Lifeline Program)

D.T.C. 13-4

INITIAL COMMENTS OF BOOMERANG WIRELESS ON PHASE II ISSUES

Introduction and Summary

Boomerang Wireless, LLC ("Boomerang" or the "Company") submits its initial comments on additional issues asked by the Department of Telecommunications and Cable ("Department" or "DTC") in the latter half of its August 1, 2014 Order Implementing Requirements and Further Request for Comment (hereinafter "Further Request"), pp. 22-30. The Department "determines that further comment is warranted on the efficiency of the lifeline program in Massachusetts, the annual Lifeline recertification process, and Lifeline subscriber protections." Id., p. 22. It then solicits industry and public comments on additional potential requirements that could be applied to Massachusetts Lifeline services under each heading.

Boomerang appreciates the Department's efforts to bring balanced policy thought on Massachusetts-specific requirements that both comport with existing Federal Communications Commission ("FCC") requirements and "preserve and advance universal service." Boomerang 2013 Comments, p. 1. Boomerang accepts the reporting and consumer safeguard requirements adopted in the first half of the Further Request that, in Boomerang's experience, are as rigorous as any jurisdiction that

retains jurisdiction over Lifeline services and will require significant additional regulatory resources to implement. See Further Request, pp. 8-22. Nevertheless, Boomerang has concerns with many of the potential additional requirements circulated for discussion in the Further Request, as outlined below. As argued by several parties in the earlier phase of this proceeding, the Department should hesitate to impose unnecessary and burdensome requirements on a quickly developing competitive market that has both limited revenue opportunities compared to other wireless market segments and is already regulated extensively at both federal and state levels.¹

Comments

I. PENDING ETC APPLICATIONS SHOULD BE ACTED ON IMMEDIATELY CONDITIONED ON INCORPORATION OF PHASE II CHANGES.

As a threshold procedural matter, Boomerang requests and strongly recommends that the Department adopt a two track approach to developing and implementing the regulatory changes to be implemented in the Further Request. First, it should lift the stay it has imposed during this proceeding on the approximately half-dozen ETC applications pending before the Department (including Boomerang's in Docket No. 12-6) and promptly rule on the merits of such requests, with the older applications being prioritized for prompt action. Such decisions should expressly reserve that the successful ETC applicant will be required to comply with any new requirements subsequently developed during the instant Phase II investigation in this docket. Second, at the same time as the Department hearing officers and Commissioner are taking action on the pending applications, the Department should

¹ See, e.g., Reply Comments of YourTel America, Inc., pp. 1-2; Verizon Initial Letter Comments, pp. 1-2.

review the written comments received in this proceeding and render a decision on whether to implement any additional regulatory requirements.

Boomerang opposes any additional delays in taking action on the many ETC applications before the Department. Boomerang filed its application in August 2012, more than two years ago, has had its application fully briefed since July 2013, more than a year ago. Due to the timing of this investigation, which commenced in Spring 2013, competition for Lifeline services is very limited. The Department has approved only five applicants (Verizon, Tracfone, T-Mobile, Virgin Mobile and Budget), with a half-dozen (including Boomerang) waiting in the wings to serve customers once the stay is over. It is not fair, reasonable or in the interests of Massachusetts consumers to force Boomerang and other ETC applicants to wait another four-to-eight months for the Department to issue the instant Phase II decision and, only then, begin the Department's final review of Boomerang's long-briefed ETC application.

II. THE DEPARTMENT SHOULD LIMIT THE IMPOSITION OF ADDITIONAL CONDITIONS ON MASSACHUSETTS ETCS.

A. Lifeline Program Efficiency (pp. 22-26)

The Further Request generally solicits comment on ways to limit waste, fraud and abuse in the Lifeline program and offers several specific proposals for consideration. Id., pp. 22-26. Boomerang is concerned about the wisdom and workability of nearly all of these potential changes, which would impose even more unique Massachusetts-specific obligations on ETCs that would be difficult and costly to implement. Furthermore, even the potential obligations that have a legitimate purpose are overbroad or unnecessarily difficult to administer, and should not be adopted in their present form. Notwithstanding, the following discussion focuses on the potential

requirements of most critical importance to Boomerang's impending market entry efforts in the Commonwealth and the overall public interest.

First, the Department asks whether a carrier should be required to provide non-Lifeline service for a particular amount of time (e.g., six months) as a precondition for receiving Department approval of a Lifeline application. Id., p. 23. Boomerang strongly opposes such a rule as an unwarranted and unnecessary barrier on telecommunications competition in the Commonwealth. The technical and financial capability of an applying carrier should be judged by the matters included in the application, rather than by an arbitrary hurdle (i.e., how an ETC performs at a business that it has not chosen voluntarily to enter and for which its operations, computerized support systems, sales team and marketing staff may not be well equipped to handle) that will serve only to delay entry by the minimum period specified in the policy. Additionally, more than 15 years of uniform telecommunications policy have supported the principle that a competitive local exchange carrier gets to choose the manner of service in which it will compete. See 47 U.S.C. § 251 (allowing for entry by facilities-based, unbundled network element or resale modes of service at the carrier's election). Such requirement, if applied to Lifeline carriers, would be inequitable to businesses that have chosen to specialize in delivery of services to Lifeline customers and have arranged their operations, software and human capital to succeed in that particular niche market.² For providers, such as Boomerang, that already are operating in

² Furthermore, if the Department is going to consider such a requirement seriously as a test for financial and technical capability, the requirement of six months of service should only apply to those with no prior history of a track record of service in any jurisdiction and the applicant should be allowed to prove compliance by reference to business efforts of affiliated companies that serve non-Lifeline customers. Boomerang's affiliate, Ready Wireless, has a management team that overlaps with Boomerang's team that should be able to be relied on for expertise in serving non-

multiple states, the very limited probative value of a six month service requirement would be far outweighed by excessive burdens imposed on the carrier from such requirement and on customers from the unnecessary delay in benefitting from the services of an additional Lifeline competitor.

Second, the Department asks about the similar but distinct proposal that would require that ETC applicants maintain a certain number of non-Lifeline customers, such as 20%, as a condition of licensure. Further Request, pp. 23-24. Such proposal would have many serious flaws and would be unworkable in practice. As a basic matter, such requirement would have little to no probative value for proving the financial and technical capability for all ETC applicants that have proven their capabilities by serving Lifeline customers in other jurisdictions. Additionally, as discussed in the preceding argument, it would likely pose challenges for companies that have chosen to specialize in Lifeline customers even if they are fully competent to deliver the Lifeline-only services for which they are applying. Furthermore, and even more importantly, it would risk placing Lifeline carriers in violation of the federal law requirement that they serve all qualifying customers in a given area. For example, under the proposed rule, notwithstanding the above federal law obligation to serve all willing customers, such Massachusetts ETC would have to decline to serve new Lifeline customers until it secures its minimum percentage of non-Lifeline customers. Conversely, if consumers chose to leave the ETC's non-Lifeline services (such as if a new provider came to the market with a compelling alternative offer), the ETC presumably would have to terminate qualified Lifeline customers to remain within the mandated minimum

Lifeline customers. See generally Docket D.T.C. 12-6 (Post-Hearing Brief of Boomerang Wireless, LLC) at pp. 2-3 and exhibits cited (discussing Boomerang affiliates).

percentage. In both cases, the ETC faces liability under federal law and loss of standing in the marketplace, and the customer is harmed.

Third, the Department asks whether it should require that an ETC de-enroll customers upon Department request even if no reason or supporting documentation is provided. Id., p. 24. This would represent bad policy. Acceptance of mandatory de-enrollment requests has no apparent bearing on an ETC's ability to operate a Lifeline program in accordance with legal standards, which is the focus of the ETC licensing guidelines in this docket. The proposal also involves significant risk of harm to the ETC and/or the customer if the Department is later found to have erred in its evaluation of a particular customer; this is why documentation is critical. Finally, as discussed above, a state policy mandating that the ETC drop a customer without appropriate documentation indicating that the particular customer is, in fact, the correct customer who has violated Lifeline rules would create an unacceptable risk that the ETC will violate the federal law requirement to serve all qualifying subscribers where it is approved to provide service. As with the other potential requirements discussed above, this potential requirement is bad for ETCs, bad for customers and represents unsound regulatory policy.

Fourth, the Department asks whether there should be a state-level verification process to confirm eligibility prior to commencing Lifeline service. Further Request, pp. 24-25. Boomerang believes that its existing certification works well and that a state-level verification process is not needed at this time and would cause inefficiencies and delays in the Lifeline customer acquisition process. See generally Docket 12-6 (Boomerang Post-Hearing Brief) at p. 6 (discussing verification measures). Boomerang agrees that a state verification process may be appropriate once an eligibility database

is available. In that event, Boomerang would not oppose a reasonable fee to compensate state agencies for work required to provide the verifications, so long as it (1) is not burdensome in relation to the Lifeline program involved, (2) is applied evenhandedly so as not to have a disparate impact on certain providers, and (3) the revenue generated does not exceed the appropriate ETCs' portion of the direct costs incurred by the agency in administering the program. This amount should also be balanced against the additional costs that the ETCs incur in order to maintain compliance with the state level verification process to confirm eligibility prior to commencing Lifeline service.

Fifth, relative to additional reporting obligations suggested at p. 25 of the Further Request, the implementation of the new requirements imposed in the first half of the instant order means that Massachusetts already has one of the most rigorous reporting requirements of any state. The changes implemented in the first half of the order will already require that providers redirect work hours and resources from expanding service to preparing Massachusetts-specific reports that are not required by the FCC or other states. Adding up to seven additional categories of reports, most of them requiring extensive Massachusetts-specific data mining on a monthly basis, would represent an unreasonable and unworkable additional increase in the resources devoted to regulatory obligations in a thin margin business. Furthermore, the relatively easy to acquire data (subscriptions added or dropped; number of subscriptions by category) can be taken from FCC reports but is of little apparent regulatory value. The remaining categories would require extraordinary amounts of work to produce Massachusetts-specific reports and would have little probative value unless the

Department undertakes extensive follow up analysis that would require additional data gathering and analysis from the ETC. Requiring any of these additional reports would raise a real risk that the economics of ETC entry in the Commonwealth would be adversely affected. Boomerang opposes all of the additional requirements but is most concerned with the highly work-intensive proposed requirements in paragraphs 1, 5, and 7. Id., p. 25.³

Sixth, Boomerang would be happy to meet with the Department annually but would appreciate the ability to conduct the meeting over the telephone and or webinar to minimize travel expense and out of office time for senior Company management. Id.

B. Annual Subscriber Recertification (pp. 26-27)

This section of the Further Request generally solicits comment on ways to improve the recertification process and results in Massachusetts. Id., pp. 26-27. Boomerang would suggest first identifying the barriers to recertification and then creating specific options that address those barriers. Many of the suggestions offered in the Further Request have little or no impact on recertification and should not be pursued. Accordingly, though Boomerang shares the Department's concerns regarding recertification, the suggestions offered 1) are already used by Boomerang and, likely,

³ Boomerang also opposes the effort related to the paragraph 7 category involved in creating a definition of "complaint." Further Request, p. 26. It would be an exceedingly difficult endeavor to produce a definition that would have regulatory value. Just looking at application denials – many are denied because the applicant failed to provide sufficient information on a timely basis; others because they did not meet Lifeline program requirements. Is it a complaint if the applicant objects to the result? Is it a complaint only if the customer seeks relief from the Department and the Department agrees there is a likely error? Regarding quality of service, Lifeline carriers generally use underlying carriers (Verizon, Sprint, etc.) who treat Lifeline resale customers like their own customers and do not respond to ETC requests for information on particular service problems. Is it complaint if the customer calls that signal strength is bad when the ETC has no immediate recourse? Regarding handsets, batteries die and have to be replaced. Is it a complaint when that happens? Is it a complaint when the customer has to wait to receive a battery timely mailed to him or her by the ETC? The complexities make this effort both unadministrable as a practical matter and of little or no regulatory value.

other ETCs as a matter of sound business practices (i.e., make multiple attempts and various means to reach the customers for Recertification); 2) require effort and resources that will have little bearing on recertification (i.e., verifying that there is only one Lifeline discount per household will have little impact on recertification results); 3) are duplicative of efforts undertaken by other regulatory or industry bodies (e.g., the National Lifeline Accountability Database currently has checks to comply with the one-per-household rule); and 4) require effort and resources that are counter-productive to the current recertification process (i.e., proposing to require subscribers to provide eligibility documentation rather than self-certifying, as permitted under federal law). Furthermore, to the proposal that Universal Service Administrative Company (“USAC”) perform recertifications for Massachusetts ETCs (p. 27), USAC may not have the resources and time required to recertify the subscribers generated by all the Massachusetts ETCs or to reach out to them multiple times.

Boomerang, like other ETCs, is open to suggestions from the Department on how to improve its recertification processes and results. Nevertheless, Boomerang is concerned about the unintended negative consequences associated with mandating recertification processes on a state-specific basis, for the reasons outlined above.

C. Subscriber Protections (pp. 27-29)

Boomerang generally opposes many of the additional subscriber protections discussed in this section. Lifeline providers have given ample testimony in this docket expressing concerns about the high degree of burdens associated with the Massachusetts requirements in general, many of which have been discussed in more detail earlier in the instant Boomerang Initial Phase II Comments. The proposed

requirements are so extensive that they will seriously threaten the economics of market entry and may serve to limit choice in the Commonwealth. Some of the requirements of most potential importance to Boomerang's business are addressed below.

First, the Department should not initiate processes that will result in use of regulatory fiats to streamline or simplify the Lifeline application process. Further Request, p. 27. Such well-intentioned requirements would likely cause significant problems for ETCs. Providers already have ample business incentives to process applications quickly, efficiently and in compliance with the regulations and rules. At the same time, they have countervailing incentives to perform work carefully to avoid inaccuracies and fraud, to be able to document compliance if audited, and to gather and track data for reporting purposes. While Boomerang is always open to good ideas, mandating efficiencies and process improvements for companies in a competitive space with accuracy and fraud concerns is a recipe for trouble. If the Department truly wants to improve efficiencies, it should limit regulatory requirements to those of critical importance to the public interest. Additional requirements necessarily cause providers to devote additional resources and take additional time to collect data needed to ensure compliance with all applicable rules and guidelines, and slows the process.

Second, the suggestion of making the effective date for the Lifeline application approval retroactive to the day on which the wireless ETC receives the application (Further Request, p. 27) is problematic and, moreover, would have little benefit to the subscribers of wireless ETCs because the subscriber cannot use the phone until they receive the phone (which is usually after approval). In the limited cases where the wireless Lifeline subscriber has a phone, retro-activating the approval date (which is not

when the Lifeline benefit is activated) will result in the wireless ETCs being forced to provide service for which they cannot apply for the Federal USF subsidy without being out of compliance with the FCC rules. Per the FCC rules, wireless ETC cannot apply for the USF subsidy until the subscriber, after receiving approval, activates the service by making a call from the phone. Mandating a start date prior to the ETC could receive payment under federal rules would be unsound and also raise constitutional due process and takings concerns.

Third, Boomerang opposes any requirement to require applications in additional, less common languages, as imposing on ETCs unjustified and excessive additional costs. Further Request, p. 28. ETCs would have to hire language specialists to develop such applications and likely would have to hire additional customer service staff with expertise in these minority languages to process them if and when they are received. ETCs often undertake targeted marketing and may not encounter many of the cited groups. In light of target marketing, a requirement to produce advertising and marketing in languages other than English and Spanish would be burdensome and costly.

Fourth, Boomerang opposes any consideration of Department requirements relative to wait times, dropped customer service calls and hold times. Boomerang respectfully suggests that some of these problems could be alleviated by granting additional ETC applications in the Commonwealth. Furthermore, the Department should remain aware that the more Massachusetts-specific regulatory requirements it imposes, the greater will be the likely burdens on provider consumer service

performance. As a general matter, regulatory changes typically result in higher call volumes.

Fifth, the Further Request (at pp. 28-29) also discussed potential provisions to require that calls to customer service not incur Lifeline minutes. This has already been addressed in the marketplace. Through competition, a wireless offering for federal Lifeline USF subsidy has been identified (about 250 voice minutes per month, generally) and for all or, at least, virtually all ETCs the ability to call 911 (emergency services) and 611 (carrier customer service) are available without regard to available Lifeline minutes and don't decrement the Lifeline minutes. Allowing competition to take its natural course should drive/control the minimum offerings. Regulatory intervention is not required.

Sixth, the Company opposes Department-imposed limitations on ETC efforts to sell optional or "top up" services and features to Massachusetts customers. Further Request, p. 29. These services and features are valued by many consumers and help improve the economics that allow for success with the core Lifeline services. The top ups allow the subscriber a competitive and affordable option to the wireline services with regular monthly charges in spite of the Lifeline discount. Like the wireline service, the top ups allow the subscriber to supplement the Lifeline minutes and services on their wireless phone with what they can afford as they need it. Furthermore, providers are subject to general consumer practices laws in the marketing of these services, including the State Unfair and Deceptive Practices laws (G.L. c. 93A), regulations adopted by the Massachusetts Attorney General (at 940 CMR 3.00 et seq.) and additional federal consumer practices and disclosure laws.

D. Other Related Issues (p. 30)

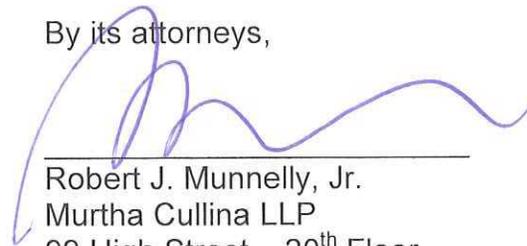
Boomerang is not aware of any authority possessed by the Department to impose an assessment on wireless ETCs. Section 7 of Chapter 25C, cited in the Further Request at p. 30, does not apply to wireless carriers to Boomerang's knowledge. The same holds true with respect to the Department's common carriage statute, G.L. c. 159, § 12(d). Extending these provisions to wireless carriers in general or wireless Lifeline ETCs in particular is a task within the legal purview of the General Court rather than the Department.

Conclusion

Boomerang appreciates the opportunity to work with the Department in finalizing sound, competition and customer-beneficial regulatory requirements applicable to Massachusetts ETCs. Accordingly, for the above-described reasons, Boomerang requests that the Department implement none or few additional requirements enumerated in the Further Request and move forward as quickly as possible to grant ETC status to Boomerang.

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