

Agenda Date: December 12, 2013
Item Number: A3

Docket: UT-121610

Company Name: Boomerang Wireless, LLC d/b/a enTouch Wireless

Staff: Roger Hahn, Regulatory Analyst
Jing Liu, Regulatory Analyst
William Weinman, Assistant Director - Telecommunications

Recommendation

The commission enter an order:

- To designate Boomerang Wireless, LLC, as an Eligible Telecommunications Carrier for the purpose of receiving Lifeline support from the federal Universal Service Fund in service areas specified in Attachment 1 and subject to the conditions in Attachment 2, and
- To grant exemptions from Washington Administrative Code 480-123-030(1)(d),(f) and (g), which requires the filing of a substantive investment plan, wireless network maps, and certification on backup power capabilities, respectively.

I. Background

On October 2, 2012, Boomerang Wireless, LLC d/b/a enTouch Wireless (Boomerang or the company) filed a petition with the Washington Utilities and Transportation Commission (UTC or commission) requesting designation as an Eligible Telecommunications Carrier (ETC) pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (the Act), and Washington Administrative Code (WAC) 480-123-030. Boomerang seeks ETC designation in Washington for the purpose of receiving federal Low Income support (Lifeline) that subsidizes monthly charges for basic telephone service for qualified low-income households. Low Income support is part of the federal Universal Service Fund (USF). The company is a reseller of facility based wireless service providers. Boomerang also requests an exemption from Washington Administrative Code 480-123-030(1)(d),(f) and (g), which requires ETC applicants to file a substantive investment plan, wireless network maps and certification on backup power capabilities.

Boomerang filed an amended petition on September 12, 2013, to update the company's terms of service to include a detailed description of its no charge Lifeline offerings¹ for the following qualified Lifeline customer's plans:

1. Plan I includes a wireless handset, 125 prepaid minutes or text and 10 mbs of data with unused voice minutes and text rolling forward for one month. The unused minutes will expire two months from the date those minutes were initially credited to

¹ Boomerang filed a supplement on September 23, 2013 updating sample advertising material. Boomerang filed a second supplement on October 1, 2013 committing that its marketing affiliate, enMarket, LLC (enMarket) will not perform any marketing services for other ETCs in Washington. Boomerang filed a revised Exhibit A, (Service Area) on November 5, 2013 to reflect the incumbent local exchange carriers' exchanges rather than wire centers.

the customer's account;

2. Plan II includes a wireless handset, 250 prepaid minutes or text and 10 mbs of data with no rollover to the next month;
3. Plan III is a tribal offering that includes a wireless handset, 1,000 voice minutes or text per month and 10 mbs of data without rollover to the next month.

Customers can purchase additional voice minutes, text or data plans that are sold through national retailers and on the company's website www.enTouchWireless.com.

Boomerang has provided Lifeline service since October, 2012. It offers commercial mobile radio service by utilizing the networks of Verizon and Sprint. It has been granted ETC designation in 18 states serving approximately 34,000 wireless lifeline customers and has applications pending in 20 jurisdictions.

II. Discussion

The commission has jurisdiction over ETC petitions. Section 214 (e) of the Act authorizes state regulatory commissions to designate a qualified common carrier as an ETC for the purpose of receiving federal Universal Service Funds.² Under WAC 480-123-040, the commission has authority to approve petitions from carriers requesting ETC designation. The commission's authority to grant or deny petitions for ETC designation includes the authority to impose conditions.³

Commission staff (staff) finds that Boomerang qualifies for ETC designation with the proposed conditions in Attachment 2. Under 47 U.S.C. § 214(e)(2), state commissions may designate more than one carrier as an ETC in an area if such designation is "consistent with the public interest, convenience, and necessity" and the carrier seeking designation as an ETC meets the two requirements of 47 U.S.C. § 214(e)(1):

- (A) offer the services that are supported by federal universal service support mechanisms under section 254(c), 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 therefore using media of general distribution.

Boomerang is a common carrier. It is capable of providing services supported by federal universal service mechanisms, as defined in 47 C.F.R. § 54.101(a) by reselling its underlying network carrier's services. Based on the FCC's *Lifeline and Link Up Reform Order*, the Federal Communications Commission (FCC) forbears from applying the Act's facilities-based requirement to all carriers that seek limited ETC designation to participate in the Lifeline program on the condition that the FCC's Wireline Competition Bureau approves such ETC

² 47 U.S.C. § 214(e)(2); 47 C.F.R. § 54.201(c).

³ *In the Matter of the Petition of TracFone Wireless, Inc. for Exemption from WAC 480-123-030(1)(d),(f) and (g); and Designation as an Eligible Telecommunications Carrier for the Purpose of Receiving Lifeline Support from the Federal Universal Service Fund*, Order 03 (June 24, 2010), UT-093012, ¶ 78.

applicant's Compliance Plan.⁴ The Compliance Plan must demonstrate the ETC applicant's commitment to fight waste, fraud and abuse in the Lifeline program and describe its adherence to the revised federal Lifeline rules. Boomerang has met the forbearance condition. Its Compliance Plan was approved by the FCC on August 8, 2012.⁵ The company also commits that it will advertise the availability of Lifeline services.

The company meets the requirements of the Washington rule on ETC designation, WAC 480-123-030, except subsections (1)(d),(f) and (g):

- WAC 480-123-030(1)(d) requires an ETC petitioner to provide a "substantive plan of the investments to be made with initial federal support during the first two years in which support is received and a substantive description of how those expenditures will benefit customers." Boomerang requests and exemption from the requirement because the company seeks only Lifeline support, not federal High Cost support. It does not have an obligation to use federal USF for infrastructure investment.
- WAC 480-123-030(1)(f) requires a wireless ETC petitioner to provide "a map in .shp format of proposed service areas (exchanges) with existing and planned locations of cell sites and shading to indicate where the carrier provides and plans to provide commercial mobile radio service signals." Boomerang requests an exemption because it does not have access to its underlying carriers' maps.
- WAC 480-123-030(1)(g) requires a wireless ETC to have "at least four hours of back up battery power at each cell site, backup generators at each microwave hub, and at least five hours back up battery power and backup generators at each switch." Boomerang requests an exemption because it does not have control over its underlying carriers' emergency power back up facilities.

Staff supports the company's request for exemptions from the three requirements under WAC 480-123-030. Granting the request is consistent with the public interest, the purposes underlying regulation, and applicable statutes. The Commission granted these exemptions in its orders designating Lifeline-only ETCs such as TracFone Wireless, Inc.

Staff reviewed the company's technical and financial capabilities to provide the supported Lifeline service and carefully considered relevant factors suggested in the FCC's Lifeline and Link Up Reform Order.⁶ Based on the company's operational history and company financial statements staff concludes that the company is technically and financially capable of providing the supported Lifeline service in compliance with all the low-income program rules. Staff recommends the commission require Boomerang to use the federal default eligibility

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 and Link Up Reform Order*"), ¶¶ 361 - 381.

⁵ Wireline Competition Bureau Approved the Compliance Plans of Birch Communications, Boomerang Wireless, IM Telecom, Q Link Wireless and Tag Mobile, FCC Public Notice, WC Docket Nos. 09-197 and 11-42, DA 12-1286 (rel. August 8, 2012).

⁶ *Lifeline and LinkUp Reform Order*, ¶¶ 388.

criteria in 47 C.F.R. § 54.409(2).⁷ As with all other similarly situated Lifeline-ETCs in Washington, Staff encourages Boomerang to work with the Department of Social and Health Services (DSHS) to gain access to their benefit verification system query database to verify the eligibility of those customers whose qualification is based on their participation in Medicaid, Supplemental Nutrition Assistance Program, Supplemental Security Income and Temporary Assistance for Needy Families.⁸ For customers who qualify based on their participation in the three federal assistance programs that are not in the DSHS database, and customers who qualify based on income-based criteria, the company must review relevant proof documentation, as specified in 47 C.F.R. § 54.410. Boomerang is also required to provide its relevant customer records to the commission and the DSHS at least on an annual basis for the purpose of identifying ineligible customers and customers who receive duplicate Lifeline benefits from the company and a wireline Lifeline provider. This condition will be in place until both the FCC's National Accountability and the National Lifeline Eligibility Databases are fully functional.

Staff recommends that the commission apply a set of conditions to Boomerang's ETC designation.⁹ The specific conditions for Boomerang are listed in Attachment 2. One notable change relative to the conditions previously imposed on other ETCs is the elimination of the one-year interim designation. Since the 2012 Lifeline and Link Up reform, the FCC has directed the Universal Service Administrative Company to conduct in-depth audits on ETCs. In addition, the National Lifeline Accountability Database will begin accepting subscriber data in December, 2013 for Washington ETCs.¹⁰ These developments are expected to effectively address the problems of duplicative Lifeline claims. Staff believes monitoring and rule enforcement in the Lifeline market obviates the need for the commission's one-year interim condition.

Staff emphasizes that Boomerang must strictly comply with its commitments in the Compliance Plan reviewed and approved by the FCC. Deviation from its Compliance Plan would forfeit the forbearance from the own-facilities requirements granted by the FCC, consequently not meeting the qualification for ETC designation from this commission.

III. Conclusion

Staff believes that designating Boomerang as a Lifeline-only ETC will deliver benefits and additional choices to low-income households in Washington. Staff recommends the commission enter an order designating Boomerang Wireless, LLC as an Eligible Telecommunications Carrier for the purpose of receiving Lifeline support from the federal Universal Service Fund in the service areas specified in Attachment 1 and subject to the conditions specified in Attachment 2 and grant exemptions from WAC 480-123-030 (1)(d), (f) and (g).

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⁷ The rationale is detailed in staff memo on Cricket Communications, Inc.'s ETC designation petition in Docket UT-111534.

⁸ Before the company obtains access to DSHS's online query database or in the event that the company fails to obtain such access, the company should follow the federal default process to verify Lifeline applicants' eligibility, as specified in 47 C.F.R. § 54.410.

⁹ The commission has previously imposed conditions on similarly situated Lifeline only ETCs.

¹⁰ Wireline Competition Bureau Announces that the National Lifeline Accountability Database Will Begin Accepting Subscriber Data in December, FCC Public Notice, WC Docket No. 11-42, DA 13-2052, Footnote 1 (rel. October 23, 2013).