

03-109, CC Docket No. 96-45, WC Docket No. 12-23, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11.¹

2. The Universal Service Order provides that only ETCs designated by a state public utilities commission (“State Commission”) shall receive federal universal service support.² Under 47 U.S.C. § 214(e), a State Commission shall, upon its own motion or upon request, designate a common carrier that meets the requirements set forth by the FCC as an ETC for a service area designated by the State Commission. The FCC defines a service area as a geographic area established by a State Commission for the purpose of determining universal service obligations and support mechanisms.

3. To be designated as a federal ETC under the Federal Act, a carrier must: (1) be a common carrier; (2) demonstrate an intent and ability to provision the supported services set forth in 47 C.F.R. § 54.101(a) throughout its designated service areas; and (3) demonstrate an intent and ability to advertise its universal service offerings and the charges therefore, using media of general distribution. *See* 47 U.S.C. § 214(e); Universal Service Order, 12 FCC Rcd at 8791.

4. The FCC's supported services set forth in 47 C.F.R. § 54.101(a) are:
- a. voice grade access to the public switched telephone network or its functional equivalent;
 - b. minutes of use for local service provided at no additional charge to end users;

¹ *See 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”).

² Section 214(e)(6) of the Federal Act states that the FCC shall designate ETCs where the carrier is not subject to the jurisdiction of the state commission.

- c. access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local governments in an eligible carrier's service area have implemented 911 or enhanced 911 systems; and
- d. toll limitation services to qualifying low-income consumers.

5. In areas served by a rural telephone company, 47 U.S.C. § 214(e)(2) further requires the Commission to determine that the designation of an additional ETC is in the public interest.

6. On September 29, 2016, Boomerang filed a Petition seeking Designation as an ETC in the State of Utah, Docket Number 16-2590-01. Boomerang seeks designation throughout the coverage areas of Sprint, Verizon, and T-Mobile, as identified by the list of wire centers in exhibit A of Boomerang's application.

7. Boomerang, the DPU, and the OCS engaged in settlement discussions in an attempt to resolve any issues raised by Boomerang's Petition.

8. The Parties have now reached agreement on the issues raised in this docket, as set forth herein. The Parties agree this Stipulation should have no legal effect outside of the instant docket.

AGREEMENT

WHEREFORE, based on their review of all testimony and exhibits submitted and upon their settlement discussions, the Parties hereby stipulate and agree as follows:

1. Boomerang is a wireless reseller of the networks of Sprint Nextel (Sprint), Verizon, and T-Mobile.

2. Boomerang seeks ETC designation for the limited purpose of providing universal service low-income Lifeline service in Utah. Boomerang will not be seeking universal service high-cost support in its service area, nor will Boomerang seek to provide universal service low-income Link Up service.

3. Boomerang's Lifeline program furthers the statutory goal that basic service be available and affordable to all citizens of the state of Utah.

4. Boomerang's Lifeline product offering will constitute an additional choice of Lifeline providers offering service for low-income consumers, which represents a benefit for those consumers and is in the public interest.

5. Boomerang is a commercial mobile radio service ("CMRS") provider, and a common carrier as defined by 47 U.S.C. § 332(c)(1)(A).

6. Boomerang provides each of the supported services set forth in 47 C.F.R. § 54.101(a) and has shown an intent and ability to offer those services once designated throughout its requested service areas.³

7. Boomerang's Compliance Plan outlines the measures it will take to implement the conditions imposed by the FCC.⁴ The FCC approved Boomerang's Compliance Plan, on August 8, 2012.

8. Boomerang will make available Lifeline service to qualifying low-income consumers. Boomerang will not offer Link Up service.

³ In its initial operations, Boomerang will not provide toll limitation service ("TLS"). Boomerang's proposed Lifeline services offer a set amount of minutes and do not differentiate domestic long distance usage from local usage. Moreover, subscribers to such "all-distance" services are not considered to have voluntarily elected to receive TLS. As a result, Boomerang currently is not required to provide TLS to its Lifeline subscribers. *See, e.g., Lifeline and Link Up Reform Order* ¶¶ 49, 230 and 367. If, in the future, Boomerang should offer a Lifeline service which differentiates between local usage and long distance usage, the Company commits to provide TLS to customers of that service.

⁴ *See Lifeline and Link Up Reform Order.*

9. In its application Boomerang had submitted language in regards to its proposed Lifeline plans. However, due to new requirements, Boomerang's supplemental direct testimony included updates to the proposed Lifeline plan. It is this language that will be detailed here and should be approved. Boomerang will provide two (2) non-tribal Lifeline plans, consisting, respectively, of (i) a 500 minute with 500 voice minutes, 100 texts, and 10 MB of data per month without rollover and (ii) a 500 MB plan that has 500 MB of data and 100 talk & text units per month, also without rollover. The voice minimum standard plan is the **500 Minute Plan** that offers 500 voice minutes, 100 texts, and 10MB of data per month. Customer must provide their own device. There is no device available with this offer, nor are discounts or promotions for devices available with this plan. Lifeline minutes, texts and data are automatically posted each month on the Lifeline customer's service date. There is no rollover of minutes, texts, or data, and any unused minutes, texts, or data will expire on the next month's monthly service date. All usage is subject to the Acceptable Use Policy. The Broadband minimum standard plan is the **500 MB Plan**: This plan offers 500 MB of data and 100 talk & text units per month. Data is 3G/4G based on network availability and device capability. Customer provides their own device as plan does not include a device. Lifeline data, units, minutes, and texts are automatically posted each month on the Lifeline customer's service date. There is no rollover of data, units, minutes, or texts, and any unused data, units, minutes, or texts will expire on the next month's monthly service date. All usage is subject to the Acceptable Use Policy.

10. The Parties stipulate and agree that designating Boomerang as an ETC in the identified wire centers serves the public interest, convenience and necessity, as defined in 47 U.S.C. § 214(e)(2).

11. The Parties stipulate and agree that Boomerang shall provide its ETC Lifeline universal service offerings in Utah pursuant to this Stipulation (including attachments). The Parties recommend that Boomerang's provision of its universal service offering as an ETC be governed by the following additional requirements:

- a. Boomerang will use a Utah-specific fact sheet that provides customers concise and complete information about the services they will receive. Such fact sheet is attached hereto as Attachment 1. Boomerang agrees to promptly update the fact sheet anytime it changes its Utah Lifeline program offerings.
- b. Boomerang is not currently seeking any Utah USF funding.
- c. If Boomerang seeks Utah USF funding in the future, Boomerang will file a separate application requesting such state support.
- d. Boomerang will comply with all state service quality and consumer protection requirements.
- e. Boomerang acknowledges that approval of its Petition will be conditioned upon the verified payment of all applicable state and local regulatory fees, including, but not limited to, universal service fees, emergency services, and relay services.
- f. Boomerang agrees to adopt any changes to the certification and verification process developed within Docket No. 10-2528-01 as well as any other Commission approved changes.
- g. Boomerang meets the requirements for federal ETC designation.

- h. Upon implementing any changes to its Lifeline offerings, Boomerang will timely file a notice with the DPU and OCS describing the changed plans.
- i. In regards to the Lifeline offerings, the offerings listed in Boomerang's Supplemental Direct Testimony will govern.

GENERAL PROVISIONS

1. The Parties stipulate to the admission into evidence in this docket of Boomerang's Petition, supplemental correspondence, pre-filed Testimony⁵ and exhibits. This stipulation to the admission of the Testimony does not represent an agreement by the Parties as to any positions taken in such Testimony.

2. Not all Parties agree that each aspect of this Stipulation is warranted or supportable in isolation. Utah Code Ann. § 54-7-1 authorizes the Commission to approve a settlement so long as the settlement is just and reasonable in result. While the Parties are not able to agree that each specific component of this Stipulation is just and reasonable in isolation, all of the Parties agree that this Stipulation as a whole is just and reasonable in result and in the public interest.

3. All negotiations related to this Stipulation are confidential, and no Party shall be bound by any position asserted in negotiations. Except as expressly provided in this Stipulation, and in accordance with Utah Code Ann. § 54-7-1, neither the execution of this Stipulation nor the order adopting it shall be deemed to constitute an admission or acknowledgment by any Party of the validity or invalidity of any principle; nor shall they be construed to constitute the basis of an estoppel or waiver by any Party; nor shall they be

⁵ Direct Testimony of Kimberley Lehrman was filed on 2/17/2017 and supplemental on 3/31/2017.

introduced or used as evidence for any other purpose in a future proceeding by any Party except in a proceeding to enforce this Stipulation.

4. The Parties agree that no part of this Stipulation or the formulae and methodologies used in developing the same or a Commission order approving the same shall in any manner be argued or considered as precedential in any future case except with regard to issues expressly called-out and resolved by this Stipulation. This Stipulation does not resolve and does not provide any inferences regarding, and the Parties are free to take any position with respect to any issues not specifically called-out and settled herein.

5. The Parties request that the Commission hold a hearing on this Stipulation. Boomerang, the DPU, and the OCS shall make one or more witnesses available to explain and offer further support for this Stipulation. The Parties shall support the Commission's approval of this Stipulation. As applied to the DPU and the OCS, the explanation and support shall be consistent with their statutory authority and responsibility.

6. The Parties agree that if any person challenges the approval of this Stipulation or requests rehearing or reconsideration of any order of the Commission approving this Stipulation, each Party will use its best efforts to support the terms and conditions of this Stipulation. As applied to the DPU and the OCS, the phrase "use its best efforts" means that they shall do so in a manner consistent with their statutory authority and responsibility. In the event any person seeks judicial review of a Commission order approving this Stipulation, no Party shall take a position in that judicial review proceeding in opposition to the Stipulation.

7. Except with regard to the obligations of the Parties under the four immediately preceding paragraphs of this Stipulation, this Stipulation shall not be final and binding on

the Parties until it has been approved without material change or condition by the Commission.

8. This Stipulation is an integrated whole, and any Party may withdraw from it if it is not approved without material change or condition by the Commission or if the Commission's approval is rejected or materially conditioned by a reviewing court. If the Commission rejects any part of this Stipulation or imposes any material change or condition on approval of this Stipulation or if the Commission's approval of this Stipulation is rejected or materially conditioned by a reviewing court, the Parties agree to meet and discuss the applicable Commission or court order within five business days of its issuance and to attempt in good faith to determine if they are willing to modify the Stipulation consistent with the order. No Party shall withdraw from the Stipulation prior to complying with the foregoing sentence. If any Party withdraws from the Stipulation, any Party retains the right to seek additional procedures before the Commission, including presentation of testimony and cross-examination of witnesses, with respect to issues resolved by the Stipulation, and no Party shall be bound or prejudiced by the terms and conditions of the Stipulation.

9. This Stipulation may be executed by individual Parties through two or more separate, conformed copies, the aggregate of which will be considered as an integrated instrument.

WHEREFORE, the Parties respectfully submit this Stipulation and Settlement Agreement for approval by the Commission and request that the Commission grant such approval.

Dated this 22nd day of August, 2017.

FOR BOOMERANG WIRELESS, LLC:



Brian W. Burnett (3772)
Kirton McConkie
50 East South Temple, Suite 400
Salt Lake City, Utah 84101
(801) 239-3185
bburnett@kmclaw.com

J. Andrew Gipson
Jones Walker, LLP
190 E Capitol St. Ste 800
Jackson, MS 39201
(601) 949-4900
agipson@joneswalker.com

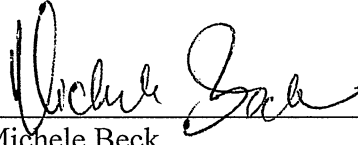
Counsel for BOOMERANG WIRELESS, LLC

**FOR THE UTAH DEPARTMENT OF
PUBLIC UTILITIES:**



Chris Parker
Director
Division of Public Utilities
160 E 300 S, 4th Floor
P.O. Box 140857
Salt Lake City, UT 84114-6751

**FOR THE UTAH OFFICE OF
CONSUMER SERVICES:**

A handwritten signature in black ink, appearing to read "Michele Beck", written over a horizontal line.

Michele Beck

Director

Office of Consumer Services

160 E 300 S, 2nd Floor

Salt Lake City, UT 84114-6782

ATTACHMENT 1
Boomerang Wireless, LLC's Utah-specific Fact Sheet

**IMPORTANT INFORMATION ABOUT YOUR
enTouch WIRELESS LIFELINE SERVICE**

enTouch Wireless Lifeline Service is brought to you by BOOMERANG WIRELESS, LLC and includes a free wireless Lifeline service plan and the offer of an E911 compliant wireless handset at a minimal charge with voicemail and custom calling features such as call waiting, call forwarding, and caller ID. This government sponsored Lifeline telephone service is subject to your continuing eligibility and annual recertification. Only one Lifeline subsidy per household is allowed; your participation in this program requires that you or anyone in your household do not receive a Lifeline subsidy on any other phone, either wireless or wireline. If you no longer participate in the low-income assistance program under which you originally qualified or if your income exceeds the qualifying amount, you must notify enTouch immediately. As a recipient of Lifeline service, your service is non-transferrable. Lifeline is a government assistance program and willfully making false statements to obtain the Lifeline benefit can result in fines, imprisonment, de-enrollment or being barred from the program.

- Your enrollment in the program will be for 12 months, unless your eligibility status changes before your 12 month anniversary, you select a different carrier, or there is no activity on your phone for 30 consecutive days. Your enrollment may be renewed based on your yearly re-certification of Lifeline eligibility.
- You will receive a minimum standard plan of either of the following two optional plans:
1) the voice minimum standard plan is the **500 Minute Plan** that offers 500 voice minutes, 100 texts, and 10MB of data per month. Customer must provide their own device. There is no device available with this offer, nor are discounts or promotions for devices available with this plan. Lifeline minutes, texts and data are automatically posted each month on the Lifeline customer's

service date. There is no rollover of minutes, texts, or data, and any unused minutes, texts, or data will expire on the next month's monthly service date. All usage is subject to the Acceptable Use Policy. 2) The Broadband minimum standard plan is the **500 MB Plan**: This plan offers 500 MB of data and 100 talk & text units per month. Data is 3G/4G based on network availability and device capability. Customer provides their own device as plan does not include a device. Lifeline data, units, minutes, and texts are automatically posted each month on the Lifeline customer's service date. There is no rollover of data, units, minutes, or texts, and any unused data, units, minutes, or texts will expire on the next month's monthly service date. All usage is subject to the Acceptable Use Policy. enTouch Wireless will inform you of any changes. (You must follow the procedures provided to you by enTouch to receive free minutes and elect a Plan.)

- You may choose to purchase an upgraded handset at any time.
- There is no carryover of any unused minutes or services, whether voice, text or data..
- Minutes will be charged for both outgoing and incoming calls. Available minutes, texts, or data can be used as set forth below:
 - Calls to directory assistance and time you are on hold will count as minutes used.
 - Emergency calls to 911 will not count against your minutes or units and CAN be made even if you have NO remaining minutes. Where available, emergency texts to 911 operate the same way.
 - Calls to enTouch customer service from your Lifeline phone (611) will not count against your minutes.
 - Partial minute usage is rounded up to the nearest minute.

- All available minutes are nationwide minutes - there is no additional charge for toll calls.
- For each monthly unit of voice or text services, one unit is equivalent to one minute or one text.
- There is no roaming available.
- To contact enTouch customer service please dial 611 from your enTouch designated Lifeline handset or dial enTouch's toll-free number 1-866-488-8719. You can also contact an enTouch customer service representative via the enTouch website, www.entouchwireless.com or [by email at support@entouchwireless.com](mailto:support@entouchwireless.com).
- Additional minutes can be added by calling enTouch customer service, visiting a local Utah retailer, or via enTouch's website. Additional minutes are available for thirty (30) days from activation. Additional minutes can be used for voice, text, or data as set forth below.

Additional Airtime offerings are subject to change without notice.

price	talk/text units	DATA	days
\$5	0	100mb	30
\$10	0	500mb	30
\$20	1500	0	30
\$30	unlimited talk & text <small>Acceptance of service 3000 minutes/text</small>	0	30
\$50	unlimited talk & text <small>Acceptance of service 3000 minutes/text</small>	4gb	30

1 UNIT = 1 TEXT or 1 VOICE MINUTE

- Approximately three months prior to your 12 month anniversary date, enTouch will contact you to verify that you are still eligible for Lifeline support to continue to receive the free monthly Lifeline benefit. You must certify your continued eligibility or you will automatically be de-enrolled from the Lifeline program. Additionally, if at any time your eligibility

certification is requested by enTouch, your failure to promptly comply will result in de-enrollment.

- If you have purchased additional airtime and have remaining minutes and days of service at the end of your Lifeline eligibility, you will be subject to enTouch's Terms of Service of enTouch's retail wireless services, which are available at:

https://www.entouchwireless.com/pages/cell_phone_termsofservice.

- Your wireless Lifeline service from enTouch is governed by enTouch Wireless Terms of Service, which will be provided to you upon request, and are available at:

https://www.entouchwireless.com/pages/cell_phone_termsofservice. YOU ARE

ENCOURAGED TO READ ALL MATERIALS PROVIDED TO YOU CAREFULLY FOR

COMPLETE DETAILS REGARDING YOUR ENTOUCH WIRELESS LIFELINE SERVICE.