

**BEFORE THE
NEBRASKA PUBLIC SERVICE COMMISSION**

In the Matter of)
)
Application of Boomerang Wireless, LLC)
d/b/a enTouch Wireless for Designation)
Wireless as an Eligible Telecommunications)
Carrier in the State of Nebraska for the)
Limited Purpose of Offering Wireless)
Lifeline Service to Qualified Households)
(Low Income Only))

Docket No. C-4852

**APPLICATION OF BOOMERANG WIRELESS, LLC D/B/A ENTOUCH WIRELESS
FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN
THE STATE OF NEBRASKA FOR THE LIMITED PURPOSE OF OFFERING
WIRELESS LIFELINE SERVICE TO QUALIFIED HOUSEHOLDS**

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INTRODUCTION

COMES NOW Boomerang Wireless, LLC d/b/a enTouch Wireless (“Boomerang” or the Company”) and, pursuant to the Federal Communications Act of 1934, as amended (the “1996 Act”), 47 U.S.C. § 214(e) and implementing rules of the Federal Communications Commission (“FCC”) related to Universal Service, 47 C.F.R. §§ 54.101 through 54.207 (the “FCC Rules”) and the provisions of the Nebraska Administrative Code (“NAC”), Title 291, Chapter 5 and Chapter 10 (“Commission Rules”), hereby requests that the Nebraska Public Service Commission (the “Commission”) designate Boomerang as an Eligible Telecommunications Carrier (“ETC”) throughout Boomerang’s service area in the State of Nebraska for the purpose of receiving federal and state universal service support for participating in the low income programs of the federal Universal Service Fund’s (“USF”) Lifeline program, and the Nebraska

Universal Service Fund's ("NUSF"), Nebraska Telephone Assistance Program (NTAP) through the provision of prepaid wireless telecommunications services. Boomerang is not seeking high cost support from either the USF or the NUSF. Therefore, upon designation as an ETC, Boomerang is entitled to automatic designation as an NETC for the purpose of participation in the NTAP and for receipt of NTAP support. *See In the Matter of the Nebraska Public Service Commission, seeking to determine Nebraska Eligible Telecommunications Carrier status, Docket No. NUSF-35 / PI-69 (Progression Order No. 2 dated July 2, 2006).* ETC status will enable Boomerang to compete in the business of providing Lifeline service to hundreds of thousands of Nebraska customers eligible for this federal program. Boomerang does not seek ETC designation (1) for the purpose of receiving federal universal service support for providing service to high-cost areas or (2) on a wireline basis.¹ A list of each exchange for which Boomerang is requesting ETC status in the State of Nebraska is attached hereto as **Exhibit "A."** Boomerang respectfully requests that the Commission grant this Application and that it do so expeditiously so that Boomerang may begin providing wireless Lifeline service to qualified low-income households at the earliest practicable time. In further support of its Application, Boomerang states as follows:

INFORMATION REGARDING THE APPLICANT

1. Boomerang Wireless, LLC is an Iowa limited liability company with its principal offices located at 955 Kacena Road, Suite A, Hiawatha, Iowa 52233. The Company's Articles of Incorporation are attached hereto as **Exhibit "B."**

¹ Boomerang seeks only Lifeline support from the low-income mechanism of the federal Universal Service Fund ("USF") and is not seeking support from the high-cost support mechanism. ETC certification requirements related to the high-cost program are therefore not applicable to Boomerang's application.

2. Boomerang has been granted ETC designation in 24 states: Arizona, Arkansas, California, Colorado, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, Texas, Washington, West Virginia and Wisconsin. Boomerang also has applications pending in seventeen jurisdictions for designation as an ETC on a wireless basis for federal support for Lifeline services.² Boomerang has never been denied ETC designation by any state commission or by the FCC in connection with any state.

3. Correspondence or communications pertaining to this Application should be directed to Boomerang's attorney of record:

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4. Questions concerning the ongoing operations of Boomerang following certification should be directed to:

² Boomerang has ETC applications currently pending before the state commissions in Hawaii, Massachusetts, New Jersey, New Mexico, Pennsylvania, and South Dakota. In addition, Boomerang has a pending petition before the FCC for ETC designations in Alabama, Connecticut, Delaware, The District of Columbia, Florida, Maine, New Hampshire, New York, North Carolina, Tennessee and Virginia, WC Docket No. 09-197 (filed Dec. 29, 2010).

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BACKGROUND

5. As a result of the work and cooperation of federal and state regulators, the FCC has adopted a number of cost recovery policies and mechanisms designed to promote and maintain universal service. One key component of universal service is the availability of subsidies from the federal Universal Service Fund (“USF”), created by the Act. The USF was created, in part, to provide support to qualifying low-income communications end-users such as those serviced by Boomerang. Mechanisms were also established to moderate the amount of costs to be recovered through basic, recurring charges to low-income users, thereby assisting efforts to maintain reasonable basic rate levels. Only a “common carrier” receiving designation as an ETC under 47 U.S.C. § 214 is eligible to receive subsidies from the federal USF. Wireless carriers are common carriers under federal law.³ Common carriers that provide services consistent with the requirements of Section 214(e) may be deemed ETCs.⁴ Section 214(e)(2) of the Act⁵ provides that:

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone

³ 47 U.S.C. § 332(c)(1).

⁴ 47 U.S.C. § 214(e)(6) provides that wireless carriers not otherwise subject to state commission jurisdiction shall be designated as ETCs if they meet the requirements of 47 U.S.C. § 214(e)(1) consistent with applicable federal and state law.

⁵ 47 U.S.C. § 214(e)(2).

company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

Section 214(e)(1) of the Act⁶ provides:

A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 of this title and shall, throughout the service area for which the designation is received—

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title, 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 therefor using media of general distribution.

6. The FCC has promulgated rules governing ETC designations, set forth at 47 C.F.R. § 54.101, §§ 54.201-203, and §§ 54.205-207 (the "FCC Rules") to establish various requirements for carriers to obtain ETC status. Applicants seeking ETC status in Nebraska must address and satisfy each of the ETC designation criteria under the FCC Rules and Rule 009.02A1 of Chapter 5 of the Commission Rules.

7. Pursuant to 47 U.S.C. § 214(e)(2) and Section 009.02A3 of the Commission Rules, the Commission has the statutory authority to designate a common carrier as an ETC that offers the services supported by federal Universal Service Fund support mechanisms and advertises "the availability of such services and the charges therefore using media of general distribution."⁷

8. Boomerang is a common carrier and reseller of commercial mobile radio service, and will offer all of the services and functionalities detailed in Section 54.101(a) of the FCC

⁶ 47 U.S.C. § 214(e)(1).

⁷ 47 C.F.R. § 54.201(d)(2).

Rules and will provide competitive wireless services throughout its Service Area through resale of other carrier's services. The provision of services through resale of other carrier's services will ensure that Boomerang can provide services to customers throughout the Service Area.⁸ As discussed in subsequent sections of this Application, Boomerang has filed and received approval of its Compliance Plan with the FCC. Additionally, Boomerang will advertise the availability of such services and the charges for these services using media of general distribution and commits to continue to advertise the availability of its Lifeline program.

9. Boomerang, in its provision of wireless services, will offer resold services which enTouch Wireless will obtain from its underlying wireless providers, Sprint, Verizon, AT&T, and other GSM carriers. This extended footprint through multiple carriers allows Boomerang to provide expanded coverage throughout otherwise underserved markets.

10. Further, as shown herein, Boomerang meets the additional requirements set forth in the FCC Rules for obtaining ETC designation for purposes of receiving Lifeline funding support:⁹

(a) Certification of Boomerang's compliance with the service requirements applicable to the support that it receives;

(b) Demonstration of Boomerang's ability to remain functional in emergency situations, including a demonstration of possession of reasonable amount of back-up power to ensure functionality without an external power source, and ability to reroute traffic around damaged facilities, and capability of managing traffic spikes resulting from emergency situations;

⁸ 47 C.F.R. § 54.101(a).

⁹ 47 C.F.R. § 54.202.

(c) Demonstration that Boomerang satisfies the applicable consumer protection and service quality standards;¹⁰

(d) Demonstration of Boomerang's financial and technical capability of providing the Lifeline service in compliance with subpart E of the FCC's rules and regulations.¹¹

(e) Submission of information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan; and

(f) Demonstration that ETC designation is in the public interest.

11. Finally, designation of Boomerang as an ETC on a wireless basis is in the public interest of the State of Nebraska and its low-income telecommunications end-users. Upon designation as an ETC, Boomerang will make Lifeline service available to qualifying customers in the Service Area pursuant to the guidelines and requirements of the universal service program and 47 C.F.R. § 54.202.

BOOMERANG MEETS THE REQUIREMENTS FOR DESIGNATION AS AN ETC TO SERVE DESIGNATED NON-RURAL AND RURAL AREAS IN NEBRASKA

12. As demonstrated below, Boomerang meets the requirements for ETC designation by the Commission pursuant to Section 214(e)(2) of the Act¹² and the Commission Rules. Boomerang demonstrates herein that its designation throughout its Service Area in the State of Nebraska is in the public interest.

¹⁰ For wireless applicants compliance with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service satisfies this requirement.

¹¹ 47 C.F.R. §§ 54.401 to 422.

¹² 47 U.S.C. § 214(e)(2).

13. The Commission has jurisdiction to designate Boomerang as an ETC. Pursuant to the provisions of Section 214(e)(2) of the Act, state commissions, such as this Commission, have primary responsibility for the designation of eligible telecommunications carriers under Section 214(e)(2). As shown in this Application, Boomerang meets the requirements for designation as an ETC in Nebraska. The Commission may and should grant Boomerang's application for ETC status.

14. Boomerang has the financial and technical capability to provide Lifeline service. As part of the Lifeline Reform Order, the FCC amended its rules to require a carrier seeking designation as a Lifeline-only ETC to demonstrate that it is financially and technically capable of providing the supported Lifeline service in compliance with all of the low-income program rules.¹³ Boomerang satisfies these criteria.

15. Boomerang generates substantial revenues from non-Lifeline services and has access to capital from its investors. Boomerang, together with its parent and sister companies, currently provides prepaid wireless services to more than 350,000 subscribers, including more than 50,000 retail customers. Consequently, the Company has not relied, and will not be relying exclusively on Lifeline reimbursement for its operating revenues. The Company has not been subject to enforcement sanctions or ETC revocation proceedings in any state.

16. Boomerang attaches as **Exhibit "C"** a current list of its officers, along with biographical information for each, showing that it has the expertise necessary to provide the services specified herein.

¹³ 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").

17. Boomerang will offer all required services and functionalities. Section 214(e)(1)(A) of the Act¹⁴ requires an ETC to offer the services that are supported by federal universal service support mechanisms under section 254(c). Effective December 29, 2011, pursuant to the USF/ICC Transformation Order¹⁵, as further clarified by the USF/ICC Order on Reconsideration¹⁶, the FCC eliminated its former list of nine supported services and amended section 54.101(a) of its rules to specify that “voice telephony service” is supported by the federal universal service mechanisms. The amended Section 54.101(a) and its list of supported services reads as follows:

§ 54.101 Supported services for rural, insular and high cost areas.

(a) Services designated for support. Voice telephony service shall be supported by federal universal service support mechanisms. The functionalities of eligible voice telephony services include voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; 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 government in an eligible carrier’s service area has implemented 911 or enhanced 911 systems;

¹⁴ 47 U.S.C. § 214(e)(1).

¹⁵ In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (“USF/ICC Transformation Order”).

¹⁶ In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Order on Reconsideration, FCC 11-189 (rel. Dec. 23, 2011) (“USF/ICC Order on Reconsideration”).

and toll limitation for qualifying low-income consumers (as described in subpart E of this part).

18. Upon designation as an ETC in Nebraska, and consistent with state and federal policies favoring universal service, Boomerang will offer voice telephony services as described in the amended Section 54.101 of the FCC Rules.¹⁷ The Company also will provide access to emergency services provided by local government or public safety officials, including 911 and enhanced 911 (“E911”) where available and will comply with any Commission requirements regarding E911-compatible handsets. As discussed above, the Company will comply with the Commission’s forbearance grant conditions relating to the provision of 911 and E911 services and handsets. Boomerang also commits to remit 911 revenues to local authorities. The Company commits to pay in a timely manner all applicable federal, state and local regulatory fees, including but not limited to universal service and E911 fees.¹⁸

19. Boomerang will not provide toll limitation service (“TLS”), which allows low-income consumers to avoid unexpected toll charges. However, since the Company is a prepaid service provider, customers cannot be disconnected for failure to pay toll charges, nor are there additional charges for exceeding their minutes. Further, the Company, like most wireless carriers, does not differentiate domestic long distance toll usage from local usage and all usage is paid for in advance. Pursuant to the Lifeline Reform Order, subscribers to such services are not considered to have voluntarily elected to receive TLS.¹⁹

20. Boomerang will provide wireless service through resale. Under Section 214(e)(1)(A) of the Act and Section 009.02A2 of the Commission Rules, an ETC must offer the

¹⁷ 47 C.F.R. §§ 54.101(a).

¹⁸ See TracFone Wireless, Inc. Petition to Rescind State 911/E911 Condition, FCC Docket No. 96-45 (May 3, 2010).

¹⁹ Lifeline Reform Order at ¶ 230.

services supported by federal universal service support mechanisms throughout its designated service area “either using its own facilities or a combination of its own facilities and resale of another carrier’s services.”²⁰ In its Lifeline Reform Order, the FCC decided to forbear, on its own motion, from applying the facilities requirement of Section 214(e)(1)(A) to any telecommunications carrier that seeks limited ETC designation to participate in the Lifeline program, conditioned on the ETC’s compliance with certain 911 requirements and the ETC’s filing with and approval by the FCC of a compliance plan describing the ETC’s adherence to certain protections prescribed by the FCC (“Blanket Forbearance”).

21. Boomerang seeks limited ETC designation in Nebraska to participate in the Lifeline program and has opted to pursue Blanket Forbearance. On August 8, 2012, the FCC approved the Company’s Compliance Plan (“Compliance Plan”). A copy of the Approved Compliance Plan is attached hereto as **Exhibit “D.”**²¹ Boomerang seeks designation as an ETC by the Board on an expedited basis in light of the FCC’s approval of the Compliance Plan. **Exhibit “D.”**²²

22. Boomerang has developed and implemented a diverse network that delivers all of the services required by the federal Lifeline guidelines, and employs Verizon, Sprint, and AT&T, as well as other GSM carrier networks, to ensure ubiquitous coverage. Additionally, Boomerang operates a network data facility located in Marion, Iowa, which is online with Boomerang’s

²⁰ 47 U.S.C. § 214(e)(1)(A).

²¹ The Company’s Compliance Plan filed with the FCC is a public document and subject to comment at the FCC, which has determined to treat the filing as a “permit-but-disclose” proceeding in accordance with the FCC’s *ex parte* rules, found at 47 C.F.R. §§ 1.1200 *et seq.* See, FCC Public Notice DA 12-314, WC Docket Nos. 09-197, 11-42, Released February 29, 2012.

²² The Company’s Compliance Plan filed with the FCC is a public document and subject to comment at the FCC, which has determined to treat the filing as a “permit-but-disclose” proceeding in accordance with the FCC’s *ex parte* rules, found at 47 C.F.R. §§ 1.1200 *et seq.* See, FCC Public Notice DA 12-314, WC Docket Nos. 09-197, 11-42, Released February 29, 2012.

remote call authorization array located at 630 E. Government Street, Pensacola, Florida 32502, and its network switch platform located at 5500 REC Drive, Marion, Iowa 62302. All wireless voice traffic is monitored and gains network authorization/access from Boomerang's call authorization platform on a per call basis. This same intelligent calling platform is used to transmit calls to the underlying carrier network for call completion, as well as communication to enTouch Wireless' IVR platform. International long distance, operator services, and directory services traffic passes through the Boomerang network system.

23. Through its service arrangements, Boomerang is able to offer all of the services and functionalities supported by the universal service program, as detailed in Section 54.101(a) of the FCC Rules and Section 009.02A2 of the Commission Rules, throughout its Service Area.

24. Boomerang will advertise the availability of the supported services. The FCC adopted specific requirements for Lifeline advertising in its Lifeline Reform Order with which the Company will comply.²³ Within the deadline provided in the Lifeline Reform Order, and in accordance with the Commission Rules, the Company will include the following information regarding its Lifeline service on all marketing materials describing the service: (1) it is a Lifeline service, (2) Lifeline is a government assistance program, (3) the service is non-transferable, (4) only eligible consumers may enroll in the program, (5) the program is limited to one discount per household; (6) documentation necessary for enrollment; (7) Boomerang's name (the ETC); (8) notice that consumers who willfully make a false statement in order to obtain the Lifeline benefit can be punished by fine or imprisonment or can be barred from the program; (9) details of the Lifeline service offerings.²⁴ These statements will be included in all print, audio video and web

²³ Lifeline Reform Order at ¶¶ 275-82.

²⁴ Lifeline Reform Order at ¶ 275.

materials (including social networking media) used to describe or enroll customers in the Company's Lifeline service offering, as well as the Company's application forms and certification forms.²⁵ This specifically includes the Company's website and outdoor signage.²⁶

25. Boomerang is fully prepared to and will comply with federal and state requirements that it advertise the availability of its services throughout its Service Area using media of general distribution.²⁷ In compliance with 47 C.F.R. § 54.201(d)(2) of the FCC's regulations and Section 009.02A3 of the Commission's Rules, Boomerang commits that it will also publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.²⁸ Boomerang specifically targets its advertising so as to reach its intended market base of low-income consumers who otherwise would be without service, or unaware of the program's availability and benefits. Accordingly, more low-income Nebraska residents will be made aware of the opportunities afforded to them under NTAP and the Lifeline program and will be able to take advantage of those opportunities by subscribing to Boomerang's service. A sample of Boomerang's planned advertising is attached hereto as **Exhibit "E."**

ADDITIONAL ELIGIBILITY CRITERIA

26. Effective April 2, 2012, 47 C.F.R. § 54.202 imposes a number of additional requirements in order to be designated an ETC under Section 214(e)(6). Boomerang will comply with the requirements of 47 C.F.R. § 54.202.

27. Boomerang will comply with service requirements. Per the requirements of 47 C.F.R. § 202(a)(1)(i) Boomerang certifies that it will comply with the service requirements

²⁵ Id.

²⁶ Id.

²⁷ 47 C.F.R. § 54.201(d)(2).

²⁸ 47 C.F.R. §§ 54.405(b).

applicable to the low-income support it receives as a result of designation as an ETC for purposes of receiving Lifeline. Boomerang not only commits to provide service throughout its Service Area, but also commits to provide universal service in a timely manner to all customers who make a reasonable request for service pursuant to the FCC Rules and the Commission Rules.²⁹ If designated as a wireless ETC, Boomerang will provide service throughout its Service Area through a combination of its own facilities and the resale of services. Boomerang is willing to accept carrier of last resort obligations throughout the universal service areas in which Boomerang is designated as an ETC by the Commission.

28. Boomerang will comply with the consumer protection standards set by the FCC, including:

(a) Customer Proprietary Network Information - Boomerang will satisfy all consumer privacy protection standards as provided in 47 C.F.R. § 64, Subpart U as applicable and will protect Customer Proprietary Network Information (“CPNI”) as required by state and federal law and will certify compliance with the same on an annual basis.

(b) Consumer Code for Wireless Service - Boomerang certifies that it will comply with the Cellular Telecommunications and Internet Association’s (“CTIA”) Consumer Code for Wireless Service as required by 47 C.F.R. § 54.202(a)(3).

(c) General Compliance - Boomerang commits to reporting information on consumer complaints per 1,000 lines on an annual basis consistent with the FCC’s USF Order.³⁰

²⁹ 47 C.F.R. § 54.202(a)(1) also requires the submission of a five-year plan demonstrating how high-cost universal service support will be used to improve the ETC’s coverage, service quality and capacity. This requirement, however, is inapplicable to this application, since Boomerang is not seeking high-cost assistance.

³⁰ Federal-State Joint Board on Universal Service, First Report and Order, 12 FCC Rcd 8776 at ¶ 4 (1997) (“USF Order”).

Boomerang in general commits to satisfying all applicable state and federal requirements related to consumer protection and service quality standards.

29. As a reseller of other carriers' wireless services, Boomerang is able to offer service of the same quality and reliability as the underlying vendors. Boomerang cannot guarantee that customers will never experience service disruptions, however, Boomerang's underlying carrier agreements allow its service to be as reliable as any other wireless service that must deal with atmospheric and other conditions that sometimes result in dropped calls.

30. Further, under the FCC Rules, an ETC applicant must demonstrate its ability to remain functional in emergency situations.³¹ Since Boomerang is providing service to its customers through the use of facilities obtained from other carriers it is able to provide to its customers the same ability to remain functional in emergency situations as currently provided by the carriers to their own customers, including access to a reasonable amount of back-up power to ensure functionality without an external power source, re-routing of traffic around damaged facilities, and the capability of managing traffic spikes resulting from emergency situations. Facilities owned by Boomerang are capable of remaining fully functional with generator back-up as described above.

31. Nebraska ETC Designation. By this Application, Boomerang Wireless also requests designation as a Nebraska ETC for purposes of participating in the NATP program. In accordance with NETC Rule 004.04A and 004.04B, Boomerang commits to comply with Section 006 of the NETC Rules to the extent such rules are applicable to the Company as a prepaid wireless provider. Boomerang commits to offer NTAP services in compliance with the Commission's order, rules and regulations regarding NTAP including the requirement to use

³¹ 47 C.F.R. § 54.202(a)(2).

only the Commission's NTAP application form, requirements regarding additions and removals of NTAP subscribers from the NTAP program and the semiannual reporting of NTAP customer lists. Boomerang further commits to comply with the requirements recently adopted in the FCC's *Lifeline and Linkup Reform Order* to annually verify the eligibility of each of its NTAP subscribers in cooperation with the NTAP Department of the Commission.³²

**DESIGNATION OF BOOMERANG AS AN ETC IN THE STATE OF NEBRASKA
SERVES THE PUBLIC INTEREST**

32. Boomerang's designation throughout its entire Service Area in Nebraska is in the public interest. Boomerang will provide competitive wireless services throughout its Service Area in the State of Nebraska. Boomerang is a reseller of commercial mobile radio service, and will offer all of the services and functionalities detailed in Section 54.101(a) of the FCC Rules and will provide competitive wireless services throughout its Service Area through resale of other carriers' services. The provision of services through resale of other carriers' services will ensure that Boomerang can provide services to customers throughout the Service Area.³³

33. Wireless ETC's *per se* promote the public interest. The FCC has determined that while "[d]esignation of competitive ETCs promotes and benefits consumers...by increasing customer choice," designation must include "an affirmative determination that such designation is in the public interest regardless of whether the applicant seeks designation in an area served by a rural or non-rural carrier."³⁴ In areas served by non-rural ILECs, the Act does not require a

³² See *Lifeline and Link Up Reform Order* at pages 240-42.

³³ 47 C.F.R. § 54.101(a).

³⁴ See Federal-State Joint Board on Universal Service, 20 FCC Rcd 6371, ¶ 42 (2005).

separate public interest finding. The FCC has previously held that designating a competitor as an ETC in areas served by non-rural ILECs is *per se* in the public interest.³⁵

34. Boomerang seeks designation as an ETC in its service area throughout Nebraska. Although Boomerang is seeking ETC designation in areas typically served by wireline carriers, Boomerang's designation as an ETC will provide a valuable alternative to the existing telecommunications services currently available in these areas.

35. Boomerang submits that the public interest benefits of designating Boomerang as an ETC include 1) a larger local calling area and expanded coverage area via multiple underlying carriers (as compared to traditional wireline carriers and single wireless carriers); 2) the convenience, portability, and security afforded by mobile telephone service; 3) the opportunity for customers to control cost by receiving a pre-set amount of flat-rate monthly airtime; 4) the ability to purchase additional low-cost usage at multiple convenient locations in the event that included usage has been exhausted; 5) the ability of users to use the supported service to send and receive "SMS" or text messages as well as the option to send data and access the public internet; and 6) 911 and, where available, enhanced 911 service in accordance with current FCC requirements. In addition, the inclusion of domestic telephone toll calling as a part of Boomerang's flat-rate wireless offering allows consumers to avoid the risks of becoming burdened with significant and unexpected per-minute charges for domestic telephone toll and overage charges. These per-minute overruns form the basis of a substantial number of consumer complaints to state and federal regulators. Accordingly, Boomerang's offerings will help to reduce this burden on public utility regulatory boards by obviating the cause for such complaints.

³⁵ See *Cellco Partnership*, 16 FCC Rcd, at 45.

36. The FCC has also identified factors that are to be considered in determining whether designation of additional ETCs will serve the public interest and whether the benefits of an additional ETC would outweigh potential harms. These factors include: 1) the benefits of increased competitive choice; and 2) the unique advantages of the applicant company's service offerings.³⁶ Boomerang affirms that its ETC designation meets these criteria as described below.

The Benefits of Increased Competitive Choice

37. The FCC has long acknowledged the benefits to consumers of being able to choose from a variety of telecommunications providers and the resulting variety of telecommunications services they provide.³⁷ This is of particular interest in cases where wireless providers like Boomerang seek to provide service as an alternative to the ILEC. In the *Highland Cellular* case, the FCC recognized and affirmed that some households may not have access to the public switched network as provided by the ILEC.³⁸ The availability of a wireless competitor benefits all consumers. The availability of a wireless competitor benefits consumers who routinely drive long distances to attend work or school or to accomplish everyday tasks such as shopping or attending community and social events. The wireless service offered by Boomerang will provide these consumers with a convenient and affordable alternative to traditional telecommunications service that can be used while at home and away from home.

38. Added together, Boomerang expects these additional competitive advantages to create an atmosphere that will cause many qualified consumers, at their option, to select

³⁶ 47 U.S.C. § 54.202(c).

³⁷ See e.g. *Specialized Common Carrier Services*, 29 FCC2d 870 (1971).

³⁸ Federal-State Joint Bd. on Universal Serv., *Highland Cellular, Inc.*, *Memorandum Opinion and Order*, 19 F.C.C.R. 6422 (2004).

Boomerang's low-income wireless Lifeline service in lieu of the more traditional wireline or wireless services.

39. Designation of Boomerang as an ETC also creates competitive pressure for other wireline and wireless providers within the proposed service areas. In order to remain competitive in low-income markets, therefore, all carriers will have greater incentives to improve networks, increase service offerings and lower prices. This results in improved consumer services and, consistent with federal law, benefits consumers by allowing Boomerang to offer the services designated for support at rates that are "just, reasonable, and affordable."³⁹

Unique Advantages of Boomerang's Service Offerings

40. Boomerang will offer a unique, easy to use, competitive and highly affordable wireless telecommunications service, which it will make available to qualified consumers who either have no other service alternatives or who choose a wireless prepaid solution in lieu of more traditional services. Boomerang's standard customer terms and conditions in connection with its wireless service offering can be found at www.enTouchwireless.com.

41. Boomerang will announce and advertise telecommunications services as an ETC in its Service Area and will publicize the availability of Lifeline services in a manner reasonably designed to reach those likely to qualify for those services. Accordingly, more low-income Nebraska residents will be made aware of the opportunities afforded to them under the Lifeline program and will be able to take advantage of those opportunities by subscribing to Boomerang's service. A sample of Boomerang's planned advertising is attached hereto as **Exhibit "E."**

42. Boomerang will provide universal service as an ETC in all of its Service Area.

³⁹ 47 U.S.C. § 254(b)(1).

43. Boomerang will provide equal access to long distance carriers, to the extent to which it is able to do so.

Boomerang Prepaid Wireless Lifeline Plan

44. enTouch Wireless will provide competitive wireless services throughout its Service Area in the State of Nebraska. Under enTouch Wireless' Lifeline Service Plan, qualified Lifeline customers who reside in Nebraska will be provided with the following optional plans, built on a base plan, with three options for acquiring a device:

45. 250 Free Minute Plan: (Base plan) 250 units and 10mb of data per month. This plan offers 250 minutes (where 1 minute equals 1 unit and 1 text equals 1 unit), for voice and text. Lifeline free minutes are automatically posted each month on the Lifeline customer's service. There are no rollover of minutes.

46. Lifeline Upgrade Data Plan: This plan includes 250 units per month (without rollover) in which 1 minute equals 1 unit and 1 text equals 1 unit, as well as 250 MB of data per month. The plan differs depending on the device: (1) for customers who bring their own device, they will pay a \$5 line fee for 90 days of service; (2) for customers who wish to purchase an entry-level smart phone from Boomerang, they can pay \$25 for the phone, and the \$5 fee will be waived for the first 90 days; after the first 90 days, the \$5 fee for 90 days will apply; (3) for customers who wish to purchase an iPhone 4 or equivalent, they can pay \$50 for the phone, and the \$5 fee will be waived for the first 90 days; after the first 90 days, the \$5 fee for 90 days of service will apply. Should a customer not wish to renew on the 90-day plan for \$5, the plan will convert to the 250 Free Minute plan. The 250 Free Minute plan will provide 250 units per month and 10 MB of data per month.

47. Tribal 1,100 Free Minute Plan: enTouch Wireless will offer qualified consumers who are eligible for the tribal subsidy the Tribal 1,100 Free Minute Plan, which is the Tribal base plan. Lifeline is a component of one of four separate federal universal service fund mechanisms[1] known as the “low-income” support mechanism”[2] and is defined in 47 C.F.R. § 54.401 as “a retail local service offering” “available only to qualified low-income consumers” “for which qualifying low-income consumers pay reduced charges as a result of application of the Lifeline support amount” that includes the services or functionalities enumerated in § 54.401, which enTouch Wireless will use to “[m]ake available Lifeline service...to qualifying low-income consumers”.[3] enTouch Wireless’ wireless Lifeline offering will provide eligible customers with 1,100 voice or text units and 100mb of data per month. This plan offers 1,100 minutes (where 1 minute equals 1 unit and 1 text equals 1 unit), for voice and text. Lifeline free minutes are automatically posted each month on the Lifeline customer’s service. There are no rollover of minutes. This plan is only available to eligible applicants residing on Tribal lands. The additional minutes that exceed those offered in the 250 Free Minute plan (described above) is due to the additional \$25.00 per month in Lifeline support to qualifying low-income consumers living on Tribal lands.

48. Tribal Lifeline Upgrade Data Plan: This plan is for eligible customers that reside on Tribal lands. This new Tribal Lifeline Upgrade Data plan will include 1100 units (voice or text) without rollover in which 1 minute equals 1 unit and 1 text equals 1 unit, as well as 500 MB of data. The plan also differs depending on the device: (1) customers can pay \$5 for 90 days of service, and will receive a free entry-level smartphone; or (2) customers can pay a one-time \$25 fee for an iPhone 4 or equivalent, with the \$5 line fee waived for the first 90 days, and a \$5 fee for 90 days after that. Also for this Tribal plan, if a customer chooses not to renew the paid plan,

he or she will be converted to a Tribal 1,100 Free Minute plan. The Tribal 1,100 Free Minute plan will provide 1,100 units and 100 MB of data per month.

49. Boomerang has a proven track record of tribal engagement and service to Native American populations residing on tribal lands. The Company currently serves tribes in the states of Arizona, Iowa, Kansas, Michigan, Minnesota, Mississippi, North Dakota, Oklahoma, Washington and Wisconsin. With its experience serving tribal communities in other states, Boomerang is well aware of and attuned to the telecommunications needs of Native American populations throughout the continental United States.

50. The terms and conditions of its voice telephony service plans offered to Lifeline subscribers are detailed on page 23 of the Compliance Plan on file with the Commission, and in the updated Terms of Service attached hereto as **Exhibit “F.”**

51. If reasonably and fairly required by the Commission to adjust its service plans to achieve comparability in order to meet standards in the public interests, Boomerang commits to making any such adjustment. All low-income universal service support will be used to allow Boomerang to provide the service with no monthly recurring charge, thus ensuring that consumers receive the full benefit of the universal service support funding for which Boomerang will seek reimbursement. In the event that all airtime has been used, Lifeline customers will also have the capability of purchasing additional airtime in various denominations through “Airfair” cards. Boomerang will not deduct airtime minutes for calls by Lifeline customers with service addresses for Lifeline service in Nebraska to Boomerang’ customer service (via 611 or other designated toll-free access dialing) and calls from Boomerang’ customer service to such Lifeline customers to address billing, customer care and customer service issues.

52. Airfair is a universal top up card that Ready Wireless, Boomerang's sister company, developed with its partner InComm. This universal top card allows the ETCs who subscribe to the Airfair card, a cost effective national distribution channel for Lifeline subscribers to obtain top up minutes. The product is now distributed in over 90K retail outlets, including 7-11 stores. Boomerang customers can Top Up their phones with voice, text and data products in their local areas with cash. Airfair replenishment cards will be made available at many retail outlets frequented by low-income customers throughout the Service Area such as CVS, Dollar General, Walgreens, Seven-Eleven, Fred's Rite Aid, as well as from Boomerang's website.

53. Under Boomerang's proposed low-income wireless offering, each eligible wireless customer will receive a 911 compliant handset at no cost to the subscriber. Wireless handsets will be delivered at no charge to qualifying customers, service will be activated, and the requisite number of minutes will be added upon certification of the customer for Lifeline.

54. Boomerang reiterates that it is applying for ETC designation solely for the purpose of providing Lifeline discounts to qualified low-income consumers and to seek reimbursement for the same and will not seek or accept high-cost support. Under the FCC Rules, an ETC applicant must submit a five-year plan that describes with specificity the proposed improvements or upgrades to the applicant's network on a wire-center-by-wire-center basis throughout its proposed Service Area. The only circumstance warranting deviation from this requirement is where an applicant's requested ETC serving territory would qualify it to receive no "high cost" USF support, but only "low income" USF support. Because Boomerang seeks ETC designation solely for purposes of reimbursement for provision of subsidized Lifeline services to eligible customers, submission of a five-year network improvement plan is not

required at this time. Since Lifeline support is designed to reduce the monthly cost of telecommunication services for eligible consumers, is distributed on a per-customer basis, and is directly reflected in the price that the eligible customer pays, it is assured that all support received by the carrier is used to provide Lifeline services to consumers, thus promoting Lifeline and the availability of telephone service to low-income users, which is clearly in the public interest. In addition, designation of Boomerang as an ETC will not pose any adverse effect in the growth in the high-cost portions of the USF, nor will it create or contribute to an erosion of high-cost funding from any rural or non-rural telephone company.

55. The FCC reaffirmed this position when it stated that “the potential growth of the fund associated with high-cost support distributed to competitive ETCs” is not relevant to carriers seeking support associated with the low-income program.⁴⁰

56. The FCC also recognized that the total effect of additional low-income-only ETC designations would have a minimal impact on the fund when it stated that “any increase in the size of the fund would be minimal and would be outweighed by the benefit of increasing eligible participation in the NTAP and the Lifeline program, furthering the statutory goal of providing access to low-income consumers.”⁴¹

57. It is also vital to recognize that in the case of Lifeline support, an ETC receives USF and NTAP support *only* for the customers it obtains. In the scenario where a competitive ETC obtains a Lifeline customer from another ETC, only the “capturing” ETC provides Lifeline discounts and as a result, only the “capturing” ETC receives support reimbursement.

⁴⁰ Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), CC Docket No. 96-45, Order, 20 FCC Rcd 15095 (2005) (“TracFone Forbearance Order”) at ¶ 17.

⁴¹ TracFone Forbearance Order, at ¶ 17.

58. In addition, all providers are required to contribute a portion of the interstate revenues received from their customers to the Universal Service Fund. In accordance with current federal regulations, Boomerang will make contributions based on that portion of its revenue that is determined to be interstate. As such, approving Boomerang as an ETC will actually create contributions to the USF that were previously non-existent.

59. Designation of Boomerang as an ETC benefits the public interest of low-income consumers throughout Boomerang's Service Area. Approval of Boomerang's ETC Application will serve the public interest by increasing participation of qualified consumers in the Lifeline program in the State of Nebraska. It will also increase the number of carriers eligible for federal USF support, thereby proportionately increasing the amount of federal USF dollars available to Nebraska consumers. Granting ETC status to Boomerang will contribute to more Nebraska residents receiving Lifeline, thereby increasing the amount of federal USF dollars flowing into and thereby benefiting Nebraska residents. In short, Nebraska residents will get more of their money back.

60. Boomerang's Lifeline program will enable thousands of residents to obtain wireless service which would otherwise be unavailable to them. The economic circumstances indicate that low-income individuals, now more than ever, can greatly benefit from the advantages offered by Boomerang's Lifeline service thus allowing those adversely impacted by the failing economy or job loss to have access to a free wireless service to assist in emergency situations, facilitate job search efforts, and to maintain contact with family members.

61. It is also a commonly accepted fact that in today's market, qualified Lifeline customers view the portability and convenience of wireless service not as a luxury, but as a necessity. Mobile service allows children to reach their parents, wherever they may be, allows a

person seeking employment the ability to be contacted by potential employers, and provides end users with the ability to contact emergency service providers, regardless of location.

62. Finally, designation of Boomerang as a wireless ETC will serve the public interest by furthering the extensive role that Boomerang believes it will play in the provision of communications service to low-income consumers, transient users, and other consumers who, due to the restrictive credit criteria, deposit requirements, and long-term commitments of wireline and traditional wireless service providers, are without a viable alternative and are likely to remain so.

63. Boomerang will comply with the uniform eligibility criteria established in new section 54.409 of the FCC Rules.⁴² Therefore, all subscribers will be required to demonstrate eligibility based at least on: (1) household income at or below 135% of the Federal Poverty Guidelines for a household of that size; (2) the household's participation in one of the federal assistance programs listed in new section 54.409(a)(2) (and, to the extent applicable, 54.409(b) for qualifying low-income consumers residing on tribal lands); or (3) meeting eligibility criteria established by Nebraska for its residents, provided such criteria are based solely on income or factors directly related to income per new section 54.409(a)(3) of the FCC Rules. In addition, the Company will confirm that the subscriber is not already receiving a Lifeline service and no one else in the subscriber's household is subscribed to a Lifeline service.

64. Boomerang will implement certification policies and procedures that enable consumers to demonstrate their eligibility for Lifeline assistance to Company personnel as detailed in the Lifeline Reform Order, together with any additional state certification

⁴² 47 C.F.R. § 54.409 (effective June 1, 2012).

requirements.⁴³ Consistent with federal requirements, Boomerang requires customers to certify at the time of service activation and annually thereafter that they: 1) are the head of household; 2) participate in one of the state-approved means tested programs; 3) will be receiving Lifeline-supported services only from Boomerang; 4) do not currently receive Lifeline support; and 5) will notify Boomerang in the event that they no longer participate in the qualifying program.

65. If Boomerang has a reasonable basis to believe that one of its Lifeline subscribers no longer meets the eligibility criteria, the Company will notify the subscriber of impending termination in writing and in compliance with any state dispute resolution procedures applicable to Lifeline termination, and give the subscriber 30 days to demonstrate continued eligibility.⁴⁴ A demonstration of eligibility must comply with the annual verification procedures found in Section 54.410(f), including the submission of a certification form.⁴⁵

66. Furthermore, Boomerang will comply with the FCC's 60-day non-usage policy, as described on pages 19-20 of Boomerang's approved FCC Compliance Plan, attached as Exhibit "D."⁴⁶

BOOMERANG WILL COMPLY WITH ALL ANNUAL REPORTING REQUIREMENTS

67. Consistent with the requirements of 47 C.F.R. § 54.422 (effective April 2, 2012), Boomerang will comply with the FCC's and any State-specific annual reporting requirements.

⁴³ Lifeline Reform Order at ¶61; 47 C.F.R. § 54.410(a).

⁴⁴ Lifeline Reform Order at ¶ 143; 47 C.F.R. § 54.405(e)(1).

⁴⁵ 47 C.F.R. §54.410 (effective April 2, 2012).

⁴⁶ Lifeline Reform Order at ¶¶ 257-63.

ANTI-DRUG ABUSE CERTIFICATION

Boomerang certifies that no party to this Application is subject to denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

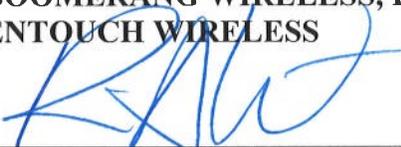
CONCLUSION

WHEREFORE, premises considered, having demonstrated herein that Boomerang satisfies all the conditions of eligibility necessary for designation as an ETC in Nebraska, and having shown that the public and universal service interests of the telecommunications consumers of the State of Nebraska will be properly served, Boomerang respectfully requests that the Commission promptly grant this Application of Boomerang, Inc. d/b/a EnTouch Wireless as a wireless eligible telecommunications carrier.

Respectfully submitted,

**BOOMERANG WIRELESS, LLC D/B/A
ENTOUCH WIRELESS**

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