

**BEFORE THE
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION**

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

Docket No. _____

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

April, 2013

BEFORE THE
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

In the Matter of)
)
Application of Boomerang Wireless, LLC d/b/a) Docket No. _____
enTouch Wireless for Designation as an Eligible)
Telecommunications Carrier in the State of)
South Dakota for the Limited Purpose of Offering)
Wireless Lifeline Service to Qualified Households)
(Low Income Only))

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

COMES NOW Boomerang Wireless, LLC d/b/a enTouch Wireless (“enTouch Wireless” or the “Company”) and, pursuant to the Federal Communications Act of 1934, as amended (the “Act”), 47 U.S.C. § 214(e), implementing rules of the Federal Communications Commission (“FCC”) and S.D. Codified Laws § 49-31-78, hereby requests that the South Dakota Public Utilities Commission (the “Commission”) designate enTouch Wireless as an Eligible Telecommunications Carrier (“ETC”) in portions of the State of South Dakota (the “Service Area”) for the purpose of receiving federal low-income universal service support for prepaid wireless services, specifically Lifeline and tribal Lifeline. enTouch Wireless does not at this time 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 enTouch Wireless is requesting ETC status in the State of South Dakota, along with a map

¹ enTouch Wireless 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 enTouch Wireless’ application.

outlining the proposed Service Area is attached hereto as **Exhibit “A”** and includes exchanges in tribal areas within South Dakota. enTouch Wireless respectfully requests that the Commission grant this Application and that it do so expeditiously so that enTouch Wireless may begin providing wireless Lifeline service to qualified low-income households at the earliest practicable time. In further support of its Application, enTouch Wireless 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 and authorization to transact business in South Dakota are attached hereto as **Exhibit “B.”**

2. The Company is a wireless ETC in the states of Maryland, Michigan, South Carolina, Oklahoma, Iowa, Louisiana, Wisconsin, West Virginia, Texas, Kentucky, Ohio, Arkansas, Kansas and Minnesota with applications pending in Georgia, Pennsylvania, Mississippi, Indiana, Colorado, Massachusetts, New Jersey, Arizona, Missouri, Illinois, and Washington. enTouch Wireless anticipates filing in several additional states in the near future. The Company also has a Petition pending with the FCC for designation as an ETC carrier in Alabama, Connecticut, Delaware, the District of Columbia, Florida, New Hampshire, New York, North Carolina, Tennessee and Virginia. enTouch Wireless 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 enTouch Wireless’ attorney of record:

J. Andrew Gipson
Jones Walker, LLP
190 E. Capitol Street, Suite 800 (39201)

P. O. Box 427
Jackson, Mississippi 39205-0427
Telephone: (601) 949-4789
Facsimile: (601) 949-4804
E-mail: agipson@joneswalker.com

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

Mr. James T. Balvanz
Boomerang Wireless, LLC
955 Kacena Road, Suite A
Hiawatha, Iowa 52233
Telephone: (319) 743-4606
Facsimile: (319) 294-6081
Email: jbalvanz@readywireless.com

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 enTouch Wireless. 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.² Common carriers that provide services

² 47 U.S.C. § 332(c)(1).

consistent with the requirements of Section 214(e) may be deemed ETCs.³ Section 214(e)(2) of the Act⁴ 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 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 Act⁵ 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 South Dakota must address and satisfy each of the ETC designation criteria under the FCC Rules.

7. Pursuant to 47 U.S.C. § 214(e)(2), the Commission has the statutory authority to designate a common carrier as an ETC that offers the services supported by federal Universal

³ 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.

⁴ 47 U.S.C. § 214(e)(2).

⁵ 47 U.S.C. § 214(e)(1).

Service Fund support mechanisms and advertises “the availability of such services and the charges therefore using media of general distribution.”⁶

8. enTouch Wireless 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 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 enTouch Wireless can provide services to customers throughout the Service Area.⁷ As discussed in subsequent sections of this Application, enTouch Wireless has filed and received approval of its Compliance Plan with the FCC. Additionally, enTouch Wireless 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. Further, as shown herein, enTouch Wireless meets the additional requirements set forth in the FCC Rules for obtaining ETC designation for purposes of receiving Lifeline funding support:⁸

(a) Certification of enTouch Wireless’ compliance with the service requirements applicable to the support that it receives;

(b) Demonstration of enTouch Wireless’ 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

⁶ 47 C.F.R. § 54.201(d)(2).

⁷ 47 C.F.R. § 54.101(a).

⁸ 47 C.F.R. § 54.202.

around damaged facilities, and capability of managing traffic spikes resulting from emergency situations;

(c) Demonstration that enTouch Wireless satisfies the applicable consumer protection and service quality standards;⁹

(d) Demonstration of enTouch Wireless' financial and technical capability of providing the Lifeline service in compliance with subpart E of the FCC's rules and regulations.¹⁰

(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.

10. Finally, designation of enTouch Wireless as an ETC on a wireless basis is in the public interest of the State of South Dakota and its low-income telecommunications end-users. Upon designation as an ETC, enTouch Wireless 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.

ENTOUCH WIRELESS MEETS THE REQUIREMENTS FOR DESIGNATION AS AN ETC TO SERVE DESIGNATED AREAS IN SOUTH DAKOTA

11. As demonstrated below, enTouch Wireless meets the requirements for ETC designation by the Commission pursuant to Section 214(e)(2) of the Act.¹¹ In addition, enTouch

⁹ For wireless applicants compliance with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service satisfies this requirement.

¹⁰ 47 C.F.R. §§ 54.401 to 422.

¹¹ 47 U.S.C. § 214(e)(2).

Wireless complies with the standards established by the FCC for determining whether applicants for ETC status serve the public interest.¹²

12. The Commission has jurisdiction to designate enTouch Wireless 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, enTouch Wireless meets the requirements for designation as an ETC in South Dakota. The Commission may and should grant enTouch Wireless' application for ETC status.

13. enTouch Wireless 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 enTouch Wireless satisfies these criteria.

14. enTouch Wireless 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.

¹² See Federal-State Joint Board on Universal Service, *Report and Order*, CC Docket No. 96-45, 20 FCC Rcd 6371, ¶ 40-43 (Rel, March 17, 2005).

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").

15. enTouch Wireless 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.

16. enTouch Wireless 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

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”).

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

17. Upon designation as an ETC in South Dakota, and consistent with state and federal policies favoring universal service, enTouch Wireless will offer voice telephony services as described in the amended Section 54.101 of the FCC Rules.¹⁷ To the extent that the Commission continues to require ETCs to provide those services supported by federal universal service support mechanisms previously enumerated in 47 C.F.R. § 54.101(a), enTouch Wireless commits to continue to satisfy state voice service requirements.¹⁸

18. 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. enTouch Wireless 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.¹⁹

19. enTouch Wireless will not provide toll limitation service ("TLS"), which allows low-income consumers to avoid unexpected toll charges. However, since the Company is a

¹⁷ 47 C.F.R. §§ 54.101(a).

¹⁸ USF/ICC Transformation Order at ¶ 82.

¹⁹ See TracFone Wireless, Inc. Petition to Rescind State 911/E911 Condition, FCC Docket No. 96-45 (May 3, 2010).

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.²⁰

20. enTouch Wireless will provide wireless service through resale. Under Section 214(e)(1)(A) of the Act, an ETC must offer the 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.”²¹ 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. enTouch Wireless seeks limited ETC designation in South Dakota 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”**. enTouch Wireless seeks designation as an ETC by the Commission on an expedited basis in light of the FCC’s approval of the Compliance Plan.

²⁰ Lifeline Reform Order at ¶ 230.

²¹ 47 U.S.C. § 214(e)(1)(A).

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

23. enTouch Wireless has developed and implemented a diverse network that delivers all of the services required by the Federal Lifeline guidelines, and employs both Verizon and Sprint, as well as other GSM carrier networks to ensure ubiquitous coverage. Additionally, enTouch Wireless operates a network data facility located in Marion, Iowa, which is on line with enTouch Wireless' 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 52302. All wireless voice traffic is monitored and gains network authorization/access from enTouch Wireless' 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 enTouch Wireless network system.

24. Through its service arrangements, enTouch Wireless 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, throughout its Service Area.

25. enTouch Wireless 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.²² Within the deadline provided in the Lifeline Reform Order, the Company will include the following information regarding its Lifeline service on all

²² Lifeline Reform Order at ¶¶ 275-82.

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) enTouch Wireless' 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; and (9) details of the Lifeline service offerings.²³ These or similar statements will be included in print, audio, video and web 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.²⁴ This includes the Company's website and outdoor signage.²⁵

26. enTouch Wireless is fully prepared to and will comply with federal requirements that it advertise the availability of its services throughout its Service Area using media of general distribution.²⁶ enTouch Wireless further 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.²⁷ enTouch Wireless 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 South Dakota residents will be made aware of the opportunities afforded to them under the Lifeline program and will be able to take

²³ Lifeline Reform Order at ¶ 275.

²⁴ Id.

²⁵ Id.

²⁶ 47 C.F.R. § 54.201(d)(2).

²⁷ 47 C.F.R. §§ 54.405(b).

advantage of those opportunities by subscribing to enTouch Wireless' service. A sample of enTouch Wireless' planned advertising is attached hereto as **Exhibit "E."**

27. As a designated ETC in South Dakota, enTouch Wireless will annually notify in writing each of its existing customers residing in the Service Area of the availability of federal Lifeline and Linkup assistance programs pursuant to S.D. Admin. R. 20:10:32:55. enTouch Wireless will also provide new customers in the Service Area with written notification of Lifeline and LinkUp assistance programs within 30 days after receiving telecommunications services.

ADDITIONAL ELIGIBILITY CRITERIA

28. The additional requirements for designation of ETCs were recently amended by the FCC. Effective April 2, 2012, 47 C.F.R. § 54.202 imposes a number of changed requirements in order to be designated an ETC under Section 214(e)(6). enTouch Wireless will comply with the requirements of 47 C.F.R. § 54.202, effective April 2, 2012.

29. enTouch Wireless will comply with service requirements. Per the requirements of 47 C.F.R. § 202(a)(1)(i) enTouch Wireless certifies that it will comply with the service requirements applicable to the low-income support it receives as a result of designation as an ETC for purposes of receiving Lifeline. enTouch Wireless 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 S.D. Admin. R. 20:10:32:43.01 and the FCC Rules.²⁸ If designated as a wireless ETC, enTouch Wireless will provide service throughout its Service Area through a combination of its own facilities and the

²⁸ 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 enTouch Wireless is not seeking high-cost assistance.

resale of services. Pursuant to S.D. Admin. R. 20:10:32:43.01, enTouch Wireless commits to providing service on a timely basis to requesting customers within the Service Area where enTouch Wireless' network already passes the potential customer's premises. If the requesting customer is within the Service Area but outside enTouch Wireless' existing network coverage, enTouch Wireless will provide service within a reasonable period of time if such service does not impose excessive or unreasonable cost by (1) modifying or replacing the requesting customer's equipment; (2) extending facilities, such as constructing or extending an access line, deploying a roof-mounted antenna or installing other equipment; (3) adjusting the nearest cell tower; (4) adjusting network or customer facilities; (5) reselling services from another carrier's facilities to provide service; or (6) employing, leasing or constructing additional network facilities such as an access line, a cell site, cell extender, repeater, or other similar equipment.

30. Pursuant to S.D. Admin. R. 20:10:32:43.04 and FCC regulations, enTouch Wireless will comply with the consumer protection standards set by the FCC, including:

(a) Customer Proprietary Network Information - enTouch Wireless 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 - enTouch Wireless 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 - enTouch Wireless commits to reporting information on consumer complaints per 1,000 lines on an annual basis consistent with the FCC's USF

Order.²⁹ enTouch Wireless in general commits to satisfying all applicable state and federal requirements related to consumer protection and service quality standards.

31. As a reseller of other carriers' wireless services, enTouch Wireless is able to offer service of the same quality and reliability as the underlying vendors. enTouch Wireless cannot guarantee that customers will never experience service disruptions, however, enTouch Wireless' 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.

32. Further, under the FCC Rules and S.D. Admin. R. 10:10:32:43.03, an ETC applicant must demonstrate its ability to remain functional in emergency situations.³⁰ Since enTouch Wireless is providing service to its customers through the use of facilities obtained from another 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 enTouch Wireless are capable of remaining fully functional with generator back-up as described above.

DESIGNATION OF ENTOUCH WIRELESS AS AN ETC IN THE STATE OF SOUTH DAKOTA SERVES THE PUBLIC INTEREST

33. enTouch Wireless will provide competitive wireless services throughout its Service Area in the State of South Dakota. enTouch Wireless is a reseller of commercial mobile radio service, and will offer all of the services and functionalities detailed in Section 54.101(a) of

²⁹ Federal-State Joint Board on Universal Service, First Report and Order, 12 FCC Rcd 8776 at ¶ 4 (1997) (“USF Order”).

³⁰ 47 C.F.R. § 54.202(a)(2).

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 enTouch Wireless can provide services to customers throughout the Service Area.³¹

34. 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.”³² In areas served by non-rural ILECs, the Act does not require a 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.³³

35. enTouch Wireless submits that the public interest benefits of designating enTouch Wireless 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

³¹ 47 C.F.R. § 54.101(a).

³² See Federal-State Joint Board on Universal Service, 20 FCC Rcd 6371, ¶ 42 (2005).

³³ See *Cellco Partnership*, 16 FCC Rcd, at 45.

current FCC requirements. In addition, the inclusion of domestic telephone toll calling as a part of enTouch Wireless' 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, enTouch Wireless' offerings will help to reduce this burden on public utility regulatory boards by obviating the cause for such complaints.

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.³⁴ enTouch Wireless 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.³⁵ This is of particular interest in cases where wireless providers like enTouch Wireless 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.³⁶ The availability of a wireless competitor benefits all consumers. The availability of a wireless competitor benefits consumers

³⁴ 47 U.S.C. § 54.202(c).

³⁵ See e.g. *Specialized Common Carrier Services*, 29 FCC2d 870 (1971).

³⁶ Federal-State Joint Bd. on Universal Serv., *Highland Cellular, Inc., Memorandum Opinion and Order*, 19 F.C.C.R. 6422 (2004).

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 enTouch Wireless 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, enTouch Wireless expects these additional competitive advantages to create an atmosphere that will cause many qualified consumers, at their option, to select enTouch Wireless' low-income wireless Lifeline service in lieu of the more traditional wireline or wireless services.

39. Designation of enTouch Wireless 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 enTouch Wireless to offer the services designated for support at rates that are "just, reasonable, and affordable."³⁷

Unique Advantages of enTouch Wireless' Service Offerings

40. enTouch Wireless 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. enTouch Wireless' standard customer terms and conditions in connection with its wireless service offering can be found at www.enTouchwireless.com.

³⁷ 47 U.S.C. § 254(b)(1).

41. enTouch Wireless 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 South Dakota 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 enTouch Wireless' service. A sample of enTouch Wireless' planned advertising is attached hereto as **Exhibit "E."**

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

43. enTouch Wireless will provide equal access to long distance carriers, to the extent to which it is able to do so, if no other ETC is providing equal access within the Service Area.

44. enTouch Wireless offers a local usage plan comparable to that offered by the ILEC in the Service Area for which it seeks designation.

enTouch Wireless Prepaid Wireless Lifeline Plan

45. enTouch Wireless will offer qualified consumers their choice of one of two Lifeline Service Plans. Lifeline is a component of one of four separate federal universal service fund mechanisms³⁸ known as the "low-income" support mechanism"³⁹ 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-

³⁸ 47 C.F.R. § 54.8(a)(1); See "Definitions" at second sentence.

³⁹ 47 C.F.R. § 54.8(a)(1)); See "Definitions" at first sentence.

income consumers”.⁴⁰ enTouch Wireless’ planned wireless Lifeline offering will provide eligible customers with the following alternative Lifeline plans: (1) 125 units that rollover where 1 minute equals 1 unit and 1 text equals 1 unit, and (2) 250 units without rollover where 1 minute equals 1 unit and 1 text equals 1 unit.

46. enTouch Wireless will offer qualified consumers who are eligible for the tribal subsidy the Tribal Lifeline Service Plan. Lifeline is a component of one of four separate federal universal service fund mechanisms⁴¹ known as the “low-income” support mechanism”⁴² 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”.⁴³ enTouch Wireless’ wireless Lifeline offering will provide eligible customers with 1000 units without rollover where 1 minutes equals 1 unit and 1 text equals 1 unit. The Tribal Lifeline plan also includes 10mb of data. The additional minutes that exceed those offered in the Lifeline plan (described above) is due to the additional \$25.00 per month in Lifeline support to qualifying low-income consumers living on Tribal lands.

47. All low-income universal service support will be used to allow enTouch Wireless to provide the service with no monthly recurring charge, thus ensuring that consumer receives 100% of all universal service support funding for which enTouch Wireless will seek reimbursement. In the event that all airtime has been used, Lifeline customers, both Tribal and

⁴⁰ 47 C.F.R. §§ 54.401(a)(1), 54.401(a)(2), 54.401(a)(3), 54.405(a).

⁴¹ 47 C.F.R. § 54.8(a)(1); See “Definitions” at second sentence.

⁴² 47 C.F.R. § 54.8(a)(1)); See “Definitions” at first sentence.

⁴³ 47 C.F.R. §§ 54.401(a)(1), 54.401(a)(2), 54.401(a)(3), 54.405(a).

non-Tribal, will also have the capability of purchasing additional airtime to supplement their Lifeline plans in the various denominations set forth on pages 22-23 of the Compliance Plan. enTouch Wireless will not deduct airtime minutes for calls by Lifeline customers with service addresses for Lifeline service in South Dakota to enTouch Wireless' Customer Service (via 611 from their Lifeline phone or other designated toll-free access dialing from any other phone), and calls from enTouch Wireless' Customer Service to such Lifeline customers to address billing, customer care and customer service issues.

48. Airtime 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, Freds, Rite Aid, as well as from the Company's website.

49. The wireless plans will also include a free handset and the following custom calling features:

- (a) Caller ID;
- (b) Call Waiting;
- (c) Call Forwarding;
- (d) 3-Way Calling; and
- (e) Voicemail.

50. 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.

51. enTouch Wireless 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 enTouch Wireless 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. Similarly, the submission of a two-year plan pursuant to S.D. Admin. R. 20:10:32:43.02 is inapplicable since enTouch Wireless is not seeking high cost USF support. 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 enTouch Wireless 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.

52. 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.⁴⁴

53. 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

⁴⁴ 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.

participation in the Lifeline program, furthering the statutory goal of providing access to low-income consumers.”⁴⁵

54. It is also vital to recognize that in the case of Lifeline support, an ETC receives USF 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.

55. 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, enTouch Wireless will make contributions based on that portion of its revenue that is determined to be interstate. As such, approving enTouch Wireless as an ETC will actually create contributions to the USF that were previously non-existent.

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

57. The Lifeline service offered by enTouch Wireless also provides important benefits that are especially needed by low-income South Dakota residents in this time of

⁴⁵ TracFone Forbearance Order, at ¶ 17.

economic downturn. As the Commission is aware, the Dow Jones Average, a primary indicator of the health of the economy, has been at low ebb for a considerable period of time. Savings accounts, upon which many depend for emergencies and retirement, have significantly eroded. The availability of a mobile telephone will be critical to the efforts of the unemployed as they search for other employment opportunities. Without a regular paycheck, wireless telephone service would become a luxury beyond the means of many of those persons.

58. enTouch Wireless' 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 enTouch Wireless' 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.

59. 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.

60. Finally, designation of enTouch Wireless as a wireless ETC will serve the public interest by furthering the extensive role that enTouch Wireless 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.

61. enTouch Wireless will comply with the uniform eligibility criteria established in new section 54.409 of the FCC Rules.⁴⁶ 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); or (3) meeting eligibility criteria established by South Dakota 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. In addition to the eligibility criteria above, pursuant to Section 54.410, low-income residents of Tribal lands may self-certify as to their residency on Tribal lands.

62. enTouch Wireless 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 requirements.⁴⁷ Consistent with federal requirements, enTouch Wireless 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 enTouch Wireless; 4) do not currently receive Lifeline support; and 5) will notify enTouch Wireless in the event that they no longer participate in the qualifying program.

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

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

63. If enTouch Wireless 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.⁴⁸ A demonstration of eligibility must comply with the annual verification procedures found in Section 54.410(f), including the submission of a certification form.⁴⁹

64. Furthermore, enTouch Wireless commits to comply with the FCC's 60-day non-usage policy, as described in the Lifeline Reform Order.⁵⁰

**ENTOUCH WIRELESS WILL COMPLY WITH
ALL ANNUAL REPORTING REQUIREMENTS**

65. Consistent with the requirements of 47 C.F.R. § 54.422 (effective April 2, 2012) and S.D. Admin. R. 20:10:32:54, enTouch Wireless will comply with state and federal annual reporting requirements:

(a) As required by 47 C.F.R. § 54.422(b)(1) and S.D. Admin. R. 20:10:32:54(3), enTouch Wireless will report, on an annual basis, "any outage in the prior calendar year, as that term is defined in 47 C.F.R. 4.5, of at least 30 minutes in duration" due to enTouch Wireless' network that potentially affects 1) at least ten percent of the end users served in a designated service area; or 2) a 911 special facility. The report will include 1) the date and time of the onset of the outage; 2) a brief description of the outage and its resolution; 3) the particular services affected 4) the geographic areas affected; 4) the steps taken to prevent a similar situation in the future; and 5) the number of customers affected.

⁴⁸ Lifeline Reform Order at ¶ 143; 47 C.F.R. § 54.405(e)(1).

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

⁵⁰ Lifeline Reform Order at ¶¶ 257-63.

(b) Consistent with the requirements of 47 C.F.R. § 54.422(b)(2) and S.D. Admin. R. 20:10:32:54(5), enTouch Wireless will annually report the number of complaints received by enTouch Wireless from the FCC, this Commission, or the Better Business Bureau, per 1,000 connections.

(c) As required by 47 C.F.R. § 54.422(b)(3) and S.D. Admin. R. 20:10:32:54(6), enTouch Wireless will certify its continuing compliance with all applicable service quality standards and consumer protection rules.

(d) Consistent with the requirement of 47 C.F.R. § 54.422(b)(4) and S.D. Admin. R. 20:10:32:54(7), enTouch Wireless will certify, on an annual basis, its continued ability to remain functional in emergency situations.

(e) Consistent with the requirement of 47 C.F.R. § 54.422(b)(5), enTouch Wireless will annually provide information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including (i) the number of minutes provided, (ii) additional charges, if any, for toll calls, and (iii) rates for each plan.

(f) As required by S.D. Admin. R. 20:10:32:54(4), enTouch Wireless will annually report the number of requests for service from potential customers within the Service Area that were unfulfilled during the past year with an explanation of how enTouch Wireless attempted to provide service to those potential customers.

(g) As required by S.D. Admin. R. 20:10:32:54(8), enTouch Wireless will certify annually that it is offering a local usage plan comparable to that offered by the incumbent local exchange company in the Service Area.

(h) As required by S.D. Admin. R. 20:10:32:54(9), enTouch Wireless will acknowledge annually that the Commission may require enTouch Wireless to provide equal

access to long-distance carriers in the event that no other ETC is providing equal access within the Service Area and further acknowledge that the FCC may require enTouch Wireless to provide equal access to long-distance carriers in the event no other ETC is providing equal access within the Service Area.

(i) As required by S.D. Admin. R. 20:10:32:55, enTouch Wireless will submit to the Commission a report by June first of each year setting forth enTouch Wireless' outreach efforts designed to increase participation in the Lifeline and LinkUp assistance programs.

66. The proposed effective date of designation of enTouch Wireless as an ETC is thirty (30) days from the date of this Application.

WHEREFORE, premises considered, having demonstrated herein that enTouch Wireless satisfies all the conditions of eligibility necessary for designation as an ETC in South Dakota, and having shown that the public and universal service interests of the telecommunications consumers of the State of South Dakota will be properly served, enTouch Wireless respectfully requests that the Commission promptly grant this Application and designate Boomerang Wireless, LLC d/b/a enTouch Wireless as a wireless eligible telecommunications carrier including tribal areas within the designated service area.

Respectfully Submitted,

By: 

J. Andrew Gipson
Margarett A. Johnson
Jones Walker, LLP
190 E. Capitol Street, Suite 800 (39201)
P. O. Box 427
Jackson, Mississippi 39205-0427
Telephone: (601) 949-4900
Facsimile: (601) 949-4804
E-mail: agipson@joneswalker.com
mjohnson@joneswalker.com

*Attorneys for Boomerang Wireless LLC
d/b/a enTouch Wireless*

ATTESTATION

STATE OF IOWA

COUNTY OF Linn

PERSONALLY came and appeared before me, the undersigned party in and for the jurisdiction aforesaid, the within named James T. Balvanz who after being duly sworn by me stated under oath as follows: that I am Chief Financial Officer of Boomerang Wireless, LLC d/b/a enTouch Wireless ("enTouch Wireless"); that I executed the foregoing pleading for and on behalf of enTouch Wireless; that I am authorized to execute and file said pleading; and that the matters and things set forth in said pleading are true and correct to the best of my knowledge, information and belief.



James T. Balvanz

SWORN TO AND SUBSCRIBED before me on this the 18th day of April,
2013.



NOTARY PUBLIC

My Commission Expires:

June 4, 2015

