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**TO:**          COMMISSONERS AND ADVISORS

**FROM:**      ERIC PAULSON AND KRISTEN EDWARDS

**RE:**          TC13-035 IN THE MATTER OF THE PETITION OF BOOMERANG WIRELESS LLC DBA  
                  ENTOUCH WIRELESS FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS  
                  CARRIER

**DATE:**      4/4/17

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Commission Staff (Staff) submits this Memorandum for the petition of Boomerang Wireless LLC dba enTouch Wireless (Boomerang or the Company), for designation as an Eligible Telecommunications Carrier (ETC) in the non-rural, CenturyLink, areas of South Dakota.

## **BACKGROUND**

On April 22, 2013, Boomerang filed a petition for designation as an eligible telecommunications carrier throughout a majority of South Dakota including both rural areas and non-rural areas for the purpose of receiving federal low-income universal service support for prepaid wireless services, specifically Lifeline services.

On May 9, 2013, the South Dakota Telecommunications Association (SDTA) filed a petition to intervene in the docket. On June 24, 2014, the Commission granted intervention to SDTA.

On November 14, 2014, Boomerang filed an amended application requesting only the non-rural, CenturyLink, areas of South Dakota be included in this docket. With the amendment to the application, rural and non-rural portions of the applications will be addressed separately in dockets TC15-002 and TC13-035 respectively. The contents of this memorandum are directed to the non-rural, CenturyLink, portion of the application.

On April 24, 2015, Boomerang filed a supplement to Exhibit F of the petition.

On July 15, 2016, Boomerang filed an amended application to comply with the most recent Lifeline rules. Boomerang also filed revised exhibits A, A-1, A-2, and Exhibit E.

The company responded to 11 rounds of data requests and numerous informal information requests from Staff. Boomerang has responded to all of Staff's requests.

On December 2, 2016, Boomerang was granted statewide ETC status for the state of South Dakota by the FCC. However, Boomerang chose to continue to pursue ETC designation by this Commission.

Recently, the decision by the FCC to grant ETC status to Boomerang and several other companies throughout the United States was rescinded for further consideration.<sup>1</sup>

## **OVERVIEW**

State and Federal rules have been implemented laying out the framework which Staff followed to ensure Boomerang meets the specific requirements and standards to be designated as an ETC in South Dakota. In this section Staff will discuss certain South Dakota rules and subparts of the rules that Staff feels need to be specifically pointed out, and discuss the company's responses to those rules.

### **Authority to Designate an ETC**

The State Commission is given authority to decide this matter by the FCC in 47 USC §214(e)(2). 47 USC §214(e)(2) also begins to lay the groundwork for what to consider when granting a company designation as an ETC.

### **ARSD 20:10:32:43(3)**

This rule requires the company to identify the service area, including a detailed map, for which designation is sought. Exhibits A-1 and A-2 of the amended application from July 15, 2016, provide a color coded map based on the overlap of the underlying carrier's service territory and CenturyLink's territory which Boomerang will use. This map covers just the non-rural portion of the application. Also included is the list of relevant wire centers.

As a result of including only non-rural, CenturyLink, areas in this portion of the application, some tribal areas will be considered in both the rural and non-rural portions. For example, in the non-rural, CenturyLink service territory portion, the wire centers in McIntosh and Flandreau are both on tribal lands and in the CenturyLink territories. Boomerang does intend to provide Tribal Lifeline options in this application.

### **ARSD 20:10:32:43(6)**

This rule is discussed below in the public interest portion.

### **ARSD 20:10:32:43.01**

On page 15 of the amended application the company confirms that they will follow the requirements as set forth under this rule.

Based on coverage maps available on the Sprint, T-Mobile, and Verizon websites, requests that cannot be fulfilled because of the network not passing a potential customer's premise should be very limited. The limited coverage areas Staff sees that could be of concern are in the north-central part of the state (Timber Lake, McIntosh, Morristown) and then west of Rapid City in the Black Hills region of the Century Link Territory. Wireless coverage by the underlying providers does not quite cover these entire regions.

### **ARSD 20:10:32:43.02**

As stated on page 26 of the amended application, Boomerang requests that the Commission find that this section of the rules does not apply to this petition.

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<sup>1</sup> See FCC Order, dated March 29, 2017.

[http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2017/db0329/DA-17-291A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0329/DA-17-291A1.pdf)

Staff agrees that the requirement for submission of a two-year plan is not applicable in to this application. Staff recommends this rule be waived for this petition. Boomerang has submitted a compliance plan in its place which has been approved by the FCC. Exhibit D attached to the amended application contains the compliance plan.

**ARSD 20:10:32:43.03**

As Boomerang discusses on page 16 of the amended application, they believe they satisfy the requirements of this rule because they will utilize the established networks of Sprint, T-Mobile, and Verizon and their facilities. Boomerang believes that all three of these companies are capable to handle traffic spikes that may occur in emergency situations and can reroute traffic if need be. Boomerang also believes that all the companies have sufficient backup power to ensure that the network remains operational if the primary power source goes down. Boomerang also confirms that any facilities owned by Boomerang are capable of handling emergency situations.

Staff feels that although they are primarily not a facilities based provider, they have demonstrated that the underlying companies are sound and capable of remaining functional in emergency situations. Staff feels that all three underlying companies are credible and very well established, and that they will be able to handle any of their own traffic plus the traffic that Boomerang may impose on their systems in the event of an emergency. Any facilities that Boomerang may own and use have also been confirmed to satisfy the rule. Staff believes that Boomerang has sufficiently demonstrated that they have the ability to remain functional in emergency situations.

**ARSD 20:10:32:43.04**

On pages 15-16 of the petition, Boomerang made a pledge and commitment to comply with the CTIA Consumer Code and all of the applicable rules pertaining to consumer protection in South Dakota.

Staff feels that the explanation and the commitment for compliance to the rule has satisfied the requirements of the rule at this time.

**ARSD 20:10:32:43.05**

Boomerang stated on page 20 that they offer a local usage plan comparable to the ILEC.

As stated by Boomerang in the response to Staff's data Request 1-3, they offer multiple plans at to no cost to eligible South Dakota residents. Boomerang also notes that they are not aware of any ILEC in the state that offers comparable service at no cost to the consumer.

Staff believes that the plans offered by Boomerang are as comparable to meet the requirements of this rule. Staff is also not aware of any Lifeline plan offered that is free to the customer in the CenturyLink territory.

**Additional FCC Requirements**

47 CFR §54.202(a)(4) states, "For common carriers seeking designation as an eligible telecommunications carrier for purposes of receiving support only under subpart E of this part, demonstrate that it is financially and technically capable of providing the Lifeline service in compliance with subpart E of this part."

In Staff's seventh data requests the company provided updated financial information to Staff.

In the most recent financial information updates filed by the company, their net income and financial statements continue to look positive throughout all of the previous financial updates the company has filed in the docket.

With the responses to Staff's data requests, and the filed financial data, Staff feels that Boomerang is financially capable as required in 47 CFR §54.202(a)(4).

Boomerang has also provided information regarding their technical capabilities. Exhibit C was originally filed with the petition and this exhibit details key officers and provides information about their background and work history. In response to data request seven, Boomerang submitted a revised Exhibit C labeled Attachment 7-3. This revision provided additional biographies to the list of executives.

Contained within the biographies and the petition, Staff feels that sufficient information showing adequate technical capabilities do exist. Key staff within Boomerang have accumulated a number of years of experience and held various positions within the telecommunications industry and other industries throughout their careers. Within the petition and data requests Boomerang states multiple times that they will use the underlying facilities of Verizon, AT&T, Sprint, and T-Mobile. All of these companies are well known within the industry and have demonstrated adequate technical capabilities by having large footprints throughout the nation and the length of time each has been in service.

With a combination of the work experience and history of the key officers and the use of the facilities owned and operated by four reputable wireless companies, Staff feels that Boomerang has shown sufficient technical capabilities as required under 47 CFR §54.202(a)(4).

**ARSD 20:10:32:43(6) and ARSD 20:10:32:43.07**

These two rules require the company to explain why their services are in the public interest and lay out the guidelines for the Commission to consider when making their decision on if the petition to grant designation as an eligible telecommunications carrier is in fact in the public interest.

Staff respectfully defers to the Commission the matter of public interest determination for this docket but provides information for the public interest standard determination as described in ARSD 20:10:32:43.07 below.

**Benefits of Increased Customer Choice**

One thing to consider when deciding on the public interest standard is the benefits of increased customer choice. Approving the petition by Boomerang will not increase the Lifeline choices offered in South Dakota in the CenturyLink territories. As indicated in the response to DR6-3, Boomerang plans to inherit the customers currently served by Budget PrePay, the only wireless ETC doing business in South Dakota approved by the SD PUC in all of CenturyLink's territory. So the element of increased competition is not really a factor in this public interest determination.

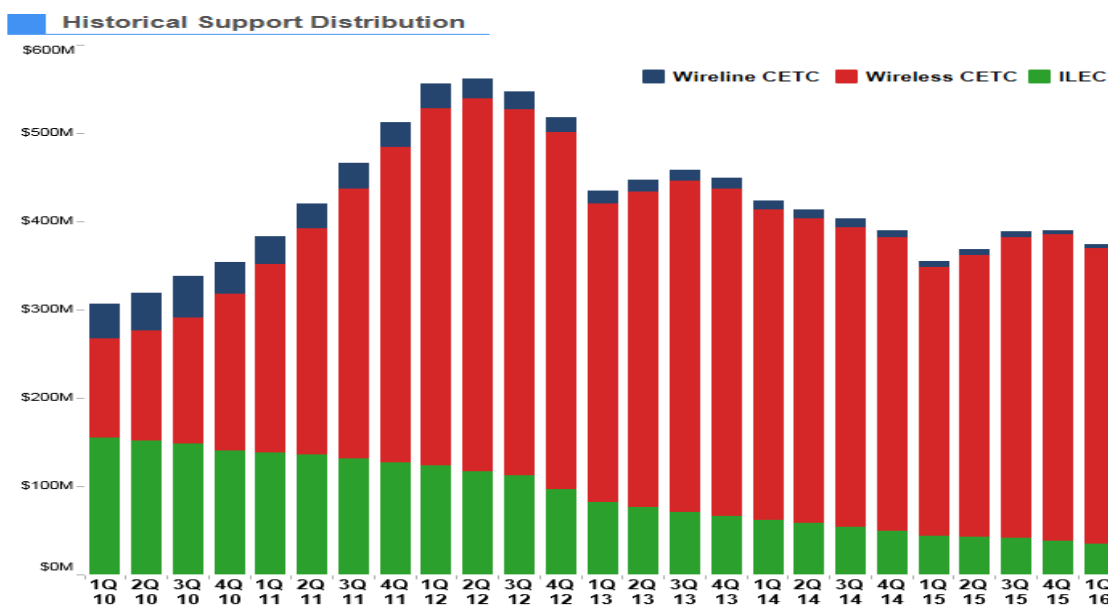
Currently there is only one wireless ETC, Budget PrePay, designated in South Dakota to operate in all non-rural, CenturyLink, wire centers. James Valley Wireless only operates out of the Aberdeen exchange.

Budget PrePay uses Sprint and T-Mobile as its underlying carriers. James Valley Wireless utilizes its own network. Boomerang has stated in its petition that it would use Sprint, Verizon, AT&T, and T-Mobile as its underlying carriers.

Impacts on the USF

In the past there have been multiple reports and studies detailing fraud, waste, and abuse taking place within the Lifeline Program. In January of 2014 the National Lifeline Accountability Database (NLAD) went into effect nationwide attempting to reduce the ability for a company or customer to commit fraud, waste, and abuse the Lifeline program.

As you can see from the graph below from the USAC website, (<http://www.usac.org/li/about/process-overview/stats/historical-support-distribution.aspx>) there has been a decline in disbursements since its peak in quarter 2 of 2012, and since the NLAD was implemented in 1Q14, 1<sup>st</sup> quarter of 2014, there has been a decline in the quarterly low income disbursements from 2012.



The graph above from the USAC website shows the breakdown of total disbursements between wireless CETCs, wireline CETCs, and ILECs. As you can see from this graph, 89% of disbursements in 1Q16 were to Wireless CETC’s. So while the designation of Boomerang could have an effect on the support distribution, it is hard to quantify how much of an effect given the large number of wireless CETC disbursements because it is hard to predict if Boomerang will get customers from wireline CETCs or ILECs to switch to wireless with Boomerang or if they will get other wireless CETC customers to switch to Boomerang’s service. If they only get customers from other wireless CETCs, such as Budget PrePay, the disbursement percentages in the chart above would not change.

Advantages and Disadvantages of Boomerang’s Lifeline Offering

The tables below provide a side by side comparison between Boomerang’s offerings and the ILEC, CenturyLink, as well as other already approved ETC’s offering wireless Lifeline services in South Dakota. The information for the companies other than Boomerang comes directly from company websites.

	Boomerang (Non-Tribal)		Boomerang (Tribal)
Network Provider	Verizon/T-Mobile/Sprint/AT&T		Verizon/T-Mobile/Sprint/AT&T
Areas Offered	All Non-Rural CenturyLink Areas		All Non-Rural CenturyLink Areas
Voice	500 minutes and 100 text messages	100 minutes or texts	Unlimited
Price	Free	Free	Free
Data	10 MB for free	500 MB for free	750 MB for free
Other comments	Customer must provide device	Customer must provide device	Customer must provide device

	CenturyLink (Non-Tribal)	Budget PrePay (Non-Tribal)	James Valley
Network Provider	Own	Sprint/T-Mobile	Own
Areas Offered	Own	All Non-Rural CenturyLink Areas	Local - Aberdeen Area
Voice Plan	Unlimited Local Calling	500 minutes and 500 texts	\$9.25 credit applied to the plan the customer chooses
Price	\$9.25 credit applied to the plan the customer chooses (Enhanced lifeline discount offered for Tribal lands)	Free	
Data Available	Yes, addition plan required	Yes, 250 MB for \$5	
Other comments	Landline, No Long Distance	Free phone	Unlimited calls and text for cell plans with data overage charges if not on the unlimited data plan

Essentially for CenturyLink and James Valley a customer can choose any plan offered and just reduce it by the amount the FCC allows depending on if it's on tribal or non-tribal land.

Advantages of the Boomerang plans include more options for the territories that overlap with other providers, free calling and texting plans, and different underlying carriers than some of the other companies.

The main disadvantage that Staff sees with the Boomerang plans is the customer is responsible for providing their own device. The devices can be a significant investment for individuals looking to get on a Lifeline plan. Smartphones can get very expensive even for base model smartphones.

Commitment to Provide Quality Telephone Services

In the petition on pages 15 and 16 of the amended application, Boomerang confirms that it will provide quality services to its customers. Boomerang commits to comply with the Cellular Telecommunication and Internet Association's Consumer Code for Wireless Service (CTIA Consumer Code). In addition, Boomerang also commits to fully comply with the applicable consumer protection and quality standards in ARSD 20:10:32:43.04.

*Boomerang's ability to Provide Supported Services throughout the Designated Service Area*

On pages 11 and 12 of the amended petition, Boomerang asserts that it will provide the required services throughout its designated service area. Staff would mention that since Boomerang is using Verizon, T-Mobile, AT&T, and Sprint as its underlying carriers, the company is constrained to the reaches of those underlying companies' networks within the CenturyLink territories. If in the future one of these underlying companies expands its network to cover a new expanded area, within the non-rural CenturyLink territory this portion of the docket covers, with the commitment to provide services and discussed starting on pages 11 and 12 of the revised petition, Staff believes Boomerang will also be required to offer the customers in the newly expanded areas an opportunity to sign up for their services if eligible, so long as they are within the borders of the designated non-rural CenturyLink territory.

*Detrimental Effect on the Provisioning of Universal Service by the ILEC*

The final portion to consider under ARSD 20:10:32:43.07 is whether designation of Boomerang as an ETC will have a detrimental effect on the provisioning of universal service on the ILEC. One thing to note is that CenturyLink, the ILEC in the territory covered by this portion of the request and memo, did not petition to intervene in this docket. By CenturyLink's decision not to intervene intervention, we can infer that they do not believe this designation would have a detrimental impact to them or they are not concerned about the effect. Based on that fact, Staff does not believe that designating Boomerang as an ETC in the CenturyLink territories as described will have a detrimental impact on the ILEC given the fact that competition is already allowed within the CenturyLink areas.

**Recommendation**

As previously stated, this memo was meant to outline the South Dakota rules and the FCC requirements placed on Boomerang's application for designation as an Eligible Telecommunications Carrier as it relates to the non-rural, CenturyLink, wire centers. Staff feels that Boomerang has provided all the necessary information and data, whether in the initial petition or through responses to Staff's data requests, as required by each applicable South Dakota and FCC rule. Also, Staff believes that the information provided pursuant to each rule, with the exception to the rules pertaining to public interest, is sufficient to consider Boomerang in compliance with the applicable Eligible Telecommunications Carrier petition requirements. One thing for the Commission to determine that Staff did not take a position on is if the requirements for determining the public interest standard have been met and if Boomerang's designation is or is not in the public interest.