

BEFORE THE
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

In the Matter of)	
)	
Application of Boomerang Wireless, LLC d/b/a)	Docket No. TC13-035
enTouch Wireless for Designation as an Eligible)	
Telecommunications Carrier in Nonrural Exchanges)	
Within the State of South Dakota for the Limited)	
Purpose of Offering Wireless Lifeline)	
Service to Qualified Households)	
(Low Income Only))	

AMENDED APPLICATION OF BOOMERANG WIRELESS, LLC D/B/A ENTOUCH WIRELESS FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE NONRURAL EXCHANGES WITHIN 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)(2), 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 the nonrural exchanges within the State of South Dakota, including certain tribal areas (the “Nonrural Service Area”) for the purpose of receiving federal low-income universal service support for prepaid wireless services, specifically Lifeline services. 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 Nonrural exchange for which enTouch Wireless is requesting ETC status in the State of South Dakota, along with a map outlining the proposed Nonrural Service Area is attached hereto as **Amended Exhibit “A.”** enTouch Wireless respectfully requests that the Commission grant this Amended 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. enTouch Wireless has previously applied for designation throughout the nonrural exchange areas of the State of South Dakota by application filed in this Docket on April 19, 2013, as amended November 14, 2014, (the “Original Application”). Since the date of the Original Application, enTouch Wireless has obtained access to broader network coverage through its underlying carriers. In addition, since the date of the original Application, by Order released April 27, 2016 the FCC has adopted a comprehensive Lifeline reform and modernization order (the “2016 Lifeline Order”) designed, among other things, to “make the . . . Lifeline program a key driver of the solution to our Nation’s broadband affordability challenge.”² For these reasons, enTouch Wireless is filing this Amended Application to reflect the updates

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.

² See In the Matter of Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Federal Universal Service Support, Connect America Fund, WC Docket No. 11-42, WC Docket No. 09-197, WC Docket No. 10-90, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38 (rel. Apr. 27, 2016) (“2016 Lifeline Order”).

and changes both to enTouch's proposed Nonrural Service Area, and the proposed Lifeline plans to be offered by enTouch Wireless.³

2. 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 were attached to the Original Application as **Exhibit "B"** and are incorporated herein by reference.

3. As of the date of this Application, the Company has been designated as a wireless ETC in twenty-four 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. Of these states, the Company currently serves Native American populations residing on tribal lands in the states of Arizona, Iowa, Kansas, Michigan, Mississippi, Minnesota, North Dakota, Oklahoma, Washington and Wisconsin. In addition, the Company has applications pending in seventeen jurisdictions for designation as an ETC on a wireless basis for federal support for Lifeline services.⁴ enTouch Wireless has never been denied ETC designation by any state commission or by the FCC in connection with any state.

4. Correspondence or communications pertaining to this Application should be directed to enTouch Wireless' attorneys of record:

³ enTouch Wireless will supplement this Application prior to December 1, 2016 to update all its Lifeline plans with expanded voice or data components meeting the minimum service requirements applicable under the 2016 Lifeline Order.

⁴ 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 granting 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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5. Questions concerning the ongoing operations of enTouch Wireless following certification should be directed to:

Ms. Kimberley Lehrman, President & Chief Marketing Officer
Boomerang Wireless, LLC
955 Kacena Road, Suite A
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BACKGROUND

6. 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.⁵ Common carriers that provide services

⁵ 47 U.S.C. § 332(c)(1).

consistent with the requirements of Section 214(e) may be deemed ETCs.⁶ Section 214(e)(2) of the Act⁷ 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 Act⁸ 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.

7. 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.

⁶ 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.

⁷ 47 U.S.C. § 214(e)(2).

⁸ 47 U.S.C. § 214(e)(1).

8. 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 Service Fund support mechanisms and advertises “the availability of such services and the charges therefore using media of general distribution.”⁹

9. 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 proposed Nonrural 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 Nonrural Service Area.¹⁰ 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.

10. 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:¹¹

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

⁹ 47 C.F.R. § 54.201(d)(2).

¹⁰ 47 C.F.R. § 54.101(a).

¹¹ 47 C.F.R. § 54.202.

(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 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;¹²

(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.¹³

(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 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 Nonrural 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**

¹² For wireless applicants compliance with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service satisfies this requirement.

¹³ 47 C.F.R. §§ 54.401 to 422.

12. As demonstrated below, enTouch Wireless meets the requirements for ETC designation by the Commission pursuant to Section 214(e)(2) of the Act.¹⁴ In addition, enTouch Wireless complies with the standards established by the FCC for determining whether applicants for ETC status serve the public interest.¹⁵

13. 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.

14. enTouch Wireless has the financial and technical capability to provide Lifeline service. As part of the 2012 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.¹⁶ enTouch Wireless satisfies these criteria.

15. 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 230,000 subscribers, including more than 50,000 retail customers. Consequently, the Company has not relied, and

¹⁴ 47 U.S.C. § 214(e)(2).

¹⁵ 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).

¹⁶ 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) ("2012 Lifeline Reform Order").

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. enTouch Wireless previously attached as **Exhibit “C”** to the Original Application 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. **Exhibit “C”** is incorporated herein by reference.

17. enTouch Wireless will offer all required services and functionalities. Section 214(e)(1)(A) of the Act¹⁷ requires an ETC to offer the services that are supported by federal universal service support mechanisms under section 254(c). As published in the Federal Register on May 24, 2016 pursuant to the Lifeline Modernization Order, the FCC amended section 54.101(a) of its rules to add broadband service as a supported service as follows:

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

(a) *Services designated for support.* Voice telephony services and broadband service shall be supported by federal universal service support mechanisms.

(1) Eligible voice telephony services must provide 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; and toll limitation services to qualifying low-income consumers as provided in subpart E of this part. Show citation box

(2) Eligible broadband Internet access services must provide the capability to transmit data to and receive data by wire or

¹⁷ 47 U.S.C. § 214(e)(1).

radio from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up service.

...¹⁸

18. In addition, the FCC's 2016 Lifeline Order established certain minimum service standards applicable to voice telephony.¹⁹ With respect to the mobile voice services to be provided by the Company, these minimum service standards are as follows:

- (3) The minimum service standard for mobile voice service will be:
 - (i) From December 1, 2016, until November 30, 2017, 500 minutes;
 - (ii) From December 1, 2017, until November 30, 2018, 750 minutes; and
 - (iii) On and after December 1, 2018, the minimum standard will be 1000 minutes.²⁰

19. 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 required under Section 54.101 of the FCC Rules. The 500 Minute and Tribal 1,100 Free Minute Lifeline plans offered by enTouch Wireless already meet the minimum service standards applicable to voice telephony services, though not required until December 1, 2016. The Company is in the process of developing its expanded broadband products and will supplement this Application prior to December 1, 2016 to update its Lifeline plans with broadband components meeting the minimum service requirements applicable to broadband internet access services under the 2016 Lifeline Order. Accordingly, enTouch Wireless will meet by December

¹⁸ Federal Communications Commission Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund; Final Rule, 81 Fed. Reg. 100, 33088-89 (May 24, 2016) (to be codified at 47 C.F.R. § 54.101(a)).

¹⁹ Id. at 33091-92 (to be codified at 47 C.F.R. § 54.408).

²⁰ Id.

1, 2016 the minimum service standards applicable to voice telephony services or broadband internet access services as described in Section 54.408 as published in the Federal Register on May 24, 2016.

20. 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.²¹

21. Consistent with clarifications made by the FCC under the 2016 Lifeline Order, enTouch Wireless will not be required to offer toll limitation service (“TLS”), because the Company, like most wireless carriers, does not distinguish between toll and non-toll calls in the pricing of the service.²²

22. 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.”²³ In its 2012 Lifeline

²¹ See TracFone Wireless, Inc. Petition to Rescind State 911/E911 Condition, FCC Docket No. 96-45 (May 3, 2010).

²² See Federal Communications Commission Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund; Final Rule, 81 Fed. Reg. 100, 33090 (May 24, 2016) (to be codified at 47 C.F.R. § 54.401(a)(2)).

²³ 47 U.S.C. § 214(e)(1)(A).

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").

23. 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 was attached to the Original Application as **Exhibit "D"** and is incorporated herein by reference. 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.

24. enTouch Wireless, in its provision of wireless services, will offer resold services which the Company will obtain from its underlying wireless providers, Sprint, Verizon, AT&T as well as other GSM carriers. This extended footprint through multiple carriers allows enTouch Wireless to provide expanded coverage throughout otherwise underserved markets as shown in **Amended Exhibit "A,"** attached.

25. enTouch Wireless has developed and implemented a diverse network that delivers all of the services required by the Federal Lifeline guidelines, and employs Verizon, Sprint, AT&T 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.

26. 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 Nonrural Service Area.

27. enTouch Wireless will advertise the availability of the supported services. The FCC adopted specific requirements for Lifeline advertising in its 2012 Lifeline Reform Order with which the Company will comply.²⁴ enTouch has developed clear and transparent methods of advertising as required by the 2012 Lifeline Reform Order, to 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) 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.²⁵ 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

²⁴ 2012 Lifeline Reform Order at ¶¶ 275-82.

²⁵ 2012 Lifeline Reform Order at ¶ 275.

Company's application forms and certification forms.²⁶ This includes the Company's website and outdoor signage.²⁷

28. enTouch Wireless is fully prepared to and will comply with federal requirements that it advertise the availability of its services throughout its Nonrural Service Area using media of general distribution.²⁸ 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.²⁹ 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 advantage of those opportunities by subscribing to enTouch Wireless' service. A sample of enTouch Wireless' updated planned advertising is attached hereto as **Amended Exhibit "E."**

29. As a designated ETC in South Dakota, enTouch Wireless will annually notify in writing each of its existing customers residing in the Nonrural 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 Nonrural Service Area with written notification of Lifeline and LinkUp assistance programs within 30 days after receiving telecommunications services.

²⁶ Id.

²⁷ Id.

²⁸ 47 C.F.R. § 54.201(d)(2).

²⁹ 47 C.F.R. §§ 54.405(b).

ADDITIONAL STATE ELIGIBILITY CRITERIA

30. enTouch Wireless is committed to providing service in South Dakota. enTouch Wireless not only commits to provide service throughout its Nonrural 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. If designated as a wireless ETC, enTouch Wireless will provide service throughout its Nonrural Service Area through the 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 Nonrural Service Area where the underlying network already passes the potential customer's premises. If the requesting customer is within the Nonrural 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 taking one or more of the actions identified in S.D. Admin. R. 20:10:32:43.01 including reselling services from another carrier's facilities to provide service.

31. 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; and

(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).

32. 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.

33. 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 CERTAIN NONRURAL EXCHANGES WITHIN THE STATE OF SOUTH DAKOTA SERVES THE PUBLIC INTEREST

34. Upon designation enTouch Wireless will provide competitive wireless services throughout its Nonrural Service Area within the State of South Dakota. enTouch Wireless is a reseller of commercial mobile radio service, and will offer all of the services and functionalities

³⁰ 47 C.F.R. § 54.202(a)(2).

detailed in Section 54.101(a) of the FCC Rules and will provide competitive wireless services throughout its Nonrural 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 Nonrural Service Area.³¹

35. 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 nonrural carrier."³² In areas served by nonrural 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 nonrural ILECs is *per se* in the public interest.³³

36. Notwithstanding the foregoing, 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

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.

service in accordance with 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.

37. 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

38. 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

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).

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 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.

39. 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.

40. 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

41. enTouch Wireless will offer a unique, easy to use, competitive and highly affordable wireless telecommunications service, which it will make available to eligible 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 https://www.entouchwireless.com/pages/cell_phone_termsofservice.

³⁷ 47 U.S.C. § 254(b)(1).

42. enTouch Wireless will announce and advertise telecommunications services as an ETC in its Nonrural 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 **Amended Exhibit "E."**

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

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

enTouch Wireless Prepaid Wireless Lifeline Plans

45. enTouch Wireless will, prior to December 1, 2016, offer qualified consumers their choice of one of three 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-income consumers".⁴⁰

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.

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

46. Prior to December 1, 2016, enTouch Wireless' planned wireless Lifeline offering will provide eligible customers with the following alternative Lifeline plans: (1) **500 Voice Minute Plan**; (2) **250 Free Monthly Unit Plan** (base plan); and (3) **Tribal 1100 Free Unit Plan** (Tribal base plan). Boomerang's Lifeline 250 Free Monthly Unit Plan and Tribal 1100 Free Unit Plan Service Plans are base plans for Lifeline Upgrade Data Plans with multiple options for acquiring a device. The 500 Voice Minute and Tribal 1100 Free Unit Lifeline plans offered by enTouch Wireless already meet the minimum service standards applicable to voice telephony services, though not required until December 1, 2016. The Company is in the process of developing its expanded broadband products and will supplement this Application prior to December 1, 2016 to update its Lifeline plans with broadband components meeting the minimum service requirements applicable to broadband internet access services under the 2016 Lifeline Order. Accordingly, enTouch Wireless will meet by December 1, 2016 the minimum service standards applicable to voice telephony services or broadband internet access services as described in Section 54.408 as published in the Federal Register on May 24, 2016.

47. The **500 Minute Plan**: This plan offers 500 voice minutes, 100 texts, and 10MB of data per month. Customer must provide their own device. There is no device available with this offer, nor are discounts or promotions for devices available with this plan. Lifeline minutes, texts, and data are automatically posted each month on the Lifeline customer's service date. There is no rollover of minutes, texts or data, and any unused minutes, texts or data will expire on the monthly service date.

48. **250 Free Units Plan**: (Base plan) 250 units and 10mb of data per month. This plan offers 250 units (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. The **Lifeline Upgrade Data Plan**: This is available to a subscriber with the 250 Free Units Plan. This plan includes 250 units per month (without rollover) of the 250 Free Units Plan (where 1 minute equals 1 unit and 1 text equals 1 unit), and adds 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.

49. Boomerang will offer qualified consumers who are eligible for the tribal subsidy the **Tribal 1,100 Free Unit Plan (base plan)**, which is the Tribal base plan. This plan offers 1100 units per month for voice and text and 100mb of data per month. The 1,100 units (where 1 minute equals 1 unit and 1 text equals 1 unit) are for voice and text. Lifeline free units are automatically posted each month on the Lifeline customer's service. There are no rollover of units, texts or data. This plan is only available to eligible applicants residing on Federally Recognized Tribal lands. The additional minutes that exceed those offered in the 250 Free Unit Plan (described above) is due to the additional \$25.00 per month in Lifeline support to qualifying low-income consumers living on Tribal lands. The **Tribal Lifeline Upgrade Data Plan**: This plan is for eligible customers that reside on Tribal lands and have the Tribal 1100 Free Unit Plan base plan. This plan includes the 1100 units (voice or text) without rollover of the Tribal 1100 Free

Unit Plan, 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.

50. enTouch Wireless will offer qualified consumers who are eligible for the tribal subsidy the Tribal Lifeline Service Plan described above. Lifeline is a component of one of four separate federal universal service fund mechanisms⁴¹ known as the “low-income” support mechanism⁴² 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

51. enTouch Wireless 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, Mississippi Minnesota, North Dakota, Oklahoma, Washington and Wisconsin. With its extensive experience serving tribal communities in other states, enTouch Wireless is well aware of and attuned to the telecommunications needs of Native

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).

American populations throughout the continental United States. By way of illustration, during the month of July, 2014 enTouch Wireless and several other carriers were contacted by the Oglala Sioux Tribe with a Request for Proposals to serve the tribal Lifeline telecommunications needs of the Oglala Sioux Tribe of the Pine Ridge Reservation in South Dakota. enTouch Wireless responded to the Oglala Sioux Tribe's request for proposals, and a copy of the Tribe's response letter was attached as **Exhibit "F"** to the Original Application, and is incorporated herein by reference. More recently, subsequent to the release of the FCC's 2016 Lifeline Order, enTouch Wireless has had discussions with another tribe in South Dakota regarding the potential benefits of mobile voice and data Lifeline services. Upon designation as an ETC for the Pine Ridge Reservation area and for the other tribal areas requested herein, enTouch Wireless is prepared and committed to engage with the Sioux and each of the other Tribes to meet their tribal residents' wireless telecommunication Lifeline needs. enTouch Wireless submits that these factors further demonstrate the public interest will be served by designation of enTouch Wireless as an ETC within the requested Rural Service Area.

52. 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 on any plan will also have the capability of purchasing additional airtime to supplement their Lifeline plans in the various denominations.⁴⁴ 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

⁴⁴ The additional airtime denominations on pages 22-23 of the Compliance Plan have been updated since the approval of the Compliance Plan in 2012.

from any other phone), and calls from enTouch Wireless' Customer Service to such Lifeline customers to address billing, customer care and customer service issues.

53. Airtime replenishment cards will be made available at many retail outlets frequented by low-income customers throughout the Nonrural Service Area such as CVS, Dollar General, Walgreens, Seven-Eleven, Freds, Rite Aid, as well as from the Company's website. There are a hundred thousand retail locations across the country where Airfair and Get Ready airtime replenishment cards can be purchased.

54. The wireless plans will also include the following custom calling features:

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

55. Wireless handsets, when applicable, 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.

56. 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 Nonrural 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 nonrural telephone company.

57. 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.⁴⁵

58. 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 Lifeline program, furthering the statutory goal of providing access to low-income consumers.”⁴⁶

59. 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

⁴⁵ 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.

⁴⁶ TracFone Forbearance Order, at ¶ 17.

a Lifeline customer from another ETC, only the “capturing” ETC provides Lifeline discounts and as a result, only the “capturing” ETC receives support reimbursement.

60. 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.

61. Designation of enTouch Wireless as an ETC benefits the public interest of low-income consumers throughout enTouch Wireless’ Nonrural 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.

62. 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 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.

63. 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.

64. 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.

65. 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.

66. enTouch Wireless will comply with the uniform eligibility criteria established in new section 54.409 of the FCC Rules as amended by the 2016 Lifeline Order to require that the consumer's household income must be at or below 135% of the Federal Poverty Guidelines for a household of that size; or the consumer, one or more of the consumer's dependents, or the

consumer's household must receive benefits from one of several specified federal assistance programs.⁴⁷ 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; or (2) the household's participation in one of the federal assistance programs listed in new section 54.409(a)(2). In addition, the Company will confirm with the subscriber that he/she is not already receiving a Lifeline service and no one else in the subscriber's household is subscribed to a Lifeline service. enTouch already participates in the National Lifeline Administrative Database ("NLAD") and will participate in the contemplated National Verifier system under the 2016 Lifeline Order.

67. 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 2016 Lifeline Order, together with any additional state certification requirements.⁴⁸ 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.

68. 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

⁴⁷ See Federal Communications Commission Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund; Final Rule, 81 Fed. Reg. 100, 33093 (May 24, 2016) (to be codified at 47 C.F.R. § 54.409(a)(2) (listing qualifying federal benefits to include Medicaid, SNAP, SSI, Federal Public Housing Assistance, or Veterans and Survivors Pension Benefit).

⁴⁸ Id. at 33093-94 (to be codified at 47 C.F.R. § 54.410).

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.⁴⁹ A demonstration of eligibility must comply with the annual verification procedures found in Section 54.410(f), including the submission of a certification form.⁵⁰

69. Furthermore, enTouch Wireless commits to comply with the FCC's 60-day non-usage policy, as described in the Company's Approved Compliance Plan under current rules, and in the future as permitted under the 2016 Lifeline Order for activities such as completion of an outbound call or usage of data, purchase of minutes or data, and sending a text message to establish "usage."⁵¹

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

70. Consistent with the requirements of 47 C.F.R. § 54.422 and S.D. Admin. R. 20:10:32:54-55, enTouch Wireless will comply with state and federal annual reporting requirements, including the recent 2016 Lifeline Order's requirements to certify compliance with applicable minimum service standards by December 1, 2016 under 47 C.F.R. § 54.416.⁵²

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

⁴⁹ 2012 Lifeline Reform Order at ¶ 143; 47 C.F.R. § 54.405(e)(1).

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

⁵¹ See Federal Communications Commission Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund; Final Rule, 81 Fed. Reg. 100, 33091 (May 24, 2016) (to be codified at 47 C.F.R. § 54.407).

⁵² Id. at 33094-95 (May 24, 2016) (to be codified at 47 C.F.R. §§ 54.416 and 422).

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 interest 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 within the designated Nonrural Service Area, including tribal areas therein.

Respectfully Submitted,

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