

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Received
on

Before Commissioners:

Mark Sievers, Chairman
Thomas E. Wright
Shari Feist Albrecht

JAN 18 2013

by
State Corporation Commission
of Kansas

In the Matter of the Application of Boomerang)
Wireless, LLC for Designation as an Eligible) Docket No. 13-BOWZ-121-ETC
Telecommunications Carrier on a Wireless)
Basis (Low Income Only).)

NOTICE OF FILING OF STAFF REPORT AND RECOMMENDATION

COMES Now the Staff of the State Corporation Commission of the State of Kansas ("Staff" and "Commission", respectively), and files its Notice of Filing of Staff Report and Recommendation, recommending the Commission dismiss Boomerang Wireless, LLC's Application requesting designation as an Eligible Telecommunications Carrier (ETC) without prejudice.

WHEREFORE, Staff requests the Commission consider its Report and Recommendation and grant such other and further relief as the Commission deems just and proper.

Respectfully submitted,



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Mark Sievers, Chairman
Thomas E. Wright, Commissioner
Shari Feist Albrecht, Commissioner

Sam Brownback, Governor

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

STATE CORPORATION
COMMISSION

JAN 13 2013

TO: Chairman Mark Sievers
Commissioner Thomas E. Wright
Commissioner Shari Feist Albrecht

PATRICE [illegible]
EXECUTIVE DIRECTOR

FROM: Paula L. Artzer, Senior Telecommunications Analyst
Christine Aarnes, Chief of Telecommunications
Jeff McClanahan, Director of Utilities

DATE: January 11, 2013

DATE SUBMITTED TO EXECUTIVE DIRECTOR: 1/16/13

DATE SUBMITTED TO LEGAL: 1/15/13

DATE SUBMITTED TO COMMISSIONERS: 1/18/13

SUBJECT: 13-BOWZ-121-ETC

In the Matter of the Application of Boomerang Wireless, LLC for Designation as
an Eligible Telecommunications Carrier on a Wireless Basis (Low-Income Only)

EXECUTIVE SUMMARY:

Boomerang Wireless, LLC (Boomerang) has filed an Application for designation as an Eligible Telecommunications Carrier (ETC) in the state of Kansas. Boomerang provides prepaid wireless telecommunications services to consumers using the Sprint, Verizon and other GSM Networks. Boomerang's Application states it is seeking ETC designation to provide Lifeline service to qualifying consumers in specific non-rural local exchanges in Kansas.

Boomerang has a repeated history of delinquent Kansas Universal Service Fund (KUSF) reporting and payment, and provided inadequate information in response to Staff's information requests. Therefore, Staff recommends dismissal of Boomerang's request for designation as a wireless Lifeline ETC for Federal Universal Service Fund (FUSF) purposes because approval would not be in the public interest at this time.

BACKGROUND:

On July 27, 2012, Boomerang filed an Application requesting the Commission grant its request to be designated an ETC for the purpose of receiving low-income FUSF support within the state of Kansas. Boomerang's Application indicates it is not seeking to receive high-cost support, only Lifeline support.

Federal law, 47 U.S.C. § 214 (e)(2), states that "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."

The Commission must evaluate Boomerang's ability to meet the criteria set out in 47 U.S.C. § 214(e)(2). The Commission is not *required* to make a public interest determination with regard to the non-rural service areas, but the Commission has determined in prior ETC proceedings that although a public interest determination is not required by the Federal Act, it would do so nonetheless. Specifically, the Commission determined in its ALLTEL Order that,

In prior cases, the Commission has interpreted the use of the word 'shall' as leaving the Commission no discretion in designating an ETC in non-rural areas if all supported services were offered and advertised throughout the service area. However, SWBT suggests that the FCC has modified its interpretation of this language. In the Virginia Cellular proceeding, the FCC stated:

[T]he Bureau previously has found designation of additional ETCs in areas served by non-rural telephone companies to be per se in the public interest based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) of the Act. We do not believe that designation of an additional ETC in a non-rural telephone company's study area based merely upon a showing that the requesting carrier complies with section 214(e)(1) of the Act will necessarily be consistent with the public interest in every instance.

Further, the FCC concluded that because Virginia Cellular had met the more rigorous public interest analysis for the rural study areas, it had also shown its commitments satisfy the public interest requirements for non-rural areas. Below, the Commission addresses the public interest analysis regarding ALLTEL's designation as an ETC in rural areas. As will be detailed below, the Commission finds it is in the public interest to designate ALLTEL as an additional ETC in rural service areas so long as ALLTEL agrees to the additional requirements imposed by this order. Thus, the Commission finds that ALLTEL has met all the requirements set out in the Federal Act to be designated as an ETC and it is in the public interest to designate ALLTEL as an ETC in the non-rural service areas, as

delineated by this Commission, so long as ALLTEL agrees to the additional requirements imposed by this Order.¹

Although the Commission is not *required* to make a public interest determination with regard to Boomerang's request for ETC designation in the non-rural service areas, the Commission has previously determined that it would make a public interest determination for rural and non-rural telephone company areas alike.

ANALYSIS:

Analysis of Boomerang's Application required Staff to submit four (4) initial Requests for Information (RFIs) to obtain further data and clarification on fourteen (14) issues in regard to the Company's request for ETC designation. The issues Staff identified included the following:

- 1) Boomerang's parent company, HH Ventures, has repeatedly been delinquent in remitting its Carrier Remittance Worksheets (CRW) and KUSF payments to the KUSF Third Party Administrator, GVNW Consulting, Inc. (GVNW);
- 2) The Company had requested a new d/b/a with the FCC but had not updated its ETC filing with the Commission;
- 3) The 499 Form with the FCC is out of date as it shows the Company only provides business in Iowa;
- 4) The Lifeline program qualifiers were not current with the FCC list or the State of Kansas list of qualifications;
- 5) The Application did not clearly identify the service areas for which the Company is seeking ETC designation; and
- 6) Staff identified numerous issues related to the Company's advertising.

Repeated Delinquencies with the KUSF

This Company has a history of late CRW filings and KUSF payments going back to 2010.

Staff's RFI 1 requested information related to the past-due KUSF payments for Boomerang's parent company, HH Ventures. The Company responded that it paid its balance on September 28, 2012, and it believed it may have overpaid the KUSF when it prepared its annual true-up. Staff researched the situation and discovered the Company did have a credit balance listed on their account, but CRW reports were still delinquent for March, April, May, June, September and October 2012, and the Annual True-Up had not been submitted for March 2011-February 2012. With the outstanding reports being due, it could not be determined if the Company would have a current credit balance once reporting was up to date.

As of January 9, 2013, the Company had remitted past due filings through October 2012 but had not paid the related KUSF assessments with the reports which totaled \$1,825.47. The Company made a payment of \$550.70 on December 4, 2012, but continues to owe additional assessments and late penalties of \$1,147.84, which are over 30 days past due. In addition, the Company has

¹ See *In the Matter of the Application of ALLTEL Kansas Limited Partnership for Designation as an Eligible Telecommunications Carrier Pursuant to Section 47 U.S.C. § 214(e)(2) of the Communications Act of 1934*, Docket No. 04-ALKT-283-ETC, September 24, 2004, Order, ¶28 ("ALLTEL Order").

not submitted its November 2012 worksheet or assessment payment and its November reporting will be 30 days overdue on January 15th, 2013.

Questions Regarding Company Name

The first Request for Information also inquired under what name the Company intended to provide Lifeline services. The Application and provided advertising indicated the Company would utilize the name Boomerang Wireless; however, the Company indicated in an FCC filing on September 7, 2012, that it would be providing Lifeline business under Boomerang d/b/a enTouch Wireless. The Company responded to Staff that it would be providing business under the name enTouch Wireless with a tag-line of "provided by Boomerang Wireless", however none of the updated marketing materials provided to Staff in November 2012 indicate anything other than Boomerang Wireless.

Service Area Request is Ambiguous

In its initial Application, Boomerang requested authority to serve "non-rural" areas in Kansas, which by definition would be those areas served by Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T). However, the Application included a list of over 1,900 Common Language Location Identifiers (CLLI) for rural and non-rural incumbent local exchange carriers. The codes provided represent numerous telephone central offices as well as telephone hardware locations (remote switches, distribution frames, etc.) that are not central offices.

Staff inquired in RFI 2 whether the Company intended to do business in non-rural areas of Kansas as stated in the Application or both rural and non-rural areas. Staff also requested an updated Attachment A only showing exchange CLLI codes where the Company was requesting ETC designation. Boomerang responded on November 29, 2012, and stated they intended to serve rural and non-rural areas and were developing an amended Attachment A. To date, Staff has not received an updated Attachment.

Calling Plan and Advertising Issues

Staff addressed several issues in its RFIs related to the marketing material provided by the Company that did not correlate with the State of Kansas or FCC programs for qualifying for the Lifeline program. Staff provided the Commission's website to assist the Company in accessing the correct information to update its marketing materials. Staff indicated the Company needed to provide the advertising with the appropriate verbiage in the documents as part of the approval process. The Company responded with amended advertising, but still referred to the programs incorrectly. In addition, the Commission-required contact information is not in compliance with the Commission's October 2, 2006, Order in Docket No. 06-GIMT-446-GIT, and the font appears very small which may result in being difficult to read. All advertising was branded Boomerang which does not reflect their stated intent of going by enTouch Wireless.

RECOMMENDATION:

ETCs are required to abide by the conditions of their designation, including: advertising requirements, compliance with the Lifeline Calling Plan Rule, annual certification requirements and, when applicable, compliance with the 60-day standard for inactivity. Moreover, ETCs may be required to file regular reports or respond to periodic inquiries from the Commission.

Boomerang has not shown its ability to comply with such requirements and Staff cannot state that the request for ETC designation is "consistent with the public interest, convenience, and necessity."

At this time, Staff believes it would not be in the public interest to grant Boomerang's request for ETC designation. The Commission must also determine if an ETC is financially and technically capable of being an ETC and Staff does not believe Boomerang has proved this to be the case either.

Therefore, Staff suggests the Commission dismiss Boomerang's request for ETC designation without prejudice. Staff's recommendation does not preclude Boomerang from filing a new request for ETC designation at a later date if HH Ventures and Boomerang can prove their ability to meet financial reporting and payment requirements on time, clearly state their intended service area, provide their customers with appropriate reference materials, and provide any additional information as necessary in a timely manner.

cc: Patrice Petersen-Klein, Executive Director

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Notice of Filing of Staff Report and Recommendation* was placed in the United States Mail, postage prepaid, on this 18th day of January, 2013, properly addressed to:

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