

BEFORE THE PUBLIC UTILITIES COMMISSION STATE OF COLORADO

DOCKET NO. 12A-954T

IN THE MATTER OF THE APPLICATION OF BOOMERANG WIRELESS, LLC, FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STATE OF COLORADO FOR THE LIMITED PURPOSE OF OFFERING WIRELESS LIFELINE SERVICE TO QUALIFIED HOUSEHOLDS (LOW INCOME ONLY) AND FOR WAIVER OF CERTAIN COMMISSION RULES.

**PARTIES' JOINT RESPONSES TO ADMINISTRATIVE LAW JUDGE'S
QUESTIONS IN DECISION NO. R12-0163-I**

Boomerang Wireless LLC ("Boomerang"), Staff of the Colorado Public Utilities Commission ("Staff"), and the Colorado Office of Consumer Counsel ("OCC") (collectively, "the Parties") hereby provide the following responses to the questions of Administrative Law Judge Jennings-Fader which were issued on February 4, 2013 in Decision No. R12-0163-I. The Parties have conferred about the responses and have authorized Boomerang, by and through its undersigned counsel, to provide these responses on behalf of all the Parties.

Dated this 20th day of February, 2013.

Respectfully submitted,
HOLLAND & HART LLP

/s/ Sara K. Rundell
Sara K. Rundell, #41314
Thorvald A. Nelson, #24715
6380 South Fiddlers Green Circle, Suite 500
Greenwood Village, CO 80111
Telephone: (303) 290-1601
Facsimile: (303) 290-1606
tnelson@hollandhart.com
sakrundell@hollandhart.com

**ATTORNEYS FOR
BOOMERANG WIRELESS, LLC**

Jean S. Watson-Weidner, #20726
First Assistant Attorney General
Office of the Colorado Attorney General
1300 Broadway, 8th Floor
Denver, Colorado 80203
Telephone: (303) 866-5158
Facsimile: (720) 508-6038
JSWW@state.co.us

**ATTORNEY FOR THE STAFF OF THE
COLORADO PUBLIC UTILITIES
COMMISSION**

Gregory E. Bunker, #24111
Senior Assistant Attorney General
Office of the Colorado Attorney General
1300 Broadway, 7th Floor
Denver, Colorado 80203
Telephone: (720) 508-6212
Facsimile: (720) 508-6040
Gregory.Bunker@state.co.us

**ATTORNEY FOR THE COLORADO OFFICE
OF CONSUMER COUNSEL**

18a. Agreement at ¶ 5 reads: “Boomerang will initially offer *one* (1) prepaid Lifeline Basic Universal Service plan (‘LBUS plan’) to eligible non-tribal Lifeline customers, as described in Attachment 3” to the Stipulation. (Emphasis supplied.) Boomerang’s FCC-approved Revised Compliance Plan (Compliance Plan) is attached to the Application as Exhibit 3. Page 23 of the Compliance Plan states: Boomerang’s “Lifeline offering will provide eligible customers with the following *two* 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.” (Emphasis supplied.)

Please explain why Boomerang decided not to offer in Colorado both of the Lifeline plans described in the Compliance Plan.

There is a discrepancy between the LBUS plan described in Attachment 3 to the Stipulation and the Lifeline offerings described in the Compliance Plan. With respect to this discrepancy, does the FCC require a carrier to provide the Lifeline offerings described in an approved compliance plan? If it does, please address whether the Commission can approve (and if it may do so, the basis on which it should approve) in this docket that Agreement which does not include both Lifeline plans described in the Compliance Plan.

RESPONSE: Staff and the OCC requested that Boomerang not offer its 125 minute plan in Colorado to help ensure that Boomerang’s offerings would accord with those of other Colorado Eligible Telecommunications Carriers (“ETCs”). The Parties believe that requiring a minimum of 250 minutes will help avoid disparate treatment of Boomerang vis-à-vis other carriers. To the Parties’ knowledge, no carriers have obtained approval to offer fewer than 250 minutes in any recent Colorado ETC proceeding. This also helps protect Lifeline customers in Colorado by ensuring that they will uniformly have access to a minimum of 250 free minutes, regardless of which Colorado ETC they select.

The Federal Communications Commission (FCC) does not require a carrier to provide the Lifeline offerings described in an approved FCC Compliance Plan. In fact, the FCC stated in Decision No. FCC 05-46, CC Docket No. 96-45, ¶ 34, that “although the Commission has not set a minimum local usage requirement, there is nothing in the Act (Communications Act of 1934, as amended), Commission rules, or orders that would limit state commissions from prescribing some amount of local usage as a condition of ETC status.”

18b.

Agreement at ¶ 11.A reads: “If Boomerang desires to (1) modify its existing LBUS Plan, (2) add a new Lifeline plan, or (3) modify a Lifeline plan (each, a ‘Modification’), then Boomerang shall first provide the other Parties [in Docket No. 12A-954T] with thirty days’ advance notice of the proposed Modification. If none of the Parties objects within the thirty-day notice period (the ‘Notice Period’), then Boomerang’s proposed Modification will go into effect upon the expiration of the Notice Period.”

Does the Commission have an obligation to make an annual (or periodic) certification to the FCC that an eligible telecommunications carrier (ETC) is providing Lifeline service in accordance with its ETC certification? If the Commission has such an obligation, please describe the obligation. Does the quoted Agreement language mean that, if neither OCC nor Staff objects within the Notice Period, Boomerang is authorized to begin offering the modified LBUS plan without a Commission decision approving the modified LBUS plan? If the Agreement language has this meaning and if the Commission has a reporting obligation, please explain how the Parties envision the Commission will meet its reporting obligation without a Commission decision that describes the Lifeline service (*i.e.*, the LBUS) that Boomerang is authorized to provide.

Previous Commission decisions approving (and incorporating) stipulations and designating a carrier as an ETC for the limited purpose of providing Lifeline service require the ETC to file an application to modify an approved LBUS plan, to add new Lifeline offerings, and to change a Lifeline offering. There is no such requirement in the Agreement. Please provide the rationale for the different approach taken in the Stipulation. Requiring previously-designated ETCs to file an application and not requiring Boomerang to file an application in the same (or similar) circumstances is disparate treatment. Please provide an explanation as to why the disparate treatment, which appears to favor Boomerang, is not discriminatory.

RESPONSE:

No. The Public Utilities Commission (“PUC”) does not have an obligation to make an annual (or periodic) certification to the FCC that an ETC is providing Lifeline service in accordance with its ETC certification. However, the FCC’s rules do require ETCs offering low-income Lifeline services to submit an annual certification to the FCC administrator pursuant to 47 C.F.R. §54.416 that they are in compliance with federal Lifeline certification procedures.

Parties in prior proceedings have negotiated a few versions of the language in ¶ 11.A, all of which, to the parties’ knowledge, require either notice and an application or simply an application for changes to the approved Lifeline plans. The language quoted above was based on

settlement language approved by the Commission in Decision No. R12-1343 in Docket No. 12A-507T in November 2012. Thus, the Parties do not believe that this language creates disparate treatment of Boomerang, as compared to other carriers.

The Parties believe the quoted language enhances administrative efficiency by providing Boomerang the ability to make some changes – *e.g.*, those favorable to consumers, such as offering more free minutes – without requiring a full-fledged application process for each such change. At the same time, if necessary, the application requirement will ensure that low-income customers in Colorado are protected from detrimental changes. For anything that would decrease customer rights or minutes, the parties anticipate that the process contained in ¶ 11.A will ensure that Boomerang will have to apply for Commission approval.

As noted above, it does not appear the Commission has a federal obligation to certify low-income ETCs to the FCC. To the extent the Commission does choose to engage in a low-income ETC certification process, ¶ 11.A will not interfere with the Commission's ability to certify Boomerang's compliance with ETC certification requirements, as any changes that decrease Boomerang's compliance with federal or state requirements would trigger an application for Commission approval.

18c.

Agreement at ¶ 11.B reads: “If Boomerang has failed to comply with paragraph 11.A above and has implemented a modification or addition to the LBUS plan or any additional Lifeline plan without following the procedures described above, then ... the Commission may investigate any unnoticed or unauthorized change to Boomerang’s LBUS or Lifeline Plan Description, Terms and Conditions and Operating Procedures.” (Emphasis supplied.)

Do the Parties intend the italicized language to place a limitation on the Commission’s ability to investigate an unnoticed or unauthorized change to Boomerang’s LBUS or Lifeline Plan Description, Terms and Conditions, and Operating Procedures? If so, please explain the rationale for the limitation. Do the Parties intend the italicized language to create a condition precedent to the Commission’s ability to investigate an unnoticed or unauthorized change to Boomerang’s LBUS or Lifeline Plan Description, Terms and Conditions, and Operating Procedures? If so, please explain the rationale for the condition precedent.

Do the Parties intend the italicized language to place a limitation on the Commission’s ability to investigate whether Boomerang in fact is providing service as it states it will do in the Compliance Plan and in the Stipulation (for example, an investigation in response to a customer complaint)? If so, please explain the rationale for the limitation. Do the Parties intend the italicized language to create a condition precedent to the Commission’s investigating whether Boomerang in fact is providing service as it states it will do in the Compliance Plan and in the Stipulation? If so, please explain the rationale for the condition precedent.

RESPONSE:

The Parties consider the quoted language an acknowledgement of the Commission’s authority, rather than a limitation on or a condition precedent to it. The Commission may always investigate as it sees fit to perform its statutory duties.

18d. Agreement at ¶ 11.C reads: “[F]or changes to any additional Lifeline plans or implementation of new Lifeline plans, other than the LBUS plan, Staff may investigate and obtain any necessary data through the Commission’s audit powers *once the Commission is notified of changes.*” (Emphasis supplied.) Pursuant to the Agreement at ¶ 11.A, Staff will receive notice of Modifications, but the Commission will not receive notice. Please address this discrepancy and its effect on when Staff may investigate changes to Lifeline plans and new Lifeline plans.

RESPONSE: The Parties agree that the language above is not entirely clear and believe that more appropriate language would be “once Staff is notified of changes.” The Parties do not intend the language above to modify the Commission or Staff’s ability to investigate or to otherwise perform their duties in any fashion.

18e. Concerning advertising: In his testimony at Exhibit JTB-6, Mr. Balvanz provides examples of Boomerang's advertising for its Lifeline service. At page 3 of that exhibit, there is a reference to 100 free monthly minutes being offered. This number is not found in any other materials and is inconsistent with the proposed LBUS plan. Should the Commission rely on this exhibit? If so, should the Commission rely on the 100 free monthly minutes? Please explain your responses.

RESPONSE: No. Boomerang is not offering a 100-minute Lifeline plan in Colorado. Boomerang provides Lifeline service in many states and had considered offering a 100-minute plan in some of them. Boomerang never intended, however, to offer a 100-minute plan in Colorado and should not have included the 100-minute advertising examples in its Colorado materials. The materials attached here as Attachment 18e were included with Boomerang's amended application in this proceeding and are more in line with what Boomerang expects to use in Colorado. Boomerang will ensure that it advertises in Colorado only the products that will be available in Colorado, and it will not include the 100-minute advertising materials in Colorado.

18f. Stipulation at Exhibit 9: In that exhibit three handsets are pictured. May a LBUS customer choose any of the three handsets as her free handset? If not, please identify the handsets that are provided free-of-charge as part of the LBUS.

RESPONSE: Exhibit 9 was attached to Boomerang's application and, as stated in the application, was a sample of handsets that could be provided. Customers do not choose among the three handsets depicted; rather, Boomerang offers each Lifeline customer one handset from its then-current stock. Boomerang offers the handsets pictured, if available, but some Lifeline customers may be offered a slightly different one. However, each Lifeline customer will receive a free handset comparable in quality and features to those contained at Exhibit 9.

18g. Stipulation at Attachment 2 at § E: Please be sure that the e-mail address shown for the Commission's External Affairs Section is the correct e-mail address.

RESPONSE: Yes, the Parties have confirmed that the appropriate e-mail address for customer complaints is dora_puc_complaints@state.co.us.

18h. Stipulation at Attachment 2 at § F.3 (last sentence) reads: “This letter *should* be filed with the Director by the last business day of the following month.” (Emphasis supplied.) Do the Parties intend that the letter *must* be filed within the specified time? If so, the quoted language does not accomplish that goal. *See, e.g.*, last sentence of *id.* at § G.4 (“shall be filed”).

RESPONSE: Yes, the Parties do intend this to create a binding obligation, and they agree with Judge Jennings-Fader that “shall” would be a better word to clarify the Parties’ intent.

18i. Stipulation at Attachment 2 at § G.5 reads: “Boomerang will comply with Rule 4 CCR 723-2-2304(b)(IV) by extending the *Lifeline customer’s service* day-for-day for qualifying outages lasting eight hours or longer during a continuous 24-hour period.” (Emphasis supplied.)

Is the reference to Lifeline customer a reference to a LBUS plan customer or to a Lifeline plan (as defined in the Agreement at ¶ 11) customer or to both? If the language includes a LBUS plan customer, please describe Boomerang’s implementation of § G.5 in light of the fact that the LBUS plan is provided to the customer free-of-charge.

Does § G.5 include extending the prepaid additional minutes that a LBUS plan customer may purchase? If it does not, please provide the rationale for not including the prepaid additional minutes.

RESPONSE:

The Parties understand that Boomerang’s obligation to comply with Rule 4 CCR 723-2-2304(b)(IV) (“Rule 2304”) exists with regard to both (1) its current LBUS Plan and (2) any additional or other Lifeline plans that Boomerang might provide in the future. Because its basic Lifeline plan offers 250 free minutes and involves no customer payments, Boomerang is not able to meaningfully adjust its Lifeline customer bills in keeping with the letter of Rule 2304. To comply with the spirit of Rule 2304, Boomerang intends to provide an extension of one day for each outage subject to Rule 2304, provided that the customer has minutes remaining at the end of the 30-day Lifeline cycle.

Thus, if a customer’s Lifeline plan would ordinarily expire on February 1, the customer would instead have until February 2 to use up any remaining minutes if a qualifying outage has occurred during the cycle. This would also apply with regard to the 1,000 minute top-up card expressly included as part of Boomerang’s LBUS Plan. The Parties would have no objection to Judge Jennings-Fader’s adding the explanation in this paragraph to an Order approving the Settlement Agreement if she believes it would help clarify the Parties’ intent.

18j. Stipulation at Attachment 3 at § C.5 states: “Lifeline customers will not be required to ... pay an activation fee.” Please identify each fee (as examples only: termination, reconnection, reactivation, governmental) that Boomerang *will* assess to Lifeline customers. As to each identified fee, please state the circumstances under which Boomerang will assess the fee.

Should Boomerang decide in the future to assess a fee to Lifeline customers that is not identified in the list provided in response to this inquiry, would that decision constitute a Modification of the LBUS (as defined in the Agreement) and, thus, trigger ¶ 11.A of the Agreement? If the provisions of ¶ 11.A of the Agreement would not be triggered, please explain why they would not be triggered.

RESPONSE: There are no initial fees whatsoever assessed or charged to Lifeline customers who select the basic 250 minutes.

As detailed in the Terms and Conditions provided as Exhibit 8 to Boomerang’s amended application in this proceeding, Boomerang may in limited circumstances request one of two potential fees in response to customer requests: a reactivation fee or a replacement fee. Each is \$25. A reactivation fee might apply if, for example, a customer had requested that its account be deactivated because it had lost its phone, but then the customer relocated the phone and requested a reactivation. A replacement fee would apply if, for example, after the expiration of Boomerang’s 30-day warranty period, a customer lost or broke its phone and requested a replacement. Boomerang does not charge customers both fees for the same event. Thus, a customer would pay only one \$25 charge for any single event (*i.e.*, Boomerang will not charge a reactivation fee for the customer if it has already charged a replacement fee for providing the customer the phone). Customers are also responsible for shipping charges when they send in a phone for replacement, but those are paid to the appropriate parcel service, rather than to Boomerang.

Like all telecommunications carriers, Boomerang will also charge all taxes and fees required to comply with the laws of the State of Colorado for anything above the 250 free minutes. For example, if a customer purchases the top-up minutes available through the LBUS Plan, Colorado taxes and fees such as E911 charges, Colorado state high cost fund assessments, and sales tax would be assessed on the additional purchase.

Yes, additional fees not described above would trigger the provisions of ¶ 11.A of the Agreement.

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of February, 2013, the foregoing **PARTIES' JOINT RESPONSES TO ADMINISTRATIVE LAW JUDGE'S QUESTIONS** was served via electronic mail upon the following:

*William Levis	<u>Bill.levis@state.co.us</u>
*Thomas Dixon	<u>Thomas.Dixon@state.co.us</u>
*Gregory Bunker	<u>Gregory.Bunker@state.co.us</u>
*John T. Scott	<u>Johnt.scott@state.co.us</u>
*Susan Travis	<u>Susan.Travis@state.co.us</u>
*Jean Watson-Weidner	<u>JSWW@state.co.us</u>
Dave Nocera	<u>Dave.nocera@state.co.us</u>
*Robin Vigil	<u>Robin.vigil@state.co.us</u>
Melvena Rhetta-Fair	<u>Melvena.Rhetta-Fair@state.co.us</u>
Chere Mitchell	<u>Chere.Mitchell@state.co.us</u>

/s/ Leah N. Buchanan

**Denotes persons eligible to receive confidential proprietary information pursuant to the Commission's rules on Confidentiality, 4 CCR 723-1100-1102.



MARKETING MATERIALS

FREE Phone Service

FREE Minutes Monthly

Supported by Lifeline benefit. A government sponsored program.

Boomerang Wireless will provide a **FREE PHONE** (Not a Lifeline supported benefit)

You may be eligible for this government benefit if you participate in certain government programs such as:

- Medicaid
- Free Lunch
- SSI
- Public Housing
- Or if you meet certain income requirements



Date:

Time:

Place:

1123008



Poster 11" x 17"

FREE Phone Service



FREE Minutes Monthly

Supported by Lifeline benefit. A government sponsored program.

- You may be eligible for this government benefit if you participate in certain government programs such as:
- Medicaid
- Free Lunch
- SSI
- Public Housing
- Or if you meet certain income requirements



Date:

Time:

Place:

Get your **FREE PHONE SERVICE** benefit from Lifeline! Tell your neighbors!
 1123008



Flyer 8.5" x 11"

FREE PHONE SERVICE

FREE Minutes Monthly

Supported by Lifeline benefit. A government sponsored program.

Boomerang Wireless will provide a **FREE PHONE** (Not a Lifeline supported benefit)

Banner 5' x 3'