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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)	
BOOMERANG WIRELESS, LLC DBA)	CASE NO. BWL-T-16-01
ENTOUCH WIRELESS FOR DESIGNATION AS)	
AN ELIGIBLE TELECOMMUNICATIONS)	COMMENTS OF THE
CARRIER PURSUANT TO 47 U.S.C. § 214(e)(2).)	COMMISSION STAFF
)	

The Staff of the Idaho Public Utilities Commission comments as follows on Boomerang Wireless, LLC's Application for designation as an eligible telecommunications carrier ("ETC").

BACKGROUND

On August 8, 2016, Boomerang Wireless, LLC dba enTouch Wireless ("enTouch" or the "Company") filed an Application requesting designation as an ETC throughout the State of Idaho to solely provide Lifeline and tribal Lifeline services to qualified consumers. The Lifeline program is intended to provide more affordable telecommunications service benefits to eligible low-income customers through the federal Universal Service Fund (USF). Idaho participates in the residential Lifeline program pursuant to *Idaho Code* § 56-901. *See* Order No. 21713.

The Application

enTouch is an Iowa limited liability company with its principal place of business in Hiawatha, Iowa and is authorized to conduct business within Idaho. Application at 2 and Exh. B.

enTouch is a reseller of commercial mobile radio services (“CMRS”). *Id.* at 6. enTouch sells prepaid wireless telecommunications services through a “diverse network . . . employ[ing] Verizon, Sprint, AT&T as well as other GSM [Global System for Mobile Communications] carriers.” *Id.* at 12. enTouch states that it will operate throughout Idaho, including certain tribal areas. *See id.* at Exhibit A. enTouch asserts that it meets all of the requirements of Section 214(e)(1) of the federal Telecommunications Act to be designated as an ETC. 47 U.S.C. § 214(3).¹ *Id.* at 7-8.

enTouch asserts it is entitled to limited ETC designation under 47 U.S.C. § 214(e)(2), which authorizes state commissions to designate wireless ETCs. *Id.* at 15-16. More specifically, in order to meet statutory and regulatory requirements, the Company asserts that it: (1) is a common carrier; (2) has the financial and technical capability to provide Lifeline service; (3) commits and is able to provide services supported by federal universal support mechanisms; (4) will advertise the availability of supported services in a manner reasonably designed to reach those likely to qualify; (5) commits to provide service throughout its service area in Idaho; (6) is capable of remaining functional in emergency situations; (7) is committed to consumer protection and service; (8) will comply with all program uniform eligibility requirements; and (9) will comply with requirements imposed by this Commission for ETC status. *Id.* at 7-16. The Company states that, if designated, it will properly notify qualified tribal consumers who are eligible for plans related to tribal subsidies.² *Id.* at 23.

The Company further states that granting it ETC designation “is consistent with the public interest, convenience, and necessity” by making Lifeline services available to Idaho consumers at rates that are “just, reasonable, and affordable.” *Id.* at 17 and 19. Specifically it contends that ETC designation is in the public interest because it: (1) will compete with non-rural incumbent local exchange carriers (ILECs), increasing competitive choice and pressure; (2) increase convenience, portability, and security for mobile telephone service, (3) increase convenience of purchasing low-cost usage; (4) allow text capability to users; (5) provide 911 and E911 (where available) according to FCC regulations; (6) provide service to unserved or

¹ In December 2011, the FCC amended the list of required services for ETC designation by removing dual tone signaling, single-party service, and access to operator services, interexchange services, and directory assistance. *In the Matter of Lifeline and Link Up Reform and Modernization, Report and Order and Further Notice of Proposed Rulemaking*, 27 F.C.C. Rcd. 6656 at ¶ 365 (Feb. 6, 2012).

² enTouch states that a copy of this Application was sent to affected tribal governments or tribal regulatory authorities as listed in Exhibit G to the Application. *See id.* at 23.

underserved rural and Native American populations; and (7) provide domestic telephone toll calling, which, the Company asserts, will decrease the burden on state regulators fielding consumer complaints due to unexpectedly large bills. *Id.* at 16-20.

enTouch's Lifeline Service Offerings

enTouch intends to offer qualified customers one of three Lifeline Service Plans: (1) 500 Minute Plan; (2) 250 Free Unit Plan; and (3) Tribal 1100 Free Unit Plan. *Id.* at 21. The 500 Minute Plan would provide 500 voice minutes, 100 texts, and 10 MB of data. *Id.* The 250 Free Unit Plan would include a free handset and would provide 250 units (1 voice minute equals 1 unit and 1 text equals one unit) and 10 MB of data.³ *Id.* at 21-22. The Tribal 1100 Free Unit Plan would include a free handset, with 1100 units that could be utilized for voice and text (where 1 voice minute equals 1 unit and 1 text equals 1 unit). *Id.* at 22.⁴ The additional units available under the Company's proposed Tribal plan are due to an additional \$25.00 per month in Lifeline support enTouch would receive based on qualifying low-income customers living on Tribal lands.⁵ *Id.* at 22. The Company notes that all of its proposed plans would enable Lifeline customers the capability of purchasing additional airtime to supplement their Lifeline plans according to the Company's Lifeline Compliance Plan. *Id.* at 24.

The Company acknowledges that, under 47 U.S.C. § 214(e)(1)(A) of the federal Telecommunications Act, ETCs must offer services, at least in part, utilizing their own facilities. *Id.* at 15. However, enTouch invokes the FCC's 2012 Lifeline Reform Order, stating that the FCC, on its own motion in that Order, grants "Blanket Forbearance" 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." *Id.* at 12. The Company attached its approved Compliance Plan as Exhibit D to the Application and, therefore, seeks to proffer services only through resale of other carriers' facilities. *Id.* at 2.

³ enTouch states that the 250 Free Unit Plan contains a Lifeline Upgrade Data Plan corollary, which would allow subscribers to add 250 MB of data per month. *See id.* at 22.

⁴ The Tribal Plan also has an upgrade option, from 100 MB of data to 500 MB. *See id.* at 23.

enTouch further asserts that because it “seeks ETC designation solely for purposes of reimbursement for provision of subsidized Lifeline services to eligible customers, submission of a network improvement plan is not required at this time, as all funding will be used for provision of Lifeline services.” *Id.* at 25.

Finally, enTouch states that it is only seeking ETC designation for the sole purpose of offering telecommunications plans and services to qualified low-income consumers and will not seek or accept high-cost support or on a “wireline” basis, and, therefore, believes that “certification requirements related to the high-cost program are . . . not applicable to enTouch Wireless’ application.” *Id.* at 1-2, 25.

STAFF ANALYSIS

Staff has reviewed enTouch’s Application along with the Company’s FCC-approved Compliance Plan. Staff has conducted an analysis of the Company’s fulfillment of the federal Telecommunications Act of 1996, the *Lifeline and Link Up Reform and Modernization Order*, the *Third Report and Order*, *Further Report and Order*, and *Order on Reconsideration* (FCC 16-38), and of Commission Order No. 29841. Specific state and federal requirements for ETC designation are discussed in more detail as follows.

Public Interest Considerations

Staff typically applies a two-prong test when analyzing whether a company’s ETC application is in the public interest. First, Staff determines whether the Company contributes to Idaho funds. Second, Staff analyzes whether the Company’s application raises “cream skimming” concerns.

In a December 1, 2016, email, enTouch confirmed that upon approval as an ETC in Idaho, the Company would participate in the appropriate Idaho programs, specifically the Idaho Lifeline program and the 9-1-1 program and any future reporting requirements deemed appropriate for competitive telecommunications providers. *See* Order No. 32383 at 3 and email from Emanuel T. Cocian, Holland & Hart LLP. The Company requests ETC designation for entire wire centers and, therefore, no cream skimming analysis is required. *Id.* at Exh. A. Thus, Staff believes enTouch satisfies the public interest considerations.

Network Improvement Plan

In the Idaho ETC Designation Order, a two-year network improvement and progress report is required of all ETCs receiving high-cost support. *See* Commission Order No. 29841 at 18. However, as with the Cricket Communications, Inc.’s ETC Application, the Commission determined that a two-year network improvement plan was not applicable to Lifeline-only ETCs. *See* CRI-T-11-01 and Order No. 32501.

In the *USF/ICC Transformation Order and FNPRM*, the FCC amended 47 C.F.R. § 54.202 to clarify that a common carrier seeking designation as a Lifeline-only ETC is *not* required to submit a five-year network improvement plan as part of its application for designation as an ETC. Lifeline-Only ETCs are not receiving high-cost funds to improve or extend networks, therefore the FCC “saw little purpose in requiring such plans as part of the ETC designation process.”⁶ enTouch’s Application seeks only low-income USF support as a limited ETC designation. Thus, the requirement to provide a network improvement plan does not apply to this Application. Staff agrees that a network improvement plan is not a requirement for enTouch’s ETC Application. *Id.* at 25.

Ability to Remain Functional in Emergencies

The Company states that it has the ability to remain functional in emergency situations in accordance with the Idaho ETC Order and the FCC’s Rules, 46 C.F.R. § 54.202(a)(2). enTouch asserts that because it is reselling wireless services, the Company is able to provide the same ability to remain functional in emergency situations as the underlying carriers provide to its 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.” *Id.* at 15. Staff agrees enTouch satisfies this requirement.

Other ETC Designation Requirements

Additional requirements for ETC designation are detailed in Appendix 1 of Order No. 29841 and are discussed in more detail below.

⁶ *See Lifeline and Link up Reform and Modernization et al*, WC Dkt no. 11-42 *et al*. Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 at para. 386.

1. Common Carrier Status. enTouch is a common carrier as defined in U.S.C. Title 47. *Id.* at 6.

2. Provide the Universal Services. enTouch will provide all required services and functionalities as amended in Section 54.101(a) of the FCC's Rules (47 C.F.R. § 54.101(a)). *Id.* at 9.

3. Advertising. enTouch will advertise the availability and rates for its services described in the Application through media of general distribution. *Id.* at 13.

4. The Commitment and Ability to Provide Supported Services. Consistent with the requirements of 47 C.F.R. § 54.201(d)(1), enTouch states that it "not only commits to provide service throughout its Service Area, but also commits to provide universal service in a timely manner to all customers who make a reasonable request for service pursuant to Appendix (B)(1) of Commission Order No. 29841 and the FCC Rules." Further, if the requesting customer is within the Service Area but outside enTouch Wireless' existing network coverage, enTouch will provide service within a reasonable period of time if such service does not impose excessive or unreasonable cost as required by Appendix (B)(1) of Commission Order No. 29841. *Id.* at 15.

5. A commitment to Consumer Protection and Service. enTouch commits to satisfying all such applicable state and federal requirements related to consumer protection and service quality standards, including compliance 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). *Id.* at 16.

6. Description of the Local Usage Plan. enTouch will offer three Lifeline Service Plans. *Id.* at 20-23. Further, the Company will meet the changing minimum service standards that will become effective on December 1, 2016, December 1, 2017, and December 1, 2018, as established in the 2016 Lifeline Order (FCC 16-38). *Id.* At 10.

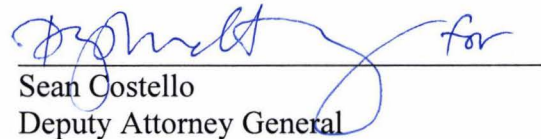
7. Tribal Notification. The Company will provide Tribal notifications. The applicable tribal areas include those of the Coeur d'Alene Tribe, Kootenai Tribe of Idaho, Nez Perce Tribe, Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho. *Id.* at 23 and Exh. G.

Staff believes enTouch meets the aforementioned ETC designation requirements where applicable for a Lifeline-only ETC designation.

STAFF RECOMMENDATION

Based on its review of the Company's Application, Staff believes that the Application, along with subsequent correspondence, demonstrates the Company's commitment to fulfill the obligations of a Lifeline-only ETC in Idaho. The Company will provide all universal services supported by the federal USF throughout its service territory; it has addressed all of the public interest questions that accompany an ETC Application; enTouch's compliance plan has been approved by the FCC; and it will provide multiple pricing plans which will increase consumer choice for low-income telephone service in Idaho. Thus, Staff believes enTouch's Application for designation as an ETC is in the public interest and should be approved for the wire centers in the Designated Service Area.

Respectfully submitted this 9th day of December 2016.


Sean Costello
Deputy Attorney General

Technical Staff: Grace Seaman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 9TH DAY OF DECEMBER 2016, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. BWL-T-16-01, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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