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June 6, 2018

BY HAND DELIVERY

Accepted / Filed

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room 4-A123
Washington, D.C. 20554

JUN -6 2018

Federal Communications Commission
Office of the Secretary

**Re: Boomerang Wireless, LLC Application for Review of Decision of the
Wireline Competition Bureau, WC Docket Nos. 11-42 and 03-109**

Dear Ms. Dortch:

Boomerang Wireless, LLC (Boomerang), by its attorneys and in accordance with section 1.115 of the Federal Communications Commission's (Commission's) rules, 47 C.F.R. § 1.115, hereby submits an Application for Review of a Decision of the Wireline Competition Bureau (Application for Review) in the above-captioned proceedings. This filing consists of the following documents:

- An original and one copy of a Request for Confidential Treatment of the confidential version of Boomerang's Application for Review;
- An original and one copy of the confidential version of Boomerang's Application for Review;
- An original and one copy of the redacted version of Boomerang's Application for Review.

Also enclosed are additional confidential copies of these documents to be distributed to Trent Harkrader, Ryan Palmer and Jodie Griffin in the Wireline Competition Bureau.

KELLEY DRYE & WARREN LLP

Ms. Marlene H. Dortch
June 6, 2018
Page 2

Kindly date-stamp the duplicate copies of this submission and return them to the courier.

Please contact the undersigned if you have any questions regarding this filing.

Sincerely,

A handwritten signature in black ink, appearing to read "John J. Heitmann".

John J. Heitmann
Counsel to Boomerang Wireless, LLC

Enclosures

cc: Trent Harkrader
Ryan Palmer
Jodie Griffin

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

Accepted / Filed

In the Matter of)

Request for Review of Decisions of the)
Universal Service Administrator by)

Boomerang Wireless, LLC)

Lifeline Universal Service Support Mechanism)

JUN -6 2018

Federal Communications Commission
Office of the Secretary

) WC Docket No. 11-42

) WC Docket No. 03-109

**BOOMERANG WIRELESS, LLC'S APPLICATION FOR REVIEW OF
DECISION OF THE WIRELINE COMPETITION BUREAU**

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June 6, 2018

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

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| Boomerang Wireless, LLC |) | WC Docket No. 11-42 |
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| Lifeline Universal Service Support Mechanism |) | WC Docket No. 03-109 |
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JUN -6 2018

Federal Communications Commission
Office of the Secretary

**BOOMERANG WIRELESS, LLC'S APPLICATION FOR REVIEW OF
DECISION OF THE WIRELINE COMPETITION BUREAU**

Pursuant to section 1.115 of the Federal Communications Commission's (the FCC's or Commission's) rules,¹ Boomerang Wireless, LLC (Boomerang or the Company) respectfully requests that the Commission reverse the Wireline Competition Bureau's (the Bureau's) Order denying Boomerang's Request for Review of two decisions of the Universal Service Administrative Company (USAC) following in-depth data validations (IDV) of Boomerang's Lifeline subscriber data performed in 2013.² Commission reversal is necessary because the IDV Order is untimely under the Commission's rules and therefore amounts to prejudicial procedural error. Further, the IDV Order is in conflict with established Commission policy applicable at the time and seeks to unfairly impose a new standard for identifying duplicates in the Lifeline

¹ 47 C.F.R. § 1.115.

² See *Requests for Review of Decisions of the Universal Service Administrator by Assist Wireless, Inc. et al.*, WC Docket Nos. 11-42 et al., Order, DA 18-464 (rel. May 7, 2018) (IDV Order); *Request for Review of Boomerang Wireless, LLC Of Decision of the Universal Service Administrator*, WC Docket Nos. 11-42, 03-109, Request for Review (filed Jan. 7, 2014) (Request for Review) (attached as **Exhibit A**); *Request for Review of Boomerang Wireless, LLC Of Decision of the Universal Service Administrator*, WC Docket Nos. 11-42, 03-109, Supplement to Request for Review (filed Jan. 10, 2014) (Boomerang Supplement) (attached as **Exhibit B**).

program on a retroactive basis more than seven years after the Commission provided the applicable standard to USAC.³ Although the number of alleged duplicates at issue in this Application for Review is exceedingly small, and the Bureau has admitted that the evidence Boomerang provided for many of them “suggests they are separate individuals,” allowing the Bureau to retroactively apply a new duplicates standard (using ambiguous standards like “nearly identical” and “substantially similar”) more than five years after the subscribers were enrolled, and nearly five years after the Bureau should have decided the matter, has a broader chilling impact on all Lifeline service providers and the program.

I. INTRODUCTION & SUMMARY

Boomerang is a provider of wireless voice and broadband services, and has provided such services to low-income Americans through the Commission’s Lifeline program since October 2012. In 2013, USAC conducted IDVs of Boomerang’s Lifeline subscriber data in two states, and concluded that [BEGIN CONFIDENTIAL] ■ [END CONFIDENTIAL] of Boomerang’s subscribers were duplicates. In January 2014, Boomerang submitted a Request for Review of USAC’s decision to the Commission, as well as a supplemental filing with specific evidence for eight of the relevant subscribers to further refute the IDV findings. On May 7, 2018, more than four years after the Request for Review, the Bureau issued the IDV Order denying a total of 14 requests for review, including Boomerang’s.

³ See 47 C.F.R. § 1.115(b)(2) (requiring an applicant to “specify, with particularity, from among the following, the factor(s) which warrant Commission consideration of the questions presented: (i) The action taken pursuant to delegated authority is in conflict with statute, regulation, case precedent, or established Commission policy. (ii) The action involves a question of law or policy which has not previously been resolved by the Commission. (iii) The action involves application of a precedent or policy which should be overturned or revised. (iv) An erroneous finding as to an important or material question of fact. (v) Prejudicial procedural error.”).

Boomerang respectfully submits that the IDV Order should be reversed on both procedural and substantive grounds. First, the IDV Order demonstrates prejudicial procedural error pursuant to section 54.724 of the Commission's rules, which requires action on a request for review no later than 180 days after receipt. Second, the IDV Order announces for the first time a "nearly identical or substantially similar" standard for detecting duplicates in the Lifeline program that is inconsistent with established Commission policy that was available to USAC and eligible telecommunications carriers (ETCs), including Boomerang, at the time the alleged duplicates were enrolled in the program and the IDV review was conducted (i.e., "same name, same address."). Finally, the Bureau erred in dismissing the validity of evidence provided by Boomerang to refute USAC's duplicates determination. Accordingly, Boomerang respectfully requests that the Commission reverse the Bureau's IDV Order upholding USAC's decision to treat the relevant customer records as unlawful intra-company duplicates.

II. QUESTION PRESENTED FOR REVIEW AND RELIEF REQUESTED

Boomerang submits the following questions for Commission review:

- (1) Whether the IDV Order constitutes prejudicial procedural error pursuant to the requirements set forth in section 54.724 of the Commission's rules regarding the required time period in which the Bureau must take action on a request for review of a USAC decision.
- (2) Whether the Bureau's decision to retroactively impose a new duplicates standard five years later conflicts with established Commission policy applicable at the time the alleged duplicate subscribers were enrolled.
- (3) Whether the Bureau erred in finding that Boomerang did not present sufficient evidence to demonstrate that the subscribers at issue were not duplicates.

As relief, Boomerang requests that the Commission, pursuant to its authority under 47 C.F.R. § 1.115(g) and 54.719(b), reverse the IDV Order and USAC's decision regarding Boomerang's alleged intracompany duplicates.

III. STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. The Commission's Duplicates Policy as of 2013

At the time USAC conducted the IDVs at issue in this case, two Commission orders and guidance provided to USAC served as the guideposts for such inquiries and should have been the only standards against which potential duplicates were evaluated.

First, in 2011, the Commission adopted a rule that "no qualifying customer" is permitted to receive more than one Lifeline subsidy concurrently.⁴ A "qualifying customer" was not defined in that order. The Commission stated only that the rule addressed "duplicative Lifeline subsidies received by the *same individual*."⁵ Precisely what subscriber data would determine whether an individual is the same was not defined. The 2011 Duplicative Payments Order also ordered USAC to develop a process for detecting and resolving duplicative claims and outlined the basics of a de-enrollment process when duplicate accounts were discovered.⁶ Concurrent with the 2011 Duplicative Payments Order, the Bureau issued instructions to USAC for conducting IDVs.⁷ With respect to duplicates on the same provider's network, the Bureau's

⁴ See *Lifeline and Link-Up Reform and Modernization*, WC Docket No. 11-42, Report and Order, FCC 11-97, ¶¶ 8 (rel. June 21, 2011) (2011 Duplicative Payments Order). The Commission adopted a parallel rule to require a Lifeline ETC to offer one Lifeline service per "qualifying low-income consumer" that is not currently receiving Lifeline service from that or any other provider. *Id.*

⁵ *Id.*, ¶ 11 (emphasis in original).

⁶ *Id.*, ¶¶ 13-15.

⁷ See Letter from Sharon E. Gillett, Chief, WCB, to D. Scott Barash, Acting Chief Executive Officer, USAC, DA 11-1082 (June 21, 2011) (IDV Guidance Letter).

guidance referred to only two types of such “duplicates,” both of which required an exact match of relevant information. First, in what it referred to as Track 2-A duplicates, the Bureau describes “different individuals, same address” as duplicates. For these duplicates, the provider will look for “other information in its possession” which either validates or refutes the existence of a duplicate. Second, the Bureau referred to “intra-company duplicates,” which it described as **“same name, same address” duplicates**.⁸ Critically, no guidance was provided stating that variations in a name or address could somehow constitute the “same name” or “same address.”⁹

In addition, the Commission’s seminal 2012 Lifeline Reform Order further addressed duplicate subscriptions.¹⁰ Specifically, the Commission imposed significant new procedural requirements for qualifying and enrolling new Lifeline subscribers.¹¹ In addition, the new rules required certain disclosures to be made to consumers – including, notably, the disclosure that only one Lifeline benefit per household is permitted – and required new subscribers to sign a

⁸ *Id.* at 5.

⁹ USAC, which may only implement FCC policies, not create them, provided little insight into how it interpreted the FCC’s guidance concerning these two categories of duplicates. In its IDV training materials, USAC stated only that it had built a “Low Income Duplicate Detection System” to (1) “standardize addresses” through the U.S. Postal Service’s address matching system and (2) conduct name comparison using “lexical and phonetic approaches” to determine name variances. *See* Presentation, FCC-USAC Joint Training Event, In-Depth Data Validations, at 11 (June 19, 2012). USAC did not disclose what “lexical and phonetic approaches” were used, nor did it state whether any manual processes or judgments were used to identify or resolve conflicts. USAC also did not state how, if at all, other subscriber information (date of birth, last four digits of SSN) the Commission required to be collected would be used in examining accounts and determining whether any were duplicates. Moreover, nothing in the IDV decisions explained how USAC concluded that accounts with variances in information were deemed to constitute a duplicate.

¹⁰ *Lifeline and Link-Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012) (2012 Lifeline Reform Order).

¹¹ *See, e.g., id.*, ¶¶ 60-285 (requiring Lifeline ETCs to review eligibility documentation and requiring proof of eligibility to be presented at the time of enrollment).

certification under penalty of perjury that they are not already receiving Lifeline supported service.¹² Further, the new rules expanded the identifying information to be collected when enrolling subscribers, such as requiring Lifeline ETCs to collect the subscriber's date of birth and last four digits of his or her Social Security Number (SSN).¹³ Finally, the Commission adopted measures to resolve potential duplicates, such as the Independent Economic Household (IEH) worksheet for use when multiple economic units reside at the same address.¹⁴

Notably, however, only the IDV Guidance Letter provided the applicable definition of a duplicate subscriber – “same name, same address.” Neither the 2011 Duplicate Payments Order nor the 2012 Lifeline Reform Order defined a “duplicate” for these purposes. Neither order defined a “subscriber” for purposes of determining whether the subscriber receives more than one Lifeline-supported service. In order to thwart duplicate enrollment attempts, the Commission required Lifeline ETCs to obtain multiple pieces of information about each subscriber: first name, last name, address, date of birth and last four digits of the subscriber's SSN. No Commission rule, however, addressed how to handle variations in that information. Finally, although the Commission adopted a one-per-household rule and defines “household,” it did not have any rules in place for resolving conflicts in address information in order to determine whether the one-per-household rule comes into play.

The 2012 Lifeline Reform Order also introduced the Commission's signature long-term protection against duplicate enrollments – the National Lifeline Account Database (NLAD). As the 2012 Lifeline Reform Order stated “[t]here is widespread agreement that a permanent solution to duplicative claims requires that ETCs are able to determine if a prospective subscriber

¹² See *id.*, ¶¶ 69, 91.

¹³ See *id.*, ¶ 118.

¹⁴ See *id.*, ¶¶ 69, 76-78.

is already receiving a Lifeline benefit at the time the subscriber requests service or seeks a Lifeline benefit from that ETC” and, to that end, directed USAC to create a database capable of providing verification upon inquiry of whether a subscriber is already receiving Lifeline support.¹⁵ However, the NLAD did not become fully operational until early in 2014 – more than a year after the Commission’s deadline, and several months after the IDVs at issue in this case were completed.¹⁶

B. The USAC December 2013 IDV Findings

USAC conducted two IDVs at issue in this Application for Review. The first IDV examined March 2013 Lifeline reimbursement claims in the State of Iowa. On December 30, 2013, USAC issued a decision finding **BEGIN CONFIDENTIAL ■ END CONFIDENTIAL** intra-company duplicates out of the **BEGIN CONFIDENTIAL ■ END CONFIDENTIAL** customers listed on the Form 497 for Iowa.¹⁷ The second IDV examined April 2013 Lifeline reimbursement claims in Oklahoma. On December 30, 2013, USAC issued a decision finding **BEGIN CONFIDENTIAL ■ END CONFIDENTIAL** intra-company duplicates in Oklahoma (out of the **BEGIN CONFIDENTIAL ■ END CONFIDENTIAL** customers listed on the Form 497 for Oklahoma).¹⁸

Despite USAC’s findings, these alleged duplicates were not, in fact, duplicates based on the data collected for each subscriber at the time of enrollment and based on the duplicates standards applicable at the time. All of the alleged intra-company duplicate accounts contained differences in name and address such that they were not duplicates pursuant to the 2011

¹⁵ *Id.* ¶ 199.

¹⁶ See USAC, “NLAD Migration,” available at <https://www.usac.org/li/tools/nlad/nlad-migration.aspx> (last viewed May 24, 2018).

¹⁷ See Request for Review, Confidential Exhibit 1.

¹⁸ See Request for Review, Confidential Exhibit 2.

Duplicative Payments Order and the duplicate definition in the IDV Guidance Letter. Further, all of the alleged intra-company duplicate accounts contained differences in the subscriber last name, date of birth, and/or SSN information (last four digits) such that they were not duplicates pursuant to the 2012 Lifeline Reform Order. A single letter or digit difference in any one of these subscriber information fields would have resulted in the accounts passing the duplicate detection screening in place for seeding the NLAD in 2013 (*i.e.*, the NLAD would not have identified these accounts as duplicates).

C. Boomerang's Request for Review

On January 7, 2014, Boomerang filed its Request for Review seeking to vacate USAC's findings of intra-company duplicates for **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** alleged duplicates, as well as a reversal of the reimbursement and de-enrollment order in USAC's finding letters for five of the alleged duplicates.¹⁹ In its Request for Review, Boomerang explained that USAC's determination in the IDVs exceeded USAC guidance and otherwise reached results that impermissibly ignored differences in Commission-mandated subscriber data fields by concluding that accounts which contained similar but not identical subscriber information are nevertheless duplicates. Boomerang further noted that USAC usurped the FCC's role and engaged in substantive policy judgments that only the Commission, not USAC, may make.²⁰

On January 10, 2014, Boomerang supplemented its Request for Review with additional documentation and information to support its argument to reverse the reimbursement and de-

¹⁹ See Request for Review.

²⁰ See generally *id.*

enrollment order in USAC's finding letters for five alleged duplicates.²¹ For two of these alleged duplicates, Boomerang provided Independent Economic Household (IEH) worksheets.²² For the other three alleged duplicate pairs, Boomerang provided full subscriber information proving that each of the six individuals at issue had different addresses²³ and dates of birth and/or SSNs.²⁴

D. The IDV Order

On May 7, 2018, the Bureau issued the IDV Order denying the requests for review submitted by Boomerang and several other ETCs.²⁵ In the IDV Order, the Bureau upheld USAC's findings of duplicate subscribers, and for the first time announced that any of the following "nearly identical or substantially similar records" were sufficient to support such a finding: "(1) an exact match in name and address; (2) same name and slight²⁶ address variation; (3) slight name and address variation; or (4) slight variation in name and same address."²⁷ The IDV Order further concluded that USAC did not exceed the Commission's guidance in the 2011 Duplicative Payments Order or 2012 Lifeline Reform Order in issuing these IDV findings, and that "[w]here subscribers with the same or substantially similar names provided the same address or substantially similar addresses, there is a **very strong probability** that those subscribers are the same person and it was reasonable for USAC to identify these subscribers as duplicates."²⁸

²¹ See Boomerang Supplement.

²² See *id.*, Exhibit A.

²³ Note that the IDV template collected only partial addresses. USAC collected only the street addresses and did not collect apartment or trailer numbers.

²⁴ See *id.*, Exhibit B.

²⁵ See IDV Order.

²⁶ The IDV Order does not define what constitutes a "slight" variation.

²⁷ IDV Order ¶ 12.

²⁸ *Id.* ¶¶ 9-10 (emphasis added).

The IDV Order acknowledged that Boomerang “submitted subscriber-specific evidence to support its claims that the subscribers at issue were not beneficiaries of duplicative support in violation of Lifeline program rules.”²⁹ Curiously, however, the Bureau concluded that this evidence “did not demonstrate that these eight subscribers were not duplicates.”³⁰ Specifically, the IDV Order brushed aside the IEH forms on the basis that “the same individual at the same address could have filled out the worksheet in order to receive multiple Lifeline services.”³¹ It then questioned the date of birth and SSN data, concluding that this evidence “suggests [these subscribers] **are separate individuals** but does not speak to whether those individuals were not household duplicates.”³²

IV. **THE IDV ORDER WAS UNTIMELY AND CONSTITUTES PREJUDICIAL PROCEDURAL ERROR**

As an initial matter, the Commission should overturn the IDV Order because its issuance was procedurally improper and constitutes prejudicial procedural error. Section 54.724(a) of the Commission’s rules plainly states that the Bureau “*shall*, within ninety (90) days, take action in response to a request for review of an Administrator decision that is properly before it,” and “*may* extend the time period for taking action on a request for review of an Administrator decision for a period of up to ninety days.”³³ Boomerang submitted its Request for Review on January 7, 2014. Accordingly, pursuant to section 54.724(a), even if the Bureau had exercised its option to extend the deadline for action on the Request for Review, it should have acted no

²⁹ *Id.* ¶ 12.

³⁰ *Id.* ¶ 12, n.43.

³¹ *Id.*

³² *Id.* (emphasis added).

³³ 47 C.F.R. § 54.724(a) (emphasis added).

later than July 7, 2014.³⁴ Therefore, the IDV Order released on May 7, 2018, nearly four years after the deadline set forth in section 54.724, was untimely and should be overturned as a prejudicial procedural error.

V. **THE BUREAU'S DECISION TO ESTABLISH A NEW DUPLICATES STANDARD FIVE YEARS LATER CONFLICTS WITH ESTABLISHED COMMISSION POLICY APPLICABLE WHEN THE SUBSCRIBERS WERE ENROLLED**

The IDV Order “affirm[s] USAC’s decision to treat the relevant customer records as unlawful intra-company duplicates” and further concludes that Boomerang and the other ETCs that sought review of the IDV findings “failed to implement reasonable internal procedures to investigate nearly identical and substantially similar records of the type flagged by USAC.”³⁵ However, when evaluating the subscribers that were deemed to be duplicates in these IDVs, it is crucial to view them through the lens that was available to Boomerang when these subscribers were enrolled [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]. At that time, the only publicly available examples of duplicates came from the IDV Guidance Letter, which were determined solely using **the same name and address**.

Rather than applying this standard, the IDV Order instead announces for the first time that subscriber accounts can be deemed duplicative if they contain “nearly identical and substantially similar” information.³⁶ As explained above, such a standard is wholly inconsistent with the “same name, same address” guidance available at the time the alleged duplicates were enrolled and therefore conflicts with established Commission policy applicable at the time. If in

³⁴ This date accounts for the fact that July 6, 2014, which marks 180 days after Boomerang submitted its Request for Review, fell on a weekend.

³⁵ IDV Order ¶ 7.

³⁶ *See id.*

fact “[s]light variations between identifying information is to be expected and requiring an exact match before making a duplicates finding is ... impractical,”³⁷ then the Commission could have issued guidance in 2011 stating that a duplicates finding would be proper based on subscriber records that are the “same or similar” “or “likely to be the same.” However, it did not do so, but rather provided duplicate detection guidance based on an unambiguous “same name, same address standard” to which the Bureau must adhere. Boomerang therefore respectfully urges the Commission to reject the Bureau’s proffered justification for upholding the IDV findings as setting a dangerous precedent for the Lifeline program. Indeed, if the Bureau can at any time adopt a new standard for identifying duplicates (or otherwise interpreting FCC rules) and apply that standard retroactively more than five years later, few, if any, providers are likely to shoulder the risk of participating in the Lifeline program and offering essential communications services at affordable rates to some of the most vulnerable Americans.³⁸

Neither the 2011 Duplicative Payments Order nor the 2012 Lifeline Reform Order provided fair notice on how to resolve information variances in such information. Similarly, the orders did not provide notice of how “other information” in the Lifeline ETC’s possession – such as the SSN or date of birth required to be collected by the 2012 Lifeline Reform Order – were to be considered to determine what, in fact, constitutes a duplicate. Moreover, the NLAD was not

³⁷ *Id.* ¶ 8.

³⁸ Moreover, a “nearly identical and substantially similar” approach to duplicate detection can result in outcomes that could be or could be perceived to be racial profiling or some other form of discrimination resulting in disparate impact or disparate treatment. In this case, the six subscribers for whom Boomerang provided SSN and date of birth data were members of an Asian ethnic minority with short, similar names who lived close by to each other – **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL**. Under the standard espoused by the IDV Order, Boomerang would have been required to disconnect these customers, despite the evidence that they were not actually duplicates.

available at the time of these enrollments.³⁹ Under these circumstances and in the absence of further guidance from the Commission, it was reasonable for Boomerang to rely on electronic screening techniques which relied principally on the identification of accounts with identical name and address information to detect duplicates. Rejecting Lifeline applicants whose information was not identical would have in fact resulted in denying applications for many eligible subscribers that were not duplicates, as evidenced by the IDV Order's acknowledgement that the SSN and date of birth data provided in the Boomerang Supplement proved that those alleged duplicates "are separate individuals."⁴⁰

VI. BOOMERANG PROVIDED EVIDENCE THAT THE ALLEGED DUPLICATES WERE NOT DUPLICATES

The IDV Order acknowledges that Boomerang "submitted evidence to support its claims that the subscribers at issue were not beneficiaries of duplicative support in violation of Lifeline program rules."⁴¹ However, the Bureau dismissed this evidence as "cursory" and nevertheless upheld USAC's decision to "treat the relevant customer records as unlawful intra-company duplicates."⁴² As explained below, Boomerang respectfully submits that the Bureau erred in reaching this conclusion, and therefore requests that the Commission reverse the IDV Order.⁴³

³⁹ If these subscribers were enrolled today in accordance with Boomerang's standard enrollment process, the NLAD's non-public algorithm for detecting duplicates may well flag them as potential duplicates which require further investigation prior to approval. However, Boomerang did not have access to this tool when enrolling the alleged duplicates identified in the IDVs, nor did any other ETC.

⁴⁰ See IDV Order ¶ 12, n.43.

⁴¹ *Id.* ¶ 12.

⁴² See *id.* ¶¶ 7, 12.

⁴³ In accordance with the Commission's procedural rules, Boomerang limits its discussion herein to the eight subscribers for whom it provided evidence in the Boomerang Supplement.

First, with respect to the six subscribers for whom Boomerang provided SSN and date of birth data, USAC's IDV finding letters stated only that the alleged duplicates "appear[ed] more than once on [Boomerang's] Lifeline subscriber list."⁴⁴ Since the allegation was that these were same subscriber duplicates, the inquiry should end with the SSN and date of birth data that was provided in the Boomerang Supplement to refute this finding. The IDV Order concedes that such data "suggests that they are separate individuals."⁴⁵

Further, USAC never alleged that these individuals were household duplicates. However, the Bureau brushes aside this fact, and instead concludes that "countervailing evidence is needed to show that they are both two individuals and in separate households, not just one or the other."⁴⁶ Setting aside the fact that the data submitted in the Boomerang Supplement demonstrated that *none* of these individuals resided at the same address⁴⁷ and therefore would not have triggered an IEH requirement in the NLAD,⁴⁸ as explained above the question of household duplicates was not raised during the IDVs for these particular subscribers. The only issue raised during USAC's review was whether the same person was receiving multiple Lifeline benefits and it was therefore inappropriate for the Bureau to conclude, without evidence, that these subscribers were household duplicates in an effort to support its seemingly foregone conclusion to uphold the IDV findings.

⁴⁴ See Request for Review, Confidential Exhibit 1 and Confidential Exhibit 2.

⁴⁵ IDV Order ¶ 12, n.43.

⁴⁶ *Id.*

⁴⁷ Boomerang's Supplement showed the full subscriber addresses indicating that they resided at different addresses, whereas the IDVs had collected only partial addresses (street addresses without the apartment or trailer numbers).

⁴⁸ See Boomerang Supplement, Confidential Exhibit B (showing that each of the six subscribers resided in different apartments).

Second, with respect to the two subscribers for whom Boomerang provided IEH worksheets, the Bureau determined that such evidence “only indicate[s] that the person completing the form is not a member of the same economic household as another unnamed individual at the same address who receives Lifeline service. In other words, the same individual at the same address could have filled out the worksheet in order to receive multiple Lifeline services.”⁴⁹ As explained in the Boomerang Supplement, the two IEH form examples indicated that each of the alleged duplicate subscribers lived at the same address as a parent or adult son who had the same name⁵⁰ and was also a Lifeline recipient, but certified that they understood the one-per-household requirement and that their address was “occupied by multiple households.”⁵¹ These forms were consistent with the worksheet crafted by USAC, and were collected in accordance with IEH requirements established by the Commission. Accordingly, to the extent that the Bureau is now concerned that the IEH process it created could result in consumer fraud because “the same individual at the same address could [fill] out the worksheet in order to receive multiple Lifeline services,”⁵² it should reform its enrollment process. However, it is improper for the Bureau to dismiss the validity of the IEH forms properly completed by the

⁴⁹ IDV Order ¶ 12, n.43.

⁵⁰ In both cases, the subscriber names were identical except that the parent was “senior” and the son was “junior.”

⁵¹ See Boomerang Supplement, Confidential Exhibit A. Specifically, the **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** IEH form indicated that he lived at an address with his parent (who was the other person at the address that was also a Boomerang Wireless customer – **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL**), and the **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** IEH form indicated that he lived at an address with his adult son (who was the other person at the address that was a Boomerang Wireless customer – also named **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL**).

⁵² IDV Order ¶ 12, n.43.

subscribers and provided by Boomerang as evidence that, in this case, the individuals identified as alleged duplicates by USAC were not actually duplicates.

Therefore, the Bureau erred in summarily dismissing Boomerang's evidence to refute USAC's claim that all of the subscribers identified during the IDVs were duplicates.

VII. CONCLUSION

For the foregoing reasons, Boomerang respectfully requests that the Commission reverse the IDV Order upholding USAC's decision to treat the relevant customer records as unlawful intra-company duplicates.

Respectfully submitted,



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Counsel to Boomerang Wireless, LLC

Dated: June 6, 2018

Exhibit A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
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Request for Review by Boomerang Wireless, LLC)
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WC Docket 11-42
WC Docket 03-109

ACCEPTED/FILED

JAN - 7 2014

Federal Communications Commission
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Boomerang Wireless, LLC's Request for Review

John J. Heitmann
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SUMMARY

Boomerang Wireless, LLC ("Boomerang Wireless") respectfully seeks review of two decisions of the Universal Service Administrative Company ("USAC") conducting in-depth validations ("IDV") of Boomerang Wireless's Low-Income Support Mechanism reimbursement claims in the states of Iowa and Oklahoma. Boomerang Wireless submits this request in order to confirm that, under existing Lifeline program rules and orders, Lifeline accounts containing different subscriber information are not "duplicates." Boomerang Wireless requests that the Commission instruct USAC to cease classifying as a "duplicate" accounts where the subscriber data is similar but not identical. Further, if the Commission modifies its rules to address such similar accounts, it should provide specific guidance to enable USAC and the industry to determine with specificity which types of variances are significant and which are not. Commission action on this key point will benefit USAC and the industry alike in applying the Lifeline rules and ensuring that the program operates efficiently and minimizes the perception of or potential for waste, fraud and abuse.

In the decisions for which Boomerang Wireless seeks review, USAC conducted IDVs of Lifeline subscribers in the states of Iowa and Oklahoma. In the IDVs, USAC concluded that a small number (representing less than 0.09% of the accounts reviewed) of Boomerang Wireless accounts that contained similar but not the same subscriber information were nevertheless "duplicates." USAC does not reveal the methodology it used to determine duplicate subscribers. Clearly, USAC's conclusions require substantive policy determinations that go beyond the guidance the FCC has provided to USAC for conducting IDV reviews. Moreover, USAC's methodology appears to ignore differences in subscriber information fields required by the Commission to be collected as of June 2012. Boomerang Wireless therefore requests that the

Commission vacate the December 2013 IDV findings regarding intra-company duplicates. In so doing, Boomerang Wireless requests that the Commission take three actions to address uncertainties caused by accounts with similar, but not identical, customer information:

First, Boomerang Wireless requests that the Commission clarify that a Lifeline account is a duplicate only if all of the mandated subscriber identification information matches. The Commission further should instruct USAC to cease classifying as a "duplicate" accounts where the subscriber data is similar, but not identical. Second, because the Commission has not previously determined that accounts with similar, but not identical, subscriber information are to be treated as duplicates, Boomerang Wireless requests that the Commission vacate USAC's IDV findings with respect to the small number of alleged intra-company duplicates found, with a single exception. Third, Boomerang Wireless requests that the Commission prospectively establish a safe harbor for Lifeline providers that engage in reasonable and diligent duplicates screening procedures. Under such a safe harbor, a Lifeline provider that has conducted appropriate due diligence to identify duplicate subscribers will not be liable for retroactive reimbursements to the Universal Service Fund and will not be subject to forfeitures or other penalties if USAC or the FCC, through additional scrutiny, concludes that the account belongs to the same subscriber despite the difference in subscriber data.

These actions will protect and promote the efficient administration of the Lifeline program. Today's confusion among Lifeline providers as to the standard to which they will be held – exacerbated by excessive and unreasonable Notices of Apparent Liability recently issued by the Commission – undermines the very foundation of the Lifeline program. If every Lifeline ETC were exposed to fines at levels consistent with the recent NALs for what USAC has identified as duplicates, no rational provider would remain in the program, and low-income

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consumers would be harmed by a scarcity of available services. Commission action to clarify the meaning of a “duplicate” and to establish a safe harbor for duplicate detection can restore balance to the program. By taking the actions above, the Commission will increase compliance with the Lifeline program’s requirements, will promote responsible Lifeline practices and will further the policy goals of the program.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ACCEPTED/FILED

JAN - 7 2014

Federal Communications Commission
Office of the Secretary

In the Matter of)

Request for Review by Boomerang Wireless, LLC)
Of Decision of the Universal Service)
Administrator)

WC Docket 11-42
WC Docket 03-109

REQUEST FOR REVIEW

Boomerang Wireless, LLC ("Boomerang Wireless"), by and through its attorneys, and pursuant to Section 54.719(c) of the Federal Communications Commission's ("FCC" or "Commission") rules, respectfully requests that the Commission review and vacate findings regarding intra-company duplicates by the Universal Service Administrative Company ("USAC") in connection with two in-depth validations ("IDV") of Boomerang Wireless's Low Income Support Mechanism benefits in the states of Iowa and Oklahoma.¹ USAC's December 2013 IDV findings regarding intra-company duplicates exceed FCC guidance and otherwise reach results that impermissibly ignore differences in FCC mandated subscriber data fields by concluding that accounts which contain similar but not identical subscriber information are nevertheless duplicates. Boomerang Wireless respectfully submits that USAC has usurped the FCC's role and has engaged in substantive policy judgments that only the Commission, not

¹ Letter from USAC to Lori Aller, Boomerang Wireless, LLC, re: Federal Universal Service Low Income Support Mechanism In-Depth Validation Phase 18, Dec. 30, 2013 (attached as Confidential Exhibit 1). Letter from USAC to Lori Aller, Boomerang Wireless, LLC, re: Federal Universal Service Low Income Support Mechanism In-Depth Validation Phase 21, Dec. 30, 2013 (attached as Confidential Exhibit 2).

USAC, may make. Therefore, Boomerang Wireless requests that the Commission (1) confirm that, under existing policy, Lifeline accounts containing different subscriber and/or address information cannot be deemed duplicates, (2) with one exception, vacate the intra-company duplicate findings in the IDVs, and (3) establish a safe harbor that will ensure Lifeline ETCs conduct a reasonable level of due diligence in detecting potential duplicates.

I. FACTUAL BACKGROUND AND STATEMENT OF ISSUES

A. The Commission's Duplicates Policy

The Lifeline program was established by the Commission in the 1980s with the purpose of providing telecommunications service to low-income households. 47 U.S.C. § 254. Codified by Congress in 1996, the program initially provided a discount to eligible consumers for a single telephone landline at a principal residence. In 2005 and in recognition of the changing marketplace, the FCC expanded the program to include non-facilities based providers, including wireless carriers. More recently, the Commission recognized that “a cell phone can literally be a Lifeline for families and provide low-income families, in particular, the means to empower themselves.” *In re Lifeline and Link-Up Reform and Modernization*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11, ¶ 17 (rel. Feb. 6, 2012) (“2012 Lifeline Reform Order”).

Seeking to balance the availability of Lifeline with the funds available for the program, the Commission limits a subscriber to receiving only one Lifeline-supported service. 47 C.F.R. § 54.409(c); see *In re Lifeline and Link-Up Reform and Modernization*, Report and Order, FCC 11-97, ¶ 2 (rel. June 21, 2011) (“2011 Duplicative Payments Order”). In 2011, the Commission clarified that each eligible consumer is entitled to only one Lifeline benefit and required Lifeline ETCs to inquire whether a subscriber or potential subscriber is already receiving a Lifeline discount from another carrier. 2011 Duplicative Payments Order, ¶¶ 8, 9. The Commission also

ordered USAC to develop a process for detecting and resolving duplicative claims and outlined the basics of a de-enrollment process when duplicate accounts were discovered. *Id.*, ¶¶ 13-15.

The Commission further addressed duplicate subscriptions in its seminal Lifeline Reform Order in February 2012. *See generally*, 2012 Lifeline Reform Order. In the 2012 Lifeline Reform Order, the Commission's principal focus was to address acknowledged shortcomings in its Lifeline rules that contributed to real and perceived waste, fraud and abuse in the Lifeline program. *Id.* To that end, the Commission imposed significant new procedural requirements for qualifying and enrolling new Lifeline subscribers. *See, e.g.*, 2012 Lifeline Reform Order, ¶¶ 60-285 (requiring Lifeline ETCs to review eligibility documentation and requiring proof of eligibility to be presented at the time of enrollment). In addition, the new rules required certain disclosures to be made to consumers – including, notably, the disclosure that only one Lifeline benefit per household is permitted – and required new subscribers to sign a certification under penalty of perjury that they are not already receiving Lifeline supported service. *See, id.*, ¶¶ 69, 91. Further, the new rules expanded the identifying information to be collected when enrolling subscribers, such as requiring Lifeline ETCs to collect the subscriber's date of birth and last four digits of his or her Social Security Number ("SSN"). *See, id.*, ¶ 118. Finally, the Commission adopted measures to resolve potential duplicates, such as the Independent Economic Household form for use when multiple economic units reside at the same address. *See, id.*, ¶¶ 69, 76-78.

Notably, however, neither the 2011 Duplicate Payments Order nor the 2012 Lifeline Reform Order defined a "duplicate" for these purposes. Neither order defines a "subscriber" for purposes of determining whether the subscriber receives more than one Lifeline-supported service. In order to thwart duplicate enrollment attempts, the Commission now requires Lifeline ETCs to obtain multiple pieces of information about each subscriber: first name, last name,

address, date of birth and last four digits of the subscriber's social security number. No Commission rule, however, addresses how to handle variations in that information. Finally, although the Commission adopted a one-per-household rule and defines "household," it does not have any rules in place for resolving conflicts in address information in order to determine whether the one-per-household rule comes into play.

The Commission's signature long-term protection against duplicate enrollments, will be the National Lifeline Account Database ("NLAD"). The FCC directed USAC to create a database of Lifeline subscribers so that duplicates can be identified and eliminated. *Id.*, ¶¶ 179-187. As the Order states "[t]here is widespread agreement that a permanent solution to duplicative claims requires that ETCs are able to determine if a prospective subscriber is already receiving a Lifeline benefit at the time the subscriber requests service or seeks a Lifeline benefit from that ETC" and, to that end, directed USAC to create a database that is capable of providing verification upon inquiry of whether a subscriber is already receiving Lifeline support. *Id.* ¶ 199. The Commission's Wireline Competition Bureau ("WCB") and USAC have been working to develop the NLAD with input and support from industry stakeholders. The database currently is not scheduled to become fully operational until early in 2014 – more than a year after the Commission's deadline.²

B. The USAC December 2013 IDV Findings

USAC conducted two IDVs at issue in this request for review. The first IDV examined March 2013 Lifeline reimbursement claims in the state of Iowa. On December 30, 2013, USAC issued a decision finding **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** intra-

² According to the revised schedule released on December 27, 2013, the first NLAD state (Maryland) will not go into "live" production until February 13, 2014 and the final group of states will not go into "live" production until March 27, 2014. *See* <http://usac.org/li/tools/nlad/nlad-migration.aspx> (last checked Dec. 30, 2013).

company duplicates out of the **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** customers listed on the Form 497 for Iowa. *See Confidential Exhibit 1.* The alleged duplicates found by USAC in the IDV represented only 0.11 % of Boomerang Wireless's Lifeline subscribers in the state.

The second IDV examined April 2013 Lifeline reimbursement claims in Oklahoma. On December 30, 2013, USAC issued a decision finding **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** intra-company duplicates in Oklahoma (out of the **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** customers listed on the Form 497 for Oklahoma). *See Confidential Exhibit 2.* The alleged duplicates found by USAC represented approximately 0.06% of Boomerang Wireless's Lifeline subscribers in Oklahoma.

Despite USAC's findings, these alleged duplicates are not, in fact, duplicates. In each case, there are differences in subscriber data. The differences in subscriber data fall into several categories. With one exception discussed below, which Boomerang Wireless is not appealing, all of the alleged intra-company duplicate accounts contain some differences in name and/or address data. All of the alleged intra-company duplicate accounts contain differences in the subscriber last name, date of birth, and/or SSN information (last four digits). A single letter or digit difference in any one of these subscriber information fields would result in the accounts passing the duplicate detection screening now in place for seeding the NLAD (*i.e.*, the NLAD would not identify these accounts as duplicates).

C. Question Presented

The December 2013 IDVs find that certain accounts containing similar information are intra-company "duplicate" accounts belonging to the same subscriber. This request for review challenges these findings and the standard used by USAC to render them. Specifically, this request raises the following central question for review: can accounts with subscriber

information that is similar but not identical be deemed a “duplicate” under the Commission’s current Lifeline program rules and orders?

II. THE FCC MUST ESTABLISH ADDITIONAL RULES TO DETERMINE WHAT VARIANCES IN SUBSCRIBER INFORMATION CAN CONSTITUTE A “DUPLICATE”

The intra-company duplicate findings in the December 2013 IDVs exceed USAC’s role as an impartial administrator of the Fund because they represent an attempt by USAC to fill a gap in the FCC’s rules and orders. Several relevant FCC orders reference duplicates but none provides adequate guidance for determining when an account that contains different information from that contained in another account can constitute a duplicate. While this may seem at first blush to be a simple task, in practice, it is not. With electronic screening, a potential duplicate will not have an exact match in every data field relating to a subscriber (name, address, date of birth, SSN, etc.). Instead, variations appear in accounts, such as differences in customer names, dates of birth, SSN information and addresses. The Commission has never concluded that such variances may be dismissed and, as a result, accounts with similar but not identical subscriber information, can constitute a duplicate. Even if some variations were to be deemed insignificant, the determination of which variations are significant and which are not requires subjective decisions to evaluate the differences in required customer information. The Commission, not USAC, is the only entity empowered to render such a policy decision.³

A. The FCC Has Not Defined an Account with Different Information as a “Duplicate”

Notably, despite Commission decisions that eligible subscribers should not receive more than one Lifeline-supported service, no FCC rule or order defines or describes what constitutes a

³ 47 C.F.R. § 54.702(c); see *The Conference Group, LLC v. FCC*, 720 F.3d 957, 960 (D.C. Cir. 2013) (USAC “has no policy or interpretive role”).

duplicate. In the *Duplicate Payments Order*, the Commission adopted a rule that “no qualifying customer” is permitted to receive more than one Lifeline subsidy concurrently. *Duplicative Payments Order*, 26 FCC Rcd at 9027 (¶ 8).⁴ A “qualifying customer” is not defined in the order. The Commission states only that this rule addresses “duplicative Lifeline subsidies received by the *same individual*.” *Id.* at 9028 (¶ 11) (emphasis in original). Again, what subscriber data determines whether an individual is the same is not defined.

Concurrent with the *Duplicative Payments Order*, the WCB issued instructions to USAC for conducting IDVs. *See* DA 11-1082, Letter from Sharon E. Gillett, Chief, WCB, to D. Scott Barash, Acting Chief Executive Officer, USAC (June 21, 2011) (“IDV Guidance Letter”). With respect to duplicates on the same provider’s network, the Bureau’s guidance refers to only two types of such “duplicates,” both of which require an exact match of relevant information. First, in what it refers to as Track 2-A duplicates, the Bureau describes “different individuals, same address” as duplicates. For these duplicates, the provider will look for “other information in its possession” which either validates or refutes the existence of a duplicate. Second, the Bureau refers to “intra-company duplicates,” which it describes as “same name, same address” duplicates. *Id.* at 5. Critically, no guidance is provided for determining whether variations in a name or address can somehow constitute the “same name” or “same address.”

USAC, which may only implement FCC policies, not create them,⁵ similarly has provided little to describe how it interprets the FCC’s guidance concerning these two categories

⁴ The Commission adopted a parallel rule to require a Lifeline ETC to offer one Lifeline service per “qualifying low-income consumer” that is not currently receiving Lifeline service from that or any other provider. *Id.*

⁵ 47 C.F.R. § 54.702(c) (“The Administrator may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress. Where the Act or the Commission’s rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.”).

of duplicates. In its IDV training materials, USAC states only that it has built a “Low Income Duplicate Detection System” to (1) “standardize addresses” through the U.S. Postal Service’s address matching system and (2) conduct name comparison using “lexical and phonetic approaches” to determine name variances. Presentation, FCC-USAC Joint Training Event, In-Depth Data Validations, June 19, 2012, at 11. USAC does not disclose what “lexical and phonetic approaches” are used, nor does it state whether any manual processes or judgments are used to identify or resolve conflicts.⁶ USAC also does not state how, if at all, other subscriber information (date of birth, last four digits of SSN) the Commission has required to be collected will be used in examining accounts and determining whether any are duplicates. Moreover, nothing in the IDV decisions explains how USAC concluded that accounts with variances in information were deemed to constitute a duplicate.

B. USAC Could Not Have Concluded That the Listed Accounts Were Duplicates Without Applying an Additional Standard

None of the FCC’s orders provide sufficient information for USAC to make the intra-company duplicate findings that it rendered in the December 2013 IDVs. The FCC’s IDV guidance to USAC only addresses situations where the relevant information is an exact match (*i.e.*, involves the “same name” or “same address”). Critically, this now-dated guidance includes no instruction as to the consideration of other required subscriber information, including date of birth and SSN information. Because none of the accounts found by USAC to be intra-company duplicates involves identical customer account information, USAC was unable to lawfully

⁶ Most recently, the WCB has proposed audit procedures for the Lifeline Biennial Audits that would require independent auditors to define a “subscriber” as having a match of name, date of birth and last four digits of the SSN. *See Wireline Competition Bureau Seeks Comment on the Lifeline Biennial Audit Plan*, Public Notice, DA 13-2016, at Attachment 2, p. 15 (rel. Sept. 30, 2013) (“Lifeline Biennial Audit Plan Notice”) (emphasis added). Moreover, independent auditors are instructed to conduct this review “using computer-assisted audit techniques,” suggesting that an electronic data matching is an acceptable duplicate screening process. *Id.*

conclude based solely on the FCC's guidance – or otherwise in a manner consistent with Lifeline program rules – that the accounts were duplicates.

Each of the duplicate accounts identified by USAC contains one or more differences in FCC-mandated subscriber information. In all instances except one, which Boomerang Wireless is not appealing, the alleged duplicate accounts contain some variation in the customer name and/or address data. All of them contain differences in subscriber information fields, including differences in last name, date of birth and/or SSN information, that would result in these accounts not being rejected as duplicate accounts by the NLAD as it is presently set for seeding. For example, USAC identified accounts where the customer name differed and the account contained a difference in customer date of birth, last four digits of SSN, or both. USAC also identified accounts with address differences and a difference in date of birth, last four digits of SSN, or both. These accounts do not fit within the "same name, same address" category specified in the IDV Guidance Letter. In order to address these accounts, USAC would have had to apply an additional standard to determine whether, despite the differences in information, the account was sufficiently the same to constitute a "same name" or "same address." That standard, of course, is not contained in the FCC's guidance to USAC.

Similarly, the FCC's guidance is not helpful in determining how other differences in subscriber information may be ignored or disregarded so as to reach the conclusion that two accounts belong to the same individual. The IDV Guidance Letter was issued before the Commission amended its rules in the 2012 Lifeline Reform Order to require ETCs to collect identifying information such as date of birth and the last four digits of SSN. The IDV Guidance Letter only discusses two pieces of information that an ETC collects – customer name and customer address. None of the FCC orders provide guidance on how the additional information

that ETCs now are required to collect – such as date of birth and SSN information – are to be considered to determine whether a similar customer name and/or address represents one or two individuals. Here again, USAC appears to have impermissibly filled in the gap in guidance with its own (undisclosed) standard that appears to simply disregard differences in date of birth and SSN information. A standard that ignores such information cannot be squared with Commission's requirement to collect such information.

These problems demonstrate the core deficiency in the Commission's "duplicates" guidance to date. Electronic screening techniques typically are used to identify accounts with identical information. Electronic screening techniques are not particularly effective in identifying or resolving other variations that may appear in subscriber data. Names may have different spellings or different suffixes, such as "Sr." or "Jr." Addresses may have different house numbers, apartments and unit numbers. In addition, the SSN and/or date of birth information may differ.⁷ Every one of these variances requires a rule to resolve whether the differences indicate a separate subscriber account or a duplicate. The FCC's guidance to date, however, does not supply a rule for addressing such differences.

C. The FCC Must Clarify its Guidance for Evaluating Duplicates

In order for USAC and the industry to address these types of differences, additional guidance from the Commission is necessary. Boomerang Wireless respectfully submits that this guidance should be provided promptly.

⁷ Under the Commission's rules, June 2012 and later accounts contain additional subscriber information fields (*i.e.*, date of birth and last four digits of SSN) not required to be collected upon enrollment for accounts established prior to that date. These discrepancies make it impossible to compare the two accounts on an apples-to-apples basis. See Lifeline Biennial Audit Plan Notice, at Attachment 2, p. 18 n. 20 (discarding pre-June 2012 accounts from the process review portion of the audit).

First, the Commission should clarify that, under existing policy, a Lifeline account may be deemed a duplicate based on subscriber provided information only if all of the mandated subscriber identification information matches. The Commission must instruct USAC to cease classifying as a "duplicate" accounts where the subscriber data is similar, but not identical. Unless and until the Commission modifies its rules to establish standards for addressing similar, but not identical, account information, USAC simply cannot conclude based on available information that accounts with different subscriber information are duplicates.

If the Commission modifies its rules to address such similar accounts, its guidance should be as specific as possible in identifying which types of variances are significant and which are not. If, for example, the Commission requires Lifeline ETCs to collect name, date of birth and last four digits of SSN, should all three of those pieces of information be an exact match in order to conclude that the person is the "same individual?"⁸ If some variances in these data points will be disregarded, the Commission should identify which ones those are.⁹

Similarly, with respect to addresses, the Commission would need to identify how conflicting information should be resolved. For example, if two accounts have different apartment numbers (Apt. 101, Apt. 304, etc.), is a Lifeline ETC permitted to conclude that this information, by itself, represents a different household?¹⁰ Similarly, if one address lacks a unit

⁸ This is the standard proposed for the Lifeline Biennial Audits. See Lifeline Biennial Audit Plan Notice, at Attachment 2, p. 18.

⁹ As of this date, the NLAD's duplicate detection logic differs from that proposed for Biennial Audits in that differences in first names would be disregarded.

¹⁰ Other carriers have noted the same concerns. In their comments on the Lifeline Biennial Audit Plan, Verizon and Verizon Wireless reported:

In Verizon's experience, USAC sometimes identifies subscribers as receiving duplicate support when, in fact, they do not. For example, USAC has identified persons with the same last name who live in the same apartment building (i.e., who have the same street address) as receiving duplicate support, when those persons had different first names and lived in different apartments. In other

number while the other contains one, can the Lifeline ETC treat these as different households?¹¹ If not, the FCC should specify when such accounts involve the "same address" and when they do not.

The development of such "conflict resolution" rules will be helpful in a number of respects. First, such rules will of course provide greater predictability to the low-income enrollment process. Second, such rules will allow Lifeline ETCs to develop methods and procedures to incorporate the conflict resolution into their enrollment processes. ETCs must be able to develop real-time electronic systems to identify such conflicts and resolve them according to the rule. The result of such systems would be fast and reliable decisions regarding eligibility of subscribers and fewer actual duplicates that successfully make their way through the process.

Third, standards for the resolution of such subscriber information differences will help to ensure uniform and non-discriminatory application of the FCC's rules. For example, with no standards for resolving such differences during an IDV, USAC might pick and choose which accounts with similar but not identical information it considers to be "duplicates" in an inconsistent manner. Worse, there would be nothing to prevent USAC from applying a stricter interpretation of duplicates against a disfavored ETC or based on some other reason unrelated to

words, USAC sometimes identifies customers as duplicates when they actually appear to be separate, eligible subscribers.

Comments of Verizon and Verizon Wireless, Lifeline Biennial Audit Plan, WC Docket No. 11-42, at 12-13 (filed Dec. 13, 2013).

¹¹ In such instances, the differences may represent a spare room for rent or a garage apartment. Both such examples would constitute different households under Lifeline program rules.

the IDV review itself.¹² Whether a duplicate is found should never depend on which staffer reviews the information and/or which ETCs are or are not in favor at the particular time.

III. USAC'S IDVS FINDINGS MUST BE VACATED

Based solely on the FCC rules and guidance to date, with a single exception, USAC could not have determined whether the particular accounts it identified as intra-company duplicates represent prohibited "duplicative support." A review of the December 2013 IDVs data shows that only one of the alleged duplicates fits the criteria established in the IDV Guidance Letter of a "same name, same address" duplicate. *See Confidential Exhibit 1.* While two of the alleged duplicate pairs involve "different individuals, same address," USAC did not acknowledge the existence of Independent Economic Household ("IEH") worksheets.

Accordingly, with that single exception (**BEGIN CONFIDENTIAL** **END** **CONFIDENTIAL**), there is no basis on which USAC may conclude that the small number of accounts identified in the December 2013 IDVs are intra-company duplicates. For these reasons, the USAC findings must be vacated.

Boomerang Wireless notes that USAC already has announced its intention to recover the Lifeline support associated with the alleged intra-company duplicate accounts identified in the December 2013 IDVs. The December 2013 IDVs state that USAC would net the amount identified in the IDVs (BEGIN CONFIDENTIAL END CONFIDENTIAL) against the company's low-income support payment that would be disbursed at the end of January 2014.

For five of the 16 alleged intra-company duplicates, Boomerang Wireless is seeking reversal of the reimbursement and de-enrollment aspect of the order. For two of the five alleged

¹² As discussed further below, discretionary scrutiny also could implicate the rights of Lifeline subscribers themselves. Without definitive rules, it is possible that customers in certain ethnic groups could face additional scrutiny and, ultimately, de-enrollment due to what may constitute impermissible profiling.

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duplicates, Boomerang Wireless collected and has retained an IEH worksheet for at least one subscriber in the alleged pair of duplicate accounts. Each of these accounts appears to belong to related individuals who have completed an IEH worksheet. **BEGIN CONFIDENTIAL**

END CONFIDENTIAL. Boomerang Wireless has no reason to ignore these IEH forms or to presume that they are invalid.

For the other three duplicate pairs, the subscribers have similar names, but different addresses and different dates of birth and/or SSNs. These six subscribers (**BEGIN CONFIDENTIAL** **END CONFIDENTIAL**), appear to be members of an ethnic minority and have similar sounding or looking names, but different addresses and dates of birth and/or SSNs. De-enrolling such subscribers based on a "similar name or address" standard that is so subjective almost certainly will result in cutting off Lifeline service to eligible consumers, potentially in a discriminatory manner. Boomerang Wireless will not engage in any kind of activity that is or appears to be racial profiling and accordingly, we appeal USAC's determination. Because the result of USAC's arbitrary and non-transparent duplicate definition and detection process is especially alarming in this context, Boomerang Wireless urges the Commission to consider the implications of it not only in this context but more broadly.

For one of the 17 alleged intra-company duplicates, Boomerang Wireless is not appealing USAC's finding of an intra-company duplicate and is not seeking reversal of the reimbursement

or de-enrollment because there is an exact name and address match (**BEGIN CONFIDENTIAL**
END CONFIDENTIAL).

Although all but one of the December 2013 IDV findings regarding intra-company duplicates are not supported and must be vacated, Boomerang Wireless clarifies that it is not seeking reversal of either the reimbursement or de-enrollment of the remaining 11 identified customers in this instance. That is, despite this request for review, Boomerang Wireless voluntarily agrees in this instance to treat 11 of the alleged duplicates as though they are duplicates and to forego the Lifeline support that USAC has intends to withhold from the January 2014 disbursements. For 16 of the 17 alleged duplicates, Boomerang Wireless seeks a ruling vacating USAC's findings of intra-company duplicates.

IV. THE FCC SHOULD ESTABLISH A SAFE HARBOR FOR LIFELINE PROVIDERS TO DETECT DUPLICATES

In addition to providing the guidance described above and vacating the unsupported December 2013 IDV findings regarding intra-company duplicates, the Commission should establish prospective standards for Lifeline ETCs to use for duplicate screening. Specifically, Boomerang Wireless requests that the FCC establish a safe harbor reflecting a minimum level of due diligence that a Lifeline ETC should employ to screen for duplicates. This safe harbor would work like the safe harbor the FCC applies to wholesale telecommunications carriers in determining whether a customer's services are exempt from USF contribution obligations because they are purchased for resale.¹³ That is, so long as a Lifeline ETC employed the safe harbor practices, it would not face retroactive liability or forfeiture penalties for any duplicates that might nevertheless evade detection.

¹³ In Re Universal Service Contribution Methodology, et al., Order, 27 FCC Rcd 13780 (rel. Nov. 5, 2012) (the "Wholesaler-Reseller Clarification Order").

A. The FCC Has Not Established a Standard of Conduct for Detecting Duplicates

The FCC's Lifeline rules do not provide instruction to Lifeline ETCs regarding the actions needed to be taken in order to detect duplicates (however the term might be defined). The Lifeline program rules are extensive and detailed. 47 C.F.R. §§ 54.400 *et seq.* The goal of many rules undoubtedly is to help prevent subsidies being paid for ineligible subscriber accounts. However, the Lifeline regulatory framework is a process-based, not a results-based, framework. 47 C.F.R. §§ 54.405, 54.407, 54.410, 54.417, 54.222. And while ETCs must "implement policies and procedures for ensuring that their Lifeline subscribers are eligible to receive Lifeline services," this rule leaves it to the ETC to determine what policies and procedures to implement. 47 C.F.R. § 54.410(a). Because no standard of conduct has been set, it is impossible for an ETC to know at this time what actions will be sufficient for screening for duplicates.

The need for such a standard is critical. Nowhere in the Lifeline program is perfection in fraud detection required. For example, the FCC itself is not held to a standard of perfection in administering the Lifeline program. The IPERA sets forth an acceptable error rate for federal executive agencies managing disbursement programs. *Improper Payments Elimination and Recovery Act of 2010*, P.L. 111-204 (Jul. 22, 2010); 31 U.S.C. § 3321, note. Under the IPERA, federal agencies are required to conduct risk assessments of programs the agencies administer and identify programs susceptible to "significant improper payments." *Id.* "[S]ignificant improper payments" under the IPERA are, for fiscal years prior to September 2012, those that exceed either (1) 2.5% of program outlays and \$10 million of all program payments or (2) payments of \$100 million.¹⁴ The IPERA's establishment of additional compliance requirements

¹⁴ The IPERA's 2.5% significant improper payment threshold decreases to 1.5% for fiscal years beginning after September 30, 2012. IPERA §§ 2(a)(3)(A)(ii)(I). Notably, according to the

that are applicable only to those improper payments defined as significant¹⁵ is a tacit acknowledgement by Congress that it is not reasonable to expect that a federal agency disbursement program will ever be completely error-free.

Nor will Lifeline ETCs be held to a standard of perfection in the upcoming biennial audits that must be conducted by ETCs that receive \$5 million or more in Lifeline support in a year. The WCB released draft standards for the audits on September 30, 2013. *See Wireline Competition Bureau Seeks Comment on the Lifeline Biennial Audit Plan*, Public Notice, DA 13-2016 (rel. Sept. 30, 2013) ("Lifeline Biennial Audit Plan Notice"). With respect to an ETC's procedures for determining subscriber eligibility (Objective III), the Biennial Audit Plan proposes a reasonable standard for a significant error rate rather than an expectation of 100% perfection. In the fieldwork test procedures for examination of the ETC's policies and procedures, the Biennial Audit Plan directs auditors to randomly select at least 100 subscribers from the ETC's subscriber list for testing. Testing would examine the eligibility information collected on subscriber certification forms to ensure its completeness. *Id.*, Attachment 2 at 17-18. This analysis, however, does not require that certification forms be complete in every single instance. Instead, auditors are directed to test the first 50 subscribers randomly sampled. If – and only if – the auditor finds an error rate of more than 5% during its examination of the first 50 forms, then the auditor proceeds with a more in-depth assessment and examines the remaining

Commission, Lifeline is the only major USF program operating within this standard. *See* Federal Communications Commission, Fiscal Year 2012 Agency Financial Report (Oct. 1, 2011 – September 30, 2012) at 85 (rel. Feb. 27, 2013) ("FCC FY2012 Financial Report") (identifying the Connect America Fund (High Cost) and Schools and Libraries (E-rate) programs as susceptible to significant improper payments).

¹⁵ *See e.g.*, IPERA § 2(c).

selected subscribers. *Id.*¹⁶ Thus, the Plan adopts thresholds that recognize a certain level of error is inevitable and does not threaten program objectives.

These standards (and others like them) recognize that a certain level of errors will occur regardless of the robustness of the procedures that are followed. Such errors are inevitable. Because of this, it is critical that an ETC know what procedures it may follow to insulate itself from potential liability for duplicates that nevertheless may escape detection. Such protection can come from the establishment of a safe harbor for duplicate prevention.

Safe harbors are used by the Commission for precisely this purpose. For example, in the context of Universal Service Fund contributions, the Commission has a long-established safe harbor for wholesale carriers to use in determining whether its customers are resellers. See 2013 Form 499-A, Instructions at 22-23. Under that safe harbor, if a wholesale provider follows the guidance provided in the FCC's instructions, it will be deemed to be in compliance with FCC rules. *Wholesaler-Reseller Clarification Order*, ¶ 51 ("A wholesale provider that complies with all of the guidance in the Form 499-A instructions will be afforded a "safe harbor"-i.e., that provider will be deemed to have demonstrated a reasonable expectation"). Critically, this safe harbor applies (and the wholesale provider is not required to make USF contributions on the revenues) even if the reseller ultimately fails to make its required contributions on the resold revenues. That is, even if an error actually occurs, the wholesale provider is absolved of liability if it has followed the safe harbor procedures. *Id.*, ¶ 38.

¹⁶ Notably, for purposes of this examination, auditors are instructed to disregard forms collected from subscribers before the effective date of the most recent Lifeline reforms, in June 2012. Lifeline Biennial Audit Plan Notice, Attachment 2 at 18 n. 20.

B. The Commission Should Establish a Safe Harbor

Boomerang Wireless requests that the Commission establish a safe harbor for Lifeline providers that engage in reasonable and diligent duplicate screening methods and procedures. Under such a safe harbor, a Lifeline provider that has conducted appropriate due diligence to identify duplicate subscribers will not be liable for retroactive reimbursements to the Universal Service Fund and will not be subject to forfeitures or other penalties if USAC or the FCC, through additional scrutiny, determines that an account is a duplicate.

The safe harbor should identify the steps a Lifeline ETC should take in order to check for duplicate enrollments in its own records. Boomerang Wireless respectfully suggests that these steps should be satisfied by evidence that the ETC (1) has obtained a valid certification from the subscriber attesting, under penalty of perjury, that the subscriber is not receiving another Lifeline-supported service, *and* (2) has submitted the subscriber's record to an electronic screening process using the NLAD (when available) or, where the NLAD is not available, using a state database, a third-party database of subscribers or the ETC's own subscriber records.

The first element of this proposed safe harbor flows from the 2012 Lifeline reforms. Under those reforms, the Commission requires Lifeline ETCs to obtain certifications from prospective customers that contain certain required information. Among such information, these forms must inform customers that:

- Only one Lifeline service is available per household;
- A household is not permitted to receive Lifeline benefits from multiple providers, and;
- Violation of the one-per-household limitation constitutes a subscriber's violation of the Commission's rules and will result in the subscriber's de-enrollment from the program.

47 C.F.R. § 54.410(d)(1). Further, the rules require that the subscriber certify under penalty of perjury that:

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- The subscriber meets the income-based or program-based eligibility criteria for Lifeline benefits;
- The subscriber will notify the carrier within 30 days if for any reason is "is receiving more than one Lifeline benefit";
- The subscriber's household will receive only one Lifeline service and, to the best of his or her knowledge, the subscriber's household is not already receiving a Lifeline service; and
- The subscriber acknowledges that providing false or fraudulent information to receive Lifeline benefits is punishable by law.

47 C.F.R. § 54.410(d)(3).

Receipt by a Lifeline ETC of a certification from each relevant subscriber that satisfies Section 54.410(d) of the rules should satisfy the first prong of the safe harbor.

The second prong – electronic screening of subscriber records – should be satisfied by evidence that the Lifeline ETC follows acceptable procedures to check for duplicates prior to enrollment and submission of a request for reimbursement from the Fund. Where the NLAD or a state database is available, the ETC should be required to screen using that database in order to benefit from the safe harbor. Absent the NLAD or a state database, the ETC should have the option to use a third-party database or its own database of subscribers to conduct a duplicates check.

Importantly, this prong of the safe harbor would be satisfied by the use of an electronic screening process. If the records match using the logic employed in the database, then the carrier must treat the subscriber as a duplicate subject to exceptions.¹⁷ If the records do not match using

¹⁷ In such an instance, an ETC could obtain additional evidence in order to demonstrate the subscriber's eligibility for a Lifeline benefit. This additional evidence may consist of an Independent Economic Household form or other evidence demonstrating that the subscriber is not a duplicate.

the logic employed in the eligibility database, however, then the subscriber is not a duplicate for purposes of the safe harbor.

Provided that the Lifeline ETC can demonstrate compliance with both prongs of the safe harbor – (1) receipt of a certification form satisfying Section 54.410(d) and (2) electronic screening through the NLAD or other appropriate database – then the ETC would not be subject to retroactive liability for enrollment of the subscriber. If, after additional review via an IDV or otherwise, USAC or the FCC concludes that an account is a duplicate, the Lifeline ETC would be required to de-enroll the account as instructed. However, the Lifeline ETC would not be required to return any Lifeline benefits received prior to the determination that the account is ineligible. Moreover, the Lifeline ETC would not be subject to any potential fines or penalties for having enrolled the subscriber or having requested reimbursement for the subscriber prior to the USAC or FCC determination. As with the safe harbor for wholesale providers in the USF contributions process, compliance with the safe harbor procedures would be sufficient to discharge the Lifeline ETC's duties to check for duplicate enrollments.

CONCLUSION

For the reasons explained above, with a single exception, Boomerang Wireless requests that the Commission vacate the December 2013 IDV findings regarding intra-company duplicates. In so doing, Boomerang Wireless requests that the Commission further clarify that under existing policy, only accounts with exact matching information in all required fields may be deemed to be duplicates based on available subscriber information. Finally, Boomerang Wireless requests that the Commission establish a safe harbor for Lifeline providers to follow in the future when checking for duplicate enrollments.

These actions will protect and promote the efficient administration of the Lifeline program. Commission action to clarify its duplicates policy, correct the erroneous USAC

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findings and to establish a safe harbor for duplicate detection can restore balance to the program. By taking the actions above, the Commission will increase compliance with the Lifeline program's requirements, will promote responsible Lifeline practices and will further the policy goals of the program.

Respectfully submitted,

BOOMERANG WIRELESS, LLC



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Counsel to Boomerang Wireless, LLC

Dated: January 7, 2014

CONFIDENTIAL EXHIBIT 1
(REDACTED)

CONFIDENTIAL EXHIBIT 2
(REDACTED)

Exhibit B

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Accepted/Files

JAN 10 2014

Federal Communications Commission
Office of the Secretary

In the Matter of)

Request for Review by Boomerang Wireless, LLC)
Of Decision of the Universal Service)
Administrator)WC Docket 11-42
WC Docket 03-109**SUPPLEMENT TO REQUEST FOR REVIEW**

On January 7, 2014, Boomerang Wireless, LLC ("Boomerang Wireless"), by and through its attorneys, and pursuant to Section 54.719(c) of the Federal Communications Commission's ("FCC" or "Commission") rules, filed a Request for Review¹ respectfully requesting that the Commission review and vacate findings regarding intra-company duplicates by the Universal Service Administrative Company ("USAC") in connection with two in-depth validations ("IDV") of Boomerang Wireless's Low Income Support Mechanism benefits in the states of Iowa and Oklahoma.² Boomerang Wireless asserted that USAC's December 2013 IDV findings regarding intra-company duplicates exceed FCC guidance and otherwise reach results that impermissibly ignore differences in FCC mandated subscriber data fields by concluding that accounts that contain similar but not identical subscriber information are nevertheless duplicates.

¹ Boomerang Wireless, LLC Request for Review, WC Docket Nos. 11-42, 03-109 (filed Jan. 7, 2014).

² Letter from USAC to Lori Aller, Boomerang Wireless, LLC, re: Federal Universal Service Low Income Support Mechanism In-Depth Validation Phase 18, Dec. 30, 2013 (attached as Confidential Exhibit 1). Letter from USAC to Lori Aller, Boomerang Wireless, LLC, re: Federal Universal Service Low Income Support Mechanism In-Depth Validation Phase 21, Dec. 30, 2013 (attached as Confidential Exhibit 2).

In addition to seeking to vacate USAC's findings of intra-company duplicates for 16 of the 17 alleged duplicates, Boomerang Wireless is seeking reversal of the reimbursement and de-enrollment order in USAC's finding letter for five of the alleged duplicates. Boomerang Wireless submits this supplement to provide additional information regarding those five alleged duplicates.

For two of the five alleged duplicates, Boomerang collected and provides as Exhibit A an Independent Economic Household ("IEH") worksheet for each of the two alleged duplicate pairs. The **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** IEH form indicates that he lives at an address with his parent (who is the other person at the address that is also a Boomerang Wireless customer – **BEGIN CONFIDENTIAL** **END CONFIDENTIAL**), but that the address "includes more than one household." As he is expressly permitted to do under the *Lifeline Reform Order*,³ the subscriber certified that he lives at an address occupied by multiple households and that he understands the one-per-household requirement.

The **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** IEH form indicates that he lives at an address with his adult son (who is the other person at the address that is a Boomerang Wireless customer – also **BEGIN CONFIDENTIAL** **END CONFIDENTIAL**), but that the address "includes more than one household." As he is expressly permitted to do under the *Lifeline Reform Order*, the subscriber certified that he lives at an address occupied by multiple households and that he understands the one-per-household requirement.

³ See *Lifeline and Link Up Reform and Modernization, et al.*, 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, 27 FCC Rcd 6656, FCC 12-11, ¶ 78 (rel. Feb. 6, 2012) ("*Lifeline Reform Order*").

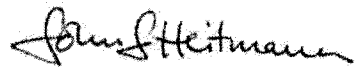
For the other three duplicate pairs, the subscribers have similar names, but different addresses and different dates of birth and/or SSNs. Included as Exhibit B is full subscriber information for these three duplicate pairs showing these differences (including the dates of birth and SSNs). These six subscribers (BEGIN CONFIDENTIAL

END CONFIDENTIAL), appear to be members of an ethnic minority and have similar sounding or looking names, but different addresses and dates of birth and/or SSNs. As stated in the Request for Review, de-enrolling such subscribers based on a “similar name or address” standard that is so subjective almost certainly will result in cutting off Lifeline service to eligible consumers, potentially in a discriminatory manner.

In the Request for Review, with one exception, Boomerang Wireless seeks a ruling vacating USAC’s finding of intra-company duplicates because there is no same name, same address match. For five of the 16 alleged duplicates, Boomerang Wireless is also seeking reversal of the reimbursement and de-enrollment order in USAC’s finding letter. In this Supplement, Boomerang Wireless provides additional support for that request in the form of IEH forms for two father and son alleged duplicate pairs and date of birth and SSN information for three other alleged duplicate pairs to show that USAC’s “similar name, similar address” arbitrary and non-transparent standard for duplicate definition could inadvertently result in racial profiling or at least something that might be perceived as racial profiling. Because these outcomes are so fundamentally at odds with Lifeline program rules, and warrant careful consideration of other important legal issues, Boomerang respectfully has sought Commission review of USAC’s findings.

Respectfully submitted,

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Counsel to Boomerang Wireless, LLC

Dated: January 10, 2014

Confidential Exhibit A

(Redacted)

Confidential Exhibit B

(Redacted)