KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400

3050 K STREET, NW

WASHINGTON, D.C. 20007-5108

(202) 342-8400

NEW YORK, NY
LOS ANGELES, CA
CHICAGO, IL
STAMFORD, CT
PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICES
MUMBAI, INDIA

FACSIMILE
(202) 342-8451
www.kelleydrye.com

DIRECT LINE: (202) 342-8544
EMAIL: jheitmann@kelleydrye.com

February 10, 2014

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Notice of *Ex Parte* Presentation; WC Docket Nos. 11-42, 03-109

Dear Ms. Dortch:

On Thursday, February 6, 2014, John Heitmann and Joshua Guyan of Kelley Drye & Warren LLP, on behalf of Boomerang Wireless, LLC; Global Connection Inc. of America; i-wireless LLC; Telrite Corporation; and Blue Jay Wireless, LLC, each members of the Lifeline Connects Coalition ("Coalition"), met with Daniel Alvarez of Chairman Wheeler's office to further discuss the role of the members in the Lifeline program and the Notices of Apparent Liability ("NALs") recently issued to several Lifeline eligible telecommunications carriers ("ETCs") including three members of the Coalition – i-wireless, Telrite and Global Connection. The topics and discussion were consistent with the *ex parte* letters filed on January 27, 2014 and February 6, 2014 regarding meetings with the other Commissioners' legal advisors, and we utilized the same exhibits.[1]

IDV Appeals and Enforcement Safe Harbor

We also discussed the fact that, as a result of the NALs, many ETCs including those in the Coalition have begun to appeal new In-Depth Validation ("IDV") findings letters

---

[1] *See* Notice of *Ex Parte* Presentation of Boomerang Wireless, LLC; Global Connection Inc. of America; i-wireless LLC; Telrite Corporation; and Blue Jay Wireless, LLC, WC Docket No. 11-42, 03-109 (Jan. 27, 2014) and Notice of *Ex Parte* Presentation of Boomerang Wireless, LLC; Global Connection Inc. of America; i-wireless LLC; Telrite Corporation; and Blue Jay Wireless, LLC, WC Docket No. 11-42, 03-109 (Feb. 6, 2014).

from the Universal Service Administrative Company ("USAC"). Any ETC that has participated in an IDV that resulted in the allegation of any intra-company duplicates can (pursuant to the Commission's apparent strict liability standard) result in an NAL. It is clear that ETCs can be close to perfect at screening for intra-company duplicates,[2] but they cannot be perfect. The lack of perfection, however, does not signal that an ETC has ignored the Commission's rules or exploited the Lifeline program.

As part of the appeals, we have proposed that the Commission establish a safe harbor reflecting a minimum level of due diligence that a Lifeline ETC should employ to screen for duplicates. The goal of the Lifeline rules undoubtedly is to help to prevent subsidies from being paid for ineligible subscriber accounts. The Lifeline regulatory framework is a process-based, not a results-based, framework, but the Commission'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). 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 safe harbor should identify the steps a Lifeline ETC should take in order to check for duplicate enrollments in its own records. We suggest 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 National Lifeline Accountability Database ("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.

Provided that the Lifeline ETC can demonstrate receipt of a certification form satisfying Section 54.410(d) and 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 Commission 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

---

[2] Even if all of the duplicates alleged in the NALs are in fact duplicates, i-wireless would have been 99.7 percent effective at screening for intra-company duplicates, Telrite would have been 99.6 percent effective and Global Connection would have been 99.4 percent effective.

having requested reimbursement for the subscriber prior to the USAC or Commission determination.

Moving Forward to Broadband

We discussed our appreciation for Chairman Wheeler's support for the Lifeline program and his desire to move the Lifeline program forward to support and provide broadband services for low-income Americans.[3] These companies support the transition of the Lifeline program to support broadband service for low-income households and will be key to ensuring competition in the low-income and Lifeline markets to provide broadband service. The program does not benefit from having only one or two major wireless Lifeline providers. Rather, it is improved by the existence of competition in the marketplace, which has resulted in an increase in the standard free wireless minutes offering from 68 minutes to 250 minutes and improved text messaging offers. Broadband offerings for low-income Americans will be improved by having a healthy Lifeline ecosystem in the wireless marketplace with multiple ETCs that are able to attract adequate investment.

We look forward to the launch of the NLAD beginning this month and to working with the Commission on a way forward that restores stability to the Lifeline program and permits competition in the marketplace.

---

[3] Chairman Wheeler Town Hall With Voices for Internet Freedom Coalition (Jan. 10, 2014, available at http://www.politico.com/morningtech/0114/morningtech12673.html ("I am big supporter of Lifeline…The idea of Lifeline for broadband is a legitimate concept, and we have to figure how to make it work.").

This letter is being filed electronically for inclusion in the public record of the above-referenced proceedings. Please feel free to contact the undersigned with any questions.

Respectfully submitted,

John J. Heitmann
Joshua T. Guyan

Counsel to Boomerang Wireless, LLC; Global Connection Inc.; i-wireless LLC; Telrite Corporation; and Blue Jay Wireless, LLC

cc: Daniel Alvarez