

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Petition of Tempo)	
Telecom, LLC for Designation as a)	
Low-Income Competitive Eligible)	Case No. 13-1527-TP-UNC
Telecommunications Carrier.)	

FINDING AND ORDER

The Commission finds:

- (1) On May 7, 1997, the Federal Communications Commission (FCC) issued a Report and Order in CC Docket 96-45 , *In re Federal-State Board on Universal Service (Universal Service)*, adopting rules to promote universal service consistent with the requirements of the Telecommunications Act of 1996 (1996 Act). In its *Universal Service* decision, the FCC, among other things, set forth parameters for the states to determine those carriers eligible to receive federal universal service support.
- (2) Consistent with the FCC's *Universal Service* decision, the Commission, on November 20, 1997, in Case No. 97-632-TP-COI (97-632), *In re Investigation of the Intrastate Universal Service Discounts*, adopted filing procedures for carriers seeking status as either a rural or non-rural eligible telecommunications carrier for the purpose of receiving federal universal service funding.
- (3) On February 6, 2012, the FCC released a Report and Order in *In re Lifeline and Link-Up Reform and Modernization, Lifeline and Link-Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training*, WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, WC Docket No. 12-23 (*Lifeline Reform Order*), adopting reforms that address waste, fraud, and abuse with regard to the federal Universal Service Fund (USF).
- (4) On May 23, 2012, the Commission issued a Finding and Order in Case No. 10-2377-TP-COI, *In re Commission Investigation into the Provision of Nontraditional Lifeline Service by Competitive Eligible Telecommunications Carriers (Nontraditional Lifeline Service Order)*. In that Finding and Order, the Commission took

steps to prevent waste, fraud, and abuse of the federal USF with regard to the provision of nontraditional Lifeline service.

- (5) On June 27, 2013, and as supplemented on January 29, 2014, Tempo Telecom, LLC (Tempo) filed an application seeking designation as an Eligible Telecommunications Carrier (ETC) in Ohio. Tempo submitted the application pursuant to 47 U.S.C. 214(e)(2), 47 C.F.R. 54.101-54.207, and Ohio Adm.Code 4901:1-6-19. In accordance with 47 U.S.C. 214(e)(2), a state commission may designate a requesting carrier as an ETC if it meets the requirements outlined in the law. Additionally, 47 U.S.C. 254 provides that "only an [ETC] designated by Section 214(e) shall be eligible to receive specific federal universal service support." Therefore, the Commission has reviewed Tempo's application as discussed herein.
- (6) In December 2012, Birch Telecom of the Great Lakes, Inc. dba Birch Communications (Birch) filed an application for designation as an ETC in Case No. 12-3115-TP-UNC (Birch Application), but withdrew it in February 2013. Before the Birch Application was withdrawn, there had been an outstanding question as to whether a separate legal entity should be established to provide prepaid wireless Lifeline service or whether the service should be provided through an existing Birch entity. In December 2012, Birch notified the FCC that the prepaid wireless Lifeline service it had originally sought to provide would, instead, be provided by a separate legal entity known as Now Comm. The Birch Application included a compliance plan which was approved by the FCC on August 8, 2012. In an FCC filing, Now Comm agreed to adopt and implement Birch's FCC-approved compliance plan and, in December 2012, the FCC found that the compliance plan it had already approved for Birch would apply to Now Comm. Now Comm has since changed its name to Tempo Telecom, LLC, the applicant in this case.
- (7) Tempo is a Georgia limited liability company and a commercial mobile radio service (CMRS) provider. At the time of its application, Tempo had been granted ETC status in the state of Kansas and had pending before the FCC a request for ETC designations in nine other states besides Ohio. Tempo utilizes the same management and day-to-day operational personnel as Birch. Birch's corporate officers are also corporate officers of

Tempo, and Tempo is owned by the same ultimate owners of Birch, but is not part of the Birch corporate family. Birch Equity Partners, LLC (a Georgia limited liability company formerly known as Birch Capital, LLC) holds 100 percent ownership interest in Tempo. The current owners of Birch own approximately 80 percent of Birch Equity Partners, LLC, with the remaining percentage owned by an individual who is the Chief Executive Officer of both Birch and Tempo. Birch is a competitive local exchange carrier (CLEC) and interexchange carrier (IXC), and has been providing integrated communications services and related technology services to residential and business customers since 1996.

- (8) In its application, Tempo states that it seeks ETC designation solely to provide resold prepaid wireless Lifeline service to qualifying Ohio consumers and that it will not seek access to funds from the USF for high-cost support. Tempo adds that granting designation as an ETC would not unduly burden the universal service fund.
- (9) For purposes of providing its prepaid wireless Lifeline and non-Lifeline services, Tempo will resell the wireless services of Sprint. Sprint will provide Tempo with the wireless network infrastructure and wireless transmission facilities needed for Tempo to offer service as a Mobile Virtual Network Operator (MVNO). Tempo will rely on Birch for all other facilities. As a non-facilities based wireless provider choosing to provide Lifeline service, Tempo will avail itself of the FCC's grant of blanket forbearance as found in the *Lifeline Reform Order*.¹
- (10) Tempo has submitted a copy of its FCC-approved compliance plan in this case. That is, the FCC has approved Tempo's adoption, as of May 13, 2013, of the same compliance plan that it had already approved for Birch on August 8, 2012, and for Now Comm in December 2012. Tempo will offer, market, and advertise its prepaid wireless Lifeline service plan in the manner described in its submitted FCC-approved compliance plan. For its provision of prepaid wireless Lifeline service in Ohio, Tempo will utilize the procedures and operations set forth in its submitted FCC-approved compliance plan.

¹ See *Lifeline Reform Order* at ¶¶ 368, 373, and 379.

- (11) Pursuant to 47 C.F.R. 54.202(a)(4), carriers seeking ETC designation must demonstrate financial and technical capability in accordance with the FCC's Lifeline service requirements.² Tempo submits that it is financially and technically capable of offering Lifeline services. Tempo does not intend to rely exclusively on universal service fund disbursements to operate and will receive revenue from other sources. Tempo projects that the majority of its target customer base will not be eligible to receive Lifeline service. Rather, Tempo's core business will be the provision of wireless voice and data services to non-Lifeline customers and this portion of Tempo's business will be fully operational, and will be producing revenues for the company, well in advance of Tempo's receipt of ETC designation or its rollout of its prepaid wireless Lifeline services once designated. Tempo has not been subject to any enforcement proceedings or ETC revocation proceedings.
- (12) In accordance with 47 C.F.R. 54.202(a)(2), Tempo states it has the ability to remain functional in emergency situations through its agreement with its underlying carrier. In particular, Tempo assures the Commission that its service, through its underlying carrier, will provide (a) a reasonable amount of back-up power to ensure functionality without an external power source; (b) the ability to reroute traffic around damaged facilities; and (c) the capability of managing traffic spikes resulting from emergency situations.

Tempo contends that receiving designation in Ohio as a wireless Lifeline service provider will benefit the public interest. According to Tempo, Ohio's low-income consumers will benefit from the added competition through a wider choice of providers and services.

Tempo does not conduct credit checks, impose activation fees, or require customers to enter into long-term contracts as a prerequisite to obtaining its service. If Lifeline service is terminated for any reason, a re-activation fee applies, but only if the Lifeline customer wants to reactivate and obtain the same telephone number that was previously assigned.

² See *Lifeline Reform Order* at ¶¶ 387-388, revising 47 C.F.R. 54.202(a)(4).

Tempo states that ETC designation in Ohio would enable Tempo to offer services providing access to emergency services on wireless devices, and a reliable means of contact for prospective employers, social service agencies, or dependents.

Finally, Tempo represents that it will satisfy all applicable state and federal requirements related to consumer protection and service quality standards. Specifically, Tempo commits to comply with the Cellular Telecommunications and Internet Association Consumer Code for Wireless Service in accordance with 47 C.F.R 54.202(a)(3).

- (13) Tempo plans to offer two prepaid wireless Lifeline options at no charge to the customer. Specifically, the customer can choose either: (a) Option 1, which includes 250 nationwide minutes or 750 texts per month; or (b) Option 2, which includes 150 nationwide minutes or 450 texts per month with the ability to rollover unused minutes to the next month. A Lifeline customer has to option to purchase packages of additional minutes at rates which vary according to the package chosen (e.g., from 200 additional minutes for \$13.95 to 900 additional minutes for \$49.95 per month). A Lifeline customer also has the option to add wireless data plans for an additional fee. Tempo will provide a wireless E-911 compliant handset to each Lifeline customer free of charge. Customers may place 911 calls for free, even if there are no remaining minutes on their account.

Tempo's Lifeline plan includes access to voice mail, call waiting, call forwarding, and Caller ID features at no additional charge. Tempo does not deduct minutes for calls placed to customer service. The company will utilize Birch's U.S.-based customer service centers; therefore, no customer calls are routed off-shore.

- (14) Tempo commits in its application to comply with 47 C.F.R. 54.409, which sets forth the customer qualifications for Lifeline eligibility by identifying the income qualifying threshold, listing the acceptable federal assistance programs, and requiring that the customer or another household member is not already subscribed to a Lifeline service. Additionally, Tempo confirms it will comply with 47 C.F.R. 54.410, which outlines the carrier responsibility for implementing policies

and procedures for subscriber eligibility determination, certification, and recertification.

- (15) Furthermore, Tempo indicates that it will comply with the Commission's rules governing certification and verification of Lifeline eligibility, the Commission's *Nontraditional Lifeline Service Order*, and the Lifeline requirements contained in Ohio Adm.Code 4901:1-6-19. Tempo understands that it must annually recertify its entire Lifeline customer base and report the results to the Universal Service Administrative Company (USAC), the FCC, and the Commission. In its FCC approved compliance plan, Tempo provides the details regarding consumer enrollment, consumer eligibility criteria, and its recertification procedures as required by the *Lifeline Reform Order*. Additionally, the company's compliance plan contains detailed explanations regarding marketing and disclosure requirements as well as procedures to prevent waste, fraud, and duplicate subsidies within its own subscriber base. Tempo pledges to review any available federal databases to determine if an applicant is receiving a Lifeline benefit from another provider.
- (16) Tempo commits that it will contribute to Ohio's Telephone Relay Service on behalf of its Lifeline customers and that it will pay the Commission's annual assessment fee.
- (17) Tempo intends to enroll customers in its Lifeline service in person at retail agent locations. Tempo states that it will train its representatives and agents in Lifeline requirements. Its representatives or agents will conduct an interview to determine eligibility and obtain the requisite qualifying documentation from the potential Lifeline customer. Until a nationwide database is available, Tempo will utilize available state-level databases to verify eligibility for its prepaid wireless Lifeline service offering. Where state-level database technology is not available, Tempo will require potential customers to provide their proof of eligibility documentation directly to Tempo (either via fax, U.S. mail, e-mail, or through a Birch-authorized third party dealer).

According to Tempo's FCC-approved compliance plan, once a consumer receives final approval for Lifeline service, the handset will be mailed to the address listed on the enrollment

form. Tempo will require the customer to take affirmative steps to “personally activate” the service, either by requiring the customer to use the handset to activate the Lifeline service or to complete an outgoing call. Tempo will not request Lifeline reimbursement until the customer personally activates the service.

To address concerns regarding the potential for waste, fraud, and abuse regarding the disbursement of federal Lifeline support, subscriber eligibility shall be established and verified pursuant to the processes as set forth in the FCC’s rules and its *Lifeline Reform Order*, as well as the Commission’s *Nontraditional Lifeline Service Order*. With regard to the issue of waste, the Commission notes that Tempo will notify Lifeline customers that have not utilized their service for any continuous 60-day period that their discount will be removed, subject to a 30-day grace period during which usage may be established.

- (18) Tempo asserts that it will advertise the availability and rates for its services using media of general distribution as required by 47 C.F.R. 54.201(d)(2) of the FCC’s regulations³ and in accordance with the requirements set forth in the *Lifeline Reform Order*.⁴ Tempo will advertise its Lifeline services under the Tempo brand using multiple media for outreach including daily and weekly print periodicals, targeted direct mail, billboards, and radio. The advertisements will be designed to reach those likely to qualify for Lifeline services. Tempo will also coordinate with relevant state agencies, community outreach organizations, and non-profit organizations to make information available regarding Tempo’s prepaid wireless Lifeline service in resource guides and other printed materials produced for those organizations, as well as in their offices or other locations visited by potential Lifeline-eligible subscribers. Tempo will also advertise through online search engines and third-party referral agents.
- (19) Based on a review of the record in this proceeding, the Commission determines that the pending application seeking ETC status for Lifeline-only support should be conditionally

³ See 47 C.F.R. 54.201.

⁴ See *Lifeline Reform Order* at Section VII.F.

approved, as discussed below. The service area requested in the application is statewide in scope, subject to the existence of Tempo's underlying carrier's facilities and corresponding coverage.

In granting this interim approval, the Commission relies upon Tempo's representation that it provides its customers in the state of Ohio with access to 9-1-1 and enhanced 9-1-1 service provided by local governments or other public safety organizations. Additionally, Tempo states that it is capable of delivering automatic numbering information and automatic location information over its existing network, and otherwise complying with applicable state and federal E-911 requirements.

Consistent with the ETC designation granted pursuant to this Order, Tempo must offer Lifeline service to subscribers who meet the requisite eligibility requirements. The Commission emphasizes that this ETC designation is limited to Lifeline service only and is granted for an interim one-year period of time commencing from the date of this Order. At the conclusion of this interim period, the Commission will review the company's operations for compliance with the FCC's ETC requirements and the requirements of the Commission's *Nontraditional Lifeline Services Order* to determine if renewal of the ETC designation is appropriate. During this review, the company can continue to provide its Lifeline service without interruption, subject to verification of compliance, until the Commission orders otherwise.

The Commission's approval in this Order is contingent upon the company complying with the *Nontraditional Lifeline Services Order*, all applicable FCC rules and orders pertaining to the company's operations as an ETC, and applicable Commission rules, as well as satisfying the conditions delineated below. Subject to these stated conditions, the Commission finds that Tempo's application is consistent with the requirements of the 1996 Act, applicable FCC decisions, and Ohio Adm.Code 4901:1-6-09 and 4901:1-6-19. For the purpose of the designation as an ETC, Tempo's service shall be considered as the primary household line, notwithstanding the fact that it is a wireless service. Only the primary household line is eligible for Lifeline

support and Lifeline support is limited to a single Lifeline subscription per household.

In determining that Tempo should be designated as an ETC on an interim basis, the Commission finds that Tempo is financially and technically capable of providing Lifeline service and that Tempo provisioning of Lifeline services will be in the public interest by providing an additional alternative provider of eligible voice telephony services as discussed in 47 C.F.R. 54.101. Additionally, Tempo service holds potential value for consumers inasmuch as it is a wireless service that extends the mobility benefits of wireless and provides a pre-set number of free monthly minutes to the qualifying Lifeline consumer.

- (20) The Commission recognizes that the federal USF, which is already facing an unprecedented demand, supports Tempo's service. Given the mobile nature of wireless, it is more difficult to ensure that only eligible customers are receiving the service. Thus, to help guard against the potential for waste, fraud, and abuse, we find that Tempo must first comply with the certification criteria as set forth in Ohio Adm.Code 4901:1-6-19(H).
- (21) The record reflects that Tempo will advertise the availability of its Lifeline services via media of general circulation throughout its service territory. While Tempo may utilize various methods of promoting its Lifeline service and providing company-specific contact information, Tempo, itself, must have direct contact with all customers applying for participation in and seeking eligibility determinations relative to the Lifeline program, prior to activating the service.
- (22) Tempo must provide its requisite contribution to Ohio's Telephone Relay Service for all of its subscribers, including those enrolled in Lifeline service. Tempo must also pay its annual Commission assessment consistent with R.C. 4905.10. The Commission reserves the right to perform an audit of Tempo's contributions into Ohio's Telephone Relay Service funds. The Commission further directs Tempo to make available to Staff, upon request, information concerning Tempo's contributions into Ohio's Telephone Relay Service funds.

- (23) The Commission reminds Tempo that it must comply with the Commission's rules regarding telephone number optimization contained in Ohio Adm.Code 4901:1-7-25 and 47 C.F.R. 52. These rules require, among other things, that the company participate in all available number conservation requirements including, but not limited to, the return of Tempo assigned telephone numbers to their underlying carrier(s) for donation to the appropriate number pool upon deactivation of service to a Tempo customer. The Commission further directs Tempo to make available to Staff, upon request, information concerning the applicant's utilization of telephone numbers.
- (24) To the extent that Tempo amends the existing rates, terms, and conditions of its Lifeline service offering, it must notify the Commission by filing such modifications in this docket. Tempo is directed to provide all records and documents requested by Staff for the purpose of monitoring the company's provision of Lifeline service and compliance with the terms and conditions of this Order.
- (25) Tempo must maintain the following Ohio-specific information on a monthly basis and informally provide Staff with quarterly reports reflecting data for that time frame. Tempo should submit the first quarterly report to Staff no later than September 1, 2014, and should encompass data beginning from June 11, 2014. The scope of the quarterly reports may change as Staff deems it appropriate.
- (a) The number of Lifeline service applications received by Tempo;
 - (b) The number of Lifeline service applications approved by Tempo. The response should include a numerical breakdown of the basis for approval (e.g., the number of applications approved based on income eligibility or program-based eligibility);
 - (c) The current total number of Lifeline customers served by the company;
 - (d) The number of Lifeline service applications that were denied by Tempo. The response should

include a numerical breakdown of the basis for denial (e.g., address found to be receiving other Lifeline benefits, improper or incomplete documentation);

- (e) The number of handsets that were deactivated after 60 days of non-usage. For the purpose of this question, deactivation implies that Tempo is no longer receiving Lifeline support from the USF for the handset;
- (f) The number of handsets that have been deactivated on a monthly basis due to the failure of subscribers to recertify or verify. For the purpose of this question, deactivated implies that Tempo is no longer receiving Lifeline support from the USF for the handset;
- (g) The number of Lifeline service subscribers whose handsets were deactivated and who subsequently re-enrolled in the Lifeline program; and,
- (h) The number of Lifeline contacts received by Tempo from Ohio customers each month. The response should include a numerical breakdown of the reason for the contact (e.g., coverage availability, service denied, did not receive a handset, did not receive monthly minutes, etc.).

It is, therefore,

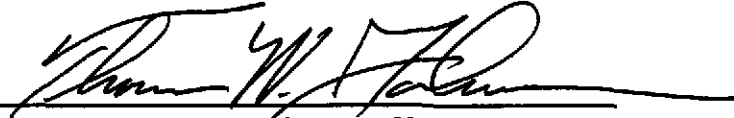
ORDERED, That Tempo be granted conditional designation as an ETC for the limited purpose of providing Lifeline service for an interim one-year period of time consistent with Finding (19). It is, further,

ORDERED, That Tempo comply with the provisions of this Finding and Order, including the submission of quarterly reports consistent with Finding (25). It is, further,


ORDERED, That nothing contained in this Finding and Order shall be deemed binding upon the Commission in any subsequent investigation or proceeding involving the justness and reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That a copy of this Finding and Order be served upon all parties and interested person of record.


THE PUBLIC UTILITIES COMMISSION OF OHIO


Thomas W. Johnson, Chairman


Steven D. Lesser


Lynn Slaby

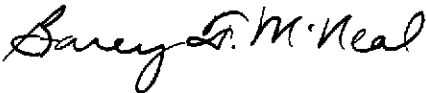

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Secretary