

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the)	Application No. C-4663/
Application of Tempo)	NUSF-96
Telecom, LLC, Kansas City,)	
Missouri, seeking)	
designation as an Eligible)	GRANTED
Telecommunications Carrier)	
in the State of Nebraska for)	
the limited purpose of)	
offering Lifeline service to)	
qualified households.)	Entered: August 19, 2014

APPEARANCES:

For the Applicant:

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For the Commission:

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Background

By Application filed with the Nebraska Public Service Commission ("Commission"), Tempo Telecom, LLC., ("Tempo" or "Company"), of Kansas City, Missouri, seeks designation as an Eligible Telecommunications Carrier ("ETC") for the limited purpose of receiving federal and state universal service support for participating in the low income programs of the Federal Universal Service Fund ("USF"), the Lifeline program, and the Nebraska Universal Service Fund ("NUSF"), called the Nebraska Telephone Assistance Program ("NTAP"), on a wireless basis. Tempo seeks designation pursuant to Section 214(e) of the Telecommunications Act of 1996, as amended (the "Act"), and provisions of Nebraska Administrative Code, Title 291, Chapter 5 and Chapter 10, ("Commission Rules"). Tempo does not seek USF or NUSF high-cost support. Notice of the application was published in The Daily Record, Omaha, Nebraska, on February 11, 2014. No protests or interventions were filed.

A hearing on the application was held on July 22, 2014, in the Commission Hearing Room, Lincoln, Nebraska, with appearances as shown above. The Company agreed to file late-filed exhibits with the Commission in response to Commission questions at the hearing. The late-filed exhibits were received on August 13, 2014.

E V I D E N C E

Gregory Corwin, the Director of Marketing for Tempo testified at the hearing on behalf of the Company. Tempo's application states that the Company is a commercial mobile radio service ("CMRS") provider that offers prepaid wireless voice and data services on a resold basis. The Company's application states it meets all the statutory and regulatory requirements for designation as an ETC and a Nebraska ETC in the State of Nebraska.¹ The Company's application further states Tempo's service provides unique advantages to qualifying Nebraska consumers because the service is convenient and budget-friendly as the customers have control over their telecommunications spending. Tempo does not conduct credit checks or require customers to enter into long-term contracts as a prerequisite to obtaining service.²

Mr. Corwin testified that Tempo is a privately held Georgia limited liability company that is owned and operated by its sole member, Birch Equity Partners, LLC, which is owned by the same individuals that own Birch Communications Holdings, Inc. ("Birch"). Birch and its subsidiaries offer telecommunications services in 50 states and the District of Columbia.³ Tempo utilizes the same management and day-to-day operational personnel as currently utilized by Birch.⁴ Tempo has been designated a wireless ETC in Georgia, Indiana, Iowa, Kansas, Kentucky, Maryland, Missouri, Nevada, Rhode Island, South Carolina, Utah, Wisconsin and Wyoming.⁵

Tempo is a common carrier and reseller of commercial mobile radio services ("CMRS") that it provides on a prepaid basis to consumers. Tempo resells service it obtains from its underlying wireless provider Sprint PCS ("Sprint").⁶

¹ Tempo Application, Exhibit 1, p. 2.

² Id., pp. 21-22.

³ Pre-filed Direct Testimony of Gregory Corwin, Exhibit 4, p. 3.

⁴ Tempo Application, Exhibit 1, p. 4.

⁵ Tempo Data Request Responses, Exhibit. 5, p. 2.

⁶ Tempo Application, Exhibit. 1, at p. 2.

Tempo is registered with the Nebraska Secretary of State's office and has been duly authorized to conduct business in Nebraska. Tempo has not been the subject of enforcement sanctions or ETC revocation proceedings in any state.⁷

The Company states in its application it is seeking ETC designation only in the territories served by Sprint in Nebraska for the limited purpose of participating in the Lifeline and NTAP programs. A list of the Sprint exchanges in which Tempo is requesting limited ETC and NETC designation are identified in Exhibit 6 attached to the Company's application.⁸ Upon questioning at the hearing, Mr. Corwin affirmed that Tempo was seeking designation in the wire centers served by Sprint. In the event the company entered into resale agreements with any other wireless carriers operating in Nebraska, the company would seek a expansion of its ETC designation at that time.⁹

The Company states its service offering will provide Lifeline customers with a choice of Lifeline Service Plans. Lifeline customers can choose either a pre-paid plan for 150 nationwide minutes per month with rollover of unused minutes, or 250 nationwide minutes per month with no rollover for no cost to the customer. Data usage is included in the plans with each megabyte of data usage counting as two (2) minutes of use. Additional minutes can be purchased in 60, 100 and 200 minute increments. All plans include a free basic handset, voicemail, caller-ID, call waiting and call-forwarding, customer service calls, national texting, with three (3) texts counting as one (1) minute of use, 911 service, and domestic long distance. Each customer will also have the option of purchasing additional minutes or paying to upgrade from the basic handset.¹⁰

In its application Tempo details the methods it proposes to utilize to advertise its service including but not limited to, direct mail, daily and weekly print periodicals, billboards, radio advertising, online and may seek to coordinate with relevant state and local community outreach organizations to make information available to potential customers.¹¹ The Company has no plans to build facilities in Nebraska.¹² Mr. Corwin

⁷ Tempo Data Request Responses, Exhibit. 5, p. 4.

⁸ Tempo Application, Exhibit. 1, attached Exhibit 6.

⁹ Application No. C-4663/NUSF-96, Hearing Transcript, 43:13 – 45:16. (Hereinafter "TR page number:line number").

¹⁰ Tempo Application, Exhibit. 1, p. 16-17.

¹¹ Tempo Application, Exhibit 1, p. 11.

¹² Tempo Data Request Responses, Exhibit. 5, p. 7.

further testified that the company will send the free handsets to applicants in the mail only after the applicant has been determined eligible for NTAP by the Commission.¹³

Tempo states it satisfies both state and federal requirements to be designated as an ETC and NETC in Nebraska. Tempo has received forbearance from the Federal Communications Commission ("FCC") from the requirement to use its own facilities at least in part contained in Section 214(e)(1)(A).¹⁴ The Company filed a Compliance Plan with the FCC that received approval August of 2012.¹⁵ A copy of the approved Compliance Plan was included with the Company's application as Exhibit 3.

Tempo also states it demonstrated that it is a common carrier as defined by the FCC and provides all the required services and functionalities to participate in the Lifeline and NTAP program. Further, the Company committed to advertising the availability of supported services using media of general distribution. Finally, Tempo committed to comply with all the Nebraska-specific requirements for ETCs and NETCs, including only using the approved NTAP enrollment form, not distributing handsets until eligibility was determined by the Commission and all NTAP reporting requirements.

O P I N I O N A N D F I N D I N G S

Section 214(e) of the Act sets forth the standards and processes for a state commission to grant carriers the designation of a federal eligible telecommunications carrier. Nebraska Administrative Code, Title 291, Chapter 5, §§ 009.01-009.02C and Chapter 10, § 004 of the Commission Rules contain the requirements for Commission designation of ETCs and NETCs. The Commission's rules largely reflect the FCC requirements. As Tempo is only seeking ETC designation for purposes of participating in Lifeline and NTAP, the Commission will not consider the issues and requirements regarding high cost support.

¹³ TR 27:2-6.

¹⁴ *In the Matter of 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*, Report and Order and Further Notice of Proposed Rulemaking, Docket Nos. 96-45, 03-109, 11-42, and 12-23, FCC 12-11 (rel. February 6, 2012) ("Lifeline Reform Order").

¹⁵ Birch received approval from the FCC of its Compliance Plan for the provision of prepaid Lifeline wireless service in August 2012. Subsequently, Birch notified the FCC that Tempo (then, Now Communications, LLC) would be the separate legal entity providing prepaid wireless Lifeline service. Tempo adopted the Birch Compliance Plan and notified the FCC, which indicated that the Birch Compliance Plan would now apply to Tempo. See Tempo Application, Exhibit 1, attached Exhibits 1 & 2.

The three general requirements listed in Section 214(e) are: 1) the carrier must be a common carrier; 2) the carrier must offer the services supported by the federal fund; and 3) the carrier must advertise the availability of those services. The carrier must also demonstrate the ability to fulfill the requirements throughout the service area for which the carrier is seeking ETC designation.

Common Carrier

The Act defines a common carrier as a person engaged as a common carrier on a for-hire basis in interstate communications utilizing either a wire or radio technology.¹⁶ The FCC's rules also specifically provide that CMRS providers, like the Applicant, are treated as common carriers.¹⁷ Upon review of the Application and testimony presented, the Commission finds that Tempo is a common carrier for purposes of ETC designation.

Supported Services

Chapter 47 C.F.R. Sections 54.101(a) and 54.202(a) of the FCC's Rules and Section 009.02A2 of the Commission Rules require an ETC to demonstrate that it will offer the services that are supported by federal universal service. The FCC's supported services were revised in its *Lifeline Reform Order* and are as follows:

- a. voice-grade access to the public switched network or its functional equivalent;
- b. minutes of use for local service without additional charge to the end user;
- c. access to emergency services; and
- d. toll limitation for qualifying low-income consumers.¹⁸

Voice Grade Access to the Public Switched Network

Tempo provides voice grade access to the public switched network through the purchase of wholesale CMRS services from Sprint, its underlying carrier as required under 47 C.F.R. § 54.101(a).

¹⁶ See 47 C.F.R. § 153(10).

¹⁷ See 47 C.F.R. § 54.20.9(a).

¹⁸ See *Lifeline Reform Order* at pp. 207-208.

Local Usage

Tempo's proposed low income wireless offering under its Lifeline Plan offers a choice of rate plans that provide customers with minutes of local use at no additional charge. Under Tempo's plan, eligible subscribers in Nebraska will have the choice of two plans, "Lifeline 200" which includes 200 anytime minutes per month at no charge with rollover of unused minutes or Lifeline 300, which provides 300 anytime minutes per month at no charge with no rollover option. Neither plan includes additional activation fees or other charges.¹⁹

Access to Emergency Services

The Company states that it complies with all FCC regulations governing the deployment and availability of E911 compatible handsets. The handsets provided to eligible customers, at no additional charge, are emergency service-compatible. Tempo states it will provide its customers access to 911 or E911 services, and will comply with Commission requirements regarding E911-compatible handsets and the FCC's forbearance grant conditions relating to the provision of 911 and E911 services and handsets.²⁰

Toll Limitation for Qualified Low-Income Customers

Regarding toll limitations, the FCC has found that toll limitation would no longer be deemed a supported service.²¹ The FCC further found that ETCs that provide Lifeline customers with a set amount of minutes and do not distinguish between toll and non-toll calls are not required to provide toll limitation service.²² Tempo provides prepaid wireless services, which by its very nature, provides effective toll limitation, providing a set amount of minutes and not distinguishing between toll and non-toll minutes.²³

Other Services

In addition to the required supported services, Tempo will also provide all the services and functionalities supported by the universal service program such as dual tone multi-frequency

¹⁹ Tempo Late Filed Exhibit, Exhibit 9.

²⁰ Tempo Application, Exhibit 1, pp. 9-10.

²¹ See *Lifeline Reform Order* at ¶ 367.

²² *Id.* at ¶ 49.

²³ Tempo Application, Exhibit 1, p.8.

signaling, or its functional equivalent, single-party service or its functional equivalent, access to operator services, access to interexchange services, and access to directory assistance.²⁴

Upon review of the application and testimony presented, the Commission finds that Tempo has the ability and has committed to provide the supported services listed above.

Facilities Requirement

Section 009.02A2 of the Commission Rules requires an ETC to demonstrate that it will offer the supported services above using either its own facilities or a combination of its own facilities and resale of another carrier's services.

However, the FCC, in its *Lifeline Reform Order* has granted blanket forbearance to all carriers seeking only Lifeline support. Carriers wishing to avail themselves of the forbearance must file a compliance plan with and receive FCC approval of such plan.²⁵ Tempo states in its application that its Compliance Plan was approved by the FCC in August of 2012.²⁶

We find that Tempo with the approval of its Compliance Plan by the FCC, has met the requirements of Rule Section 009.02A2.

Advertising Supported Services

Section 009.02A3 of the Commission Rules requires an ETC to advertise the availability of supported services and related charges using media of general distribution. ETCs must also publicize the availability of Lifeline or NTAP services in a manner reasonable calculated to reach those that qualify for the service.

Based on the application, we find Tempo has provided sufficient commitments to advertise the availability of such services and charges using media of general distribution and in a manner that is designed to reach those likely to qualify for such services. Tempo's application states that the Company will specifically target its advertising so as to reach its intended market base of low-income consumers. The Company states its will utilize a wide variety of media outlets including direct mail, print advertisements and internet.²⁷

²⁴ Tempo Application, Exhibit 1, pp. 7-8.

²⁵ See *Lifeline Reform Order* at ¶¶ 368, 373, and 379.

²⁶ Tempo Application, Exhibit 1, pp. 2-3 and See footnote 15 above.

²⁷ *Id.* at p. 11.

Designated Service Area

Tempo's application seeks authority and will serve areas served by Sprint. Tempo's designation as an ETC shall be for the areas identified in Attachment 6 to the Company's application, Hearing Exhibit 1.

Provisioning of Continuous Service

Rule 009.02A4 of the Commission Rules requires that an ETC not only demonstrate the ability and commitment to providing the supported services listed above, but must also demonstrate the ability to continuously provide such services in its designated Service Area. We find, upon our review of the application and testimony, that Tempo has demonstrated and committed to providing the supported services listed above continuously throughout its Service Area.

Provision of Service to Requesting Customers

Section 009.02A5 of the Commission's Rules require an ETC to demonstrate its commitment to provide service throughout the designated area to all customers who make a reasonable request for service.

As demonstrated by Tempo in the Company's application, the Company is currently able to provide the Supported Services throughout its requested service areas by reselling the service which it obtains from its underlying facilities-based provider Sprint.²⁸ We find that Tempo has demonstrated an ability and commitment to satisfy its obligation to provide service upon reasonable request throughout the Company's requested service areas.

Ability to Remain Functional in Emergency Situations

Section 009.02A7 of the Commission's Rules requires an ETC applicant to demonstrate an ability to remain functional during emergency situations. This provision of the Rules only applies to companies seeking high-cost support; however, Tempo in its Application demonstrated that it will provide its customers with the same level of emergency functionality as its underlying provider. Tempo, through its underlying carriers will provide access to a reasonable amount of back-up power to ensure functionality without an external power source, reroute traffic

²⁸ *Id.* at pp. 8-9.

around damaged facilities, and has the capability of managing traffic spikes resulting from emergency situations.²⁹

Public Interest

Rule 009.02A1 of Chapter 5 of the Commission Rules requires any company seeking ETC designation to demonstrate that such designation is consistent with the public interest, convenience, and necessity. The public interest consideration may include the benefits of increased consumer choice and the unique advantages and disadvantages of the Applicant's service offerings.³⁰

In its application, Tempo states the public interest benefits of the Company's wireless service include furthering the goals of the Lifeline and NTAP programs. The Company will increase the choices available to low-income consumers, expanding the number of affordable telecommunications services available to low-income consumers. Further, Tempo states a grant of its application will provide customers with access to high quality, advanced services and the benefits of a mobile service. The Company also states the public interest benefits of the Company's wireless service include a larger local calling area, the convenience and security afforded by a mobile telephone service, the opportunity for customers to have a stable contact method where traditional landline service would be unavailable or not a viable option. Tempo's wireless service also allows the customer to control cost and avoid long term contracts.³¹

Tempo committed to comply with the Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service and further committed to satisfying all applicable state and federal guidelines related to consumer protection and service quality standards.³² Additionally, Tempo committed to comply with the applicable rules and regulations of the Commission. Based on the evidence before us, we conclude that Tempo's service offerings will provide a public interest benefit and its business plan provides a unique advantage to low-income consumers. We find Tempo has demonstrated that its designation as an ETC would be consistent with the public interest, convenience, and necessity.

²⁹ *Id.* at pp 12-13.

³⁰ *See* 47 C.F.R. § 54.202(c).

³¹ Tempo Application, Exhibit 1, pp. 21-22.

³² *Id.* at pp. 13-14.

Nebraska ETC Designation

Rule 004.04A and 004.04B of Chapter 10 of the Commission Rules requires carriers designated as ETC for purposes of receiving USF support to participate in NTAP and comply with Section 006 of Chapter 10 of the Commission Rules or the "NTAP Rules". Tempo, in its application, committed to complying with the Commission's orders, rules and regulations regarding NTAP including the requirement to use only the Commission approved NTAP Application Form, requirements regarding additions and removals of NTAP subscribers from the NTAP program and the semiannual reporting of NTAP customer lists. Mr. Corwin also expressed an understanding on behalf of the Company that all eligibility determinations of NTAP applicants are made exclusively by the Commission. Tempo further committed to complying with those requirements adopted by the FCC in its *Lifeline Reform Order* to annually verify the eligibility of NTAP subscribers³³ in cooperation with NTAP Department of the Commission.

The Company further committed to cooperating with the NTAP Department prior to initiating service in Nebraska and ensuring all administrative issues are dealt with prior to beginning advertising and soliciting business in Nebraska. We find that Tempo shall contact the NTAP Department prior to beginning any operations in Nebraska to deal with administrative and logistical issues, including getting Tempo set up on the NTAP online form, NTAP reporting, and general procedures in NTAP. Further, Tempo shall provide courtesy copies of any print advertising being utilized in Nebraska to the NTAP Department.

Finally, due to ongoing efforts to prevent fraud, waste and abuse in the NTAP and Lifeline programs, the Commission will closely scrutinize Tempo's compliance with our rules and regulations and will take any and all administrative action it deems appropriate, including revocation of Tempo's ETC designation, if it becomes evident the Company is not in full compliance. Failure by the Company to comply with its commitments made to the Commission during this proceeding will not be tolerated.

³³ Lifeline Reform Order at pp. 240-242.

Conclusion

In summary, upon review of the application and evidence presented at the hearing, we find the Applicant has demonstrated that it meets the standards set forth in 47 U.S.C. § 214(e), the supplemental requirements set out in the *Lifeline Reform Order*, and applicable state and federal law for the designation of eligible telecommunications carriers in the proposed geographic area for the limited purpose of participation in the Lifeline and Nebraska Telephone Assistance Program and the application should be approved.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-4663/NUSF-96, should be and it is hereby granted and Tempo Telecom, LLC, is designated as an eligible telecommunications carrier in the State of Nebraska for the limited purpose of receiving federal universal service support to participate in the Lifeline program as requested in the application consistent with the findings and conclusions made herein.

IT IS FURTHER ORDERED that Tempo Telecom, LLC, is hereby declared to be a Nebraska Eligible Telecommunications Carrier for the limited purpose of receiving state universal service support to participate in the Nebraska Telephone Assistance Program.

IT IS FURTHER ORDERED that Tempo Telecom, LLC, shall file information with the Commission evidencing it is advertising through media of general distribution on or before July 1st each year hereafter.

IT IS FURTHER ORDERED that Tempo Telecom, LLC, shall file a copy of this Order with the Universal Service Administrative Company ("USAC") and the FCC to commence its receipt of federal universal service support effective as of the date of this Order.

IT IS FINALLY ORDERED that Tempo Telecom, LLC, shall contact the Nebraska Telephone Assistance Program Department prior to beginning any advertising or business in Nebraska and cooperate to ensure compliance with all administrative matters and procedures for initiating business and on-going participation in the Nebraska Telephone Assistance Program.

MADE AND ENTERED at Lincoln, Nebraska, this 19th day of August, 2014.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Application No. C-4663/NUSF-96

Page 12

MADE AND ENTERED at Lincoln, Nebraska, this 19th day of August, 2014.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Tim Schram

Dave Boyle

Paul Johnson

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Frank E. Landis
Chairman

ATTEST:

Steve Meradith
Executive Director

//s//Frank E. Landis