

**Before the
MISSOURI PUBLIC SERVICE COMMISSION**

In the Matter of)	
)	
Application of Tempo Telecom, LLC for)	Case No. _____
Designation as an Eligible)	
Telecommunications Carrier in the State of)	
Missouri for the Limited Purpose of)	
Offering Prepaid Wireless Lifeline Service)	
to Qualified Households)	
)	

**APPLICATION OF TEMPO TELECOM, LLC
FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN
THE STATE OF MISSOURI FOR THE LIMITED PURPOSE OF OFFERING PREPAID
WIRELESS LIFELINE SERVICE TO QUALIFIED HOUSEHOLDS**

Tempo Telecom, LLC (“Tempo”), by its attorneys, and pursuant to Section 214(e)(2)¹ of the Communications Act of 1934, as amended (the “federal Act”), Section 54.201² of the rules and regulations of the Federal Communications Commission (“FCC”),³ and the rules and regulations of the Missouri Public Service Commission (“Commission”), including 4 CSR 240-3.570 and 240-31.050, hereby submits this Application for Designation as an Eligible Telecommunications Carrier (“Application”). Tempo seeks designation as an eligible telecommunications carrier (“ETC”) for Lifeline support only to provide prepaid wireless services to qualifying Missouri consumers. Tempo will not seek access to funds from the federal Universal Service Fund (“USF”) for the purpose of providing service to high cost areas.⁴ As demonstrated herein, Tempo meets all the statutory and regulatory requirements for designation

¹ 47 U.S.C. § 214(e)(2).
² 47 C.F.R. § 54.201.
³ Tempo files this Application in accordance with Missouri law and the rules adopted by the FCC in *Lifeline and Link Up Reform and Modernization; et al.*, 27 FCC Rcd 6656 (2012) (“*Lifeline Reform Order*”) and *Connect America Fund; et al.*, 26 FCC Rcd 17663 (2011) (“*Connect America Fund Order*”).
⁴ Given that Tempo only seeks Lifeline support and does not seek any high-cost support, ETC certification requirements for the high-cost program are not applicable to Tempo.

as an ETC in the State of Missouri. Tempo respectfully submits that designation of Tempo as an ETC in Missouri will serve the public interest and requests that the Commission grant this application expeditiously.

1. Tempo is a Georgia limited liability company with offices located at 3060 Peachtree Road NW, Suite 1065, Atlanta, Georgia 30305 and 2300 Main Street, Suite 340, Kansas City, Missouri 64108. Tempo is a commercial mobile radio service (“CMRS”) provider, and will provide prepaid wireless voice and data services in 18 states.⁵ Tempo has been authorized to conduct business in Missouri as reflected in **Exhibit 1**. In addition to prepaid wireless Lifeline service as an ETC, Tempo will also provide other prepaid wireless voice and data services in Missouri.

2. In November 2012, Birch Telecom of Missouri, Inc. dba Birch Communications (“Birch”) filed an Application for Designation as an Eligible Telecommunications Carrier in Case TA-201300314 (“Birch Application”). The Birch Application included a copy of the Compliance Plan approved by the Federal Communications Commission (“FCC”). The Compliance Plan noted there was 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 one of the existing Birch entities.

3. On December 18, 2012, Birch notified the FCC that the prepaid wireless Lifeline service would be provided by a separate legal entity known as Now Communications, LLC (“Now Comm”). A copy of that filing is attached as **Exhibit 2** (without attachments) (“December 2012 FCC Filing”). In that filing, Now Comm committed to implement and comply with the Compliance Plan, and notified the FCC that it adopted the Compliance Plan as its own.

⁵ These states are: Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, Ohio, South Carolina, Tennessee, Texas, and Wisconsin.

The FCC acknowledged these changes in corporate structure on December 20, 2012 in a public notice attached as **Exhibit 3**. The FCC indicated that the Compliance Plan would apply to Now Comm. In January 2013, Birch withdrew the Birch Application due to issues with the “Now Comm” name, and in the interest of administrative economy and efficiency.

4. Now Comm has since changed its name to Tempo Telecom, LLC. All other statements in the December 2012 FCC Filing apply equally to Tempo. On May 13, 2013, Tempo notified FCC staff of its name change, and filed with the FCC an amended petition for ETC designation in the states for which the FCC handles such designations.⁶ A copy of that filing (without attachments) is attached as **Exhibit 4** (“May 13 FCC Amendment”). Tempo also updated the FCC-approved Compliance Plan to reflect Tempo’s adoption of the plan, which is attached as **Exhibit 5**. All changes made via the May 13 FCC Amendment are incorporated by reference into the Compliance Plan.

5. Tempo will utilize the same procedures and operations set forth in the FCC-approved Compliance Plan for its provision of prepaid wireless Lifeline service. Except as modified herein and by the May 13 FCC Amendment, Tempo will offer the same prepaid wireless Lifeline service plan set forth in the Compliance Plan, and will market and advertise its prepaid wireless Lifeline service in the same manner as described in the Compliance Plan.

6. Tempo utilizes the same management and day-to-day operational personnel as currently utilized by Birch. Birch’s current corporate officers also are 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 a 100% ownership interest in Tempo. The current owners

⁶ For Tempo’s purposes, these states are Alabama, Florida, North Carolina, Tennessee, and Texas.

of Birch (Holcombe Green and R. Kirby Godsey, who in combination hold a 98% interest in Birch) own approximately 80% of Birch Equity Partners, LLC, with the remaining percentage owned by Vincent Oddo, the Chief Executive Officer of both Birch and Tempo. Attached as **Exhibit 6** is a current list of Tempo's officers, along with biographical information for each, showing that it has the expertise necessary to provide the services specified herein.

7. Tempo has been granted ETC status in the state of Kansas. Tempo's request for ETC status is currently pending before the FCC, which covers the states of Alabama, Florida, North Carolina, Tennessee, and Texas. Tempo also has ETC designation applications pending in the states of Arkansas, Georgia, Kentucky, Louisiana, Mississippi, South Carolina, and Wisconsin. Tempo is in the process of filing ETC designation applications in the states of Ohio, Illinois, Indiana, and Oklahoma. Tempo has never been denied ETC designation by any state commission or by the FCC in connection with any state.

8. For purposes of providing its prepaid wireless Lifeline and non-Lifeline services, Tempo will resell the wireless services of Sprint, which provides wholesale capacity to many wireless resellers, including other prepaid wireless providers that have received ETC designation. 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").

9. Tempo will rely on Birch for all other facilities, network, back office, billing, and customer support functions necessary to provide both its Lifeline and non-Lifeline wireless services.⁷ Birch is a competitive local exchange carrier ("CLEC") and interexchange carrier

⁷ For numerous years, Birch has been providing wireline Lifeline services in 18 states as a non-ETC reseller using resold services obtained from AT&T, and thus Birch is familiar with the eligibility and verification procedures applicable to Lifeline service offerings.

("IXC"), and since 1996 has been providing high-quality, cost-effective integrated communications services and related information technology services to residential and small and medium-sized business ("SMB") customers. Today, Birch offers a variety of products, services and tailored solutions including local voice, long distance voice, broadband Internet, converged Internet Protocol ("IP") solutions, and related telecommunications and IT services. In addition to Missouri, the Birch family of companies is currently authorized to provide telecommunications services in 47 other states and the District of Columbia, with applications pending in Arizona and West Virginia.

10. **Exhibit 7** contains a list of each exchange for which Tempo is requesting ETC designation in Missouri (the "Service Area"). Specifically, Tempo's designated Service Area in Missouri is Sprint's wireless coverage area or Sprint's licensed service area, which comprises a portion of or the entirety of the exchanges set forth on **Exhibit 7**. Tempo will serve any potential customer in the exchanges listed in **Exhibit 7** to the extent resold wireless services are available from Sprint in the customer's geographic area.

11. Pursuant to 4 CSR 240-2.060(1)(I), communications concerning this Application should be directed to:

Carl J. Lumley
Curtis, Heinz, Garrett & O'Keefe, P.C
130 S. Bemiston, Suite 200
Clayton, MO 63105
(314) 725-8788 (telephone)
(314) 725-8789 (facsimile)
CLumley@lawfirmemail.com

with a copy to:

Angela F. Collins

Cahill Gordon & Reindel LLP
1990 K Street, N.W., Suite 950
Washington, D.C. 20006
202-862-8930 (telephone)
866-255-0185 (facsimile)
acollins@cahill.com

12. Pursuant to 4 CSR 240-2.060(1)(K), Tempo states that it has no pending action or final unsatisfied judgments or decisions against it from any state or federal agency or court that involve customer service or rates, which action, judgment, or decision has occurred within three (3) years of the date of this Application. No matter has been brought in the last ten years by any state or federal regulatory or law enforcement agency against Tempo, any person or entity that holds more than a 10% ownership interest in it, or any affiliated company (any company under common management ownership or control or that, by contract or other agreement performs any of the functions necessary to its Lifeline Service), that involves any aspect of the provision of Lifeline Service or any aspect of state or federal Universal Service funds, or any matter involving fraud, deceit, perjury, stealing or the omission or misstatement of material fact in connection with a commercial transaction, including formal or informal notices of investigation, indictment, the filing of a complaint, a civil lawsuit, revocation or suspension proceeding, action for penalties or damages, or criminal charges.

13. Pursuant to 4 CSR 240-2.060(1)(L), Tempo states that no annual report or assessment fees are overdue.

I. TEMPO MEETS THE REQUIREMENTS FOR ETC DESIGNATION UNDER SECTION 214(e) OF THE FEDERAL ACT AND SECTION 54.201(d) OF THE FCC'S RULES

14. Under Section 214(e)(1) of the federal Act and Section 54.201(d) of the FCC's

rules, a common carrier may be designated as an ETC if it: (1) offers the services supported by federal universal service as determined by the FCC; (2) offers such services using its own facilities or a combination of its own facilities and resale of another carrier's services; and (3) advertises the availability of such services and the relevant charges using media of general distribution.⁸ As set forth below, Tempo meets these requirements.

A. Tempo Is a Common Carrier

15. Only a "common carrier" receiving designation as an ETC under 47 U.S.C. § 214 is eligible to receive subsidies from the federal USF. Wireless carriers are common carriers under federal law.⁹ Common carriers that provide services consistent with the requirements of Section 214(e) may be deemed ETCs.¹⁰ Tempo will be a common carrier by virtue of its provision of wireless services. Therefore, Tempo certifies that it is a common carrier under 47 U.S.C.A. § 214(e)(1) for purposes of ETC designation.

B. Tempo Will Offer the Services Supported by Federal Universal Service

16. Pursuant to Section 54.101(a) of the FCC's rules, as modified by the *Lifeline Reform Order*, carriers seeking ETC designation must provide voice telephony services.¹¹ Specifically, eligible Lifeline telephony services must provide voice grade access to the public switched telephone network ("PSTN") or its functional equivalent, minutes of use for local service provided at no additional charge, access to emergency 911 and enhanced 911 service in locations where implemented, and toll limitation at no charge (subject to certain requirements

⁸ 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d).

⁹ 47 U.S.C. § 332(c)(1) (an entity providing commercial mobile services is deemed to be a common carrier); *see also* 47 U.S.C. § 332(d)(1) (defining "commercial mobile service" to be any mobile service that is provide for profit and makes interconnected service available to the public).

¹⁰ 47 U.S.C. § 214(e)(6) provides that wireless carriers not otherwise subject to state commission jurisdiction shall be designated as ETCs if they meet the requirements of 47 U.S.C. § 214(e)(1) consistent with applicable federal and state law.

¹¹ 47 C.F.R. § 54.101(a); *Lifeline Reform Order* ¶ 48.

and limitations).¹² Tempo certifies that its prepaid wireless Lifeline service offering satisfies the FCC's definition of voice telephony service, and it will therefore provide all services designated for support by the FCC.

17. Tempo's prepaid wireless Lifeline service offering will provide voice grade access to the PSTN through its provision of resold wireless services from Sprint. Tempo also offers its customers access to operator services, the ability to make "long distance" telephone calls, and access to directory assistance services by dialing "411" through Birch's facilities or through arrangements with Sprint. As described below, Tempo's prepaid wireless Lifeline service offering will provide a specified number of minutes of use to eligible consumers at no charge. In addition, as explained below, Tempo's prepaid wireless Lifeline service offering will provide consumers with access to 911 and enhanced 911 to the extent local governments have implemented such services. Although Tempo understands it has an independent obligation to provide 911 and E911 services as a reseller,¹³ Tempo will rely on its contractual arrangement with Sprint to provide such emergency services to consumers.

18. With respect to toll limitation service, the *Lifeline Reform Order* eliminated the requirement to provide toll limitation services if the Lifeline offering provides a set amount of minutes that do not distinguish between toll and non-toll calls.¹⁴ As explained more below, Tempo's prepaid wireless Lifeline service offerings will be nationwide calling plans, and will not distinguish between toll and non-toll calls. Consumers, however, may implement toll control for international calls to the extent they seek that capability. Moreover, consumers purchasing Tempo's prepaid wireless Lifeline service offering will have the ability to monitor their minute

¹² *Lifeline Reform Order* ¶ 48.

¹³ 47 C.F.R. § 20.18(m).

¹⁴ *Lifeline Reform Order* ¶ 49.

usage and balances from their handset, online, or through customer service.

C. Satisfies the Requirements for Conditional Forbearance from the Facilities Requirement

19. Both the federal Act and the FCC's rules require a carrier seeking ETC designation to offer the supported services using its own facilities or a combination of its own facilities and resale of another carrier's services.¹⁵ In the *Lifeline Reform Order*, however, the FCC decided to conditionally forbear from application of the federal Act's facilities requirement to all telecommunications carriers that seek limited ETC designation to participate in the Lifeline program.¹⁶ Specifically, the FCC determined that conditional forbearance from the facilities requirement would apply if the carrier: (1) complied with certain 911 requirements and (2) filed and received approval of a compliance plan providing specific information regarding the carrier's service offerings and outlining the measures the carrier will take to implement the obligations contained in the *Lifeline Reform Order* as well as further safeguards against waste, fraud and abuse as the Wireline Competition Bureau may deem necessary.¹⁷ Tempo certifies that it meets the requirements for conditional forbearance as demonstrated in its approved Compliance Plan, which is attached as **Exhibit 5**.

20. Tempo's prepaid wireless Lifeline service offering will comply with the 911 requirements outlined in the *Lifeline Reform Order* necessary for application of conditional forbearance. Tempo will provide its prepaid wireless Lifeline subscribers with 911 and E911 access regardless of activation status and availability of minutes. Tempo will also provide its Lifeline subscribers with E911-compliant handsets and replace, at no additional charge to the subscriber, any non-compliant handset. As noted above, Tempo will rely on its contractual

¹⁵ 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d).

¹⁶ *Lifeline Reform Order* ¶ 368.

¹⁷ *Lifeline Reform Order* ¶ 368.

arrangement with Sprint to provide 911 and E911 services to consumers, as well as obtain the handsets to be provided to consumers.¹⁸ Tempo's MVNO arrangement with Sprint specifically addresses 911/E911 services and requires Sprint to supply handsets that satisfy all FCC requirements.

21. In further support of Tempo's eligibility for the conditional grant of forbearance from the facilities requirement, Tempo provides a copy of its approved Compliance Plan in **Exhibit 5**, which was prepared in accordance with the requirements of the *Lifeline Reform Order* and the Public Notice issued by the Wireline Competition Bureau on February 29, 2012.¹⁹ The FCC-approved version of the Compliance Plan can also be found at:

<http://www.fcc.gov/encyclopedia/lifeline-compliance-plans-etc-petitions> on the FCC's website.

D. Tempo Will Advertise the Availability of the Supported Services and the Relevant Charges Using Media of General Distribution

22. Tempo will publicize the availability of its prepaid wireless Lifeline service offering in a manner reasonably designed to reach those likely to qualify for the service.²⁰ Tempo will utilize the FCC's 2004 outreach guidelines for advertising its prepaid wireless Lifeline service offering.²¹ Specifically, Tempo will utilize outreach materials and methods designed to reach households that currently do not have telephone service, will develop advertising materials for non-English speaking populations within its service area, and will coordinate its outreach efforts with relevant government agencies.

23. As required under the *Lifeline Reform Order*, Tempo will ensure the FCC-

¹⁸ Tempo understands that it has an independent obligation to provide 911 and E911 services as a wireless reseller, and will utilize its underlying contractual arrangement with Sprint to meet that obligation. *See, e.g.*, 47 C.F.R. § 20.18(m); *Lifeline Reform Order* at n. 989.

¹⁹ *Wireline Competition Bureau Provides Guidance for the Submission of Compliance Plans Pursuant to the Lifeline Reform Order*, 27 FCC Rcd 2186 (2012).

²⁰ 47 C.F.R. § 54.405(b).

²¹ *Lifeline and Link Up*, 19 FCC Rcd 8302, ¶¶ 45-48 (2004).

required disclosures of any “doing business as” names it uses, and details of the prepaid wireless Lifeline service offering are contained in all marketing materials.²² In Missouri, Tempo will only use the name indicated in this Application unless further notice is provided to the Commission (see *infra* para. 79). Attached as **Exhibit 8** is an example of Tempo’s marketing materials.

24. Tempo’s advertising for its prepaid wireless Lifeline service offering will include, but not be limited to, targeted direct mail, advertisements in daily and weekly print periodicals, billboards, and radio advertising. Tempo will also engage in outbound calling campaigns (consistent with applicable telemarketing regulations). 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 offering in resource guides and other printed materials produced by 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/dealers.

25. Pursuant to Sections 54.405(c) and (d) of the FCC’s rules,²³ Tempo will ensure that all materials describing its prepaid wireless Lifeline service offering use easily understood language to indicate that the service is a Lifeline service, that Lifeline is a government assistance program, that the service is non-transferrable, that only eligible consumers may enroll in the program, and that the program is limited to one discount per household as required under the rules.²⁴ Tempo will also ensure that all materials describing its prepaid wireless Lifeline service

²² *Lifeline Reform Order* ¶¶ 274-282.

²³ 47 C.F.R. § 54.405(c), (d).

²⁴ 47 C.F.R. § 54.405(c).

offering utilize the Tempo brand as the name of the ETC providing services.²⁵ Tempo understands that the term “materials describing the service” include all print, audio, video, and web materials used to describe or enroll in the Lifeline service offering, including application and certification forms.²⁶ This specifically includes the Tempo’s website and other marketing materials.

II. TEMPO MEETS THE ADDITIONAL REQUIREMENTS FOR ETC DESIGNATION UNDER SECTION 54.202 OF THE FCC’S RULES

26. Section 54.202 of the FCC’s rules contains certain additional requirements for a common carrier to be designated as an ETC. As set forth below, Tempo satisfies each of those requirements. Tempo is aware that it is liable for any conduct by its agents, contractors and representatives (acting within the scope of their employment) that violates the FCC’s Lifeline rules and will take all necessary steps to ensure scrupulous adherence to those rules. (See **Exhibit 4** p 16 and note 30).

A. Tempo Will Comply with the Service Requirements Applicable to Lifeline Support

27. Section 54.202(a)(1) of the FCC’s rules requires a common carrier seeking ETC designation to (1) certify that it will comply with the service requirements applicable to the support that it receives and (2) submit a five-year plan for proposed improvements or upgrades to the applicant’s network unless the applicant is seeking Lifeline support only.²⁷ Tempo seeks ETC designation for Lifeline support only. Tempo hereby certifies that it will comply with the service requirements applicable to Lifeline support. Given that Tempo seeks designation for

²⁵ 47 C.F.R. § 54.405(d).

²⁶ 47 C.F.R. § 54.405(c).

²⁷ 47 C.F.R. § 54.202(a)(1).

Lifeline support only, a five-year network improvement plan is no longer necessary.²⁸

B. Tempo Will Remain Functional in Emergency Situations

28. Section 54.202(a)(2) of the FCC's rules requires a common carrier seeking ETC designation to demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.²⁹

29. Sprint will provide Tempo with network infrastructure and wireless transmission facilities. Tempo will rely on Birch for all other facilities, network, back office, billing, and customer support functions needed to provide Lifeline and non-Lifeline services. Birch has been offering telecommunications services since 1996, and thus has significant experience with remaining functional in emergency situations. As a successful, profitable CLEC, Birch has disaster recovery contingency plans that include diverse/alternate routing, electronics redundancy, dual data centers geographically separated, and environmental controls for data and switching centers. Tempo will rely on Birch to apply these same measures to its prepaid wireless Lifeline service offering to the extent there is an emergency situation affecting Tempo's operations.

30. The MVNO contract arrangement with Sprint imposes certain obligations on Sprint to ensure Tempo's prepaid wireless Lifeline service offering remains functional during emergency situations. As a large, nationwide wireless carrier, Sprint is subject to regulatory

²⁸ *Lifeline Reform Order* ¶ 386.

²⁹ 47 C.F.R. § 54.202(a)(2).

requirements to remain functional during emergency situations.³⁰ The MVNO agreement with Sprint also contains certain quality of service guarantees. As a result Tempo is able to provide to its customers the same ability to remain functional in emergency situations as currently provided by Sprint to its own customers, including access to a reasonable amount of back-up power to ensure functionality without an external power source, re-routing of traffic around damaged facilities, and the capability of managing traffic spikes resulting from emergency situations.

C. Tempo Will Satisfy Applicable Consumer Protection and Service Quality Standards

Section 54.202(a)(3) of the FCC's rules requires a common carrier seeking ETC designation to demonstrate that it will satisfy applicable consumer protection and service quality standards.³¹ Tempo will satisfy applicable consumer protection and service quality standards. Tempo will apply Birch's consumer protection and service quality standards. As a CLEC/IXC, Birch is currently subject to the consumer protection and service quality standards promulgated by the Commission and the states in which Birch operates. These same practices to Tempo's prepaid wireless Lifeline service product. Tempo will satisfy all consumer privacy protection standards as provided in 47 C.F.R. § 64, Subpart U as applicable and will protect Customer Proprietary Network Information ("CPNI") as required by state and federal law and will certify compliance with the same on an annual basis. Tempo will also comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service to satisfy this requirement.³²

D. Tempo Is Financially and Technically Capable of Providing Lifeline Services

³⁰ Tempo is also familiar with the continuity and disaster response program Sprint has implemented, which addresses the need to remain functional during emergency situations.

³¹ 47 C.F.R. § 54.202(a)(3). Pursuant to FCC rules, Tempo will annually certify that it is in compliance with applicable service quality standards and consumer protection rules. 47 C.F.R. § 54.422(b)(3).

³² 47 C.F.R. § 54.202(a)(3).

in Accordance with the FCC's Rules

31. Tempo has the financial and technical capability to provide Lifeline service. Section 54.202(a)(4) of the FCC's rules requires a common carrier seeking ETC designation for Lifeline support to demonstrate it is financially and technically capable of providing Lifeline service in compliance with the FCC's rules.³³ The FCC stated that the "relevant considerations" for satisfying this requirement would be whether the applicant previously offered services to non-Lifeline consumers, how long the applicant has been in business, whether the applicant intends to rely exclusively on universal service fund disbursements to operate, whether the applicant receives funds from other sources, and whether the applicant has been subject to enforcement action or ETC revocation proceedings in other states.³⁴

32. Tempo is financially capable of offering Lifeline services. Tempo does not intend to rely exclusively on universal service fund disbursements to operate, and will receive revenues from other sources. Tempo will initially offer prepaid wireless voice and data services in 18 states starting in June 2013. This portion of Tempo's business will be fully operational prior to Tempo's receipt of ETC designation or its rollout of its prepaid wireless Lifeline services once designated. Tempo's core business will be the provision of wireless voice and data services to non-Lifeline customers. Based on its forward-looking business and financial plans, Tempo projects that the majority of its target customer base will not be eligible to receive Lifeline service.

33. Further, Tempo has sufficient operating capital to provide prepaid wireless Lifeline services. In May 2013, the individual owners of Birch Equity Partners, LLC (formerly known as Birch Capital, LLC) (Tempo's sole member) contributed a significant amount of

³³ 47 C.F.R. § 54.202(a)(4); *see also Lifeline Reform Order* ¶ 387.

³⁴ *Lifeline Reform Order* ¶ 388.

funding to the company. These “start-up” funds are large enough to cover the company’s operating expenses for more than a month. Tempo projects that it will start accruing revenues from its prepaid non-Lifeline wireless voice and data services in July 2013.

34. As a new entity, Tempo has not been subject to any enforcement proceedings or ETC revocation proceedings. Birch has not been subject to an abnormal number of enforcement proceedings given the significant number of customers it serves and the more than 15 years it has been offering service, and has not been subject to any enforcement proceeding with respect to Lifeline services.

35. The management and ultimate owners of Tempo are intimately familiar with the financial and technical needs of a telecommunications company. As noted above, Tempo utilizes the same management and day-to-day operational personnel as currently utilized by Birch, a successful company that has been operating as a competitive local exchange carrier since 1996. Birch’s current 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). In addition, Tempo relies on Birch for various network facilities, back office, billing, and customer support functions necessary for Tempo to provide both its Lifeline and non-Lifeline services.

36. Finally, Tempo is reselling the wireless services of Sprint for both its Lifeline and non-Lifeline services. Sprint provides wholesale capacity to numerous wireless resellers. Like several other prepaid wireless providers, Sprint will provide Tempo with the network infrastructure and wireless transmission facilities needed for Tempo to offer service as a MVNO. Sprint is a large, nationwide carrier, and serves several other MVNOs offering wireless Lifeline

products.³⁵ Tempo's partnership with Sprint further demonstrates Tempo is technically and financially capable of providing a prepaid wireless Lifeline service.

E. Tempo Will Provide Prepaid Wireless Lifeline Service Plans to Eligible Consumers

37. Section 54.202(a)(5) of the FCC's rules require a common carrier seeking ETC designation for Lifeline support to submit information describing the terms and conditions of the voice telephony plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges for toll calls (if any), and rates for each such plan.³⁶ At this time, Tempo plans to offer two prepaid wireless Lifeline options at no charge to the customer. Specifically, the customer can choose between the following options:

Option 1

250 nationwide minutes including texting, with three (3) texts counting as one (1) minute

Option 2

150 nationwide minutes including texting, with three (3) texts counting as one (1) minute, with the ability to rollover unused minutes to the next month

Either option also will provide the customer with:

- Wireless handset (there are several handset options) - at least one free choice and the possibility of additional choices³⁷
- Voicemail
- National texting, with three (3) texts counting as one (1) minute
- 911 and E911 access as available
- Custom calling features such as call waiting, call forwarding, and caller ID

³⁵ Based on filings made with the FCC, it appears Sprint also provides underlying MVNO services to other carriers such as PlatinumTel, i-wireless, and CAL Communications, which also have sought ETC designation from the FCC.

³⁶ 47 C.F.R. § 54.202(a)(5).

³⁷ Tempo is still considering which handsets will be offered, but all handsets will be compliant with all applicable Commission requirements. Handsets will be offered for free in conjunction with the prepaid wireless Lifeline product. Based upon market availability and handset prices, the consumer may have a choice of handsets. Tempo is continuing to evaluate the possibility of offering premium handsets at an additional cost, but a free handset will always be offered to every prepaid wireless Lifeline subscriber.

- Option for international calling with per-minute pricing based on the country to be called, which will be provided to the consumer when opting for this capability
- Option to add wireless data plans for an additional cost (also dependent on handset)
- Option to purchase additional minutes anytime during the month that are available for 60 days from purchase at the following rates:

Additional Minutes	Price
200	13.95
250	16.95
300	19.95
400	25.95
900	49.95

Tempo’s planned prepaid wireless Lifeline service offering is consistent with the federal Act’s requirement that consumers have access to quality services at “just, reasonable, and affordable rates,”³⁸ and is consistent with the FCC’s findings that Lifeline consumers should have the option to purchase bundled packages, additional calling features, and optional voice services.³⁹

38. As set forth in Tempo’s approved Compliance Plan, Tempo has established processes for ensuring Lifeline services are provided only to eligible customers, including procedures for confirming consumer eligibility, enrolling eligible customers, re-certifying eligibility at regular intervals, and recordkeeping. In Missouri, Tempo will use the state USF board approved enrollment and certification form. Tempo has revised its forms based on a request from FCC staff to include a statement that not all Lifeline services are marketed under the “Lifeline” name, and may be offered under other names, and to clarify that certain consumer information will be provided to the Universal Service Administrative Company for the purpose of verifying eligibility and maintaining the information in a database. Tempo has made similar

³⁸ 47 U.S.C. § 254(b)(1).

³⁹ *Lifeline Reform Order* ¶ 317.

changes to its script for third party verification (“TPV”) of Lifeline eligibility, and has informed its customer service representatives to include these statements in any oral disclosures given to potential Lifeline customers.

III. TEMPO MEETS THE REQUIREMENTS FOR LIFELINE SERVICES UNDER SECTION 54.405 OF THE FCC’S RULES

39. Under Section 54.405 of the FCC’s rules, an ETC has certain obligations to offer Lifeline service.⁴⁰ Tempo understands these obligations and will meet them as described below.

A. Tempo Will Make Lifeline Service Available as Defined under the FCC’s Rules

40. Section 54.405(a) of the FCC’s rules requires an ETC to make available Lifeline service, as defined in Section 54.401 of the FCC’s rules,⁴¹ to qualifying low-income consumers.⁴² Tempo certifies that its prepaid wireless Lifeline service offering will conform to the definition of “Lifeline” in the FCC’s rules.

B. Tempo Will Publicize the Availability of Lifeline Service

41. Section 54.405(b) of the FCC’s rules requires an ETC to publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.⁴³ As described above, Tempo will publicize the availability of its prepaid wireless Lifeline service offering in a manner reasonably designed to eligible consumers.

C. Tempo Will Include Certain Disclosures on Materials Describing Its Lifeline Service, Including the Name of the ETC

42. Sections 54.405(c) and (d) of the FCC’s rules require an ETC to make certain disclosures on all materials describing the Lifeline service offering, including the name of the

⁴⁰ 47 C.F.R. § 54.405.

⁴¹ 47 C.F.R. § 54.401.

⁴² 47 C.F.R. § 54.405(a).

⁴³ 47 C.F.R. § 54.405(b).

ETC.⁴⁴ As noted above, Tempo will ensure that all materials describing its prepaid wireless Lifeline service offering use easily understood language to indicate that the service is a Lifeline service, that Lifeline is a government assistance program, that the service is non-transferrable, that only eligible consumers may enroll in the program, and that the program is limited to one discount per household as required under the rules.⁴⁵ Tempo will also ensure that all materials describing its prepaid wireless Lifeline service offering utilize the “Tempo” brand as the name of the ETC providing services.⁴⁶ Tempo understands that the term “materials describing the service” include all print, audio, video, and web materials used to describe or enroll in the Lifeline service offering, including application and certification forms.⁴⁷

D. Tempo Will Comply with the FCC’s De-Enrollment Procedures

43. Section 54.405(e) of the FCC’s rules requires an ETC to impose certain de-enrollment procedures for Lifeline services.⁴⁸ Tempo will comply with the Commission’s de-enrollment procedures as described more fully in the approved Compliance Plan set forth in **Exhibit 5**. As discussed in the Compliance Plan, Tempo will de-enroll Lifeline customers for duplicative support, for non-usage, and for failure to re-certify, and will have general de-enrollment procedures in place.

IV. TEMPO WILL COMPLY WITH THE FCC’S CONSUMER CERTIFICATION AND ANNUAL VERIFICATION REQUIREMENTS

44. As discussed at length in Tempo’s Compliance Plan, Tempo will offer its prepaid wireless Lifeline service to households receiving benefits from a qualifying state or federal

⁴⁴ 47 C.F.R. § 54.405(c), (d).

⁴⁵ 47 C.F.R. § 54.405(c).

⁴⁶ 47 C.F.R. § 54.405(d).

⁴⁷ 47 C.F.R. § 54.405(c).

⁴⁸ 47 C.F.R. § 54.405(d).

assistance program or with an income at or below 135% of the Federal Poverty Guidelines.⁴⁹ In Missouri, Tempo will use the state USF board approved consumer certification form, which will collect identifying information about the prospective Lifeline recipient, certify his or her eligibility to receive it, and require the consumer to acknowledge the terms and conditions of the Lifeline program as delineated by the FCC.⁵⁰ Tempo will make any necessary changes to the extent the FCC or the Universal Service Administrative Company (“USAC”) issue additional guidance on the language to be contained on enrollment and certification forms. Tempo also confirms that it will comply with any future FCC or USAC guidance, directives, or rule changes regarding the Lifeline program.

45. Tempo certifies that will verify the eligibility of its Lifeline subscriber base after 2012⁵¹ in accordance with Section 54.409 and 54.410 of the FCC’s rules.⁵² As documented in Attachment B to Tempo’s Compliance Plan, Tempo has designated an annual recertification process that fulfills the requirements set forth by Section 54.410(f) of the FCC’s rules.⁵³

V. DESIGNATION OF TEMPO AS A LIFELINE-ONLY ETC IS IN THE PUBLIC INTEREST

46. Pursuant to Section 54.202(b) of the FCC’s rules, Tempo’s designation as an ETC is in the public interest.⁵⁴ Tempo’s designation as Lifeline-only ETC will bring increased competitive choice and unique advantages to qualifying Missouri consumers, on the part of a

⁴⁹ 47 C.F.R. § 54.409(a).

⁵⁰ See 47 C.F.R. §§ 54.405(c), 54.409, 54.410(a)-(d); *Lifeline Reform Order* ¶ 121.

⁵¹ *Lifeline Reform Order* ¶ 133. As Tempo did not have a Lifeline subscriber basis as of June 1, 2012, the FCC’s January 31, 2013 recertification requirement is inapplicable. *Id.* ¶¶ 130, 132 (“[T]he rule we adopt today will apply to all Lifeline subscribers enrolled in the program as of June 1, 2012”).

⁵² 47 CFR. §§ 54.409, 54.410.

⁵³ 47 CFR. § 54.410(f). To fulfill the Commission’s annual reporting and certification requirements, Tempo certifies that it will maintain records to document compliance with all FCC and Commission requirements pursuant to FCC rules. 47 C.F.R. § 54.417(a). Tempo also certifies that it will comply with the FCC’s annual reporting rules promulgated by 47 C.F.R. § 54.422.

⁵⁴ 47 C.F.R. § 54.202(b).

carrier with a demonstrated commitment to quality. The goals of universal service mandated by Congress and the Commission are therefore served by designation of Tempo as a Lifeline-only ETC.⁵⁵

47. Tempo's ETC designation will bring another competitive alternative to low-income consumers in Missouri, and will exert further competitive pressures on existing wireless Lifeline providers operating in Missouri. This furthers the federal Act's goal of ensuring that quality communication services are available at "just, reasonable, and affordable rates."⁵⁶ As the FCC has observed, "an important goal of the Act is to open local telecommunications markets to competition. Designation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies."⁵⁷ In seeking ETC designation in Missouri, Tempo seeks to make it easier for low-income consumers located within Missouri to receive affordable telecommunications services that are comparable to those enjoyed by other consumers.

48. Tempo seeks to offer a comprehensive wireless communications solution to the qualifying consumer at no charge. Tempo's ETC designation provides accessible, technologically advanced services to a portion of the public that may not otherwise be able to obtain telecommunications services due to insufficient credit, immigrant status, or living situation. Prepaid wireless services like those offered by Tempo also offer consumers convenience, control over their telecommunications spending without the imposition of high monthly fees, and the ability to pay for only those services needed. Such advantages directly

⁵⁵ 47 U.S.C. § 254.

⁵⁶ 47 U.S.C. § 254(b)(1).

⁵⁷ *Federal-State Joint Board on Universal Service*, 16 FCC Rcd 48, ¶ 17 (2000).

fulfill the goals of universal service promulgated by Congress and the FCC.⁵⁸

VI. TEMPO WILL COMPLY WITH MISSOURI-SPECIFIC ETC REQUIREMENTS THAT ARE APPLICABLE TO ITS PREPAID WIRELESS LIFELINE SERVICE

49. Pursuant to 4 CSR 240-3.570, Tempo will comply with Missouri-specific ETC requirements that are applicable to its prepaid wireless Lifeline service.

A. 4 CSR 240-3.570(2)(A)

1. Intended use of high-cost support

50. As explained in this Application, Tempo is not seeking high-cost support, rendering inapplicable the requirement that Tempo provide construction plans with start and end dates, populations affected by construction plans, existing tower site locations for CMRS cell towers, and estimated budget amounts.

2. Two-year high-cost support plan

51. As explained in this Application, Tempo is not seeking high-cost support, rendering inapplicable the requirement that Tempo provide a two (2)-year plan demonstrating, with specificity, that such support shall only be used for the provision, maintenance and upgrading of facilities and services for which the support is intended in the Missouri service area.

3. Demonstration in two-year plan that that universal service support shall be used to improve coverage, service quality or capacity

52. As explained in this Application, Tempo is not seeking high-cost support, and need not complete the two (2)-year plan requirement, rendering inapplicable the requirement that Tempo include a demonstration that universal service support shall be used to improve coverage, service quality or capacity on a wire center-by-wire center basis throughout the Missouri service area with the two (2)-year plan.

⁵⁸ 47 U.S.C. § 254.

4. Demonstration of emergency functionality

53. As explained above, Tempo has the ability to remain functional in emergency situations, including a reasonable amount of back-up power to ensure functionality without an external power source, the ability to reroute traffic around damaged facilities and the capability of managing traffic spikes resulting from emergency situations.⁵⁹

5. Demonstration that ETC grant is consistent with the public interest, convenience and necessity

54. As explained above, grant of Tempo's request for ETC designation is consistent with the public interest, convenience and necessity.⁶⁰

6. Commitment to advertise the availability of services and charges

55. As explained above and in its FCC-approved Compliance Plan, Tempo will advertise the availability of services and charges therefore using media of general distribution throughout the ETC service area.⁶¹

7. Commitments pursuant to provision of Lifeline service

56. As explained above, Tempo will provide Lifeline consistent with 47 C.F.R. § 54.401 and will publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service consistent with 47 C.F.R. § 54.405.⁶²

8. Statement that the carrier will satisfy consumer privacy protection standards

57. Tempo commits to satisfy consumer privacy protection standards as provided in 47 C.F.R. § 64 Subpart U and service quality standards as applicable.⁶³

⁵⁹ 4 CSR 240-3.570(2)(A)(4).

⁶⁰ 4 CSR 240-3.570(2)(A)(5).

⁶¹ 4 CSR 240-3.570(2)(A)(6).

⁶² 4 CSR 240-3.570(2)(A)(7).

⁶³ 4 CSR 240-3.570(2)(A)(8).

9. Statement that the carrier will provide equal access

58. Should all other ETCs in Tempo’s service area relinquish their designation pursuant to 47 U.S.C. § 214(e), Tempo will provide equal access.⁶⁴ Tempo notes, however, that 4 CSR 240-32.100(3) and (4) are facially inapplicable to Tempo, as they pertain to basic local and interexchange telecommunications service as provided by basic local telecommunications companies.

10. Commitment to offer local usage plan comparable to those offered by ILEC

59. Pursuant to the *Connect America Fund Order*, the FCC has eliminated the requirement that ETC applicants demonstrate that they offer a local usage plan comparable to the one offered by the incumbent local exchange carrier (“ILEC”) in the service areas for which it seeks designation.⁶⁵ The local usage commitment promulgated by Missouri regulations is therefore inapplicable to Tempo.⁶⁶

B. 4 CSR 240-3.570(2)(B)

60. As explained above, Tempo certifies that it will abide by the consumer code for wireless service recognized by CTIA. Tempo has provided a copy of the consumer code for wireless service currently recognized by CTIA to which it commits to abide, attached to the Application as **Exhibit 9**. Tempo certifies that following its designation as an ETC by the Commission, it will file with the Commission any change(s) to the consumer code for wireless service included with its Application or any subsequent code approved under 4 CSR 240-3.570, within thirty (30) days of the change.

C. 4 CSR 240-3.570(2)(C)

⁶⁴ 4 CSR 240-3.570(2)(A)(9).

⁶⁵ See *Connect America Fund Order* at 18199-18200.

⁶⁶ 4 CSR 240-3.570(2)(A)(10).

61. As explained in this Application, Tempo will offer Lifeline service to qualifying Missouri consumers through its provision of resold wireless services from Sprint. Thus, the requirement for a plan outlining the method for handling unusual construction or installation charges is inapplicable to Tempo.

D. 4 CSR 240-3.570(3)(A)

62. As explained in the Application, Tempo's prepaid wireless Lifeline service product is offered at no charge to qualifying consumers. To the extent that customers purchase additional minutes or services, Tempo certifies that, as an ETC, it will develop a bill design that can be easily interpreted by their customers and clearly sets forth charges in compliance with state and federal billing requirements.

E. 4 CSR 240-3.570(3)(B)

63. Tempo certifies that, upon being designated an ETC, it will provide customer service contact information online and, to the extent applicable, on billing statements. Tempo acknowledges that the customer service contact information requirement applies to the use of third-party billing agents.

F. 4 CSR 240-3.570(3)(C)

1. Supported services

64. As explained above, Tempo will provide the required services for federal universal service support delineated by Section 54.101(a) of the FCC's rules, as modified by the *Lifeline Reform Order*.⁶⁷ Several provisions of 4 CSR 240-3.570(3)(C)(1) are thus inapplicable to Tempo – dual tone multi-frequency signaling or its functional equivalent; single-party service

⁶⁷ 47 C.F.R. § 54.101(a); *Lifeline Reform Order* ¶ 48. Toll limitation services need no longer be offered if the Lifeline offering provides a set amount of minutes that do not distinguish between toll and non-toll calls. *Lifeline Reform Order* ¶ 49.

or its functional equivalent; access to interexchange service; access to Directory Assistance service; access to operator services; and toll limitation and/or blocking for qualifying low-income consumers.⁶⁸ Tempo certifies that it will offer access to telecommunications relay services by dialing 711.⁶⁹

2. Publicize construction of new facilities

65. As explained in this Application, Tempo will provide prepaid wireless Lifeline service via Sprint, which will provide Tempo with the network infrastructure and wireless transmission facilities needed for Tempo to offer service as a MVNO. Tempo will serve any potential customer to the extent resold wireless services are available from Sprint in the customer's geographic area. Pursuant to the *Connect America Fund Order*, the FCC has eliminated the requirement that ETC applicants modify, replace, adjust, or add equipment or facilities to encompass potential customers that are inside the applicant's licensed service area but outside its existing network coverage.⁷⁰ Tempo therefore does not contemplate the construction of all new facilities that will enhance services in un-served or underserved areas, but agrees to publicize it to the extent applicable so that consumers are aware of the improved service in the area.⁷¹

3. Extend networks

66. Tempo certifies that, upon designation as an ETC, it will provide service upon reasonable request from a Missouri customer to the extent it can obtain such service from Sprint. Tempo will serve any potential customer to the extent resold wireless services are available from

⁶⁸ 4 CSR 240-3.570(3)(C)(1)(A), (B), (E), (G), (H), (I).

⁶⁹ 4 CSR 240-3.570(3)(C)(1)(F).

⁷⁰ *Connect America Fund; et al.*, 26 FCC Rcd 17663, 18199-18200 (2011) ("*Connect America Fund Order*").

⁷¹ 4 CSR 240-3.570(3)(C)(2).

Sprint in the customer's geographic area. As noted above, the FCC has eliminated the requirement that ETC applicants modify, replace, adjust, or add equipment or facilities to encompass potential customers that are inside the applicant's licensed service area but outside its existing network coverage. Tempo certifies that if there is no possibility of providing service to a requesting customer, Tempo will notify the customer and include such information in its annual certification documentation to the Commission.⁷²

G. 4 CSR 240-3.570(3)(D)

67. Tempo certifies that within thirty (30) days of receiving ETC status or before offering service, it will make an informational filing with the Commission consisting of a complete description of all of its service offerings, and will amend this filing as service offerings are introduced or modified. Tempo's terms and conditions will also be posted on www.mytempo.com.

H. 4 CSR 240-3.570(3)(E)

68. Tempo certifies that, upon designation as an ETC, it will maintain a record of customer complaints that have been received by the company in a manner that includes, at a minimum: the end-user name; the account number; a description of the complaint; the date the complaint was filed; the resolution; and the amount of refund or credit, if any. Tempo will also maintain a record of complaints from consumers in the Missouri service area in which ETC designation was granted that have been submitted to or filed with the FCC for which Tempo has knowledge in a manner that includes, at a minimum: a description of the complaint; the date the complaint was filed; the date the complaint was resolved; the resolution of the complaint and the amount of refund or credit, if any.

⁷² 4 CSR 240-3.570(3)(C)(3).

I. 4 CSR 240-3.570(3)(F)

69. Tempo certifies that, upon designation as an ETC, it will, within ten (10) days of a change in the company-designated contacts, either notify the manager of the Telecommunications Department, in writing or by electronic mail, or shall update the Commission's electronic filing system ("EFIS"). The notification or update shall include the name(s), address(es) and/or telephone number(s) of the designated individual(s). The contact name(s) provided shall be the individual(s) primarily responsible for: customer service; repair and maintenance; answering complaints; authorizing and/or furnishing refunds to customers; and informational or tariff filing issues.

J. 4 CSR 240-3.570(4)(A)

70. As explained in this Application, Tempo is not seeking high-cost support, rendering inapplicable the requirement that Tempo, by August 15 of each year, submit an affidavit executed by a Tempo officer attesting that federal high-cost support is used consistent with the Commission's rules and the Telecommunications Act of 1996.⁷³ Likewise inapplicable is the requirement that Tempo, in conjunction with the annual high-cost certification process, assist the Commission staff in comparing residential rates in rural areas served by non-rural incumbent local exchange carriers to urban rates nationwide.⁷⁴

K. 4 CSR 240-3.570(4)(B)

1. Review of two-year plan

71. As noted above, the Commission's two (2)-year improvement plan requirement is inapplicable to Tempo. Thus, the requirement that Tempo annually meet with the Commission concerning this plan is inapplicable. To the extent that the Commission seeks information on

⁷³ 4 CSR 240-3.570(4)(A)(1).

⁷⁴ 4 CSR 240-3.570(4)(A)(2).

other aspects of Tempo's operations as a prepaid wireless Lifeline service provider, Tempo certifies that it will comply in accordance with the Commission's rules.

2. Demonstration that high-cost support shall be used for the provision, maintenance and upgrading of facilities and services in service area

72. As explained in this Application, Tempo is not seeking high-cost support, rendering inapplicable the requirement that Tempo submit a demonstration that the receipt of high-cost support will be used only for the provision, maintenance and upgrading of facilities and services for which the support is intended in the Missouri service area in which ETC designation was granted.

3. Demonstration that high-cost support was used to improve coverage, service quality or capacity in service area

73. As explained in this Application, Tempo is not seeking high-cost support, rendering inapplicable the requirement that Tempo submit a demonstration that high-cost support was used to improve coverage, service quality or capacity in the Missouri service area in which ETC designation was granted and that such support was used in addition to any expenses the ETC would normally incur.

4. Statement that costs incurred and/or estimated budget/investment amounts were no greater than necessary to provide consumers in the ETC's service area access to telecommunications and information services that are reasonably comparable to those services provided in urban areas

74. Tempo will provide a statement that costs incurred and/or estimated budget/investment amounts were no greater than necessary to provide consumers in the ETC's service area access to telecommunications and information services that are reasonably comparable to those services provided in urban areas. As noted above, the FCC has eliminated the requirement that ETC applicants modify, replace, adjust, or add equipment or facilities to

encompass potential customers that are inside the applicant's licensed service area but outside its existing network coverage.⁷⁵

5. Affidavit signed by an officer of the company certifying that the ETC complies with quality, functionality, local usage, and equal access requirements

75. Tempo will submit an affidavit signed by a Tempo officer certifying that Tempo continues to comply with the approved consumer code for wireless service recognized by CTIA and/or applicable service quality standards and consumer protection rules, certifying that Tempo continues to be able to function in emergency situations, and continues to acknowledge that Tempo shall provide equal access pursuant to 4 CSR 240-32.100(3) and (4) if all other ETCs in that service area relinquish their designations pursuant to section 214(e)(3) of the Telecommunications Act of 1996. The requirement that the affidavit certify that Tempo continues to offer a local usage plan comparable to that offered by the incumbent local exchange telecommunications carrier in the relevant service areas is inapplicable to Tempo. As noted above, the FCC has eliminated the requirement that ETC applicants demonstrate that they offer a local usage plan comparable to the one offered by the ILEC.

6. Report of complaints from consumers in the Missouri service area in which ETC designation was granted that have been submitted to or filed with the FCC in the previous twelve (12) months for which the company has knowledge

76. Tempo will submit a report of complaints from consumers in the Missouri service area in which ETC designation was granted that have been submitted to or filed with the FCC in the previous twelve (12) months for which Tempo has knowledge. Such report shall include, at a minimum: a description of the complaint; the date the complaint was filed; the date the

⁷⁵ See *Connect America Fund Order* at 18199-18200.

complaint was resolved; the resolution of the complaint and the amount of refund or credit, if any.

7. Other requested information

77. Tempo will promptly furnish, concurrent with or following its designation as an ETC, requested information, including financial information, related to its designation as an ETC to the Commission, its staff or the Office of the Public Counsel.

L. 4 CSR 240-3.570(4)(C)

78. As explained in this Application, Tempo is offering prepaid wireless Lifeline service to qualifying Missouri consumers. Requirements applicable to ILECs promulgated by 4 CSR 240-3.570(4)(C) are thus inapplicable to Tempo.

M. 4 CSR 240-3.570(5)

79. Tempo certifies that it will take the following actions as necessary, and in conformance with the Commission's rules:

- Tempo will submit to the Commission a letter reflecting any change to the name and/or change, deletion or addition of a trade name under which Tempo will be doing business in the state of Missouri, attaching, as applicable, an amended Certificate of Incorporation, Fictitious Name registration or an amendment thereof. Tempo shall modify its current informational filing, as required in subsection (3)(D) to reflect the new name and shall attest that no revisions are being made, except for the name change.
- Tempo shall not self-certify to the Universal Service Administrative Company for receipt of federal universal service funds.

- Tempo shall not willfully make any false entry in any business record of any kind kept by it, nor shall it willfully destroy, mutilate, alter or by any method falsify any such record, nor shall it willfully neglect or fail to make full, true and correct entries in such records of all facts and transactions appertaining to its business, nor shall it falsify any statement to the commission.
- Except as otherwise provided in commission rules, Tempo shall keep all books and records associated with its ETC designation and/or the Commission's annual certification process in accordance with good business practices, and at such place as they are normally kept in the usual course of business. Tempo shall make its books and records associated with its ETC designation and/or the Commission's annual certification process available to the Commission at reasonable times for examination and inspection at a location designated by the Commission. Tempo will preserve all such records for at least two (2) years.

N. 4 CSR 240-31.050

80. As described in this Application, Tempo will meet the applicable eligibility, verification and reporting requirements set forth in Rule 31.050.

VII. WAIVER REQUEST

81. To the extent the Commission deems it necessary, Tempo requests a formal waiver of the various rules identified herein as being inapplicable to it. Tempo does not view Rule 4 CSR 240-4.020(2) as requiring Tempo to provide 60 days advance notice of the intent to file this Application, but to the extent the Commission disagrees, Tempo requests a waiver of that requirement. Tempo is not aware of any public utility that would be affected by any of the waivers it has requested in this Application.

VIII. ANTI-DRUG ABUSE CERTIFICATION

82. Tempo certifies that, pursuant to Sections 1.2001 through 1.2003 of the FCC's rules, that neither Tempo nor its subsidiaries, affiliates, officers, directors, or persons holding 5% or more of its outstanding stock, are subject to a denial of federal benefits, including Commission benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.⁷⁶

CONCLUSION

WHEREFORE, for the forgoing reasons, Tempo respectfully requests that the Commission expeditiously designate it as an ETC for the provision of prepaid wireless Lifeline services in the State of Missouri.

Respectfully submitted,

/s/ Angela F. Collins

/s/ Carl J. Lumley

Angela F. Collins
Cahill Gordon & Reindel LLP
1990 K Street, N.W., Suite 950
Washington, D.C. 20006
202-862-8930 (telephone)
866-255-0185 (facsimile)
acollins@cahill.com

Carl J. Lumley MBE #32869
Curtis, Heinz, Garrett & O'Keefe, P.C
130 S. Bemiston, Suite 200
Clayton, MO 63105
(314) 725-8788 (telephone)
(314) 725-8789 (facsimile)
CLumley@lawfirmemail.com

Attorneys for Tempo Telecom, LLC

Dated: June 26, 2013

⁷⁶ *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, 12 FCC Rcd 22947, 22948-949 (1997).

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing has been served by forwarding the same by electronic mail and/or first class mail, postage prepaid this 26th day of June, 2013 to the following:

Office of the Public Counsel
PO Box 2230
Jefferson City, Missouri 65102
opcservice@ded.mo.gov


Office of General Counsel
Missouri Public Service Commission
PO Box 360
Jefferson City, Missouri 65102
Staffcounsel@psc.mo.gov

/s/ Carl J. Lumley

VERIFICATION

I, Christopher J. Bunce, Senior Vice President, Legal and General Counsel, first being duly sworn upon oath, depose and say that I am an officer authorized to represent Tempo Telecom, LLC in this Application; that I have read the Application and know the contents; that the contents are true and correct to the best of my knowledge and belief.

Tempo Telecom, LLC

By: 
Christopher J. Bunce, Senior Vice President, Legal
and General Counsel for Birch Equity
Partners, LLC as its Sole Member

Subscribed and sworn to before me this

11th day of June, 2013.


Notary Public for Platte County
My Commission Expires: 6-9-14

ANGELA A. HOKE
Notary Public-Notary Seal
STATE OF MISSOURI
Platte County
My Commission Expires June 9, 2014
My Commission Expires: 6-9-2014
Commission # 10887286