

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

In the Matter of)	
)	
TEMPO TELECOM, LLC)	WC Docket No. 09-197
(formerly filed under Birch Communications, Inc.))	
)	
Petition for Designation as an Eligible)	WC Docket No. 11-42
Telecommunications Carrier pursuant to)	
Section 214(e)(6) of the Communications Act)	
for Lifeline Support Only)	
_____)	

**TEMPO TELECOM, LLC
AMENDED PETITION FOR DESIGNATION
AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER
PURSUANT TO SECTION 214(e)(6) OF THE COMMUNICATIONS ACT
FOR LIFELINE SUPPORT ONLY**

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Tempo Telecom, LLC (“Tempo”), by its attorneys, respectfully submits this Amended Petition for designation as an eligible telecommunications carrier (“ETC”) pursuant to Section 214(e)¹ of the Communications Act of 1934, as amended (the “Act”), and Section 54.201² of the rules and regulations of the Federal Communications Commission (“Commission”).³ Specifically, Tempo seeks ETC designation for Lifeline support only to provide prepaid wireless services in the states of Alabama, Florida, North Carolina, Tennessee, and Texas (the “Designated Service Area”).⁴ This Amended Petition is being filed to: (1) consolidate pending petitions; (2) to update the Commission with respect to the corporate structure of the entity to be designated as an ETC and with additional Lifeline plans to be offered; and (3) provide additional information requested by Commission staff. All of the statements made in this Amended

¹ 47 U.S.C. § 214(e).

² 47 C.F.R. § 54.201.

³ See, e.g., *Lifeline and Link Up Reform and Modernization, et al.*, 27 FCC Rcd 6656 (2012) (“*Lifeline Reform Order*”).

⁴ More detail on Tempo’s Designated Service Area is set forth herein and in Exhibit 3.

Petition are incorporated by reference into Tempo's approved Compliance Plan, which is attached hereto as **Exhibit 1**.

I. OVERVIEW OF TEMPO

This designation petition was originally filed by Birch Communications, Inc. ("Birch") on April 27, 2012 covering the states of Alabama, Florida, North Carolina, and Tennessee.⁵ On June 29, 2012, Birch filed Compliance Plan with the Commission (attached as **Exhibit 1**),⁶ which was approved on August 8, 2012.⁷ Birch filed a second designation petition for the state of Texas on November 29, 2012.⁸ In both designation petitions and in the Compliance Plan, Birch noted that it was reviewing whether a separate legal entity should be established for the provision of its prepaid wireless Lifeline service or whether the service should be provided through one of the existing Birch entities.⁹

On December 18, 2012, Birch notified the Commission that the prepaid wireless Lifeline service would be provided by a separate legal entity known as Now Communications, LLC ("Now Comm"), and requested that ETC status be granted to Now Comm rather than Birch.¹⁰ In

⁵ WC Docket Nos. 09-197, 11-42, Birch Communications, Inc. Petition for Designation as an Eligible Telecommunications Carrier pursuant to Section 214(e)(6) of the Communications Act for Lifeline Support Only and Compliance Plan (filed Apr. 27, 2012) ("Birch Multiple State Petition").

⁶ WC Docket Nos. 09-197, 11-42, Further Amended Compliance Plan of Birch Communications, Inc. (filed June 29, 2012) ("Compliance Plan"). Tempo will implement and comply with the Compliance Plan and hereby adopts the Compliance Plan as its own.

⁷ WC Docket Nos. 09-197 and 11-42, *Wireline Competition Bureau Approves the Compliance Plans of Birch Communications, Boomerang Wireless, IM Telecom, Q Link Wireless, and TAG Mobile*, 27 FCC Rcd 9184 (2012).

⁸ WC Docket Nos. 09-197, 11-42, Birch Communications, Inc. Petition for Designation as an Eligible Telecommunications Carrier pursuant to Section 214(e)(6) of the Communications Act for Lifeline Support Only in the State of Texas (filed Nov. 29, 2012) ("Birch Texas Petition").

⁹ Birch Multiple State Petition at n.4; Birch Texas Petition at n.4; Compliance Plan at n.3.

¹⁰ WC Docket Nos. 09-197, 11-42, Letter from Angela F. Collins, Counsel to Birch, to Marlene H. Dortch, FCC (filed Dec. 18, 2012) (notifying FCC of adoption of Compliance Plan); WC Docket Nos. 09-197, 11-42, Amendment to Petition for Designation as an Eligible Telecommunications Carrier pursuant to Section 214(e)(6) of the Communications Act for Lifeline Support Only in the States of Alabama, Florida, North Carolina, and Tennessee (filed Dec. 18, 2012) (amending Birch Multiple State Petition); WC Docket Nos. 09-197, 11-42, Amendment to Petition for Designation as an Eligible Telecommunications Carrier pursuant to Section 214(e)(6) of

that filing, Now Comm committed to implement and comply with the previously-approved Compliance Plan, and notified the FCC that it adopted the Compliance Plan as its own. Now Comm also committed to utilize the same procedures and operations set forth in the Compliance Plan for its provision of prepaid wireless Lifeline service, offer the same prepaid wireless Lifeline service plan set forth in the Compliance Plan, and market and advertise its prepaid wireless Lifeline service in the same manner as described in the Compliance Plan. The FCC acknowledged these changes in corporate structure in a December 20, 2012 public notice, and confirmed that the previously-approved Compliance Plan would apply to Now Comm.¹¹

Subsequent to the December 2012 filing, Now Comm changed its name to Tempo Telecom, LLC. The prepaid wireless Lifeline service at issue in this Petition will be provided by Tempo, and ETC status should be granted in Tempo's name only. All other statements in the December 2012 filing apply equally to Tempo. Tempo utilizes the same management and day-to-day operational personnel as currently utilized by Birch.¹² Birch's current corporate officers 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.¹³

the Communications Act for Lifeline Support Only in the State of Texas (filed Dec. 18, 2012) (amending Birch Texas Petition).

¹¹ *Wireline Competition Bureau Seeks Comment on Petitions for Designation as a Low-Income Eligible Telecommunications Carrier filed by Now Comm, Zing PCS, LTS, Odin Wireless, and TX Mobile*, 27 FCC Rcd 15937 (2012) ("The Wireline Competition Bureau has approved Birch's compliance plan, which will also apply to Now Comm.")

¹² Birch is a competitive local exchange carrier ("CLEC") and interexchange carrier ("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. The Birch family of companies currently serves customers throughout 46 states and the District of Columbia.

¹³ Specifically, Birch Capital, LLC (a Georgia limited liability company) holds a 100% ownership interest in Tempo. The current owners of Birch (Holcombe Green and R. Kirby Godsey, which in combination hold a 98% interest in Birch) own approximately 90% of Birch Capital, LLC, with the remaining percentage owned by Vincent Oddo, the Chief Executive Officer of both Birch and Tempo.

Tempo is in the process of registering with the Commission to provide domestic interstate telecommunications services, and its authorization for the provision of international telecommunications services is pending. Tempo provides prepaid wireless voice and data services in 18 states.¹⁴ Tempo will provide prepaid wireless Lifeline services in those same 18 states once it receives all necessary authority. 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. Sprint will provide Tempo with the network infrastructure and wireless transmission facilities needed for Tempo to offer wireless voice and data services as a Mobile Virtual Network Operator (“MVNO”), as Sprint does for several other prepaid wireless providers that have received ETC designation. 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 services.¹⁵

II. THE COMMISSION HAS JURISDICTION OVER TEMPO’S DESIGNATION REQUEST

Tempo certifies that each state for which Tempo seeks ETC designation from the Commission has asserted that it lacks jurisdiction over the wireless services that Tempo seeks to provide as a Lifeline-only ETC. Tempo therefore seeks ETC designation from the Commission pursuant to Section 214(e)(6).¹⁶ Attached as **Exhibit 2** to this Amended Petition are the relevant orders and/or examples of letters from the Alabama, Florida, North Carolina, Tennessee, and

¹⁴ These states are: Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, Ohio, South Carolina, Tennessee, Texas, and Wisconsin.

¹⁵ 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 Commission’s eligibility and verification procedures applicable to Lifeline service offerings.

¹⁶ 47 U.S.C. § 214(e)(6).

Texas state commissions asserting to a lack of jurisdiction over ETC designation for wireless services.

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

Under Section 214(e)(1) of the Act and Section 54.201(d) of the Commission's rules, a common carrier¹⁷ may be designated as an ETC if it (1) offers the services supported by federal universal service as determined by the Commission, (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.¹⁸ As set forth below, Tempo meets these requirements.

A. Tempo Will Offer the Services Supported by Federal Universal Service throughout Its Designated Service Area

Pursuant to Section 54.101(a) of the Commission's rules, as modified by the *Lifeline Reform Order*, carriers seeking ETC designation must provide voice telephony services.¹⁹ 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 and limitations).²⁰ Tempo certifies that its prepaid wireless Lifeline service offering satisfies the

¹⁷ Tempo will be a common carrier by virtue of its provision of wireless services. See 47 U.S.C. § 332(c)(1)(A) (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 provided for profit and makes interconnected service available to the public).

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

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

²⁰ *Lifeline Reform Order* ¶ 48.

Commission's definition of voice telephony service, and it will therefore provide all services designated for support by the Commission.

Tempo's prepaid wireless Lifeline service offering will provide voice grade access to the PSTN through its provision of resold wireless services from Sprint. As described below, Tempo's prepaid wireless Lifeline service offerings will provide a bucket of minutes of use to eligible consumers at no additional 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,²¹ Tempo will rely on its contractual arrangement with Sprint to provide such emergency services to consumers.

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.²² As explained more below, Tempo's prepaid wireless Lifeline service offerings will offer a nationwide calling plan, 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 usage and balances from their handset, online, or through customer service.

B. Tempo Will Provide Service Throughout Its Designated Service Area

Tempo will offer the services supported by federal universal service throughout its Designated Service Area. Tempo's requested Designated Service Area is Sprint's wireless coverage area or Sprint's licensed service area in the states of Alabama, Florida, North Carolina,

²¹ 47 C.F.R. § 20.18(m).

²² *Lifeline Reform Order* ¶ 49.

Tennessee, and Texas, which comprise a portion or the entirety of the telephone company study areas identified on **Exhibit 3**.

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

Both the Act and the Commission'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.²³ In the *Lifeline Reform Order*, however, the Commission decided to conditionally forbear from application of the Act's facilities requirement to all telecommunications carriers that seek limited ETC designation to participate in the Lifeline program.²⁴ Specifically, the Commission 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.²⁵ Tempo certifies that it meets the requirements for conditional forbearance as demonstrated in its approved Compliance Plan, which is attached as **Exhibit 1**.

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

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

²⁴ *Lifeline Reform Order* ¶ 368.

²⁵ *Lifeline Reform Order* ¶ 368.

subscriber, any non-compliant handset. As noted above, Tempo will rely on its contractual arrangement with Sprint to provide 911 and E911 services to consumers, as well as obtain the handsets to be provided to consumers.²⁶ Tempo's MVNO arrangement with Sprint specifically addresses 911/E911 services and requires Sprint to supply handsets that satisfy all Commission requirements.

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 1**, 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, 2012.²⁷

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

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.²⁸ Tempo will utilize the Commission's 2004 outreach guidelines for advertising its prepaid wireless Lifeline service offering.²⁹ 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.

Tempo's advertising strategy for its prepaid wireless Lifeline service offering will build on its expertise in advertising its wireline Lifeline product currently offered as a non-ETC

²⁶ 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.

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

²⁸ 47 C.F.R. § 54.405(b).

²⁹ *Lifeline and Link Up*, 19 FCC Rcd 8302, ¶¶ 45-48 (2004).

reseller. 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 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 build on the existing relationships with these organizations that Birch has in connection with Birch's current wireline Lifeline service offering as a non-ETC reseller. Tempo will also advertise through online search engines and third-party referral agents/dealers.³⁰ As required under the *Lifeline Reform Order*, Tempo will ensure the Commission-required disclosures, any DBA names it uses, and details of the prepaid wireless Lifeline service offering are contained in all marketing materials.³¹ An example of Tempo's marketing materials are attached as **Exhibit 4**.

IV. TEMPO MEETS THE ADDITIONAL REQUIREMENTS FOR ETC DESIGNATION UNDER SECTION 54.202 OF THE COMMISSION'S RULES

Section 54.202 of the Commission's rules contains certain additional requirements for a common carrier³² to be designated as an ETC. As set forth below, Tempo satisfies each of those requirements.

³⁰ Tempo explains its relationships with third-party dealers and retail outlets in its approved Compliance Plan (attached as **Exhibit 1**). Tempo confirms that a Tempo employee will be responsible for overseeing and finalizing every Lifeline enrollment prior to including that customer on a FCC Form 497 for reimbursement. Tempo will be responsible for the actions of all of its employees and agents, including those enrolling customers in any Tempo-owned, affiliated, or third-party retail location.

³¹ *Lifeline Reform Order* ¶¶ 274-282.

³² Tempo will be a common carrier by virtue of its provision of wireless services. *See* 47 U.S.C. § 332(c)(1)(A) (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 provided for profit and makes interconnected service available to the public).

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

Section 54.202(a)(1) of the Commission’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.³³ Tempo hereby certifies that it will comply with the service requirements applicable to Lifeline support as set forth herein and in its approved Compliance Plan set forth in **Exhibit 1**. Given that Tempo seeks designation for Lifeline support only, a five-year network improvement plan is no longer necessary.³⁴

B. Tempo Will Remain Functional in Emergency Situations

Section 54.202(a)(2) of the Commission’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.³⁵ Tempo’s MVNO contract arrangement with Sprint imposes certain obligations on Sprint to ensure Tempo’s prepaid wireless Lifeline service offering remains functional during emergency situations.³⁶ As a large, nationwide wireless carrier, Sprint is subject to regulatory requirements to remain functional

³³ 47 C.F.R. § 54.202(a)(1).

³⁴ *Lifeline Reform Order* ¶ 386.

³⁵ 47 C.F.R. § 54.202(a)(2).

³⁶ Sprint will provide the underlying wireless services to Tempo, but Birch will provide any necessary billing services associated with the Tempo prepaid wireless Lifeline product to the Tempo end user customer. The Birch billing system will be served by two geographically separate data centers for back-up redundancy, one currently located in Macon, Georgia and the other in Emporia, Kansas.

during emergency situations.³⁷ Tempo's MVNO agreement with Sprint also contains certain quality of service guarantees.

As noted above, Tempo also will rely on Birch for various operational functions. Birch has been offering telecommunications services since 1996, and thus has significant experience with remaining functional in emergency situations. As a CLEC/IXC, Birch is currently subject to the Commission's outage reporting rules, as well as the back-up power and outage requirements in the states in which Birch operates. As a successful, profitable CLEC for over 15 years 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 Tempo's prepaid wireless Lifeline service offering to the extent there is an emergency situation affecting Tempo's operations.

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

Section 54.202(a)(3) of the Commission's rules requires a common carrier seeking ETC designation to demonstrate that it will satisfy applicable consumer protection and service quality standards.³⁸ Tempo will comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service to satisfy this requirement.

In response to a request from Commission staff, Tempo confirms that customers will be able to reach a live customer service representative between the hours of 8:00am to 8:00pm Eastern, Monday through Friday, and between the hours of 8:30am to 6:00pm Eastern on Saturdays. After these hours, the customer will receive a message informing it of Tempo's

³⁷ Tempo is also familiar with the continuity and disaster response program Sprint has implemented, which addresses the need to remain functional during emergency situations.

³⁸ 47 C.F.R. § 54.202(a)(3).

normal business hours and offering the customer the ability to utilize an automated payment system to add additional minutes, etc. If the customer does not choose to use the automated payment system, a recorded message will inform the customer to call back during normal business hours.

D. Tempo Is Financially and Technically Capable of Providing Lifeline Services in Accordance with the Commission's Rules

Section 54.202(a)(4) of the Commission'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 Commission's rules.³⁹ The Commission 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.⁴⁰

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. As discussed further above, 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

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

⁴⁰ *Lifeline Reform Order* ¶ 388.

plans, Tempo projects that the majority of its target customer base will not be eligible to receive Lifeline service.

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

The ultimate owners and management 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 company that has been operating as a successful 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.

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.⁴¹ 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

Section 54.202(a)(5) of the Commission'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.⁴² 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 or 750 texts per month

Option 2

150 nationwide minutes or 450 texts per month 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 choices⁴³
- Voicemail
- National texting, with three (3) texts counting as one (1) minute
- 911 and E911 access as available

⁴¹ Based on filings made with the Commission, 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 Commission.

⁴² 47 C.F.R. § 54.202(a)(5).

⁴³ 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.

- Custom calling features such as call waiting, call forwarding, and caller ID
- 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 Act’s requirement that consumers have access to quality services at “just, reasonable, and affordable rates,”⁴⁴ and is consistent with the Commission’s findings that Lifeline consumers should have the option to purchase bundled packages, additional calling features, and optional voice services.⁴⁵

As set forth in Tempo’s approved Compliance Plan (attached as **Exhibit 1**), 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. Attached as **Exhibit 5** are updated versions of Tempo’s initial enrollment and certification form, which will also be used for re-certification as explained in Tempo’s approved Compliance Plan (attached as **Exhibit 1**).

Tempo has revised its forms based on a request from Commission staff to include a statement

⁴⁴ 47 U.S.C. § 254(b)(1).

⁴⁵ *Lifeline Reform Order* ¶ 317.

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 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. Tempo also confirms in response to a request from Commission staff that a Tempo employee will be responsible for overseeing and finalizing every Lifeline enrollment prior to including that customer on a FCC Form 497 for reimbursement. Tempo will be responsible for the actions of all of its employees and agents, including those enrolling customers in any Tempo-owned, affiliated, or third-party retail location.⁴⁶

F. Designation of Tempo as a Lifeline-Only ETC Is in the Public Interest

Section 54.202(b) of the Commission’s rules requires the Commission make a public interest finding prior to making an ETC designation.⁴⁷ Designation of Tempo as an ETC for Lifeline support serves the public interest. Tempo’s ETC designation will bring another competitive alternative to low-income consumers in the Designated Service Area, and will exert further competitive pressures on existing wireless Lifeline providers operating in the Designated Service Area. Tempo seeks to make it easier for low-income consumers located within the Designated Service Area to receive affordable telecommunications services that are comparable to those enjoyed by other consumers. Tempo’s ETC designation serves the public interest by providing services to a portion of the public that may not otherwise be able to obtain

⁴⁶ Tempo explains its relationships with third-party dealers and retail outlets in its approved Compliance Plan (attached as **Exhibit 1**).

⁴⁷ 47 C.F.R. § 54.202(b).

telecommunications services due to insufficient credit, immigrant status, or living situation.

Prepaid wireless services 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. The goals of universal service mandated by Congress and the Commission are therefore served by designation of Tempo as a Lifeline-only ETC.⁴⁸

V. TEMPO MEETS THE REQUIREMENTS FOR LIFELINE SERVICES UNDER SECTION 54.405 OF THE COMMISSION’S RULES

Under Section 54.405 of the Commission’s rules, an ETC has certain obligations to offer Lifeline service.⁴⁹ Tempo understands these obligations and will meet them as described below.

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

Section 54.405(a) of the Commission’s rules requires an ETC to make available Lifeline service, as defined in Section 54.401 of the Commission’s rules,⁵⁰ to qualifying low-income consumers.⁵¹ Tempo certifies that its prepaid wireless Lifeline service offering will conform to the definition of “Lifeline” in the Commission’s rules.

B. Tempo Will Publicize the Availability of Lifeline Service

Section 54.405(b) of the Commission’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.⁵² As described above in Section III.D., Tempo will publicize the availability of its prepaid wireless Lifeline service offering in a manner reasonably designed to reach eligible consumers.

⁴⁸ 47 U.S.C. § 254.

⁴⁹ 47 C.F.R. § 54.405.

⁵⁰ 47 C.F.R. § 54.401.

⁵¹ 47 C.F.R. § 54.405(a).

⁵² 47 C.F.R. § 54.405(b).

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

Sections 54.405(c) and (d) of the Commission’s rules require an ETC to make certain disclosures on all materials describing the Lifeline service offering, including the name of the ETC.⁵³ As noted above in Section III.D., 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.⁵⁴ Tempo will also ensure that all materials describing its prepaid wireless Lifeline service offering include its name as well as its D/B/A name of “Tempo” as the name of the ETC providing services.⁵⁵ 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.⁵⁶

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

Section 54.405(e) of the Commission’s rules requires an ETC to impose certain de-enrollment procedures for Lifeline services.⁵⁷ Tempo will comply with the Commission’s de-enrollment procedures as described more fully in the approved Compliance Plan set forth in **Exhibit 1**. As discussed in the Compliance Plan, Tempo will de-enroll Lifeline customers for

⁵³ 47 C.F.R. § 54.405(c), (d).

⁵⁴ 47 C.F.R. § 54.405(c).

⁵⁵ 47 C.F.R. § 54.405(d).

⁵⁶ 47 C.F.R. § 54.405(c).

⁵⁷ 47 C.F.R. § 54.405(d).

duplicative support, for non-usage, and for failure to re-certify, and will have general de-enrollment procedures in place.

VI. ANTI-DRUG ABUSE CERTIFICATION

Tempo certifies that, pursuant to Sections 1.2001 through 1.2003 of the Commission'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 1988.⁵⁸

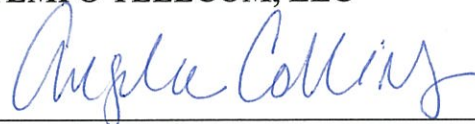
⁵⁸ *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, 12 FCC Rcd 22947, 22948-949 (1997).

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 states of Alabama, Florida, North Carolina, Tennessee, and Texas.

Respectfully submitted,

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Its Attorneys

EXHIBIT 1

FCC-Approved Compliance Plan

EXHIBIT 2

State Commission Statements regarding Jurisdiction for Wireless ETC Designation for Alabama, Florida, North Carolina, Tennessee, and Texas

EXHIBIT 3

**Tempo Telecom, LLC
Designated Service Area**

EXHIBIT 4

Examples of Marketing Material

EXHIBIT 5

Revised Certification and Enrollment Forms