
BEFORE THE UTAH PUBLIC SERVICE COMMISSION

In the Matter of the Petition of Tempo Telecom, LLC for Designation as an Eligible Telecommunications Carrier in the State of Utah.

Docket No. 13-2569-01

DIRECT TESTIMONY OF GREGORY CORWIN ON BEHALF OF TEMPO TELECOM, LLC

Q PLEASE STATE YOUR NAME, ADDRESS AND POSITION.

A My name is Gregory Corwin. My business address is 2323 Grand Boulevard, Suite 925, Kansas City, MO 64108. I am the Director of Marketing for Tempo Telecom, LLC d/b/a Tempo (“Tempo”).

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE UTAH PUBLIC SERVICE COMMISSION?

A No. I have testified on behalf of Tempo before the Indiana Regulatory Utility Commission, and have submitted pre-filed written testimony to the South Carolina Public Service Commission and the Nevada Public Utilities Commission, with respect to Tempo’s request to be designated as an Eligible Telecommunications Carrier (“ETC”) in Indiana, South Carolina, and Nevada, respectively.

Q ARE YOU SPONSORING THE PETITION IN THIS PROCEEDING?

A The Petition for Designation as an ETC in the State of Utah (“the Petition”), was verified by Jamie Sark, the Senior Projects Manager for Tempo. But, I have reviewed the Petition and I am familiar with its contents, with similar applications filed by Tempo in other

jurisdictions, and with the business of Tempo generally, and can also verify the statements made in the Petition.

Q WHAT IS TEMPO REQUESTING IN ITS PETITION?

A Tempo is requesting designation by the Utah Public Service Commission (“Commission”) as an ETC for the limited purpose of providing federal universal service low-income Lifeline service in Utah. Tempo will not seek universal service high-cost support in its service area, nor will Tempo seek to provide universal service low-income Link Up service.

Q WHAT IS TEMPO’S PROPOSED SERVICE AREA IN UTAH?

A Tempo is seeking ETC designation throughout the service area of Sprint in Utah. A listing and description of each exchange for which Tempo is seeking ETC status in Utah is attached to the Petition as Exhibit 7.

Q IS TEMPO SEEKING FUNDING FROM THE UTAH STATE UNIVERSAL SERVICE FUND?

A Tempo is not currently seeking any Utah Universal Service Fund (“USF”) funding. If Tempo seeks Utah USF funding in the future, Tempo will file a separate application requesting such state support.

Q WHAT ARE THE REQUIREMENTS FOR DESIGNATION AS AN ETC PURSUANT TO FEDERAL LAW?

A As I understand it, 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

37 services using its own facilities or a combination of its own facilities and resale of
38 another carrier's services; and (3) advertises the availability of such services and the
39 relevant charges using media of general distribution.

40 **Q IS TEMPO A COMMON CARRIER UNDER FEDERAL LAW?**

41 A Yes. Wireless carriers are common carriers under federal law. Common carriers that
42 provide services consistent with the requirements federal law may be deemed ETCs.
43 Tempo will be a common carrier by virtue of its provision of wireless services.
44 Therefore, Tempo is a common carrier under federal law for purposes of ETC
45 designation.

46 **Q WILL TEMPO OFFER THE SERVICES SUPPORTED BY FEDERAL**
47 **UNIVERSAL SERVICE?**

48 A Yes. Tempo will provide voice grade access to the public switched telephone network
49 ("PSTN") or its functional equivalent, minutes of use for local service provided at no
50 additional charge, access to emergency 911 and enhanced 911 service in locations where
51 implemented, and toll limitation at no charge (subject to certain requirements and
52 limitations). Tempo's prepaid wireless Lifeline service offering satisfies the FCC's
53 definition of voice telephony service, and it will therefore provide all services designated
54 for support by the FCC.

55 **Q HOW DOES TEMPO PLAN TO PROVIDE 911 AND E911 SERVICE?**

56 A Tempo will provide consumers with access to 911 and enhanced 911 to the extent local
57 governments have implemented such services. Tempo understands it has an independent

obligation to provide 911 and E911 services as a reseller, and it will rely on its contractual arrangement with Sprint to provide such emergency services to consumers.

Q DOES TEMPO'S PLAN TO PROVIDE 911 AND E911 SERVICE COMPLY WITH THE FCC'S LIFELINE REFORM ORDER?

A Yes, Tempo's prepaid wireless Lifeline service offering will comply with the 911 requirements outlined in the FCC's *Lifeline Reform Order*. 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 arrangement with Sprint to provide 911 and E911 services to consumers. Tempo's arrangement with Sprint specifically addresses 911/E911 services, and Tempo will supply handsets that satisfy all FCC requirements.

Q DOES TEMPO SATISFY THE REQUIREMENTS FOR CONDITIONAL FORBEARANCE FROM THE FACILITIES REQUIREMENT?

A 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 service. The FCC, however, has allowed conditional forbearance from the application of this facilities requirement when a carrier has complied with certain 911 requirements and also filed and received approval of a

78 compliance plan. As stated above, Tempo will offer the necessary 911 and E911
79 services.

80 **Q DOES TEMPO HAVE AN APPROVED FCC COMPLIANCE PLAN?**

81 **A** Yes. Originally, the Compliance Plan was filed on behalf of Birch Communications, Inc.
82 (“Birch”). Ionex Communications North, Inc. (“Ionex”) operates as a competitive local
83 exchange carrier and interexchange carrier in Utah, doing business as Birch
84 Communications, and is a subsidiary of Birch. However, during the FCC process a
85 question arose as to whether it would be more appropriate to form a new entity for the
86 purpose of prepaid wireless lifeline services. A separate entity was set up and named
87 Now Communications, LLC (“NOW”). NOW adopted the Compliance Plan, which was
88 approved by the FCC on August 8, 2012, and the FCC acknowledged NOW’s adoption of
89 the Compliance Plan on December 20, 2012 in a public notice (attached to the Petition as
90 Exhibit 3). NOW has since changed its name to Tempo and notified the FCC on May 13,
91 2013 of the name change. To ensure that the FCC records are accurate, Tempo
92 subsequently (September 17, 2013) notified the FCC that Tempo, via the name change,
93 will comply with the FCC-approved Compliance Plan (attached to the Petition as Exhibit
94 4). The FCC’s Lifeline website has been updated to reflect that Tempo is operating
95 pursuant to the FCC-approved Compliance Plan originally filed by Birch.

96 **Q PLEASE EXPLAIN THE RELATIONSHIP BETWEEN BIRCH AND TEMPO.**

97 **A** Birch and Tempo are under common ownership. Birch Equity Partners, LLC (a Georgia
98 limited liability company formerly known as Birch Capital, LLC) holds a 100%

ownership interest in Tempo. The following individuals hold ownership interests in Birch Equity Partners, LLC: Holcombe Green (70%), Vincent Oddo (20%), and R. Kirby Godsey (10%). Birch Communications Holdings, Inc. holds a 100% ownership interest in Birch. Mr. Green and Mr. Godsey also hold a majority of the total shares outstanding in Birch Communications Holdings, Inc., with Mr. Green holding 53% and Mr. Godsey holding 21%. Mr. Oddo holds approximately 7%, with the remainder held by various individuals. Mr. Oddo is the Chief Executive Officer of both Birch and Tempo. 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.

Q IS TEMPO'S FCC COMPLIANCE PLAN APPLICABLE TO UTAH?

A Tempo has confirmed in Supplemental Exhibit 2 to its Petition in this docket that its FCC-approved Compliance Plan (attached to the Petition as Exhibit 4), applies to all jurisdictions in which Tempo seeks ETC designation, including Utah. This is consistent with FCC statements that all ETCs must comply with their FCC-approved compliance plans in each state or territory where they are designated as an ETC.

Q HOW WILL TEMPO ADVERTISE THE AVAILABILITY OF THE SUPPORTED SERVICES AND THE RELEVANT CHARGES?

A Tempo will use 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. A more complete summary of Tempo's advertising plans may be found in the Petition at pages 10-11. As required under the *Lifeline Reform Order*, Tempo will ensure the FCC-required disclosures, any DBA names it uses, and details of the prepaid wireless Lifeline service offering are contained in all marketing materials. An example of Tempo's marketing materials is attached as Exhibit 8 to the Petition.

Q DOES TEMPO MEET ALL OF THE REQUIREMENTS FOR ETC DESIGNATION UNDER SECTION 54-202 OF THE FCC'S RULES?

A Yes. In addition to the requirements discussed above, Section 54-202 of the FCC's Rules contains certain requirements for a common carrier to be designated as an ETC. Tempo will comply with all of the applicable FCC requirements for ETC designation under that Rule. The Petition filed in this proceeding explains how Tempo will comply with the service requirements applicable to Lifeline support, how it will remain functional in emergency situations, and how it will satisfy consumer protection and service quality standards as required by the FCC's Rule. (*See* Petition at 11-13.)

Q IS TEMPO FINANCIALLY AND TECHNICALLY CAPABLE OF PROVIDING LIFELINE SERVICE IN ACCORDANCE WITH THE FCC'S RULES?

A The financial and technical capabilities of Tempo are stated in the Petition at pages 14-16. Tempo will not rely solely on Lifeline services for its revenue. Its core business will be the provision of wireless voice and data services to non-Lifeline customers, and it projects that the majority of its target customer base will not be eligible to receive

141 Lifeline service. Further, Tempo has sufficient operating capital to provide prepaid
142 wireless Lifeline services.

143 The management and ultimate owners of Tempo are very familiar with the
144 financial and technical needs of a telecommunications company. Tempo uses the same
145 management and day-to-day operational personnel that are currently used by Birch, a
146 company that has been operating as a successful competitive local exchange carrier since
147 1996. Tempo will also rely on Birch for various network facilities, back office, billing,
148 and customer support functions necessary for Tempo to provide both its Lifeline and non-
149 Lifeline services. Finally, Tempo is reselling the wireless services of Sprint for both its
150 Lifeline and non-Lifeline services. Sprint provides wholesale capacity to numerous
151 wireless resellers. Like several other prepaid wireless providers, Sprint will provide
152 Tempo with the network infrastructure and wireless transmission facilities needed for
153 Tempo to offer service as a mobile virtual network operator.

154 **Q DOES TEMPO MEET THE REQUIREMENTS FOR LIFELINE SERVICE**
155 **UNDER SECTION 54-405 OF THE FCC'S RULES?**

156 **A** Yes. Tempo understands the obligations that this section of the FCC's Rules places on
157 ETCs offering Lifeline services. The Petition fully explains how Tempo will meet those
158 obligations. Tempo will make Lifeline service available in accordance with the FCC's
159 Rules; it will publicize the availability of Lifeline service in a manner reasonably
160 designed to reach eligible customers; it will make the required disclosures on materials
161 describing its Lifeline services; and it will comply with the FCC's procedures for de-

enrolling customers for duplicative support, for non-usage, and for failure to re-certify, and will have general de-enrollment procedures in place as set forth in Tempo's Compliance Plan. (*See* Petition at 18-19.)

Q HAS TEMPO BEEN CERTIFIED AS AN ETC IN ANY OTHER STATES?

A Yes, Tempo has been granted ETC status in the states of Kansas, Missouri, South Carolina, Wisconsin, Indiana, Maryland, and Georgia. Tempo was granted ETC status in Indiana on December 18, 2013, in Maryland on January 15, 2014, and in Georgia on February 4, 2014, all after Tempo filed its Petition in Utah. Tempo's request for ETC status is currently pending at the FCC for those states handled by the FCC, and in the states of Arizona, Arkansas, California, Colorado, Idaho, Iowa, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Jersey, New Mexico, Ohio, Pennsylvania, Rhode Island, Utah, Vermont, Washington, West Virginia, and Wyoming. Tempo has never been denied ETC designation by any state commission or by the FCC in connection with any state.

Q DOES TEMPO PLAN TO OFFER UTAH-SPECIFIC INFORMATION TO SUBSCRIBERS?

A Yes. Tempo will use a Utah-specific fact sheet that provides subscribers with concise and complete information about the services they will receive, substantially in the form of the fact sheet that is attached hereto as **Attachment 1**. Tempo agrees to promptly update the fact sheet when it changes its Utah Lifeline program offerings.

182 **Q DOES TEMPO ALSO INTEND TO NOTIFY REGULATORS OF CHANGES TO**
183 **ITS LIFELINE OFFERINGS?**

184 **A** Tempo will timely file a notice with the Utah Division of Public Utilities and the Office
185 of Consumer Services upon implementing any changes to its Utah Lifeline offerings.

186 **Q DOES TEMPO INTEND TO COMPLY WITH ALL UTAH STATE**
187 **REQUIREMENTS?**

188 **A** Yes. Tempo will comply with all applicable state service quality and consumer protection
189 requirements. Tempo acknowledges that approval of its Petition will be conditioned
190 upon the payment of all applicable state and local regulatory fees, including, but not
191 limited to, universal service fees, emergency services, and relay services.

192 **Q IS TEMPO AWARE THAT UTAH REGULATORS ARE CURRENTLY**
193 **DEVELOPING PROCEDURES FOR CERTIFYING AND VERIFYING**
194 **ELIGIBLE CUSTOMERS?**

195 **A** Tempo understands that the Commission has an open docket where customer eligibility
196 and verification is currently under consideration. (UT PSC Docket No. 10-2528-01).
197 Tempo is prepared to adopt changes to its certification and verification process to
198 conform to those developed within Docket No. 10-2528-01.

199 **Q DOES THIS CONCLUDE YOUR PRE-FILED DIRECT TESTIMONY?**

200 **A** Yes.