

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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

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HEARING PROCEEDINGS

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TAKEN AT:	Public Service Commission Hearing Room 451 160 East 300 South Salt Lake City, Utah
DATE:	Tuesday, April 15, 2014
TIME:	9:02 a.m.
REPORTED BY:	Nancy A. Fullmer, RMR

APPEARANCES

ADMINISTRATIVE LAW JUDGE:

MELANIE A. REIF

FOR DIVISION OF PUBLIC UTILITIES:

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Hearing Proceedings

April 15, 2014

PROCEEDINGS

THE HEARING OFFICER: Good morning, everyone. My name is Melanie Reif. And I am the administrative law judge for the Utah Public Service Commission. This morning we are hearing the stipulation and settlement agreement which was filed in this docket entitled In the Matter of the Petition of Tempo Telecom, LLC, for Designation as an Eligible Telecom Carrier in the State of Utah. This is Docket No. 13-2569-01. And this is the hearing that is scheduled in this matter.

Let's start by taking appearances starting with you, Mr. Evans.

MR. EVANS: I'm William Evans of Parsons, Behle & Latimer. And sitting next to me is Joe Stultz, also an attorney at Parsons Behle. And on the phone is James Sark from Tempo Telecom.

THE HEARING OFFICER: Thank you. Welcome to both of you.

THE WITNESS: Thank you.

MR. JETTER: And Justin Jetter representing Utah Division of Public Utilities. And with me is Casey Coleman, a utility technical consultant with the Division of Public Utilities.

THE HEARING OFFICER: Thank you.

1 MR. BRENT COLEMAN: Brent Coleman for the
2 Office of Consumer Services. With me is Cheryl Murray.

3 THE HEARING OFFICER: Thank you, once again,
4 all of you for being here this morning. We will start by--since
5 this is the obligation of Tempo Telecom, we'll start with the
6 Company. Mr. Evans.

7 MR. EVANS: Thank you. We're here on a
8 stipulation. And I think it might help if you have on the record
9 how we got to where we are today and some details about how
10 this has evolved. Tempo filed its petition for designation as an
11 eligible telecommunications carrier, which we will abbreviate as
12 ETC for the purposes of our hearing this morning in Utah.

13 We were served some data request by the Office of
14 Consumer Services to which we have responded. There was
15 some follow-up that the Office had. And the parties met live in
16 a telephone conference to discuss some of the Office's
17 concerns, primarily dealing with Utah specific requirements for
18 offering ETC services in the State of Utah.

19 On April 7, we entered into a stipulation and
20 settlement agreement that is before the Commission today and
21 for which we're seeking approval. And it stipulates very briefly
22 that Tempo has met the requirements under the Federal Act for
23 Designation as an ETC, that it will implement its FCC approved
24 compliance plan in the State of Utah, and also will meet certain
25 requirements that are in the stipulation that are unique to Utah,

1 and that we can discuss more if you would like. Those are the
2 same requirements that have been imposed on previously ETCs,
3 the most recent being Stand Up Wireless's stipulation is very
4 similar to that one.

5 We're here on hearing of the stipulation. Tempo
6 appreciates the cooperation of the Office and the Division in
7 arriving at this stipulation and is prepared to comply with its
8 requirements. The record contains several filings subsequent to
9 the filing of the petition that our witness is prepared to address,
10 if you would like. And I think it would be helpful to go through
11 some of that this morning. So, if you're ready, we can call Mr.
12 Sark and ask him a few questions.

13 THE HEARING OFFICER: Absolutely, Mr. Evans.
14 Mr. Sark, are you on the line?

15 MR. SARK: I am, yes.

16 THE HEARING OFFICER: Okay. And are you
17 hearing this okay?

18 MR. SARK: Yes, I am.

19 THE HEARING OFFICER: Okay. Are you prepared
20 to testify at this time?

21 MR. SARK: I am.

22 THE HEARING OFFICER: Okay. Could you kindly
23 raise your right hand, sir?

24 MR. SARK: Yes.

25 THE HEARING OFFICER: And do you swear that

1 the testimony you're about to give is the truth?

2 MR. SARK: Yes.

3 THE HEARING OFFICER: Thank you.

4 MR. EVANS: Thank you.

5 JAMES SARK, having been first duly sworn, was
6 examined and testified as follows:

7 EXAMINATION

8 BY-MR.EVANS:

9 Q. Good morning, Mr. Sark.

10 A. Good morning.

11 Q. For the record, would you please state your name
12 and business address and your position at Tempo Telecom?

13 A. Yes. I am Jamie Sark, Senior Projects Manager for
14 Tempo. My business address is 140 Gateway Drive, Suite A,
15 Macon, Georgia 31210. And I would also like to state that the
16 regulatory address for Tempo Telecom is 2323 Grand
17 Boulevard, Suite 925, Kansas City, Missouri 64108.

18 Q. And how long have you been in the position of
19 Senior Projects Manager for Tempo?

20 A. Twelve months.

21 Q. Have you reviewed the Tempo Petition for
22 Designation as an ETC in the State of Utah?

23 A. Yes.

24 Q. Are you the person who signed the verification for
25 that petition?

1 A. Yes.

2 Q. What services does Tempo propose to offer in
3 Utah?

4 A. Tempo seeks ETC designation for the purpose of
5 providing universal service low-income lifeline service in Utah.
6 We will not be seeking universal service high-cost support in the
7 service area, nor will we attempt to seek or provide universal
8 service low-income linkup service.

9 Q. And there was a supplemental filing in this docket
10 on December 16, 2013, which was Tempo's authorization to do
11 business in Utah. Have you reviewed that?

12 A. Yes.

13 Q. And have you also reviewed Tempo's supplemental
14 Exhibit 2 to the petition, which was filed on January 21, 2014,
15 confirming that Tempo's compliance plan is intended to apply in
16 all jurisdictions in which Tempo seeks designation as an ETC?

17 A. Yes.

18 Q. And you understand that that compliance plan will
19 also--is also intended to apply in Utah, correct?

20 A. Yes, I do.

21 Q. Then, on March 24, 2014, Tempo filed an amended
22 Exhibit 7 to the petition in which Tempo reduced the number of
23 exchanges in which Tempo is proposing to provide lifeline
24 service. Is that correct?

25 A. Yes.

1 Q. Can you explain why Tempo eliminated some
2 exchanges from its proposed service territory?

3 A. Yes. Basically, Tempo relies on Sprint Wireless
4 network infrastructure and their wireless transmission facilities
5 to offer lifeline service in Utah. In certain exchanges, after
6 further review, it was felt that Sprint's geographic coverage was
7 inadequate for our purposes, so that's why we elected not to
8 provide service in those exchanges at this time.

9 Q. Okay. Thank you. Have you reviewed the direct
10 testimony of Gregory Corwin, which was filed on February 12 in
11 this docket?

12 A. Yes.

13 Q. And do you have personal knowledge of the matters
14 set out in Mr. Corwin's direct testimony?

15 A. Yes, I do.

16 Q. So, if I were to ask you, then, whether you are
17 prepared to adopt the statements made in Mr. Corwin's direct
18 testimony as your own, would you be willing to do that?

19 A. Yes.

20 Q. Are there any corrections that ought to be made to
21 that testimony?

22 A. There are just a few changes. In his testimony on
23 lines 25 and 27, we need to make a correction. Where the
24 testimony talks about the proposed Tempo service areas, those
25 statements have since been superseded by the filing of

1 amended Exhibit 7. So, the statement can be corrected by
2 replacing line 27 with the words "is found in amended Exhibit 7."
3 A full reading of that statement would be as follows, lines 25
4 through 27: "A listing and description of each exchange for
5 which Tempo is seeking ETC status in Utah is found in amended
6 Exhibit 7."

7 The only other change at this time is lines 165 and
8 166. Tempo has now been granted ETC status in Iowa as of
9 March 20, 2014; Rhode Island as of April 7, 2014; and in
10 Nevada as of February 2, 2014. And that is basically all the
11 corrections that are needed.

12 Q. All right. Thank you. Can you please offer a
13 summary of why you believe it is in the public interest for Tempo
14 to become an ETC in the State of Utah for the limited purpose
15 of providing low-income lifeline service?

16 A. Yes. Tempo's designation as a lifeline only ETC
17 will bring increased competitive choice to the qualifying low-
18 income Utah customers. In our planning efforts and in using the
19 most recent information available from USAC at the time we
20 were planning, it was discovered that out of the population in
21 Utah that is eligible to receive the lifeline benefit, that only 20 to
22 50 percent of those eligible customers were signed up for the
23 service. Having Tempo as another option will continue to
24 increase the customer's awareness of that benefit.

25 Tempo has also demonstrated a commitment to

1 quality and believe that the public interest will be served by
2 offering a comprehensive wireless communications solution to
3 the qualifying customers at no charge.

4 Q. Okay. Thank you. Have you received or are you
5 aware of any opposition from third parties, the public, or anyone
6 else with respect to Tempo's designation as an ETC in Utah?

7 A. No. I have heard of no opposition.

8 Q. Have you reviewed the stipulation and settlement
9 agreement that was entered into among Tempo, the Division of
10 Public Utilities, and the Office of Consumer Services?

11 A. Yes.

12 Q. And are you aware of the additional requirements
13 that are imposed upon Tempo in that stipulation that is
14 additional to your compliance plan?

15 A. Yes.

16 Q. And is Tempo prepared to abide by the terms and
17 conditions of the stipulation?

18 A. Yes. I believe the stipulation reaches a fair and
19 reasonable result. And Tempo is prepared to abide by it.

20 Q. Do you believe the stipulation is in the public
21 interest?

22 A. Yes. Tempo's lifeline product--what's that?

23 Q. I'm sorry. Go ahead. We just had a little glitch.

24 A. Oh, I heard feedback or something, I think, on the
25 call. Yeah. Tempo's product offering for our lifeline product in

1 Utah means that the Utah low-income customers will have
2 another choice among lifeline providers.

3 And by stipulating to approval of the petition, the
4 Division and Office can be assured that Tempo will provide a
5 reliable service to those who qualify for it. And we will also
6 meet their expectation through our commitment for service
7 quality. And this will be a significant benefit to Utah consumers
8 and definitely in the public interest.

9 Q. Thank you. One final question, Mr. Sark. You are
10 aware, are you not, that in the stipulation Tempo has agreed to
11 adopt any changes to the certification and verification process
12 developed in Docket No. 10-2528-01. Is that correct?

13 A. Yes.

14 Q. And Tempo is willing to agree to any changes as a
15 result of that docket.

16 A. Yes. Correct.

17 MR. EVANS: Okay. Thank you, Mr. Sark. I have
18 no more questions. If people would like to cross.

19 THE HEARING OFFICER: Mr. Jetter, do you have
20 any questions?

21 MR. JETTER: I just have a quick question to clarify
22 on the record here.

23 THE HEARING OFFICER: Sure.

24 EXAMINATION

25 BY-MR.JETTER:

1 Q. Mr. Sark, is it--it's your understanding--
2 is it correct that it's your understanding at the time that an
3 agreement--that Tempo is not seeking Utah specific lifeline
4 funds and would need to file another docket if it were to do so in
5 the future? File a--excuse me, correct that--another petition in
6 a new docket?

7 A. Yes. I didn't hear that completely, but I'll answer it
8 to make sure I got it correct that Tempo is aware that we are not
9 applying to receive Utah State USF extra funds. And we will
10 make an amendment at the time we would like to request those
11 extra State funds.

12 MR. JETTER: Thank you. That's the only question
13 I have.

14 THE HEARING OFFICER: Mr. Coleman?

15 MR. BRENT COLEMAN: Nothing from the Office.
16 Thank you.

17 THE HEARING OFFICER: Okay. Thank you for
18 your testimony today, Mr. Sark. Just one question, please, from
19 the Commission.

20 EXAMINATION

21 BY-THE HEARING OFFICER:

22 Q. Your testimony was that the stipulation and
23 settlement agreement, taken as a whole in your words, is fair
24 and reasonable in result. Our statute requires that the
25 stipulation be just and reasonable in result. And although that

1 may be just a difference in semantics, it would be helpful to
2 make sure we have the proper nomenclature on the record. So,
3 is it your testimony that the stipulation agreement with Tempo
4 Telecom in this docket is fair--excuse me--is just and
5 reasonable in result?

6 A. Yes.

7 THE HEARING OFFICER: Okay. Thank you. Any
8 follow-up questions?

9 MR. EVANS: No follow-up, but we would submit the
10 testimony and exhibits for receiving in the record.

11 THE HEARING OFFICER: Okay. Any objection?
12 Hearing no objection, they are received.

13 MR. EVANS: Thank you.

14 THE HEARING OFFICER: Thank you.

15 Mr. Sark, thank you again for your testimony.
16 You're welcome to hold the line. I might ask if you have the
17 ability to push a mute button. It might be helpful just on our end
18 so we're not getting any feedback noise.

19 MR. SARK: All right. Thank you, as well. And I
20 will push the mute button.

21 THE HEARING OFFICER: Thank you. Mr. Jetter.

22 MR. JETTER: Thank you. The Division would like
23 to call Casey Coleman as our witness.

24 THE HEARING OFFICER: Good morning, Mr.
25 Coleman.

1 MR. CASEY COLEMAN: Morning.

2 THE HEARING OFFICER: Would you kindly raise
3 your right hand? And do you swear that the testimony you're
4 about to give is the truth?

5 MR. CASEY COLEMAN: Yes.

6 CASEY J. COLEMAN, having been first duly sworn,
7 was examined and testified as follows:

8 EXAMINATION

9 BY-MR.JETTER:

10 Q. Mr. Coleman, would you please state your name
11 and occupation for the record?

12 A. My name is Casey J. Coleman. I'm the
13 occupation's technical consultant for the Division of Public
14 Utilities.

15 Q. Mr. Coleman, have you reviewed the petition filed
16 by Tempo Telecom as well as the testimony and other filings
17 and exhibits filed by Tempo Telecom?

18 A. Yes.

19 Q. And did you create and cause to be filed two
20 memorandums from the Division of Public Utilities, dated
21 January 6 and January 17, 2014?

22 A. Yes, I did.

23 Q. And do you have any corrections or updates you
24 would like to make to either of those?

25 A. No.

1 Q. In addition to reviewing the filings from Tempo
2 Telecom, have you also reviewed the settlement agreement filed
3 in this docket?

4 A. Yes, I have.

5 Q. And after your review of that, do you believe that
6 approval of that settlement agreement would be just,
7 reasonable, and in the public interest?

8 A. Yes, I do.

9 Q. Are you aware of any opposition to the approval of
10 this settlement stipulation?

11 A. No, I'm not aware of any.

12 MR. JETTER: That's all the questions I have.

13 THE HEARING OFFICER: Thank you. Any
14 questions for Mr. Coleman?

15 MR. EVANS: No questions. Thank you.

16 MR. BRENT COLEMAN: Nothing from the Office.
17 Thank you.

18 THE HEARING OFFICER: Okay. I have no
19 questions. Mr. Jetter.

20 MR. JETTER: I would just like the Commission to
21 take notice of the memos filed on the record. Otherwise, we
22 have nothing further.

23 THE HEARING OFFICER: Okay. Thank you. Your
24 memorandums are accepted. Thank you.

25 THE HEARING OFFICER: Mr. Coleman.

1 MR. BRENT COLEMAN: The Office would ask Ms.
2 Cheryl Murray to be sworn.

3 THE HEARING OFFICER: Good morning, Ms.
4 Murray.

5 MS. MURRAY: Good morning.

6 THE HEARING OFFICER: And would you kindly
7 raise your right hand? And do you swear that the testimony
8 you're about to give is the truth?

9 MS. MURRAY: Yes.

10 THE HEARING OFFICER: Thank you.

11 CHERYL MURRAY, having been first duly sworn,
12 was examined and testified as follows:

13 EXAMINATION

14 BY-MR.BRENT COLEMAN:

15 Q. Thank you, Ms. Murray. Would you state your
16 name and business title for the record?

17 A. Cheryl Murray, Utility Analyst for the Office of
18 Consumer Services.

19 Q. And were you involved on behalf of the Office in the
20 analysis and review of the application submitted by Tempo
21 Telecom in this current docket?

22 A. Yes, I was.

23 Q. Do you have a position statement on behalf of the
24 Office today?

25 A. Yes, I do.

1 Q. Please proceed.

2 A. The Office of Consumer Services is responsible for
3 assessing the impact of utility rate changes and regulatory
4 actions upon residential and small commercial customers. And
5 it is in that capacity that we analyzed Tempo Telecom's request
6 for limited designation as an eligible telecommunications carrier
7 for the purpose of providing lifeline service to residential
8 customers in Utah.

9 The Office recognizes the need for low- income
10 persons to have access to telephone service and, in general,
11 supports the ability to receive that access through wireless
12 telephone service. So, our consideration of Tempo Telecom's
13 request are both with the benefits provided to low-income
14 customers, as well as the money collected from
15 telecommunication customers which fund the lifeline program.

16 In order to determine whether or not the Office
17 could support Tempo's request, we reviewed the petition, the
18 testimony, exhibits, and supplemental filings provided by the
19 applicant, and we issued two sets of data requests, the second
20 of which was responded to by a conference call, which included
21 the Division of Public Utilities.

22 Subsequent to our review of the information
23 provided, the parties entered into a settlement stipulation. The
24 stipulation that is being presented today incorporates conditions
25 that the Office asserts are necessary to the public interest, such

1 as the development and use of a Utah specific information
2 sheet, Tempo's agreement to pay appropriate fees and taxes,
3 their agreement to be bound by the outcome of Docket
4 10-2528-01, and that any future requests for access to State
5 USF requires a filing and a hearing on the matter.

6 In conclusion, in the Office's judgment, the
7 settlement is just and reasonable in result and in the public
8 interest and we recommend that the Commission approve it.

9 MR. BRENT COLEMAN: Thank you. At this time, I
10 don't believe the Office has anything--
11 excuse me--has anything further and would submit it for any
12 cross-examination from parties or Your Honor.

13 THE HEARING OFFICER: Mr. Evans.

14 MR. EVANS: No questions. Thank you.

15 THE HEARING OFFICER: Mr. Jetter.

16 MR. JETTER: I have no questions. Thank you.

17 THE HEARING OFFICER: One question, please,
18 Ms. Murray.

19 EXAMINATION

20 BY-THE HEARING OFFICER:

21 Q. Is the Office aware of any opposition in this matter?

22 A. No, we are not.

23 THE HEARING OFFICER: Okay. Mr. Coleman.

24 MR. BRENT COLEMAN: I don't believe the Office
25 has anything further.

1 THE HEARING OFFICER: Okay. And do you wish
2 to have your filings entered into evidence in this?

3 MR. BRENT COLEMAN: We did not submit any
4 written filings with respect to anything on the docket. So, our
5 only submissions back and forth are the data requests.

6 THE HEARING OFFICER: Okay. Very good. Thank
7 you for that clarification.

8 Is there anything further?

9 MR. EVANS: Only of--let me just say this, that
10 lifeline services are important to Utah's population and
11 competition is important to lifeline services. To have Tempo in
12 the Utah market, I believe we've heard today, serves the public
13 interest.

14 The stipulation is just and reasonable. Tempo has
15 agreed to abide by it and we would request that the Commission
16 approve this application, approve the stipulation, and grant ETC
17 designation to Tempo. Thank you.

18 THE HEARING OFFICER: Thank you, Mr. Evans.
19 Does anyone else have anything to add? Okay. I would just like
20 to cover a couple of things. Realizing that our paper record
21 does not have the visual record that we're all capable of seeing
22 here, so this might seem a little awkward, but I would like to ask
23 if there's anyone here who is wishing to address the docket who
24 has not already done so. Hearing none, I would also like to ask
25 if there's anyone here who wishes to oppose the application.

1 Hearing none, the record will so reflect that.

2 I also wish to note although the stipulation does
3 mention it, we do have an open docket, as I believe most
4 everyone here knows, in Docket 10-2528-01. This is not a
5 hearing or a matter concerning that docket, but I do wish to note
6 that in the event that Tempo Telecom is not already a part of
7 that docket or wishes to be a part of that docket, that they can
8 notify our front office and be on the mailing list for any matters
9 involving that docket. So, if Mr. Sark or Mr. Sark's counsel
10 would like to do that, that is certainly an option.

11 And based on our statute, which has been met
12 based on the testimony this morning, the order will issue
13 granting the ETC requested. And if you'll just give us a little bit
14 of time to get that drafted. And I want to thank you very much
15 for your time and assistance this morning and for bringing this
16 to the Commission. As you know, the Commission greatly
17 appreciates it when things do settle. And even when they don't,
18 we're happy to hear things. So, thank you very much and have
19 a very pleasant day.

20 MR. EVANS: Thank you.

21 (Hearing concluded at 9:26 a.m.)
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1 CERTIFICATE

2 This is to certify that the foregoing proceedings
3 were taken before me, NANCY A. FULLMER, a Registered Merit
4 Reporter and Notary Public in and for the State of Utah;

5 That the proceeding was reported by me in
6 stenotype and thereafter caused by me to be transcribed into
7 typewriting, and that a full, true, and correct transcription of
8 said testimony so taken and transcribed is set forth in the
9 foregoing pages;

10 I further certify that I am not of kin or otherwise
11 associated with any of the parties to said cause of action, and
12 that I am not interested in the event thereof.

13
14
15 -----
16 Nancy Fullmer, RMR

17 My Commission Expires:

18 June 28, 2016
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