

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of)

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Application of Tempo Telecom, LLC)
for Designation as an Eligible)
Telecommunications Carrier in the)
Commonwealth of Kentucky for the Limited)
Purpose of Offering Lifeline Service to)
Qualified Households)
_____)

Case No. 2013-_____

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

The Application of Tempo Telecom, LLC (“Tempo” or “Applicant”) respectfully shows:

(a) That Applicant is engaged in the business of providing communications services in the Commonwealth of Kentucky and is registered with the Public Service Commission of Kentucky.

(b) That the post office address of the Applicant is 2300 Main Street, Suite 340 Kansas City, MO 64108.

(c) That Tempo, by its attorneys, and pursuant to Section 214(e)(2)¹ of the federal Communications Act of 1934, as amended (the “federal Act”) and Section 54.201² of the rules and regulations of the Federal Communications Commission (“FCC”),³ hereby submits this Application for Designation as an Eligible Telecommunications Carrier (“ETC”) by the

¹ 47 U.S.C. § 214(e)(2).

² 47 C.F.R. § 54.201.

³ Tempo files this Application in accordance with 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*”).

Kentucky Public Service Commission (the “Commission”),⁴ and seeks ETC designation for Lifeline support only to provide prepaid wireless services to qualifying Kentucky consumers throughout the area defined by any overlap⁵ between its wireless coverage area and the exchanges of any Kentucky incumbent local exchange carrier, (the “Service Area”) for the purpose of receiving federal and state low-income universal service support for wireless services, specifically Lifeline. Tempo will not seek access to funds from the federal Universal Service Fund (“USF”) for the purpose of providing service to high cost areas.⁶ Once Tempo is approved as an ETC, its qualified customers within the Service Area will be able to subscribe to supported services, and Tempo will seek reimbursement from both the federal and Kentucky USF.⁷ As demonstrated herein, Tempo meets all the statutory and regulatory requirements for designation as an ETC in the Commonwealth of Kentucky.

I. OVERVIEW OF TEMPO

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.⁸ Tempo has been authorized to

⁴ This Application is submitted in accordance with the Commission’s recent revisions to its ETC designation requirements promulgated by Kentucky Public Service Commission Administrative Case No. 2012-00146, *Lifeline Reform*, Order (May 1, 2012) (“*KPSC Lifeline Order*”).

⁵ In its *Tracfone* decision the Commission found that a wireless reseller seeking ETC status can satisfy the requirement to identify its service area by identifying its underlying carrier and providing other information that explains the extent of its service territory. Order, Case No. 2009-00100 (Nov. 24, 2010). Upon satisfying the Commission’s identification requirements Tracfone was designated an ETC “in Kentucky” for the limited purpose of offering Lifeline and Link Up Service. Tempo currently uses Sprint as its underlying carrier in Kentucky.

⁶ 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.

⁷ See Order, *An Inquiry into Universal Service and Funding Issues*, Administrative Case No. 360, at 37 (May 22, 1998) (determining Kentucky USF support of \$3.50 per line per month).

⁸ These states are: Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, Ohio, South Carolina, Tennessee, Texas, and Wisconsin.

conduct business in Kentucky and has filed its Amended Certificate of Authority with the Commission. In addition to prepaid wireless Lifeline service as an ETC, Tempo will also provide other prepaid wireless voice and data services in Kentucky. Tempo registered as a utility on April 22, 2013.

In November 2012, Birch Telecom of the South, Inc. dba Birch Communications (“Birch”) filed an Application for Designation as an Eligible Telecommunications Carrier in Case No. 2012-00540 (“Birch Application”).⁹ 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.

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 I** (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. The FCC acknowledged these changes in corporate structure on December 20, 2012 in a public notice attached as **Exhibit II**. The FCC indicated that the Compliance Plan would apply to Now Comm. Later in December 2012, Birch withdrew the Birch Application due to issues with the “Now Comm” name, and in the interest of administrative economy and efficiency. The withdrawal was noted in a dismissal order in Case No. 2012-00540 dated January 10, 2013.

⁹ Birch and its affiliates are authorized to provide telecommunications services in Kentucky, and in 47 other states and the District of Columbia, with applications pending in Arizona and West Virginia.

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.¹⁰ A copy of that filing (without attachments) is attached as **Exhibit III** (“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 IV**. All changes made via the May 13 FCC Amendment are incorporated by reference into the Compliance Plan.

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.

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 of Birch (Holcombe Green and R. Kirby Godsey, who in combination hold a 98% interest in Birch) own approximately 90% 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 V** is

¹⁰ For Tempo’s purposes, these states are Alabama, Florida, North Carolina, Tennessee, and Texas.

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.

Tempo has been granted ETC status in the state of Kansas. Tempo's request for ETC status is currently pending before the FCC, and will cover the states of Alabama, Florida, North Carolina, Tennessee, and Texas. Tempo also has ETC designation applications pending in the states of Georgia, Louisiana, Arkansas, South Carolina, and Wisconsin. Tempo is in the process of filing ETC designation applications in the states of Mississippi, Missouri, 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.

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").

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.¹¹ 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,

¹¹ For numerous years, Birch and its affiliates have 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.

converged Internet Protocol (“IP”) solutions, and related telecommunications and IT services. The Birch family of companies is currently authorized to provide telecommunications services in 48 states and the District of Columbia, with applications pending in Arizona and West Virginia.

Tempo’s designated Service Area in Kentucky is to include Sprint’s wireless coverage area or Sprint’s licensed service area, and Tempo will serve any potential customer in the state to the extent resold wireless services are available from Sprint or another CMRS licensee which may support Tempo’s business in the future.

Pleadings, orders, notices and other papers filed or serviced in this matter should be serviced upon:

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II. 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

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.¹² As set forth below, Tempo meets these requirements.

A. Tempo Is a Common Carrier

Wireless carriers are common carriers under federal law.¹³ Common carriers that provide services consistent with the requirements of Section 214(e) may be deemed ETCs.¹⁴ 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. § 214(e)(1) for purposes of ETC designation.

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

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.¹⁵ 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).¹⁶ 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.

Tempo's prepaid wireless Lifeline service offering will provide voice grade access to the

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

¹³ 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).

¹⁴ 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.

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

¹⁶ *Lifeline Reform Order* ¶ 48.

PSTN through its provision of resold wireless services from Sprint. As described below, Tempo's prepaid wireless Lifeline service offering will provide a specified number of minutes of use to eligible consumers. 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.

In addition, as explained below, Tempo's prepaid wireless Lifeline service offering will provide consumers with access to 911 and enhanced 911 in the Service Area where local governments have implemented such services. Although Tempo understands it has an independent obligation to provide 911 and E911 services as a reseller,¹⁷ Tempo will rely on its contractual arrangement with Sprint to provide such emergency services to consumers. Tempo will register with the Kentucky CMRS Board for the purpose of E911 surcharge remittance and reporting as may be required under 202 KAR 6:080.

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.¹⁸ As explained more below, Tempo's prepaid wireless Lifeline service offering will be 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.

¹⁷ 47 C.F.R. § 20.18(m).

¹⁸ *Lifeline Reform Order* ¶ 49.

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

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.¹⁹ 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.²⁰ 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.²¹ Tempo certifies that it meets the requirements for conditional forbearance as demonstrated in its approved Compliance Plan, which is attached as **Exhibit IV**.

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 arrangement with Sprint to provide access to 911 and E911-based emergency services to

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

²⁰ *Lifeline Reform Order* ¶ 368.

²¹ *Lifeline Reform Order* ¶ 368.

consumers, as well as obtain the handsets to be provided to consumers.²² Tempo's MVNO arrangement with Sprint specifically addresses 911/E911 services and requires Sprint to supply handsets that satisfy all FCC 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 IV**, 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, 2012.²³ 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

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.²⁴ Tempo will utilize the FCC's 2004 outreach guidelines for advertising its prepaid wireless Lifeline service offering.²⁵ 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. As required under the *Lifeline Reform Order*, Tempo will ensure the FCC-required disclosures, any "doing business as" names it uses, and details of the

²² 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.

²³ *Wireline Competition Bureau Provides Guidance for the Submission of Compliance Plans Pursuant to the Lifeline Reform Order*, 27 FCC Rcd 2186 (2012).

²⁴ 47 C.F.R. § 54.405(b).

²⁵ *Lifeline and Link Up*, 19 FCC Rcd 8302, ¶¶ 45-48 (2004).

prepaid wireless Lifeline service offering are contained in all marketing materials.²⁶ Attached as **Exhibit VI** is an example of Tempo's marketing materials.

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.

The FCC adopted specific requirements for Lifeline advertising in its *Lifeline Reform Order* with which Tempo will comply.²⁷ Within the deadline provided in the *Lifeline Reform Order*, Tempo will include the following information regarding its Lifeline service on all marketing materials describing the service: (1) it is a Lifeline service, (2) Lifeline is a government assistance program, (3) the service is non-transferable, (4) only eligible consumers may enroll in the program, (5) the program is limited to one discount per household; (6) documentation necessary for enrollment; (7) Tempo's name (the ETC); and (8) notice that consumers who willfully make a false statement in order to obtain the Lifeline benefit can be punished by fine or imprisonment or can be barred from the program.²⁸ These statements will be included in all print, audio, video and web materials used to describe or enroll customers in

²⁶ *Lifeline Reform Order* ¶¶ 274-282.

²⁷ *Lifeline Reform Order* at ¶¶ 275-82.

²⁸ *Lifeline Reform Order* at ¶ 275.

Tempo's Lifeline service offering, as well as Tempo's application forms and certification forms. This specifically includes the Tempo's website and other marketing materials.²⁹

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

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.

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

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.³⁰ 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 Lifeline support only, a five-year network improvement plan is no longer necessary.³¹

B. Tempo Will Remain Functional in Emergency Situations

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

²⁹ *Id.*

³⁰ 47 C.F.R. § 54.202(a)(1).

³¹ *Lifeline Reform Order* ¶ 386.

managing traffic spikes resulting from emergency situations.³² Sprint will provide Tempo with the 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 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 its prepaid wireless Lifeline service offering to the extent there is an emergency situation affecting Tempo's operations.

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.³³ As a large, nationwide wireless carrier, Sprint is subject to regulatory requirements to remain functional during emergency situations.³⁴ Tempo's 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

³² 47 C.F.R. § 54.202(a)(2).

³³ While Sprint will provide the underlying wireless services to Tempo, Birch will provide to Tempo the billing services associated with the 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.

³⁴ Tempo is also familiar with the continuity and disaster response program Sprint has implemented, which addresses the need to remain functional during 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.³⁵ 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 in the states in which Birch operates. These same practices apply 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 to the FCC 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. Tempo further certifies that it will report the number of consumer complaints per 1,000 handsets as required in annual ETC filings.³⁶

Tempo will remit all fees required by law, including an amount for each for each access line served equal to the Kentucky Telecommunications Relay Service/Telecommunications Access Program ("TRS/TAP") surcharge (currently four cents per line per month) that wireless carriers would collect from customers who receive a monthly bill. Similarly, Tempo will remit an amount equal to the Kentucky Universal Service Fund ("USF") Surcharge for each access line served, including Lifeline customers, equal to the surcharge (currently eight cents per line per month) that wireless carriers would collect from customers who receive a monthly bill. Since

³⁵ 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).

³⁶ 47 C.F.R. § 54.422(b)(2); *see USF Order* ¶ 4.

Tempo's wireless service is prepaid, it cannot pass through these amounts using line item surcharges.

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

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.³⁷ 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.³⁸ Tempo satisfies these criteria.

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 receive Lifeline service and will choose alternative Tempo service plans.

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

³⁸ *Lifeline Reform Order* ¶ 388.

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 funding to the company. These "start-up" funds are large enough to cover the company's initial operating expenses. Tempo projects that it will start accruing revenues from its prepaid non-Lifeline wireless voice and data services in July 2013.

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.

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 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.³⁹

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

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.⁴⁰ 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:⁴¹

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 choices⁴²
- 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

³⁹ 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.

⁴⁰ 47 C.F.R. § 54.202(a)(5).

⁴¹ Though Tempo's product will be offered at no charge to qualifying Kentucky customers, Tempo certifies that it will notify its Lifeline customers in writing of any changes to the rates they will pay. *KPSC Lifeline Order* at 5.

⁴² 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,”⁴³ 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.⁴⁴

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. Attached as **Exhibit VII** 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. 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

⁴³ 47 U.S.C. § 254(b)(1).

⁴⁴ *Lifeline Reform Order* ¶ 317.

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.

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

Under Section 54.405 of the FCC’s rules, an ETC has certain obligations to offer Lifeline service.⁴⁵ 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

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,⁴⁶ to qualifying low-income consumers.⁴⁷

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

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.⁴⁸ As described above, Tempo will publicize the availability of its prepaid wireless Lifeline service offering in a manner reasonably designed to reach eligible consumers.

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 FCC’s rules require an ETC to make certain disclosures

⁴⁵ 47 C.F.R. § 54.405.

⁴⁶ 47 C.F.R. § 54.401.

⁴⁷ 47 C.F.R. § 54.405(a).

⁴⁸ 47 C.F.R. § 54.405(b).

on all materials describing the Lifeline service offering, including the name of the ETC.⁴⁹ 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.⁵⁰ 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.⁵¹ 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.⁵²

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

Section 54.405(e) of the FCC’s rules requires an ETC to impose certain de-enrollment procedures for Lifeline services.⁵³ Tempo will comply with the FCC’s de-enrollment procedures as described more fully in the FCC-approved Compliance Plan set forth in **Exhibit IV**. 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.

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

A. Tempo Will Comply with the FCC’s Consumer Certification Requirements

⁴⁹ 47 C.F.R. § 54.405(c), (d).

⁵⁰ 47 C.F.R. § 54.405(c).

⁵¹ 47 C.F.R. § 54.405(d).

⁵² 47 C.F.R. § 54.405(c).

⁵³ 47 C.F.R. § 54.405(d).

In the *KPSC Lifeline Order*, the Commission noted that per the FCC’s *Lifeline Reform Order*, “Kentucky ETCs offering Lifeline must now offer consumers the option of qualifying for Lifeline by meeting the income-based qualifier of 135 percent of the Federal Poverty Guidelines.”⁵⁴ The *KPSC Lifeline Order* also detailed new ETC certification form requirements promulgated by the FCC.⁵⁵ Tempo meets these requirements.

As discussed in the Compliance Plan, Tempo will offer its prepaid wireless Lifeline service to households receiving benefits from a qualifying state or federal assistance program or with an income at or below 135% of the Federal Poverty Guidelines.⁵⁶ Tempo’s associated consumer certification form 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.⁵⁷ Set forth as **Exhibit VII** are Tempo’s enrollment and certification forms. Tempo will make any necessary changes to the extent the Commission, 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 Commission, FCC, or USAC guidance, directives, or rule changes regarding the Lifeline program.

B. Tempo Will Comply with the FCC’s Annual Verification Requirements

In the *KPSC Lifeline Order*, the Commission formally adopted the FCC’s annual audit and recertification process for ETCs.⁵⁸ Tempo certifies that will verify the eligibility of its

⁵⁴ *KPSC Lifeline Order* at 3; see 47 C.F.R. § 54.409(a)(1).

⁵⁵ *KPSC Lifeline Order* at 3-4.

⁵⁶ 47 C.F.R. § 54.409(a).

⁵⁷ See 47 C.F.R. §§ 54.405(c), 54.409, 54.410(a)-(d); *Lifeline Reform Order* ¶ 121.

⁵⁸ *KPSC Lifeline Order* at 4-5. Tempo certifies that its annual verification process will follow the FCC’s rules and direction pertaining to annual audits. *KPSC Lifeline Order* at 5.

Lifeline subscriber base in accordance with Section 54.409 and 54.410 of the FCC's rules.⁵⁹ As documented in Attachment B to the 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.⁶⁰

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

Section 54.202(b) of the FCC's rules requires the FCC make a public interest finding prior to making an ETC designation.⁶¹ Tempo's designation as a Lifeline-only ETC will bring increased competitive choice and unique advantages to qualifying Kentucky consumers, on the part of a carrier with a demonstrated commitment to quality. The goals of universal service mandated by Congress, the FCC, and the Commission are therefore served by designation of Tempo as a Lifeline-only ETC.⁶²

Tempo's ETC designation will bring another competitive alternative to low-income consumers in Kentucky, and will exert further competitive pressures on existing wireless Lifeline providers operating in Kentucky. This furthers the federal Act's goal of ensuring that quality communication services are available at "just, reasonable, and affordable rates."⁶³ As the FCC has observed, "an important goal of the [federal] 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

⁵⁹ 47 U.S.C. §§ 54.409, 54.410.

⁶⁰ 47 U.S.C. § 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.

⁶¹ 47 C.F.R. § 54.202(b).

⁶² 47 U.S.C. § 254.

⁶³ 47 U.S.C. § 254(b)(1).

new technologies.”⁶⁴

According to the USAC data, Kentucky’s Lifeline participation rate is between 10 and 20 percent.⁶⁵ It was for this reason that Governor Beshear proclaimed September 13-19, 2010 as Lifeline Awareness Week to focus attention on the program. Commission Chairman Armstrong supported this effort and stated the program is “one of the best ways for eligible households to reduce their monthly costs” while noting that Kentuckians participate at a lower rate than in many neighboring states, suggesting that “there are many eligible Kentuckians who do not participate in the program.” In seeking ETC designation in Kentucky, Tempo seeks to make it easier for low-income consumers located within Kentucky to receive affordable telecommunications services that are comparable to those enjoyed by other consumers.

The impact of Tempo’s designation as an ETC on the USF will be negligible, in light of the fact that Tempo is not seeking high-cost support. The Lifeline program, unlike high-cost support, is predicated on per-customer reimbursement.⁶⁶ The overall size of the program is thus capped by the number of qualified consumers in a state, and further limited by eligibility, utilization and de-enrollment standards.⁶⁷ Tempo intends to strictly adhere to such standards, as demonstrated by its approved Compliance Plan.

Historically, only a small proportion of the USF has been dedicated to low-income support. In 2007, low-income support constituted 11.8% of the universal service support – in the

⁶⁴ *Federal-State Joint Board on Universal Service*, 16 FCC Rcd 48, ¶ 17 (2000).

⁶⁵ 2010 Lifeline Participation Rates by State (Feb. 15, 2011), *available at* http://www.usac.org/_res/documents/li/pdf/participation-rates/li-participation-rate-map-2010.pdf.

⁶⁶ *See, e.g.*, WC Docket No. 09-197, *Telecommunications Carriers Eligible for Universal Service Support*, Order, DA 12-1339, ¶ 9 (Aug. 16, 2012).

⁶⁷ *See* WC Docket Nos. 11-42, 03-109, 12-23 and CC Docket No. 96-45, *Wireline Competition Bureau Issues Progress Report on the Lifeline Program Savings*, Public Notice, DA 12-1232 (July 31, 2012).

next year, 11.5%.⁶⁸ Accordingly, the FCC has concluded that “[a]ny increase in the size of the fund” from certifying a Lifeline-only prepaid wireless reseller “would be minimal and is outweighed by the benefit of increasing eligible participation in the Lifeline program, furthering the statutory goal of providing access to low-income consumers.”⁶⁹

As explained above, 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 fulfill the goals of universal service.⁷⁰

⁶⁸ FEDERAL COMMUNICATIONS COMMISSION INDUSTRY ANALYSIS AND TECHNOLOGY DIVISION WIRELINE COMPETITION BUREAU, TRENDS IN TELEPHONE SERVICE, 19-5 (Sept. 2010), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

⁶⁹ *Federal-State Joint Board on Universal Service*, 20 FCC Red 15095, ¶ 17 (2005). Pursuant to FCC precedent, no “cream-skimming” analysis is necessary as Tempo is seeking ETC designation only with respect to low-income support mechanisms. See *Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A)*, 24 FCC Red 3381, ¶ 39, n. 101 (2009).

⁷⁰ 47 U.S.C. § 254.

CONCLUSION

WHEREFORE, Applicant asks that the Public Service Commission of the Commonwealth of Kentucky make its order designating applicant as an ETC statewide for the provision of prepaid wireless Lifeline services in the Commonwealth of Kentucky.

Dated this 19th of June, 2013.

Respectfully submitted,

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Counsel for Tempo Telecom, LLC

LIST OF EXHIBITS

- I. Birch Communications, Inc.'s December 18, 2012 FCC Filing
- II. FCC December 20, 2012 Public Notice in Response to Birch December 18, 2012 Filing
- III. Tempo Telecom, LLC's May 13 FCC Amendment to Petition for ETC designation
- IV. Tempo Telecom, LLC Compliance Plan Adopted From Now Communications
- V. Tempo Telecom LLC's Officers and Bios
- VI. Example of Tempo's Marketing Materials
- VII. Tempo's Initial Enrollment and Certification Form
- VIII. Christopher J. Bunce Verification

EXHIBIT I

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December 18, 2012

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WC Docket Nos. 09-197, 11-42

Dear Secretary Dortch:

Birch Communications, Inc. (“Birch”) and Now Communications, LLC (“Now Comm”), by their attorneys, respectfully notify the Federal Communications Commission (“Commission”) that Now Comm will comply with and adopt as its own the Compliance Plan filed by Birch and approved by the Commission on August 8, 2012.¹

Now Comm is a Georgia limited liability company, which is in the process of registering with the Commission for domestic interstate authority and obtaining authorization from the Commission for the provision of international telecommunications services. Now Comm is also in the process of obtaining telecommunications authority at the state level in Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, Ohio, South Carolina, Tennessee, Texas, and Wisconsin. In addition to prepaid wireless Lifeline service, Now Comm will also provide the wireline Lifeline services currently provided by Birch and its affiliates as a non-ETC reseller in the 18 above-listed states.²

Sprint will provide Now Comm with the network infrastructure and wireless transmission facilities needed for Now Comm to offer service as a Mobile Virtual Network Operator (“MVNO”). Specifically, Birch’s current contract with Sprint will be assigned to Now Comm.³ In addition, Now Comm 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.

¹ 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*, Public Notice, DA 12-1286 (rel. Aug. 8, 2012); see also *Lifeline Compliance Plans & ETC Petitions*, <http://www.fcc.gov/encyclopedia/lifeline-compliance-plans-etc-petitions>.

² Petition at 2 (explaining Birch’s provision of Lifeline services as a non-ETC reseller in 18 states). Birch and Now Comm will obtain any necessary regulatory approvals to execute the transfer of existing Birch customers from Birch to Now Comm.

³ Petition at 2 (explaining Birch’s relationship with Sprint).

Birch noted in the Compliance Plan that it was reviewing whether a separate legal entity should be established for the provision of prepaid wireless Lifeline service or whether the service should be provided through one of the existing Birch entities.⁴ In that regard, Birch hereby notifies the Commission that the prepaid wireless Lifeline service will be provided by a separate legal entity known as Now Communications, LLC.

Now Comm will implement and comply with the Birch Compliance Plan approved by the Commission on August 8, 2012,⁵ and hereby adopts the Birch Compliance Plan as its own. Now Comm will utilize the same procedures and operations set forth in the Birch Compliance Plan for its provision of prepaid wireless Lifeline service, and will use the same draft application and verification forms attached to the Birch Compliance Plan. Now Comm will offer the same prepaid wireless Lifeline service plan set forth in the Birch Compliance Plan, and will market and advertise its prepaid wireless Lifeline service in the same manner as described in the Birch Compliance Plan. A copy of the Birch Compliance Plan adopted by Now Comm is attached. Birch and Now Comm have also filed amendments to the pending designation petitions previously filed by Birch to reflect Now Comm's adoption of the Birch Compliance Plan and to request that Now Comm, not Birch, be the entity designated as an eligible telecommunications carrier.⁶

Now Comm will utilize the same management and day-to-day operational personnel as currently utilized by Birch. Birch's current corporate officers will also be corporate officers of Now Comm. Now Comm will be owned by the same ultimate owners of Birch, but will not be part of the Birch corporate family.⁷

⁴ Compliance Plan at n.3.

⁵ 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*, Public Notice, DA 12-1286 (rel. Aug. 8, 2012); see also Lifeline Compliance Plans & ETC Petitions, <http://www.fcc.gov/encyclopedia/lifeline-compliance-plans-etc-petitions>.

⁶ On April 27, 2012, Birch filed a petition for designation as an eligible telecommunications carrier ("ETC") for Lifeline service only for the states of Alabama, Florida, North Carolina, and Tennessee. On November 29, 2012, Birch filed a petition for designation as an ETC for Lifeline service only for the state of Texas. On December 18, 2012, Birch and Now Comm filed amendments to these pending petitions to reflect Now Comm's adoption of the Birch Compliance Plan and the parties' request that ETC status be granted to Now Comm rather than Birch. Birch will not provide Lifeline services as an ETC in any state.

⁷ Specifically, Birch Capital, LLC (a Georgia limited liability company) holds a 100% ownership interest in Now Comm. 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 Now Comm. See Birch Compliance Plan at 4-5 (discussing ownership of Birch).

Please contact the undersigned if you have any questions regarding this matter

Respectfully submitted,

A handwritten signature in cursive script, reading "Angela Collins".

Angela F. Collins
Counsel to Birch Communications, Inc. and
Now Communications, LLC

Attachment

cc: Garnet Hanly (via electronic mail)

EXHIBIT II



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 12-2068
Release Date: December 20, 2012

WIRESLINE 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

WC Docket No. 09-197

Comment Date: January 22, 2013
Reply Comment Date: February 5, 2013

The Wireline Competition Bureau seeks comment on petitions filed by Birch Communications, Inc. (Birch) and Now Communications, LLC (collectively, Now Comm),¹ FLATEL Wireless, Inc. dba ZING PCS (ZING PCS),² LTS of Rocky Mount, LLC (LTS),³ Prepaid Wireless Retail, LLC dba Odin

¹ 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, WC Docket No. 09-197 (filed Nov. 29, 2012); Amendment to 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, WC Docket No. 09-197 (filed Dec. 18, 2012) (collectively, Now Comm Amended Petition) (amending the petition to reflect that Birch's prepaid wireless Lifeline service will be provided by a separate legal entity known as Now Communications, LLC and subject to Birch's compliance plan). *See also* Letter from Angela F. Collins, Counsel to Birch and Now Comm, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 09-197, 11-42 (filed Dec. 18, 2012) (Now Comm explains that it will adopt and adhere by Birch's approved Compliance Plan and its business structure). Now Comm will have the same owners as Birch, including the same management and day-to-day operational personnel as currently utilized by Birch. *See* Now Comm Amended Petition at 2-3.

The Wireline Competition Bureau has approved Birch's compliance plan, which will also apply to Now Comm. *See Wireline Competition Bureau Approves the Compliance Plans of Birch Communications, Boomerang Wireless, IM Telecom, Q Link Wireless and TAG Mobile*, WC Docket Nos. 09-197 and 11-42, 27 FCC Rcd 9184 (Wireline Comp. Bur. 2012); *see also Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6816, para. 380 (2012) (*Lifeline Reform Order*).

² FLATEL Wireless, Inc. dba ZING PCS Petition for Limited Designation as an Eligible Telecommunications Carrier in Alabama, Connecticut, Delaware, the District of Columbia, Florida, New Hampshire, New York, North Carolina, Tennessee, Texas and Virginia, WC Docket No. 09-197 (filed Dec. 14, 2012) (ZING PCS Petition). ZING PCS has a compliance plan pending with the Commission and may not be designated as an ETC until its plan has been approved by the Wireline Competition Bureau. *See* FLATEL Wireless, Inc. dba ZING PCS Amended Compliance Plan, WC Docket Nos. 09-197 and 11-42 (filed Nov. 14, 2012); *see also, Lifeline Reform Order*, 27 FCC Rcd at 6816, para. 380.

³ LTS of Rocky Mount, LLC Petition for Limited Designation as an Eligible Telecommunications Carrier in Alabama, Connecticut, Delaware, the District of Columbia, Florida, New Hampshire, New York, North Carolina, Tennessee and Virginia, WC Docket No. 09-197 (filed Oct. 31, 2012) (LTS Petition). LTS has a compliance plan pending with the Commission and may not be designated an ETC until its plan has been approved by the Wireline Competition Bureau. *See* LTS of Rocky Mount, LLC Compliance Plan, WC Docket Nos. 09-197 and 11-42 (filed Oct. 31, 2012); *see also, Lifeline Reform Order*, 27 FCC Rcd at 6816, para. 380.

Wireless (Odin Wireless),⁴ and TX Mobile, LLC (TX Mobile),⁵ for limited designation as an eligible telecommunications carrier (ETC) for the provision of Lifeline service. LTS and TX Mobile each seek designation as an ETC for the limited purpose of offering Lifeline service in Alabama, Connecticut, Delaware, District of Columbia, Florida, New Hampshire, North Carolina, New York, Tennessee and Virginia.⁶ ZING PCS and Odin Wireless each seek designation as an ETC for the limited purpose of offering Lifeline service in Alabama, Connecticut, Delaware, District of Columbia, Florida, New Hampshire, North Carolina, New York, Tennessee, Texas and Virginia. Now Comm seeks ETC designation for the limited purpose of offering Lifeline service in Texas.⁷

Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).⁸

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

⁴ Prepaid Wireless Retail, LLC dba Odin Wireless Petition for Limited Designation as an Eligible Telecommunications Carrier in Alabama, Connecticut, Delaware, the District of Columbia, Florida, New Hampshire, New York, North Carolina, Tennessee, Texas and Virginia, WC Docket No. 09-197 (filed Dec. 10, 2012) (Odin Wireless Petition). Odin Wireless has a compliance plan pending with the Commission and may not be designated an ETC until its plan has been approved by the Wireline Competition Bureau. *See* Prepaid Wireless Retail, LLC dba Odin Wireless Compliance Plan, WC Docket Nos. 09-197 and 11-42 (filed Dec. 10, 2012); *see also, Lifeline Reform Order*, 27 FCC Rcd, at 6816, para. 380.

⁵ TX Mobile, LLC Petition for Limited Designation as an Eligible Telecommunications Carrier in Alabama, Connecticut, Delaware, the District of Columbia, Florida, New Hampshire, New York, North Carolina, Tennessee and Virginia, WC Docket No. 09-197 (filed Nov. 26, 2012) (TX Mobile Petition). TX Mobile has a compliance plan pending with the Commission and may not be designated an ETC until its plan has been approved by the Wireline Competition Bureau. *See* TX Mobile, LLC, Compliance Plan, WC Docket Nos. 09-197 and 11-42 (filed Oct. 18, 2012); *see also, Lifeline Reform Order*, 27 FCC Rcd at 6816, para. 380.

⁶ ZING PCS Petition at 1-2; LTS Petition at 1; Odin Wireless Petition at 1; TX Mobile Petition at 1.

⁷ Now Comm Amended Petition at 1-3.

⁸ *See* 47 CFR §§ 1.415, 1.419; *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

For further information, please contact Divya S. Shenoy, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7400 or TTY (202) 418-0484.

- FCC -

⁹ 47 C.F.R. §§ 1.1200 *et seq.*

EXHIBIT III

**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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Dated: May 13, 2013

Its Attorneys

TABLE OF CONTENTS

| | <u>Page</u> |
|--|--------------------|
| I. OVERVIEW OF TEMPO | 2 |
| II. THE COMMISSION HAS JURISDICTION OVER TEMPO’S DESIGNATION REQUEST..... | 4 |
| 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..... | 5 |
| A. Tempo Will Offer the Services Supported by Federal Universal Service throughout Its Designated Service Area | 5 |
| B. Tempo Will Provide Service Throughout Its Designated Service Area | 6 |
| C. Tempo Satisfies the Requirements for Conditional Forbearance from the Facilities Requirement..... | 7 |
| D. Tempo Will Advertise the Availability of the Supported Services and the Relevant Charges Using Media of General Distribution | 8 |
| IV. TEMPO MEETS THE ADDITIONAL REQUIREMENTS FOR ETC DESIGNATION UNDER SECTION 54.202 OF THE COMMISSION’S RULES | 9 |
| A. Tempo Will Comply with the Service Requirements Applicable to Lifeline Support..... | 10 |
| B. Tempo Will Remain Functional in Emergency Situations | 10 |
| C. Tempo Will Satisfy Applicable Consumer Protection and Service Quality Standards..... | 11 |
| D. Tempo Is Financially and Technically Capable of Providing Lifeline Services in Accordance with the Commission’s Rules | 12 |
| E. Tempo Will Provide Prepaid Wireless Lifeline Service Plans to Eligible Consumers..... | 14 |
| F. Designation of Tempo as a Lifeline-Only ETC Is in the Public Interest..... | 16 |
| V. TEMPO MEETS THE REQUIREMENTS FOR LIFELINE SERVICES UNDER SECTION 54.405 OF THE COMMISSION’S RULES | 17 |

| | | |
|-----|--|----|
| A. | Tempo Will Make Lifeline Service Available as Defined under the Commission’s Rules | 17 |
| B. | Tempo Will Publicize the Availability of Lifeline Service | 17 |
| C. | Tempo Will Include Certain Disclosures on Materials Describing Its Lifeline Service, Including the Name of the ETC | 18 |
| D. | Tempo Will Comply with the Commission’s De-Enrollment Procedures | 18 |
| VI. | ANTI-DRUG ABUSE CERTIFICATION | 19 |
| | CONCLUSION..... | 20 |
| | 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 - Designated Service Area | |
| | EXHIBIT 4 - Examples of Marketing Material | |
| | EXHIBIT 5 - Revised Certification and Enrollment Forms | |

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

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| 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**

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

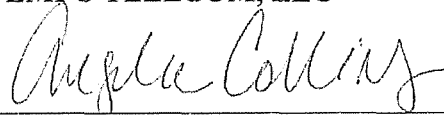
⁵⁸ *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, 12 FCC Rcd 22947, 22948-949 (1997).

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,

TEMPO TELECOM, LLC



Angela F. Collins
Cahill Gordon & Reindel LLP
1990 K Street, N.W., Suite 950
Washington, D.C. 20006
202-862-8930 (telephone)
866-814-6582 (facsimile)
acollins@cahill.com

Dated: May 13, 2013

Its Attorneys

EXHIBIT IV

Tempo Telecom, LLC Compliance Plan

Tempo Telecom, LLC (f/k/a Now Communications, LLC) has adopted the following Further Amended Compliance Plan of Birch Communications, Inc. dated June 29, 2012, which was approved by the Wireline Competition Bureau on August 8, 2012. *See 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).*

The Wireline Competition Bureau confirmed the adoption of the Compliance Plan by Tempo Telecom, LLC (f/k/a Now Communications, LLC) on December 20, 2012. *See 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.”).

EXHIBIT V

TEMPO OFFICERS

Dr. R. Kirby Godsey Chairman of the Board

Dr. Godsey is Chairman of the Board of Birch Communications and an owner of Tempo. Prior to becoming Chairman of the Board at Birch in 2007, Dr. R. Kirby Godsey served as the 17th president of Mercer University from 1979-2006. Prior to his appointment as President, he served as Executive Vice President and as Dean of the College of Liberal Arts. Prior to coming to Mercer in 1977, Dr. Godsey was Vice President and Dean of the College at Averett College in Danville, Virginia. Dr. Godsey earned his undergraduate degree in history and religion from Samford University in Birmingham, Alabama. He holds Master of Divinity and Doctor of Theology degrees from New Orleans Baptist Theological Seminary, and a Master of Arts in Philosophy from the University of Alabama. In 1969, he earned a Ph.D. in Philosophy from Tulane University. The University of South Carolina, Averett College and Samford University have all awarded him honorary degrees.

Vincent Oddo President & CEO

Vincent M. Oddo serves as President and Chief Executive Officer of Birch Communications and Tempo. In this capacity, he is responsible for the overall strategic direction of the company as well as playing a critical role in the many acquisitions that have been completed to date. Mr. Oddo is a 25+ year veteran of the telecom industry and has specialized in growing, restructuring and managing wire-line, wireless and broadband telecommunications businesses. Prior to joining Birch in 2003, he served as SVP and COO of Network Telephone; SVP and CIO of NuVox Communications; SVP of BellSouth; and SVP of Graphic Scanning Corp. Mr. Oddo holds both a Bachelor of Arts degree and Masters degree in Public Administration from Long Island University.

Chris Aversano Chief Operating Officer and Executive Vice President

Chris Aversano serves as Chief Operating Officer and Executive Vice President of Birch Communications and Tempo. In this capacity, he is responsible for managing the overall Operations and Engineering efforts of the company. Mr. Aversano is a 20+ year veteran of the telecommunications and engineering industries and has specialized in wire-line, wireless, and satellite communications. Prior to joining Birch in 2004, he served as VP of Service Delivery and Engineering Operations at Network Telephone Corp; VP of Provisioning at Nuvox; Director of Process Design at Covad Communications; and Program Manager for the United States Air Force responsible for Global Positioning System (GPS) Satellites. Mr. Aversano holds a Bachelor of Science degree in Electrical Engineering from Clemson University, as well as an Associates Degree in Telecommunications from the United States Air Force.

Edward James**Chief Financial Officer and Senior Vice President**

Edward James serves as Chief Financial Officer and Senior Vice President of Birch Communications and Tempo. In this capacity, he is responsible for maintaining and reporting the financial health of the company and overseeing the corporate assets of the company. Mr. James is a nearly 20 year veteran of the telecommunications and finance industries. Prior to joining Birch in 2008, he served as CFO of American Telecom Services, Inc.; Director of Finance of Carter's Inc.; various accounting, operations and finance positions at United Parcel Service (UPS). Mr. James holds a Bachelor of Arts degree from Mississippi College, and a Masters in Business Administration degree from Cumberland University.

Christopher Ramsey**Senior Vice President - Chief Sales & Marketing Officer**

Chris Ramsey serves as Senior Vice President - Chief Sales and Marketing Officer for Birch Communications and Tempo. In this capacity, he is responsible for managing the overall sales and marketing efforts of the company. Mr. Ramsey is a 9-year veteran of Birch Communications who was responsible for starting and managing the telesales, account management and inside sales channels. Prior to joining Birch in 2001, he served in various leadership positions, of increasing responsibility, in Worldwide Account Management for Black and Veatch and GE Capital Assurance, Inc. Mr. Ramsey holds a Bachelor of Arts degree from Southwest Baptist University.

Chris Bunce**Senior Vice President, Legal, and General Counsel**

Mr. Bunce serves as Senior Vice President, Legal & Regulatory, and General Counsel. In this capacity, he is responsible for managing the legal operations, and legal and regulatory compliance functions of both Birch and Tempo. Mr. Bunce is a nearly 20-year veteran in communications and telecom law. Prior to joining Birch in 2000, he served as legal counsel for GST Telecom, CallAmerica, Whole Earth Networks, Hawaii Online and other telecommunications and Internet firms. Mr. Bunce holds a Bachelor's degree in both History and Journalism/Mass Communication from Iowa State University, and a Juris Doctor degree from the University of Iowa College of Law.

Tom Stachowiak**Vice President, Information Technology**

Mr. Stachowiak serves as Vice President of Information Technology for Birch Communications and Tempo. In this capacity, he is responsible for developing, implementing and managing the information technology needs of the company. Prior to his current position he served as Vice President, Engineering. Mr. Stachowiak is a 13+ year veteran of the telecommunications and information technology industries. Prior to joining Birch in 2005, he spent several years at Verso Technologies building and operating VoIP softswitches and application servers. He also worked for 4 years at Syracuse University conducting research on applying IP technologies to military command and control systems and distance learning. Mr. Stachowiak holds both a Masters of Science degree in Computer Science and a Masters in Business Administration degree from Syracuse University.

EXHIBIT VI

FREE Cell Phone

FREE 250 Mins Every Month!

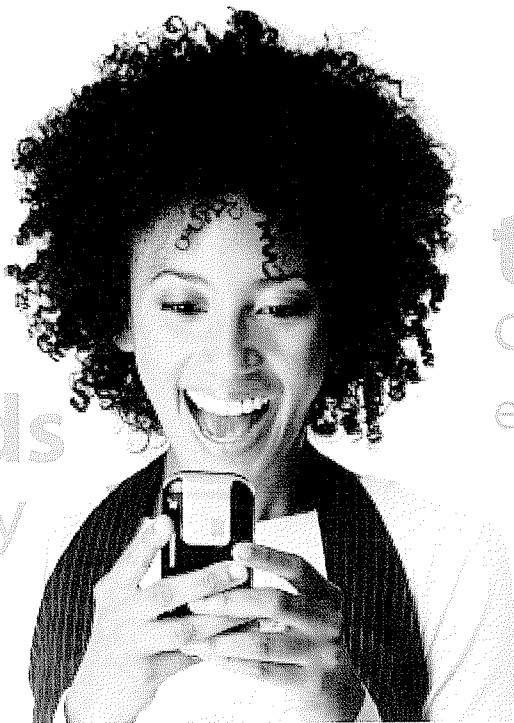
1-8XX-XXX-XXXX

You may qualify if you participate in programs such as Food Stamps or Medicaid.

No contract. No credit check. No hidden fees.

Tempo is a Lifeline supported service, a government assistance program. Only eligible customers may enroll in the program. See if you qualify for a free phone with free monthly service! Service is limited to one discount per household, consisting of either wireline or wireless service. Rules and forms of documentation necessary for enrollment are listed on reverse. Service is non-transferable.

connect
pics
friends
family



learn
talk smile
communicate
explore
text

tempo
Communications
at your pace.

FREE Cell Phone & Free Minute Plan

Choose your FREE monthly plan!

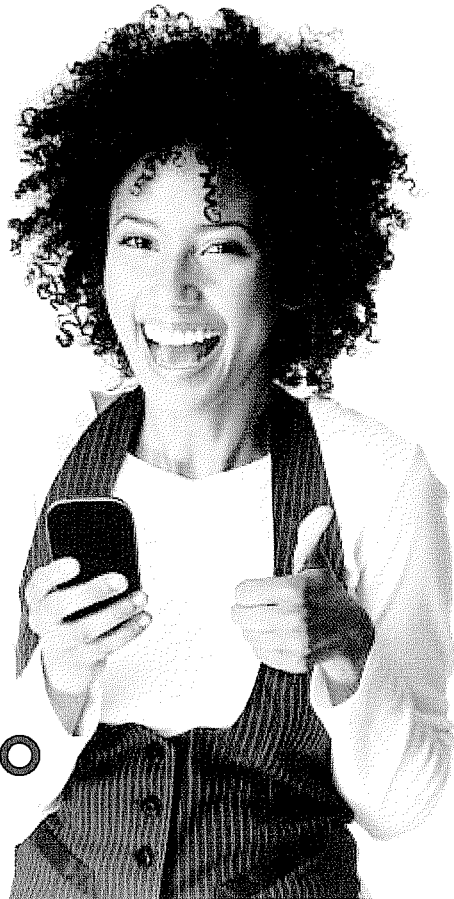
250 minutes/750 Texts
-Or-
150 minutes/450 Texts
with Rollover

Included Features

Nationwide Calling
Text Messaging
Caller ID
Voicemail
Additional Minute Plans
911 Service

Call to Qualify!

- Tempo is a Lifeline supported service, a government assistance program. Only eligible customers may enroll in the program.
- Lifeline benefits are limited to a single line of service per household. You may not receive multiple Lifeline benefits. You may apply your Lifeline discount to either one landline or one wireless number, but you cannot have the discount on both.
- You must present Photo ID and Proof of Benefit to obtain service. You may qualify if you have Food Stamps, Medicaid or are enrolled in other governmental assistance programs.



tempo

To sign up or ask us a question,
we're ready to help!

1-8XX-XXX-XXXX

Forms of documentation necessary for enrollment: All subscribers will be required to demonstrate eligibility based at least on (1) Household income at or below 135% of Fed Poverty guidelines for a household of that size; OR (2) the household's participation in a qualifying state, federal or Tribal program, (a) current or prior year's statement of benefits from a qualifying state, federal or Tribal program. (b) a notice letter of participation in a qualifying state, federal or Tribal program. (c) program participation documents (eg: consumers SNAP card, Medicaid card, or copy thereof). (d) other official document evidencing the consumer's participation in a qualifying state, federal or Tribal program.

Income eligibility: prior year's state, federal or Tribal tax return, current income statement from an employer or paycheck. Social Security statement of benefits. Veterans Administration statement of benefits. Retirement/pension statement of benefits. Unemployment / Workmen's comp statement of benefits. Federal or Tribal notice letter of participation in General Assistance. Divorce decree, child support award, or other official document containing income information for at least three (3) months time. Tempo will NOT retain a copy of this documentation.

IMPORTANT: consumers who willfully make a false statement in order to obtain the Lifeline benefit can be punished by fine or imprisonment or can be barred from the program.

Tempo Telecom, LLC is an Eligible Telecommunications Carrier (ETC), doing business as Tempo.

EXHIBIT VII



Lifeline Subscriber Name

Address 1
City, State, ZIP

Address 2

Month, Day, Year

Time to Recertify!

In order to keep your lifeline discounts on your phone service, you must complete the recertification form and provide your benefit documentation by *April 22, 2013*.

We value your business! The Federal Government requires Tempo to recertify your eligibility once a year in order for you to continue receiving your lifeline discount. In order to continue receiving your discount you must recertify by **April 22, 2013**.

To recertify please complete the attached recertification form, and provide your documentation of income or government program eligibility. You can provide your documentation to Tempo in many ways:

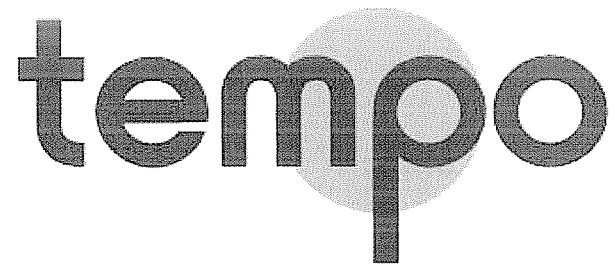
- Fax the completed form to (877) 465-0545.
- Scan and e-mail the completed form to lifeline@mytempo.com.
- Take a picture of the completed form with your mobile phone and text the photo to (816) 446-3388.

We very much value your business. If you have any questions, or there is anything we can do for you, please call us at (866) 580-8411.

Thank you,

A handwritten signature in black ink that reads "Darrell Freelon". The signature is written in a cursive style with a large initial "D" and a long, sweeping tail.

Darrell Freelon
Tempo Telesales Manager



Lifeline Enrollment And Recertification Form

Three Easy Steps to Complete:

Step #1 – Complete Lifeline Enrollment Form on page 3

Step #2 – Locate your Lifeline Benefit Documentation
(More info on your required documentation on pages 4 and 5)

**Step #3 – Send completed Lifeline Enrollment Form and Lifeline
Benefit Documentation to Tempo**
(There are many convenient ways to send them, check Page 4)



Lifeline Enrollment/Recertification Form

Account #: _____

This signed application is required to enroll you in the Lifeline program in your state. This application is only for the purpose of verifying your participation in these programs and will not be used for any other purpose.

Things to know about the Lifeline Program:

- Lifeline is a Federal benefit that is not transferrable to any other person;
- Lifeline service is available for only one line per household. A household cannot receive benefits from multiple providers. Not all Lifeline services are marketed under the name Lifeline, and may be offered under other names;
- A household is defined, for purposes of the Lifeline program, as any individual or group of individuals living at the same address that share income and expenses; and,
- Violation of the one-per household rule is not permitted under federal rules and will result in the subscriber's de-enrollment from the program and possible criminal prosecution by the U.S. Government.

First Name: _____ MI: _____ Last Name: _____ Date of Birth: _____

Last Four Digits of Social Security Number: _____ Contact Telephone Number: _____

Residential Address:

Must be a street address (not a P.O. Box) and your principal residence.

Billing Address:

May contain a P.O. Box.

• Check here if the billing address is the same as the residential address

Address Line 1: _____

Address Line 1: _____

Address Line 2: _____

Address Line 2: _____

City, State and Zip: _____

City, State and Zip: _____

This Address Is:

• Permanent • Temporary (If temporary, your address must be certified or updated every 90 days.)

• A shared, multi-household residence (Complete Household Worksheet)

(Initial)

If shared, multi-household residence, I hereby certify that other household adults do not contribute income and/or share expenses in my household. Complete Household Worksheet.

_____ I hereby certify that I qualify to participate in at least one of the following programs (check all that apply):

(initial) Please see the related documentation requirements on the reverse side.

- Supplemental Nutrition Assistance Program (SNAP) formerly known as Food Stamps • Supplemental Security Income (SSI)
- Federal Public Housing Assistance (FPHA) or Section 8 • Low Income Home Energy Assistance Program (LIHEAP)
- National School Lunch Program's free lunch program • Temporary Assistance for Needy Families (TANF) • Medicaid

_____ I hereby certify that my household income is at or below 135% of the Federal Poverty Guidelines; there are _____ members in my household.

(initial) Please see the Federal Poverty Guidelines and the related documentation requirements on the reverse side.

I certify, under penalty of perjury: (Initial by Each Certification)

The information provided in this application is true and correct to the best of my knowledge; I acknowledge that willfully providing false or fraudulent information in order to receive Lifeline service is punishable by fine or imprisonment, termination of all Lifeline benefits, and being barred from participating in the Lifeline program.

_____ I acknowledge that non-usage over a consecutive 60-day period will result in my de-enrollment from this Lifeline service.

_____ I am eligible for Lifeline service through participation in the qualifying program(s) or meeting the income requirements as identified above.

_____ I have provided documentation of eligibility for Lifeline service, unless otherwise specifically exempted from providing such documentation.

I will inform Tempo within 30 days of any potential change in eligibility, including, but not limited to: (i) a move or change of address; (ii) any change in participation in the programs identified above or change in income or household members; (iii) receiving Lifeline service from another provider; or (iv) any other change that would affect my eligibility for Lifeline service. If I fail to inform Tempo of any of these changes, I understand under penalty of perjury, I may be subject to penalties.

_____ I have provided the address where I currently reside and, if a temporary address has been provided, then I acknowledge that Tempo will attempt to verify my address every 90 days, and, if I do not respond to verification attempts within 30 days, then I may be de-enrolled from my Lifeline benefits.

_____ My household will receive only one Lifeline benefit and, to the best of my knowledge, no one in my household is currently receiving Lifeline service from any other provider.

_____ I acknowledge that I will be required to annually re-certify eligibility and may be required to re-certify continued eligibility for Lifeline at any time and failure to re-certify will result in the termination of Lifeline benefits or other penalties.

_____ I authorize Tempo and its agents to access any records (including financial records) required to verify my statements herein and to confirm my eligibility for Lifeline service. I authorize government agencies and their authorized representatives to discuss with and/or provide information to Tempo and its agents verifying my participation in public assistance programs that qualify me for Lifeline service.

_____ I acknowledge and consent to my name, telephone number, and address being divulged to the Universal Service Administrative Company (USAC) (the administrator of the program) and/or its agents for the purpose of maintaining the information in a database and verifying that I, as a subscriber, do not receive more than one Lifeline benefit. In the event that USAC identifies that I am receiving more than one Lifeline subsidy for my household, all carriers involved may be notified so that I may select one service and be de-enrolled from the other.

APPLICANT SIGNATURE/TPV ID: _____

DATE: _____

FOR TEMPO OFFICE USE ONLY

Account #: _____ **TPV ID:** _____

Company Representative Name: _____ • Database Queried? Date: ___/___/___ Database Name: _____

• ETC Eligibility Review Confirmation Type: Written, attached • Screenshot, attached • ETC employee

Type of Documentation: • Benefits Card • Award Letter • Voucher • State Agency Queried? Date: ___/___/___ Agency Name: _____

• Income Statement • Other _____ Agency contact: _____ Confirmation Type: • Notice, attached

How received: • In person • Fax • Email • Text Photo • Mail

Date/Expiration Date of Documentation: ___/___/___

Describe Documentation: _____ Name on Documentation: _____

Date reviewed: ___/___/___

• Applicant name different than name on documentation (Note relationship to applicant: _____)

Applicant Name: _____

_____ Certification that individual is part of applicant's household (**MUST certify with applicant in-person or verbally**)

_____ Certification that individual is does not already receive Lifeline (**MUST certify with applicant in-person or verbally**)

Representative Signature: _____ Date: _____

NOTES : _____

HOW TO SUBMIT YOUR ENROLLMENT APPLICATION:

FAX: (877) 465-0545 **EMAIL:** lifeline@mytempo.com **POSTAL MAIL:** Tempo, 2300 Main St., Suite 340, Kansas City, MO 64108.

HOW TO SUBMIT YOUR DOCUMENTATION:

TEXT A DOCUMENT: (816) 446-3388 **FAX:** (877) 465-0545 **EMAIL:** lifeline@mytempo.com **POSTAL MAIL:** Tempo, 2300 Main St., Suite 340, Kansas City, MO 64108.

DOCUMENTATION REQUIREMENTS

You are required to provide proof of your participation in the programs you identified OR proof of your qualifying income.

PROGRAM ELIGIBILITY

If, on page 3 of this form, you indicated you were in a qualifying program, you must provide documentation to prove receipt of benefits under these programs to Tempo. Upon examination by Tempo, any copies, photos or faxes of your documentation will be destroyed or returned to you at your request. Acceptable forms of documentation are described below:

Public Housing Assistance (FPHA) or Section 8

There are two types of documentation that can prove receipt of benefits under the Public Housing Assistance (FPHA), or Section 8, Program. **First**, an applicant can provide an award letter. A recipient of Public Housing Assistance (FPHA), or Section 8, receives an award letter from his or her local Public Housing Agency (PHA). The award letter should include the following information: name of program, date of award, name of beneficiary and award amount.

Second, an applicant can provide either a Public Housing Assistance Lease Agreement or a Section 8 Voucher. These items should clearly reflect the type of Public Housing Assistance credit issued.

If the beneficiary does not have an award letter, lease agreement, or voucher, the applicant can contact the agency that approved the application and request formal documentation of his or her award. To find contact information for a local Public Housing Agency, please visit the U.S. Department of Housing and Urban Development's state contact and agency listing.

The beneficiary named on the FPHA documentation may be a member of the Lifeline applicant's household, rather than the applicant. If the name of the beneficiary on the documentation provided does not match the name of the Lifeline applicant, Tempo must record the name of the beneficiary and confirm by receiving certification from the applicant that the named beneficiary is a member of his or her household, and that this individual does not receive Lifeline.

Low Income Home Energy Assistance Program (LIHEAP)

Because the Low Income Home Energy Assistance Program (LIHEAP) is administered by a wide range of local agencies, the program's name may vary by state (note that most include the words "energy assistance program" in the name).

There are two types of documentation applicants can provide to demonstrate receipt of LIHEAP benefits.

First, a LIHEAP participant might have an award letter from a state agency. The award letter will include the following: name of program, date of award, name of beneficiary and award amount. In some instances, if the beneficiary received notification of his or her approval in-person, the awardee might not have a formal award letter and will need to contact the state agency that approved the application to request a formal award letter.

Second, a LIHEAP participant can provide a utility bill that reflects the Housing Assistance credit. The utility bill should clearly reflect inclusion of an Energy Assistance credit.

The beneficiary named on the LIHEAP documentation may be a member of the Lifeline applicant's household, rather than the applicant. If the name of the beneficiary on the documentation provided does not match the name of the Lifeline applicant, the ETC must record the name of the beneficiary and confirm by receiving certification from the applicant that the named beneficiary is a member of his or her household, and that this individual does not receive Lifeline. To find contact information for a local LIHEAP agency, please visit the Low Income Home Energy Assistance Program's [state contact and agency listing](#).

National School Lunch Program's Free Lunch Program (NSLP)

Although the National School Lunch Program's Free Lunch Program (NSLFP) is a federally assisted program, award letters are provided by state agencies and, thus, will vary by locality. All award letters should contain the following basic information: name of program, name of beneficiary, address of beneficiary and date of award. The beneficiary named on the NSLP documentation may be a dependent of the Lifeline applicant, rather than the applicant. If the name of the beneficiary on the documentation provided does not match the name of the Lifeline applicant, the ETC must record the name of the beneficiary and confirm by receiving certification from the applicant that the named beneficiary is a member of his or her household, and that this individual does not receive Lifeline.

Supplemental Security Income (SSI)


Participation in the federal portion of SSI is an eligibility criterion for Lifeline. Some states offer state supplements to the federal SSI program, but receipt of benefits from the state supplement, but not federal SSI, does not qualify an individual for Lifeline. All award letters should contain the following basic information: name of program, name of beneficiary, address of beneficiary, date of award and award amount. A benefit check stub from the Social Security Administration may also be submitted as proof of participation, if the check stub clearly states the date and name of the beneficiary.

The beneficiary named on the SSI documentation may be a dependent of the Lifeline applicant, rather than the applicant. If the name of the beneficiary on the documentation provided does not match the name of the Lifeline applicant, the ETC must record the name of the beneficiary and confirm by receiving certification from the applicant that the named beneficiary is a member of his or her household, and that this individual does not receive Lifeline.

Temporary Assistance for Needy Families (TANF)

All award letters should contain the following basic information: name of program, name of beneficiary, address of beneficiary and date of award.

The beneficiary named on the TANF documentation may be a member of the Lifeline applicant's household, rather than the applicant. If the name of the beneficiary on the documentation provided does not match the name of the Lifeline applicant, the ETC must record the name of the beneficiary and confirm by receiving certification from applicant that the named beneficiary is a member of his or her household, and that this individual does not receive Lifeline.

In some states, TANF might be more commonly referred to by a different name. Look for your state on this list of [TANF program names by state](#) .

Supplemental Nutrition Assistance Program (SNAP)

The Supplemental Nutrition Assistance Program (SNAP) was previously known as Food Stamps. Beneficiary cards and award letters may vary because SNAP is administered on a state level. Because not all beneficiary cards include the recipient's name, it is recommended that an award letter from the local state agency be used for Lifeline verification purposes. All award letters should contain the following basic information: name of program, name of beneficiary, address of beneficiary and date of award.

The beneficiary named on the SNAP documentation may be a member of the Lifeline applicant's household, rather than the applicant. If the name of the beneficiary on the documentation provided does not match the name of the Lifeline applicant, the ETC must record the name of the beneficiary and confirm by receiving certification from the applicant that the named beneficiary is a member of his or her household, and that this individual does not receive Lifeline.

In some states, SNAP might be more commonly referred to by a different name. Look for your state on this list of [SNAP program names by state](#) .

Medicaid

Each state provides its own unique Medicaid card to beneficiaries. However, most cards should clearly state the following: name of program, name of beneficiary, state of residence, issued or effective date and the name of the state agency that provided the card.

The beneficiary named on the Medicaid documentation may be a dependent of the Lifeline applicant, rather than the applicant. If the name of the beneficiary on the documentation provided does not match the name of the Lifeline applicant, the ETC must record the name of the beneficiary and confirm by receiving certification from the applicant that the named beneficiary is a member of his or her household, and that this individual does not receive Lifeline.

Some states have different names for their Medicaid programs. Look for your state on this list of [Medicaid program names by state](#) .

PROGRAM ELIGIBILITY

An applicant may be eligible for Lifeline if he or she has a household income at or below 135% of the Federal Poverty Guidelines. Below are the acceptable types of documentation:

- The prior year's state, federal, or Tribal tax return
- A current income statement from an employer or paycheck stub
- A Social Security statement of benefits
- A Veterans Administration statement of benefits
- A retirement or pension statement of benefits
- An Unemployment or Workers' Compensation statement of benefits
- A federal or Tribal notice letter of participation in General Assistance
- A divorce decree, child support award, or other official document containing income information
- If the documentation relied on does not cover a full year, such as a current pay stub, the subscriber must present the same type of documentation covering three consecutive months within the previous twelve months.

| 135% FEDERAL POVERTY GUIDELINES - 2013 | |
|---|--------------------------------------|
| Members of Household | Household Income must be at or below |
| 1 | \$ 15,512 |
| 2 | \$ 20,939 |
| 3 | \$ 26,366 |
| 4 | \$ 31,793 |
| 5 | \$ 37,220 |
| 6 | \$ 42,647 |
| 7 | \$ 48,074 |
| 8 | \$ 53,501 |
| For every additional member of your household, add \$5,427. | |

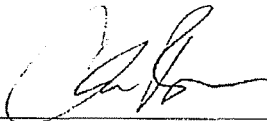
Upon examination by Tempo, any copies, photos or faxes of your documentation will be destroyed or returned to you at your request.

EXHIBIT VIII

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 # 10887286