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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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| IN THE MATTER OF PETITION OF TEMPO )<br>TELECOM, LLC FOR DESIGNATION AS AN )<br>ELIGIBLE TELECOMMUNICATIONS CARRIER IN )<br>THE STATE OF INDIANA FOR THE LIMITED )<br>PURPOSE OF OFFERING LIFELINE SERVICE TO )<br>QUALIFIED HOUSEHOLDS ) | CAUSE NO. 41052 ETC 70<br><br>APPROVED:     DEC 18 2013 |
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ORDER OF THE COMMISSION

**Presiding Officers:**  
**Larry S. Landis, Commissioner**  
**Gregory R. Ellis, Administrative Law Judge**

On June 26, 2013, Tempo Telecom, LLC or (“Petitioner”, “Tempo” or “Company”) filed its Verified Petition for Designation as an Eligible Telecommunications Carrier (“ETC”) for the Limited Purpose of Offering Lifeline Service to Qualified Households (“Petition”) with the Indiana Utility Regulatory Commission (“Commission”). In its Petition, Tempo sought designation as an ETC pursuant to §214(e)(2)<sup>1</sup> of the Federal Communications Act of 1934, as amended (“Act”) solely to provide wireless services supported by the Federal Universal Service Fund’s (“USF”) Lifeline program. Petitioner did not seek authority to provide services supported by the USF’s high-cost program.

Petitioner pre-filed its direct testimony and exhibits on July 19, 2013. On September 25, 2013, Tempo responded to questions propounded by the Presiding Officers in a docket entry dated September 20, 2013. The Indiana Office of the Utility Consumer Counselor (“OUCC”) did not file testimony or exhibits in this Cause.

On October 1, 2013, pursuant to notice duly published as required by law, an evidentiary hearing was convened at 1:30 p.m. in Room 222, PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, Tempo and the OUCC appeared and participated. No members of the general public were present or sought to testify. The testimony and exhibits of the witness were admitted into evidence and the witnesses were made available for cross-examination. In accordance with the direction of the Presiding Officers, Tempo submitted late-filed exhibits on October 15, 2013.

The Commission, having examined all of the evidence of record, and being duly advised in the premises, now finds as follows:

**1.     Notice and Jurisdiction.** Proper, legal, and timely notice of the hearing in this cause was given and published by the Commission as provided for by law. The proofs of publication of the notice of the hearing have been incorporated into the record of this proceeding.

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<sup>1</sup> 47 U.S.C. § 214 (2012) (originally enacted as Act of June 19, 1934, ch. 652, Title VII, § 707, 48 Stat. 1105).

Pursuant to the Act, 47 U.S.C. §151 *et seq.*, and applicable Federal Communications Commission (“FCC”) Rules, 47 C.F.R. §§ 54.201 and 54.203, the Commission is authorized to designate ETCs, thereby enabling those so designated to apply for federal universal service support under Section 254 of the Act and in accordance with the Commission’s Orders in Cause Nos. 40785, 41052 and 42067. The Commission also has jurisdiction pursuant to Ind. Code § 8-1-2.6-13(d)(5)(B). The Commission therefore has jurisdiction over the Petitioner and the subject matter of this Cause.

**2. Petitioner’s Characteristics.** 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 shares common ownership with Birch Telecom of the Great Lakes, d/b/a Birch Communications (“Birch Great Lakes”), and its parent company Birch Communications, Inc. (“Birch”). Tempo is a commercial mobile radio service (“CMRS”) provider as acknowledged by the Commission in its Certificate of Territorial Authority (“CTA”) issued in Cause No. 44343 dated June 26, 2013. Tempo has been authorized by the Indiana Secretary of State to conduct business in Indiana. Tempo will also provide other prepaid wireless voice and data services in Indiana. Tempo is also a common carrier as defined by 47 C.F.R. §20.9 and a telecommunications carrier as defined by 47 U.S.C. § 153.

**3. Requirements for ETC Designation.** The Commission’s November 5, 1997 Order in Cause No. 40785 (“40785 Order”) adopted the FCC’s original eligibility requirements for designation of ETCs within the State of Indiana. Accordingly, each Indiana ETC receiving federal universal service support is required by 47 C.F.R. § 54.101(b) to offer the universal services or functionalities set out in 47 C.F.R. § 54.101(a). We note that the FCC modified the list of supported services that must be offered by ETC designees in the *USF/ICC Transformation Order*.<sup>2</sup> We also note that on February 6, 2012, the FCC released its *Lifeline Reform Order*,<sup>3</sup> which is discussed in more detail below. In addition to offering the delineated universal services, to be eligible for designation as an ETC, applicants are required by 47 C.F.R. § 54.405 to offer qualifying low-income customers Lifeline programs. The Petition seeks only a limited designation and thus is presented for the limited purpose of participating in the USF’s Lifeline program as a wireless carrier. If the Petition is approved, 47 C.F.R. § 54.201(d)(2) will require Petitioner as an ETC receiving federal universal support for Lifeline to publicize the availability and cost of the supported services and the Lifeline programs using media of general distribution throughout the service areas for which the designation is requested. Pursuant to the 40785 Order, carriers seeking ETC designation in Indiana are also required to file proposed tariffs and boundary maps depicting the area(s) for which ETC designation is sought.

On March 17, 2005, the FCC released ETC eligibility guidelines mandating that future ETC designations would require a public interest analysis for applicants regardless of whether the proposed designation area is served by a rural or non-rural carrier. *Federal-State Joint Board on Universal Service*, 20 FCC Rcd. 6371, 6389-6390 (2005) (“2005 FCC ETC Order”). The Commission adopted the FCC’s new eligibility guidelines by its June 8, 2005 Order in Cause No. 41052 ETC 47. On November 10, 2010, the Commission issued the first “Lifeline-only” ETC designation to Virgin Mobile in Cause No. 41052 ETC 55 (“Virgin Mobile ETC Order”).

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<sup>2</sup> *Connect America Fund*, 26 FCC Rcd 17663 (2011) (“*USF/ICC Transformation Order*”)

<sup>3</sup> *Lifeline and Link Up Reform and Modernization*, 27 FCC Rcd 6656 (2012) (“*Lifeline Reform Order*”).

Subsequently, we have granted Lifeline only ETC designations to other communications services providers. In each of the Orders, we have imposed certain requirements and reporting obligations as a condition of the ETC designation.

Through the *USF/ICC Transformation Order* and the *USF/ICC Clarification Order*,<sup>4</sup> the FCC revised the ETC designation eligibility requirements by: (1) eliminating the requirement to offer dual tone multi-frequency signaling, single party service, access to operator service, access to interexchange service, and directory assistance from the supported services found in 47 C.F.R. § 54.101(a) to be included in universal service offerings; (2) requiring carriers to certify compliance with the service requirements applicable to the support received, consistent with 47 C.F.R. § 54.202(a)(1)(i); (3) eliminating the additional requirement of offering local usage and providing equal access found in 47 C.F.R. § 54.202; and (4) eliminating the requirement that Lifeline-only applicants submit a 5-year service improvement plan pursuant to 47 C.F.R. § 54.202.

The FCC's *Lifeline Reform Order*<sup>5</sup> is intended to:

...substantially strengthen protections against waste, fraud, and abuse; improve program administration and accountability; improve enrollment and consumer disclosures; initiate modernization of the program for broadband; and constrain the growth of the program in order to reduce the burden on all who contribute to the Universal Service Fund.

The *Lifeline Reform Order* changed the requirements pertaining to state ETC designations found in 47 C.F.R. § 54.201(h). In the Order, the FCC concluded that “in order to ensure Lifeline-only ETCs, whether designated by the [FCC] or the states, are financially and technically capable of providing Lifeline services, we now include an explicit requirement in section 54.202 that a common carrier seeking to be designated as a Lifeline-only ETC demonstrate its technical and financial capacity to provide the supported service.”<sup>6</sup> Relevant considerations for such a showing include whether the applicant previously offered services to non-Lifeline consumers, how long it has been in business, whether the applicant intends to rely exclusively on USF disbursements to operate, whether the applicant receives or will receive revenue from other sources, and whether it has been subject to enforcement action or ETC revocation proceedings in any state.<sup>7</sup>

The *Lifeline Reform Order* modified and added new requirements for ETC designation that apply to ETC applications filed with state commissions that specifically adopt the additional requirements. The requirement to demonstrate financial and technical capability was added in 47 C.F.R. § 54.202(a)(4). The requirement to offer a Lifeline plan comparable to the incumbent local exchange carrier (“ILEC”) in the service areas for which it seeks designation was replaced with 47 C.F.R. § 54.202(a)(5), which requires ETC applicants to explain the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details

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<sup>4</sup> *Connect America Fund*, 27 FCC Rcd 605(2012) (“*USF/ICC Clarification Order*”).

<sup>5</sup> *Lifeline Reform Order* at 6659.

<sup>6</sup> *Id.* at 6819.

<sup>7</sup> *Id.*

on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan. Additionally, once designated by this Commission as a Lifeline ETC, the designee's Lifeline offerings must reflect a uniform \$9.25 per month federal reimbursement of the Lifeline discount; include specific disclosures in advertising and outreach; include required processes for determining initial and ongoing eligibility; and comply with the reporting and compliance obligations set forth herein. In keeping with the Commission's past practice of adopting the FCC's ETC guidelines, we adopt the guidelines and requirements set forth in the *Lifeline Reform Order*, as well as the requirements of the *USF/ICC Transformation Order* and the *USF/ICC Clarification Order*, in addressing the Petitioner's requested relief.

#### 4. Petitioner's Evidence.

A. Edward R. James, III. Tempo first offered the testimony of its Chief Financial Officer and Senior Vice President, Edward R. James, III. Mr. James acts in the same capacity for Birch Great Lakes, and its parent company, Birch. Mr. James testified that Tempo is financially capable of offering Lifeline services. He stated that Tempo does not intend to rely exclusively on universal service fund disbursements to operate, and will receive revenues from other sources. Mr. James testified that Tempo will initially offer prepaid wireless voice and data services in 19 states and plans to expand its wireless operations to serve approximately 3,000 wireless lines through an acquisition closing in September, 2013. Thus, Mr. James testified that the non-Lifeline portion of Tempo's wireless business will be fully operational prior to Tempo's receipt of ETC designation or its rollout of its prepaid wireless Lifeline services once designated in Indiana. Mr. James stated that 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, he stated that Tempo projects that the majority of its target customer base will not be eligible to receive Lifeline service.

When asked whether Tempo, as a new entity, has adequate operating capital to support its initiation of operations, Mr. James testified that in May 2013, the individual owners of Birch Capital, LLC pledged a significant amount of funding to the Company. He stated that these "start-up" funds are large enough to cover the Company's operating expenses for more than a month. Mr. James testified that Tempo projects it will start accruing revenues from its prepaid non-Lifeline wireless voice and data services in September 2013, and will increase its revenues in October 2013 upon consummation of the previously mentioned acquisition. Since Tempo is not a publicly traded company, Mr. James noted that Tempo filed its financial statements subject to a request for confidential treatment.

In response to questions from the Presiding Officers during the evidentiary hearing, Mr. James confirmed that the financial statements reflect Tempo's projected revenues and expenses for all operations. He noted that Tempo has been designated as an ETC in two states and that since Tempo only began offering service in September, Mr. James estimates that its projections should begin to materialize in approximately three months. When asked why the projections reflect a relatively rapid growth rate, Mr. James explained that this is attributable to the acquisition that recently closed, as well as Tempo's projections to add services for short message service ("SMS") or text messaging, data, which will grow as well. Further, Mr. James explained that the lack of any capital expenditures shown for Tempo is due to Tempo's reliance on Birch's

supply of operational support systems, management, and customer service functions, which are supplied through an inter-company agreement where some services are provided to Tempo at cost. Mr. James testified that funds are available from the owners to support any additional financial need and stated that he is very confident that Tempo can reach the financial benchmarks reflected in its projections. Subsequent to the evidentiary hearing, Tempo submitted a late-filed exhibit reflecting its efforts to obtain a line of credit or other similar instrument from its financial institution.

**B. Gregory Corwin.** Tempo also offered the testimony of Gregory Corwin, its Director of Marketing. Mr. Corwin explained that Tempo is a privately held Georgia limited liability company that is owned and operated by its sole member Birch Equity Partners, LLC (“Birch Equity”). He stated that the majority owners of Birch Equity are R. Kirby Godsey, Holcombe Green, and Vincent Oddo. Mr. Corwin testified that Mr. Godsey and Mr. Green also are the majority owners of Birch Communications Holdings, Inc. (“Birch Holdings”) and Birch, which are the ultimate parent companies of Birch Great Lakes. Mr. Corwin stated that Birch Great Lakes is authorized to provide telecommunications services in Indiana pursuant to Cause No. 41740. He testified that Birch and its affiliates also are authorized to provide telecommunications services in 49 other states and the District of Columbia, with an application pending in Arizona.

Mr. Corwin testified that Tempo provides resold wireless voice and data services and will initially offer wireless services in 19 states. He also noted that through the acquisition of another carrier’s business, Tempo will expand its wireless operations to service approximately 3000 wireless lines throughout the United States starting in September 2013.

Mr. Corwin testified that Tempo has been designated as an ETC for its wireless operations in Kansas and Wisconsin and has ETC applications pending at the FCC for the states of Alabama, Connecticut, Florida, North Carolina, Tennessee, and Texas. Tempo also has ETC designation applications pending in the states of Arkansas, Georgia, Kentucky, Louisiana, Mississippi, Missouri, Ohio, and South Carolina. He stated that Tempo has never been denied ETC designation.

Mr. Corwin testified that Tempo will provide prepaid wireless services to consumers through resold services it obtains from its underlying wireless provider, Sprint. It will also resell the wireless services of Sprint for its non-Lifeline services. He stated that 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”). Mr. Corwin testified that 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.

Mr. Corwin testified that Tempo satisfies all of the requirements for ETC designation contained in both federal and Indiana state regulations. He referenced Tempo’s Verified Petition, which demonstrates that Tempo received conditional forbearance from the FCC of the “own facilities” requirement of Section 214(e)(1)(A) of the Communications Act. Mr. Corwin stated that Tempo’s Compliance Plan was approved by the FCC on August 8, 2012. He clarified that the Compliance Plan was originally filed under the “Birch” name, but Tempo later adopted

the Compliance Plan in its entirety, which was acknowledged by the FCC. Mr. Corwin stated that Tempo expects to be offering Lifeline service in Indiana within 30-60 days of receiving an ETC designation order from the Commission.

When asked whether Tempo has the technical capacity to provide the Lifeline supported services, Mr. Corwin testified that the management and ultimate owners of Tempo are intimately familiar with the financial and technical needs of a telecommunications company. He stated that 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. Mr. Corwin noted that Tempo provided with its Verified Petition the biographies of Tempo's key management, who has sufficient administrative and technical expertise to effectively manage Tempo's operations.

Mr. Corwin testified that upon designation as an ETC in Indiana, Tempo will offer all of the services and functionalities required by 47 C.F.R. § 54.101. He noted that Tempo provided the details of these services and functionalities in its Verified Petition. He stated that Tempo seeks designation only for non-rural areas of the state covered by Sprint's wireless network, which were provided in Exhibits to Tempo's Verified Petition. Accompanying Mr. Corwin's testimony was an electronic map in a geospatial format that outlines Tempo's proposed designated service area. Mr. Corwin also confirmed that Tempo will provide service to customers in the designated area upon reasonable request.

When asked whether Tempo maintains any business facilities or customer service centers in Indiana, Mr. Corwin testified that Tempo relies on Birch for its customer service operations. Birch's customer service centers are located in Macon, Georgia and in Emporia, Kansas. He stated that Tempo will not have any customer service employees located in Indiana at this time. Mr. Corwin noted that Tempo explained in its FCC-approved Compliance Plan that it may utilize third-party dealers located in Indiana to market its Lifeline and non-Lifeline services, but Tempo does not plan to operate any Tempo-branded store locations in Indiana at this time. Mr. Corwin testified that Indiana customers will have access to Tempo's customer service by dialing 611 from their Tempo-provided handset, by accessing Tempo's website, or by dialing Tempo's toll-free customer service number from any phone. He confirmed that customers will not be charged per-minute usage for dialing 611 from their Tempo-provided handset and that customers can visit a Tempo-authorized third-party dealer in person to resolve any customer service issues.

With regard to advertising the supported Lifeline services, Mr. Corwin testified that in general, Indiana customers will learn of Tempo's Lifeline services through marketing materials (print, radio, billboards), partnerships with third-party retail dealers, social service organizations, outbound telemarketing to the extent permitted under state and federal rules, and direct mail. He stated that Tempo will 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. Mr. Corwin testified that Tempo will proactively market its prepaid wireless Lifeline services through state, county, municipal and non-profit community action agencies, associations and networks. Tempo provided a sample of its Lifeline advertising with

its Verified Petition. Mr. Corwin stated that the advertising complies with the FCC's *Lifeline Reform Order* and includes the required disclosures.

Mr. Corwin noted that Tempo's FCC-approved Compliance Plan reflects Tempo's plan to train personnel on the benefits conferred under the Lifeline program, how the Lifeline program works, and eligibility requirements to qualify as a Lifeline customer, including a duplicative service check. Mr. Corwin testified that Tempo will require its third-party dealers to have their employees participate in quarterly webinars to receive training (and re-training) on compliance requirements for Lifeline services. Tempo will also supply each third party dealer with copies of written materials providing detailed information on Lifeline compliance requirements. Tempo will require the third-party dealer to sign documentation certifying that all employees selling Tempo Lifeline services have read the Lifeline compliance requirements provided by Tempo, understand the Lifeline compliance requirements, and will comply with the Lifeline compliance requirements. Mr. Corwin stated that Tempo will conduct periodic audits and random checks of its third-party dealers to ensure compliance with applicable rules. He testified 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. Mr. Corwin indicated that 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.

Mr. Corwin testified that Tempo's planned prepaid wireless Lifeline offering is consistent with the federal Act's requirement that consumers have access to quality services at "just, reasonable, and affordable rates," 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. Mr. Corwin stated that at present, Tempo plans to offer two prepaid wireless Lifeline options at no charge to the customer: a) 250 nationwide minutes; and b) 150 nationwide minutes with the ability to rollover unused minutes to the next month. Mr. Corwin stated that 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 choices
- Voicemail
- National texting, with three (3) texts counting as one (1) minute of use
- 911 and E911 access as available
- 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
- Web/Internet usage, with 1 megabyte (MB) counting as two (2) minutes of use (Web/Internet access dependent on handset)
- Option to purchase additional minutes (which can also be used for texting and Web/Internet access as described above) anytime during the month that are available for 30 days from purchase (and will carry over into the next month) at the following rates:

| Additional Minutes | Price   |
|--------------------|---------|
| 60                 | \$5.95  |
| 100                | \$9.95  |
| 200                | \$14.95 |

Mr. Corwin attached to his testimony Tempo's Terms and Conditions for the Indiana Lifeline offering and noted that the Terms and Conditions will be posted on Tempo's website: [www.mytempo.com](http://www.mytempo.com) and customers will be provided with a link to the Terms and Conditions after completion of enrollment.

Mr. Corwin confirmed that customers will be able to contact customer service from their phone or on line, and they will have access to InTrac services for speech and hearing impaired individuals in compliance with Indiana Code ch. 8-1-2.8. Mr. Corwin testified that Tempo has also committed to comply with the Cellular Telecommunications and Internet Association's ("CTIA") Consumer Code for Wireless Service. Mr. Corwin noted that all wireless handsets Tempo distributes are capable of delivering automatic numbering information and automatic location information and otherwise satisfy the applicable state and federal E911 requirements. He also stated that the Lifeline service plans offer nationwide calling thereby making toll blocking inapplicable. Consistent with the requirements of 47 C.F.R. § 54.202(a)(2), Mr. Corwin stated that Tempo has the ability to remain functional in emergency situations, which includes access to reasonable amounts of back-up power, rerouting of traffic around damaged facilities, and the capability to manage traffic spikes resulting from emergency situations.

Mr. Corwin testified that Tempo will certify and verify consumer eligibility to participate in the Lifeline program in accordance with FCC rules. Specifically, Tempo provided its enrollment and certification forms and explained that it will collect identifying information about the prospective Lifeline recipient; certify eligibility; and require the consumers to acknowledge the terms and conditions of the Lifeline program as delineated by the FCC. As explained in Tempo's FCC Compliance Plan, in states like Indiana where no state-level database exists, Tempo will require potential customers to provide proof of eligibility documentation directly to Tempo (either by fax, mail, or electronic mail, or through an authorized third party dealer). Tempo further committed to comply with any future guidance, directives, or Lifeline rule changes from the FCC or the Universal Service Administrative Company. Mr. Corwin testified that in compliance with the *Lifeline Reform Order*, Tempo will require every consumer enrolled in the Lifeline program to verify on an annual basis that he or she is the head of his or her household, receives Lifeline-supported service only from the Company and, to the best of his or her knowledge, no one else in the subscriber's household is receiving a Lifeline-supported service. Mr. Corwin also stated that as required by the *Lifeline Reform Order*, Tempo will implement a non-usage policy as described in Tempo's Compliance Plan whereby it will de-enroll Lifeline customers that have not used Tempo's Lifeline service for 60 consecutive days.

Mr. Corwin testified that Tempo will collect and remit any fees required by law and contribute to federal and state universal service funds as required by law. He added that Tempo will pay all applicable fees, including the Indiana Telecommunications Relay Access Corporation ("InTRAC") fee pursuant to Ind. Code ch. 8-1-2.8; the public utility fee required under Ind. Code ch. 8-1-6, the Indiana USF fee established in Cause No. 42144; the wireless

enhanced 911 fee required under Ind. Code § 36-8-16.5-30.5. Mr. Corwin indicated that Tempo has the ability to quantify sales made in Indiana and determine which customer accounts remain open or have been closed.

With regard to whether Tempo's ETC designation is in the public interest, Mr. Corwin testified that the public interest benefits include increased competitive choice. He stated that Tempo's ETC designation will provide 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. He said that Tempo's Lifeline services will provide consumers with convenience, control over their telecommunications spending without the imposition of high monthly fees, and the ability to pay for only those services needed. Mr. Corwin testified that Tempo will offer a wireless handset and services package to Lifeline-eligible customers at no charge to the consumer, which will include hundreds of nationwide minutes, texting, voicemail, 911 access, and other features. Tempo will also offer Lifeline customers other plan choices at low costs, including the option to add wireless data plans. Mr. Corwin further noted that subject to economic conditions, Tempo's business model calls for the use of third-party dealers in Indiana and the possible development of a Tempo-branded retail presence in the state. Because the Company is able to serve Indiana customers using existing arrangements and resold services, Mr. Corwin explained that Tempo has no current plans to deploy or construct network facilities in Indiana.

Mr. Corwin confirmed that Tempo will use funds from the Federal Lifeline program to provide supported services to Lifeline customers, and that designation of Tempo as an ETC will not unduly burden the USF or otherwise reduce the amount of funding available to other ETCs. He also noted that designation of Tempo as an ETC will likely increase the Lifeline participation rate of qualified low-income individuals and further the goal of Congress to provide all individuals with affordable access to telecommunications service.

Mr. Corwin affirmed Tempo's commitment to comply with all rules and regulations that the Commission may lawfully impose in connection with its status as an ETC, including annual reporting obligations imposed on other competitive ETC designees; filing Tempo's annual Lifeline Verification survey results; and quarterly reports on the number of Lifeline customers enrolled and deactivated and the reasons for deactivations. If required by the Commission, Mr. Corwin testified that Tempo will annually report the number of complaints per 1,000 handsets or lines as well as the number of requests for service from potential customers that were unfulfilled during the prior year, including Tempo's attempt to provide service to each potential customer.

**5. Commission Discussion and Findings.** Universal service funds are provided in four areas: (1) funds to support service to high-cost areas; (2) provision of discounted telecommunications and internet access to eligible schools and libraries (also known as the "E-Rate" program); (3) funds to assist low-income customers by provision of a monthly discount on telecommunications costs; and (4) provision of discounted service to rural health care providers. *Comprehensive Review of Universal Service Fund Management, Administration and Oversight*, 22 FCC Rcd 16372, 16374 (2007).

Tempo seeks designation in Indiana for the limited purpose of offering federally supported discounted wireless Lifeline service to low-income customers. Accordingly, Tempo's Petition does not involve the other three Universal Service programs. Based on the evidence in the record, we find that Tempo meets the eligibility criteria for ETC designation as contained in Section 214(e)(1) of the Act and related FCC rules, for the limited purpose of offering Lifeline service in Indiana, and satisfies the public interest analysis called for in the *2005 FCC ETC Order*.

A. **Common Carrier.** The first requirement for ETC designation is status as a common carrier under federal law. A common carrier is generally defined by 47 U.S.C. § 153(11) as any person engaged as a common carrier on a for-hire basis in interstate communication utilizing either wire or radio technology (except for radio broadcasters). As a provider of wireless telecommunications services, we find that Tempo is a "common carrier" for purposes of obtaining ETC designation under Section 214(e)(1) of the Act.

B. **Required Service Offerings.** The evidence confirms that upon designation as an ETC in Indiana, Tempo will provide all of the functionalities required of an ETC in the *Lifeline Reform Order* and pursuant to 47 C.F.R. § 54.101(a), as follows:

i. **Voice-grade access to the public switched telephone network.** Pursuant to 47 C.F.R. § 54.101(a), voice telephony services must provide voice grade access to the public switched network or its functional equivalent. No evidence was presented that Tempo's customers would not be able to make and receive calls on the public switched telephone network in accordance with the federal rules. Accordingly, we find that Tempo satisfies this requirement.

ii. **Local usage.** Eligible voice telephony services must provide minutes of use for local service at no additional charge to end users as part of a universal service offering. As the record demonstrates, Tempo will offer users the ability to send and receive local phone calls wherever the company offers service. Mr. Corwin noted that Tempo intends to offer Lifeline customers access to a variety of other features at no cost, including caller ID, call waiting, call forwarding, 3-way calling and voicemail. Based on this evidence, we find that Tempo has satisfied this requirement.

iii. **Access to Emergency Services.** As part of a universal service offering and as required by 47 C.F.R. § 54.101(a), eligible voice telephony services must provide access to the emergency services provided by local government or other public safety organizations, such as 911 and E-911, to the extent the local government in an eligible carrier's service area has implemented 911 or E-911 systems. Mr. Corwin testified that Tempo will provide access to emergency services in conformance with the FCC's requirements. Based on the foregoing, we find that Tempo has satisfied this requirement.

iv. **Toll Limitation for Qualifying Low-Income Consumers.** Voice telephony services eligible for federal universal service support mechanisms must provide toll limitation services to qualifying low-income consumers only for service plans for which the ETC charges a fee for toll calls, either domestic or international, that is in addition to per month or per

billing cycle price of the consumer's Lifeline service.<sup>8</sup> Tempo will not specifically provide toll limitation services which allow low-income customers to avoid unexpected toll charges. However, since Tempo is a prepaid provider, customers cannot be disconnected for failure to pay toll charges nor are there additional charges for exceeding their minutes. Further Tempo does not differentiate local and long distance usage and all usage is paid in advance. Therefore, Tempo is effectively providing toll blocking to qualified Lifeline customers, at no charge, as part of its Lifeline offerings. In the event Tempo offers toll plans as mentioned above, Tempo will be required to offer toll limitation service. Accordingly, the Commission is satisfied that Tempo meets the toll limitation requirement.

**C. Lifeline Service Offering Requirements.** 47 C.F.R. § 54.202(a)(5) requires common carriers seeking designation as an ETC to submit information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan. Mr. Corwin provided evidence that Tempo will offer Lifeline eligible customers the choice of having 250 nationwide minutes or 125 nationwide rollover minutes, with either option also including such additional features as caller ID, call waiting, call forwarding, and voicemail. Three text messages are treated as the equivalent of one minute. One megabyte of data is treated as the equivalent of two minutes of use. The evidence shows that Tempo agrees to comply with all applicable Lifeline requirements upon designation as an ETC.

**D. Functionality in Emergency Situations.** 47 C.F.R. § 54.202(a)(2) requires an ETC to provide a “[d]emonstration of the carrier’s ability to remain functional in emergency situations.” Tempo has certified that it has the ability to remain functional in emergency situations, which includes access to a reasonable amount of back-up power available from the other carriers from whom Tempo purchases wholesale service, as well as those carriers’ rerouting of traffic around damaged facilities, and their capability to manage traffic spikes resulting from emergency situations. Tempo also explained that it 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 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 these measures to the extent there is an emergency. The Commission is satisfied that Tempo is able to meet this requirement.

**E. Advertising Requirements.** Tempo demonstrated that it will broadly advertise the availability and rates for its Lifeline services using a variety of media in conformance with state and federal regulations. Tempo will implement an advertising plan that will reach consumers using varying media and distribution methods. Based on the foregoing, we find that the evidence in the record indicates that Tempo will comply with 47 U.S.C. § 214(e)(1)(B) and all applicable advertising requirements.

**F. Petitioner’s Designated ETC Service Area.** The FCC’s rules define “service area” as a “geographic area established by a state commission for the purpose of

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<sup>8</sup> *Lifeline and Link Up Reform and Modernization*, 26 FCC Rcd 9022, 9027-9028 (2011) ¶ 230

determining universal service obligations and support mechanisms.” 47 C.F.R. § 54.207(a). Tempo is authorized to provide telecommunications service throughout the State of Indiana, but only intends to offer Lifeline service in the non-rural wireless coverage area of Sprint. The wire centers and a geospatial map showing where Tempo will offer Lifeline service were provided with Tempo’s Verified Petition. Accordingly, we approve Tempo’s proposed Lifeline-only ETC service area.

**G. Facilities-Ownership.** Tempo is not a facilities-based CMRS provider and will be reselling the services of other wireless carriers. Federal rules prohibit pure resellers from being designated as ETCs. However, the FCC can grant wireless resellers who seek ETC designation for the limited purpose of providing Lifeline services forbearance from the facilities requirement of 47 U.S.C. § 214(e)(1)(A) if the reseller files a compliance plan that is approved by the FCC and complies with certain 911 requirements. *See 2012 Lifeline Reform Order*, at 6813-6814. The evidence shows that Tempo (f/k/a Now Communications, LLC) adopted the Further Amended Compliance Plan of Birch Communications, Inc. dated June 29, 2012, which was approved by the Wireline Competition Bureau on August 8, 2012. The Wireline Bureau confirmed the adoption of the Compliance Plan by Tempo on December 20, 2012. Accordingly, we find that Tempo has secured the required forbearance from the FCC for the facilities ownership requirement.

In prior Orders granting ETC designation to wireless resellers, the Commission has required the reseller to obtain certification regarding 911 capabilities from each public safety answering point (“PSAP”) in its proposed service area. This requirement was consistent with federal requirements. However, the FCC has since determined that resellers no longer need to obtain individual certifications, but that states may impose a self-certification requirement. *Lifeline Reform Order* at 6815. In an effort to ensure the availability of information concerning the provision of, and access to, 911 and E911 services, it is necessary to have a clear understanding of where a wireless reseller ETC is obligated to provide 911 service and which facilities-based wireless carrier(s) services an ETC is reselling. Therefore, in this instance, we find that it is in the public interest to require Tempo to: (1) certify that it provides subscribers with 911 and E911 access by providing a letter from its underlying facilities-based wireless carrier(s) which affirms the facilities-based wireless carrier is the underlying carrier for the reseller, and it routes all 911 calls from the resellers’ customers to the PSAP in the same manner that it routes 911 calls from its own customers; and (2) provide a self-certification that it is 911 compliant. The certifications shall be submitted to the Commission with copies to the OUCC and the Statewide 911 Board prior to offering Lifeline service in Indiana.

**H. Public Interest Considerations.** As noted above and in accordance with 47 C.F.R. § 54.202(b), the designation of Tempo as an ETC requires a public interest analysis. *See also 2005 FCC ETC Order* at 6389-6390. In the absence of statutory strictures for evaluating the public interest, the FCC has recommended that ETC designations be analyzed “in a manner that is consistent with the purposes of the Act itself, including the fundamental goals of preserving and advancing universal service; ensuring the availability of quality telecommunication services at just, reasonable, and affordable rates; and promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high-cost areas.” *2005 FCC ETC Order*, at 6388.

i. Use of Lifeline Funding. The record indicates that Tempo will use funds from the federal Lifeline program to provide supported services to Lifeline customers. Tempo has met its burden of proof for the Lifeline program. We also note that Tempo will be subject to federal recordkeeping and auditing requirements in 47 C.F.R. § 54.417 and 47 C.F.R. § 54.420 respectively. We find that Tempo's plans are consistent with current FCC regulations on the use of such funds.

ii. Impact on the Universal Service Fund. We have previously recognized that the FCC has undertaken various steps to address the growth in high-cost universal service support disbursements. *See, e.g., Perry-Spencer Communications, Inc.*, Cause No. 41052-ETC-53, 2008 Ind. PUC LEXIS 510, at \*33 (IURC July 24, 2008). Notably, however, Tempo is not seeking access to funding from the federal USF to provide service to high-cost areas. Lifeline support is provided on a customer-specific basis, and only after a carrier has acquired and begun to serve an eligible customer does the carrier receive Lifeline support for that customer. By tying support to actual service of a customer, the Lifeline program ensures that the low-income universal service fund support is only paid to the carrier actually serving a given customer. However, we also recognize that costs for the low income portion of the universal service fund are increasing rapidly. While it is in the public interest that Lifeline eligible customers get connected to affordable telecommunications service, preventing misuse of the Lifeline program is necessary to control unproductive growth of the fund and increased USF surcharges for all Indiana telecommunications customers.

We have historically underscored our concern that prepaid wireless providers may be especially vulnerable to misapplication of the program due to the appeal of free phones and free minutes. Therefore, we find as we did in the Virgin Mobile ETC Order that the public interest requires that we impose certain safeguards on Tempo. To ensure that a prepaid Lifeline offering does not unnecessarily increase USF expenditures, we condition our grant on Tempo's adoption of policies to control waste, fraud and abuse of the Lifeline program, such as terminating service to inactive customers after 60 days of inactivity as described in 47 C.F.R. § 54.405(e)(3); dealing directly with the customer; and obtaining documentation from the customer which demonstrates eligibility with other conditions enumerated in this Order. Provided these requirements are satisfied, along with other conditions and safeguards promulgated in this Order and in FCC rules to deter waste fraud and abuse, we find that Tempo's Lifeline-only designation should not have an excessive impact on the federal universal service fund.

iii. Consumer Protection. One of the requirements established by the 2005 FCC ETC Order was that, regardless of certification date, all ETCs must submit to the FCC, on an annual basis, certification that the ETC is complying with applicable service quality standards and consumer protection rules. 47 C.F.R. § 54.202(a)(3). According to the verified Petition, Tempo will comply with consumer protection requirements in the *CTIA Consumer Code of Conduct*.

iv. Creamskimming. The FCC identified creamskimming as an appropriate factor to consider in "areas where an ETC applicant seeks designation below the study area level of a rural company." See 47 C.F.R. § 54.202(b). That type of analysis is

unnecessary in this case since Tempo seeks ETC designation to serve only the non-rural ILEC territories of AT&T Indiana and Frontier Communications as indicated on its twice amended and subsequently corrected Exhibit A. *See 2005 FCC ETC Order.*

v. *Increased Customer Choice.* Currently in Indiana all ILECs are required to provide the Lifeline discount to eligible customers. In light of Indiana's low Lifeline take rate and recent ETC relinquishments by several other Indiana carriers, Tempo's Lifeline service offerings will bring increased competitive choice to Lifeline eligible customers in Indiana and may reach a particular segment of Lifeline eligible customers that have not yet been reached. Based on the record, we find that Tempo's designation as a Lifeline-only ETC will increase the level of customer choice by expanding the availability of wireless services to qualifying income-eligible Indiana customers.

vi. *Affordable Rates.* We must also consider whether designation as an ETC will "...ensur[e] the availability of quality telecommunications services at just, reasonable, and affordable rates[.]" *2005 FCC ETC Order* at 6388. Tempo presented evidence that its Lifeline offering is free to eligible retail customers choosing either 250 nationwide minutes or 125 nationwide rollover minutes, with either option also including such additional features as caller ID, call waiting, call forwarding, and voicemail. Three text messages are treated as the equivalent of one minute. One megabyte of data is treated as the equivalent of two minutes of use. Tempo offers these "pay-as-you-go" services so customers can purchase the packages they consider most beneficial to them. These packages are similar to other prepaid wireless ETC offerings previously approved by this Commission. The OUCC did not dispute the affordability of Tempo's rates. Accordingly, we find that the designation of Tempo as an ETC would serve the public interest by ensuring the availability of telecommunications services at just, reasonable and affordable rates. Therefore, Tempo should file tariffs consistent with the testimony filed herein prior to offering Lifeline services in Indiana.

vii. *Advantages and Disadvantages of the Offering.* The record reflects that Tempo's Lifeline service offering will expand available, accessible service options for income-eligible Indiana households. Accordingly, we find that Tempo has satisfied this criterion of our public interest inquiry.

viii. *Commitment to Provide Service upon Reasonable Request.* Tempo provided evidence that, to the extent it does not currently have wireless coverage within a portion of its proposed ETC service area, it will consider requests for service, consistent with its universal service obligations. Further, over time, Tempo will expand its coverage to serve consumers throughout its ETC service area. We find that Tempo's commitments satisfy the requirements of 47 C.F.R. § 54.405(a). Accordingly, we find that Tempo has demonstrated its willingness and ability to provide service throughout its requested service area.

ix. *Additional Public Interest Analysis.* ETC designation confers both benefits and burdens upon the petitioning telecommunications service provider. Because the designation gives the provider the right to apply for federal universal service funds, it is essential that the provider comply with its obligations to contribute to public interest funds and not have a competitive advantage over other Indiana telecommunications carriers by avoiding such

obligations. We find that it would not be competitively neutral to designate an ETC permitting it to collect public funds, yet not contribute its fair share to public interest funds from which its network and its customers benefit. Tempo has testified to its willingness to comply with Indiana laws and policies regarding public interest funds for which the Commission has administrative oversight, including the public utility fee pursuant to Indiana Code ch. 8-1-6; the InTRAC fee pursuant to Indiana Code ch. 8-1-2.8; and the Indiana Universal Service Fund pursuant to the Commission's Order in *Commission Investigation of Universal Service Reform*, Cause No. 42144, 2004 Ind. PUC LEXIS 61 (IURC March 17, 2004). In addition, Tempo submitted a late-filed exhibit indicating that customer disputes can be submitted to this Commission or resolved through arbitration in Indiana. Based on the foregoing public interest analysis, we conclude that designating Tempo as an ETC will promote the public interest and further the goals of the Act.

x. *Determination of Financial and Technical Ability.* In the *Lifeline Reform Order*, the FCC concluded that a common carrier seeking to be designated as a Lifeline-only ETC must demonstrate its technical and financial capacity to provide the supported service. The FCC provided that relevant considerations for such a showing include whether the applicant previously offered services to non-Lifeline consumers, how long it has been in business, whether the applicant intends to rely exclusively on USF disbursements to operate, whether the applicant receives or will receive revenue from other sources, and whether it has been subject to enforcement action or ETC revocation proceedings in any state. The FCC added these criteria to compel a more rigorous review of companies prior to designating them as eligible to receive reimbursement from the federal universal service fund. In addition to the *Lifeline Reform Order*, the FCC adopted a new rule found in 47 C.F.R. 54.201(h) which states:

A state commission shall not designate a common carrier as an eligible telecommunications carrier for purposes of receiving support only under subpart E [Lifeline] of this part unless the carrier seeking such designation has demonstrated that it is financially and technically capable of providing the supported Lifeline service in compliance with subpart E of this part.

We previously noted that it is plausible that an adequately-funded, professionally-managed and sufficiently robust entrant which provides meaningful evidence to that effect should not be eliminated from consideration merely because of insufficient longevity. The record demonstrates that while Tempo is a new entrant, it has sufficient funding pledged from its owners to support its initial operations. Tempo also provided evidence that it is working toward securing a stand-by line of credit that will act as an additional financial backstop while Tempo gains its footing in the market. Additionally, Tempo offered evidence that it will begin serving a substantial customer base as the result of the recent acquisition by Birch of Lightyear Communications and the migration of those customers to Tempo. Tempo has never been the subject of an enforcement or ETC revocation proceeding. This evidence, coupled with the fact that Tempo plans to support its operations with non-Lifeline service and value added services including data, lead us to conclude that Tempo is sufficiently robust to provide Lifeline service. Finally, Tempo will rely on the management and support systems of Birch, which has been operating as a profitable competitive local exchange carrier since 1996. Based on the evidence in the record, the Commission is satisfied that Tempo possesses the financial and technical ability to provide Lifeline services.

6. **Regulatory Oversight.** This Commission has recognized certain specific regulatory requirements that competitive wireless ETC applicants must satisfy in order to secure and maintain their ETC status in Indiana. See e.g., *Nextel*, Cause No 41052 ETC 43, 2004 Ind. PUC LEXIS 87 (IURC March 17, 2004). Such regulatory requirements stem from the FCC's mandate that state commissions certify that federal USF support is being used "only for the provision, maintenance and upgrading of facilities and services for which the support is intended," consistent with 47 U.S.C. § 254(e). Absent such a certification, carriers will not receive such support. In order for this Commission to satisfy its ETC certification requirements to the FCC, it requires ETC applicants to file a tariff with the Commission and track its USF expenditures. See *Commission Investigation of Universal Service Reform*, Cause No. 40785, 1997 Ind. PUC LEXIS 354 (IURC November 15, 1997). The record reflects Tempo's intention to comply with the Commission's Lifeline tariff filing requirement. Petitioner must also comply with USF tracking requirements this Commission previously established to ensure that funds received from the Universal Service Administrative Company for Indiana are devoted to furthering universal service goals within Tempo's Indiana ETC designated service area. Accordingly, we find that Tempo's terms and conditions of service should be incorporated into its Lifeline tariff for Indiana and filed with the Commission's Communications Division for review prior to Tempo making its universal service offering available to eligible consumers in Indiana.

In previous ETC designations of prepaid wireless Lifeline providers, the Commission (and the FCC) imposed a condition that the ETC deal directly with the customer as an additional safeguard to prevent abuse of the Lifeline program. Mr. Corwin testified that Tempo exerts a great deal of oversight over third party sales agents and requires that Tempo's own employees review and verify the eligibility of every applicant prior to activating Lifeline service. Tempo states that its primary marketing strategy will not include the use of temporary structures such as tents and buses, although it may use those means on a limited basis but only when direct employees of Tempo are present and when Tempo produces and sanctions the marketing material disseminated at such an event. Tempo conducts audits to further confirm eligibility, and secures customer sensitive data by using a firewall and a private company network that is not publicly available on the internet. Tempo committed in testimony to require each customer to self-certify under penalty of perjury that he or she is the only member of a household receiving the Lifeline discount and that he or she does not receive the Lifeline discount for any other phone. Tempo indicated it will require Lifeline customers to provide copies of documentation demonstrating that they are eligible for Lifeline based upon participation in one of the qualifying low income programs or based upon income. Tempo will abide by the applicable regulations of the FCC and the Commission regarding certification and verification of customer eligibility.

7. **Prospective ETC Reporting Requirements.** Finally, we find that Tempo shall be required to meet the prospective reporting requirements consistent with new federal rules in 47 C.F.R § 54.422 which include reporting: (1) the ETCs holding company and operating names, any affiliate relationships, and branding as well as universal service identifiers; (2) information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan; (3) detailed information on any outage

in the prior calendar year: (4) number of complaints per 1000 handsets; (5) certification of compliance with applicable service quality standards; and (6) certification that the carrier is able to function in emergency situations.

**8. Conditions Imposed on Tempo's Designation as an ETC.** In accordance with the Commission's findings above, Tempo shall be subject to the following conditions:

- (a) Approval shall be subject to Tempo's Compliance Plan approved by the FCC and subject to the Lifeline plans, rates, conditions and procedures set forth in the Compliance Plan.
- (b) Consistent with 47 C.F.R. § 54.407, Tempo shall not receive universal service support for a subscriber to lifeline service until the subscriber activates the service.
- (c) Tempo shall deactivate a Lifeline account if the customer has no usage for 60 consecutive days. Tempo shall report annually the number of subscribers de-enrolled for non-usage under 47 C.F.R. § 54.405(e)(3). This de-enrollment information must be reported by month and must be submitted to the Commission at the time an eligible telecommunications carrier submits its annual certification report pursuant to 47 C.F.R. § 54.416.
- (d) Tempo is authorized to offer Lifeline-eligible customers the Lifeline packages set forth in the testimony provided by Mr. Balvanz which shall include either a plan consisting of 125 rollover minutes which is free to Lifeline customers or a plan which provides for 250 non-rollover minutes and is also free to Lifeline customers. Prior to providing Lifeline service in Indiana, Tempo shall file a tariff which defines all terms and conditions of their proposed Lifeline plans and airtime minute cards consistent with the Commission's findings herein and notify the Commission in the form of a new tariff if any terms, conditions or allocation of free minutes change.
- (e) Tempo shall provide its Lifeline customers with 911 and E-911 access regardless of activation status and availability of prepaid minutes as of the date it provides Lifeline services in Indiana.
- (f) Tempo shall provide its Lifeline customers with E-911 compliant handsets and replace, at no additional charge, noncompliant handsets of existing customers who obtain Lifeline supported services as of the date it provides Lifeline services in Indiana.
- (g) Tempo shall certify 911 compliance in accordance with Paragraph 5.G. above.
- (h) Tempo shall establish safeguards to prevent its customers from receiving multiple Lifeline subsidies at the same address as required by 47 C.F.R. § 54.405 and abide by the *Lifeline Reform Order* and the FCC's *2011 Duplicative Program Payments*

*Order*,<sup>9</sup> which requires ETCs to explain to consumers in plain, easily comprehensible language that they are not permitted to receive more than one Lifeline subsidy.

- (i) On a quarterly basis Tempo shall provide: (1) the number of Indiana Lifeline customers that it enrolled during the previous quarter, with the data listed separately for each month; (2) the number of deactivated Lifeline customers for each month in the previous quarter and the reasons for deactivation (e.g., no usage for 60 consecutive days, unsuccessful annual verification, or voluntary exit); and (3) an update on Tempo's investment in establishing stores and hiring employees in Indiana. Quarterly reports shall be filed with the Commission no later than 30 days after the end of each quarter. Tempo will continue to make such quarterly filings until otherwise instructed by the Commission.
- (j) Tempo shall certify the eligibility of Lifeline customers pursuant to 47 C.F.R. § 54.410 requiring prospective Lifeline customers to demonstrate that they are eligible for Lifeline based upon participation in one of the qualifying low income programs or based upon income.
- (k) Pursuant to 47 C.F.R. § 54.410, Tempo shall notify each Lifeline customer on an annual basis and request confirmation of continued eligibility by requiring that the customer re-certify continued eligibility for the discount based upon income or participation in a qualifying low income program. Such verification will be required in order for the consumer to continue to purchase prepaid airtime at the discounted rate. Consistent with the changes precipitated by the *Lifeline Reform Order* relating to the timing of verifications to USAC and the FCC, Tempo shall provide the Commission with a copy of its Lifeline re-certification results that it files annually with USAC by January 31 each year.
- (l) Tempo shall contribute to the InTRAC Fund on a monthly basis in an amount equal to the Commission approved InTRAC monthly surcharge multiplied by the number of active Tempo accounts during each month, consistent with the Commission's January 19, 2005 Order in Cause No. 39880 and Ind. Code ch. 8-1-2.8.
- (m) Tempo shall pay applicable fees, such as the public utility fee, pursuant to Ind. Code ch. 8-1-6; the InTRAC fee pursuant to Ind. Code ch. 8-1-2.8; the Indiana USF fee pursuant to the 42144 Order; the wireless emergency E-911 fee pursuant to Ind. Code § 36-8-16.5-30.5 and any other applicable fees.

We therefore find, based on the evidence presented, that Tempo has met all of the ETC eligibility requirements and that the public interest supports granting ETC status to Tempo for the limited purpose of participation in the Lifeline program. We find that making Tempo's Lifeline service available to eligible customers will increase customer choice and will not

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<sup>9</sup> *Lifeline and Link Up Reform and Modernization*, 26 FCC Rcd 9022, 9027-9028 (2011).

adversely affect the USF. Tempo has the financial and technical capability to provide Lifeline service in compliance with State and Federal law. Tempo also has demonstrated it has the ability to satisfy the obligation to serve the designated service areas within a reasonable time frame. Finally, we note that the Commission has the statutory authority to investigate, as it deems necessary, Tempo's compliance with this Order and its eligibility for ETC designation. We further find that Tempo should be subject to the prospective reporting requirements and conditions set forth herein.

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

1. Tempo Telecom, LLC's petition for designation as an Eligible Telecommunications Carrier for the limited purpose of participation in the Universal Service Fund's Lifeline program, for the service areas identified in Tempo Telecom, LLC's evidence, is granted.

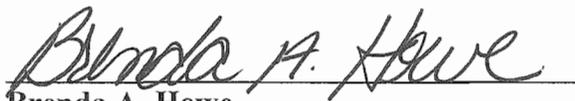
2. Tempo Telecom, LLC's request for authority to apply for or receive universal service funds from the Lifeline program pursuant to 47 U.S.C. § 254 is granted, subject to Tempo Telecom, LLC's compliance with the terms, conditions and reporting requirements of this Order and other applicable laws.

3. This Order shall be effective on and after the date of its approval.

**ATTERHOLT, LANDIS, MAYS, AND ZIEGNER CONCUR:**

**APPROVED: DEC 18 2013**

**I hereby certify that the above is a true and correct copy of the Order as approved.**



**Brenda A. Howe**  
**Secretary to the Commission**