

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Tempo Telecom, LLC**  
**Designated Eligible Carrier**  
**Application**

**Case No. PU-14-34**

**ORDER ON ELIGIBLE TELECOMMUNICATIONS CARRIER DESIGNATION**

**November 6, 2014**

**Preliminary Statement**

On January 15, 2014, Tempo Telecom, LLC (Tempo), owned by Birch Equity Partners, LLC, a Georgia company organized under Georgia law and with offices located at 3060 Peachtree Road, NW, Suite 1065, Atlanta, Georgia, 30305, filed an application (Application) for designation as an eligible telecommunications carrier (ETC) for the purpose of receiving federal universal service support for low-income consumers under 47 CFR Part 54 Subpart E. This designation is also known as Lifeline-only ETC designation. Tempo proposes to provide prepaid Lifeline universal services to qualifying low income consumers as a commercial mobile radio service (CMRS) carrier throughout North Dakota wire centers currently served by Sprint.

On January 29, 2014, the Commission issued a Notice of Opportunity for Hearing (Notice) providing until March 18, 2014, for comments and requests for hearing. No comments or requests for hearing were received. The Notice identified the issues to be considered in this matter:

1. Is the applicant qualified under the Telecommunications Act of 1996, Section 214(e) for designation as an ETC eligible to receive federal universal service funding?
2. What ETC universal service support area should be designated?
3. Is designation of the applicant as an ETC in the public interest?

The Notice stated that the Commission can determine the matter without a formal hearing.

On January 21, 2014, the Commission requested additional information from Tempo. Tempo filed responses to the request for additional information on February 25, 2014.

On February 25, 2014, Tempo filed a Certification Relating to Order Provisions (Certification), signed by Jamie Sark, Senior Projects Manager at Tempo.

On March 25, 2014, the Commission held an Informal Hearing to discuss the issues with Tempo.

On April 10, 2014, Tempo filed an amendment to the Application.

On April 24, 2014, Tempo requested the Commission delay action on the Application in order to allow it to submit additional financial documentation. Tempo filed financial documentation in support of the Application on May 29, 2014, and on September 26, 2014.

### **ETC Designation**

The Telecommunications Act of 1996 provides financial support for universal services to common carriers that have been designated as ETCs and that (1) offer the universal services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services and (2) advertise the universal services, advertise the availability of such services, and advertise the charges for such services, using media of general distribution.

In its *Report and Order and Further Notice of Proposed Rulemaking* released February 6, 2012 in Docket No. FCC 12-11 at paragraph 368, the Federal Communications Commission found that it would forbear from the "own-facilities" requirement contained in section 214(e)(1)(A) for carriers that seek to become, Lifeline-only ETCs, subject to the following conditions: (1) the carrier must comply with certain 911 requirements and (2) the carrier must file, and the FCC must approve, a compliance plan providing specific information regarding the carrier's service offerings and outlining the measures the carrier will take to implement Lifeline service obligations as well as further safeguards against waste, fraud and abuse the FCC may deem necessary.

Under 47 CFR 54.201, a carrier seeking Lifeline-only ETC designation must demonstrate that it is financially and technically capable of providing Lifeline service in compliance with 47 CFR Subpart E. Tempo is seeking Lifeline-only ETC designation. Tempo is not seeking high-cost support as part of its ETC Application.

Both federal law and state law give the Commission the authority to designate a common carrier as an ETC. In areas served by a rural telephone company, the Commission must find that ETC designation is in the public interest.

Tempo is a Georgia limited liability company. Tempo has been authorized to do business in the State of North Dakota since August 21, 2013, when it filed its Articles of Incorporation with the North Dakota Secretary of State, as evidenced by the corporate papers filed with the Commission on January 15, 2014, in Case No. PU-14-37.

Tempo is a common carrier and reseller of commercial mobile radio service, and will offer all of the services and functionalities detailed in Section 54.101(a) of the FCC Rules.

Tempo generates revenues from non-Lifeline services and currently provides prepaid wireless services to approximately 6,000 wireless non-Lifeline customers nationwide. Therefore, Tempo is not solely dependent on reimbursements from the Universal Service Fund. Tempo is authorized as a wireless ETC in five states. Tempo has not been subject to enforcement action at the FCC or in any state.

Tempo has a resale agreement with Sprint, and will be using their wireless network infrastructure and wireless transmission facilities in order to provide service as a Mobile Virtual Network Operator in North Dakota.

Tempo will offer at no charge to qualified consumers their choice of a 150 or a 250 minute Lifeline wireless calling plan. The 150 minute plan allows unused minutes to be carried over to the next month, while the 250 minute plan does not. Both plans offer a free wireless handset and a nationwide calling area with voicemail, caller ID, call forwarding, and call waiting at no charge. As an option, consumers may use text at three nationwide texts consuming one plan minute, and data with each megabyte consuming two plan minutes. There will be a per-minute charge for international calls, and additional minutes can be purchased in bundles of 60, 100, and 200. Other calling features and optional voice services will also be made available for purchase.

Tempo seeks only Lifeline support from the low-income mechanism of the federal Universal Service Fund and does not seek support from the high-cost support mechanism. Because Tempo does not seek support from the high-cost support mechanism, designation of Tempo as a Lifeline-only ETC will not pose any adverse effect on the growth in the high-cost portions of the Universal Service Fund (USF), nor will it create or contribute to an erosion of high-cost funding from any rural or non-rural telephone company. Increasing the number of designated Lifeline-only ETCs in North Dakota will provide the opportunity for increased participation by qualified consumers in the Lifeline program.

North Dakota Administrative Code §69-09-05-12(6)(a) requires a full description of available services in the ETC's official telephone directory. Since Tempo is a CMRS provider, it does not have an official telephone directory in North Dakota and requests a waiver from this requirement pursuant to North Dakota Administrative Code §69-09-05-12(2)(c) and (d).

Tempo has adopted a Compliance Plan, which was filed with the FCC on June 29, 2012, and approved by the FCC on August 8, 2012. The Wireline Competition Bureau confirmed the adoption of the Compliance Plan by Tempo on December 20, 2012, and thereby granted Tempo forbearance from the statutory requirement that

Tempo provide service using its own facilities in order to be designated as a Lifeline-only ETC.

The Certification provided by Tempo binds the company to certain future actions they will undertake as a Lifeline-only ETC, and is incorporated by reference and attached to this order.

Consumers qualifying for the Lifeline plans offered by Tempo will receive the benefits of nationwide and international calling areas and the convenience and security of mobile telephone service. Tempo will bring increased customer choice and the benefits of competition.

### **Universal Service Support Area**

The Commission must establish a geographic area (service area) for the purpose of determining universal service obligations and support mechanisms for the designated ETC. 47 U.S.C. §214(e)(5).

The Act defines service area:

**SERVICE AREA DEFINED--** The term "service area" means a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

In its *Memorandum Opinion and Order*, FCC 13-44, released April 15, 2013, the Federal Communications Commission has determined that carriers may be designated as a Lifeline-only ETC in partial rural service areas.

In this proceeding, Tempo is requesting ETC designation throughout the service area of Sprint in the state of North Dakota; a listing and description of each exchange for which Tempo is seeking ETC status in North Dakota is given in Exhibit 6 of the Application.

Tempo has demonstrated that it is financially and technically capable of providing Lifeline service in compliance with 47 CFR Subpart E.

Based on the evidence in this proceeding, Tempo is qualified under the Telecommunications Act of 1996, Section 214(e) for designation as an ETC eligible to receive federal universal service support for low-income consumers under 47 CFR Part 54 Subpart E.

It is in the public interest that Tempo be designated as a Lifeline-only ETC in throughout the service area requested.

Tempo registered with the Commission to provide commercial mobile radio and long distance services on August 26, 2013. Tempo filed its telecommunications reseller performance bond with the Commission on September 3, 2013.


Having allowed all interested persons an opportunity to be heard and having heard, reviewed and considered all testimony and evidence presented, the Commission makes the following:

### Order

The Commission orders:

1. Tempo Telecom, LLC, is designated an eligible telecommunications carrier for the purpose of receiving federal universal service support for low-income consumers under 47 CFR Part 54 Subpart E. The designated service area in this proceeding consists of all the service area described in Exhibit 6, which is incorporated by reference and attached to this order.
2. Tempo Telecom, LLC, shall comply with the applicable annual reporting requirements set forth in North Dakota Administrative Code §69-09-05-12.1.
3. Under North Dakota Administrative Code §69-09-05-12(2)(c) and (d), Tempo Telecom, LLC, is granted a waiver of the requirements of North Dakota Administrative Code §69-09-05-12(6)(a) regarding the publication of a full description of its services in an official telephone directory.
4. Until further notice, Tempo Telecom, LLC, shall file at least annually, or more often if requested by the Public Service Commission, a complete list of Tempo Telecom, LLC's North Dakota consumers and waivers for each consumer on the list including North Dakota Department of Human Services Department Form SFN 1059, Authorization for Release of Information 449-55-05.

### PUBLIC SERVICE COMMISSION

  
**Randy Christmann**  
Commissioner

  
**Brian P. Kalk**  
Chairman

  
**Julie Fedorchak**  
Commissioner

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Tempo Telecom, LLC**  
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**CERTIFICATION**

I am Jamie Sark, a representative of Tempo Telecom, LLC (Tempo) with authority to bind Tempo and I certify that:

1. Tempo understands and agrees to the conditions and criteria set forth in Chapter 49-21 of the North Dakota Century Code and Chapter 69-09-05 of the North Dakota Administrative Code that pertain to Wireless Lifeline Only Eligible Telecommunications Carriers (ETC), and that Tempo will be responsible for compliance with this Certification, the Public Service Commission's order designating Tempo as an ETC, and conditions and criteria set forth in the applicable federal and state laws and rules pertaining to Eligible Telecommunications Carriers offering Lifeline Only services.
2. Tempo agrees to comply with all statements, processes and procedures set forth in its Application for designation as an ETC in the non-rural and rural wire centers in North Dakota identified in its Application. Tempo agrees that all statements made and matters set forth in its Application are true and correct to the best of Tempo's knowledge, information, and belief.
3. Tempo will use the federal low-income universal service support it receives only for the provision of services for which the support is intended.
4. Tempo meets all of the prerequisites to be designated as an ETC throughout its proposed ETC Designated Area in the state of North Dakota.
5. Tempo provides each of the services supported by federal universal service support mechanisms, specified in Federal Communications Commission's (FCC's) rules, 47 C.F.R. § 54.101, and will offer these supported services in North Dakota upon designation as an ETC, including voice grade access, minutes of use for local service at no additional charge, access to emergency services and toll limitation services.
6. Tempo will provide the supported services on a timely basis to requesting customers within Tempo's designated service area where Tempo's underlying carriers' network exists.

7. Tempo will provide service within a reasonable period of time, if the potential customer is within Tempo's proposed designated service area but outside its existing network coverage, if service can be provided at reasonable cost by:
  - (a) Modifying or replacing the requesting customer's equipment;
  - (d) Adjusting network or customer facilities; or
  - (e) Reselling services from another carrier's facilities to provide service.
8. Tempo is not seeking Universal Service Fund high-cost support as part of its Application.
9. Tempo will use all available means to ensure customers are eligible for the Lifeline program at the time of sign-up and recertification in accordance with the federal default eligibility criteria in 47 C.F.R. § 54.409(2) and the relevant proof documentation specified in 47 C. F. R. § 54.410. Tempo will check all available databases including the FCC's National Accountability Database and the National Lifeline Eligibility Database when fully functional to prevent duplication and determine eligibility.
10. Tempo has taken, and will continue to take, steps to work with its underlying carriers to remain functional in emergency situations by: (1) maintaining a reasonable amount of backup power to ensure functionality without an external power source; (2) maintaining the ability to re-route traffic around damaged facilities and to manage traffic spikes resulting from emergency situations; and (3) establishing procedures for employees to follow in an emergency to prevent or minimize interruption or impairment of telecommunications services.
11. Tempo will meet or exceed applicable consumer protection and quality standards and will comply with the Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service.
12. Tempo will advertise the availability of the supported services detailed in its Application, and the corresponding rates and charges, in a manner designed to inform the general public within North Dakota. This advertising will occur through a combination of media channels, such as television and radio, newspaper, magazine and other print advertisements, outdoor advertising, direct marketing, and the Internet.
13. Tempo will offer the services described in its Application.
14. Tempo understands and agrees that if Tempo has not advertised its Lifeline services or signed up any North Dakota customers within 12 months of the effective date of Tempo's designation as a Lifeline-only ETC, the Public Service Commission may revoke Tempo's ETC designation and Tempo may reapply to be designated as a Lifeline-only ETC in North Dakota.

15. Tempo understands and agrees that it may be required by the FCC to provide equal access to long distance carriers in the event that no other ETC provides equal access within Tempo's designated ETC service area.
16. Tempo will comply with all applicable annual reporting requirements associated with being an ETC in North Dakota including filing with the Public Service Commission a copy of each report filed with the FCC, within 30 days of filing with the FCC.
17. Tempo will file at least annually or more often if requested by the Public Service Commission, a complete list of its customers and waivers, including North Dakota Department of Human Services' Form SFN 1059, Authorization for Release of Information 449-55-05, for each customer on the list until such time as the Public Service Commission deems this reporting no longer necessary.
18. Tempo understands and agrees that its ability to offer service is subject to suspension or revocation for failure to comply with the Public Service Commission's orders, or applicable statutes, rules, regulations, standards, and other authorizations.
19. Tempo agrees to maintain the records to demonstrate that Tempo has complied with the requirements of the Public Service Commission's order(s) and that Tempo will preserve records demonstrating compliance for Public Service Commission inspection at any reasonable time upon reasonable notice.
20. Tempo understands and agrees that, to the extent there are any conflicts or inconsistencies between Tempo's Application and the provisions in this Certification, the Certification provisions control.

Dated this 27<sup>TH</sup> day of JANUARY, 2014.

TEMPO TELECOM, LLC

By

  
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Jamie Sark

Its Senior Projects Manager

# **EXHIBIT 6**

Tempo's designated service area in North Dakota is Sprint's wireless coverage area or Sprint's licensed service area, which comprises a portion of or the entirety of the following exchanges:

CLLI	RC ABBRE	CITY	STATE	OCN_NAME
ABRCNDXA	ABERCROMBI	ABERCROMBIE	ND	RED RIVER RURAL TEL ASSN - ND
ABSRNDXA	ABSARAKA	ABSARAKA	ND	ABSARAKA COOPERATIVE TELEPHONE CO.
ALICNDXA	ALICE	ALICE	ND	INTER-COMMUNITY TELEPHONE COMPANY, LLC
ARTHNDXA	ARTHUR	ARTHUR	ND	POLAR COMMUNICATIONS MUTUAL AID CORP.
BFLONDXA	BUFFALO	BUFFALO	ND	INTER-COMMUNITY TELEPHONE COMPANY, LLC
CGTNNDXA	BOWDON	CARRINGTON	ND	DAKOTA CENTRAL TELECOMMUNICATIONS COOP.
CLFXNDXA	COLFAX	COLFAX	ND	RED RIVER RURAL TEL ASSN - ND
CSLTNDBC	CASSELTON	CASSELTON	ND	QWEST CORPORATION
DHLNNDXA	DAHLEN	DAHLEN	ND	POLAR COMMUNICATIONS MUTUAL AID CORP.
ELDLNDXA	CRETE	ELLEDALE	ND	DICKEY RURAL TELEPHONE COOPERATIVE
ENDRNDXA	ENDERLIN	ENDERLIN	ND	MOORE & LIBERTY TELEPHONE CO.
GFABNDBC	EMERADO	GRAND FORKS AIR BASE	ND	QWEST CORPORATION
GLBGNDXA	GALESBURG	GALESBURG	ND	POLAR COMMUNICATIONS MUTUAL AID CORP.
GLBYNDXA	GILBY	GILBY	ND	POLAR COMMUNICATIONS MUTUAL AID CORP.
GRNRNDBC	GARDNER	GARDNER	ND	QWEST CORPORATION
GRTBNDXA	GREAT BEND	GREAT BEND	ND	RED RIVER RURAL TEL ASSN - ND
HKSNDXA	HANKINSON	HANKINSON	ND	RED RIVER RURAL TEL ASSN - ND
HLBONDBC	HILLSBORO	HILLSBORO	ND	QWEST CORPORATION
HLSTMNXH	HALSTAD	HALSTAD	ND	HALSTAD TELEPHONE CO.
HNTRNDXA	HUNTER	HUNTER	ND	POLAR COMMUNICATIONS MUTUAL AID CORP.
HTTNDBC	HATTON	HATTON	ND	QWEST CORPORATION
JMTWNDBC	JAMESTOWN	JAMESTOWN	ND	QWEST CORPORATION
KNDRNDBC	KINDRED	KINDRED	ND	QWEST CORPORATION
LGWDNDXA	LIDGERWOOD	LIDGERWOOD	ND	RED RIVER RURAL TEL ASSN - ND
LNRDNDMW	LEONARD	LEONARD	ND	QWEST CORPORATION
LRMRNDBA	LARIMORE	LARIMORE	ND	QWEST CORPORATION
MANVNDBC	MANVEL	MANVEL	ND	QWEST CORPORATION
MRTNNDXA	MOORETON	MOORETON	ND	RED RIVER RURAL TEL ASSN - ND
MYVLNDBC	MAYVILLE	MAYVILLE	ND	QWEST CORPORATION
NOMENDXA	NOME	NOME	ND	INTER-COMMUNITY TELEPHONE COMPANY, LLC
NWODNDBC	NORTHWOOD	NORTHWOOD	ND	QWEST CORPORATION
PAGENDXA	PAGE	PAGE	ND	INTER-COMMUNITY TELEPHONE COMPANY, LLC
PKRVND01	BROCKET	PARK RIVER	ND	POLAR COMMUNICATIONS MUTUAL AID CORP.

Tempo's designated service area in North Dakota is Sprint's wireless coverage area or Sprint's licensed service area, which comprises a portion of or the entirety of the following exchanges:

PTBGNDXA	PETERSBURG	PETERSBURG	ND	POLAR COMMUNICATIONS MUTUAL AID CORP.
RBSNNDXA	PETTIBONE	ROBINSON	ND	BEK COMMUNICATIONS COOPERATIVE
RYNLNDBC	REYNOLDS	REYNOLDS	ND	QWEST CORPORATION
SNBRNDXA	SANBORN	SANBORN	ND	INTER-COMMUNITY TELEPHONE COMPANY, LLC
STELNDXA	STEELE	STEELE	ND	BEK COMMUNICATIONS COOPERATIVE
THSNNDXC	THOMPSON	THOMPSON	ND	QWEST CORPORATION
TWCYNDXA	TOWER CITY	TOWER CITY	ND	INTER-COMMUNITY TELEPHONE COMPANY, LLC
VLCYNDBC	VALLEYCITY	VALLEY CITY	ND	QWEST CORPORATION
WFRGNDBC	FARGO	WEST FARGO	ND	QWEST CORPORATION
WLCTNDXA	WALCOTT	WALCOTT	ND	WOLVERTON TELEPHONE CO. - ND
WYNDNDBA	WYNDMERE	WYNDMERE	ND	RED RIVER RURAL TEL ASSN - ND