



STATE OF NEW JERSEY
Board of Public Utilities
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OFFICE OF CABLE TELEVISION
AND TELECOMMUNICATIONS

IN THE MATTER OF PETITION OF TEMPO TELECOM,) ORDER
LLC FOR DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER IN THE STATE)
OF NEW JERSEY) DOCKET NO. TE23070457

Parties of Record:

Lance J.M. Steinhart Esq., TEMPO TELECOM, LLC
Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On July 21, 2023, TEMPO TELECOM, LLC (“TEMPO” or “Company”) filed a petition with the New Jersey Board of Public Utilities (“Board”) requesting designation as an Eligible Telecommunications Carrier (“ETC”) to provide Lifeline¹ service to qualifying New Jersey consumers (“Petition”). By the Petition, TEMPO sought ETC designation solely for the purpose of providing Lifeline service and does not seek access to funds from the federal Universal Service Fund (“USF”) for participation in the Link-Up program or for providing service to high-cost areas.

TEMPO is a Georgia limited liability company and provider of prepaid wireless services throughout the United States, and prepaid wireless Lifeline services in the following 21 states: Colorado, Georgia, Hawaii, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, Nevada, North Dakota, Ohio, Rhode Island, South Carolina, Utah, West Virginia, Wisconsin, and Wyoming.

The Lifeline program provides qualifying low-income consumers discounts for voice, broadband Internet, or bundled voice-broadband packages to help ensure access to affordable communications services. To be eligible for participation in the Lifeline program, the Federal Communications Commission (“FCC”) requires consumers to either have an income that is at or below 135% of the Federal Poverty Guidelines or participate in certain federal assistance programs, such as the Supplemental Nutrition Assistance Program (“SNAP”), Medicaid, Federal

¹ Lifeline service is a federally funded program that is part of the Universal Service Fund and provides up to \$9.25/month subsidy directly to the ETC that serves the qualified low-income consumer. 47 C.F.R. § 54.403(a).

Public Housing Assistance, Supplemental Security Income, the Veterans and Survivors Pension Benefit, or certain Tribal Programs. 47 C.F.R. § 54.409.

The Board has jurisdiction to designate Wireless ETCs in accordance with Section 214(e)(2) of the federal Communications Act of 1934 ("Act"), as amended. 47 U.S.C. 214(e)(2). The FCC has exclusive jurisdiction to regulate the rates and conditions of market entry of mobile services. 47 U.S.C. § 332(c)(3)(A). However, states are expressly permitted to regulate the "other terms and conditions" of commercial mobile services and approve ETC designations. Id.

Petition

In the Petition, the Company averred that it meets all the statutory and regulatory requirements (see: *Lifeline and Link Up Reform Order*², *the Lifeline Modernization Order*³, and *the Fifth Report and Order*⁴) for designation as an ETC in the State of New Jersey. Section 214(e)(2) of the Act and 47 C.F.R. § 54.201(d) require that ETCs meet the following criteria for designation as an ETC:

- 1) Common carrier status;
- 2) Offer all the supported services in its Lifeline service offering;
- 3) Offer Lifeline service throughout its designated ETC service area;
- 4) Advertise the availability of Lifeline service; and
- 5) Meet all requirements for designation as an ETC for purposes of providing Lifeline services.

² In re Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training, WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, WC Docket No. 12-23, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012) ("Lifeline and Link Up Reform Order").

³ In re Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund, WC Docket No. 11-42, WC Docket No. 00-197, WC Docket No. 10-90, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38 (rel. Apr. 27, 2016) (hereinafter, "Third Report and Order" or "Lifeline Modernization Order").

⁴ In re Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, WC Docket No. 17-287, WC Docket No. 11-42, WC Docket No. 09-197, Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 19-111 (rel. Nov. 14, 2019) (hereinafter, "Fifth Report and Order").

According to the Petition, TEMPO satisfies the existing criteria established under federal law,⁵ the FCC rules and orders,⁶ and applicable New Jersey requirements. TEMPO stated that it:

1. Is a common carrier.⁷
2. Will provide all supported services required by 47 C.F.R. §54.101(a).
3. Will advertise the availability of supported services and rates using media of general distribution as required by 47 C.F.R. § 54.201(d)(2).
4. Will provide Lifeline service wherever its underlying, facilities-based providers have wireless coverage.
5. Will certify and comply with the service requirements applicable to the low-income support that it receives pursuant to 47 C.F.R. § 54.202(a)(1)(i).
6. Demonstrates it has the ability to remain functional in emergency situations pursuant to 47 C.F.R. § 54.202(a)(2).
7. Satisfies consumer protection and service quality standards, pursuant to 47 C.F.R. § 54.202(a)(3).
8. Has demonstrated that it is financially and technically capable of providing Lifeline-supported services pursuant to 47 C.F.R. § 54.202(a)(4).
9. Will provide all services supported by the universal service program, as detailed in 47 C.F.R. § 54.101(a), throughout New Jersey.
10. Will comply with certification and verification requirements in accordance with 47 C.F.R. § 54.410.
11. Will comply with the requirements of the National Lifeline Accountability Database (“NLAD”) and 47 C.F.R. § 54.404 of the FCC’s rules.
12. Will provide the Board a copy of its annual certifications and Lifeline recertification results pursuant to 47 C.F.R. § 54.416 (i.e., FCC Form 555), as well as a copy of its annual report filed pursuant to 47 C.F.R. § 54.422 (i.e., FCC Form 481), and will comply with applicable Board reporting requirements for Lifeline ETCs.
13. Will comply with rules and regulations imposed by the Board.

⁵ 47 C.F.R. § 54.202(a)(1).

⁶ 47 C.F.R. § 54.201(d). In its USF/ICC Transformation Order, the FCC modified the required supported services in 47 C.F.R. § 54.101 and the additional requirements for designation as an ETC in 47 C.F.R. § 54.202. In re Connect America Fund, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, released November 18, 2011 (“USF/ICC Transformation Order”)

⁷ See 47 U.S.C. § 332(c)(1)(A).

As a Commercial Mobile Radio Service (“CMRS”) provider and as a common carrier, TEMPO indicated that it would provide affordable prepaid wireless telecommunications services to consumers by using the underlying wireless networks of Tier 1 carriers, currently T-Mobile USA, Inc. (“T-Mobile”), on a wholesale basis.

TEMPO asserted that it is able to provide all of the supported voice telephony services required by 47 C.F.R. § 54.101(a) as follows:

1. Voice Grade Access to the Public Switched Telephone Network (“PSTN”) through the purchase of wholesale CMRS services from T-Mobile.
2. Minutes of Use for Local Usage, at no additional charge by offering rate plans that provide its customers with minutes of use for local service at no additional charge.
3. Access to Emergency Services by providing 911 and Enhanced 911 access for all of its customers free of charge to the extent the local government in its service area has implemented 911 or E911 systems.
4. Toll Limitation to qualifying low-income consumers. The FCC has determined that toll limitation is no longer deemed a supported service.⁸ Nonetheless, TEMPO’s offerings allow Lifeline subscribers to control their usage, as its wireless service is offered on a prepaid, or pay-as-you-go basis. TEMPO’s service, moreover, is not offered on a distance-sensitive basis and local and domestic long-distance minutes are treated the same.

TEMPO indicated that it recognizes that Section 214(e)(1)(A) of the Act states that ETCs shall offer services, at least in part, over their own facilities, and that Section 54.201(i) of the FCC’s Rules (47 C.F.R. § 54.201(i)) prohibits state commissions from designating as an ETC a telecommunications carrier that offers services exclusively through the resale of another carrier’s services. However, the FCC has granted forbearance from enforcement of this facilities requirement to carriers seeking Lifeline-only ETC designation.⁹ In addition, with respect to carriers seeking to provide Lifeline-only service, the FCC authorized forbearance from the requirement that an ETC’s service area conform to the service area of any rural telephone company serving the same area.¹⁰ In light of this forbearance, the Board may grant designation to ETCs such as TEMPO in rural areas, provided all other applicable requirements are met.

Under Title I, section 10(e) of the Act (47 U.S.C. § 160(e)) it states that: “[a] State commission may not continue to apply or enforce any provision of this chapter that the [Federal Communications] Commission has determined to forbear from applying under subsection (a) of this section.” As such, TEMPO contended that the Board is required by Section 10(e) to act in accordance with the FCC’s grant of forbearance, and therefore, may not apply the facilities-based

⁸ Lifeline and Link up Reform Order at ¶ 367.

⁹ Lifeline and Link up Reform Order at ¶ 368.

¹⁰ In re Telecommunications Carriers Eligible for Support, Lifeline and Link Up Reform, WC Docket No. 09-197, WC Docket No. 11-42, Memorandum Opinion and Order, FCC 13-44 ¶ 1 (rel. April 15, 2013)(citing 47 U.S.C. §§ 160 and 214(e)(5); 47 C.F.R. 54.207(b)).

requirement to TEMPO. Accordingly, TEMPO asserted that the Board has the authority under Section 214(e)(2) of the Act to grant TEMPO's request for designation as an ETC throughout the State of New Jersey.

TEMPO represented that it has the ability to provide all services supported by the USF, as detailed in 47 C.F.R. § 54.101(a), throughout New Jersey. TEMPO stated in the Petition that it intends to provide affordable prepaid mobile phone service, including calling, text, messaging and broadband access. Upon designation as an ETC, TEMPO indicated that it commits that its Lifeline-supported voice services will meet or exceed the minimum service standards set forth in 47 C.F.R. § 54.408, including as such standards are updated going forward. TEMPO stated that its Lifeline-supported broadband services will also meet the minimum service standards set forth in 47 C.F.R. § 54.408 for mobile broadband internet access services, including for service speed and data usage allowance, as such standards are updated going forward. To the extent TEMPO provides devices for use with Lifeline-supported broadband service, such devices will meet the equipment requirements set forth in 47 C.F.R. § 54.408(f), and TEMPO will not impose an additional or separate tethering charge for mobile data usage below the minimum standard. TEMPO proposes to offer its Lifeline customers the following:

- 1) 1,000 voice minutes,
- 2) Unlimited text messages, and
- 3) 4.5 GB of data per month at no cost

TEMPO's proposed offering will also include:

- 1) Free calls to TEMPO Customer Service
- 2) Free calls to 911 emergency services
- 3) Free access to Voicemail, Caller-ID, and Call Waiting features
- 4) Voice minutes may be used for Domestic Long Distance at no extra cost.

According to the Petition, and in response to a discovery request from Board Staff ("Staff"), TEMPO stated that it will provide user-friendly handsets, tablet or hotspot devices. TEMPO will provide for free the BLU C5L handset. If customers receive the phone and it is damaged, and call TEMPO within 14 days of receipt, TEMPO will replace/provide a refund for the phone. While the Company does not replace lost/stolen phones, it will offer to sell the customer another phone. TEMPO offers technical support via Customer Support on devices. All devices are new, and the customer has the option to purchase or bring their own device. The Company will not require service contracts from its customers and it will always ensure competitively low pricing for its services and products. TEMPO will manage all aspects of the customer experience, including setting service pricing, handset selection, marketing materials, and customer service. The Company asserted that its prepaid, budget-friendly pricing will give many low-income consumers the option of having mobile phone service and broadband access without the burden of hidden costs, varying monthly charges, or contractual commitments. If customers need additional minutes or data, they can purchase as set forth on TEMPO's website: <https://mytempo.com/plans/>.

Customers in New Jersey can apply to the National Eligibility Verifier ("National Verifier") via mail or online.¹¹ TEMPO indicated that it will rely on the National Verifier to determine initial and

¹¹ The National Verifier launched in New Jersey on October 11, 2019.

ongoing eligibility of New Jersey Lifeline subscribers as required by the FCC. TEMPO utilizes the standard Lifeline application forms as required by FCC rules, and thus complies with the disclosure and information collection requirements in 47 C.F.R. § 54.410(d).¹² In order to combat waste fraud and abuse, the Company indicated that it will comply with the requirements of the National Lifeline Eligibility Accountability Database to determine if a customer is currently receiving a Lifeline benefit.

The Company claimed that designation of TEMPO as an ETC would further competition for wireless Lifeline service and would significantly benefit low-income consumers eligible for Lifeline services in New Jersey—the intended beneficiaries of universal service.

By letter dated February 5, 2024, the New Jersey Division of Rate Counsel submitted comments to the Board on the petition and does not oppose approval if the Board determines that TEMPO meets the ETC designation requirements.

DISCUSSION

To qualify as a Lifeline-only ETC, carriers must offer Lifeline subscribers Lifeline-supported voice service (mobile or landline), broadband internet service, or a package of voice and broadband service. The Board **HEREBY FINDS** that TEMPO has demonstrated that it meets or exceeds all of the current FCC requirements and has pledged to comply with any existing or proposed federal requirements. The Board, however, requires the Company to adhere to the following as conditions of approval:

- 1) To continue to work with the National Verifier in order to prevent waste, fraud, and abuse of the Lifeline program;
- 2) To submit to the Board total federal funds received and the number of customers served in New Jersey. This information must be submitted with a certification made by an officer of the Company attesting to its accuracy;
- 3) To provide any other data or information deemed necessary by Staff to evaluate compliance with all federal and state requirements;
- 4) To provide the Board a copy of its annual certifications and Lifeline recertification results pursuant to 47 C.F.R. § 54.416 (i.e., FCC Form 555), as well as a copy of its annual report filed pursuant to 47 C.F.R. § 54.422 (i.e., FCC Form 481), and will comply with applicable Board reporting requirements for Lifeline ETCs.
- 5) To comply with all FCC rules and reporting requirements as well as Universal Service Administrative Company (“USAC”) audit requirements and submit to the Board total federal funds received and the number of customers served in New Jersey. This information must be submitted with a certification made by an officer of the Company attesting to its accuracy.

¹² FCC Wireline Competition Bureau Provides Guidance on Universal Forms for the Lifeline Program, WC Docket No. 11-42, Public Notice, “Wireline Competition Bureau Provides Guidance on Universal Forms for the Lifeline Program,” DA 18-161 (rel. Feb. 20, 2018). The standard application/certification forms are available on USAC’s website (See USAC, Lifeline Forms, <http://www.usac.org/li/tools/forms/default.aspx>).

TEMPO, in its Petition and responses to Staff's discovery requests, has indicated that it will comply with the FCC and Board requirements. After careful review of the record, the Board is satisfied that TEMPO meets and exceeds the relevant criteria established to receive approval for designation as an ETC from this Board. Therefore, the Company's petition is **HEREBY APPROVED** as conditioned herein. The Board **DIRECTS** that the Director of the Office of Cable Television and Telecommunications, with the assistance of the Office of the Attorney General, if such assistance is deemed necessary, send the appropriate notice of this Order designating TEMPO as an ETC to the FCC and Universal Service Administration Company. TEMPO's ETC designation may, at any time, be suspended or revoked by order of the Board.

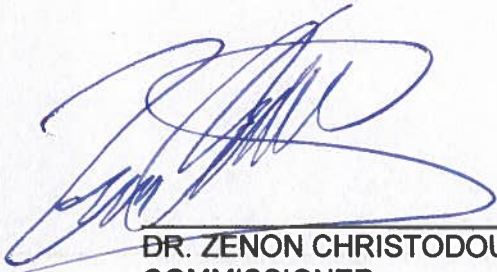
This Order shall be effective on March 27, 2024.

DATED: March 20, 2024

BOARD OF PUBLIC UTILITIES
BY:



CHRISTINE GUHL-SADOVY
PRESIDENT



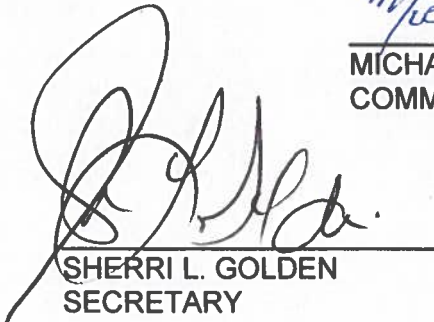
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COMMISSIONER



MARIAN ABDOU
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MICHAEL BANGE
COMMISSIONER



ATTEST:

SHERRI L. GOLDEN
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities.

IN THE MATTER OF PETITION OF TEMPO TELECOM, LLC FOR DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STATE OF NEW JERSEY

DOCKET NO. TE23070457

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