

**Minnesota Public Utilities Commission**  
*Staff Briefing Paper*

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Meeting Date: December 11, 2014..... \* Agenda Item # 1

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Company:      Tempo Telecom, LLC

Docket No.    P-6919/M-13-1137  
                  In the Matter of the Petition of Tempo Telecom, LLC (Tempo) for Designation as  
                  an Eligible Telecommunications Carrier (ETC) in Minnesota

Issues:        Should the Commission approve Tempo’s petition for ETC designation?

Staff:         Kevin O’Grady.....651-201-2218

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***Relevant Documents***

Tempo Petition ..... December 12, 2013  
Comments: DOC.....November 5, 2014  
Comments: Tempo.....November 19, 2014

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The attached materials are work papers of Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

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## *Procedural Background*

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**On December 12, 2013**, Tempo filed a petition seeking designation as an Eligible Telecommunications Carrier (ETC) in Minnesota for the purpose of providing voice telephony service to Lifeline-qualified customers.

**On November 5, 2014**, the Minnesota Department of Commerce (DOC) filed comments. DOC recommended approval of Tempo's request, subject to conditions.

**On November 19, 2014**, Tempo filed comments noting that it did not object to the conditions proposed by DOC.

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## *Introduction*

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The Telecommunications Act (Act) makes provision for the subsidization of voice telephony service for customers in high-cost areas and for low-income customers. Section 214(e)(1) of the Act dictates that to receive federal universal service support a common carrier must be designated as an Eligible Telecommunications Carrier (ETC). Section 214(e)(2) grants state commissions the authority to determine whether a petitioning carrier should be granted ETC status.

Tempo seeks ETC status from this Commission for the provision of prepaid wireless services to customers eligible for Lifeline support in the areas of Minnesota served by its underlying carrier, Sprint. If the Commission grants Tempo's petition Tempo will be one of fifteen prepaid wireless carriers that hold ETC designation in Minnesota.<sup>1</sup>

Table 1 summarizes the criteria, established by the FCC, the Minnesota legislature and the Minnesota Commission, to be used in reviewing requests by prepaid wireless carriers for Lifeline-only ETC designation.

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<sup>1</sup> The Commission has granted ETC designation to a number of prepaid wireless carriers: **Telrite** (Docket 11-132, 11/30/11, renewed 11/28/12); **Midwestern** (Docket 10-1174, 12/1/11, revoked 1/10/13); **TerraCom** (Docket 11-202, 11/5/12); **Virgin Mobile** (Docket 11-314, 12/7/12); **i-wireless** (Docket 11-473, 12/27/12); **Budget Prepay** (Docket 11-976, 1/18/13); **Global Connections** (Docket 11-910, 2/19/13); **Q Link** (Docket 11-1249, 3/18/13); **Boomerang** (Docket 12-969, 3/28/13); **Nexus** (Docket 10-264, 5/13/13); **Blue Jay** (Docket 12-11-1, 10/17/13); **TAG Mobile** (Docket 12-1153, 12/10/13); **American Broadband** (Docket 13-675, 5/28/14); **Total Call** (Docket 12-1182, 7/15/14) and **Tracfone** (Docket 09-802, 10/3/14).

<b>Table 1. Criteria for Approval of Eligible Telecommunications Carrier Designation</b>	
<b>Number</b>	<b>Criterion</b>
<b>1</b>	<b>Common Carriage and Supported Services.</b> The applicant must be a common carrier and commit to providing voice telephony services: (1) voice grade access to the public switched telephone network or its functional equivalent, (2) minutes of local usage at no additional charge, (3) access to 911 and E-911 services, and (4) toll limitation for qualifying low-income customers. (47 USC § 214(e)(1) and 47 CFR § 54.101)
<b>2</b>	<b>Facilities Ownership.</b> The applicant must offer services either using its own facilities or a combination of its own facilities and resale of another carrier's services. (47 USC § 214(e)(1)(A))
<b>3</b>	<b>Service Offering.</b> The applicant must file information describing the terms and conditions of any voice telephony plan offered to Lifeline subscribers. (47 CFR § 54.202(a)(5))
<b>4</b>	<b>Advertising Plan.</b> The applicant must publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for service. ((47 CFR § 54.405(b))
<b>5</b>	<b>Emergency Functionality.</b> The applicant must demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations. ((47 CFR § 54.202(a)(2))
<b>6</b>	<b>Consumer Protection.</b> The applicant must demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment to comply with the Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service will satisfy this requirement. ((47 CFR § 54.202(a)(3))
<b>7</b>	<b>Informational Tariff.</b> The applicant must file an informational tariff, or customer service agreement that shows the rates, service plans, cost of related equipment and installation charges, and all terms and conditions related to the universal service offering, and including the CTIA's Consumer Code for Wireless Service.
<b>8</b>	<b>Financial and Technical Ability.</b> The applicant must demonstrate that it is financially and technically capable of providing Lifeline service. ((47 CFR § 54.202(a)(4))
<b>9</b>	<b>Payment of 911 Fees.</b> The applicant may not provide service as an ETC until and unless the Commissioner of the Minnesota Department of Public Safety certifies that the applicant is not in arrears in amounts owed to the 911 emergency

	telecommunications service account. (Minn. Stat. § 403.11)
<b>10</b>	<b>Public Interest.</b> Prior to designating an eligible telecommunications carrier the state commission shall determine that such designation is in the public interest. (47 USC § 214(e)(2))

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## *Comments of the Parties*

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### DOC Comments

DOC recommends the Commission find that Tempo has made a credible showing of its capability and intent to provide and advertise an affordable, quality Lifeline offering, throughout its proposed service area, and that its designation for the provision of Lifeline service is in the public interest, subject to conditions. DOC recommends that the Commission approve Tempo's petition for ETC status for the limited purpose of providing Lifeline service to qualifying Minnesota customers, conditioned upon the following:

- a) Tempo shall offer, in Minnesota, the highest number of free minutes of usage offered in any jurisdiction by Tempo, and supplementary minutes offered at the lowest price offered in any other jurisdiction in which Tempo provides wireless Lifeline service, provided that the available support is the same.
- b) Within 30 days of the Commission's Order conditionally approving Tempo's petition, Tempo must submit a formal advertising and outreach plan listing the specific local and community newspapers and commercial broadcast stations in Minnesota through which it intends to advertise the availability of Lifeline service and a proposed schedule or anticipated frequency of such advertising. Tempo should state whether it will sign customers up for Lifeline service and distribute phones at in-person events, and if so, describe its methodology for doing so. Tempo should provide information as to how often and at what locations such events will be conducted.
- c) Within 30 days of the Commission's Order conditionally approving Tempo's petition, Tempo must file a revised informational tariff as recommended by DOC in its comments. Tempo should also be required to ensure that the Terms and Conditions applicable to Minnesota customers, posted on its website, do not conflict with the terms and conditions included in its Minnesota informational tariff.

- d) Tempo should be required to notify the Commission and DOC, in writing, immediately upon any change to the Lifeline offering terms, conditions, or rates, or if it seeks to withdraw its Lifeline offering or any portion thereof. Tempo must submit a revised tariff or customer service agreement page to reflect such changes.
- e) Tempo shall report any unfulfilled requests of Lifeline-qualified customers. If it determines that it cannot reasonably serve a qualified consumer within its service area, it will report the unfulfilled request to DOC and the Commission within 10 days after making such a determination.
- f) Tempo shall comply with the collection and remittance provisions of Minn. Stat. §§ 403.11 and 237.52.
- g) Tempo must complete the certification process required by the Department of Public Safety (DPS) and file its certificate, signed by DPS, prior to operating in Minnesota.
- h) Tempo shall provide customers with access to usable phones. Frequent static or other interference on the line, lack of clarity, dropped calls, inability to place a call, or receive a call under normal circumstances are not acceptable. If the buttons on phones are too small to use, for example, Tempo shall provide customers an opportunity to try a different make or model. Tempo must make hearing-aid compatible handsets available to Lifeline-qualified customers, at no charge.
- i) Policies regarding repair, maintenance, replacement of handsets, batteries, and chargers and options to purchase handsets must be clear to consumers, and available to consumers who do not have web access. Tempo shall provide detailed information in writing, at the time of enrollment, of repair and replacement policies for phones and accessories (batteries, chargers) and purchase options. Within 30 days of the Commission's Order designating Tempo as an ETC, Tempo shall update its Lifeline Terms and Conditions to include its repair and replacement policies.
- j) Tempo shall provide cell phone instruction manuals to its Lifeline customers.
- k) Tempo shall provide its customers access to customer service without lengthy hold-times and without use of air-time minutes.
- l) To the extent that Tempo conducts, or employ agents to conduct, in-person distribution events, it shall provide consumers with access to information, via telephone as well as website, on all Minnesota distribution events, locations, and times.

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**Tempo Comments**

Tempo has no objections to the conditions proposed by DOC.

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***Staff Comment***

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Staff supports Tempo's petition subject to the conditions recommended by DOC. However, Staff suggests minor modifications to the DOC recommendations, largely replacing "should" with "shall" as indicated below.

**Commission Options**

1. Find that Tempo has made a credible showing of its capability and intent to provide and advertise an affordable, quality Lifeline offering, throughout its proposed service area, and that its designation for the provision of Lifeline service is in the public interest, subject to conditions. Approve Tempo's petition for ETC status for the limited purpose of providing Lifeline service to qualifying Minnesota customers, conditioned upon the following:
  - a) Tempo shall offer, in Minnesota, the highest number of free minutes of usage offered in any jurisdiction by Tempo, and supplementary minutes offered at the lowest price offered in any other jurisdiction in which Tempo provides wireless Lifeline service, provided that the available support is the same.
  - b) Within 30 days of the Commission's Order conditionally approving Tempo's petition, Tempo must submit a formal advertising and outreach plan listing the specific local and community newspapers and commercial broadcast stations in Minnesota through which it intends to advertise the availability of Lifeline service and a proposed schedule or anticipated frequency of such advertising. Tempo ~~should~~ shall state whether it will sign customers up for Lifeline service and distribute phones at in-person events, and if so, describe its methodology for doing so. Tempo ~~should~~ shall provide information as to how often and at what locations such events will be conducted.
  - c) Within 30 days of the Commission's Order conditionally approving Tempo's petition, Tempo must file a revised informational tariff as recommended by DOC in its comments. Tempo ~~should also be required to~~ shall ensure that the Terms and Conditions applicable to Minnesota customers, posted on its website, do not conflict with the terms and conditions included in its Minnesota informational tariff.

- d) Tempo ~~should~~ shall be required to notify the Commission and DOC, in writing, immediately upon any change to the Lifeline offering terms, conditions, or rates, or if it seeks to withdraw its Lifeline offering or any portion thereof. Tempo must submit a revised tariff or customer service agreement page to reflect such changes.
- e) Tempo shall report any unfulfilled requests of Lifeline-qualified customers. If it determines that it cannot reasonably serve a qualified consumer within its service area, it ~~will~~ shall report the unfulfilled request to DOC and the Commission within 10 days after making such a determination.
- f) Tempo shall comply with the collection and remittance provisions of Minn. Stat. §§ 403.11 and 237.52.
- g) Tempo must complete the certification process required by the Department of Public Safety (DPS) and file its certificate, signed by DPS, prior to operating in Minnesota.
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- j) Tempo shall provide cell phone instruction manuals to its Lifeline customers.
- k) Tempo shall provide its customers access to customer service without lengthy hold-times and without use of air-time minutes.
- l) To the extent that Tempo conducts, or employ agents to conduct, in-person distribution events, it shall provide consumers with access to information, via telephone as well as website, on all Minnesota distribution events, locations, and times.

2. Reject Tempo's petition.

3. Take other action.

Staff recommends option #1.