

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-1374T

IN THE MATTER OF THE APPLICATION OF TEMPO TELECOM, LLC FOR
DESIGNATION AS A WIRELESS ELIGIBLE TELECOMMUNICATIONS CARRIER IN
THE STATE OF COLORADO FOR THE LIMITED PURPOSE OF OFFERING LIFELINE
SERVICE TO QUALIFIED HOUSEHOLDS

STIPULATION AND SETTLEMENT AGREEMENT

Tempo Telecom, LLC ("Tempo" or the "Company"), Trial Staff of the Public Utilities Commission of the State of Colorado ("Staff"), and the Colorado Office of Consumer Counsel ("OCC") (collectively the "Stipulating Parties" or the "Parties"), enter into this Stipulation and Settlement Agreement ("Stipulation") regarding the Application filed by Tempo in the instant Proceeding. The Parties submit this Stipulation for approval by the Colorado Public Utilities Commission (the "Commission" or the "PUC") pursuant to the Commission's Rules of Practice and Procedure, 4 CCR 723-1-1407 and 1408.

PRELIMINARY STATEMENT

1. On May 8, 1997, the Federal Communications Commission ("FCC") issued its Universal Service Report and Order, 12 FCC Rcd. 8776 (1997) ("Universal Service Order") implementing the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Federal Act"). The FCC provided further guidance on Eligible Telecommunications Carrier ("ETC") designation in its ETC Report and Order issued March 17, 2005, Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd. 6371, 6384 (2005).

2. The Universal Service Order provides that where states certify ETCs, such as is the case in Colorado, only ETCs designated by a state public utilities commission ("State Commission") shall receive federal universal service support. Under 47 U.S.C. § 214(e), a State

Commission shall, upon its own motion or upon request, designate a common carrier that meets the requirements set forth by the FCC as an ETC for a service area designated by the State Commission. The FCC defines a service area as a geographic area established by a State Commission for the purpose of determining universal service obligations and support mechanisms.

3. To be designated as a federal ETC under the Federal Act, a carrier must: (1) be a common carrier; (2) demonstrate an intent and ability to provision the supported services set forth in 47 C.F.R. § 54.101(a) throughout its designated service areas; and (3) demonstrate an intent and ability to advertise its universal service offerings and the charges therefor, using media of general distribution. 47 U.S.C. § 214(e); Universal Service Order, 12 FCC Rcd. at 8791.

4. The FCC's supported services, as set forth in 47 C.F.R. § 54.101(a), which was revised on December 23, 2011, are:

- a. voice grade access to the public switched telephone network or its functional equivalent;
- b. minutes of use for local service without additional charge to the end user;
- c. access to emergency services; and
- d. toll limitation for qualifying low-income consumers.

5. On February 6, 2012, the FCC issued a Report and Order and Further Notice of Proposed Rulemaking, ("Lifeline Reform Order")¹, in which it issued blanket forbearance from

¹ See *In the Matter of 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 12-23, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd. 6656 (FCC rel. Feb. 6, 2012) (Lifeline Reform Order).

the facilities-based requirement to all carriers that were seeking limited ETC designation for the purpose of offering Lifeline service only.² Lifeline-only ETCs are now subject to the following conditions:

- a. provide Lifeline subscribers with 911/E911 access, regardless of activation status and availability of minutes;
- b. provide E911-compliant handsets and replace noncompliant handsets at no additional charge; and
- c. file a compliance plan with the FCC for approval that includes the procedures to enroll a subscriber in Lifeline service and for reimbursement for that subscriber, sample marketing materials, materials on initial and ongoing certification, how the carrier will offer service, the geographic areas in which it will offer service, and a detailed description of its Lifeline service plans including the rates, number of minutes and types of plans available to Lifeline subscribers.

6. In addition, the Lifeline Reform Order eliminated Link Up support for all ETCs serving non-Tribal lands.³

7. The Lifeline Reform Order further requires that a carrier seeking ETC designation

² *Id.* at ¶ 496.

³ *Id.* at ¶ 245.

for the purpose of offering Lifeline-only must demonstrate its technical and financial capacity to provide the supported services.⁴

8. This Commission has adopted its own rules for implementing 47 U.S.C. Section 214(e)(1)-(2) of the Federal Act which appear at 4 CCR 723-2-2180 through 2191, which rules are consistent with Section 214(e) and the FCC's rules.

9. On December 24, 2013, Tempo filed an Application ("Application") seeking designation as an ETC for the limited purpose of receiving universal service support for low-income subscribers in Colorado, Proceeding Number 13A-1374T. Tempo sought ETC designation for the limited purpose of offering Lifeline service to consumers who reside in the geographic service area where its underlying carrier, Sprint, provides coverage in the State of Colorado, excluding any exchanges served by rural incumbent local exchange carriers. A list of the exchanges in which Tempo was seeking ETC status in Colorado is shown on Exhibit 8 to Tempo's Application.

10. The Parties engaged in settlement discussions regarding issues raised by Tempo's Application.

11. The Parties have now reached agreement on all the issues that were, or could have been raised in this Proceeding as set forth herein. This Stipulation is entered into for the purpose of avoiding the costs and risks of litigation. The Parties agree this Stipulation shall only bind the parties hereto and shall not legally bind the Parties with respect to other applications and proceedings before the Commission other than in a subsequent proceeding to enforce the terms of this Stipulation.

⁴ *Id.* at ¶ 388.

AGREEMENT

WHEREFORE, based on their review of all testimony and exhibits submitted and upon their settlement discussions, the Parties hereby stipulate and agree as follows:

1. Tempo is a beneficial user of the Sprint network.
2. Attachment 1 hereto is a list of the exchanges in which Tempo will offer Lifeline service throughout each entire exchange and in which the Parties agree Tempo should be granted ETC status in Colorado.⁵ Tempo will not assess roaming charges to any Lifeline subscribers for use within any of the exchanges listed in Attachment 1 or within Sprint's coverage area.
3. Tempo will advertise the availability of the supported services throughout its designated service areas using media of general distribution pursuant to 47 U.S.C. § 214(3)(1)(B) in a manner that is designed to reach those likely to qualify for such services. Tempo intends to use media such as newspapers of general circulation, radio, and television, in addition to direct mailing and providing promotional materials to social service organizations having interaction with those likely to qualify for Lifeline services. In light of these obligations and the fact that Tempo does not maintain or produce a White Pages directory, the Parties agree that Tempo should be granted a permanent waiver of the portion of 4 CCR 723-2-2187 (d)(VII) regarding the placing of consumer guide pages in the "White Pages" directory within the ETC service area as requested by Tempo.⁶

⁵ This list differs from the list provided in Exhibit 8 to Tempo's Application.

⁶ Contemporaneously with the filing of this Stipulation, Tempo has filed an Unopposed Motion for Waiver of Certain Rules ("Tempo's Motion for Waiver") in which it specifically requests this waiver as well as a number of additional waivers agreed to by the Stipulating Parties that are discussed below.

5. Tempo seeks ETC designation for the limited purpose of providing universal service low-income Lifeline service in Colorado. Tempo is neither seeking Federal universal service high-cost support (“USF”) nor Colorado high cost support mechanism (“CHCSM”) support in its service area.

6. Because Tempo does not seek high cost USF or CHCSM support and for other reasons set forth in Tempo’s Motion for Waiver, the Parties agree that it would be in the public interest and consistent with the Lifeline Reform Order⁷ for Tempo to be granted a full waiver of Rule 2187(f)(II) (F), (G), (H) and (K) through (N), which would otherwise require the submission of detailed information about network expansion plans paid for by high cost funds in areas where Tempo has been designated an ETC, a Colorado-specific trial balance, and a build-out plan showing Tempo’s intended use of high cost funds. As to duration, the Parties agree that this waiver be in effect until either (1) Tempo provides services solely on its own network, (2) this Commission modifies Rule 2187(f)(II)(F), (G), (H) and (K) through (M) or (3) the FCC modifies its blanket forbearance of the “own facilities” requirement. The Parties also agree that the waiver of the Colorado-specific trial balance requirement in Rule 2187(f)(II)(N) should be permanent. Finally, for the reasons noted above, the Parties agree that a full waiver of Rule 2187(d)(XIII) regarding a build-out plan for universal service is warranted and should be permanently granted.

7. The Parties agree that the Commission should grant Tempo a waiver of Rule 2187(F)(II)(A) given that the recent changes to the Lifeline program eliminated the reporting of unfulfilled requests.

⁷ The Lifeline Reform Order streamlined the reporting requirements for ETCs designated by the FCC and an ETC applicant is no longer required to submit a five-year network improvement plan.

8. Tempo requests partial waiver of Rule 2187(F)(II)(O) that requires affidavit language concerning receipt of high cost support. Because Tempo is not seeking high cost support from the USF or CHCSM support, the Parties agree that it would be in the public interest and consistent with the Lifeline Reform Order reporting requirements to not require Tempo to attest that it is aware of the purposes of High Cost Support and is in compliance with 47 U.S.C. § 254(e) when it will not receive any such support. The Parties agree the Commission should grant this partial waiver and that Tempo will submit an affidavit attesting that all required information provided in its annual filing is true and correct.

9. Tempo should also be granted full waiver of Rule 2187(d)(III) that requires a proposed ETC to describe in its application the service area in which the Applicant seeks designation as an ETC by metes and bounds. As to duration, the Parties request that this waiver be for the filing of this Application only since the metes and bounds description is information to be included in an application when filed. Sprint's physical network does not precisely correlate with a metes and bounds description as required by Rule 2187(d)(III). However, a list of the wire centers in Colorado where Tempo has shown an intent and ability to offer the supported services once designated as an ETC throughout the service area is set forth in Attachment 1.

10. Tempo's Lifeline program furthers the statutory goal that basic service be available and affordable to all citizens of the state of Colorado.

11. Tempo's Lifeline product offering provides an additional choice of another provider offering Lifeline service for low-income consumers, which is a significant benefit for those consumers and is in the public interest.

12. The Parties stipulate and agree that Tempo has shown good cause that its Lifeline service offerings as described in Attachment 3 meet all applicable state and federal requirements,

that Tempo's ETC designation for Colorado low-income universal service purposes will serve the public interest, convenience and necessity, that Tempo does not receive high cost USF support in Colorado, that Tempo's advertising adequately informs potential subscribers of the availability of Tempo's Lifeline service throughout its proposed ETC service area, and that the Commission should grant Tempo's Motion for Waiver.

Federal ETC Designation For the Limited Purpose of Offering Lifeline

1. Tempo is a commercial mobile radio service ("CMRS") provider and a common carrier as defined by 47 U.S.C. § 153(10) and 47 C.F.R. § 20.9(a)(7).

2. Tempo has been granted ETC status to offer Lifeline wireless services in Georgia, Indiana, Iowa, Kansas, Kentucky, Maryland, Missouri, Nevada, Rhode Island, South Carolina, and Wisconsin.

3. Tempo has not been subject to any enforcement action at the FCC or in any state. No ETC designations held by Tempo have been rescinded, revoked, or terminated by the FCC or by any state regulatory agency. Tempo has operated in the United States since 2013 and its owners and management have significant experience in providing high-quality telecommunications services. It obtains the majority of its revenue from selling non-Lifeline prepaid wireless voice and data services on a nationwide basis. Tempo will not need to rely exclusively on federal USF support and will not need, and does not seek, Colorado high cost funds to provide the proposed wireless services.

4. Tempo provides each of the supported services set forth in 47 C.F.R. § 54.101(a) and has shown an intent and ability to offer those services once designated an ETC throughout the areas set forth on Attachment 1 of this Stipulation.

5. Tempo will offer two Lifeline plans to eligible Lifeline subscribers, which are set forth in Attachment 3. The Parties have agreed that any other Lifeline plans discussed in Tempo's FCC Compliance Plan or Tempo's other filings with the FCC, or as described in Tempo's Application in this proceeding, will not be offered in Colorado. Specifically, Tempo will not offer a Lifeline plan with fewer than 250 free minutes per month in Colorado. Tempo will not seek the Tribal lands support amount, as defined in 47 C.F.R. § 54.403(a)(2), for Tribal subscribers. Tempo's Lifeline plans described in Attachment 3 comply with Rule 2187(d)(XII) as Tempo offers the Lifeline subscriber at least one plan with not less than 900 minutes of use per month. Tempo's Lifeline plans are consistent with other previously-designated ETC Lifeline-only carriers in Colorado. Tempo's Lifeline plans are available for enrollment via Tempo's website (www.mytempo.com) and through Tempo's customer service department.

6. It is understood that Tempo, as a prepaid provider, will not be required to obtain or retain social security numbers of subscribers. However, in compliance with Lifeline Reform Order, Tempo will obtain and retain the last four digits of the social security number of its subscribers.

7. Tempo's Lifeline plans are not offered on a distance sensitive basis and there is no additional charge for toll minutes of use. As such, toll limitation is not a concern because of the prepaid nature of these Lifeline plans. Prepaid offerings, by their very construct, act as a toll limitation mechanism; therefore, Tempo will not seek reimbursement for toll limitation.

8. The Lifeline Reform Order further requires each applicant seeking ETC designation to submit to the FCC for approval a Compliance Plan that contains the information as outlined in Section 5.c of the Preliminary Statement above.

9. Tempo's Compliance Plan was approved by the FCC on August 8, 2012 under the name Birch Communications, Inc. ("Birch"). The Compliance Plan noted there was an outstanding question as to whether a separate legal entity should be established to provide prepaid wireless Lifeline service or whether the service should be provided through one of the existing Birch entities. On December 18, 2012, Birch notified the FCC that the prepaid wireless Lifeline service would be provided by a separate legal entity known as Now Communications, LLC ("Now Comm"). In that filing, Now Comm committed to implement and comply with the Compliance Plan, and notified the FCC that it adopted the Compliance Plan as its own. The FCC acknowledged these changes in corporate structure on December 20, 2012 in a public notice, and indicated that the previously approved Compliance Plan would apply to Now Comm.

Now Comm changed its name to Tempo Telecom, LLC in 2013. On May 13, 2013, Tempo notified FCC staff of its name change, and filed with the FCC an amended petition for ETC designation in the states for which the FCC handles such designations. Tempo also updated the FCC-approved Compliance Plan to reflect Tempo's adoption of the plan and to update the Lifeline service plans Tempo planned to offer. At the FCC's request, the information in the May 13, 2013 filing was incorporated by reference into the FCC-approved Compliance Plan. To ensure there was no question regarding Tempo's adoption of the FCC-approved Compliance Plan, on September 17, 2013, Tempo filed a letter with the FCC to formally notify the FCC that Tempo will comply with and adopt as its own the Compliance Plan that was approved in August 2012. Thereafter, the FCC updated its Lifeline website to reflect that Tempo has adopted the Birch Compliance Plan: <http://www.fcc.gov/encyclopedia/lifeline-compliance-plans-etc-petitions> (under Bureau-Approved Compliance Plans).

The FCC-approved Compliance Plan details the verification, certification, and other anti-fraud measures Tempo has implemented to comply with state and federal requirements and to ensure that Lifeline support is provided only to consumers who are truly eligible. Since it has been found to meet all of the FCC's aforementioned criteria, Tempo is entitled to the FCC's blanket forbearance from the "own facilities" requirement. Tempo's approved Compliance Plan, the FCC's public notice approving the Compliance Plan, and Tempo's formal notification to the FCC of its adoption of the Compliance Plan are attached to this Stipulation as Attachment 4.

10. The Parties stipulate and agree that with the incorporation of the agreed upon terms and conditions in Attachments 2 and 3, designating Tempo as an ETC in the study areas and wire centers set forth in Attachment 1 serves the public interest, convenience and necessity, as required by 47 U.S.C. § 214(e)(2) and §§ 40-15-101, 40-15-501, and 40-15-502, C.R.S. The Parties further stipulate and agree that the areas shown in Attachment 1 should be approved as Tempo's designated service area and that Tempo shall use a Lifeline Certification Form as set forth in Attachment 5 hereto unless a different form is required by the Commission in the future.

11. Tempo has entered into this Stipulation with Staff and the OCC to settle this matter. The Parties have agreed to the Lifeline plans and additional minutes as described in Attachment 3. Nothing in this Stipulation shall prohibit Tempo the flexibility to offer new service plans to eligible consumers or to permit eligible consumers to apply their Lifeline discount to bundled service plans or plans containing optional calling features. In the event Tempo offers new expanded service plans or bundled service plans in the future, the Parties agree these plans will be considered "Lifeline" plans subject to the terms of this Stipulation. Further, the Parties stipulate and agree that Tempo shall provide its Lifeline plans and any future

Lifeline plans pursuant to this Stipulation (including Attachments 1 through 4). The following requirements shall apply:

- A. If Tempo desires to (1) modify its existing Lifeline plans, (2) add a new Lifeline plan, (3) modify a Lifeline plan, (4) modify its Lifeline Terms and Conditions, or (5) modify its Operating Procedures (*i.e.*, Attachment 2), (each, a "Modification"), then Tempo shall first provide the other Parties thirty-days advance written notice of the proposed Modification. If none of the Parties objects within the thirty-day notice period (the "Notice Period"), then Tempo's proposed Modification will go into effect upon the expiration of the Notice Period. However, if one or more of the Parties objects in writing to the proposed Modification and indicates to Tempo during the Notice Period that the Modification may be contrary to the public interest or disadvantageous to subscribers, then Tempo shall file an application with the Commission and obtain the Commission's approval before implementing the proposed Modification. Tempo shall also maintain Colorado-specific information on its "Terms and Conditions of Service" page on its website (www.mytempo.com) that will provide interested persons with notice of any proposed modifications to its Lifeline plans or any additional Lifeline plans offered to eligible subscribers.
- B. If Tempo has failed to comply with paragraph A above and has implemented a Modification to a Lifeline plan or any additional Lifeline plans without following the procedures described above, then upon appropriate pleading, or upon its own motion, the Commission may investigate any unnoticed or unauthorized change to Tempo's Lifeline Plan Description, Terms and Conditions and Operating Procedures. In any such investigation, Tempo agrees to respond to requests for information from the Commission Staff. However, nothing in this Stipulation shall be construed as a waiver of any rights Tempo may have to object to such requests for information, seek to limit disclosure of privileged information, or seek to declare information as confidential. After notice to Tempo and a subsequent investigation, the Commission may find that a change is not consistent with Tempo's ETC status or results in a universal service Lifeline offering that is not eligible for universal service Lifeline funding. If Tempo does not thereafter make such changes as are necessary to bring its Lifeline offering into compliance with such requirements, Tempo understands that the Commission may revoke Tempo's ETC status.
- C. The Parties agree that the Commission has authority to enforce compliance with this Stipulation pursuant to its terms and pursuant to Rule 2187 and, consistent with this Paragraph, may exercise its audit powers derived from Section 40-15-107, C.R.S., with respect to the Lifeline plans or Tempo's ETC status. Consistent with this authority, for changes to any

additional Lifeline plans or implementation of new Lifeline plans, other than the Lifeline plans set forth on Attachment 3 hereto, Staff may investigate and obtain any necessary data through the Commission's audit powers once Staff is notified of changes. This process should work in the same manner that occurs when Staff reviews tariff filings. Staff will work cooperatively with Tempo to obtain information in order to assess whether the changes are in the public interest or may otherwise impact Tempo's eligibility to receive Lifeline funding. The investigation should be completed within the 30-day period between the notification of proposed change and Tempo's implementation of the change if the Parties reach an agreement. Tempo may not implement the proposed change if the investigation has not been completed. If there is disagreement between Staff and Tempo, any Party, or any interested person, may file a formal complaint with, or seek a declaratory ruling from the Commission. Tempo will have an opportunity to contest a Staff position that a change is not consistent with Tempo's ETC status or results in a universal service Lifeline offering that is not eligible for universal service Lifeline funding by filing (1) an application to change its Lifeline Plans, or (2) a request for declaratory ruling, and in each case an evidentiary hearing may be held. Finally, with regard to Lifeline plans other than the approved Plan, Staff may notify the FCC and Universal Service Administrator Company ("USAC") if it believes the Lifeline offering is not eligible for funding.

- D. The Parties acknowledge that because Tempo is using the network of its underlying carrier, Sprint, throughout its designated service area, that no notice to Public Safety Answering Points ("PSAPs") is required.
- E. The Parties agree that Tempo shall remit and pay the prepaid wireless E911 charge of one and four-tenths percent, as specified in C.R.S § 29-11-102.5, or \$0.18 on its wireless Lifeline service based on a value of \$12.75 per month in Colorado. In the event the number of free minutes associated with the Lifeline service changes as discussed above, or with any new Lifeline Plans, the value for purposes of calculating the E911 charge shall be modified proportionately. The Parties further agree that Tempo shall remit and pay the prepaid wireless E911 charge of one and four-tenths percent of the price of each retail transaction associated with the purchase of additional minutes or data plans from Lifeline subscribers as required by C.R.S § 29-11-102.5. In the event C.R.S § 29-11-102.5 is amended to change the E911 charge, Tempo shall pay the E911 charge at the amended rate and in the same manner as its wireless Lifeline competitors. Tempo will also pay the prepaid wireless E911 charge on all prepaid plans and or/replenishment voice minutes sold independently of the Lifeline plans. For prepaid minutes bundled with text messages or other services sold directly through Tempo, Tempo will pay the prepaid wireless E911 charge on the full amount of the retail transaction. In the event that Tempo develops a system to separate out the voice minute charges from non-voice charges at the point of sale, Tempo shall notify the Commission at

least 30 days in advance of its intent to pay the prepaid wireless E911 charge only on voice minutes when bundled with text messages or other services.

- F. The Parties agree that Tempo shall remit and pay the Colorado High Cost charge, at the rate then in effect, on all intrastate retail voice minute revenues received from Lifeline subscribers (calculated based on the safe harbor percentage established by the FCC then in effect, currently 62.9 percent intrastate).
- G. The Parties agree that Tempo provides all its subscribers with the ability to make and receive interexchange or toll calls through interconnection arrangements made by Tempo or its underlying providers.
- H. Tempo commits to provide service throughout its designated service area as listed in Attachment 1 of this Stipulation to all subscribers making a reasonable request for service. Tempo certifies that it will provide service on a timely basis and that it will comply with the service requirements applicable to the support that it receives pursuant to 47 C.F.R. § 54.202(a)(1)(i).
- I. Before offering Lifeline service in Colorado, Tempo will include its Colorado-specific information on the “Terms and Conditions of Service” page of its web site (www.mytempo.com) where its Colorado offering is described, and the Commission’s contact information as listed in Attachment 2 to the Stipulation for any unresolved subscriber questions or complaints.
- J. To the extent the Commission subsequently adopts rules of general applicability to Lifeline ETCs that are inconsistent with some or all these provisions A through I, the provisions in the Commission’s Lifeline ETC rules shall control.

GENERAL PROVISIONS

1. The Parties desire to end further uncertainty in this Proceeding by entering this Stipulation. Accordingly, the Parties hereby agree to be bound to the terms of this Stipulation. The Parties recognize and acknowledge that should the Commission or the FCC determine a change in the particular regulatory treatment applicable to wireless ETC designees, in further rulemakings or otherwise, any such lawful and applicable determinations would apply to Tempo.

2. This Stipulation is a settlement of disputed and compromised claims and accordingly, this Stipulation is made for settlement purposes only. No Party concedes the validity or correctness of any regulatory principle or methodology directly or indirectly incorporated in this Stipulation.

3. All witnesses of the Parties will support all aspects of the Stipulation embodied in this document in any hearing conducted to determine whether the Commission should approve this Stipulation. Each Party also agrees that, except as expressly provided in this Stipulation, it will take no action in any administrative or judicial proceeding which would have the effect, directly or indirectly, of contravening the provisions of this Stipulation. Without prejudice to the foregoing, the Parties expressly reserve the right to advocate positions different from those stated in this Stipulation in any proceeding other than one necessary to obtain approval of, or enforce this Stipulation or a Commission order approving this Stipulation. Nothing in this Stipulation shall constitute a waiver by any Party with respect to any matter not specifically addressed in this Stipulation.

4. This Stipulation shall not become effective until the Commission issues a final order approving the Stipulation, which order does not contain any modification of the terms and conditions of this Stipulation that is unacceptable to any of the Parties to the Stipulation. In the event the Commission modifies this Stipulation in a manner unacceptable to any Party hereto, that Party may withdraw from the Stipulation and shall so notify the Commission and the other Parties to the Stipulation in writing within ten (10) days of the date of the Commission order. In the event a Party exercises its right to withdraw from the Stipulation, this Stipulation shall be null and void and of no effect in this or any other proceedings.

5. In the event this Stipulation becomes null and void or in the event the Commission does not approve this Stipulation, this Stipulation, as well as the negotiations undertaken in conjunction with the Stipulation, shall not be admissible into evidence in these or any other proceedings.

6. The Parties state that they have reached this Stipulation by means of a negotiated process that is in the public interest, and that the results reflected in this Stipulation are just, reasonable and in the public interest. Approval by the Commission of this Stipulation shall constitute a determination that the Stipulation represents a just, equitable, and reasonable resolution of all issues which were or could have been contested by the Parties with respect to the Tempo Application.

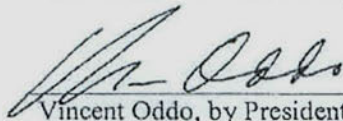
7. This Stipulation is an integrated agreement that may not be altered by the unilateral determination of any Party.

8. This Stipulation may be executed in separate counterparts, including facsimile. The counterparts taken together shall constitute the Stipulation. The Parties represent that the signatories to the Stipulation have full authority to bind their respective parties to the terms of the Stipulation.

WHEREFORE, the Parties respectfully submit this Stipulation for approval by the Commission and request that the Commission grant such approval.

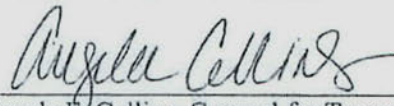
Dated this 14th day of April, 2014.

FOR TEMPO TELECOM, LLC:



Vincent Oddo, by President and CEO of
Birch Equity Partners, LLC, sole
member of Tempo Telecom, LLC
3060 Peachtree Road, NW
Suite 1065
Atlanta, GA 30305

APPROVED AS TO FORM:



Angela F. Collins, Counsel for Tempo
Telecom, LLC
Cahill Gordon & Reindel LLP
1990 K Street, N.W., Suite 950
Washington, D.C. 20006
202-862-8930 (telephone)
866-814-6582 (facsimile)

**FOR THE STAFF OF THE
COLORADO PUBLIC UTILITIES
COMMISSION**

John T. Scott
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, Colorado 80202
Tele: 303-894-2043
Fax: 303-894-2813

APPROVED AS TO FORM:

David M. Nocera, No. 28776
Senior Assistant Attorney General
Office of the Colorado Attorney
General
1300 Broadway, 8th Floor
Denver, Colorado 80203
Tele: 720-508-6333
Fax: 720-508-6038

**FOR THE
COLORADO OFFICE OF
CONSUMER COUNSEL**

Ron Fernandez
Colorado Office of Consumer
Counsel
1560 Broadway, Suite 200
Denver, Colorado 80202
Tele: 303-894-2123
Fax: 303-894-2117

APPROVED AS TO FORM:

Gregory E. Bunker, No. 24111
Senior Assistant Attorney General
Office of the Colorado Attorney
General
1300 Broadway, 7th Floor
Denver, Colorado 80203
Tele: 720-508-6212
Fax: 720-508-6040

FOR TEMPO TELECOM, LLC:

Vincent Oddo, by President and CEO of
Birch Equity Partners, LLC, sole
member of Tempo Telecom, LLC
3060 Peachtree Road, NW
Suite 1065
Atlanta, GA 30305

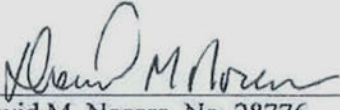
APPROVED AS TO FORM:

Angela F. Collins, Counsel for Tempo
Telecom, LLC
Cahill Gordon & Reindel LLP
1990 K Street, N.W., Suite 950
Washington, D.C. 20006
202-862-8930 (telephone)
866-814-6582 (facsimile)

**FOR THE STAFF OF THE
COLORADO PUBLIC UTILITIES
COMMISSION**


John T. Scott
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, Colorado 80202
Tele: 303-894-2043
Fax: 303-894-2813

APPROVED AS TO FORM:


David M. Nocera, No. 28776
Senior Assistant Attorney General
Office of the Colorado Attorney
General
1300 Broadway, 8th Floor
Denver, Colorado 80203
Tele: 720-508-6333
Fax: 720-508-6038

**FOR THE
COLORADO OFFICE OF
CONSUMER COUNSEL**

Ron Fernandez
Colorado Office of Consumer
Counsel
1560 Broadway, Suite 200
Denver, Colorado 80202
Tele: 303-894-2123
Fax: 303-894-2117

APPROVED AS TO FORM:

Gregory E. Bunker, No. 24111
Senior Assistant Attorney General
Office of the Colorado Attorney
General
1300 Broadway, 7th Floor
Denver, Colorado 80203
Tele: 720-508-6212
Fax: 720-508-6040

FOR TEMPO TELECOM, LLC:

Vincent Oddo, by President and CEO of
Birch Equity Partners, LLC, sole
member of Tempo Telecom, LLC
3060 Peachtree Road, NW
Suite 1065
Atlanta, GA 30305

APPROVED AS TO FORM:

Angela F. Collins, Counsel for Tempo
Telecom, LLC
Cahill Gordon & Reindel LLP
1990 K Street, N.W., Suite 950
Washington, D.C. 20006
202-862-8930 (telephone)
866-814-6582 (facsimile)

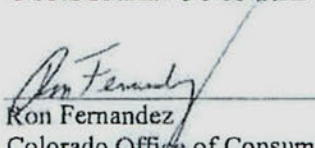
**FOR THE STAFF OF THE
COLORADO PUBLIC UTILITIES
COMMISSION**

John T. Scott
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, Colorado 80202
Tele: 303-894-2043
Fax: 303-894-2813

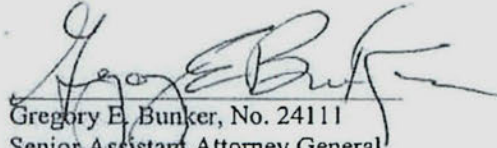
APPROVED AS TO FORM:

David M. Nocera, No. 28776
Senior Assistant Attorney General
Office of the Colorado Attorney
General
1300 Broadway, 8th Floor
Denver, Colorado 80203
Tele: 720-508-6333
Fax: 720-508-6038

**FOR THE
COLORADO OFFICE OF
CONSUMER COUNSEL**


Ron Fernandez
Colorado Office of Consumer
Counsel
1560 Broadway, Suite 200
Denver, Colorado 80202
Tele: 303-894-2123
Fax: 303-894-2117

APPROVED AS TO FORM:


Gregory E. Bunker, No. 24111
Senior Assistant Attorney General
Office of the Colorado Attorney
General
1300 Broadway, 7th Floor
Denver, Colorado 80203
Tele: 720-508-6212
Fax: 720-508-6040

LIST OF ATTACHMENTS

- | | |
|---------------|--|
| Attachment 1: | Tempo's Colorado designated service area |
| Attachment 2: | Operating Procedures |
| Attachment 3: | Tempo's Initial Lifeline Offering |
| Attachment 4: | FCC-Approved Compliance Plan and Public Notice |
| Attachment 5: | Tempo Enrollment Form |

Colorado PUC E Filings System
Proceeding No. 13A-1374T
Stipulation and Settlement
Attachment 1

Tempo Telecom, LLC ETC Designation - Lifeline Only Service Area			Associated Zip Codes***
Clii	Central Office Name	Underlying Provider	
1 AFACCOMA	AIR FORCE ACADEMY	Qwest Corporation	00027, 80919, 80840, 80841
2 ENWDCOAB	ABERDEEN	Qwest Corporation	80124, 80126, 80104, 80130, 80134, 80112, 80111, 80014, 80015
3 ARVDCOMA	ARVADA	Qwest Corporation	80401, 80002, 80033, 80004, 80034, 80001, 80212, 80006, 80007, 80021, 80005, 80003, 80031
4 AURRCOMA	AURORA	Qwest Corporation	80231, 80220, 80207, 80224, 80230, 80045, 80040, 80012, 80010, 80239, 80013, 80017, 80041, 80011, 80044,
5 AURRCOMB	MONAGHAN	Qwest Corporation	80022, 80019, 80249, 80137, 80102
6 BLDRCOGB	GUNBARREL	Qwest Corporation	80301, 80314, 80503
7 BRFDcoma	BROOMFIELD	Qwest Corporation	80007, 80021, 80005, 80027, 80020, 80026, 80031, 80038, 80260, 80234
8 CFTNCONM	CLIFTON	Qwest Corporation	81503, 81527, 81506, 81504, 81520, 81526
9 CLSPCO32	GATEHOUSE	Qwest Corporation	80920, 80908
10 CLSPCOEA	COLO SPRINGS EAST	Qwest Corporation	80911, 80925, 80910, 80909, 80935, 80916, 80940, 80917, 80918, 80920, 80915, 80914, 80970, 80929, 80922, 80908, 80831
11 CLSPCOPV	PIKEVIEW	Qwest Corporation	00027, 80904, 80907, 80949, 80919, 80840, 80917, 80936, 80918, 80941, 80962, 80920, 80995, 80922, 80908
12 DNVRCOCH	CAPITOL HILL	Qwest Corporation	80204, 80202, 80205, 80273, 80264, 80203, 80295, 80218
13 DNVRCOC	CURTIS PARK	Qwest Corporation	80299, 80202, 80244, 80257, 80294, 80201, 80290, 80205, 80216, 80203, 80243, 80221, 80229, 80022
14 DNVRCOCW	COTTONWOOD	Qwest Corporation	80303, 80301, 80028, 80027, 80020, 80026, 80503, 80504, 80516
15 DNVRCODC	DRY CREEK	Qwest Corporation	80124, 80126, 80130, 80110, 80122, 80121, 80237, 80112, 80155, 80111, 80231, 80014
16 DNVRCOEA	DENVER EAST	Qwest Corporation	80205, 80216, 80231, 80209, 80206, 80218, 80246, 80262, 80220, 80207, 80224, 80280, 80230, 80010, 80239, 80022
17 DNVRCOMA	DENVER MAIN	Qwest Corporation	80214, 80212, 80219, 80204, 80223, 80256, 80271, 80293, 80202, 80217, 80248, 80265, 80211, 80259, 80281, 80291, 80274, 8020
18 DNVRCOMB	MONTEBELLO	Qwest Corporation	80216, 80207, 80010, 80239, 80022, 80011, 80238, 80019, 80249
19 DNVRCONC	DENVER NORTHEAST	Qwest Corporation	80216, 80252, 80279, 80266, 80024, 80037, 80239, 80221, 80233, 80229, 80022, 80640, 80603, 80601, 80249
20 DNVRCONO	DENVER NORTH	Qwest Corporation	80002, 80033, 80214, 80212, 80204, 80202, 80211, 80216, 80221
21 DNVRCOOU	DNVR INTL AIRPORT	Qwest Corporation	80022, 80603, 80019, 80249, 80137
22 DNVRCOSE	DENVER SOUTHEAST	Qwest Corporation	80110, 80210, 80250, 80237, 80222, 80111, 80263, 80231, 80209, 80246, 80224
23 DNVRCOSH	SMOKY HILL	Qwest Corporation	80134, 80112, 80111, 80014, 80138, 80107, 80015, 80016, 80013, 80046, 80018, 80137, 80102
24 DNVRCOSL	SULLIVAN	Qwest Corporation	80237, 80111, 80231, 80014, 80224, 80012, 80251, 80013, 80047, 80017, 80011
25 DNVRCOSO	DENVER SOUTH	Qwest Corporation	80110, 80204, 80223, 80261, 80210, 80208, 80209, 80203, 80206, 80218, 80246
26 DNVRCOSW	DENVER SOUTHWEST	Qwest Corporation	80465, 80401, 80127, 80227, 80235, 80232, 80228, 80225, 80226, 80215, 80123, 80236, 80219
27 DNVRCOWS	DENVER WEST	Qwest Corporation	80227, 80232, 80226, 80236, 80110, 80214, 80219, 80204, 80223
28 ECKRCOCX	Eckert	Delta County Telecommunications Inc.	81418
29 ENWDcoma	ENGLEWOOD	Qwest Corporation	80227, 80235, 80120, 80150, 80236, 80110, 80219, 80223, 80121, 80151, 80210
30 ERIECOMA	ERIE	Qwest Corporation	80026, 80504, 80516
31 FONTcoma	FOUNTAIN	Qwest Corporation	81007, 80913, 80911, 80817, 81008, 80925
32 FRDRcoma	FREDERICK	Qwest Corporation	80504, 80603, 80514, 80516, 80530, 80621
33 FTLPCOMA	FT LUPTON	Qwest Corporation	80603, 80621, 80520
34 GLCRcoma	GILCREST	Qwest Corporation	80651, 80543, 80623, 80645
35 GRELcoma	GREELEY	Qwest Corporation	80634, 80550, 80631, 80615, 80652, 80620, 80639, 80632, 80633, 80638, 80646, 80644
36 HDSNcoma	HUDSON	Qwest Corporation	80603, 80621, 80651, 80642, 80643, 80645
37 HLRScoma	HILLROSE	Qwest Corporation	80723, 80750, 80733
38 JHMLcoma	JOHNSTOWN-MILLIKEN	Qwest Corporation	80537, 80651, 80513, 80534, 80543, 80634, 80645
39 LKVDcoma	LAKEWOOD	Qwest Corporation	80401, 80225, 80226, 80215, 80033, 80214, 80212
40 LNMTcoma	LONGMONT	Qwest Corporation	80503, 80533, 80501, 80504, 80516, 80502, 80544, 80542, 80651, 80513
41 LTTNCOHL	HIGHLANDS RANCH	Qwest Corporation	80125, 80127, 80128, 80131, 80129, 80124, 80126, 80104, 80163, 80130, 80120
42 LTTNcoma	LITTLETON	Qwest Corporation	80125, 80128, 80235, 80129, 80126, 80123, 80120, 80160, 80165, 80166, 80236, 80110, 80122, 80161, 80121
43 LVLDcoma	LOVELAND	Qwest Corporation	80537, 80513, 80526, 80539, 80541, 80534, 80525, 80528, 80550
44 MEADcoma	MEAD	Qwest Corporation	80504, 80542, 80651, 80513, 80534
45 MNZNCOXC	MANZANOLA	CenturyTel of Eagle	81058
46 NGLNcoma	NORTHGLENN	Qwest Corporation	80020, 80260, 80234, 80233, 80241, 80229, 80614, 80640, 80602, 80603, 80601, 80516
47 NIWTcoma	NIWOT	Qwest Corporation	80301, 80026, 80503, 80504, 80516
48 PRKRcoma	PARKER	Qwest Corporation	80104, 80134, 80112, 80116, 80138, 80107, 80016
49 PTVLcoma	PLATTEVILLE	Qwest Corporation	80504, 80621, 80651, 80543, 80645
50 PUBLCO06	PUEBLO WEST	Qwest Corporation	81240, 81005, 81007, 80913, 81008

Tempo Telecom, LLC ETC Designation - Lifeline Only Service Area				Associated Zip Codes***
	Citi	Central Office Name	Underlying Provider	
51	PUBLCOMA	PUEBLO MAIN	Qwest Corporation	81004,81005,81007,81002,81003,81022,81006,81010,81011,81012,81001,81008,81025
52	PUBLICOSU	SUNSET	Qwest Corporation	81004,81240,81005,81007,81003,81022,81006
53	RCFRCOXC	ROCKY FORD	CenturyTel of Eagle	81058,81067,81050
54	SCRTCOMA	SECURITY	Qwest Corporation	80913,80906,80911,80817,80931,80925,80977,80910,80916,80929
55	TEMACOMA	TABLE MESA	Qwest Corporation	80303,80305,80309,80301,80007,80021,80025,80307,80027,80026
56	WMNSCOMA	WESTMINISTER	Qwest Corporation	80002,80212,80030,80035,80036,80216,80021,80020,80003,80031,80221,80260,80229

OPERATING PROCEDURES APPLICABLE TO LIFELINE SERVICE OFFERING OF TEMPO TELECOM, LLC

A. ACCESS TO RECORDS.

All records required by these procedures pertaining to Tempo Telecom, LLC's ("Tempo") Lifeline Service offering shall be made available to the Commission or its authorized representatives, on a confidential basis, as appropriate, at any time upon request.

B. RETENTION OF RECORDS.

Unless otherwise authorized by the Colorado Public Utilities Commission ("Commission"), all records required by these procedures pertaining to Tempo's Lifeline offering shall be preserved for the period of time specified by Rule 4 CCR 723-2-2005 of the Rules Regulating Telecommunications Providers, Services, and Products, but in no event less than a minimum of 24 months after the date of entry of the record or for any longer period of time specified by FCC rule or order or Commission rule, whichever is longer.

C. SERVICE AREA.

Attachment 1 to the Stipulation depicts the wire centers where Tempo is designated for ETC status.

D. RECORDS OF COMPLAINTS.

1. Tempo shall maintain an accurate record of all oral and written complaints made by its subscribers regarding its service, or rates and charges. This record shall include the name and address of the subscriber or complainant, the time, date and nature of the complaint, the action taken to clear trouble, and the date and time of trouble clearance.
2. The record of complaints shall be categorized to indicate to Tempo and to the Commission whether any particular subscriber encounters the same difficulties frequently, in terms of complaints per month, including subscriber trouble reports, whether a large number or percentage of all complaints from different subscribers arise from the same irregularity in service, with 5 percent or more of all complaints over a three month period being considered significant, or whether some phase of the construction, equipment, maintenance or operation are causing the complaints.
3. For any unresolved complaints or subscriber questions, Tempo shall direct its personnel engaged in initial contact with an applicant or a subscriber in which dissatisfaction with the decision or explanation by the personnel is expressed, to inform the subscriber of the right to have the problem considered and acted upon by another consumer representative or

supervisory personnel of Tempo. If the applicant or subscriber continues to express dissatisfaction after the supervisory personnel have addressed the problem, Tempo shall further direct the supervisory personnel to provide the complainant that they may contact the External Affairs Section of the Commission at Colorado Public Utilities Commission, Consumer Affairs, 1560 Broadway, Suite 250, Denver Colorado 80202, Phone 303-894-2070 or 800-456-0858, fax number 303-894-2532 or by e-mail to dora_puc_complaints@state.co.us for further review of an unresolved problem. Tempo shall post on its website the contact information of the External Affairs Section of the Commission.

E. DESIGNATED SERVICE AREA.

Tempo shall file an application with the Commission for expansion of its ETC designation service area if it increases its service area beyond the boundaries of the ILEC wire centers listed in Attachment 1 to this Stipulation. Absent authorization from the Commission, Tempo shall not serve eligible Lifeline subscribers in the portions of those wire centers beyond those listed in Attachment 1.

F. HELD SERVICE APPLICATIONS.

1. During periods of time, if any, when Tempo may not be able to supply service to subscribers in Tempo's Designated Service Area within ten calendar days from the date of the customer's application for service Tempo shall keep a record for its Designated Service Area showing the name and address of each applicant for service, the date of application, the class type and grade of service applied for, together with the reason for the delay in providing the service to the applicant, and the expected date of service.
2. All Lifeline subscribers who have not been delivered a telephone and assigned a telephone number within ten calendar days from the date of the customer's application for service shall be provided a written or email notice by Tempo, stating the order number assigned by Tempo to the application for service, the general status of the order, and a phone number to call with questions. This notice shall be postmarked or sent via email on or before the 15th day after the date of approval of their eligibility Tempo.
3. Under circumstances where the period to provide Lifeline service exceeds 30 calendar days after the approval of the subscriber, Tempo shall file a letter with the Commission stating the circumstances causing the delay, explaining whether such circumstances are beyond Tempo's control, and providing an estimate of the time necessary to provide service. This letter

shall be filed with the Director by the last business day of the following month.

G. SERVICE INTERRUPTIONS.

General

1. Service is interrupted when it becomes unusable to the subscriber or when the subscriber is unable to transmit or receive calls due to the failure of a component of the network furnished by Tempo or provided through resale.
2. An interruption period begins when the subscriber reports a service, facility or circuit to be inoperative and releases it for testing and repair. An interruption period ends when the service, facility or circuit is operative.

Reestablishing Service

3. Tempo will make all reasonable efforts to prevent interruptions of service that are within its control and, when interruptions do occur, reestablish service with the shortest possible delay. Tempo will make attempts to resolve emergencies at all hours, consistent with the bona fide needs of subscribers and the personal safety of Tempo's employees. In almost all cases, Tempo will be able to reestablish service within 24 hours. If unusual repairs are required, or other factors will prevent the prompt reestablishment of service, Tempo will make reasonable efforts to contact the subscriber. In the event a Lifeline subscriber in Colorado experiences a service interruption caused by a failure of equipment under Tempo's control or under the control of Tempo's underlying facilities-based carrier, Sprint, for a time period that meets or exceeds eight or more hours during a continuous 24-hour period as stated in Rule 2304(b)(IV), Tempo will extend that subscriber's service for the 30-day period in which the interruption occurred day for day for a period of time equal to the loss of service for any minutes remaining at the end of the 30-day period on its Lifeline plan and any additional minutes included as part of Tempo's Lifeline plan.

Record Keeping and Reports

4. Tempo shall keep records regarding outages described in Rule 2187(f)(II)(C). Tempo shall inform subscribers of the potential of future service unavailability when Tempo is experiencing or is forecasting potential service unavailability in specific areas for purposes other than outages due to routine maintenance. Services are generally available twenty-four (24) hours per day, seven (7) days per week. Tempo will

make reasonable arrangements to resolve emergencies resulting from failures of service, unusual and prolonged increases in traffic, illness of personnel, fire, storm or other acts of God, and inform its employees as to procedures to be followed in the event of such emergencies in order to prevent or minimize interruptions or impairment of telecommunications service. Reports including the detailed information described in Rule 2187(f)(II)(C) shall be filed with the Commission as part of Tempo's ETC annual report, as required by Rule 2187(f)(II)(C).

H. ADVERTISING.

Tempo shall submit annual reports describing advertising materials in use in Colorado to the Commission Staff and OCC as described and required by Rule 2187(f)(II)(I).

I. NETWORK REQUIREMENTS.

Intra-LATA Interexchange Toll Dialing Pattern. Tempo will comply with all NANP dialing pattern requirements.

J. REPORTING REQUIREMENTS.

Tempo shall file the following reports with the Commission:

1. Copies of all Lifeline-related filings submitted to Federal Communications Commission (FCC) or Universal Service Administrator Company (USAC). Tempo shall file copies of all Lifeline-related FCC forms submitted to the FCC or USAC, including Form 497, with the Commission promptly after those filings occur at the FCC or USAC.
2. Annual ETC Certification. Tempo will file an annual certification that it is able to function in emergency situations, is complying with applicable service quality standards and the consumer protection rules, e.g., the CTIA consumer code for wireless service. This certification shall be filed with Tempo's annual report as required by Rule 2187(f)(II)(D) and (E).
3. 911 Surcharge Report. Tempo shall submit to the Commission as a compliance filing a copy of the Department of Revenue (DOR) DR 526 Form and all documentation and workpapers including any formulas used to calculate the 911 fee on its free minutes as discussed in Stipulation and Settlement Agreement, section 11.E, at the same time filed with DOR.
4. Upon audit request from Staff of the Commission, Tempo agrees to provide on a confidential basis, subscriber-specific data, including subscriber name, address, and zip code, for:

- a. Lifeline subscribers receiving two or more Lifeline subsidies per household in that same month from Tempo,
- b. New Lifeline subscribers enrolled in Tempo's Lifeline service,
- c. Lifeline subscribers removed from Lifeline service due to non-usage, and
- d. Lifeline subscribers removed from Lifeline service due to ineligibility through the annual re-certification process.

K. LIFELINE NON-USAGE POLICY AND INELIGIBILITY NOTICE.

- 1. Tempo will identify Lifeline subscribers who have not used Tempo's Lifeline service for 60 consecutive days in accordance with Tempo's FCC Compliance Plan (p. 23-24) and will de-enroll such subscribers from Lifeline service, deactivate such accounts and cease to claim Lifeline reimbursement for such subscribers. Non-usage is determined as follows:
 - a. After 60 consecutive days of non-use, Tempo contacts the subscriber, either by phone, text, email, or written notification, asking the subscriber to provide confirmation that the subscriber wishes to retain his or her Lifeline service within 30 days from the date of the notice. Subscribers are informed that failure to provide such confirmation will result in de-enrollment from the Lifeline program.
 - b. If the subscriber does not respond to the notice as provided above, the subscriber is de-enrolled from the Lifeline program and Tempo does not request further Lifeline reimbursement for the subscriber from USAC or any state Universal Service Fund Administrator. Tempo will report annually to the Federal Communications Commission the number of subscribers de-enrolled for non-usage by month.
 - c. During the entire 60 day period, Tempo's Lifeline subscriber's service remains active and is not suspended. In the event the subscriber's service is deactivated for non-usage as described above, access to 911 emergency services remains intact as required by the FCC's existing public safety rules and guidelines.

- d. Lifeline subscribers can “use” the service by: (1) completing an outbound call; (2) purchasing minutes from Tempo to add to the subscriber’s plan; (3) answering an incoming call from a party other than Tempo; or (4) responding to a direct contact from Tempo confirming that the subscriber wants to continue receiving the service.
2. The subscriber shall be notified in writing of Tempo’s intention to discontinue Lifeline services due to the Lifeline subscriber no longer meeting the qualification criteria. Any notice shall clearly state that the subscriber contact Tempo to verify eligibility. Tempo will not seek Lifeline reimbursement from USAC unless the subscriber confirms eligibility with Tempo.

L. CTIA CODE OF CONDUCT.

Tempo shall comply with the principles, disclosures, and practices for wireless service provided to consumers in the Cellular Telecommunications and Internet Association’s (CTIA) Consumer Code for Wireless Service. Such Code can be found at: http://files.ctia.org/pdf/The_Code.pdf.

Tempo will allow Lifeline subscribers a trial period of not less than 14 days to try out the service. Tempo will not impose any termination for and will not assess the return fee of \$25 if the Lifeline subscriber purchased the phone from Tempo if the Lifeline subscriber elects to not accept Tempo’s Lifeline offering during the trial period.

M. SUBSCRIBER ELIGIBILITY.

1. Subscriber eligibility shall be established pursuant to 47 CFR §54.409 and §54.410. Upon initial application for Tempo’s Lifeline service, the subscriber must certify by his or her signature under penalty of perjury that he or she will receive Lifeline supported services only from Tempo and, to the best of his/her knowledge, no one else in his/her household is receiving Lifeline-supported service.
 - a. Tempo shall require each eligible Lifeline consumer to self-certify under penalty of perjury at the time of enrollment and annually thereafter that his or her household will receive only one Lifeline service and, to the best of his or her knowledge, the subscriber’s household is not already receiving a Lifeline service;
 - b. Tempo shall require each eligible Lifeline consumer at the time of application to initial on the certification form that to the best of his or her knowledge that he or she is not receiving Lifeline-supported

service from any other Lifeline provider and to ensure the consumer understands that “Lifeline-supported service” is a federal subsidy and that willfully making false statements to obtain the benefit can result in fines, imprisonment, de-enrollment or being barred from the program;

- c. Lifeline service is a non-transferable benefit and the Lifeline subscriber may not transfer his or her benefit to any other person;
 - d. If the Lifeline subscriber moves to a new address, he or she will provide that new address to Tempo within 30 days;
 - e. If the Lifeline subscriber provided a temporary residential address to Tempo, he or she will be required to verify his or her temporary residential address every 90 days;¹ and,
 - f. The Lifeline subscriber will notify Tempo within 30 days if he or she is no longer eligible for receiving Lifeline benefits; the subscriber is receiving more than one Lifeline benefit, or another member of the subscriber’s household is receiving a Lifeline benefit.
- 2. Tempo shall file a copy of state-specific subscriber data, including name and address of Lifeline subscribers, to the Commission, upon request for the purpose of determining whether an existing Lifeline subscriber receives Lifeline service from another carrier.
 - 3. Tempo shall immediately investigate any notification from the Commission, FCC or USAC regarding any Lifeline subscriber receiving duplicate subsidy from another carrier or from Tempo. If it is determined that the Lifeline subscriber is receiving a duplicate subsidy, Tempo will work with the other carrier(s) to notify the subscriber of the duplicate accounts and work with the subscriber to choose only one provider of Lifeline service. Tempo shall also abide by any rules of the FCC and work with USAC and the Commission Staff to rectify any duplicate accounts. In the event the subscriber selects a carrier other than Tempo to provide Lifeline service, Tempo shall promptly remove the subscriber’s Lifeline service and remove the subscriber from any USAC reimbursement.
 - 4. Tempo shall deal directly with the subscriber to certify and verify the subscriber’s Lifeline eligibility on an annual basis.

¹ Tempo will comply with the temporary address rule if and when it becomes effective; as of the date of this Stipulation, this requirement has not been approved pursuant to the Paperwork Reduction Act.

5. Tempo shall explain in prominent, plain, easily comprehensible language to all new and potential subscribers that no consumer is permitted to receive more than one Lifeline subsidy.
6. Tempo shall ensure that all marketing materials for the service make clear that it is a Lifeline-supported service.
7. Tempo shall promptly de-enroll any subscriber whom Tempo determines is no longer eligible for Lifeline service or when Tempo becomes aware that the subscriber is no longer eligible for Lifeline service. Tempo shall promptly remove a subscriber's Lifeline service and remove the subscriber from any USAC reimbursement.

N. 911 CALLING.

1. Tempo shall provide access to 911 service. If service is disconnected or minutes are depleted, subscribers may still make 911 calls and calls to the subscriber service department number (611).
2. Tempo shall remit the appropriate wireless E911 charges in accordance with the Stipulation and Settlement and C.R.S. § 29-11-102.5(3) and provide a copy to the Commission Staff of the amount remitted at the time the payment is made. Parties agree that Tempo will separately identify the imputed amount of E911 charge on free minutes and the amount remitted on retail transactions.

O. SUBSCRIBER SERVICE ACCESS.

Subscribers will be provided a toll-free method to access Tempo's subscriber service department, available at a minimum from 8am - 5pm CST Monday through Friday by dialing #611 from a Tempo handset, and online at (www.mytempo.com). Subscribers may obtain directory assistance by dialing 411 from a Tempo handset.

P. LIMITATIONS OF LIABILITY.

Because Tempo has no control of the content of communications transmitted over its network, and because of the possibility of errors incident to the provision and use of its services, services furnished by Tempo are subject to the terms, conditions and limitations specified herein and in Tempo's Terms and Conditions of Service available at (<http://www.mytempo.com/footer/Lifeline-Terms-and-Conditions.aspx>).

Q. SUBSCRIBER DISCONNECTION.

1. Tempo shall not deny or discontinue service to a subscriber without prior written notice of at least 15 days (“written notice” or “in writing” as used in this Section shall mean a message sent to the subscriber as a SMS or “text” message or in letter form printed in English and Spanish per 4 CCR 723-2- 2303(d)(II)) except for the following reasons:
 - a. If a condition immediately dangerous or hazardous to life, physical safety, or property exists; or
 - b. Upon order by any court, the Commission, or any other duly authorized public authority; or
 - c. For a violation of Tempo’s Terms and Conditions or Commission rule that may adversely affect the safety of any person or the integrity of Tempo’s service; or
 - d. If service was obtained fraudulently or without the authorization of the provider or is being used for, or suspected of being used for, fraudulent purposes; or
 - e. Obtaining service by subterfuge that includes, but is not restricted to, an application for service at a location in the name of another party.
2. If Tempo disconnects service to a Lifeline subscriber for any reasons stated above, Tempo will immediately cease seeking reimbursement from the Lifeline universal service fund for that subscriber.

LIFELINE SERVICE OFFERING OF TEMPO TELECOM, LLC

The following contains a detailed description of Tempo Telecom, LLC's ("Tempo") Lifeline initial offering in Colorado.

A. TEMPO LIFELINE OFFERING

Tempo's Lifeline Offering includes the following services required under 47 C.F.R. § 54.101(a) and 4 CCR 723-2-2308(a):

1. Access to Public Switched Telephone Network and Local Usage. Tempo's service includes voice grade access to the public switched telephone network or its functional equivalent and minutes of use for local service without additional charge to the end user.
2. Access to Emergency Service. Subscribers of Tempo's Lifeline plan will be able to reach a public safety answering point by dialing "911" regardless of activation status. Tempo will provide its Lifeline subscribers with 911 and E911 compliant handsets and replace non-compliant handsets at no additional charge.
3. Toll Limitation. Tempo's Lifeline plan is not offered on a distance-sensitive basis and minutes are not charged separately for local or domestic long distance services. Prepaid offerings, by their very construct, act as a toll limitation mechanism.
4. Lifeline Services. Qualified low income subscribers shall receive the equivalent value of \$9.25 per month.¹
5. Hearing Impaired. Tempo will make available services for the hearing impaired. Subscribers may contact Tempo for more information.

B. ADDITIONAL SERVICES WHICH ARE INCLUDED IN TEMPO'S LIFELINE OFFERING

1. Free Handset to each qualifying subscriber – at least one free choice and the possibility of additional choices
2. Free Voicemail²
3. Free Call Waiting
4. Free Caller ID
5. Free subscriber service calls by calling #611 from a Tempo handset
6. Free calls to 911 emergency services

¹ Nothing in this Paragraph A(4) shall modify Tempo's agreement in the Stipulation to remit and pay the prepaid wireless E911 charges as set forth in the Stipulation and Settlement and required by C.R.S § 29-11-102.5.

² Calls placed to Voicemail count against the voice minutes provided by the plan.

7. Free domestic long distance calls
8. National texting, with three (3) texts counting as one (1) minute of use³
9. Web/Internet usage, with 1 megabyte (MB) counting as two (2) minutes of use (Web/Internet access dependent on handset)⁴

C. THE PRICING FOR TEMPO'S LIFELINE OFFERING

1. At this time, Tempo plans to offer two options to Lifeline customers in Colorado: Lifeline 250 with 250 nationwide minutes, and Lifeline 900 with 900 nationwide minutes (unused minutes will not carry over to the next month).
2. Long distance calls are included at no additional charge for calls made within the United States.
3. Federal and state universal service assessments are imposed separately. The Parties agree that Tempo shall remit and pay the Colorado High Cost charge, at the rate then in effect, on all intrastate retail voice minute revenues received from Lifeline subscribers (calculated based on the safe harbor percentage established by the FCC then in effect, currently 62.9 percent intrastate).
4. Lifeline subscribers will not be required to enter into a long-term service contract or pay an activation fee.
5. Lifeline subscribers will be required to pay a number change fee of \$15.00 for a change of wireless telephone number initiated at the request of the Lifeline subscriber.
6. Lifeline subscribers will be charged the replacement cost based on the value of the handset, starting at \$19.99 and up, associated with lost, stolen or damaged handsets.
7. Lifeline subscribers will be able to access directory assistance from their wireless handsets. Airtime minutes will be deducted for each call to directory assistance.
8. If Lifeline service is deactivated, the Lifeline subscriber may reactivate its service by re-enrolling in the Tempo Lifeline program (if eligible). Lifeline subscribers will be subject to a reactivation fee of up to \$30.00 if they request to be assigned the same telephone number previously assigned to the subscriber prior to the deactivation of service. Lifeline subscribers willing to be assigned a new telephone number upon reactivation will not be subject to a reactivation fee.

³ Texting is not regulated by the Colorado Public Utilities Commission.

⁴ Web and Internet access is not regulated by the Colorado Public Utilities Commission

9. Customers may purchase roaming for a flat fee of \$19.95 per month for use outside of Sprints coverage area. It must be purchased prior to use. The customer can opt-out of the roaming plan at the end of any month by selecting a new plan that does not include roaming. If the customer does not affirmatively purchase roaming, roaming capabilities will be blocked and the customer will not incur roaming charges.

D. THE AREAS IN WHICH TEMPO'S LIFELINE OFFERING IS AVAILABLE, AND THE CORRESPONDING LOCAL CALLING AREAS

Tempo's Lifeline offering is available to customers within the exchanges in which Tempo has been designated as an ETC. Tempo shall not offer its Lifeline plan in exchanges other than those listed in Attachment 1 to the Stipulation and shall file an application with the Commission if it expands its footprint to exchanges not listed in Attachment 1.

E. TEMPO'S LIFELINE PLAN

At this time, Tempo plans to offer the following prepaid wireless Lifeline plans in Colorado:

Lifeline 250 - free to Lifeline subscribers

250 nationwide minutes (unused minutes will not carry over to the next month)

Lifeline 900 - \$32.95 for Lifeline subscribers (available in Colorado only)

900 nationwide minutes (unused minutes will not carry over to the next month)

Either plan contains the 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).

Additional airtime can be purchased in various denominations through Tempo's website (www.mytempo.com) and through Tempo's customer service department.

Tempo Telecom, LLC Compliance Plan

Tempo Telecom, LLC (f/k/a Now Communications, LLC) has adopted the following Further Amended Compliance Plan of Birch Communications, Inc. dated June 29, 2012, which was approved by the Wireline Competition Bureau on August 8, 2012. *See Wireline Competition Bureau Approves the Compliance Plans of Birch Communications, Boomerang Wireless, IM Telecom, Q Link Wireless, and TAG Mobile, 27 FCC Rcd 9184 (2012).*

The Wireline Competition Bureau confirmed the adoption of the Compliance Plan by Tempo Telecom, LLC (f/k/a Now Communications, LLC) on December 20, 2012. *See Wireline Competition Bureau Seeks Comment on Petitions for Designation as a Low-Income Eligible Telecommunications Carrier filed by Now Comm, Zing PCS, LTS, Odin Wireless, and TX Mobile, 27 FCC Rcd 15937 (2012)* (“The Wireline Competition Bureau has approved Birch’s compliance plan, which will also apply to Now Comm.”).

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

In the Matter of	)	
	)	
BIRCH COMMUNICATIONS, INC.	)	WC Docket No. 09-197
	)	
Compliance Plan	)	WC Docket No. 11-42
	)	
	)	
Petition for Designation as an Eligible	)	
Telecommunications Carrier pursuant to	)	
Section 214(e)(6) of the Communications Act	)	
for Lifeline Support Only	)	
	)	

FURTHER AMENDED COMPLIANCE PLAN OF BIRCH COMMUNICATIONS, INC.

Birch Communications, Inc. (“Birch”), by its attorneys, respectfully submits this Amended Compliance Plan to be associated with its Petition for designation as an eligible telecommunications carrier (“ETC”) pursuant to Section 214(e)¹ of the Communications Act of 1934, as amended (the “Act”), and Section 54.201² of the rules and regulations of the Federal Communications Commission (“Commission”), which was filed on April 27, 2012 in the above-referenced matters. Birch’s original Compliance Plan was filed May 7, 2012, and an amendment was filed June 1, 2012. Birch seeks ETC designation for Lifeline support only to provide prepaid wireless services under the “NOW Communications” brand name in the non-rural areas of the following states: Alabama, Florida, North Carolina, and Tennessee (the “Designated Service Area”).³

¹ 47 U.S.C. § 214(e).

² 47 C.F.R. § 54.201.

³ Birch is reviewing whether a separate legal entity should be established for the provision of its prepaid wireless Lifeline service or whether the service should be provided through one of the existing Birch entities, such as Birch Telecom of the South, Inc. (FCC Filer ID 820616), which is a subsidiary of Birch and operates as a certificated carrier in Alabama, Florida, North Carolina, and Tennessee. More information on Birch’s corporate structure is set forth herein.

Both the Act and the Commission's rules require a carrier seeking ETC designation to offer the supported services using its own facilities or a combination of its own facilities and resale of another carrier's services.⁴ In the *Lifeline Reform Order*, however, the Commission decided to conditionally forbear from application of the Act's facilities requirement to all telecommunications carriers that seek limited ETC designation to participate in the Lifeline program.⁵ Specifically, the Commission determined that conditional forbearance from the facilities requirement would apply if the carrier: (1) complied with certain 911 requirements and (2) filed and received approval of a compliance plan providing specific information regarding the carrier's service offerings and outlining the measures the carrier will take to implement the obligations contained in the *Lifeline Reform Order* as well as further safeguards against waste, fraud and abuse as the Wireline Competition Bureau may deem necessary.⁶

To avail itself of the Commission's conditional grant of forbearance from the facilities requirement, Birch provides this Compliance Plan in accordance with the requirements of the *Lifeline Reform Order*⁷ and the *Public Notice* issued by the Wireline Competition Bureau on February 29, 2012.⁸ Specifically, Birch's Compliance Plan provides information regarding Birch's planned Lifeline service offerings and outlines the measures Birch will take to implement the obligations contained in the *Lifeline Reform Order* as well as further safeguards

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

⁵ *Lifeline Reform Order* ¶ 368.

⁶ *Lifeline Reform Order* ¶ 368.

⁷ WC Docket Nos. 11-42, 03-109, 12-23 and CC Docket No. 96-45, *Lifeline and Link Up Reform and Modernization, et al.*, FCC 12-11, Report and Order and Further Notice of Proposed Rulemaking, ¶ 368 ("*Lifeline Reform Order*").

⁸ WC Docket Nos. 09-197, 11-42, *Wireline Competition Bureau Provides Guidance for the Submission of Compliance Plans Pursuant to the Lifeline Reform Order*, Public Notice, DA 12-314 (rel. Feb. 29, 2012) ("*Public Notice*").

against waste, fraud and abuse. To that end, Birch provides the information requested in the *Public Notice*, which indicated compliance plans should contain the following:

(1) Information about the carrier and the Lifeline plans it intends to offer:

(a) names and identifiers used by the carrier, its holding company, operating company and all affiliates;

Birch is a competitive local exchange carrier (“CLEC”) and interexchange carrier (“IXC”), and since 1996 has been providing high-quality, cost-effective integrated communications services and related information technology services to residential and small and medium-sized business (“SMB”) customers. Today, Birch offers a variety of products, services and tailored solutions including local voice, long distance voice, broadband Internet, converged Internet Protocol (“IP”) solutions, and related telecommunications and IT services.

Birch is a Georgia corporation with offices located at 3060 Peachtree Road NW, Suite 1065, Atlanta, GA 30305 and 2300 Main Street, Suite 340, Kansas City, MO 64108. Birch has authority to provide interstate and international telecommunications services from the Commission.⁹ Birch’s wholly-owned subsidiary, Birch Communications of Virginia, Inc., operates pursuant to Birch’s international 214 authority and is registered to provide interstate telecommunications services.¹⁰ Birch’s wholly-owned subsidiary, Birch Telecom, Inc., has authority to provide international telecommunications services.¹¹ The following wholly-owned subsidiaries of Birch Telecom, Inc. operate pursuant to Birch Telecom Inc.’s international authority and also provide interstate telecommunications services: Birch Telecom of the South, Inc., Birch Telecom of the West, Inc., Birch Telecom of the Great Lakes, Inc., Birch Telecom of Missouri, Inc., Birch Telecom of Oklahoma, Inc., Birch Telecom of Texas Ltd., LLP, Birch

⁹ IB File No. ITC-214-19970926-00584, FCC Filer ID 815113.

¹⁰ FCC Filer ID 828502.

¹¹ IB File No. ITC-214-19990701-00441.

Telecom of Kansas, Inc., Birch Communications of the Northeast, Inc., Ionex Communications, Inc., Ionex Communications South, Inc., and Ionex Communications North, Inc.¹² Each of these subsidiaries also operates under the D/B/A name of “Birch Communications,” and certain of Birch’s subsidiaries also serve customers under the brand name “NOW Communications.”¹³ Customers purchasing Birch’s prepaid wireless Lifeline service offering will see the “NOW Communications” logo.¹⁴

The Birch family of companies either offer service or are certificated to offer telecommunications services as CLECs and intrastate IXC’s in the following 38 states: Alabama, Arkansas, California, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, New Jersey, New Mexico, New York, North Carolina, North Dakota, Nebraska, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, Wisconsin, and Wyoming. The Birch family of companies currently serves approximately 118,000 customers throughout Birch’s 38-state territory.

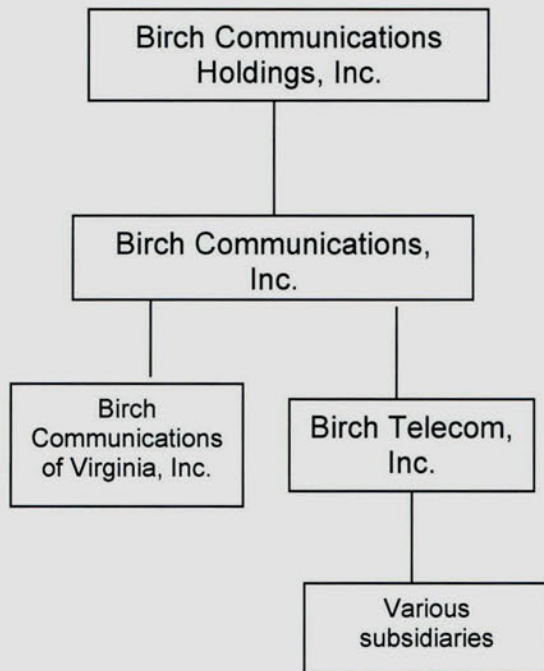
Birch Communications Holdings, Inc. (“Birch Holdings”) owns a 100% voting and equity interest in Birch. Birch Holdings is a Georgia corporation whose principal business is

¹² Birch Telecom of the South, Inc. (FCC Filer ID 820616), Birch Telecom of the West, Inc. (FCC Filer ID 827985), Birch Telecom of the Great Lakes, Inc. (FCC Filer ID 826636), Birch Telecom of Missouri, Inc. (FCC Filer ID 819422), Birch Telecom of Oklahoma, Inc. (FCC Filer ID 820061), Birch Telecom of Texas LTD LLP (FCC Filer ID 819948), Birch Telecom of Kansas, Inc. (FCC Filer ID 807993), IONEX Communications, Inc. (FCC Filer ID 815376), Birch Communications of the Northeast, Inc. (FCC Filer ID 828483), Ionex Communications South, Inc. (FCC Filer ID 808443), Ionex Communications North, Inc. (FCC Filer ID 815082).

¹³ These subsidiaries are Birch Telecom of the South, Inc., Birch Telecom of Missouri, Inc., Birch Telecom of Kansas, Inc., Birch Telecom of Oklahoma, Inc., and Birch Telecom of Texas Ltd., L.L.P. Birch acquired the use of the “NOW Communications” trade name in an earlier asset acquisition.

¹⁴ Birch is reviewing whether a separate legal entity should be established for the provision of its prepaid wireless Lifeline service or whether the service should be provided through one of the existing Birch entities, such as Birch Telecom of the South, Inc. (FCC Filer ID 820616), which is a certificated carrier in Alabama, Florida, North Carolina, and Tennessee.

telecommunications holdings. The address for Birch Holdings is 3060 Peachtree Road, NW, Suite 1065, Atlanta, GA 30305. Below is Birch's organizational chart:



The following entities and individuals hold a ten percent (10%) or greater direct or indirect ownership interest in Birch Holdings: (1) Holcombe Green, a U.S. citizen, owns a 66% voting and equity interest in Birch Holdings and (2) R. Kirby Godsey, a U.S. citizen, owns a 32% voting and equity interest¹⁵ in Birch Holdings. The business address for both Mr. Green and Mr. Godsey is 3060 Peachtree St., NW, Suite 1060, Atlanta, GA 30305. None of the entities or individuals holding an interest in Birch or Birch Holdings hold any interests in other telecommunications-related entities.

¹⁵ R. Kirby Godsey holds his percentage through his individual holdings and through the R. Kirby Godsey 2008 Grantor Retained Annuity Trust.

(b) detailed information demonstrating that the carrier is financially and technically capable of providing the supported Lifeline service in compliance with the Commission's rules;

The Commission has stated that the “relevant considerations” for demonstrating that a carrier is financially and technically capable would be whether the applicant previously offered services to non-Lifeline consumers, how long the applicant has been in business, whether the applicant intends to rely exclusively on universal service fund disbursements to operate, whether the applicant receives funds from other sources, and whether the applicant has been subject to enforcement action or ETC revocation proceedings in other states.¹⁶ Birch has been operating as a CLEC/IXC since 1996, and currently operates in 38 states. In addition to the other services it offers, Birch has been providing wireline Lifeline services in 18 states as a non-ETC reseller using resold services obtained from AT&T for numerous years. Birch serves approximately 1800 wireline Lifeline customers at this time as a non-ETC reseller. Birch does not, and will not, rely on universal service fund disbursements to operate - the majority of Birch's funds to operate will come from the non-Lifeline services it provides throughout its 38-state territory. Birch has not been subject to an abnormal number of enforcement proceedings given the significant number of customers it serves and the more than 15 years it has been offering service.

With respect to the prepaid wireless Lifeline service, Birch will resell the wireless services of Sprint, which provides wholesale capacity to wireless resellers. Like several other prepaid wireless providers, Sprint will provide Birch with the network infrastructure and wireless transmission facilities needed for Birch to offer service as a Mobile Virtual Network Operator (“MVNO”). Sprint is a large, nationwide carrier, and serves several other MVNOs offering

¹⁶ *Lifeline Reform Order* ¶ 388.

wireless Lifeline products.¹⁷ Birch's partnership with Sprint further demonstrates that Birch is technically capable of providing a prepaid wireless Lifeline service.

(c) detailed information, including geographic locations, of the carrier's current service offerings if the carrier currently offers service;

Please see Birch's response to 1(a) above. Birch currently provides local, toll, domestic long distance, and international long distance as a CLEC/IXC in the 38 states listed above. Birch also provides broadband Internet, converged IP solutions, and related telecommunications and IT services throughout its 38-state service territory.

(d) the terms and conditions of each Lifeline service plan offering, including rates, the number of minutes provided, and additional charges, if any, for toll calls; and

At this time, Birch plans to offer the following prepaid wireless Lifeline plan at no charge to an eligible customer:

Basic Plan Prepaid Wireless Lifeline Plan

Wireless handset (there are several handset options) - at least one free choice and the possibility of additional choices¹⁸

250 nationwide minutes per month

Voicemail

National texting, with each text sent or received counting as 1 minute

911 and E911 access as available

Option to purchase additional minutes anytime during the month that carry over for 2 months

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

¹⁷ Based on filings made with the Commission, it appears Sprint also provides underlying MVNO services to other carriers such as PlatinumTel, i-wireless, and CAL Communications, which also have sought ETC designation from the Commission.

¹⁸ Birch is still considering which handsets will be offered, but all handsets will be compliant with all applicable Commission requirements. Handsets will be offered for free in conjunction with the prepaid wireless Lifeline product. Based upon market availability and handset prices, the consumer may have a choice of handsets. Birch is continuing to evaluate the possibility of offering premium handsets at an additional cost, but a free handset will always be offered to every prepaid wireless Lifeline subscriber.

Additional minutes

Minutes	Price
200	13.95
250	16.95
300	19.95
400	25.95
900	49.95

Available minutes are nationwide, and there are no additional charges for toll calling.

(e) all other certifications required under newly amended section 54.202 of the Commission's rules.

Section 54.202 of the Commission's rules requires a common carrier seeking ETC designation to: (1) certify that it will comply with the service requirements applicable to the support that it receives;¹⁹ (2) submit a five-year plan for proposed improvements or upgrades to the applicant's network unless the applicant is seeking Lifeline support only;²⁰ (3) 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;²¹ (4) demonstrate that it will satisfy applicable consumer protection and service quality standards;²² (5) demonstrate it is financially and technically capable of providing Lifeline service in compliance with the Commission's rules;²³ and (6) submit information describing the terms and conditions of the voice telephony plans offered to

¹⁹ 47 C.F.R. § 54.202(a)(1)(i).

²⁰ 47 C.F.R. § 54.202(a)(1)(ii).

²¹ 47 C.F.R. § 54.202(a)(2).

²² 47 C.F.R. § 54.202(a)(3).

²³ 47 C.F.R. § 54.202(a)(4).

Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges for toll calls (if any), and rates for each such plan.²⁴

Birch has addressed (5) and (6) above in (1)(b) and (1)(d), and the five-year plan required under (2) is no longer applicable given that Birch seeks designation for Lifeline support only.²⁵

With respect to (1), Birch seeks ETC designation for Lifeline support only, and therefore certifies that it will comply with the service requirements applicable to Lifeline support.

With respect to (3), Birch has the ability to remain functional in emergency situations. Birch has been offering telecommunications services since 1996, and thus has significant experience with remaining functional in emergency situations. As a CLEC/IXC, Birch is currently subject to the Commission's outage reporting rules, as well as the back-up power and outage requirements in the states in which Birch operates. As a successful, profitable CLEC for over 15 years Birch has disaster recovery contingency plans that include diverse/alternate routing, electronics redundancy, dual data centers geographically separated, and environmental controls for data and switching centers. Birch will apply these same measures to its prepaid wireless Lifeline service offering to the extent there is an emergency situation affecting Birch's operations. Birch's MVNO contract arrangement with Sprint also imposes certain obligations on Sprint to ensure Birch's prepaid wireless Lifeline service offering remains functional during emergency situations.²⁶ As a large, nationwide wireless carrier, Sprint is subject to regulatory

²⁴ 47 C.F.R. § 54.202(a)(5).

²⁵ *Lifeline Reform Order* ¶ 386.

²⁶ While Sprint will provide the underlying wireless services to Birch, Birch will provide billing services associated with the prepaid wireless Lifeline product to the Birch end user customer. The Birch billing system will be served by two geographically separate data centers for back-up redundancy, one currently located in Macon, Georgia and the other in Emporia, Kansas.

requirements to remain functional during emergency situations.²⁷ Birch's MVNO agreement with Sprint also contains certain quality of service guarantees.

With respect to (4), Birch will satisfy applicable consumer protection and service quality standards. As a CLEC/IXC, Birch is currently subject to the consumer protection and service quality standards promulgated by the Commission and the states in which Birch operates. Birch will apply these same practices to its prepaid wireless Lifeline service product, and will comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service to satisfy this requirement as permitted by the Commission's rules.²⁸

(2) A detailed explanation of how the carrier will comply with the Commission's new rules relating to determinations of subscriber eligibility for Lifeline services, including all of the consumer eligibility, consumer enrollment, and re-certification procedures, as required by Section VI and Appendix C of the *Lifeline Reform Order*, and a copy of the carrier's certification form.

Birch currently offers wireline Lifeline services as a non-ETC reseller. Birch is therefore intimately familiar with the Commission's procedures for confirming consumer eligibility, enrolling eligible customers, re-certifying eligibility at regular intervals, and recordkeeping. Birch plans to build on that expertise in offering its prepaid wireless Lifeline service offering as an ETC. Birch has implemented the Commission's *Lifeline Reform Order* rule changes into its existing wireline, non-ETC Lifeline program.²⁹ Birch will utilize the same processes outlined below for both its prepaid wireless Lifeline service (as an ETC) and its wireline Lifeline service (as a non-ETC reseller) to the extent applicable.

²⁷ Birch is also familiar with the continuity and disaster response program Sprint has implemented, which addresses the need to remain functional during emergency situations.

²⁸ 47 C.F.R. § 54.202(a)(3).

²⁹ Birch recently received and executed a certification form from AT&T, its underlying provider for its resold Lifeline services, in which Birch certified its compliance with the FCC's *Lifeline Reform Order* requirements for Birch's provision of wireline Lifeline services as a non-ETC reseller.

Set forth as Attachment A is an initial draft of Birch's prepaid wireless Lifeline enrollment and certification forms. Birch is continuing to refine these documents and will make any necessary changes to the extent the Commission or the Universal Service Administrative Company ("USAC") issue additional guidance on the language to be contained on enrollment and certification forms. Birch also confirms that it will comply with any future Commission or USAC guidance, directives, or rule changes regarding the Lifeline program.

Consumer Eligibility

Under its current procedures for its wireline Lifeline offering (as a non-ETC reseller), Birch utilizes the Texas Low Income Database Administrator database to verify and document a Texas consumer's eligibility for Lifeline service. Until a national database is available, Birch will utilize available state-level databases to verify eligibility for its prepaid wireless Lifeline service offering as required under the Commission's rules. Where state-level database technology is not available, Birch will require potential customers to provide their proof of eligibility documentation directly to Birch (either via facsimile, U.S. mail, electronic mail, or through a Birch-authorized third-party dealer as discussed below). New subscribers can be added to the Lifeline program through Birch internal sales agents or through Birch-authorized third-party dealers. Birch currently utilizes approximately 100 third-party dealers for its wireline Lifeline product (non-ETC reseller), and plans to offer its wireless Lifeline product at those same locations plus additional locations that would be frequented by the target audience for Lifeline services. Birch's current third-party dealers include check cashing locations, grocery stores, computer stores, independent telephone retailers, storage facilities, beauty supply stores, and pawn shops. Once wireless Lifeline service is implemented, Birch plans to add independent wireless retailers and mall kiosks to its potential third-party dealer locations.

In the internal sales agent situation, the potential subscriber would provide its eligibility documentation to Birch and would complete the enrollment and certification form in paper format, via third-party verification (or “TPV”), or via electronic signature as described in the “Enrollment and Certification” section below. As described in more detail below, the handset would then be shipped to the customer after Birch verifies the customer’s eligibility to obtain a Lifeline product and has obtained all necessary certifications from the customer. The flow-chart in Attachment B-1 provides more detail on the process using internal sales agents.

At the third-party retail location, a potential subscriber can provide its eligibility information in-person to the third-party dealer, which will then be transmitted to Birch for review as explained below. The potential subscriber can also complete the enrollment and certification form discussed further below and a draft of which is set forth in Attachment A. As described in more detail below, the handset would then be shipped to the customer after Birch verifies the customer’s eligibility to obtain a Lifeline product and has obtained all necessary certifications from the customer. The flow-chart in Attachment B-2 provides more detail on the process using third-party retail locations. To ensure compliance with the Commission’s one-per-household and other Lifeline eligibility requirements, Birch will require its third-party dealers to have their employees participate in quarterly webinars to receive training (and re-training) on Commission-compliance requirements for Lifeline services. Birch will also supply each third-party dealer with copies of written materials providing detailed information on the Commission’s Lifeline compliance requirements. Birch will then require the third-party dealer to sign documentation certifying that all employees selling Birch Lifeline services have read the Lifeline compliance requirements provided by Birch, understand the Lifeline compliance requirements,

and will comply with the Lifeline compliance requirements. Birch will conduct periodic audits and random checks of its third-party dealers to ensure compliance with the Commission's rules.

It is important to note that, even when a customer signs up for Lifeline service through a third-party dealer, eligibility information provided by potential consumers will be reviewed by appropriate Birch personnel pursuant to Birch's internal policies for review of Lifeline eligibility documents. Until such time as there is adequate database access allowing third-party dealers to confirm eligibility automatically through Commission-sanctioned databases, all initial eligibility determinations will be made by Birch personnel. And even after third-party dealers have access to eligibility databases, Birch will review and verify a consumer's eligibility prior to seeking reimbursement for that customer. As part of confirming a potential customer's eligibility, Birch personnel will also confirm that there is no Lifeline duplication using the process discussed under (5) below. Detailed information regarding the documents provided by the potential customer and Birch's review of the documentation will be included in the customer's account information as kept in Birch's internal recordkeeping system. Any actual documentation provided by the potential customer will be destroyed or returned to the customer upon request.³⁰

Enrollment and Certification

Once Birch determines a potential customer is eligible to receive a Lifeline service product, Birch will proceed to enroll the customer in its prepaid wireless Lifeline program and obtain the necessary certifications under the Commission's rules (this can be done by an internal Birch sales agent or a Birch-authorized third-party dealer as explained above). In its current wireline Lifeline service offering (as a non-ETC reseller), Birch utilizes TPV to enroll customers and confirm their certification for Lifeline eligibility in addition to paper enrollment/certification

³⁰ *Lifeline Reform Order* ¶ 101.

forms. Birch plans to continue utilizing TPV for its prepaid wireless Lifeline service product³¹ to the extent Birch can ensure all Commission-required information is included in the TPV without the process becoming too unwieldy for the potential customer. Birch also plans to make paper forms available for enrollment/certification and also is looking to develop an online portal that potential customers could access via any Internet connection, including at their local libraries or social service organizations for electronic signature of the required documentation.

As part of the enrollment/certification process, Birch will first obtain the relevant contact information from the potential customer: (a) full name; (b) full residential address; (c) whether the residential address is permanent or temporary; (d) billing address if different than residential; (e) date of birth, (f) last 4 digits of Social Security Number; (g) if qualifying under federal or state assistance program, which program; and (h) if qualifying under income-based criteria, the number of individuals in the household. Birch will also require the customer to indicate whether the household is shared, which would trigger the use of the Lifeline Household Worksheet developed by USAC (included as part of Birch's draft enrollment and certification form set forth in Attachment A). Birch will also confirm that the customer understands its information may be shared with USAC as necessary under the Commission's rules and to ensure there is no duplication of Lifeline benefits.

Next, Birch will utilize its TPV script or the paper form (or online portal once developed) to address each of the certifications required under the Commission's rules. The certifications will be addressed through individual questions, each to be answered by the customer before

³¹ The Commission has recognized TPV is an acceptable method for obtaining such information. *See Lifeline Reform Order* ¶ 169.

moving any further in the TPV script³² or each to be initialed by the customer on the paper form (or each to be individually acknowledged in an online format):

- Certifying, under penalty of perjury, that the consumer meets the Lifeline eligibility requirements because either the household receives benefits from a qualifying state or federal assistance program (and naming the program) or has income at or below 135% of the Federal Poverty Guidelines;
- Certifying, under penalty of perjury, that the consumer has presented documentation to Birch that accurately represents the consumer's household income or participation in the program;
- Certifying, under penalty of perjury, that the consumer will notify Birch within 30 days when it is no longer eligible for Lifeline service, whether because the consumer no longer qualifies, it has another Lifeline supported service, or for any other reason, and confirming that the customer understands failure to so notify Birch may subject it to penalties;
- Certifying, under the penalty of perjury, that the information the consumer is providing to Birch is true and correct to the best of its knowledge;
- Certifying, under the penalty of perjury, that the consumer understands that providing false or fraudulent information to receive Lifeline benefits is punishable by law;
- Certifying, under penalty of perjury, that the consumer understands it will be required to annually re-certify its continued eligibility for Lifeline at any time and that failure to do so will result in the termination of the consumer's Lifeline benefits;

³² The customer will be required to answer "Yes" to these questions on the recorded TPV to enroll in Birch's prepaid wireless Lifeline program. TPV recordings are searchable by confirmation number and primary telephone number assigned to the customer. TPV confirmation numbers will be stored in the order and account notes associated with the customer.

- Certifying, under penalty of perjury, that the consumer will provide its new address to Birch within 30 days of moving;
- Certifying, under penalty of perjury, that the consumer will be required to verify its temporary address every 90 days if the subscriber provides a temporary residential address when initially enrolling;
- Certifying, under penalty of perjury that the subscriber's household is receiving no more than one Lifeline-supported service, that the consumer receives Lifeline-supported service only from Birch, and to the best of the consumer's knowledge no one else in the subscriber's household is receiving a Lifeline-supported service;
- Certifying that the consumer understands that Lifeline is a government benefit and consumers who willfully make false statements in order to obtain the benefit can be punished by fine or imprisonment or can be barred from the program;
- Certifying that the consumer understands that Lifeline is a non-transferrable benefit, and that an eligible Lifeline subscriber may not transfer its phone service to anyone else, not even someone who is also eligible;
- Certifying that the consumer understands that non-usage of its prepaid wireless Lifeline service from Birch for any consecutive 60-day period of time will result in de-enrollment and deactivation of the service; and
- Certifying that the consumer understands that (a) Lifeline is a federal benefit; (b) Lifeline service is available for only one line per household; (c) a household is defined for purposes of the Lifeline program as any individual or group of individuals who live together at the same address and share income and expenses; (d) a household is not permitted to receive Lifeline benefits from multiple providers; and (e) violation of the

one-per-household rule constitutes a violation of Commission rules and will result in the consumer's de-enrollment from the program and could result in criminal prosecution by the United States government.

Birch will ensure its TPV script and paper documentation is written in clear, easily understood language. Birch will retain its TPV recordings and copies of its paper enrollment/certification documentation for at least five (5) years.

Once all eligibility determinations and documentation requirements are complete, Birch will ship the handset to the customer via overnight delivery to the address listed on the enrollment form. Birch will require the customer to take affirmative steps to "personally activate" the service, either by requiring the customer to use the handset to activate the Lifeline service or to complete an outgoing call.³³ If service is not initiated, Birch will not consider the consumer to be enrolled in the Lifeline program and Birch will not request Lifeline reimbursement until the subscriber personally activates its service.³⁴ The flow-charts in Attachments B-1 and B-2 provide more detail on the certification process using both internal sales agents and third-party dealers.

Annual Re-Certification

Birch's systems are capable of tracking and flagging the anniversary of a Lifeline customer's start date. Birch plans to utilize this anniversary date to ensure its Lifeline customers re-certify their eligibility to participate in the Lifeline program once a year. Birch will utilize state-level databases or the national database to the extent available to re-certify customers. Until that time, Birch plans to contact its prepaid wireless Lifeline customers via written notification, and is exploring the ability to utilize text messaging, automated voicemail, and TPV

³³ *Lifeline Reform Order* ¶ 260.

³⁴ *Lifeline Reform Order* ¶ 257.

re-certification procedures. Any customers that do not re-certify within the 30-day window will be de-enrolled from Birch's prepaid wireless Lifeline service within five (5) business days after the expiration of the subscriber's time to respond to Birch's re-certification efforts as required by Commission's rules, which is explained in more detail below.³⁵ Birch will retain any TPV recordings, paper forms, copies of text message, or other documentation for re-certification for at least five (5) years. The flow-chart in Attachment B-3 provides more detail on the annual re-certification process.

(3) A detailed explanation of how the carrier will comply with the forbearance conditions relating to public safety and 911/E-911 access.

Birch's prepaid wireless Lifeline service offering will comply with the 911 requirements outlined in the *Lifeline Reform Order* necessary for application of conditional forbearance. Birch will provide its prepaid wireless Lifeline subscribers with 911 and E911 access regardless of activation status and availability of minutes. Birch will also provide its Lifeline subscribers with E911-compliant handsets and replace, at no additional charge to the subscriber, any non-compliant handset. Birch will rely on its contractual arrangement with Sprint to provide 911 and E911 services to consumers, as well as obtain the handsets to be provided to consumers.³⁶ Birch's MVNO arrangement with Sprint specifically addresses 911/E911 services and requires Sprint to supply handsets that satisfy all Commission requirements.

³⁵ 47 C.F.R. § 54.405(e)(4).

³⁶ Birch understands that it has an independent obligation to provide 911 and E911 services as a wireless reseller, and will utilize its underlying contractual arrangement with Sprint to meet that obligation. *See, e.g.*, 47 C.F.R. § 20.18(m); *Lifeline Reform Order* at n.989.

(4) A detailed explanation of how the carrier will comply with the Commission's marketing and disclosure requirements for participation in the Lifeline program;

Birch will publicize the availability of its prepaid wireless Lifeline service offering in a manner reasonably designed to reach those likely to qualify the service.³⁷ Birch will utilize the Commission's 2004 outreach guidelines for advertising its prepaid wireless Lifeline service offering.³⁸ Specifically, Birch will utilize outreach materials and methods designed to reach households that currently do not have telephone service, will develop advertising materials for non-English speaking populations within its service area, and will coordinate its outreach efforts with relevant government agencies. As required under the *Lifeline Reform Order*, Birch will ensure the Commission-required disclosures, any DBA names it uses, and details of the prepaid wireless Lifeline service offering are contained in all marketing materials.³⁹

Birch's advertising strategy for its prepaid wireless Lifeline service offering will build on its expertise in advertising its wireline Lifeline product currently offered as a non-ETC reseller. Birch understands that its ability to provide wireline Lifeline services as a non-ETC reseller may be limited in the future. As part of its marketing efforts for its prepaid wireless Lifeline service, Birch will market to those consumers currently taking its wireline Lifeline product, but will ensure that the consumer receives only one Lifeline service in accordance with the Commission's one-per-household rules.

Birch's advertising for its prepaid wireless Lifeline service offering will include, but not be limited to, targeted direct mail, advertisements in daily and weekly print periodicals, billboards, event sponsorship, bus advertising, radio advertising, and online search engines. Birch will also engage in outbound calling campaigns (consistent with applicable telemarketing

³⁷ 47 C.F.R. § 54.405(b).

³⁸ *Lifeline and Link Up*, 19 FCC Rcd 8302, ¶¶ 45-48 (2004).

³⁹ *Lifeline Reform Order* ¶¶ 274-282.

regulations). Birch will obtain marketing calling lists through various marketing activities, which may include, but not be limited to interest forms completed by prospective customers who have attended a marketing event and have provided their phone number indicating their interest in being contacted. Birch also plans to target its current wireline Lifeline customers (served by Birch as a non-ETC reseller) to determine interest in converting from wireline Lifeline service to wireless Lifeline service. Birch will also consider purchasing prospective customer lists for outbound calling campaigns once the company has determined such lists effectively target potential Lifeline customers and adhere to all applicable telemarketing regulations. Once Birch has a list of prospective customer to contact, Birch marketing personnel will deliver a marketing message that accurately and in detail describes the benefits of the Lifeline program, how the Lifeline program works, and eligibility requirements to qualify as a Lifeline customer, including a determination of whether the prospective customer is already receiving a Lifeline service (duplicative service check). If the prospective customer appears initially qualify, the outbound marketing call will initiate the completion of the Birch Lifeline Enrollment Form and receipt program eligibility documents to be reviewed by Birch personnel.

Birch will also coordinate with relevant state agencies, community outreach organizations, and non-profit organizations to make information available regarding Birch'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. Birch has existing relationships with these organizations in connection with its current wireline Lifeline service offering. Birch will pro-actively market its prepaid wireless Lifeline services through state, county, municipal and non-profit community action agencies, associations and networks. These agencies support Lifeline eligible individuals and families in

obtaining support services, employment, employment training, life skills training and other services. Birch will have marketing personnel dedicated to building strong relationships with these agencies - and formulate marketing programs that support the missions of these agencies. Birch will raise awareness of Birch Lifeline services through the inclusion of Birch Lifeline information in resource guides and other support materials (online and in printed materials issued by the agency) that are provided to Lifeline-eligible prospective customers. Birch will also pursue referral arrangements and partnerships where a non-profit non-governmental agency can specifically refer Lifeline-eligible customers directly to Birch in exchange for minimal compensation or other remuneration to the agency for the referral. Birch will also raise awareness of its Lifeline services through sponsoring events held by these agencies.

(5) A detailed explanation of the carrier's procedures and efforts to prevent waste, fraud and abuse in connection with Lifeline funds, including but not limited to, procedures the carrier has in place to prevent duplicate Lifeline subsidies within its own subscriber base, procedures the carrier undertakes to de-enroll subscribers receiving more than one Lifeline subsidy per household, information regarding the carrier's toll limitation service, if applicable, and the carrier's non-usage policy, if applicable.

Prior to enrolling a Lifeline customer, Birch will take two steps to prevent duplicate Lifeline subsidies within its own subscriber base. First, Birch will review its own service records to ensure the potential customer is not currently receiving a Lifeline service from Birch. Second, Birch will utilize available state-level databases and the national database to be created to ensure the potential customer is not currently receiving a Lifeline service from any other carrier. Birch will promptly investigate any notification it receives from a state, the Commission, or USAC that one of its Lifeline customers is improperly receiving service. Birch will also update any required databases within one (1) business day of de-enrolling a consumer.⁴⁰ The flow-chart set forth in Attachment B-4 provides additional detail on the de-enrollment process described herein.

⁴⁰ *Lifeline Reform Order* ¶ 257.

De-enrollment for failure to re-certify. Birch will also re-check its internal databases and available state-level or federal databases as part of its annual re-certification process. Birch will issue a letter separate from the invoice to all subscribers, requesting them to recertify and noticing the subscriber that failure to respond within 30 days will trigger de-enrollment. The subscriber will be given the option to mail or fax back the re-certification form. The subscriber will also be given the option to complete their recertification form online, over the phone with TPV, or by mail. If the subscriber fails to respond with their completed form and documentation of eligibility by the 30th day of the notice period, Birch will de-enroll the customer by taking the following steps: Birch will place a Local Service Request (“LSR”) with the supporting local exchange carrier to remove the Lifeline USOC to prevent further credits; remove the credit supplied by Birch to the end user from the billing system; and the credit may only be reapplied if customer goes through certification process again. The flow-chart in Attachment B-3 provides more detail on the annual re-certification process.

De-enrollment for duplicative support. Birch understands that duplicative claims are wasteful and burden the fund, and will take all necessary steps to swiftly de-enroll consumers found to be receiving duplicative federal Lifeline discounts. Upon notification from the Commission, a state, or USAC that a subscriber is receiving Lifeline service from another carrier, or more than one member of a household is receiving Lifeline service, Birch will de-enroll the subscriber within five business days.⁴¹ To the extent de-enrollment is necessary due to duplicative support, Birch will take the following steps to de-enroll a customer: Birch will immediately place a LSR with the supporting local exchange carrier to remove the Lifeline USOC to prevent further credits; remove the credit supplied by Birch to the end user from the

⁴¹ 47 C.F.R. § 54.405(e)(2); see also *Lifeline and Link Up Reform and Modernization*, 26 FCC Rcd 9022, ¶ 15 (2011).

billing system; and have a company policy in place that the credit may only be reapplied if the customer goes through certification process again. Birch will not seek reimbursement for any de-enrolled subscriber following the date of that subscriber's de-enrollment.

De-enrollment for non-usage. As part of its de-enrollment procedures, Birch will comply with the Commission's 60-day non-usage policy. Specifically, Birch will not consider a consumer to be enrolled, and Birch will not seek reimbursement for that consumer, until the consumer activates its service in the first instance.⁴² Further, Birch will de-enroll and not seek reimbursement for any consumer whose service is inactive for a consecutive 60-day period.⁴³ Birch will define "usage" consistent with Commission rules. Specifically, the following activities will constitute "usage" of Birch's prepaid wireless Lifeline service: (1) completion of an outbound call; (2) purchase of minutes to add to the subscriber's service plan; (3) answer of an incoming call from a party other than Birch or its representative; and (4) response to direct contact from Birch and confirmation that the consumer seeks to continue receiving the Lifeline service.⁴⁴ Birch will run usage reports for each customer to determine non-usage over a period of 60 consecutive days. Despite a consumer's "usage" as defined herein and in the Commission's rules, Birch will continue to comply with its existing public safety obligations to transmit all wireless 911 calls regardless of subscriber inactivity even if Birch is no longer providing Lifeline service to that consumer.⁴⁵

When a customer has been identified for de-enrollment for non-usage, a letter will be sent to the customer, and the customer will have 30 days to respond. Birch will allow 15 calendar

⁴² 47 C.F.R. § 54.404(b)(10).

⁴³ *Lifeline Reform Order* ¶ 257.

⁴⁴ 47 C.F.R. § 54.407(c)(2); *Lifeline Reform Order* ¶ 261.

⁴⁵ *Lifeline Reform Order* ¶ 262.

days for mail delivery and handling, and a 30-day notice period thereafter. Birch will run usage monitoring reports on the customers who have been noticed and de-enroll the customer if usage is not reflected on their account by the 30th day. On the 31st day, Birch will de-enroll the customer by placing a LSR with the supporting local exchange carrier to remove the Lifeline USOC to prevent further credits and remove the credit supplied by Birch to the end user from the billing system. The flow-chart set forth in Attachment B-5 provides more information on the process for de-enrollment for non-usage.

CONCLUSION

WHEREFORE, for the forgoing reasons, Birch respectfully requests that the Commission expeditiously approve its further amended Compliance Plan and designate it as an ETC for the provision of prepaid wireless Lifeline services in the states of Alabama, Florida, North Carolina, and Tennessee.

Respectfully submitted,

BIRCH COMMUNICATIONS, INC.



Angela F. Collins
Cahill Gordon & Reindel LLP
1990 K Street, N.W., Suite 950
Washington, D.C. 20006
202-862-8930 (telephone)
866-255-0185 (facsimile)
acollins@cgrdc.com

Christopher J. Bunce
Vice President, Legal and General
Counsel
Birch Communications, Inc.
2300 Main Street, Suite 340
Kansas City, MO 64108
816-300-3000 (telephone)
chris.bunce@birch.com

Dated: June 29, 2012

Its Attorneys

Attachment A to Compliance Plan

Draft Enrollment and Certification Form



Lifeline Enrollment Form

Three Easy Steps to Complete:

Step #1 – Complete Lifeline Enrollment Form on page 2
(And if needed Household Worksheet on page 5)

Step #2 – Locate your Lifeline benefit documentation
(More info on your required documentation on pages 3 and 4)

Step #3 – Send complete enrollment form and benefit documentation to NOW Communications
(There are many convenient ways to send them, check Page 2)



Lifeline Enrollment Form

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

Things to know about the Lifeline Program:

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

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

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

Residential Address:

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

Billing Address:

May contain a P.O. Box.

☐ Check here if the billing address is the same as the residential address.

Address Line 1: _____

Address Line 1: _____

Address Line 2: _____

Address Line 2: _____

City, State and Zip: _____

City, State and Zip: _____

This Address Is: ☐ Permanent ☐ Temporary *(If temporary, your address must be certified or updated every 90 days.)*

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

(Initial)

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

_____ I hereby certify that I qualify to participate in at least one of the following programs *(check all that apply):*
(Initial) Please see the related documentation requirements on the reverse side.

☐ Supplemental Nutrition Assistance Program (SNAP) formerly known as Food Stamps ☐ Supplemental Security Income (SSI)

☐ Federal Public Housing Assistance (FPHA) or Section 8 ☐ Low Income Home Energy Assistance Program (LIHEAP)

☐ National School Lunch Program's free lunch program ☐ Temporary Assistance for Needy Families (TANF) ☐ Medicaid

_____ I hereby certify that my household income is at or below 135% of the Federal Poverty Guidelines; there are _____ members in my household.
(initial) Please see the Federal Poverty Guidelines and the related documentation requirements on the reverse side.

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

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

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

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

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

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

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

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

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

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

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

APPLICANT SIGNATURE/TPV ID: _____ DATE: _____

FOR NOW COMMUNICATIONS OFFICE USE ONLY

Company Representative Name: _____ ☐ Database Queried? Date: __/__/__ Database Name: _____

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

Type of Documentation reviewed: _____ ☐ State Agency Queried? Date: __/__/__ Agency Name: _____

Type of media: _____ How received: _____ Agency contact: _____ Confirmation Type: ☐ Notice, attached

Date/Expiration Date of Documentation: __/__/__

Identity of Documentation: _____

Date reviewed: __/__/__

☐ Applicant name different than name on documentation (Note: _____)

Name: _____

_____ Certification that individual is part of applicant's household

_____ Certification that individual is does not already receive Lifeline

Representative Signature: _____ Date: _____

NOTES : _____

HOW TO SUBMIT YOUR ENROLLMENT APPLICATION:

COMPLETE ENROLLMENT APPLICATION ONLINE: www.nowcommunications.com FAX: (877) 465-0545 EMAIL: nowcommunications@birch.com
POSTAL MAIL : NOW Communications, 2300 Main St., Suite 340, Kansas City, MO 64108.

HOW TO SUBMIT YOUR DOCUMENTATION:

TEXT A DOCUMENT: (816) 446-3388 FAX: (877) 465-0545 EMAIL: nowcommunications@birch.com POSTAL MAIL: NOW Communications, 2300 Main St., Suite 340, Kansas City, MO 64108.

DOCUMENTATION REQUIREMENTS

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

PROGRAM ELIGIBILITY

If, on page 1 of this form, you indicated you were in a qualifying program. You must provide documentation to prove receipt of benefits under these programs to NOW Communications. Upon examination by NOW Communications, any copies, photos or faxes of your documentation will be destroyed or returned to you at your request. Acceptable forms of documentation are described below:

Public Housing Assistance (FPHA) or Section 8

There are two types of documentation that can prove receipt of benefits under the Public Housing Assistance (FPHA), or Section 8, Program.

First, an applicant can provide an award letter. A recipient of Public Housing Assistance (FPHA), or Section 8, receives an award letter from his or her local Public Housing Agency (PHA). The award letter should include the following information: name of program, date of award, name of beneficiary and award amount.

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

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

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

Low Income Home Energy Assistance Program (LIHEAP)

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

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

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

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

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

To find contact information for a local LIHEAP agency, please visit the Low Income Home Energy Assistance Program's [state contact and agency listing](#).

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

Although the National School Lunch Program's Free Lunch Program (NSLP) is a federally assisted program, award letters are provided by state agencies and, thus, will vary by locality. All award letters should contain the following basic information: name of program, name of beneficiary, address of beneficiary and date of award.

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

Supplemental Security Income (SSI)

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

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

Temporary Assistance for Needy Families (TANF)

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

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

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

Supplemental Nutrition Assistance Program (SNAP)

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

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

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

Medicaid

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

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

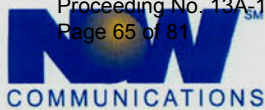
Some states have different names for their Medicaid programs. Look for your state on this list of [Medicaid program names by state](#).

PROGRAM ELIGIBILITY

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

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

135% FEDERAL POVERTY GUIDELINES - 2012	
Members of Household	Household Income must be at or below
1	\$ 15,080
2	\$ 20,426
3	\$ 25,772
4	\$ 31,118
5	\$ 36,464
6	\$ 41,810
7	\$ 47,156
8	\$52,502
For every additional member of your household, add \$4,950.	



Optional Lifeline Household Worksheet

Complete only if you checked "A shared, multi-household residence" on your enrollment form

Name	
Address	
Telephone Number	

Lifeline is a government program that provides a monthly discount on home or mobile telephone services. Only ONE Lifeline discount is allowed per household. Members of a household are not permitted to receive Lifeline service from multiple telephone companies.

Your **household** is everyone who lives together at your address as one economic unit (including children and people who are not related to you).

The **adults** you live with are part of your **economic unit** if they contribute to and share in the income and expenses of the household. An **adult** is any person 18 years of age or older, or an emancipated minor (a person under age 18 who is legally considered to be an adult). Household **expenses** include food, health care expenses (such as medical bills) and the cost of renting or paying a mortgage on your place of residence (a house or apartment, for example) and utilities (including water, heat and electricity). **Income** includes salary, public assistance benefits, social security payments, pensions, unemployment compensation, veteran's benefits, inheritances, alimony, child support payments, worker's compensation benefits, gifts, and lottery winnings.

Spouses and domestic partners are considered to be part of the same household. Children under the age of 18 living with their parents or guardians are considered to be part of the same household as their parents or guardians. If an adult has no income, or minimal income, and lives with someone who provides financial support to that adult, both people are considered part of the same household.

You have been asked to complete this Worksheet because someone else currently receives a Lifeline-supported service at your address. This other person may or may not be a part of your household. Answer the questions below to determine whether there is more than one household residing at your address.

- Does your spouse or domestic partner (that is, someone you are married to or in a relationship with) already receive a Lifeline-discounted phone? (check no if you do not have a spouse or partner) ☐ YES ☐ NO
 - If you checked **YES**, you may not sign up for Lifeline because someone in your household already receives Lifeline. Only ONE Lifeline discount is allowed per household.
 - If you checked **NO**, please answer question #2.
- Other than a spouse or partner, do other adults (people over the age of 18 or emancipated minors) live with you at your address?

A. A parent	☐ YES ☐ NO	D. An adult roommate	☐ YES ☐ NO
B. An adult son or daughter	☐ YES ☐ NO	E. Other _____	☐ YES ☐ NO
C. Another adult relative (such as a sibling, aunt, cousin, grandparent, grandchild, etc.)	☐ YES ☐ NO		

 - If you checked **NO** for each statement above, you do not need to answer the remaining questions. Please initial line B, below, and sign and date the worksheet.
 - If you checked **YES**, please answer question #3.
- Do you share living expenses (bills, food, etc.) and share income (either your income, the other person's income or both incomes together) with at least one of the adults listed above in question #2? ☐ YES ☐ NO
 - If you checked **NO**, then your address includes **more than one household**. Please initial lines A and B below, and sign and date the worksheet.
 - If you checked **YES**, then your address includes only **one household**. You may not sign up for Lifeline because someone in your household already receives Lifeline.

CERTIFICATION

Please initial the certifications below and sign and date this worksheet. Submit this worksheet to NOW Communications along with your Lifeline application.

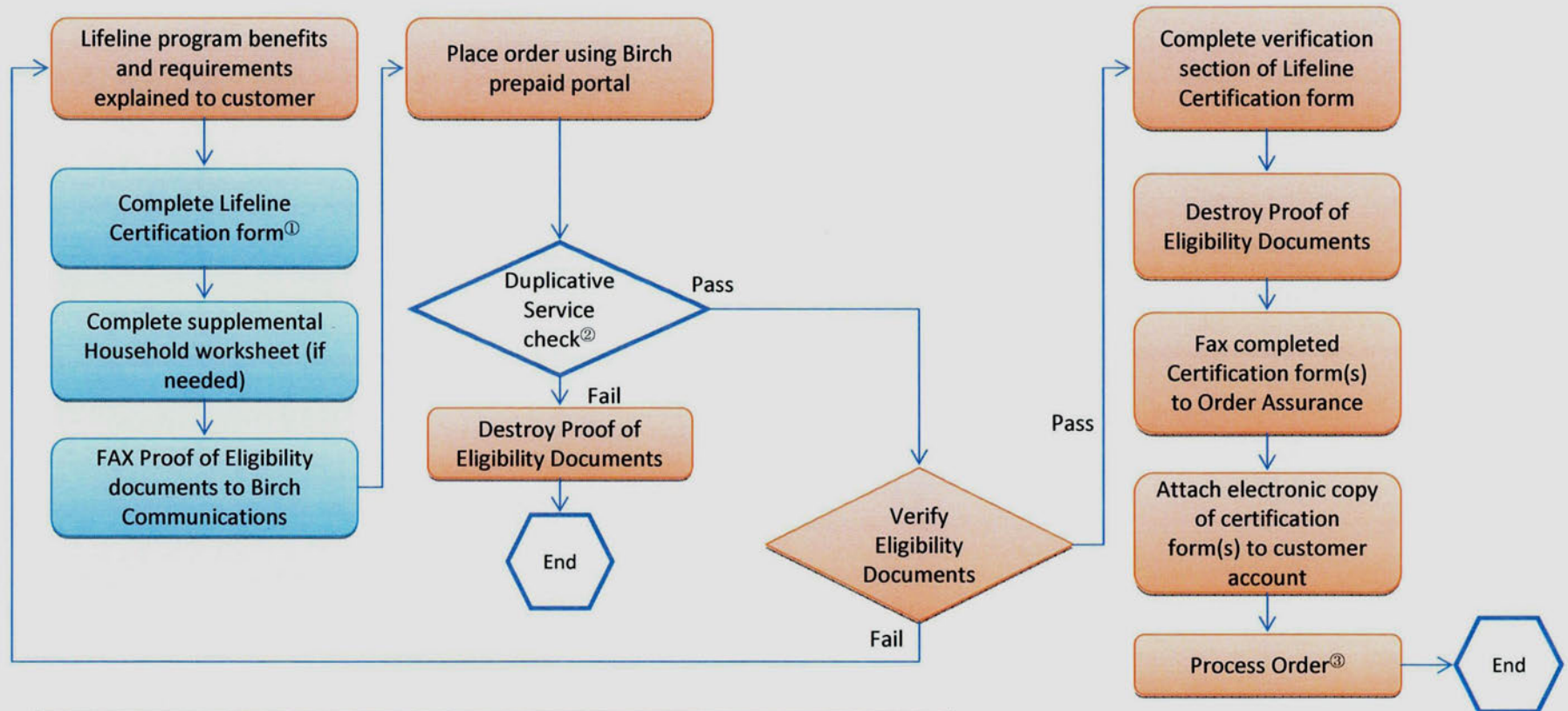
- ☐ I certify that I live at an address occupied by multiple households.
- ☐ I understand that violation of the one-per-household requirement is against the Federal Communication Commission's rules and may result in me losing my Lifeline benefits, and potentially, prosecution by the United States government.

Signature _____ Date _____

Attachment B to Compliance Plan

**Flow-Charts Depicting Birch Internal
Processes for Lifeline Compliance**

Lifeline Certification process – Internal Sales Agents



① Certification form may be completed by one of the following methods:

- Hand-written paper form
- Third-Party Verification (TPV)
- Electronic Signature (DocuSign)

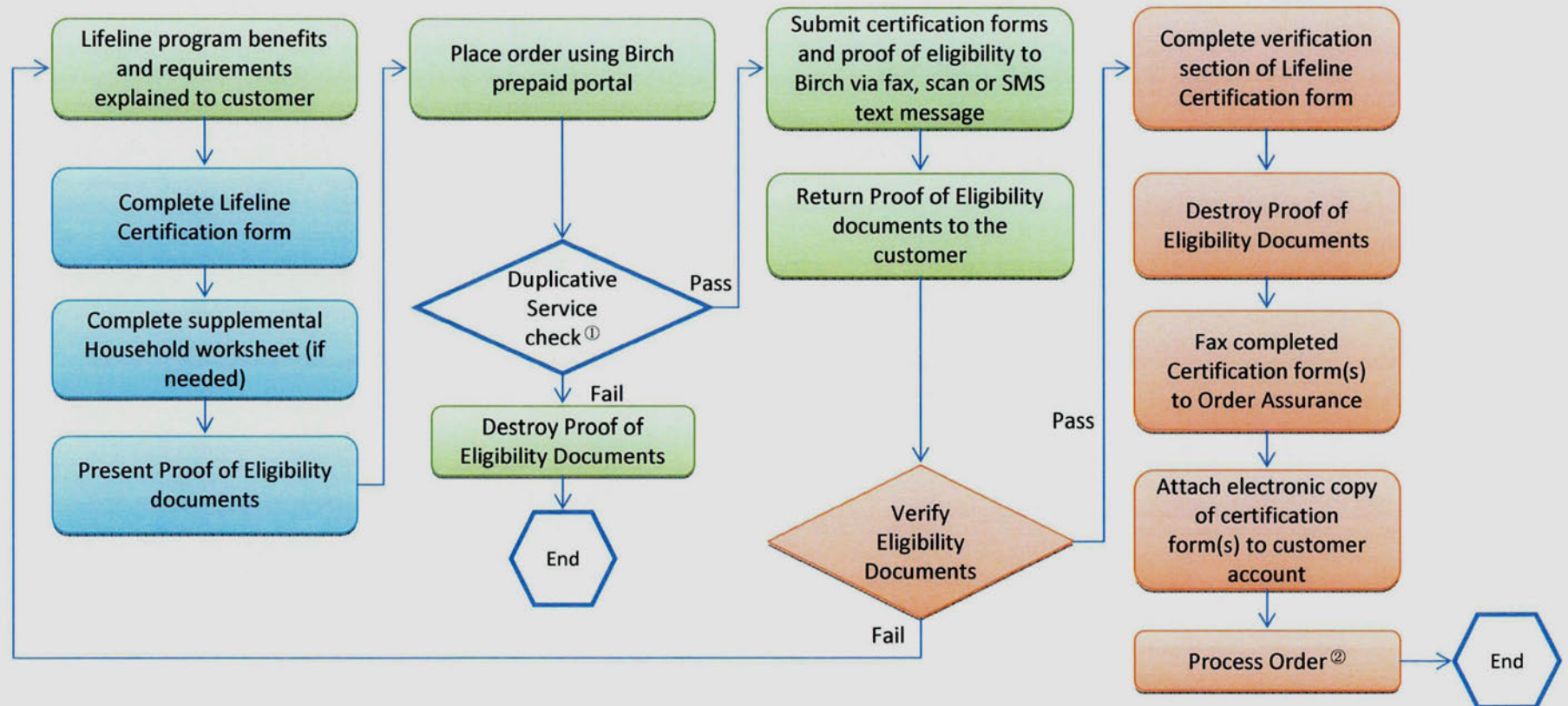
② When duplicative service is found, Birch will determine if customer is part of multi-household residence

③ Wireless handsets will be shipped to the customer in an inactive state. Birch will not seek lifeline reimbursement from USAC until the customer activates the device and incurs usage

Customer

Birch Communications

Lifeline Certification process – Authorized Dealers



^① When duplicative service is found, Birch will determine if customer is part of multi-household residence

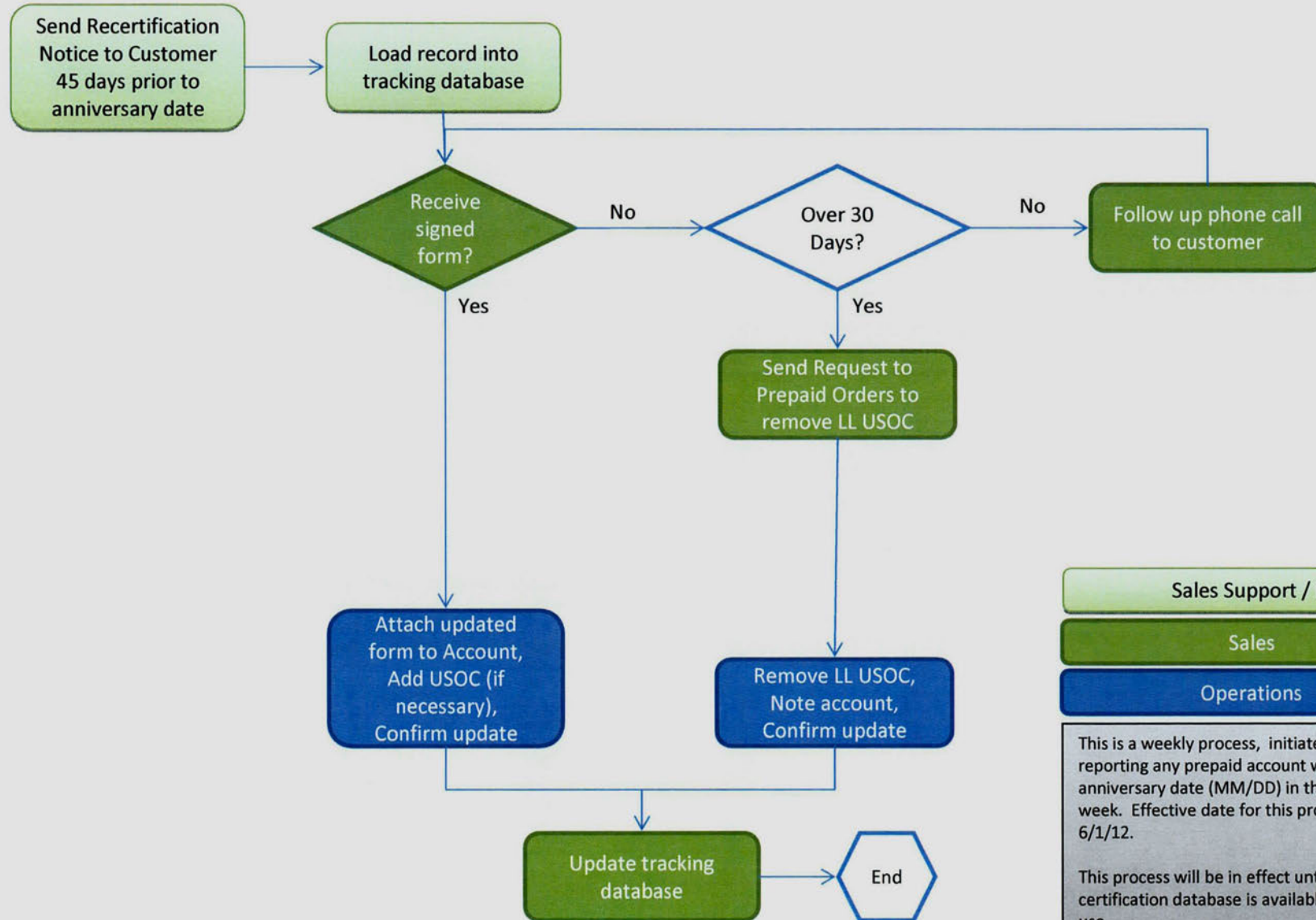
^② Wireless handsets will be shipped to the customer in an inactive state. Birch will not seek lifeline reimbursement from USAC until the customer activates the device and incurs usage

Birch Authorized Dealer

Customer

Birch Communications

Annual Lifeline Re-Certification



Sales Support / IT

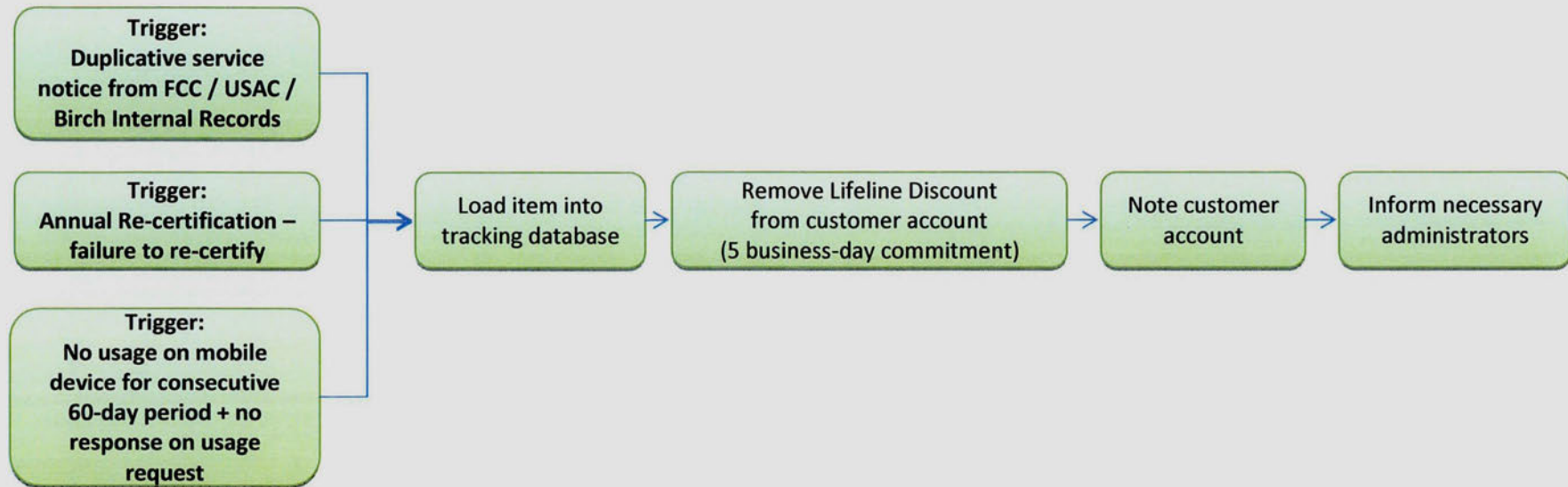
Sales

Operations

This is a weekly process, initiated by reporting any prepaid account with an anniversary date (MM/DD) in the previous week. Effective date for this process is 6/1/12.

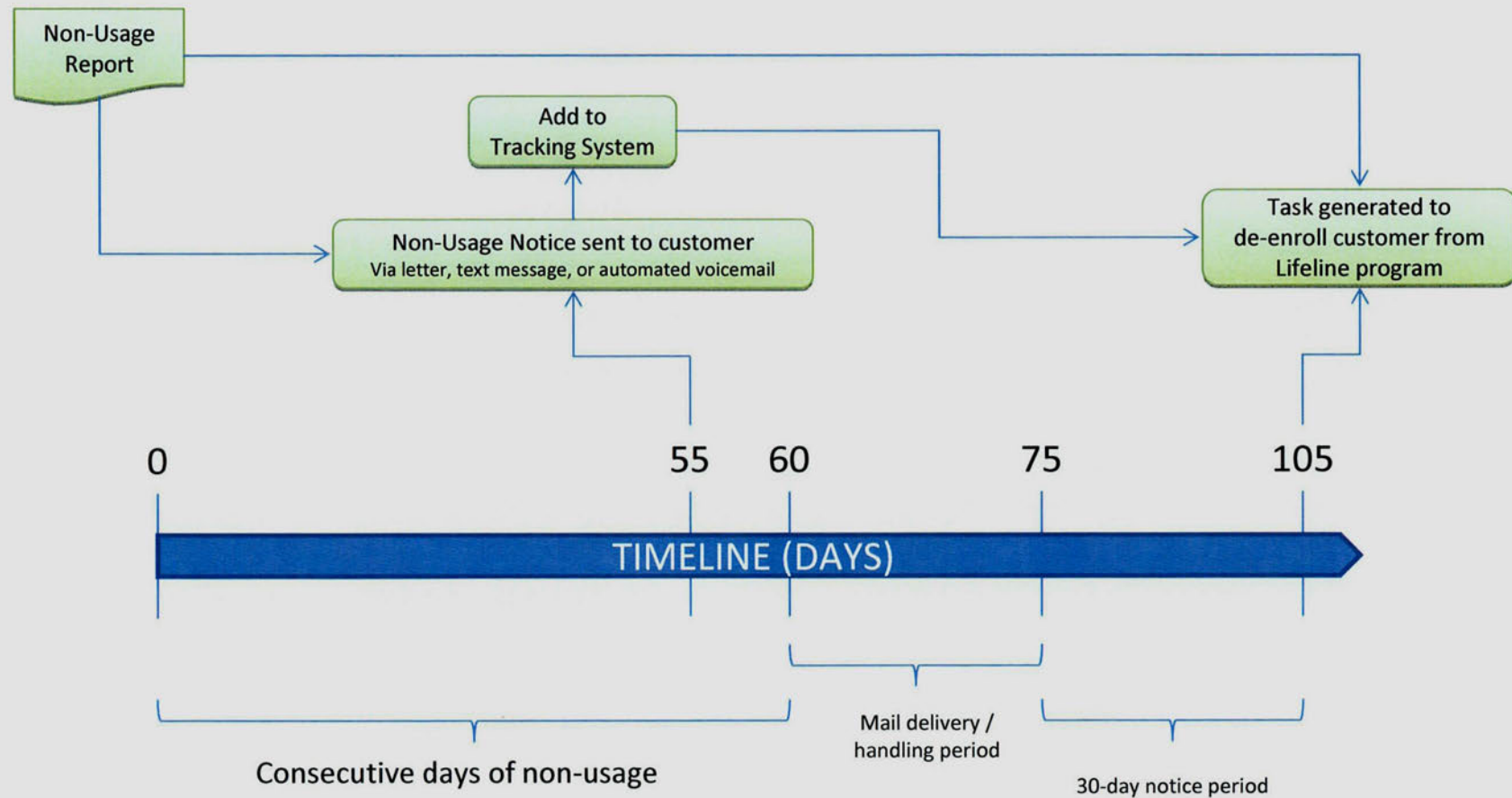
This process will be in effect until the national certification database is available and is in use.

Lifeline De-enrollment Scenarios



- De-enrollment in Lifeline program will remove the customer from any USAC filings for reimbursement of the lifeline discount amount.
- All wireless handsets, regardless of activation status, will retain the capability of dialing and reaching emergency-911

Non-Usage notification





PUBLIC NOTICE

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

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

DA 12-1286
Release Date: August 8, 2012

WIRELINE COMPETITION BUREAU APPROVES THE COMPLIANCE PLANS OF BIRCH COMMUNICATIONS, BOOMERANG WIRELESS, IM TELECOM, Q LINK WIRELESS AND TAG MOBILE

WC Docket Nos. 09-197 and 11-42

The Wireline Competition Bureau (Bureau) approves the compliance plans of five carriers: Birch Communications, Inc. (Birch); Boomerang Wireless, LLC (Boomerang); IM Telecom, LLC (IM); Q Link Wireless, LLC (Q Link); and TAG Mobile, LLC (TAG). The compliance plans were filed pursuant to the *Lifeline Reform Order* as a condition of obtaining forbearance from the facilities requirement of the Communications Act of 1934, as amended (the Act), for the provision of Lifeline service.¹

The Act provides that in order to be designated as an eligible telecommunications carrier for the purpose of universal service support, a carrier must “offer the services that are supported by Federal universal service support mechanisms . . . either using its own facilities or a combination of its own facilities and resale of another carrier’s services”² The Commission recently amended its rules to define voice telephony as the supported service and removed directory assistance and operator services, among other things, from the list of supported services.³ As a result of these amendments, many Lifeline-only ETCs that previously met the facilities requirement by providing operator services, directory assistance or other previously supported services no longer meet the facilities requirement of the Act.⁴ In the *Lifeline Reform Order*, the Commission found that a grant of blanket forbearance of the facilities requirement, subject to certain public safety and compliance obligations, is appropriate for carriers

¹ See *Lifeline and Link Up Reform and Modernization et al*, WC Docket No.11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6816-17 at paras. 379-380 (2012) (*Lifeline Reform Order*). A list of the compliance plans approved through this Public Notice can be found in the Appendix to this Public Notice.

² 47 U.S.C. § 214(e)(1)(A).

³ See *Connect America Fund*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17692-93, paras. 77-78, 80 (2011); *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011); *Connect America Fund*, WC Docket No. 10-90 *et al.*, Order on Reconsideration, 26 FCC Rcd 17633, 17634-35, para. 4 (2011) (*USF/ICC Transformation Order on Reconsideration*).

⁴ See *Lifeline Reform Order*, 27 FCC Rcd 6812, at para. 366, App. A; *USF/ICC Transformation Order on Reconsideration* at para. 4. Some ETCs have included language in their compliance plans indicating that they have facilities or plan to acquire facilities in the future. See, e.g., Blanket Forbearance Compliance Plan, WC Docket Nos. 09-197 and 11-42, Q Link Wireless, LLC’s Third Amended Compliance Plan at 4 n. 2 (filed July 30, 2012). To the extent ETCs seek to avail themselves of the conditional forbearance relief established in the *Lifeline Reform Order*, we presume they lack facilities to provide the supported service under section 54.101 and 54.401 of the Commission’s rules. See 47 C.F.R. §§ 54.101 and 54.401. Such ETCs must comply with the compliance plan approved herein in each state or territory where they are designated as an ETC, regardless of their claim of facilities for other purposes, such as eligibility for state universal service funding.

seeking to provide Lifeline-only service.⁵ Therefore, in the *Lifeline Reform Order*, the Commission conditionally granted forbearance from the Act's facilities requirement to all telecommunications carriers seeking Lifeline-only ETC designation, subject to the following conditions: (1) compliance with certain 911 and enhanced 911 (E911) public safety requirements; and (2) Bureau approval of a compliance plan providing specific information regarding the carrier and its service offerings and outlining the measures the carrier will take to implement the obligations contained in the *Order*.⁶

The Bureau has reviewed the five plans listed in the Appendix for compliance with the conditions of the *Lifeline Reform Order*, and now approves those five compliance plans.⁷

Filings, including the Compliance Plans identified in the Appendix, and comments are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone: (202) 488-5300, fax: (202) 448-5563, or via email www.bcpweb.com.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-7400 or TTY (202) 418-0484.

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

- FCC -

⁵ See *Lifeline Reform Order*, 27 FCC Rcd 6813-6817 at paras. 368-381.

⁶ See *id.* at paras. 373 and 389. Subsequently, the Bureau provided guidance for carriers submitting compliance plans pursuant to the *Lifeline Reform Order*. *Wireline Competition Bureau Provides Guidance for the Submission of Compliance Plans Pursuant to the Lifeline Reform Order*, WC Docket Nos. 09-197 and 11-42, Public Notice, 27 FCC Rcd 2186 (Wireline Comp. Bur. 2012).

⁷ The Commission has not acted on any pending ETC petitions filed by these carriers, and this Public Notice only approves the compliance plans of the carriers listed above. While these compliance plans contain information on each carrier's Lifeline offering, we leave it to the designating authority to determine whether or not the carrier's Lifeline offerings are sufficient to serve consumers. See *Lifeline Reform Order*, 27 FCC Rcd 6679-80, 6818-19 at paras. 50 and 387.

APPENDIX

Petitioner	Compliance Plans As Captioned by Petitioner	Date of Filing	Docket Numbers
Birch Communications, Inc.	Further Amended Compliance Plan of Birch Communications, Inc.	July 2, 2012	09-197; 11-42
Boomerang Wireless, LLC	Boomerang Wireless, LLC Revised Compliance Plan	July 26, 2012	09-197; 11-42
IM Telecom, LLC	IM Telecom, LLC d/b/a Infiniti Mobile Compliance Plan	July 5, 2012	09-197; 11-42
Q Link Wireless, LLC	Q Link Wireless, LLC's Third Amended Compliance Plan	July 30, 2012	09-197; 11-42
TAG Mobile, LLC	TAG Mobile, LLC Compliance Plan	July 26, 2012	09-197; 11-42

CAHILL GORDON & REINDEL LLP

SUITE 950

1990 K STREET, N.W.

WASHINGTON, D.C. 20006-1181

EIGHTY PINE STREET
NEW YORK, N.Y. 10005-1702
(212) 701-3000
FAX: (212) 269-5420

TELEPHONE (202) 862-8900
FACSIMILE (202) 862-8958

AUGUSTINE HOUSE
6A AUSTIN FRIARS
LONDON, ENGLAND EC2N 2HA
(011) 44.20.7920.9800
FAX: (011) 44.20.7920.9825

ANGELA F. COLLINS | 202-862-8930 | acollins@cgrdc.com

September 17, 2013

VIA ECFS

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

**Re: WC Docket Nos. 09-197, 11-42
Tempo Telecom, LLC Adoption of Compliance Plan**

Dear Secretary Dortch:

Tempo Telecom, LLC ("Tempo"), by its attorneys, respectfully notifies the Federal Communications Commission ("Commission") that Tempo will comply with and adopt as its own the Compliance Plan filed by Birch Communications, Inc. ("Birch"), which was approved by the Commission on August 8, 2012.¹

Via letter dated December 18, 2012, Birch notified the Commission that the prepaid wireless Lifeline service would be provided by a separate legal entity known as Now Communications, LLC ("Now Comm"). Now Comm committed to implement and comply with the previously-approved Compliance Plan, and notified the Commission that it adopted the Compliance Plan as its own. The Commission acknowledged these changes in corporate structure in a December 20, 2012 public notice, and confirmed that the previously-approved Compliance Plan would apply to Now Comm.²

Following the December 2012 filing, Now Communications, LLC changed its name to Tempo Telecom, LLC. Therefore, Tempo hereby notifies the Commission it will implement and comply with the Compliance Plan approved by the Commission on August 8, 2012, and hereby adopts the Compliance Plan as its own. Tempo commits to using the same procedures and policies set forth in the Compliance Plan for its provision of prepaid wireless Lifeline service,

¹ WC Docket Nos. 09-197 and 11-42, *Wireline Competition Bureau Approves the Compliance Plans of Birch Communications, Boomerang Wireless, IM Telecom, Q Link Wireless, and TAG Mobile*, Public Notice, DA 12-1286 (rel. Aug. 8, 2012).

² *Wireline Competition Bureau Seeks Comment on Petitions for Designation as a Low-Income Eligible Telecommunications Carrier filed by Now Comm, Zing PCS, LTS, Odin Wireless, and TX Mobile*, 27 FCC Rcd 15937 (2012) ("The Wireline Competition Bureau has approved Birch's compliance plan, which will also apply to Now Comm.")

and will market and advertise its prepaid wireless Lifeline service in the same manner as described in the Compliance Plan.

A copy of the Compliance Plan adopted by Tempo is attached, along with a cover sheet indicating Tempo's adoption of the Compliance Plan.

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

Respectfully submitted,



Angela F. Collins
Counsel to Tempo Telecom, LLC

Attachment

cc: Michelle Schaefer (via electronic mail)



Lifeline Enrollment And Recertification Form

Three Easy Steps to Complete:

Step #1 – Complete Lifeline Enrollment Form on page 2

Step #2 – Locate your Lifeline Benefit Documentation

(More info on your required documentation on pages 4 and 5)

**Step #3 – Send completed Lifeline Enrollment Form and Lifeline
Benefit Documentation to Tempo**

(There are many convenient ways to send them, check page 3)



Lifeline Enrollment/Recertification Form

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

Things to know about the Lifeline Program:

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

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

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

Residential Address:

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

Billing Address:

May contain a P.O. Box.

____ Check here if the billing address is the same as the residential address.

Address Line 1: _____

Address Line 1: _____

Address Line 2: _____

Address Line 2: _____

City, State and Zip: _____

City, State and Zip: _____

This Address Is: _____ Permanent _____ Temporary *(If temporary, your address must be certified or updated every 90 days.)*

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

(Initial)

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

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

(Initial) Please see the related documentation requirements on page 4.

- ____ Supplemental Nutrition Assistance Program (SNAP) formerly known as Food Stamps
- ____ Federal Public Housing Assistance (FPHA) or Section 8
- ____ Low Income Home Energy Assistance Program (LIHEAP)
- ____ National School Lunch Program's free lunch program

- ____ Supplemental Security Income (SSI)
- ____ Temporary Assistance for Needy Families (TANF)
- ____ Medicaid

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

(initial) Please see the Federal Poverty Guidelines and the related documentation requirements on page 4.

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

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

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

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

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

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

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

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

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

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

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

APPLICANT SIGNATURE/TPV ID: _____ **DATE:** _____

FOR TEMPO OFFICE USE ONLY

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

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

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

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

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

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

Date/Expiration Date of Documentation: ____/____/____

Describe Documentation: _____ Name on Documentation: _____

Date reviewed: ____/____/____

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

Applicant Name: _____

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

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

Representative Signature: _____ Date: _____

NOTES : _____

HOW TO SUBMIT YOUR ENROLLMENT APPLICATION:

FAX: (877) 465-0545

EMAIL: lifeline@mytempo.com

POSTAL: Tempo
2323 Grand Blvd, Suite 925
Kansas City, MO 64108

HOW TO SUBMIT YOUR ELIGIBILITY DOCUMENTATION:

TEXT: (816) 446-3388

FAX: (877) 465-0545

EMAIL: lifeline@mytempo.com

POSTAL: Tempo
2323 Grand Blvd, Suite 925
Kansas City, MO 64108

DOCUMENTATION REQUIREMENTS

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

PROGRAM ELIGIBILITY

If, on page 2 of this form, you indicated you were in a qualifying program, you must provide documentation to prove receipt of benefits under these programs to Tempo. Upon examination by Tempo, any copies, photos or faxes of your documentation will be destroyed or returned to you at your request. The beneficiary named on the NSLP documentation may be a dependent of the Lifeline applicant, rather than the applicant. If the name of the beneficiary on the documentation provided does not match the name of the Lifeline applicant, the ETC must record the name of the beneficiary and confirm by receiving certification from the applicant that the named beneficiary is a member of his or her household, and that this individual does not receive Lifeline. Acceptable forms of documentation are described below:

Supplemental Nutrition Assistance Program (SNAP)

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

Public Housing Assistance (FPHA) or Section 8

There are two types of documentation that can prove receipt of benefits under the Public Housing Assistance (FPHA), or Section 8, Program. First, an applicant can provide an award letter. A recipient of Public Housing Assistance (FPHA), or Section 8, receives an award letter from his or her local Public Housing Agency (PHA). The award letter should include the following information: name of program, date of award, name of beneficiary and award amount. Second, an applicant can provide either a [Public Housing Assistance Lease Agreement](#) or a Section 8 Voucher. These items should clearly reflect the type of Public Housing Assistance credit issued. If the beneficiary does not have an award letter, lease agreement, or voucher, the applicant can contact the agency that approved the application and request formal documentation of his or her award. To find contact information for a local Public Housing Agency, please visit the U.S. Department of Housing and Urban Development's [state contact and agency listing](#).

Low Income Home Energy Assistance Program (LIHEAP)

Because the Low Income Home Energy Assistance Program (LIHEAP) is administered by a wide range of local agencies, the program's name may vary by state (note that most include the words "energy assistance program" in the name). There are two types of documentation applicants can provide to demonstrate receipt of LIHEAP benefits. First, a LIHEAP participant might have an award letter from a state agency. The award letter will include the following: name of program, date of award, name of beneficiary and award amount. In some instances, if the beneficiary received notification of his or her approval in-person, the awardee might not have a formal award letter and will need to contact the state agency that approved the application to request a formal award letter. Second, a LIHEAP participant can provide a utility bill that reflects the Housing Assistance credit. The utility bill should clearly reflect inclusion of an Energy Assistance credit. To find contact information for a local LIHEAP agency, please visit the Low Income Home Energy Assistance Program's [state contact and agency listing](#).

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

Although the National School Lunch Program's Free Lunch Program (NSLFP) is a federally assisted program, award letters are provided by state agencies and, thus, will vary by locality. All award letters should contain the following basic information: name of program, name of beneficiary, address of beneficiary and date of award.

Supplemental Security Income (SSI)

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

Temporary Assistance for Needy Families (TANF)

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

Medicaid

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

PROGRAM ELIGIBILITY

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

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

135% FEDERAL POVERTY GUIDELINES - 2014	
Members of Household	Household Income must be at or below
1	\$ 15,755
2	\$ 21,236
3	\$ 26,717
4	\$ 32,198
5	\$ 37,679
6	\$ 43,160
7	\$ 48,641
8	\$ 54,122
For every additional member of your household, add \$5,481.	

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



Optional Lifeline Household Worksheet

Complete only if you checked "A shared, multi-household residence" on your enrollment form

Name	
Address	
Telephone Number	

Lifeline is a government program that provides a monthly discount on home or mobile telephone services. Only ONE Lifeline discount is allowed per household. Members of a household are not permitted to receive Lifeline service from multiple telephone companies.

Your **household** is everyone who lives together at your address as one economic unit (including children and people who are not related to you).

The **adults** you live with are part of your **economic unit** if they contribute to and share in the income and expenses of the household. An **adult** is any person 18 years of age or older, or an emancipated minor (a person under age 18 who is legally considered to be an adult). Household **expenses** include food, health care expenses (such as medical bills) and the cost of renting or paying a mortgage on your place of residence (a house or apartment, for example) and utilities (including water, heat and electricity). **Income** includes salary, public assistance benefits, social security payments, pensions, unemployment compensation, veteran's benefits, inheritances, alimony, child support payments, worker's compensation benefits, gifts, and lottery winnings.

Spouses and domestic partners are considered to be part of the same household. Children under the age of 18 living with their parents or guardians are considered to be part of the same household as their parents or guardians. If an adult has no income, or minimal income, and lives with someone who provides financial support to that adult, both people are considered part of the same household.

You have been asked to complete this Worksheet because someone else currently receives a Lifeline-supported service at your address. This other person may or may not be a part of your household. Answer the questions below to determine whether there is more than one household residing at your address.

- Does your spouse or domestic partner (that is, someone you are married to or in a relationship with) already receive a Lifeline-discounted phone? (check no if you do not have a spouse or partner) ☐ YES ☐ NO
 - If you checked **YES**, you may not sign up for Lifeline because someone in your household already receives Lifeline. Only ONE Lifeline discount is allowed per household.
 - If you checked **NO**, please answer question #2.
- Other than a spouse or partner, do other adults (people over the age of 18 or emancipated minors) live with you at your address?

A. A parent	☐ YES ☐ NO	D. An adult roommate	☐ YES ☐ NO
B. An adult son or daughter	☐ YES ☐ NO	E. Other _____	☐ YES ☐ NO
C. Another adult relative (such as a sibling, aunt, cousin, grandparent, grandchild, etc.)	☐ YES ☐ NO		

 - If you checked **NO** for each statement above, you do not need to answer the remaining questions. Please initial line B, below, and sign and date the worksheet.
 - If you checked **YES**, please answer question #3.
- Do you share living expenses (bills, food, etc.) and share income (either your income, the other person's income or both incomes together) with at least one of the adults listed above in question #2? ☐ YES ☐ NO
 - If you checked **NO**, then your address includes **more than one household**. Please initial lines A and B below, and sign and date the worksheet.
 - If you checked **YES**, then your address includes only **one household**. You may not sign up for Lifeline because someone in your household already receives Lifeline.

CERTIFICATION

Please initial the certifications below and sign and date this worksheet. Submit this worksheet to Tempo along with your Lifeline application.

- _____ I certify that I live at an address occupied by multiple households.
- _____ I understand that violation of the one-per-household requirement is against the Federal Communication Commission's rules and may result in me losing my Lifeline benefits, and potentially, prosecution by the United States government.

Signature _____

Date _____