

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

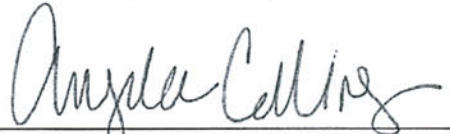
PROCEEDING NO. 13A-1374T

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

**PARTIES' JOINT RESPONSES TO ADMINISTRATIVE LAW JUDGE'S
QUESTIONS IN DECISION NO. R14-0585-I**

Tempo Telecom, LLC ("Tempo"), Staff of the Colorado Public Utilities Commission ("Staff"), and the Colorado Office of Consumer Counsel ("OCC") (collectively, "the Parties") hereby provide the following responses to the questions of Administrative Law Judge Mana Jennings-Fader issued May 30, 2014 in Decision No. R14-0585-I. The Parties have conferred about the responses to the questions, and have authorized Tempo to provide these responses on behalf of all Parties.

Respectfully submitted,



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**COUNSEL FOR TEMPO
TELECOM, LLC**

Dated: June 20, 2014

QUESTIONS PERTAINING TO STIPULATION

17a. General. In what jurisdictions is Tempo now designated as an Eligible Telecommunications Carrier (ETC) to provide Lifeline service?

RESPONSE:

As of June 19, 2014, Tempo has been designated as an Eligible Telecommunications Carrier ("ETC") in the states of: Georgia, Indiana, Iowa, Kansas, Kentucky, Maryland, Missouri, Nevada, Ohio, Rhode Island, South Carolina, Utah, Wisconsin, and Wyoming.

17b. General. The Stipulation and its attachments modify (or appear to modify) some aspects of the Application. To the extent that the two documents may contain different provisions (*e.g.*, description of types of Lifeline service to be offered), on which document should the ALJ rely?

RESPONSE:

The ALJ is correct - the Stipulation and its attachments modify some aspects of the Application. The ALJ should rely on the Stipulation and its attachments to the extent there are differences between the Stipulation (and its attachments) and the Application.

17c. General. On February 27, 2014, Mr. Gregory Corwin filed direct testimony and exhibits in support of the Application. In that testimony, Mr. Corwin provides a great deal of information that supplements -- and, in some instances, updates or clarifies -- the Application. To what extent should the ALJ rely on Mr. Corwin's testimony -- and, more specifically, the representations in the testimony (*see, e.g.*, the Corwin testimony at 19:411-22) -- when the ALJ is considering the Application or the Stipulation (or both)?

RESPONSE:

The Stipulation and its attachments modify some aspects of Mr. Corwin's direct testimony and exhibits. The ALJ should rely on the Stipulation and its attachments to the extent there are differences between the Stipulation (and its attachments) and Mr. Corwin's testimony.

17d.

General. The Agreement at ¶ 10 at 11 states, in relevant part:

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 ... §§ 40-15-101, 40-15-501, and 40-15-502, C.R.S.

On May 9, 2014, Governor Hickenlooper signed House Bill 14-1328, House Bill 14-1329, House Bill 14-1330, and House Bill 14.1331 (collectively, 2014 telecommunications bills). Each is now in effect.

Do the 2014 telecommunications bills impact the Stipulation or its attachments (or both)? If so, identify the provisions impacted and explain the impact. If the 2014 telecommunications bills do not impact the Stipulation or its attachments (or both), explain why there is no impact.

Do the 2014 telecommunications bills impact the standard that the Commission must apply when arriving at its decision in this Proceeding? If there is a new standard or a different standard, identify the standard. Explain the response.

Do the 2014 telecommunications bills impact the findings that the Commission must make in this Proceeding? If so, identify the new areas or the changed areas in which the Commission must make findings. Explain the response.

RESPONSE:

The applicable Commission Rules remain unchanged, and to the extent the Commission adopts rule changes in the future in response to the 2014 telecommunications bills, the Parties do not believe any such rule changes will have an impact on the Stipulation, or its attachments, which was entered into pursuant to the current Rules. Thus, the Parties submit that the Commission should apply the same standards and make the same findings with respect to the Stipulation and its attachments as the Commission repeatedly has applied and made under the currently applicable Commission Rules.

17e.

Preliminary Statement at ¶ 6 at 3 (“In addition, the Lifeline Reform Order eliminated Link Up support for all ETCs serving non-Tribal lands.” (Footnote omitted.)): The ALJ understands that, as an ETC in Colorado, Applicant will serve some Tribal lands. Is the ALJ’s understanding correct? If the ALJ’s understanding is correct, explain whether Tempo will offer Link Up on Tribal lands in Colorado and, if it will, the impact (if any) on this Proceeding (for example, must this issue be addressed in the recommended decision).

RESPONSE:

To the best of the Parties’ knowledge, Tempo’s designated service area in Colorado does not include Tribal areas. Regardless, Tempo is not seeking approval for a Tribal-specific Lifeline offering and is not seeking authority to offer Link Up on Tribal lands.

17f.

Agreement at ¶ 2 at 5 (Footnote 5 notes that the list of exchanges that Tempo will serve as an ETC in Colorado (*see* Attachment 1 to the Stipulation) differs from the list of exchanges that Tempo provided in Exhibit 8 to the Application.): Explain why the two lists are not identical.

RESPONSE:

Based on discussions between Tempo and Staff, Tempo modified its list of exchanges to include only those exchanges for which Sprint's network covers the entire exchange and in which customers can receive exchange-wide service without access to roaming.

17g.

Agreement at ¶ 2 at 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." The Stipulation at Attachment 3 at 3 and the testimony of Mr. Corwin at 7-8 also discuss roaming.): The use of the phrase "within Sprint's coverage area" is ambiguous as it may refer to: (a) Sprint's coverage area in Colorado; (b) Sprint's coverage area nationwide; or (c) something else. Explain the meaning of the phrase "within Sprint's coverage area" as used in the Agreement.

RESPONSE:

The phrase "within Sprint's coverage area" was intended to mean Sprint's coverage area nationwide. Tempo will not assess roaming charges to any Lifeline subscribers for use of their Tempo-provided device as long as the Lifeline subscriber is within Sprint's network coverage area in the United States. Tempo also will not assess roaming charges without the Lifeline subscriber affirmatively choosing a roaming option and paying the roaming charges upfront (a flat monthly fee of \$19.95).

17h.

Agreement at ¶ 11.C at 12-13 (In this section, the Parties agree: (a) “the Commission has authority to enforce compliance with this Stipulation pursuant to its terms and pursuant to Rule [4 CCR 723-2-]2187”; (b) consistent with the Stipulation, the Commission “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”; (c) “Staff may investigate and obtain any necessary data through the Commission audit powers once Staff is notified of [proposed] changes” to Tempo’s Lifeline plans; and (d) in the event of a disagreement between Tempo and Staff with respect to proposed changes, “any Party, or any interested person, may file a formal complaint with, or seek a declaratory ruling from[,] the Commission.” *See also* Stipulation at Attachment 2 at § J.4 at 4 (“Upon audit request from Staff of the Commission, Tempo agrees to provide” specific data)): Do the 2014 telecommunications bills impact these provisions? If so, explain the impact. If not, explain why there is no impact.

RESPONSE:

The applicable Commission Rules remain unchanged, and to the extent the Commission adopts rule changes in the future in response to the 2014 telecommunications bills, the Parties do not believe any such rule changes will have an impact on the Stipulation, or its attachments, which was entered into pursuant to the current Rules. Thus, the Parties submit that the Commission should apply the same standards and make the same findings with respect to the Stipulation and its attachments as the Commission repeatedly has applied and made under the currently applicable Commission Rules.

- 17i. Agreement at ¶ 11.F at 14 (“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[.]”): Do the 2014 telecommunications bills affect this provision? If so, explain the impact. If not, explain why there is no impact.

RESPONSE:

The applicable Commission Rules remain unchanged, and to the extent the Commission adopts rule changes in the future in response to the 2014 telecommunications bills, the Parties do not believe any such rule changes will have an impact on the Stipulation, or its attachments, which was entered into pursuant to the current Rules. Thus, the Parties submit that the Commission should apply the same standards and make the same findings with respect to the Stipulation and its attachments as the Commission repeatedly has applied and made under the currently applicable Commission Rules.

17j. Stipulation at Attachment 2 at § D.3 at 2 (As relevant here, the second sentence of this provision reads: “Tempo shall further direct the supervisory personnel to provide the complainant that they may contact the External Affairs Section”): Is there language missing from this sentence?

RESPONSE:

The referenced sentence should be revised to read “Tempo shall further direct the supervisory personnel to inform the complainant that they may contact the External Affairs Section. . . .”

17k. Stipulation at Attachment 2 at §J.4 at 4 references a Department of Revenue Form DR 526. Is this the correct form number?

RESPONSE:

Yes, this is the correct form number for these purposes. For convenience, a copy of Department of Revenue Form DR 526 is attached.

171. Stipulation at Attachment 2 at § L at 6 (That section states: “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 [fee] 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.” (Emphasis supplied.)): Identify each fee (as examples only: termination, reconnection, reactivation, governmental) that Tempo plans to assess its Lifeline customers in Colorado. For each identified fee, state the circumstances under which Tempo will assess the fee. For each identified fee, state where in the Stipulation or its attachments (or both) the fee and the circumstances under which it will be assessed are discussed. Explain how a prospective Lifeline customer in Colorado will be notified of each fee and of the circumstances under which Tempo will assess the fee. Explain how a Lifeline customer in Colorado will be notified of each fee and of the circumstances under which Tempo will assess the fee.

RESPONSE:

Tempo will collect E911 fees from its Colorado Lifeline customers as required by 29-11-102.5 C.R.S. and the Stipulation (section 11.E.). For Lifeline plans in which no charge is due from the customer, Tempo will remit the E911 fee on behalf of the customer based on the imputation calculation set forth in the Stipulation (section 11.E). For Lifeline plans in which a charge is due from the customer or for purchases of additional minutes, Tempo will collect the E911 fee from the flat-rate paid by the customer for the Lifeline plan or the additional minutes. Tempo will remit the E911 fee as required by 29-11-102.5 C.R.S. Tempo’s Lifeline Terms and Conditions notify customers that E911 fees may apply.

To the extent permissible under applicable law, Tempo will not collect other types of governmental fees (such as state or federal universal service) from its Lifeline customers.

In addition to any E911 fees, the other fees that Tempo plans to assess on its Lifeline customers in Colorado are set forth in Attachment 3 to the Stipulation, and include the following:

- 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.
- 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.
- 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.

- Customers may purchase roaming for a flat fee of \$19.95 per month for use outside of Sprint's 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.

Each of these fees is set forth in Tempo's Lifeline Terms and Conditions, which are provided to the customer upon activation and are available on Tempo's website at: <http://www.mytempo.com/footer/Lifeline-Terms-and-Conditions.aspx>.

17m.

Stipulation at Attachment 3 at § C.8 at 2 (This section addresses reactivation of Lifeline service. As pertinent here, the section states: "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."): The ALJ understands that, as a public good, a telephone number is free (that is, available at no cost) to the subscriber. Given this, explain the reason for, and the basis of, a reactivation fee that is assessed when a Lifeline customer requests the telephone number the customer had prior to deactivation of Lifeline service.

Is there a period of time during which a telephone number cannot be reassigned? If there is, what is that period of time? If there is, what is the basis for the reactivation fee given that the telephone number is available for a specified period of time?

The reactivation fee is stated as "up to \$30.00." Explain why the reactivation fee is stated as a range (*i.e.*, floor of \$ 0 and a ceiling of \$ 30) and not as a specific amount. Given that the reactivation fee is stated as a range, explain how Tempo will determine the amount of the reactivation fee to be assessed on a Lifeline customer.

Assume that a Lifeline subscriber asks for the telephone number previously assigned to her and pays the required reactivation fee. Assume further that the requested telephone number is not available or that, for some other reason, the Lifeline subscriber cannot have the requested, previously-assigned telephone number. In that situation, is the reactivation fee refunded?

Explain the response.

RESPONSE:

Through Tempo's underlying carrier, a telephone number generally remains available to Tempo for reactivation on the customer's behalf for 30 days. The reason for the "up to \$30.00" reactivation fee is due to the very manual nature and amount of time required of Tempo to get the telephone number reassigned and activated back on the customer's device once a disconnect has been processed. The process of retrieving the telephone number may vary depending on the circumstances. The fee is "up to \$30.00" to allow Tempo to work with an individual situation and individual customer's circumstances. Tempo has not assessed the \$30.00 reactivation fee for any Lifeline subscriber to date.

No reactivation fee will be assessed until the Lifeline subscriber's previous telephone number is successfully retrieved. The Lifeline subscriber is assessed the reactivation fee once the telephone number is retrieved and prior to Lifeline service being reactivated on subscriber's Lifeline device.

17n.

Service Interruptions: Rule 4 CCR 723-2-2304(b)(IV) provides:

In the event the customer's basic local exchange service is interrupted and remains out of order for eight or more hours during a continuous 24-hour period after being reported by the customer, or is found to be out of order by the [Local Exchange Carrier] (whichever occurs first), *appropriate adjustments shall be automatically made by the [Local Exchange Carrier] to the customer's bill.*

(Emphasis supplied.) If there are provisions in the Stipulation or its attachments (or both) that define or discuss adjustments or credit allowances for service interruptions, identify each provision.

If there are no provisions in the Stipulation or its attachments (or both) that define or discuss adjustments or credit allowances for service interruptions, explain whether Tempo will make allowances or give credit allowances for service interruptions. If Tempo *will make* allowances or give credit allowances for service interruptions, provide a definition of each term; state the circumstances in which Tempo will make allowances or give credit allowances for service interruptions; and state the amount, or process for calculating, the adjustments or credit allowances. If Tempo *will not make* allowances or give credit allowances for service interruptions, will Tempo comply with Rule 4 CCR 723-2-2304(b)(IV)? If it will comply, explain how it will comply. If it will not comply, explain why it will not comply.

RESPONSE:

Tempo is not a local exchange carrier, and it will not provide bills to its Lifeline customers (all services are prepaid). Nevertheless, information regarding service interruptions and credits to the customer are contained in Attachment 2 to the Stipulation. For certain types of interruptions and as explained in Attachment 2, Tempo will extend a subscriber's service for the 30-day period in which an interruption occurred for a period of time equal to the loss of service. For example, if the customer is out of service for 10 hours, Tempo will extend the customer's 30-day month of service by 10 hours.

- 17o.** Unused minutes:- What happens to unused Lifeline plan minutes at the end of each month (*e.g.*, do they expire, rollover, something else)? What happens to purchased but unused Lifeline plan minutes at the end of 30 days from the date of purchase (*e.g.*, do they expire, rollover, something else)? Explain the response.

RESPONSE:

As explained in Attachment 3 to the Stipulation, unused minutes provided to a Lifeline subscriber as part of its monthly allotment of minutes do not carry over to the next month.

Any additional minutes purchased by the Lifeline customer are available 30 days from the date of purchase, and carry over into the next month. At the end of the 30-day period, any unused minutes expire.

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QUESTIONS PERTAINING TO MOTION FOR WAIVER

21. As discussed above, the 2014 telecommunications bills are now in effect. Do the 2014 telecommunications bills impact the Tempo Motion? If so, identify the portions impacted and explain the impact. If the 2014 telecommunications bills do not impact the Tempo Motion, explain why there is no impact.

RESPONSE:

The applicable Commission Rules remain unchanged, and to the extent the Commission adopts rule changes in the future in response to the 2014 telecommunications bills, the Parties do not believe any such rule changes will have an impact on the Tempo Motion, which is based on the current Rules. Thus, the Parties submit that the Commission should apply the same standards and make the same findings with respect to the Tempo Motion as the Commission repeatedly has applied and made under the currently applicable Commission Rules.

ADDITIONAL REQUIRED FILING

- 23.** At present, Mr. Corwin's testimony and exhibits are in the administrative record in this Proceeding but are not evidence in this Proceeding. In order for the Commission to consider Mr. Corwin's filed testimony and exhibits as evidentiary support for the Application, the testimony and exhibits must be verified. Not later than **June 20, 2014**, Tempo shall file an affidavit signed by Gregory Corwin that verifies his direct testimony and exhibits filed on February 27, 2014.

RESPONSE:

Tempo filed an affidavit signed by Mr. Corwin with the submission of his direct testimony and exhibits on February 27, 2014. The affidavit is reflected in the Commission's electronic docket of this case, and is attached hereto.

DR 0526 (11/22/13)
COLORADO DEPARTMENT OF REVENUE
Denver, CO 80261-0009
www.TaxColorado.com

Prepaid Wireless E911 Surcharge Return (See form on page 2)

General Instructions

Who must file a return:

All retailers and sellers who sell prepaid wireless telecommunication services must collect a fee of 1.4% of the purchase price. The fee must be collected at the time a consumer purchases prepaid wireless service either at a retail location in Colorado, from a seller who delivers the service to Colorado or any purchase made to a consumer who has a Colorado address or mobile phone number associated with a Colorado location.

When you must file:

Returns are due on the same day as the Colorado Sales/Use Tax Return. A return must be filed even if no fee is due. If no fee is due, enter zero on the total remitted line. This return must be filed on or before the 20th of the month. Mailed returns must be postmarked the 20th of the month or prior thereto. EFT payments must be made before 4pm Mountain Standard Time on the due date.

Records:

A copy of this return and records of both purchases and sales including sales invoices and purchase orders, must be retained for a period of three years. The burden of proof for exempt sales rests with the vendor. Retain copies of the sales tax reports. Records must be open for inspection by authorized representatives of the Executive Director, Colorado Department of Revenue.

Specific Instructions for completing the return

- Line 1:** Enter the dollar amount of prepaid wireless telecommunication sales for the period reported. Include wholesale, retail, online and recharge sales.
- Line 2:** Enter the wholesale sales of prepaid wireless to other licensed dealers for resale. Keep records of these sales.
- Line 3:** Subtract Line 2 from Line 1. This is the total sales.
- Line 4:** E911 Rate.
- Line 5:** E911 Surcharge Amount Collected. Multiply Line 3 times Line 4. Enter amount.
- Line 4:** Enter amount.
- Line 6:** **Service fee**—Multiply Line 5 times 3.3% (.033). Enter amount.
- Line 7:** **Net due**—Subtract Line 6 from Line 5. Enter amount.
- Line 8:** **Penalty**—If return and/or payment remitted after due date. Line 7 times .10.
- Line 9:** **Interest**—If return and/or payment remitted after due date. Line 7 times interest rate listed.
- Line 10:** **Total Remitted**—Add Lines 7, 8 and 9. Check box if payment is by EFT. Make check or money order payable to the Colorado Department of Revenue. Be sure to write your account number on your check.

Mail return and payment to:

Colorado Department of Revenue
Denver, CO 80261-0009

DR 0526 (11/22/13)
COLORADO DEPARTMENT OF REVENUE
Denver, CO 80261-0009
www.TaxColorado.com

Prepaid Wireless E911 Surcharge Return



Mail to: Colorado Department of Revenue, Denver, CO 80261-0009

Make checks or money orders payable to: Colorado Department of Revenue. Be sure to write your account number, SSN or FEIN on your check.

Photocopy for your records.

Account Number		FEIN	SSN	Period (MM/YY - MM/YY)	
Check if amended return • <input type="checkbox"/>					0526-104
Business Name or Taxpayer Last Name			First Name		Due Date (MM/DD/YY)
Address		City		State	Zip
1. Sales of prepaid wireless telecommunication service sold				• 1	00
2. Sales of prepaid wireless telecommunication service to other licensed dealers for resale				• 2	00
3. Total sales of prepaid wireless telecommunication service (subtract line 2 from 1)				3	00
4. E911 Rate				4	.014
5. Total E911 wireless surcharge collected (multiply line 3 by rate on line 4)				5	00
6. Service fee (multiply line 5 times .033, only if paid on or before due date)				6	00
7. Net due (Subtract line 6 from line 5)				• 7	00
8. Penalty (Line 7 times .10)				8	00
9. Interest (Line 7 times		Interest Rate	9		00
10. Total Remitted (Total of lines 7, 8 & 9)				Paid by EFT <input type="checkbox"/>	\$.00
<small>The State may convert your check to a one time electronic banking transaction. Your bank account may be debited as early as the same day received by the State. If converted, your check will not be returned. If your check is rejected due to insufficient or uncollected funds, the Department of Revenue may collect the payment amount directly from your bank account electronically.</small>					
Signed under penalty of perjury in the second degree.					
Signature			Date (MM/DD/YY)		Phone Number

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

**AFFIDAVIT OF GREGORY CORWIN
ON BEHALF OF TEMPO TELECOM, LLC**

STATE OF MISSOURI)
 : ss
COUNTY OF JACKSON)

I, GREGORY CORWIN, being duly sworn under penalty of perjury, state that the attached testimony and exhibits were prepared by me or under my supervision, control, and direction; that the testimony and exhibits are true, accurate, and correct to the best of my knowledge, information, and belief; and that I would give the same testimony orally and would present the same exhibits if asked under oath.



GREGORY CORWIN

SUBSCRIBED and SWORN to before me this 25 day of February, 2014.



NOTARY PUBLIC (SEAL)

ANGELA A. HOKE
Notary Public - Notary Seal
STATE OF MISSOURI
Clay County
My Commission Expires June 9, 2014
Commission # 10887286