

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 AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STATE OF COLORADO FOR THE LIMITED PURPOSE OF OFFERING WIRELESS LIFELINE SERVICE TO QUALIFIED HOUSEHOLDS.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
ADDRESSING MOTIONS, VACATING PROCEDURAL
SCHEDULE *NUNC PRO TUNC*, VACATING
EVIDENTIARY HEARING *NUNC PRO TUNC*,
DIRECTING PARTIES TO RESPOND TO QUESTIONS
PERTAINING TO STIPULATION AND SETTLEMENT
AGREEMENT, DIRECTING PARTIES TO RESPOND
TO QUESTIONS PERTAINING TO MOTION FOR
WAIVER, AND REQUIRING ADDITIONAL FILING**

Mailed Date: May 30, 2014

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I. STATEMENT

1. On December 24, 2013, Tempo Telecom, LLC (Tempo, Company, or Applicant), filed a verified Application for Designation as a Wireless Eligible Telecommunications Carrier in the State of Colorado and [for] Waiver of Certain Commission Rules (Application). That filing commenced this Proceeding.

2. The Colorado Office of Consumer Counsel (OCC) and Trial Staff of the Commission (Staff) timely intervened. Both OCC and Staff contested the Application.

3. OCC and Staff, collectively, are the Intervenors. Applicant and Intervenors, collectively, are the Parties.

4. On January 29, 2014, by Minute Order, the Commission deemed the Application to be complete within the meaning of § 40-6-109.5, C.R.S. On February 4, 2014, Decision No. R14-0127-I notified the Parties that the Commission had deemed the Application to be complete.

5. On January 29, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

6. The procedural history of this Proceeding is set out in Interim Decisions issued in this matter. The procedural history is repeated here to put this Interim Decision in context.

7. On February 18, 2014, by Decision No. R14-0182-I, the ALJ scheduled a May 20, 2014 evidentiary hearing and established the procedural schedule for this Proceeding.

8. Pursuant to the procedural schedule, on February 27, 2014, Tempo filed the Direct Testimony and Exhibits of Gregory Corwin in Support of Application. Mr. Corwin is employed by Tempo and serves as Director of Marketing for the Company.

A. Rulings on Procedural Motions.

9. On March 26, 2014, Staff filed an Unopposed Motion to Modify Due Date for Answer Testimony and Exhibits. By electronic mail sent on March 28, 2014, the ALJ granted this motion. This Interim Decision memorializes that ruling.

10. On April 14, 2014, the Parties filed a Joint Motion to Approve Stipulation and Settlement Agreement and for Waiver of Response Time. The Stipulation and Settlement Agreement (Stipulation) accompanied that filing.

11. The ALJ will deny as moot the Joint Motion for Waiver of Response Time.

12. In the Joint Motion to Approve Stipulation and Settlement Agreement at ¶ 7, the Parties requested that the remainder of the procedural schedule be vacated and that response time to the motion be waived. By electronic mail sent on April 14, 2014, the ALJ granted the Parties' requests; waived response time to the motion to vacate the remainder of the procedural schedule; and vacated the remainder of the procedural schedule. This Interim Decision memorializes those rulings.

13. The ALJ has reviewed the Stipulation and its five attachments. The ALJ has questions about the Stipulation.¹ The Parties can provide verified responses to the questions posed below. As a result, the ALJ finds that there is no need for the scheduled evidentiary hearing. The ALJ will vacate the May 20, 2014 hearing *nunc pro tunc*.²

B. Questions Pertaining to Stipulation.

14. The ALJ will order the Parties to file, not later than **June 20 2014**, written responses to the questions posed in this Interim Decision. Should the Parties determine that

¹ This is discussed below.

² By electronic mail sent on May 6, 2014, the ALJ informed the Parties that she had vacated the evidentiary hearing. This Interim Decision memorializes that ruling.

amending the Stipulation will respond to the ALJ's questions, the Parties may file, not later than June 20, 2014, an amended Stipulation in lieu of, or in addition to, providing written responses to the questions posed.

15. The Stipulation contains three sections: Preliminary Statement (at 1-4), Agreement (at 5-14), and General Provisions (at 14-16). Each section contains separate paragraph numbers. The ALJ has questions about the Preliminary Statement portion and the Agreement portion of the Stipulation.

16. For ease of reference, the ALJ will pose questions based on where the provisions appear in the Stipulation and its attachments. The order in which the questions are posed does not indicate or reflect the relative importance of the questions.

17. The Parties will be ordered to respond to the following questions:

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

b. 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?

c. 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)?

d. 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.

e. 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).

f. 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.

g. 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.

h. 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”;³ (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

³ Rule 4 CCR 723-2-2187 is found in the Rules Regulating Telecommunications Providers, Services, and Products, Part 2 of 4 *Code of Colorado Regulations* 723.

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.

i. 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.

j. 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?

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

l. 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.

m. 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.

n. 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.

o. 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.

18. After reading and considering the questions, the Parties may believe that written responses do not allow them to respond adequately to the ALJ's questions. If the Parties wish to respond to the questions through oral testimony, the Parties, in their June 20, 2014 filing, must inform the ALJ of their desire to have an evidentiary hearing on the Stipulation in order to present testimony in support of the Stipulation and to respond to the ALJ's questions.

19. Irrespective of whether the Parties request a hearing on the Stipulation, the ALJ may hold an evidentiary hearing on the Stipulation if she finds it necessary in order to understand the Stipulation or the Parties' responses, or both.

C. Questions Pertaining to Motion for Waiver.

20. On April 14, 2014, Tempo filed an Unopposed Motion for Waiver of Certain Commission Rules (Tempo Motion). The Tempo Motion seeks a waiver of portions of Rule 4 CCR 723-2-2187. The Stipulation also addresses the substance of the Tempo Motion.

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.

D. Additional Required Filing.

22. On February 27, 2014, Mr. Corwin filed direct testimony and exhibits in support of the Application. No affidavit verifying the testimony and exhibits accompanied this filing. It appears that the Applicant relies on Mr. Corwin's testimony and exhibits as support for the Application.

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.

II. ORDER

A. It Is Ordered That:

1. Not later than June 20, 2014, the Parties shall file their verified responses to the questions posed in this Interim Decision.
2. Not later than June 20, 2014, Tempo Telecom, LLC, shall file an affidavit signed by Gregory Corwin that verifies his direct testimony and exhibits filed on February 27, 2014.
3. The Unopposed Motion to Modify Due Date for Answer Testimony and Exhibits, which motion was filed by Trial Staff of the Commission on March 26, 2014, is granted *nunc pro tunc*.
4. The request in ¶ 7 of the Joint Motion to Approve Stipulation and Settlement Agreement, which motion was filed on April 14, 2014, is granted.
5. The procedural schedule established in Decision No. R14-0182-I is vacated *nunc pro tunc*.
6. The evidentiary hearing scheduled for May 20, 2014 is vacated *nunc pro tunc*.
7. The Joint Motion for Waiver of Response Time, which motion was filed on April 14, 2014, is denied as moot.
8. The Parties are held to the advisements in the Interim Decisions issued in this Proceeding.

9. This Interim Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director