

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

October 6, 2023

IN RE:

PETITION OF TEMPO TELECOM, LLC FOR
DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER

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DOCKET NO.
23-00054

ORDER DESIGNATING TEMPO TELECOM, LLC
AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER

This matter came before Vice Chairman David F. Jones, Commissioner Robin L. Morrison, Commissioner Clay R. Good, Commissioner Kenneth C. Hill, and Commissioner John Hie of the Tennessee Public Utility Commission (the “Commission” or “TPUC”), the voting panel assigned to this docket, during a regularly scheduled Commission Conference held on September 11, 2023, for consideration of the *Petition of TEMPO TELECOM, LLC for Designation as an Eligible Telecommunications Carrier* (“*Petition*”) filed by TEMPO TELECOM, LLC (“TEMPO” or “Company”) on July 21, 2023.

BACKGROUND AND PETITION

In accordance with Tennessee law, the Commission annually certifies wireline companies as Eligible Telecommunications Carriers (“ETC”) upon verifying compliance with federal standards.¹ Orders designating wireline companies as ETCs are submitted to the Federal Communications Commission (“FCC”) to allow designated Tennessee companies to receive federal funding for certain services, including Lifeline service. Prior to Tennessee legislative

¹ 47 C.F.R. § 54.314 (2023). *See also* Tenn. Code Ann. § 65-4-104(c) (2023).

changes in 2022, the Commission lacked authority to designate non-wireline companies, e.g., wireless or cellular providers, as ETCs. Tennessee Public Acts Chapter 789 became effective in March 2022, thereby providing the Commission with the authority to designate cellular providers as ETCs. The newly enacted language provides:

Notwithstanding § 65-4-101(6)(A)(vi), the Commission may upon petition designate a provider or reseller of domestic public cellular radio telephone service as an eligible telecommunications carrier pursuant to 47 C.F.R. § 54.201 for purposes of providing Lifeline service.²

On July 21, 2023, TEMPO filed its *Petition* for the purpose of providing Lifeline service to qualifying Tennessee consumers. In its *Petition*, TEMPO states that it satisfies all the statutory and regulatory requirements for designation as an ETC, including Tenn. Code Ann. § 65-4-104 as amended in 2022. In support of its position, TEMPO states it is an established wireless carrier holding ETC status in twenty-one (21) other States as a wireless Lifeline provider.³ The Company submitted a Federal Communications Commission (“FCC”) approved Compliance Plan and a 2nd Revised Compliance Plan that was filed with the FCC on April 28, 2023.⁴

TEMPO states that it seeks ETC designation solely to provide Lifeline service to qualifying Tennessee consumers and it will not—nor is eligible to—seek access to funds from the federal Universal Service Fund (“USF”) for the purpose of participating in the Link-Up program or providing service to high-cost areas.⁵ TEMPO also filed a signed affidavit by Alex Valencia, Chief Compliance Officer, affirming that the matters, facts and statements set forth in the *Petition* are true to the best of his knowledge.

² Tenn. Code Ann. § 65-4-104(c) (West 2022). *See also* 2022 Tenn. Pub. Acts Ch. 789.

³ *Petition*, pp. 2-3 (July 21, 2023).

⁴ *Id.* at 8 and Exh. 2.

⁵ *Id.* at 1.

STANDARD FOR COMMISSION APPROVAL

Commission approval is required for designation as an ETC pursuant to the Telecommunications Act of 1996, 47 U.S.C.A § 214(e), which provides, in relevant part:

(e) Provision of universal service

(1) Eligible telecommunications carriers. A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 of this title and shall, throughout the service area for which the designation is received—

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title, either using its own facilities or a combination of its own facilities (the FCC granted forbearance from the facilities requirement in its *Lifeline and Link Up Reform Order* at ¶ 368) and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefor using media of general distribution.

(2) Designation of eligible telecommunications carriers

A State Commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest. (The FCC's *Lifeline and Link Up Reform Memorandum Opinion and Order- FCC 13-44 released April 15, 2013*, authorized forbearance from the service area conformance requirements with respect to carriers seeking to provide Lifeline only service).⁶

⁶ 47 U.S.C.A. § 214(e)(1)-(2).

FINDINGS AND CONCLUSIONS

State Commissions have been designated to certify ETCs that meet the requisite federal criteria, so that such designated companies may in turn receive federal support for providing certain services. In this instance, TEMPO is seeking federal low-cost funds which are designated to provide Lifeline service to qualified Tennessee consumers.

According to information provided by the Company, TEMPO has been offering the requisite services (Lifeline) as defined in Section 254(c) of the Federal Telecommunications Act for numerous years in other states. The Company also advertises the availability of the services and otherwise meets the eligibility criteria for designation as an ETC. Further, this request to become certified as an ETC certainly meets the public interest as approval of this petition will allow TEMPO access to federal funds to greatly assist in the provisioning of wireless voice service as well as broadband service in areas that otherwise might not receive such essential service.

Upon consideration of the *Petition*, Affidavit, and the entire record in this docket, the voting panel found that TEMPO meets the qualifications necessary to be designated as an ETC. Further, the panel found that it is in the public interest to designate TEMPO as an ETC. Therefore, the voting panel unanimously approved the *Petition*.

IT IS THEREFORE ORDERED THAT:

1. The *Petition of TEMPO TELECOM. LLC for Designation as an Eligible Telecommunications Carrier* is approved, designating TEMPO as an Eligible Telecommunications Carrier in the State of Tennessee.
2. Any person who is aggrieved by the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within fifteen days from the date of this Order.
3. Any person who is aggrieved by the Commission's decision in this matter has the

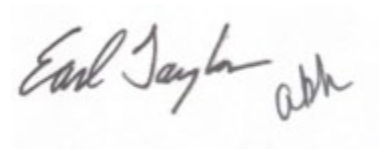
right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty days from the date of this Order.

TENNESSEE PUBLIC UTILITY COMMISSION:

**Vice Chairman David F. Jones
Chairman Robin L. Morrison
Commissioner Clay R. Good
Commissioner Kenneth C. Hill, and
Commissioner John Hie, concurring.**

None dissenting.

ATTEST:

A handwritten signature in dark ink, appearing to read "Earl Taylor" with a stylized flourish or initials "abh" at the end.

Earl R. Taylor, Executive Director