

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF TEMPO TELECOM’S) CASE NO. TEM-T-23-01
APPLICATION FOR DESIGNATION AS AN)
ELIGIBLE TELECOMMUNICATIONS) ORDER NO. 36022
CARRIER)
)

On August 7, 2023, Tempo Telecom, LLC (“Company” or “Tempo”) applied to the Commission (“Commission”) for designation as an Eligible Telecommunications Carrier (“ETC”) in the State of Idaho (“Application”). The Company seeks designation as an ETC for the sole purpose of providing Lifeline services. The Company requests that it be allowed to participate and receive reimbursement from the Idaho Telephone Service Assistance Program accordingly (“ITSAP”).

On October 17, 2023, the Commission issued a Notice of Application and set deadlines for public comments and the Company’s reply. Order No. 35961. Staff submitted comments. No other comments were received.

With this Order, we approve the Company’s request for designation as an ETC.

THE APPLICATION

According to the Company, Tempo is part of a corporate structure consisting of several layers. Tempo is a wholly owned subsidiary of Lingo Management, LLC (“Lingo”); B. Riley Principal Investments (“BRPI”) owns 100% of Lingo; BRPI is owned by B. Riley Financial, Inc.—a publicly traded company.

The Company requests a limited designation to be authorized to provide Lifeline service to qualifying Idaho consumers—including those on federally recognized Tribal lands.

The Company states that the Commission has jurisdiction over this matter and that Tempo is a common carrier with the ability to provide the telecom services listed in its Application. The Company requests that its designation as an ETC include the authority to participate in, and receive reimbursement from, the ITSAP. The Company states that it seeks to provide Lifeline services to qualifying Idaho customers; with this exception, the Company states that it is *not* eligible to receive funds from the Universal Service Fund (“USF”) and is not seeking approval to participate in USF programs outside of offering Lifeline services.

The Company asserts that it meets all federal and state requirements for designation as an ETC. The Company also argues that designating it as an ETC is in the public interest because ETC designation would allow the Company to offer Lifeline services to qualifying low-income Idahoans.

The Company further asserts that, if approved, it will offer telecom services—including calling, text messaging, and broadband access—in a cost-effective manner. The Company states that this will increase competition and customer service options within an underserved area.

STAFF COMMENTS

Staff reviewed the Company's Application for compliance with the Federal Telecommunications Act of 1996 ("Federal Act"), Federal Communications Commission ("FCC") regulations, and Commission Order No. 29841.

Staff believes the Company's proposal satisfies the relevant public interest considerations. Staff further believes the Company complied with the tribal notification requirements delineated in Commission Order No. 35126. Staff notes the Company is not required to have a network improvement plan. Staff believes the Company will remain functional in emergencies per Commission Order No. 29841 and FCC requirement 47 C.F.R. § 54.202(a)(2). Last, Staff believes the Company's Application meets the requirements for ETC designation as delineated in the Appendix to Commission Order No. 29841.

Staff believes the Company's designation as a limited ETC is in the public interest and its Application should be approved.

COMMISSION FINDINGS AND DECISION

The Commission has authority to grant ETC designation to a telecommunications carrier under federal and state law. 47 U.S.C. § 214(e) ("Federal Act"); *Idaho Code* §§ 62-610D and 62-615(1). The Commission has considered the record, including the Company's Application and Staff Comments. We now make these findings.

A. Common Carrier, Own Facilities, and Advertising

We first address requirements listed in § 214(e)(1) of the Federal Act. That provision requires an applicant to be a "common carrier" offering services "using its own facilities or a combination of its own facilities and resale of another carrier's services," unless otherwise granted FCC forbearance. 47 U.S.C. §§ 153(11), 214(e)(1)(A) and 160(a)(3). The FCC has granted forbearance from the "own-facilities" requirement to Lifeline-only ETCs provided they comply

with certain 911 requirements and file a compliance plan. *Lifeline and Link Up Reform Order*. The Company represented that, as a Lifeline-only ETC, it complied with the Federal Act with the filing of its December 2012 FCC-approved Compliance Plan. The Company stated its intention to follow 911 requirements governing Lifeline subscribers in accordance with its FCC-approved Compliance Plan. We find the Company properly complied with the FCC forbearance regarding the “own facilities” requirement. On the record before us, we find the Company is also a “common carrier.” *See* 47 U.S.C. § 153(11).

An applicant seeking ETC designation must also “advertise the availability of such services and the charges therefor using media of general distribution.” 47 U.S.C. § 214(e)(1)(B). Based on the record and the Company’s assurances, we find this requirement to also be satisfied.

B. Public Interest and Related ETC Designation Requirements

Under the Federal Act, state commissions shall determine whether granting the requested ETC designation is “consistent with the public interest, convenience, and necessity.” 47 U.S.C. § 214(e)(2).

First, the Company committed to offering Lifeline services to a wide array of low-income and unserved and underserved Idaho residents. *See* 47 C.F.R. § 54.101(d). We find that the Company’s offering of these services in the service areas promotes the public interest because these services will assist unserved or underserved people and provide investment in facilities and equipment in these areas.

We also consider whether the Company would contribute to the appropriate Idaho funds. Order No. 33002 at 2-3; Order No. 33226 at 3. Staff confirmed that the Company would participate in the appropriate Idaho programs and comply with the Commission’s annual reporting requirements. We find that the Company’s commitment to participating in the appropriate Idaho programs advances the public interest.

Next, we consider whether the Company is engaged in “cream skimming,” which we have found to be contrary to the public interest. Order No. 33002 at 2-3; Order No. 33226 at 3. Because the Company requested limited ETC designation for the entire state, no cream-skimming analysis is required.

We therefore find that granting the Company limited designation as an ETC in its requested service area—the State of Idaho—satisfies the public interest requirements.

C. Remaining Requirements

Finally, we address the six remaining requirements from federal regulations and Order No. 29841. *See* 47 C.F.R. § 54.202.

(1) Service Requirements for Support Received. We find the Company has sufficiently committed to meeting these requirements.

(2) Plan for Proposed Improvements or Upgrades to the Network. The FCC and this Commission have waived the requirement for Lifeline-only ETCs who seek only low-income USF support to submit a network improvement plan. *See* Order No. 32501 at 3-4; 47 C.F.R. § 54.202(a)(1)(ii). We find that the Company is not required to submit a network improvement plan.

(3) Ability to Remain Functional in Emergencies. We find the Company has demonstrated sufficient compliance with this requirement.

(4) Willingness to Satisfy Consumer Protection and Service Quality Standards. We are satisfied with the Company's assurances as to this requirement.

(5) Financial and Technical Capability. Based on the Company's statements concerning its financial abilities, technical qualifications, and the Company's connections with its parent company and partners, we also find this requirement to be satisfied.

(6) Notice to Affected Tribes. We find the Company has notified Tribal authorities. The Commission here notes that the Company's ETC designation shall include federally recognized tribal lands. *See* 47 C.F.R. § 54.202(c); Order No. 29841 at 16 (superseded in part by Order No. 35126 at 6).

Based on the above findings, we conclude that the Company has satisfied the federal and state requirements for limited designation as an ETC carrier. We therefore designate the Company an ETC in the State of Idaho for the purpose of providing Lifeline service to qualifying Idaho consumers and to participate in and receive reimbursement from the ITSAP.

ORDER

IT IS HEREBY ORDERED that the Company's Application for limited designation as an ETC in the State of Idaho is approved. Additionally, the Company may participate in the ITSAP and provide Lifeline services to qualifying Idaho customers.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order about any matter

decided in this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *Idaho Code* § 61-626.

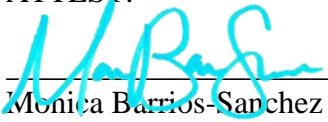
DONE by order of the Idaho Public Utilities Commission at Boise, Idaho this 13th day of December 2023.


ERIC ANDERSON, PRESIDENT


JOHN R. HAMMOND, JR., COMMISSIONER


EDWARD LODGE, COMMISSIONER

ATTEST:


Monica Barrios-Sanchez
Interim Commission Secretary

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