

Performance Audit  
of  
Tempo Telecom, LLC  
A Universal Service Fund Lifeline Beneficiary

Final Audit Report No. 18-AUD-12-09

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CONDUCTED FOR:  
FEDERAL COMMUNICATIONS COMMISSION,  
OFFICE OF INSPECTOR GENERAL



MANAGEMENT CONSULTANTS &  
CERTIFIED PUBLIC ACCOUNTANTS

1420 K Street, NW  
Suite 910  
Washington, DC 20005  
Tel: 202-296-7101  
Fax: 202-296-7284  
[www.regiscpa.com](http://www.regiscpa.com)



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## Executive Summary

The Federal Communications Commission (FCC) Office of Inspector General (OIG) engaged Regis & Associates, PC to conduct a performance audit of Tempo Telecom, LLC (Tempo or the Company), a Universal Service Fund (USF) beneficiary. Regis & Associates, PC conducted an audit of Tempo's FCC Forms 497, Lifeline Worksheets; and Lifeline Claims System filings submitted to the Universal Service Administrative Company (USAC) for the 12-month period ended March 31, 2018. These filings were submitted for the state of Georgia under Study Area Code 229024. We designed procedures to determine whether Tempo complied with Title 47 of the Code of Federal Regulations C.F.R., § 54.400-54.423 and related USF orders regarding the USF Lifeline program. We also designed procedures to determine whether Tempo implemented effective controls to provide reasonable assurance that USF funds were safeguarded and used for the intended purposes. We conducted this performance audit in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States.

During our audit we identified four (4) findings in which Tempo did not comply with the USF Lifeline program's rules and regulations. We found that Tempo: (1) had inadequate procedures for verifying the validity of Lifeline subscribers' addresses; (2) had inadequate subscriber eligibility determination and certification procedures; (3) did not file all required reports with the Georgia Public Service Commission in a timely manner; and (4) submitted an FCC Form 555 for calendar year 2017 that was not adequately supported, nor mathematically accurate. Also, Tempo's advertising materials did not disclose the mobile broadband speed provided to its Lifeline subscribers in the state of Georgia. However, Tempo met the core service requirements of the FCC rules and regulations; therefore, this condition did not rise to the level of a reportable finding. We provided additional details on this condition in the "Other Matters" section of this report.

We made recommendations to Tempo to improve its internal controls over the Lifeline program. For findings 1 and 4, we also recommended that the Wireline Competition Bureau direct USAC to perform additional procedures to determine whether any reimbursements are due to the USF for improper payments. The detailed findings are incorporated into the Findings and Recommendations section of this report.

Tempo did not agree with three of the findings and the condition reported as an other matter. Tempo agreed with the finding related to the untimely filing of all the required reports with the Georgia Public Service Commission. Tempo's full response is incorporated into this report as Appendix B.

## Background

The FCC established the Universal Service Fund (USF), which was codified in the Telecommunications Act of 1996, to advance the availability of telecommunications services to all consumers, including those in low income, rural, insular, and high cost areas; at rates that are reasonably comparable to those charged in urban areas. USAC is tasked by the FCC to administer the USF. In administering the USF, USAC has five (5) primary functions, which include the administration of four (4) USF programs (High-Cost, Lifeline, Schools and Libraries, and Rural Health Care) and the collection of USF contributions from telecommunications providers. The Lifeline program provides discounts that make voice and broadband services affordable for low-income consumers. The Lifeline program is available to eligible low-income consumers in every state and on Tribal lands.

Tempo is an eligible telecommunications carrier<sup>1</sup> (ETC), headquartered in Atlanta, Georgia. Tempo's service provider identification number is 143037358. Tempo was designated as an ETC in the state of Georgia, under SAC 229024. Tempo was founded in 1996 and until February 2013, was known as Now Communications, LLC. Tempo is registered with the FCC and is authorized to provide domestic interstate and international telecommunications services. Tempo provides wireless and wireline telephone service to Lifeline and non-Lifeline customers, in addition to wireless voice and data services throughout the United States. For providing services to its prepaid wireless Lifeline and non-Lifeline services, Tempo resells the wireless services of Sprint Spectrum, L.P. and T-Mobile US, Inc.

## Objectives, Scope, and Methodology

The objectives of this audit were to determine whether Tempo (1) complied with Title 47 of the Code of Federal Regulations, 47 C.F.R. § 54.400-54.423 and related USF orders regarding the USF Lifeline Program, and (2) implemented adequate and effective controls to provide reasonable assurance that USF funds were safeguarded and used for the purposes intended.

The scope of our audit covers Tempo's Lifeline program filings on FCC Forms 497<sup>2</sup>, Lifeline Worksheets, and Lifeline Claims System<sup>3</sup> filings submitted to USAC for the Georgia SAC for the period from April 2017 through March 2018. The total amount of Lifeline funds received by Tempo from the USF for the period audited totals [REDACTED].

The audit was conducted in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions, based on our audit objectives. We believe that the evidence obtained, provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>1</sup> An eligible telecommunications carrier is a telecommunications carrier, or an affiliate, that meets specific FCC regulatory requirements. ETC's have obtained a designation that allows a company to receive federal universal service fund support from the High Cost and Lifeline programs.

<sup>2</sup> ETCs were required to use FCC Form 497 to submit claims and revisions for data months prior to 2018.

<sup>3</sup> ETCs are required to use the Lifeline Claims System that is available through the National Lifeline Accountability Database (NLAD) to submit claims and revisions for the data months in 2018 and later.

Additional details on the audit objectives, scope, and methodology are provided in Appendix A of this report.

## Audit Results

During our audit, we identified four instances in which Tempo did not comply with Lifeline program rules and regulations. These instances of non-compliance were primarily due to a lack of adequate internal controls over the processes related to the Lifeline program. We found that Tempo: (1) did not implement enrollment certification procedures to adequately ensure that prospective subscribers were eligible to receive Lifeline services; (2) did not file all required reports with the Georgia Public Service Commission in a timely manner; (3) submitted an FCC Form 555 for calendar year 2017 that was not mathematically accurate, and for which Tempo could not support the subscriber recertification totals; and (4) used subscriber eligibility determination and certification procedures that were not adequate for verifying the validity of Lifeline subscribers' addresses.

We made recommendations to Tempo to improve its internal controls over the Lifeline program. For findings 1 and 4, we also recommended that the Wireline Competition Bureau direct USAC to perform additional procedures to determine whether any reimbursements were due to the USF for improper payments. The detailed findings are incorporated into the Findings and Recommendations section of this report.

We also observed that Tempo's advertising materials did not disclose the mobile broadband speed provided to its Lifeline subscribers in the state of Georgia, as required by the FCC rules. We reported that condition as "Other Matters" because Tempo, otherwise, met the core service requirements of FCC rules and regulations.

Tempo did not agree with three findings (finding numbers 1, 2 and 4) and the other matter. Tempo only agreed with finding number 3, related to the untimely filing of all required reports with the Georgia Public Service Commission. Tempo's full response is incorporated into this report as Appendix B.

## Findings and Recommendations

### **Finding 1: Inadequate Procedures for Verifying the Validity of Lifeline Subscribers' Addresses**

#### **BACKGROUND:**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] However, Tempo claimed subscribers at this apartment community, with apartment numbers outside this range.

**CONDITION:**

During the period April 2017 through March 2018, Tempo claimed [REDACTED] subscribers on FCC Form 497 that were enrolled under non-existent residential addresses. The Lifeline reimbursement claims were for subscribers, who reported [REDACTED] as their residential address. However, the complex's property management verified that the apartment numbers reported by the subscribers did not exist. The non-existent apartment numbers associated with the [REDACTED] subscribers ranged from [REDACTED]

We reviewed a sample of [REDACTED] of the [REDACTED] subscribers and found that Tempo was able to provide qualifying assistance documents<sup>4</sup> for all [REDACTED]. However, none of the program eligibility documents contained residential addresses. Therefore, we could not determine the true addresses of these [REDACTED] subscribers. When enrolling subscribers, Tempo's marketing agents typically compare a subscriber's identification to the Lifeline enrollment forms; but do not, and are not allowed to, retain copies of the identification. Using a non-existent or incomplete apartment number for enrollment in the Lifeline program is not compliant with FCC rules. Without a valid address, Tempo is not eligible for Lifeline program reimbursements for these [REDACTED] subscribers.

Tempo stated that they have no reason to question the validity of the subscribers' reported addresses because the subscribers certified, under penalty of perjury, that their listed address was correct. However, Tempo should have had procedures in place to ensure the validity of addresses when many of its subscribers are using the same address, but with different or incomplete apartment numbers.

**CRITERIA:**

Title 47 Code of Federal Regulations § 54.410, *Subscriber eligibility determination and certification*, states:

“(a) All eligible telecommunications carriers must implement policies and procedures for ensuring that their Lifeline subscribers are eligible to receive Lifeline services. An eligible telecommunications carrier may not provide a consumer with an activated device that it represents enables use of Lifeline-supported service, nor may it activate service that it represents to be Lifeline service, unless and until it has:

- (1) Confirmed that the consumer is a qualifying low-income consumer pursuant to § 54.409, and;
- (2) Completed the eligibility determination and certification required by this section and sections §§ 54.404 through 54.405, and completed any other necessary enrollment steps.”

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<sup>4</sup> Qualifying assistance documents refers to documentation demonstrating that a prospective subscriber qualifies for Lifeline assistance under the program-based eligibility requirements. Acceptable documentation of program eligibility includes the current or prior year's statement of benefits from a qualifying assistance program, a notice or letter of participation in a qualifying assistance program, program participation documents, or another official document demonstrating that the prospective subscriber, one or more of the prospective subscriber's dependents, or the prospective subscriber's household receives benefits from a qualifying assistance program.

**CAUSE:**

Tempo did not have effective controls in place for verifying the validity of Lifeline subscribers' apartment numbers, in addition to the street addresses contained in subscriber documentation.

**EFFECT:**

Tempo received improper reimbursements, totaling [REDACTED], for the [REDACTED] subscribers that enrolled in the Lifeline program using non-existent addresses.

Tempo claimed these subscribers on its FCC Forms 497 from April 2017 through March 2018, as summarized in the table below:

<b>Month Claimed</b>	<b>Number of Lifeline Claims Associated with Invalid Addresses</b>	<b>Audit Recommended Adjustments to Lifeline Reimbursements</b>
April 2017	[REDACTED]	[REDACTED]
May 2017	[REDACTED]	[REDACTED]
June 2017	[REDACTED]	[REDACTED]
July 2017	[REDACTED]	[REDACTED]
August 2017	[REDACTED]	[REDACTED]
September 2017	[REDACTED]	[REDACTED]
October 2017	[REDACTED]	[REDACTED]
November 2017	[REDACTED]	[REDACTED]
December 2018	[REDACTED]	[REDACTED]
January 2018	[REDACTED]	[REDACTED]
February 2018	[REDACTED]	[REDACTED]
March 2018	[REDACTED]	[REDACTED]
<b>Total</b>	[REDACTED]	[REDACTED]

**RECOMMENDATIONS:**

- 1.1 We recommend that Tempo establish and implement controls to ensure the validity of subscriber addresses.
- 1.2 We recommend that FCC's Wireline Competition Bureau direct USAC to perform additional procedures to determine whether Tempo should reimburse the USF for:
  - a. improper disbursements, totaling [REDACTED] for the [REDACTED] subscribers with invalid addresses for the period from April 2017 through March 2018, and
  - b. other periods in which Tempo may have claimed these [REDACTED] subscribers with invalid addresses.

**MANAGEMENT’S RESPONSES:**

**TEMPO’S RESPONSE:**

Tempo does not concur with the finding. Tempo stated that each of the subscribers identified in this finding completed an enrollment and certification form, under the penalty of perjury, that included the subscriber’s address. Tempo also stated that an ETC was required to query NLAD [National Lifeline Accountability Database<sup>5</sup>], maintained by USAC, for each prospective subscriber to verify, among other things, the subscriber’s address. Tempo stated that it received documentation verifying the identity and eligibility of each of the subscribers. Tempo also stated that it should not bear the responsibility for the, potentially, fraudulent actions of subscribers; when it complied with the FCC’s rules and the NLAD process, which approved the subscribers identified in this finding, for enrollment in the Lifeline program.

See Tempo’s full response in Appendix B (therein referred to as, Tempo Response to Notice of Finding and Recommendation #1).

**USAC’S RESPONSE**

USAC Response to Recommendation #1.1: USAC agrees with the recommendation.

USAC Response to Recommendation #1.2: USAC will request from OIG, a list of the subscribers at issue in this finding. Upon receipt of the list, USAC will review its records to determine whether recovery should be sought for the [REDACTED] in disbursements covering the [REDACTED] subscribers identified for the relevant audit period. USAC will also perform additional action to determine if there are any additional periods where these subscribers were improperly claimed and, as necessary, seek recovery for the appropriate amount.

**AUDITOR’S ANALYSIS:**

We found no evidence in Tempo’s response to support revising our conclusion or removing our recommendation from the audit report. Tempo did not refute that the addresses were non-existent. ETCs bear a responsibility to prevent fraud, waste, and abuse in the Lifeline program; even when NLAD and subscriber certifications are in place. Payments are not deemed to be proper based, merely, on the circumstances that permitted ineligible subscribers to be enrolled.

We concur with USAC’s response and will provide OIG and USAC the list of subscribers at issue.

**Finding 2: Inadequate Subscriber Eligibility Determination and Certification Procedures**

**CONDITION:**

Tempo improperly enrolled 2 out of [REDACTED] subscribers that we examined. In the first instance, the subscriber’s residential address field included a house number, but the street name was left

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<sup>5</sup> The primary purpose of the National Lifeline Accountability Database is to prevent multiple Lifeline program-supported services from being provided to a subscriber or household.

blank. Tempo provided evidence from its customer enrollment system which showed that the first subscriber was previously enrolled under a different account number. That account, which was established in a period outside of the scope of this audit, included a complete, but different address. Tempo asserts that the prior address was used to enroll the subscriber, and that the incomplete address was a typographical error. However, the subscriber information in the National Lifeline Accountability Database (NLAD) contained the same incomplete address and, thus, contradicts Tempo's assertion. This was further corroborated by the subscriber listing that we obtained from USAC, which originates from NLAD. The USAC subscriber listing showed that as of March 2018, the last month within our audit scope, the subscriber was still enrolled under the incomplete address.

In the second instance, Tempo enrolled a subscriber who provided a qualifying assistance program document<sup>6</sup>. However, the subscriber's name did not match the name on the eligibility certification form. The name on the qualifying assistance document was for a different, existing subscriber, and it included the existing subscriber's social security number and residential address. Tempo stated that its customer enrollment system shows that Tempo's personnel questioned the name mismatch and requested that the subscriber submit valid documentation to support his/her eligibility for the Lifeline program. Once the Tempo personnel confirmed the subscriber's eligibility, they enrolled the subscriber. However, Tempo did not provide us with the qualifying assistance program document in which the name matched the name on the enrollment form. Tempo also did not provide any evidence to show that they questioned the name mismatch, or that they requested valid documentation to verify the subscriber's eligibility.

**CRITERIA:**

Title 47 Code of Federal Regulations § 54.410, *Subscriber eligibility determination and certification*, states:

(a) All eligible telecommunications carriers must implement policies and procedures for ensuring that their Lifeline subscribers are eligible to receive Lifeline services. An eligible telecommunications carrier may not provide a consumer with an activated device that it represents enables use of Lifeline-supported service, nor may it activate service that it represents to be Lifeline service, unless and until it has:

(1) Confirmed that the consumer is a qualifying low-income consumer pursuant to § 54.409, and;

(2) Completed the eligibility determination and certification required by this section and §§ 54.404 through 54.405, and completed any other necessary enrollment steps.

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<sup>6</sup> Qualifying assistance documents refers to documentation demonstrating that a prospective subscriber qualifies for Lifeline under the program-based eligibility requirements. Acceptable documentation of program eligibility includes the current or prior year's statement of benefits from a qualifying assistance program, a notice or letter of participation in a qualifying assistance program, program participation documents, or another official document demonstrating that the prospective subscriber, one or more of the prospective subscriber's dependents or the prospective subscriber's household receives benefits from a qualifying assistance program.

Furthermore, § 54.410(d)(2)(ii), states that the form provided by the entity enrolling subscribers must require each prospective subscriber to provide the information including the subscriber's full residential address.

**CAUSE:**

Tempo did not have effective internal controls over the subscriber enrollment process to ensure that prospective subscribers' eligibility certification forms were accurate, complete, and adequately supported.

**EFFECT:**

Tempo may have received improper reimbursements, totaling [REDACTED], for the two ineligible subscribers included in the audit sample. Even though we did not perform a statistically valid sample, there is a risk that other ineligible subscribers may exist but were not included in our sample.

**RECOMMENDATIONS:**

We recommend that Tempo:

- 2.1 Improve internal controls over the review and approval of the Lifeline eligibility determination and certification processes.
- 2.2 Research the circumstances of the two improperly enrolled subscribers and correct the discrepancies, where possible, or reimburse the USF for any improper reimbursements.

**MANAGEMENT'S RESPONSES:**

**TEMPO'S RESPONSE:**

Tempo's Management does not concur with the finding. For the first subscriber identified, Tempo stated that it appears that the address, as listed on the enrollment and certification form, was a typographical error. Tempo also stated that its customer enrollment system shows the complete street address for the subscriber, which was used to successfully enroll the subscriber in NLAD. Tempo further stated that NLAD would have sent back an error or TPIV [Third-Party Identity Verification<sup>7</sup>] failure message if an address could not be accepted by NLAD. Tempo also stated that it previously provided this information and the supporting documentation to the Auditor.

For the second subscriber identified, Tempo stated that its customer enrollment system shows that the Tempo personnel questioned the name mismatch and requested further documentation from the subscriber to verify whether he/she was eligible for the Lifeline program. Tempo also stated that it did not retain the updated documentation reviewed to verify the name, but that documented notes from Tempo's customer enrollment system were provided to the Auditor for

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<sup>7</sup> Third-Party Identity Verification is an algorithm, within NLAD, designed to prevent the enrollment of duplicate subscribers.

review. Tempo stated that once its personnel confirmed the subscriber's eligibility, it enrolled the subscriber.

See Tempo's full response in Appendix B (therein referred to as, Tempo Response to Notice of Finding and Recommendation #2).

**USAC'S RESPONSE:**

USAC agrees with the recommendations.

**AUDITOR'S ANALYSIS:**

Tempo did not provide us with supporting documentation or customer enrollment system notes; either during our fieldwork testing or with their management response to the draft audit report. We, therefore, maintain that the subscriber was inappropriately enrolled and not eligible to receive Lifeline program services. We will provide information to USAC for its use in researching the improperly enrolled subscribers.

**Finding 3: Untimely Reporting to the Georgia Public Service Commission**

**CONDITION:**

Tempo failed to provide all required quarterly and semi-annual reports to the Georgia Public Service Commission (GPSC) within 15 days of the close of the reporting period. These reports are required by the Rules and Regulations of the State of Georgia and GPSC, as a condition of the carrier's ETC designation<sup>8</sup>. Tempo did not submit Lifeline Quarterly Non-Usage Reports for the second or third quarter of 2017 or the first quarter of 2018 within 15 days of the close of the respective reporting period. Tempo also did not submit Lifeline Semi-Annual Subscriber Reports for the second quarters of 2017 and 2018 within 15 days of the close of the reporting periods.

**CRITERIA:**

Title 47 CFR §54.416(c) indicates that: "States that mandate Lifeline support may impose additional standards on eligible telecommunications carriers operating in their states to ensure compliance with state Lifeline programs".

Georgia State Rule 515-12-1-.35(5)<sup>9</sup> mandates that: "[a]n Eligible Telecommunications Carrier shall file the number of Lifeline subscribers that the carrier services in the State of Georgia as of June 30<sup>th</sup> and December 31<sup>st</sup> of each year, broken down by eligibility criterion. The report shall be filed 15 days from the close of the period."

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<sup>8</sup> The Georgia Public Service Commission Order on Application for Tempo's Designation as an ETC, was filed on February 6, 2014; in reference to Docket No. 36360, Document No. 151853.

<sup>9</sup> Ga. Comp. R. & Regs. R. 515-12-1-.35, *Eligible Telecommunications Carriers*. This section provides the rules and regulations that ETCs must comply with, when providing Lifeline services within the state of Georgia.

Additionally, GPSC released an Order <sup>10</sup> amending Tempo's ETC Designation. The amendment states that: "Tempo Telecom shall report, on a quarterly basis, the number of customers that have been deactivated for non-usage in a 60-day period, the number of customers that did not pass annual verification, and the number of customers that were voluntarily deactivated. The report shall be filed within 15 days of the close of each quarter".

**CAUSE:**

Tempo did not have adequate internal controls to ensure compliance with the Georgia Lifeline program's filing requirements. Tempo stated that the reports were not filed timely due to the departure of the employee who was responsible for submitting the reports.

**EFFECT:**

Tempo's Georgia ETC designation is contingent upon compliance with applicable Federal and state laws, as well as GPSC rules and orders. Therefore, non-compliance with the requirements set forth by the GPSC may result in the GPSC taking enforcement action; including fines and revocation of the company's ETC designation. If Tempo loses its ETC designation, its Lifeline subscribers may not be able to obtain lifeline service in the state of Georgia.

**RECOMMENDATION:**

3.1 We recommend that Tempo improve its internal controls to ensure that it meets the filing requirements set forth by the Georgia Public Service Commission and remains eligible to provide Lifeline program services.

**MANAGEMENT'S RESPONSES:**

**TEMPO'S RESPONSE:**

Tempo agrees that it did not submit its quarterly and semi-annual reports to the GPSC; in accordance with the deadlines for filing, established by the GPSC, for certain periods in 2017 and 2018.

See Tempo's full response in Appendix B (therein referred to as, Tempo Response to Notice of Finding and Recommendation #3).

**USAC'S RESPONSE:**

USAC agrees with the recommendation.

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<sup>10</sup> The Georgia Public Service Commission Order, amending the conditions of Tempo's ETC Designation, was filed on May 21, 2015; in reference to Docket No. 36360, Document No. 151853.

**AUDITOR’S ANALYSIS:**

Tempo concurred with the audit conclusions and recommendations. Therefore, no additional auditor analysis is required.

**Finding 4: FCC Form 555 Was Not Adequately Supported, Nor Mathematically Accurate**

**BACKGROUND:**

ETCs are required to recertify subscribers annually in order to confirm their current eligibility to receive Lifeline services. ETCs are also required to report, on an annual basis, the results of those efforts. This reporting is to be done by completing FCC Form 555, Annual Lifeline Eligible Telecommunications Carrier Certification Form, starting in the six-month period ended December 2017<sup>11</sup>.

**CONDITION:**

Tempo could not provide us with documentation to support the annual subscriber recertification data that it reported in blocks B<sup>12</sup>, F<sup>13</sup>, G<sup>14</sup>, and H<sup>15</sup> of its FCC Form 555<sup>16</sup> for the 2017 reporting period. Acceptable documentation includes, but is not limited to, a list of the names of the subscribers that comprise the totals on the form. Without the lists of subscribers to support the totals on the form, we could not determine the overall accuracy of the subscriber data reported in the various blocks on the FCC Form 555 for 2017.

Additionally, the number of subscribers reported on the 2017 Form 555 was not mathematically accurate. We observed that the number of subscribers reported in block F of the Form 555 was higher for each month of the six-month period, from July through December 2017, than the sum of blocks G and H. Based on FCC instructions, block F of Form 555 should be equal to the sum of blocks G and H (F = G + H).

Our recalculation yielded the differences noted in the table below:

<b><u>Form 555 Section</u></b>	<b><u>Jul</u></b>	<b><u>Aug</u></b>	<b><u>Sep</u></b>	<b><u>Oct</u></b>	<b><u>Nov</u></b>	<b><u>Dec</u></b>	<b><u>Total</u></b>
<b>Block G Per Form 555</b>	737	736	594	655	502	380	<b>3,604</b>
<b>Block H Per Form 555</b>	1	17	249	83	43	46	<b>439</b>
<b>Recalculated Block F</b>	<b>738</b>	<b>753</b>	<b>843</b>	<b>738</b>	<b>545</b>	<b>426</b>	<b>4,043</b>
<b>Block F Per Form 555</b>	746	1,016	956	969	694	609	<b>4,990</b>
<b>Number of Subscribers Over-Reported</b>							

<sup>11</sup> ETCs were not required to recertify subscribers with annual anniversary dates during the period of January through June 2017 (the “transition period”), which was meant to give ETCs time to prepare for the rolling recertification requirements of 47 CFR §54.410(f)(1).

<sup>12</sup> Block B reports subscribers who were de-enrolled prior to recertification attempts.

<sup>13</sup> Block F reports subscribers who were directly contacted by the ETC to recertify.

<sup>14</sup> Block G reports subscribers who failed to recertify through the ETC’s direct outreach attempt.

<sup>15</sup> Block H reports subscribers who recertified through the ETC’s direct outreach attempt.

<sup>16</sup> FCC Form 555 reports the results of the annual Lifeline subscriber recertification process and includes data accuracy certifications.

However, we observed that the Form 555 for the 2018 reporting period was appropriately supported by a subscriber listing; and that the form was mathematically accurate.

**CRITERIA:**

Lifeline carriers must report the correct number of subscribers on Form 555, based on adequate documentation, which must be retained to support the number of subscribers reported. Title 47 CFR, Section 54.416(b) states:

“(b) All eligible telecommunications carriers must annually provide the results of their re-certification efforts, performed pursuant to §54.410(f), to the Commission and the Administrator. Eligible telecommunications carriers designated as such by one or more states pursuant to §54.201 must also provide, on an annual basis, the results of their recertification efforts to state commissions for subscribers residing in those states where the state designated the eligible telecommunications carrier.”

Title 47 CFR, Section 54.410, *Subscriber eligibility determination and certification*, subparagraph (f)(1), states:

“(f) Annual eligibility re-certification process

(1) All eligible telecommunications carriers must re-certify all subscribers 12 months after the subscriber's service initiation date and every 12 months thereafter, except for subscribers in states where the National Verifier, state Lifeline administrator, or other state agency is responsible for the annual re-certification of subscribers' Lifeline eligibility.”

**CAUSE:**

Tempo did not have adequate internal controls to ensure that the FCC Form 555 for calendar year 2017 was supported by subscriber recertification data, and that the form was mathematically accurate. Tempo stated that the problems occurred, due to the departure of the employee who was responsible for preparing the 2017 FCC Form 555. Furthermore, USAC did not reject Tempo's FCC Form 555, even though it was not mathematically accurate.

**EFFECT:**

Tempo may not have properly recertified subscribers on an annual basis, as required by FCC Lifeline rules. As a result, Tempo may not be eligible to claim reimbursement for the number of subscribers that it claimed on FCC Form 497, Lifeline Worksheet, but did not properly recertify. Tempo did not have the subscriber listing to support the number of subscribers reported on its 2017 Form 555. Therefore, we could not determine whether there was any monetary effect resulting from Tempo's failure to properly recertify its subscribers.

**RECOMMENDATIONS:**

4.1 We recommend that Tempo improve its internal controls to ensure that data reported on its FCC Forms 555 is supported and accurate.

4.2 We recommend that FCC’s Wireline Competition Bureau direct USAC to reject Forms 555 from ETCs that are not mathematically accurate.

**MANAGEMENT’S RESPONSES:**

**TEMPO’S RESPONSE:**

Tempo does not concur with this finding. Tempo stated that it has the data used to populate the FCC Form 555; but was not able to re-create what was done to complete the FCC Form 555 for calendar year 2017 in order to provide the back-up data to the Auditor. Tempo also stated that since the 2017 data is now two (2) years old, there could have been changes to specific customers that caused the customer’s status to change.

Additionally, Tempo stated that completion of the FCC Form 555 is not an exact science; and there have been many explanations and interpretations given by USAC regarding completion of the form. It also stated that for the calendar year 2017 filing, it sought advice from USAC on how to complete certain portions of the FCC Form 555. Although the calendar year 2017 submission may not “mathematically” balance according to the formulas in the form; it was completed consistent with the direction provided to Tempo by USAC personnel.

See Tempo’s full response in Appendix B (therein referred to as, Tempo Response to Notice of Finding and Recommendation #4).

**USAC’S RESPONSE:**

USAC Response to Recommendation #4.1: USAC agrees with the recommendation.

USAC Response to Recommendation #4.2: According to information reported by Tempo on its FCC Form 555; subscribers that responded to Tempo’s recertification outreach, plus subscribers who did not respond to Tempo’s recertification outreach did not equal the total subscribers that Tempo contacted to recertify. When the numerical values on the form do not add up, the current filing system is designed to provide a soft error (a warning message) so that the carrier may review and correct its information. In 2020, USAC will conduct all recertification outreach and processing using the National Verifier, which will directly capture the recertification information that was previously reported by carriers in their annual FCC Form 555 filings.

The FCC Form 555 is next due in January 2021 for calendar year 2020. USAC will review the FCC Form 555 and related systems and processes with the FCC to ensure that information collected by the National Verifier is accurately and timely reported.

**AUDITOR’S ANALYSIS:**

We found no evidence in Tempo’s response to warrant revising our conclusion or removing our recommendation. Tempo did not provide arguments to refute the finding; instead, they provided explanations of how their inconsistent reporting may have occurred.

We concur with USAC’s response.

## Other Matters

Tempo did not disclose, in its printed marketing materials, the mobile broadband speed provided to its Lifeline subscribers in the state of Georgia for the period under audit, as required by FCC rules. We observed that Tempo's 2019 print and internet<sup>17</sup> advertisements did not disclose the mobile broadband speed offered. However, our detailed subscriber testing showed that Tempo provided the required minimum service standard for mobile broadband speed. The FCC rules<sup>18</sup> require that ETCs both advertise and provide a minimum service standard of 3G<sup>19</sup>.

Tempo does not agree with our observation. Tempo stated that it has added the data speed in all advertising and will continue to do so, going forward. See Tempo's full response in Appendix B (therein referred to as, Tempo Response to Auditors "Other Matters" Comments). We disagree with Tempo's assertion, since FCC's rules use the word "must", which indicates that FCC requires compliance with the advertising requirement.

Since Tempo provided the required minimum service, their non-compliance with the advertisement requirements did not rise to the level of a reportable finding. Therefore, we have reported this non-compliance as "other matters".

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<sup>17</sup> The Tempo website Lifeline page, at <https://mytempo.com/lifeline-wireless/>, does not disclose the mobile broadband speed offered. Due to the passage of time, we could not access the Lifeline page that was in place during the scope of our audit.

<sup>18</sup> Title 47 CFR § 54.408 *Minimum service standards*, paragraph (a) subparagraph (2), states, "(2) The minimum service standard for mobile broadband speed, as described in paragraph (b)(2)(i) of this section, is the level of service which an eligible telecommunications carrier must both advertise and provide to an end user..."

<sup>19</sup> 3G, short for third generation, is the third generation of wireless mobile telecommunications technology that provides high speed access to data and voice services. The 3G technology is delivered, using a 3G network. The third-generation technology was preceded by the digital second generation (2G) technology and the analog first generation (1G).

## Appendix A – Detailed Objectives, Scope, and Methodology

The objectives of this audit were to determine whether Tempo (1) complied with Title 47 of the Code of Federal Regulations, 47 C.F.R. § 54.400-54.423 and related USF orders regarding the USF Lifeline Program, and (2) implemented adequate and effective controls to provide reasonable assurance that USF funds were safeguarded and used for the purposes intended.

The scope of our audit covers Tempo’s filings on FCC Forms 497, Lifeline Worksheets, and Lifeline Claims System filings submitted to USAC, for the Georgia SAC, for the period from April 2017 through March 2018. The amount received by Tempo from the USF for the period audited totals [REDACTED]. The following table summarizes Tempo’s FCC Forms 497 claims and Lifeline Claims System filings for reimbursement for the Georgia SAC for the period under audit.

<b>Data Month</b>	<b>Lifeline Subscribers</b>	<b>Lifeline Claims for Reimbursement</b>
Mar-18	[REDACTED]	[REDACTED]
Feb-18	[REDACTED]	[REDACTED]
Jan-18	[REDACTED]	[REDACTED]
Dec-17	[REDACTED]	[REDACTED]
Nov-17	[REDACTED]	[REDACTED]
Oct-17	[REDACTED]	[REDACTED]
Sep-17	[REDACTED]	[REDACTED]
Aug-17	[REDACTED]	[REDACTED]
Jul-17	[REDACTED]	[REDACTED]
Jun-17	[REDACTED]	[REDACTED]
May-17	[REDACTED]	[REDACTED]
Apr-17	[REDACTED]	[REDACTED]
<b>Total</b>	[REDACTED]	[REDACTED]

The audit was conducted in accordance with Generally Accepted Government Auditing Standards, issued by the Government Accountability Office. Those standards require that we plan and perform the audit to obtain sufficient and appropriate evidence to provide a reasonable basis for our findings and conclusions, based on our audit objectives. We believe that the evidence obtained, provides a reasonable basis for our findings and conclusions, based on our audit objectives.

We obtained Tempo’s subscriber listings for all of the months presented in the table, above, and reconciled the number of subscribers to those claimed on their respective FCC Form 497 and Lifeline Claims System filings. We performed a mathematical check of the claimed reimbursements, based on the authorized discount, and reconciled the reimbursements to the amounts reported as disbursed by USAC. We performed process walkthroughs to gain an understanding of Tempo’s internal controls over the processes related to the administration of

Lifeline services. Out tests included a review of carrier eligibility, Lifeline reporting (FCC Form 497), subscriber eligibility determination and certification, annual recertification, and de-enrollment. We designed procedures to assess and to provide reasonable assurance of detecting potential fraud and illegal acts.

We judgmentally selected [REDACTED] of the [REDACTED] total Lifeline subscriber accounts for multipurpose detail testing based on each subscriber's attributes. The detail testing for the selected subscriber accounts included reviewing whether: the claimed reimbursements were appropriate; internal controls over the Lifeline program were operating effectively; and whether Tempo complied with applicable Lifeline program rules and regulations. For the selected subscribers, we considered the compliance requirements related to whether a subscriber was eligible to be reported on the FCC Form 497. These compliance requirements impact the following: (1) subscriber eligibility determination and certification; (2) annual recertification of subscriber eligibility; and (3) subscriber de-enrollment.

We visited Tempo's office in Macon, GA from June 10 through 14, 2019; and met with Tempo's Lifeline program managers and attorney. We performed internal control process walkthroughs and detail subscriber testing while onsite. At the end of our site visit, we notified Tempo's management and attorney of our preliminary findings.

## Appendix B Tempo Telecom, LLC Management's Response



April 2, 2020

### Via Electronic Delivery

Regis & Associates, PC  
1420 K Street, NW, Suite 910  
Washington, DC 20005

Re: [REDACTED]

**Tempo Telecom, LLC**

To Whom It May Concern:

Tempo Telecom, LLC (“Tempo”) respectfully reiterates and submits its response to the four (4) Notice of Findings and Recommendations (“NFRs”) and other comments transmitted by Regis & Associates, PC (the “Auditor”) via electronic mail on March 26, 2020. The NFRs were issued in connection with the audit being conducted on behalf of the Federal Communications Commission (“FCC”) Office of Inspector General (“OIG”) for the 12-month period of April 1, 2017 to March 31, 2018 (the “Audit Period”) for Study Area Code 229024, Georgia. This response addresses each NFR as well as other comments of the Auditor and states whether Tempo concurs in the NFR, any reasons for non-concurrence, and any corrective actions Tempo has or will put in place in connection with the NFR.

### Tempo Response to Notice of Finding and Recommendation #1

As stated in our previous response, Tempo disagrees that its “subscriber eligibility determination and certification procedures were not adequate for verifying the validity of Lifeline subscribers’ addresses.” Tempo has not received any “improper reimbursements” and does not owe any reimbursement to the Universal Service Fund related to any subscriber listing the apartment complex at [REDACTED] as its address when enrolling in the Lifeline program.

Prior to providing a potential Lifeline subscriber with an activated device during the Audit Period, an eligible telecommunications carrier (“ETC”) was required to: (1) confirm the subscriber is a qualifying low-income subscriber based on household income, receipt of certain federal or state benefits, or participation in certain federal or state programs; and (2) obtain certain certifications and information from the potential subscriber *under the penalty of perjury*, including the potential subscriber’s name, address, date of birth, and last four digits of the subscriber’s social security number.<sup>1</sup>

<sup>1</sup> 47 C.F.R. § 54.410(a), (d).

The potential subscriber also must acknowledge *under the penalty of perjury* that the information provided to the ETC “is true and correct to the best of his or her knowledge” and that “providing false or fraudulent information to receive Lifeline benefits is punishable by law.”<sup>2</sup>

An ETC also was required during the Audit Period to query the National Lifeline Accountability Database (“NLAD”) maintained by the Universal Service Administrative Company (“USAC”) for each prospective subscriber.<sup>3</sup> If NLAD cannot accept the prospective subscriber, the ETC receives an error message (known as a third-party identity verification or “TPIV” failure) indicating there is a problem with the potential subscriber’s identity, name, social security number, date of birth, *address*, or age, or the potential subscriber is already receiving Lifeline service from another provider (duplicate).<sup>4</sup> If an error message is received, an ETC may submit additional information to NLAD in an attempt to resolve the error, but an ETC cannot claim reimbursement for any subscriber that is not enrolled in NLAD as of the first day of the month.<sup>5</sup>

██████████ is an apartment complex. The company currently performs reviews that are above and beyond FCC requirements ██████████

██████████ it conducts further research to determine whether the address is an apartment complex, homeless shelter, or other type of multi- dwelling establishment. ██████████

██████████ A current copy of this list was provided to the Auditor ██████████ regarding ██████████, its research determined the address was a multi- unit apartment complex, and Tempo ██████████

Each of the subscribers identified in Notice of Finding and Recommendation (“NFR”) #1 completed an enrollment and certification form *under the penalty of perjury* that included the subscriber’s address. Tempo also received documentation verifying the identity and eligibility of each of the subscribers. Those subscribers also were accepted by NLAD, which would have issued an error or TPIV failure message if there was a problem with the subscriber’s address. Knowing that ██████████ is an apartment complex based on its prior research, Tempo had no reason to question the information provided by the subscriber *under penalty of perjury* or the approval issued by NLAD for that subscriber.

In July 2017, the FCC directed USAC to undertake a review of potential “oversubscribed addresses.” As a result, USAC started conducting oversubscribed address audits, which requires the ETC to obtain confirmation from the subscriber regarding its address. If such confirmation cannot be obtained within the timeframe established by USAC, the subscriber is de-enrolled from the Lifeline program. Tempo has been subject to ██████████ but

<sup>2</sup> 47 C.F.R. § 54.410(d).

<sup>3</sup> 47 C.F.R. § 54.404(b).

<sup>4</sup> <https://www.usac.org/li/tools/nlad/dispute-resolution/default.aspx>.

<sup>5</sup> <https://www.usac.org/li/program-requirements/receive-payment/default.aspx>.

has never received a request from USAC regarding [REDACTED].

In the *2012 Lifeline Reform Order*, the FCC declined to adopt a “one-per-residential address rule” because “it would be inappropriate to exclude otherwise eligible consumers solely because they lack a unique residential address”<sup>6</sup> The FCC recognized that “[c]onsumers may live in residences for which there is no unique U.S. Postal Service address or where multiple persons or families share a residential address, and this may be particularly common for low- income consumers” and declined to adopt a rule that “would potentially have the unintended consequence of excluding low-income consumers from participation in Lifeline.”<sup>7</sup>

The FCC also has recognized that a subscriber’s address is not the most important piece of information to protect against waste, fraud, and abuse. When it determined that otherwise eligible subscribers can use a *temporary address* to obtain Lifeline services, the FCC determined “[e]xisting measures, including the robust identify verification and checks for duplicative support already built into the NLAD . . . provide adequate protections against waste and abuse.”<sup>8</sup> The FCC found that the other subscriber data collected by USAC is sufficient to verify a subscriber’s identity and check for duplicative support.<sup>9</sup>

To the extent a subscriber provided a “non-existent” address, the subscriber committed the error, not Tempo.<sup>10</sup> Each of the subscribers identified in NFR #1 certified *under penalty of perjury* that he/she was providing accurate, true, and correct information to Tempo as a condition of receiving Lifeline service. Tempo relied on that information, as well as the approval Tempo received from NLAD for each of those subscribers, and Tempo provided services to the subscriber. As the FCC previously recognized,

in many situations, the service provider simply is not in a position to ensure that all applicable statutory and regulatory requirements have been met. Indeed, in many instances, a service provider may well be totally unaware of any violation. In such cases, we are now convinced that it is both unrealistic and inequitable to seek recovery solely from the service provider.<sup>11</sup>

For this reason, one “must consider which party was in a better position to prevent a violation of

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<sup>6</sup> *Lifeline and Link Up Reform and Modernization, et al.*, 27 FCC Rcd 6656, ¶ 80 (2012) (“*2012 Lifeline Reform Order*”).

<sup>7</sup> *2012 Lifeline Reform Order* ¶ 80.

<sup>8</sup> *2016 Lifeline Reform Order* ¶ 435.

<sup>9</sup> *2016 Lifeline Reform Order* ¶ 437.

<sup>10</sup> *See, e.g., AT&T Corp. v. Dataway, Inc.*, 557 F.Supp.2d 1099 (N.D. Cal. 2008) (finding the customer, not the telecommunications provider, was liable for fraudulent long-distance calls made using the customer’s system).

<sup>11</sup> *Federal-State Joint Board on Universal Service, et al.*, 19 FCC Rcd 15252, 12 (2004).

[FCC] program rules, and which party committed the act or omission that forms the basis for the violation.”<sup>12</sup> To do otherwise would discourage carrier participation in the Lifeline program, which was one of the primary reasons the FCC now requires ETCs to use the National Verifier to determine consumer eligibility for Lifeline services and as such Tempo is no longer responsible for determining eligibility.<sup>13</sup> Tempo should not bear the responsibility for the potentially fraudulent actions of subscribers when Tempo complied with the FCC’s rules and NLAD process, which approved the subscribers identified in NFR #1 for enrollment in the Lifeline program. Should use of the National Verifier stop Tempo will intensify its address review by [REDACTED].

## **Tempo Response to Notice of Finding and Recommendation #2**

Tempo reiterates its disagreement that it “did not have subscriber eligibility determination and certification procedures that ensured that its Lifeline subscribers were eligible to receive Lifeline services.” Tempo also disagrees that it “improperly enrolled” [REDACTED] out of the [REDACTED] subscribers reviewed by the Auditor or that other “ineligible subscribers may exist” that were not included in the sample. Tempo has not received any “improper reimbursements” and does not owe any reimbursement to the Universal Service Fund (“Fund”) related to the [REDACTED] subscribers identified in Notice of Finding and Recommendation (“NFR”) #2.

Prior to providing a potential Lifeline subscriber with an activated device during the Audit Period, an eligible telecommunications carrier (“ETC”) was required to: (1) confirm the subscriber is a qualifying low-income subscriber based on household income, receipt of certain federal or state benefits, or participation in certain federal or state programs; and (2) obtain certain certifications and information from the potential subscriber *under the penalty of perjury*, including the potential subscriber’s name, address, date of birth, and last four digits of the subscriber’s social security number.<sup>14</sup> The potential subscriber also must acknowledge *under the penalty of perjury* that the information provided to the ETC “is true and correct to the best of his or her knowledge” and that “providing false or fraudulent information to receive Lifeline benefits is punishable by law.”<sup>15</sup>

Tempo also was required during the Audit Period to query the National Lifeline Accountability Database (“NLAD”) maintained by the Universal Service Administrative Company

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<sup>12</sup> *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, 33 FCC Rcd 4058, ¶ 27 (2018).

<sup>13</sup> 2016 Lifeline Reform Order ¶ 7 (“We next take a step that will curb abuse in the program and encourage provider participation by creating the National Verifier, which will transfer the responsibility of eligibility determination away from Lifeline providers. By lowering Lifeline providers’ costs of conducting verification and reducing the risks of facing a verification-related enforcement action, the National Verifier will make the Lifeline program more attractive to providers.”).

<sup>14</sup> 47 C.F.R. § 54.410(a), (d).

<sup>15</sup> 47 C.F.R. § 54.410(d).

(“USAC”) for each prospective subscriber.<sup>16</sup> If NLAD cannot accept a prospective subscriber, the ETC receives an error message (known as a third-party identity verification or “TPIV” failure) indicating there is a problem with the potential subscriber’s identity, name, social security number, date of birth, address, or age, or the potential subscriber is already receiving Lifeline service from another provider (duplicate).<sup>17</sup> If an error message is received, an ETC may submit additional information to NLAD in an attempt to resolve the error, but an ETC cannot claim reimbursement for any subscriber that is not enrolled in NLAD as of the first day of the month.<sup>18</sup>

For the first subscriber identified in NFR #2, the Auditor claims the subscriber’s residential address field indicated a house number with no street name on the subscriber’s enrollment and certification form. It appears the address as listed on the enrollment and certification form was a typographical error. A review of Tempo’s customer enrollment system shows the complete street address for the subscriber, which Tempo was able to verify because the subscriber previously received service from Tempo under a different account number. The subscriber was successfully enrolled in NLAD with the address as listed in Tempo’s customer enrollment system. While Tempo did not update the complete address used in NLAD, NLAD would have sent back an error or TPIV failure message if an address could not be accepted by NLAD. Tempo previously provided this information and the supporting documentation to the Auditor.

For the second subscriber identified in NFR #2, the Auditor claims the name of the subscriber used on the qualifying program assistance document did not match the name on the subscriber’s enrollment and certification form. A review of Tempo’s customer enrollment system shows that Tempo personnel questioned the name mismatch and requested further documentation from the subscriber to verify the subscriber completing the enrollment and certification was eligible for the Lifeline program. Tempo did not retain the updated documentation reviewed to verify the name, but documented notes from Tempo’s customer enrollment system were provided to the Auditor for review. Once Tempo personnel confirmed the subscriber’s eligibility, the subscriber was enrolled.

In this instance, the issue is that the updated subscriber information was not saved and the original document that caused the additional scrutiny was saved. It should be noted that with the implementation of the National Verifier Tempo is no longer responsible for verifying identity or eligibility. However, should the use of the National Verifier end, Tempo will implement procedures to ensure the system will retain updated documentation being used to correct an error, where allowed to by regulation, that confirms a subscriber’s identity.

Accordingly, both subscribers identified in NFR #2 were enrolled properly in the Lifeline program and Tempo does not owe reimbursements to the Fund related to these subscribers.

### **Tempo Response to Notice of Finding and Recommendation #3**

Tempo agrees that it did not submit its quarterly and semi-annual reports to the Georgia Public Service Commission (“PSC”) in accordance with the deadlines for filing established by the PSC for certain periods in 2017 and 2018. The reports were not submitted timely due to the departure of the

<sup>16</sup> 47 C.F.R. § 54.404(b).

<sup>17</sup> <https://www.usac.org/li/tools/nlad/dispute-resolution/default.aspx>.

<sup>18</sup> <https://www.usac.org/li/program-requirements/receive-payment/default.aspx>

employee previously responsible for the reports. Once Tempo learned of the filing error, it immediately filed the required quarterly and semi-annual reports with the Georgia PSC. Tempo currently is in compliance with its Lifeline reporting obligations in Georgia. Tempo also has engaged a third-party compliance company to assist with reporting going forward. Tempo notes this Notice of Finding and Recommendation has no monetary effect on reimbursement or Tempo's provision of Lifeline service to subscribers.

#### **Tempo Response to Notice of Finding and Recommendation #4**

Tempo cannot agree that the FCC Form 555 for calendar year 2017 was inaccurate. Tempo also disagrees that Tempo did not retain the underlying data for the calendar year 2017 FCC Form 555.

The current Tempo employees responsible for the FCC Form 555 were not responsible for completion of the form for calendar year 2017. Tempo has the data used to populate the FCC Form 555 but was not able to re-create what was done to complete the FCC Form 555 for calendar year 2017 in order to provide the back-up data to the Auditor. At this time, the 2017 data is two (2) years old and there could have been changes to specific customers that caused the customer's status to change. For example, a customer that previously was disconnected for non-usage could have re-enrolled, which would change that customer's status in the data. Re-creation of the 2017 data would show the customer as active rather than disconnected.

Tempo also explained to the Auditor that completion of the FCC Form 555 is not an exact science, and there have been many explanations and interpretations given by USAC regarding completion of the form. For the calendar year 2017 filing, Tempo sought advice from USAC on how to complete certain portions of the FCC Form 555. As a result, the calendar year 2017 submission may not "mathematically" balance according to the formulas in the form, but it was completed consistent with the direction provided to Tempo by USAC personnel.

During the site-visit, Tempo provided the Auditor with a detailed, step-by-step walk-through of the process for creation of the FCC Form 555 for calendar year 2018, and demonstrated Tempo's current process for capturing the back-up data used to create the FCC Form 555. The process implemented by Tempo to capture the back-up data for the calendar year 2018 FCC Form 555 will be applied for future FCC Form 555 submissions. Tempo notes this Notice of Finding and Recommendation has no monetary effect on reimbursement or Tempo's provision of Lifeline service to subscribers.

#### **Tempo Response to Auditors "Other Matters" Comments**

Tempo disagrees that its advertising materials were required to provide the mobile broadband speed provided to its Lifeline subscribers in the state of Georgia. The Notice of Finding and Recommendation ("NFR") cites to FCC Rule 54.408, which states:

§ 54.408 Minimum service standards.

- (a) As used in this subpart, with the following exception of paragraph (a)(2) of this section, a minimum service standard is:

- (1) The level of service which an eligible telecommunications carrier must provide to an end user in order to receive the Lifeline support amount.
- (2) The minimum service standard for mobile broadband speed, as described in paragraph (b)(2)(i) of this section, is the level of service which an eligible telecommunications carrier must both advertise and provide to an end user.<sup>19</sup>

When Rule 54.408(a) was adopted in 2016, the FCC stated: A coalition of Lifeline providers indicated that the Commission should require mobile broadband providers to offer speeds of 3G or better, and we agree. We conclude that, to claim Lifeline support for a mobile broadband service, a provider must provide to the Lifeline subscriber a service advertising at least 3G mobile technology for at least the amount of data usage allowance specified by the minimum service standards. We believe this is an appropriate starting point given the Commission’s actions in the Mobility Fund, where funding was limited to those who deployed networks at 3G or higher.<sup>20</sup>

Rule 54.408 addresses minimum service standards, not advertising requirements. The requirements for advertising Lifeline services are found in FCC Rule 54.405(b), which provides the items to be included in Lifeline advertisements.<sup>21</sup> This is further supported by the FCC’s additional discussion in the *2016 Lifeline Reform Order* in which the FCC sought to “reduce burdens on providers” relating to advertising requirements. Specifically, the FCC noted the rules require eligible telecommunications carriers to “advertise the availability of such services and the price of service.”<sup>22</sup> The FCC did not reference any requirement that the specific minimum service standard be advertised.

As the Auditor notes, Tempo provided the minimum service standard for mobile broadband speed as required by Rule 54.408. Additionally, Tempo has added the dataspeed in all advertising and will continue to do so going forward. Thus, this NFR has no monetary effect on reimbursement or Tempo’s provision of Lifeline service to subscribers.

### **Tempo Request for Confidential Treatment**

We understand materials received pursuant to an audit are generally protected from disclosure pursuant to the Freedom of Information Act, 5 U.S.C. § 552. Nonetheless, Tempo requests confidential treatment of this response pursuant to Section 0.457 of the Commission’s rules.<sup>23</sup> Section 0.457(d) exempts from public disclosure trade secrets and commercial or financial information.<sup>24</sup> Tempo is not a publicly-traded company, and this response contains data regarding Tempo’s

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<sup>19</sup> 47 C.F.R. § 54.408.

<sup>20</sup> *Lifeline and Link Up Reform and Modernization, et al.*, 31 FCC Rcd 3962, ¶ 96 (2016) (“*2016 Lifeline Reform Order*”) (subsequent history omitted).

<sup>21</sup> 47 C.F.R. § 54.405(b).

<sup>22</sup> *2016 Lifeline Reform Order* ¶¶ 362-65.

<sup>23</sup> 47 C.F.R. § 0.457.

<sup>24</sup> 47 C.F.R. § 0.457(d); 5 U.S.C. § 552(b)(4).

operations and its customers, and includes sensitive and confidential financial and commercial data that is not routinely made available for public inspection. Public disclosure of this information could be used by competitors of Tempo to cause competitive harm. As such, the information falls within the scope of Section 0.457 of the Commission's rules and should be afforded protection from public inspection. Further, Tempo requests confidential treatment of this response as it contains customer proprietary network information ("CPNI") and other personally identifiable customer information that is protected from disclosure under 47 U.S.C. § 222 and other state and federal laws. In the event Tempo's request for confidential treatment pursuant to Section 0.457 is denied, Tempo respectfully requests notice of that determination and an opportunity to make a showing for confidentiality under Section 0.459 of the Commission's rules prior to making this response available for public inspection.<sup>25</sup>

If you have any questions regarding this matter, please contact me at 478-257-5963 or [jamie.sark@lingo.com](mailto:jamie.sark@lingo.com).

Respectfully submitted,

*/s/ Jamie Sark*

Jamie Sark  
Director of Mobility

cc: Robert McGriff, Assistant Inspector General, FCC OIG  
Sharon Spencer, Deputy Assistant Inspector General, FCC OIG  
Randal Skalski, Director, USF High-Cost Program Audits, FCC OIG  
Timothy Kemp, Auditor, FCC OIG

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<sup>25</sup> 47 C.F.R. § 0.459.