

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

TEMPO TELECOM, LLC)
)
Petition for Designation as an Eligible) Docket No. TC23-____
Telecommunications Carrier)
_____)

**PETITION OF TEMPO TELECOM, LLC
FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER
IN THE STATE OF SOUTH DAKOTA AND WAIVER OF CERTAIN RULES**

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TEMPO TELECOM, LLC)	
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Petition for Designation as an Eligible Telecommunications Carrier)	Docket No. TC23-_____
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PETITION

I. INTRODUCTION

TEMPO TELECOM, LLC (“TEMPO” or the “Company”), by its undersigned counsel, and pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (the “Act”),¹ Sections 54.101 through 54.207 of the Rules of the Federal Communications Commission (“FCC”),² and the rules and regulations of the Public Utilities Commission of the State of South Dakota (the “Commission”), hereby submits this Petition for Designation as an Eligible Telecommunications Carrier (“ETC”) in the State of South Dakota (this “Petition”). Pursuant to ARSD 20:10:32:56, TEMPO also hereby petitions for waiver of ARSD 20:10:32:43.01(2), ARSD 20:10:32:43.02 and ARSD 20:10:32:54(1-2), as discussed in section V.J below.

¹ 47 U.S.C. § 214(e)(2)

² 47 C.F.R. §§ 54.101-54.207.

TEMPO seeks ETC designation solely to provide Lifeline service to qualifying South Dakota consumers; it will not (and is not eligible to) seek access to funds from the federal Universal Service Fund (“USF”) for the purpose of participating in the Link-Up program or high cost program.³

As demonstrated herein, and as certified in Exhibit 1 attached hereto, TEMPO meets all the statutory and regulatory requirements for designation as an ETC in the State of South Dakota, including the requirements outlined in the FCC’s *Lifeline Reform Order*,⁴ *Lifeline Modernization Order*,⁵ and *Fifth Report and Order*.⁶ Furthermore, TEMPO is positioned to reach unserved and underserved Lifeline-eligible consumers. Rapid grant of TEMPO’s request, therefore, would advance the public interest because it would enable the Company to commence much needed Lifeline services to a wide array of low-income South Dakota residents as soon as possible. Accordingly, the Company respectfully requests that the Commission expeditiously approve this Petition.

³ Given that the Company only seeks Lifeline support from the low-income program and does not seek any high-cost support, ETC certification requirements for the high-cost program are not applicable to the Company.

⁴ *In the Matter of Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training*, WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, WC Docket No. 12-23, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012) (“*Lifeline Reform Order*”).

⁵ *In the Matter of Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund*, WC Docket No. 11-42, WC Docket No. 09-197, WC Docket No. 10-90, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38 (rel. Apr. 27, 2016) (hereinafter, “*Third Report and Order*” or “*Lifeline Modernization Order*”).

⁶ *In the Matter of Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 17-287, WC Docket No. 11-42, WC Docket No. 09-197, Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 19-111 (rel. Nov. 14, 2019) (hereinafter, “*Fifth Report and Order*”).

All correspondence, communications, pleadings, notices, orders and decisions relating to this Petition should be addressed to:

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II. COMPANY OVERVIEW

TEMPO is a Georgia limited liability company and provider of commercial mobile radio service (“CMRS”). TEMPO provides prepaid wireless services throughout the United States, and prepaid wireless Lifeline services in 21 states,⁷ by using the underlying wireless networks of Tier 1 carriers (“Underlying Carrier”), currently T-Mobile USA, Inc. (“T-Mobile”), on a wholesale basis. T-Mobile provides TEMPO with the underlying network infrastructure and wireless transmission facilities needed for TEMPO to offer service as a Mobile Virtual Network Operator (“MVNO”). TEMPO operates under the “Tempo” or “Tempo Telecom” name throughout the United States.

TEMPO is a wholly-owned subsidiary of Lingo Management, LLC (“Lingo Management”), a Delaware limited liability company with a principal office at 25925 Telegraph Rd., Suite 210, Southfield, MI 48033. Lingo Management is a holding company and does not provide any telecommunications services or hold authorizations from any state authority for the provision of telecommunications services. Lingo Management holds international Section 214 authority on behalf of its operating subsidiaries, but does not provide any services.

⁷ These states are: Colorado, Georgia, Hawaii, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, Nevada, North Dakota, Ohio, Rhode Island, South Carolina, Utah, West Virginia, Wisconsin, and Wyoming.

B. Riley Principal Investments, LLC (“BRPI”), a Delaware limited liability company, holds 100 percent of Lingo Management.⁸ BRPI is a holding company with a principal office at 30870 Russell Ranch Road, Suite 250, Westlake Village, CA 91362. BRPI is owned by B. Riley Financial, Inc., a publicly traded Delaware corporation (NASDAQ: RILY) and diversified financial services company that takes a collaborative approach to the capital raising and financial advisory needs of public and private companies and high net worth individuals. Bryant R. Riley, a U.S. citizen, beneficially owns approximately 20.8 percent of the shares of B. Riley outstanding as of March 28, 2022. BRPI does not provide telecommunications services or hold authorizations from any state or federal authority for the provision of telecommunications services.

Lingo Management also is the holding company for the following telecommunications carriers (the “Lingo Carriers”): Lingo Telecom, LLC (f/k/a Matrix Telecom, LLC); Lingo Telecom of Virginia, LLC (f/k/a Matrix Telecom of Virginia, LLC); Lingo Telecom of the West, LLC;⁹ Lingo Communications of Kentucky, LLC; and BullsEye Telecom, Inc. Separate and apart from its holdings in Lingo Management, BRPI also holds ownership interests in: United Online, Inc.; YMax Communications Corp.; and magicJack SMB, Inc.

After a proposed transaction described further herein, TEMPO will be 100 percent owned by Insight Mobile, Inc. (“Insight Mobile”), a Delaware corporation with principal offices located at 12301 Wilshire Boulevard, Suite 303, Los Angeles, California 90025. Insight Mobile is not currently providing telecommunications services. Shadi Aslemand, a United States citizen, owns

⁸ In the Updated Compliance Plan approved on September 21, 2022, BRPI held an 80 percent interest in Lingo Management and Lingo Communications, LLC (“Lingo”), a Georgia limited liability company held a 20 percent interest in Lingo Management. On February 24, 2023, BRPI acquired Lingo’s 20 percent interest in Lingo Management, thereby becoming its sole owner. Given that BRPI already held a controlling interest in BRPI, there was not transfer of control.

⁹ In connection with an internal corporate reorganization expected to occur in the next few months, this entity will be dissolved and its California customers will continue to be served by Lingo Telecom, LLC.

100 percent of Insight Mobile. Ms. Aslemand is also a 50 percent owner of Excess Telecom, Inc. (Excess Telecom), a California corporation which operates as a Mobile Virtual Network Operator (MVNO) and delivers domestic wireless voice services and broadband services to qualified low-income households nationwide and participates in the Affordable Connectivity Program (“ACP”).

TEMPO will provide affordable prepaid mobile phone service, including calling, text messaging, and broadband access, along with user-friendly handsets, tablet or hotspot devices. The Company will not require service contracts from its customers and it will always ensure competitively low pricing for its services and products. TEMPO will manage all aspects of the customer experience, including setting service pricing, handset selection, marketing materials, and customer service. The Company’s prepaid, budget-friendly pricing will give many low-income consumers the option of having mobile phone service and broadband access without the burden of hidden costs, varying monthly charges, or contractual commitments. Customers will be able to customize their TEMPO service to suit their needs with TEMPO’s available bundles of minutes, broadband data, and text packages to supplement their monthly plan.

TEMPO’s Lifeline customers will depend on, and benefit greatly from, TEMPO’s inexpensive and flexible pricing plans. TEMPO will not impose credit checks nor will it require any deposits or contractual commitments. Many Lifeline customers turn to carriers like TEMPO because they cannot afford the postpaid services provided by traditional wireless carriers. TEMPO will affirmatively reach out to the low-income sector of the consumer base to offer attractive and affordable communications options. As such, TEMPO will contribute to the expansion of mobile wireless and broadband services for low-income consumers in South Dakota.

III. THE COMMISSION HAS JURISDICTION OVER DESIGNATION OF WIRELESS ETCs

Section 214(e)(2) of the Act provides state public utility commissions with the “primary responsibility” for the designation of ETCs.¹⁰ Although Section 332(c)(3)(A) of the Act prohibits states from regulating the entry of or the rates charged by any provider of commercial mobile service or any private mobile service, this prohibition does not allow states to deny wireless carriers ETC status.¹¹ Under the Act, a state public utility commission with jurisdictional authority over ETC designations must designate a common carrier as an ETC if the carrier satisfies the requirements of Section 214(e)(1).

TEMPO recognizes that Section 214(e)(1)(A) of the Act states that ETCs shall offer services, at least in part, over their own facilities and that Section 54.201(i) of the FCC’s Rules (47 C.F.R. § 54.201(i)) prohibits state commissions from designating as an ETC a telecommunications carrier that offers services exclusively through the resale of another carrier’s services. However, the FCC has granted forbearance from enforcement of this facilities requirement to carriers seeking Lifeline-only ETC designation.¹² Section 10(e) of the Act (47 U.S.C. § 160(e)) provides: “[a] State commission may not continue to apply or enforce any provision of this chapter that the [Federal Communications] Commission has determined to forbear from applying under subsection (a) of this section.” As such, the Commission is required by Section 10(e) to act in accordance with the FCC’s grant of forbearance, and therefore, may not apply the facilities-based requirement to TEMPO. Therefore, the Commission has the authority under Section 214(e)(2) of the Act to grant TEMPO’s request for designation as an ETC throughout the State of South Dakota.

¹⁰ 47 U.S.C. § 214(e)(2).

¹¹ *USF Order*, at 8858–59, ¶ 145.

¹² *See Lifeline Reform Order* at ¶ 368.

IV. TEMPO SATISFIES THE REQUIREMENTS FOR DESIGNATION AS AN ETC UNDER 47 C.F.R. § 54.201

Section 254(e) of the Act provides that, “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific federal universal service support.” Section 214(e)(2) of the Act authorizes state commissions, such as the Commission, to designate ETC status for federal universal service purposes and authorizes the Commission to designate wireless ETCs.¹³ Section 214(e)(1) of the Act and Section 54.201(d) of the FCC’s rules provide that applicants for ETC designation must be common carriers that shall, throughout the designated service area, offer all of the services supported by universal service, either using their own facilities or a combination of their own facilities and the resale of another carrier’s services, except where the FCC has forbore from the “own facilities” requirement. Applicants also must commit to advertise the availability and rates of such services.¹⁴ As detailed below, TEMPO satisfies each of the above-listed requirements.

A. TEMPO Will Provide Service Consistent with the FCC’s Grant of Forbearance from Section 214’s Facilities Requirements

Although Section 214 requires ETCs to provide services using their facilities, at least in part, the FCC has forbore from that requirement with respect to carriers such as TEMPO. In the *Lifeline Reform Order*, the FCC granted forbearance from the “own-facilities” requirement contained in Section 214(e)(1)(A) for carriers that are, or seek to become, Lifeline-only ETCs, subject to the following conditions:¹⁵

- (1) the carrier must comply with certain 911 requirements [(a) providing its Lifeline subscribers with 911 and E911 access, regardless of activation status and availability of minutes; (b) providing its Lifeline subscribers with E911-compliant handsets and replacing,

¹³ See *Federal-State Joint Board on Universal Service, First Report and Order*, 12 FCC Rcd 8776, 8858-59, ¶ 145 (1997) (“*USF Order*”).

¹⁴ See 47 U.S.C. § 214(e)(1) and 47 C.F.R. § 54.201(d)(2).

¹⁵ See *Lifeline Reform Order* at ¶¶ 368, 373, and 379.

at no additional charge to the subscriber, noncompliant handsets of Lifeline-eligible subscribers who obtain Lifeline-supported services; and (c) complying with conditions (a) and (b) starting on the effective date of this Order]; and

(2) the carrier must file, and the Bureau must approve, a compliance plan providing specific information regarding the carrier's service offerings and outlining the measures the carrier will take to implement the obligations contained in this Order as well as further safeguards against waste, fraud and abuse the Bureau may deem necessary.

TEMPO's original Compliance Plan, which the FCC approved on August 8, 2012,¹⁶ was filed under the name of Birch Communications, Inc. ("Birch"). Via letter dated December 18, 2012, Birch notified the FCC that the prepaid wireless Lifeline service at issue in the Compliance Plan would be provided by a separate legal entity known as Now Communications, LLC ("Now Comm"). The FCC acknowledged these changes in corporate structure in a December 20, 2012 public notice, and confirmed that the previously-approved Compliance Plan applied to Now Comm.¹⁷ After the December 2012 filing, Now Comm changed its name to Tempo Telecom, LLC. Via letter dated September 17, 2013, TEMPO notified the FCC it would implement and comply with the previously-approved Compliance Plan and adopt the Compliance Plan as its own. On July 25, 2022, TEMPO filed its Updated Compliance Plan which the FCC approved on September 21, 2022.¹⁸

TEMPO filed its Second Updated Compliance Plan on April 28, 2023, a copy of which is attached hereto as Exhibit 2, identifying the transfer of control described herein. TEMPO commits

¹⁶ *Wireline Competition Bureau Approves the Compliance Plans of Birch Communications, Boomerang Wireless, IM Telecom, Q Link Wireless, and TAG Mobile*, WC Docket Nos. 09-197, 11-42, Public Notice, DA 12-1286 (WCB Aug. 8, 2012).

¹⁷ *Wireline Competition Bureau Seeks Comment on Petitions for Designation as a Low-Income Eligible Telecommunications Carrier filed by Now Comm, Zing PCS, LTS, Odin Wireless, and TX Mobile*, WC Docket No. 09-197, Public Notice (WCB Dec. 20, 2012) ("The Wireline Competition Bureau has approved Birch's compliance plan, which will also apply to Now Comm.")

¹⁸ *Wireline Competition Bureau Approves the Updated Compliance Plan of Tempo Telecom, LLC*, WC Docket Nos. 09-197, 11-42, Public Notice, DA 22-991, at 1 (WCB Sept. 21, 2022). See Updated Compliance Plan of Tempo Telecom, LLC, WC Docket Nos. 09-197, 11-42 (filed July 25, 2022), <https://www.fcc.gov/ecfs/search/search-filings/filing/107250467828034>.

to providing Lifeline service in South Dakota in accordance with its approved Compliance Plan, including as it continues to be updated, and in compliance with applicable state and federal regulations, to the extent amendments thereto may supersede commitments made in the Compliance Plan.

B. TEMPO Is a Common Carrier

CMRS providers like TEMPO are treated as common carriers.¹⁹

C. TEMPO Will Provide All Supported Services

Through its Underlying Carrier, TEMPO is able to provide all of the supported services required by Section 54.101(a) of the FCC's Rules (47 C.F.R. § 54.101(a)) as follows:

1. Voice Telephony Service

As set forth in 47 C.F.R. § 54.101(a)(1), eligible Voice Telephony Services must provide the following:

Voice Grade Access to the Public Switched Telephone Network. TEMPO provides voice grade access to the public switched telephone network ("PSTN") through the purchase of wholesale CMRS services from its facilities-based Underlying Carrier.

Local Usage At No Additional Charge. TEMPO offers rate plans that provide its customers with minutes of use for local service at no additional charge.

Access to Emergency Services. TEMPO provides 911 and E911 access for all of its customers to the extent the local government in its service area has implemented 911 or E911

¹⁹ *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1425 ¶ 37, 1454-55 ¶ 102 (1994) (wireless resellers are included in the statutory "mobile services" category, and providers of cellular service are common carriers and CMRS providers); 47 U.S.C. § 332(c)(1)(A) ("mobile services" providers are common carriers); *see also PCIA Petition for Forbearance for Broadband PCS*, WT Docket No. 98-100, (Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 16857, 16911 ¶ 111 (1998) ("We concluded [in the *Second Report and Order*] that CMRS also includes the following common carrier services: cellular service, ... all mobile telephone services *and resellers of such services.*") (emphasis added).

systems. As noted, calls to 911 emergency services will always be free and will be available regardless of service activation status or availability of minutes. TEMPO also complies with the FCC's regulations governing the deployment and availability of E911 compatible handsets.

Toll Limitation. In its *Lifeline Reform Order*, the FCC provided that toll limitation would no longer be deemed a supported service.²⁰ "ETCs are not required to offer toll limitation service to low-income consumers if the Lifeline offering provides a set amount of minutes that do not distinguish between toll and non-toll calls."²¹ Nonetheless, TEMPO's offerings inherently allow Lifeline subscribers to control their usage, as its wireless service is offered on a prepaid, or pay-as-you-go, basis. TEMPO's service, moreover, is not offered on a distance-sensitive basis and local and domestic long distance minutes are treated the same.

2. Broadband Internet Access Services

So that its Lifeline customers have access to the full amount of Lifeline support, TEMPO provides broadband Internet access service ("BIAS") which the FCC has stated consists of the ability for a user to receive "the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service."²² TEMPO provides BIAS to low-income consumers via resale of its Underlying Carrier's mobile services.

D. TEMPO Requests Designation Throughout Its Service Area

TEMPO is not a rural telephone company as defined in Section 153(37) of the Act (47 U.S.C. § 153(37)). Accordingly, TEMPO is required to describe the geographic area(s) within

²⁰ See *Lifeline Reform Order* at ¶ 367.

²¹ See *id.* at ¶ 49.

²² See 47 C.F.R. § 8.2(a).

which it requests designation as an ETC. TEMPO requests ETC designation throughout the non-rural (i.e. CenturyLink) service areas in South Dakota, including federally recognized tribal lands. Current coverage maps are attached hereto as Exhibit 3. The FCC has previously determined that designating a competitor as an ETC in areas served by non-rural ILECs is *per se* in the public interest.²³ To the best of TEMPO's knowledge, neither AT&T Mobility LLC nor T-Mobile USA, Inc. provide a postpaid and/or prepaid wireless Lifeline offering.

In the event that the customer is not satisfied with TEMPO's coverage, the customer will not be charged for termination and will be able to keep any phone or SIM card provided by the Company without charge.

E. TEMPO Will Advertise the Availability of Supported Services

TEMPO will advertise the availability and rates for the services described above using media of general distribution as required by 47 C.F.R. § 54.201(d)(2). TEMPO will comply with the FCC's rules regarding information to be included in marketing materials, including FCC rule section 54.405(c). TEMPO includes the following information regarding its Lifeline service on all relevant marketing materials: (1) it is a Lifeline-supported service; (2) Lifeline is a government assistance program; (3) the service is non-transferable; (4) only eligible consumers may enroll in the Lifeline program; (5) the Lifeline program is limited to one discount per household; and (6) documentation is necessary for enrollment in the Lifeline program.²⁴ TEMPO ensures the FCC-required disclosures, any DBA names it uses, and details of the prepaid wireless Lifeline service

²³ Federal-State Joint Board on Universal Service; Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier, *Memorandum Opinion and Order*, CC Docket No. 96-45, 16 FCC Rcd 39, 45; -U 14 (Rel. Dec. 26, 2000) (hereinafter "*Cellco Partnership*") ("For those areas served by non-rural telephone companies, such as the state of Delaware, we believe that designation of an additional ETC based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) is **consistent per se with the public interest**. The carrier need make **no further showing** to satisfy this requirement.") (emphasis added).

²⁴ 47 C.F.R. § 54.405(c).

offering are contained in all marketing materials.²⁵ This information is included in all print, audio, video, website, and electronic materials (including social networking) used to describe or enroll subscribers in Lifeline service. In addition, the standard application/certification forms developed by USAC state that consumers who willfully make a false statement in order to obtain the Lifeline benefit can be punished by fine or imprisonment or can be barred from the program.²⁶

TEMPO publicizes the availability of its prepaid wireless Lifeline service offering in a manner reasonably designed to reach those likely to qualify the service.²⁷ Specifically, TEMPO utilizes outreach materials and methods designed to reach households that currently do not have telephone service, has developed advertising materials for non-English speaking populations within its service area, and coordinates its outreach efforts with relevant government agencies.

TEMPO's advertising strategy for its prepaid wireless Lifeline service offering builds on its expertise in advertising its prepaid wireless service, and the advertising used by TEMPO's telecommunications carrier affiliates. TEMPO's advertising for its prepaid wireless Lifeline service offering includes, but is not limited to, targeted direct mail, advertisements in daily and weekly print periodicals, billboards, event sponsorship, bus advertising, radio advertising, and online search engines.²⁸

TEMPO intends to coordinate with relevant state agencies, community outreach organizations, and non-profit organizations to make information available regarding TEMPO's prepaid wireless Lifeline service offering in resource guides and other printed materials produced by those organizations, as well as in their offices or other locations visited by potential Lifeline-

²⁵ *Lifeline Reform Order*, ¶¶ 274-282.

²⁶ 47 C.F.R. § 54.410(d)(1).

²⁷ 47 C.F.R. § 54.405(b).

²⁸ See attached Exhibit 4 for a sample advertisement.

eligible subscribers. In addition, TEMPO intends to market its prepaid wireless Lifeline services through state, county, municipal and non-profit community action agencies, associations, and networks. These agencies support Lifeline-eligible individuals and families in obtaining support services, employment, employment training, life skills training, and other services. TEMPO will help raise awareness of Lifeline services through the inclusion of TEMPO Lifeline information in resource guides and other support materials (online and in printed materials issued by the agency) that are provided to Lifeline-eligible prospective customers. TEMPO may also raise awareness of its Lifeline services through sponsoring events held by these agencies.

V. TEMPO SATISFIES THE ADDITIONAL REQUIREMENTS FOR ETC DESIGNATION UNDER 47 C.F.R. § 54.202(a)

TEMPO hereby provides the additional information and certifications required for carriers seeking ETC designation as set forth in 47 C.F.R. § 54.202(a).

A. Service Commitment Throughout the Proposed Designated Service Area

TEMPO will provide service in South Dakota by reselling service which it obtains from its Underlying Carrier whose network is operational and largely built out. Thus, TEMPO will be able to commence offering its Lifeline service to all locations served by its Underlying Carrier very soon after receiving approval from the Commission. In accordance with ARSD 20:10:32:43.01(1), TEMPO commits to provide service on a timely basis to requesting customers in its Designated Service Area where the applicant's network already passes the potential customer's premises.

In accordance with 47 C.F.R. § 54.202(a)(1)(i), and by the certification attached in Exhibit 1, TEMPO commits to comply with the service requirements applicable to the low-income support that it receives. Pursuant to 47 C.F.R. § 54.202(a)(1)(ii), a common carrier seeking designation as a Lifeline-only ETC is not required to submit a five-year network improvement plan as part of its Petition for designation as an ETC.

B. Ability to Remain Functional in Emergency Situations

In accordance with 47 C.F.R. § 54.202(a)(2), TEMPO has the ability to remain functional in emergency situations. TEMPO has been offering telecommunications services since 2012, and its affiliates have been offering telecommunications services since at least 1996. Thus, TEMPO and its affiliated telecommunications carriers have significant experience with remaining functional in emergency situations. TEMPO has disaster recovery contingency plans that include diverse/alternate routing, electronics redundancy, dual data centers geographically separated, and environmental controls for data and switching centers. TEMPO's MVNO contract arrangements with T-Mobile also impose certain obligations on T-Mobile to ensure TEMPO's prepaid wireless Lifeline service offering remains functional during emergency situations. As a large, nationwide wireless carrier, T-Mobile is subject to regulatory requirements to remain functional during emergency situations.²⁹ TEMPO's MVNO agreements also contain certain quality of service guarantees.

C. Commitment to Consumer Protection and Service Quality

In accordance with 47 C.F.R. § 54.202(a)(3), an ETC applicant must demonstrate that it will satisfy applicable consumer protection and service quality standards, and wireless applicants may satisfy this requirement with a commitment to comply with the Cellular Telecommunications and Internet Association's ("CTIA") Consumer Code for Wireless Service. TEMPO hereby commits to comply with the CTIA Consumer Code for Wireless Service.

TEMPO's customer service is available Monday through Friday from 8:00 AM to 7:00PM EDT via phone (611 or toll free 833-998-3676) or online chat. Subscribers can also initiate support

²⁹ TEMPO is also familiar with the continuity and disaster response program T-Mobile has implemented, which addresses the need to remain functional during emergency situations.

tickets 24 hours a day 7 days a week via an online chat and customer service representatives respond during the above-mentioned support hours. TEMPO will cooperate fully with the Commission to resolve all consumer complaints. At this time, the company does not plan to have physical locations and employees in South Dakota.

D. TEMPO is Financially and Technically Capable

In accordance with 47 C.F.R. § 54.202(a)(4), TEMPO is financially and technically capable of providing Lifeline-supported services. Financial Statements attached as Exhibit 7 are marked and filed as “Confidential and Proprietary” under separate cover. TEMPO has successfully operated as a wireless reseller since 2012 and has been providing Lifeline services since 2013. TEMPO’s affiliates have been operating as nationwide competitive local exchange carriers since at least 1996. TEMPO has never been subject to an ETC revocation proceeding in any state.

With respect to technical expertise, TEMPO has demonstrated its technical capabilities over the past 10 years of successful operation. Further, TEMPO’s partnerships with nationwide wireless carriers such as T-Mobile demonstrate TEMPO is technically capable of providing prepaid wireless Lifeline service.

Pursuant to a Membership Interest Purchase Agreement dated January 24, 2023, Lingo Management and Insight Mobile have agreed that, subject to regulatory approval, Lingo Management will transfer 100 percent of the outstanding membership interests in TEMPO to Insight Mobile (the “Transaction”). Financial support for TEMPO’s continued operations will be enhanced by the Transaction. Following the proposed change in TEMPO’s ownership, the Company’s corporate and trade names and identifiers initially will remain unchanged, and any future changes to the Company’s name will comply with relevant laws governing customer notices. The Transaction will not result in any loss or impairment of service for any customer, and

customers will continue to receive their existing services at the same rates, terms and conditions currently in effect.

Upon approval of the change in ownership, Insight Mobile's management team will be responsible for day-to-day oversight of TEMPO's operations. However, the parties contemplate that TEMPO's employees who are currently responsible for the Company's Lifeline service business will maintain their positions under Insight Mobile's ownership. Insight Mobile's management team has extensive experience in the telecommunications and technology industries, as well as in the Lifeline services market. Their collective expertise will guide the Company's decisions going forward.³⁰ As a result, the Transaction will bring together the full strength of TEMPO's and Insight Mobile's experience in the telecommunications industry and business expertise. The resulting synergies will enable TEMPO to achieve measurable growth at the same time as it develops improved operating efficiencies, both necessary components for the Company to thrive. Moreover, with access to Insight Mobile's financial and technical resources, TEMPO will be able to offer enhanced service offerings to all current and future end users, including those who are enrolled in the Lifeline program.

E. Terms and Conditions of Proposed Lifeline Offering

TEMPO has the ability to provide all services supported by the universal service program, as detailed in 47 C.F.R. § 54.101(a), throughout South Dakota. TEMPO commits that its Lifeline-supported voice services will meet or exceed the minimum service standards set forth in 47 C.F.R. § 54.408, including as such standards are updated going forward. TEMPO'S Lifeline-supported broadband services will also meet the minimum service standards set forth in 47 C.F.R. § 54.408 for mobile broadband internet access services, including for service speed and data usage

³⁰ See Exhibit 5 for key management bios.

allowance, as such standards are updated going forward. To the extent TEMPO provides devices for use with Lifeline-supported broadband service, such devices will meet the equipment requirements set forth in 47 C.F.R. § 54.408(f), and TEMPO will not impose an additional or separate tethering charge for mobile data usage below the minimum standard.

Attached hereto as Exhibit 6 is a summary table of the Company's "Lifeline Data Bundle" plan, which offers unlimited nationwide voice minutes, unlimited nationwide text messages, and 4.5 gigabytes ("GB") of data each month at no charge to an eligible consumer after application of Lifeline support. Tribal customers will receive unlimited talk and text with 15 GB data each month at no charge after application of enhanced tribal Lifeline support. In addition, TEMPO offers consumers the ability to purchase additional data at reduced rates (plus applicable taxes and fees).

In addition to wholly-supported or discounted wireless services, prepaid Lifeline customers will receive access to voicemail, caller ID and call waiting features at no additional charge. All plans will include nationwide domestic long-distance at no extra per-minute charge, and TEMPO will not assess any usage for access to its free customer services (611). Emergency (911) calls will be free, regardless of service activation or availability of minutes, and will not count against the customer's airtime. The Company's Lifeline offering will provide feature-rich mobile connectivity for qualifying subscribers without the burden of credit checks or service contracts. TEMPO's prepaid offering will be an attractive alternative for consumers who need the mobility, security, and convenience of a wireless phone, but who are concerned about usage charges or long-term contracts.

F. TEMPO Will Comply with the Lifeline Certification and Verification Requirements

TEMPO has been offering Lifeline services for nearly 10 years, and is therefore intimately familiar with the procedures for confirming consumer eligibility, enrolling eligible customers, recertification, activation, and usage.

Consumer Eligibility

TEMPO has implemented detailed policies and procedures to ensure its Lifeline customers are eligible to receive Lifeline service. TEMPO does not provide Lifeline service – and does not provide an activated device – to any consumer until TEMPO has confirmed the consumer meets the eligibility requirements established by the FCC for receipt of Lifeline services.³¹ Specifically, a consumer must meet one of the following requirements to be eligible for Lifeline service: (1) the consumer’s household income is at or below 135 percent of the Federal Poverty Guidelines currently in effect for a household of that size; or (2) the consumer (or the consumer’s dependents or household) receives benefits from certain federal assistance programs.³² TEMPO relies solely on the National Lifeline Eligibility Verifier (“Lifeline National Verifier”) for establishing a prospective customer’s eligibility for Lifeline service.³³

Enrollment

Prospective Lifeline customers can contact TEMPO via its website or toll-free customer service number to start the process of receiving Lifeline services from TEMPO.³⁴ TEMPO relies on the USAC-standard application and certification form, and thus TEMPO’s processes comply

³¹ 47 C.F.R. § 54.409.

³² 47 C.F.R. § 54.409(a). TEMPO also complies with any state-specific eligibility requirements.

³³ The Lifeline National Verifier also collects any needed documentation from the prospective customer.

³⁴ At this time, TEMPO is not using third-party dealer locations to sign-up prospective Lifeline customers. In the future, prospective customers may be able to begin the process of receiving Lifeline services from TEMPO via a third-party dealer location.

with FCC rules for subscriber eligibility determinations and certifications.³⁵ If the customer has not pre-qualified via the Lifeline National Verifier, TEMPO first directs the customer to the Lifeline National Verifier so the customer can confirm its eligibility for Lifeline service and obtain an approved application ID from the Lifeline National Verifier.

Once the customer's eligibility has been confirmed by the Lifeline National Verifier (and the customer has obtained an approved application ID), TEMPO takes two additional steps to prevent duplicate Lifeline subsidies. First, TEMPO reviews its own service records to ensure the potential customer is not currently receiving Lifeline service from TEMPO. Second, TEMPO checks the National Lifeline Accountability Database ("NLAD") to ensure the potential customer is not currently receiving a Lifeline service from any other carrier.³⁶ When applicable, TEMPO requires the prospective customer to complete the Independent Economic Household Worksheet via the Lifeline National Verifier. This USAC-developed form contains the following: (1) an explanation of the FCC's one-per-household rule; (2) a check box that an applicant can mark to indicate that he or she lives at an address occupied by multiple households; (3) a space for the applicant to certify that he or she shares an address with other adults who do not contribute income to the applicant's household and share in the household's expenses or benefit from the applicant's income, pursuant to the FCC's definition; and (4) the penalty for a consumer's failure to make the one-per-household certification when required.

Once TEMPO has confirmed there is no duplicate service, TEMPO enrolls the customer in the Lifeline program using NLAD's real-time interface (API), and submits all required

³⁵ 47 C.F.R. § 54.410. TEMPO representatives also orally explain the application and certification form to potential Lifeline customers if they choose to enroll over the phone.

³⁶ TEMPO also commits to promptly investigate any notification it receives from a state, the FCC, or USAC that one of its Lifeline customers is improperly receiving service.

information regarding the customer to NLAD.³⁷ TEMPO does not enroll or claim reimbursement for a prospective customer if NLAD or the Lifeline National Verifier cannot verify the identity of the prospective customer or the prospective customer's status as non-deceased.³⁸

Any TEMPO representatives involved in the Lifeline enrollment process (both in-house and third-party)³⁹ are required to engage in initial and ongoing training regarding Lifeline rules and must be registered with USAC prior to enrolling any customer in NLAD.⁴⁰ TEMPO also conducts periodic audits and random checks of its Lifeline representatives to ensure compliance with FCC rules. TEMPO does not offer or provide any commission or other compensation to enrollment representatives based on the number of consumers that apply for or are enrolled in the Lifeline program.⁴¹

Annual Verification

TEMPO's systems are capable of tracking and flagging the anniversary of a Lifeline customer's start date. TEMPO uses the anniversary date to ensure its Lifeline customers re-certify their eligibility to participate in the Lifeline program once a year. TEMPO Lifeline customers are re-certified within 12 months after the subscriber's service initiation date and within every 12 months thereafter by the Lifeline National Verifier as required under FCC rules.⁴² The annual re-certification materials inform the subscriber it is being contacted to re-certify continuing eligibility

³⁷ In addition, TEMPO updates each subscriber's information in NLAD within ten (10) business days of any change, except for de-enrollment, which is updated within one (1) business day. *See* 47 C.F.R. § 54.404(b)(8), (10).

³⁸ 47 C.F.R. § 54.404(b).

³⁹ At this time, TEMPO does not utilize third-party dealers to enroll prospective customers in the Lifeline program, but could do so in the future.

⁴⁰ 47 C.F.R. § 54.406.

⁴¹ 47 C.F.R. § 54.406(b).

⁴² 47 C.F.R. § 54.410(f).

for Lifeline, and if the subscriber fails to respond, it will be de-enrolled from the program as discussed below.

Activation and Usage

Once all eligibility determinations and documentation requirements are complete, TEMPO ships the free SIM card or purchased handset, whichever is applicable, to the customer at the address listed on the enrollment form.⁴³ TEMPO requires the customer to take affirmative steps to “personally activate” the service by requiring the customer to complete an outgoing call.⁴⁴ If service is not initiated, TEMPO does not consider the consumer to be enrolled in the Lifeline program and TEMPO does not request Lifeline reimbursement until the subscriber personally activates its service.⁴⁵ After service activation, TEMPO does not seek reimbursement for any Lifeline subscriber who has not used the service consistent with FCC usage requirements.⁴⁶

G. Prevention of Waste, Fraud and Abuse

TEMPO has procedures in place to prevent waste, fraud, and abuse. As discussed above, TEMPO prevents waste, fraud, and abuse by relying upon the Lifeline National Verifier and NLAD to ensure applicants are eligible and not duplicative. Further, TEMPO de-enrolls Lifeline customers in accordance with FCC rules for: no longer qualifying for Lifeline service; duplicative support; non-usage; failure to re-certify; and when requested by the Lifeline subscriber. As

⁴³ If TEMPO were to use third-party dealers in the future, the third-party representative may provide the handset or SIM card to the customer during an in-person enrollment depending on availability.

⁴⁴ *Lifeline Reform Order* ¶ 260.

⁴⁵ *Lifeline Reform Order* ¶ 257.

⁴⁶ 47 C.F.R. § 54.407(c)(2).

required by the FCC's rules, TEMPO updates NLAD with de-enrollment information within one (1) business day of de-enrollment.⁴⁷

De-Enrollment for Ineligibility

If TEMPO has a reasonable basis to believe that one of its Lifeline customers no longer meets the eligibility criteria (either based on TEMPO's own knowledge or information supplied by a third-party), TEMPO notifies the subscriber of the impending de-enrollment in writing and gives the subscriber thirty (30) days to demonstrate continued eligibility.⁴⁸ Any demonstration of eligibility from the subscriber must comply with the annual re-certification procedures set forth in the FCC's rules, including the submission of the USAC-created enrollment/certification form. A subscriber's failure to provide the requested documentation will result in de-enrollment within five (5) business days after the expiration of the subscriber's time to respond.

De-enrollment for duplicative support

TEMPO understands that duplicative claims are wasteful and burden universal service and takes all necessary steps to swiftly de-enroll consumers found to be receiving duplicative federal Lifeline discounts. Upon notification from the FCC, a state, or USAC that a subscriber is receiving Lifeline service from another carrier, or more than one member of a household is receiving Lifeline service, TEMPO de-enrolls the subscriber within five (5) business days.⁴⁹

De-enrollment for non-usage

TEMPO de-enrolls any Lifeline customer whose service is inactive for a consecutive 30-day period after providing the customer with notice and a 15-day "cure" period.⁵⁰ After 30

⁴⁷ 47 C.F.R. § 54.404(b)(10).

⁴⁸ 47 C.F.R. § 54.405(e)(1).

⁴⁹ 47 C.F.R. § 54.405(e)(2).

⁵⁰ 47 C.F.R. § 54.405(e)(3). TEMPO provides the customer with notice via text message on day 7, day 14, and day 28 that failure to use the Lifeline service may result in service termination.

consecutive days of non-usage (as defined in FCC rules), TEMPO provides subscribers notice, using clear, easily understood language, to inform the subscriber that its failure to use the Lifeline service within the next 15 days will result in service termination on the 46th day (30 days of non-usage plus the 15-day “cure” period).⁵¹ TEMPO will continue to comply with its existing public safety obligations to transmit all 911/E911 calls regardless of subscriber inactivity even if TEMPO is no longer providing Lifeline service to that consumer.⁵² TEMPO understands that it can only seek reimbursement for any subscriber that has used its Lifeline service within the last 30 days or who has cured its non-usage as described above.⁵³

De-enrollment for failure to re-certify

TEMPO de-enrolls subscribers who do not respond to an annual re-certification request or fail to provide the required certification to the Lifeline National Verifier,⁵⁴ which is the entity responsible for annual re-certification of a subscriber’s Lifeline eligibility. Prior to de-enrolling a subscriber for failure to re-certify, subscribers receive written notice explaining that failure to respond to the re-certification request within sixty (60) days will result in the subscriber’s de-enrollment. TEMPO de-enrolls the subscriber within five (5) business days after the expiration of the subscriber’s time to respond.

⁵¹ TEMPO provides the customer with notice via text message on day 30, day 35, and days 40-44 that failure to use the Lifeline service may result in service termination. TEMPO then provides the customer with notice via text message on day 45 that the service will be disconnected for non-usage.

⁵² *Lifeline Reform Order*, ¶ 262.

⁵³ 47 C.F.R. § 54.407(c)(2).

⁵⁴ 47 C.F.R. § 54.405(e)(4).

De-Enrollment by Subscriber

If a subscriber contacts TEMPO and states the subscriber is no longer eligible for Lifeline or wishes to de-enroll for any reason, TEMPO de-enrolls the subscriber within two (2) business days.⁵⁵ Subscribers can make this request either via customer service or online.

H. TEMPO Will Comply With Reporting Requirements

TEMPO will provide the Commission a copy of its annual reports and certifications pursuant to 47 C.F.R. § 54.416 (i.e., FCC Form 555) and 47 C.F.R. § 54.422 (i.e., FCC Form 481), and will comply with applicable Commission reporting requirements for Lifeline ETCs.

I. TEMPO Will Comply With Regulations Imposed By The Commission

By this Petition, TEMPO hereby asserts its willingness and ability to comply with the rules and regulations that the Commission may lawfully impose upon the Company's provision of service contemplated by this Petition. Upon Commission request, TEMPO is prepared to answer questions or present additional testimony or other evidence about its services within the state. TEMPO commits that 100% of federal universal service funds will flow through directly to Lifeline customers.

J. Waiver Requests

ARSD 20:10:32:43.01(2) requires ETCs to make modifications to network facilities to provide service within a reasonable period of time if the potential customer is within the applicant's service area but outside its existing network coverage and service can be provided at reasonable cost. TEMPO is a wireless reseller that relies upon the networks of other service providers, and thus TEMPO requests a waiver of ARSD 20:10:32:43.01(2) to the extent it would require the

⁵⁵ 47 C.F.R. § 54.405(e)(5).

Company to engage in activities that are not feasible for a reseller, such as modifications or extension of networks or facilities.

TEMPO further requests a waiver of ARSD 20:10:32:43.02, which requires that ETCs submit a two-year service quality improvement plan (“Plan”), as well as ARSD 20:10:32:54(1–2), which would require a new Plan and a progress report on the previously filed Plan. As set forth in the *Lifeline and Link Up Reform Order*, a common carrier seeking designation as a Lifeline-only ETC is not required to submit a network improvement plan as part of its application for designation as an ETC.⁵⁶ This guideline has no application where an applicant’s requested ETC serving territory would qualify it to receive no “high cost” USF support, but only “low income” USF support. Because TEMPO seeks ETC designation solely for purposes of reimbursement for provision of subsidized Lifeline services to eligible customers, submission of a service quality improvement plan is not required.

VI. DESIGNATION OF TEMPO AS AN ETC WOULD PROMOTE THE PUBLIC INTEREST

One of the principal goals of the Act, as amended by the Telecommunications Act of 1996, is “to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies” to all citizens, regardless of geographic location or income.⁵⁷ Designation of TEMPO as an ETC in South Dakota will further that public interest. Whether because of financial constraints, poor credit history, or intermittent employment, many low-income consumers often lack the countless choices available to most consumers and thus have yet to reap the full benefits of the intensely competitive wireless market.

⁵⁶ See *Lifeline and Link Up Reform Order* at ¶ 386.

⁵⁷ *Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 Stat. 56.

The instant request for ETC designation must be examined in light of the Act’s goal of providing low-income consumers with access to telecommunications services. The primary purpose of universal service is to ensure that consumers—particularly low-income consumers—receive affordable and comparable telecommunications services. The FCC has in recent years expanded the Lifeline program to cover broadband services, noting that “Only half of all households in the lowest income tier subscribe to a broadband service and 43 percent say the biggest reason for not subscribing is the cost of the service,” and “Of the low income consumers who have subscribed to mobile broadband, over 40 percent have to cancel or suspend their service due to financial constraints.”⁵⁸ Given this context, designating TEMPO as an ETC would significantly benefit low-income consumers eligible for Lifeline services in South Dakota—the intended beneficiaries of universal service.

A. Advantages of TEMPO’s Service Offering

TEMPO offers an easy to use, competitive, and highly affordable wireless telecommunications service, which benefits qualified consumers who either have no other service alternatives or who choose a wireless prepaid solution in lieu of more traditional service. The public interest benefits of TEMPO’s wireless service include larger calling areas (as compared to traditional wireline carriers), the convenience and security afforded by mobile service, and a generous amount of voice and broadband access included without cost (after application of the Lifeline support), as well as free access to caller ID, call waiting, and Voicemail features, and access to 911 services regardless of the number of voice minutes remaining on the Lifeline consumer’s plan. These no cost to consumer services and low-cost minutes are an invaluable resource for cash-strapped consumers, and the prepaid nature of the service also provides an

⁵⁸ See *Lifeline Modernization Order* ¶ 2.

alternative for “unbanked” consumers. TEMPO’s prepaid wireless service is likely to be an especially attractive option for low-income consumers because it alleviates customer concerns regarding hidden costs, varying monthly charges and long-term contract issues.

In today’s market, consumers, including qualified Lifeline customers, view the portability and convenience of wireless service not as a luxury, but as a necessity. Mobile service allows children to reach their parents wherever they may be, allows a person seeking employment greater ability to be contacted by potential employers, and provides end users with the ability to contact emergency service providers regardless of location. Mobile service often also serves as a key bridge in closing the homework gap for students who live in rural areas with limited access to broadband.

Without question, prepaid wireless services have become essential for low-income customers, providing them with value for their money, access to emergency services on wireless devices, and a reliable means of contact for prospective employers, social service agencies or dependents. Providing TEMPO with the authority necessary to offer discounted Lifeline service to those without wireless service—or most in danger of losing service altogether—undoubtedly promotes the public interest.

B. The Benefits of Competitive Choice

The FCC has acknowledged the benefits to consumers of being able to choose from among a variety of telecommunications service providers for more than three decades.⁵⁹ Increasing customer choice promotes competition and innovation, thus spurring other carriers to target low-income consumers with service offerings tailored to their needs, ultimately resulting in improved services to consumers. Designation of TEMPO as an ETC will help ensure that quality

⁵⁹ See, e.g., *Specialized Common Carrier Services*, 29 FCC Rcd 870 (1971).

services are available at “just, reasonable, and affordable rates” as envisioned in the Act.⁶⁰ Introducing TEMPO into the market as an additional wireless ETC provider will afford low-income South Dakota residents a wider choice of providers and available services while creating a competitive marketplace as ETCs compete for a finite number of Lifeline-eligible customers. Increasing the competitive marketplace of providers has the potential to effectively increase the penetration rate and reduce the number of individuals not connected to the PSTN.

C. Impact on the Universal Service Fund

With Lifeline, ETCs only receive support for customers they obtain. The amount of support available to an eligible subscriber is exactly the same whether the support is given through a company such as TEMPO or the Incumbent LEC operating in the same service area. The number of persons eligible for Lifeline support is the same regardless of the number of ETCs; thus, TEMPO will only increase the amount of USF Lifeline funding in situations where it obtains Lifeline customers not already enrolled in another ETC’s Lifeline program. By implementing the safeguards set forth in the *Lifeline Reform Order* and utilizing the NLAD and National Verifier, the likelihood that TEMPO’s customers are not eligible or are receiving duplicative support either individually or within their household is greatly minimized. TEMPO’s ability to increase the Lifeline participation rate of qualified low-income individuals will further the goal of Congress to provide all individuals with affordable access to telecommunications service, and thus any incremental increases in Lifeline expenditures are far outweighed by the significant public interest benefits of expanding the availability of affordable wireless services to low-income consumers.

⁶⁰ See 47 U.S.C. § 254(b)(1).

VII. CONCLUSION

Based on the foregoing, designation of TEMPO as an ETC in the State of South Dakota accords with the requirements of Section 214(e)(2) of the Act and is in the public interest.

WHEREFORE, TEMPO respectfully requests that the Commission promptly designate TEMPO as an ETC in the State of South Dakota for the purpose of participating in the Lifeline program.

Respectfully submitted,

/s/Lance J.M. Steinhart

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Attorneys for TEMPO TELECOM, LLC

August 23, 2023

CERTIFICATE OF SERVICE

In accordance with to ARSD 20:10:32:46, I hereby certify that, on August 23, 2023, a true and correct copy of the foregoing Petition for Eligible Telecommunications Carrier Designation was sent to the following telecommunications company serving as ETCs:

Qwest Corp. dba CenturyLink QC
100 CenturyLink Drive
Monroe, LA 71203

I further hereby certify that, on August 23, 2023, a true and correct copy of the foregoing Petition for Eligible Telecommunications Carrier Designation was sent to all Affected Tribal Governments and Tribal Regulatory Authorities:

Kevin Keckler, Chairman
Cheyenne River Sioux Tribe
PO Box 590
Eagle Butte, SD 57625-0590

Anthony Reider, President
Flandreau Santee Sioux Tribe
PO Box 283
Flandreau, SD 57028-0283

Michael Jandreau, Chairman
Lower Brule Sioux Tribe
PO Box 187
Lower Brule, SD 57548-0187

Cyril Scott, President
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PO Box 430
Rosebud, SD 57570-0430

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Dated August 23, 2023

/s/ Lance J.M. Steinhart

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