

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

In the Matter of a General Investigation for)
Tempo Telecom, LLC, to Show Cause Why this)
Commission Should Not Initiate Sanctions and) Docket No. 19-TEMT-082-SHO
Fines and/or Revoke its Eligible)
Telecommunications Carrier Designation the)
Carrier Currently Holds.)

**STAFF'S REPLY TO TEMPO TELECOM, LLC'S RESPONSE TO
ORDER TO SHOW CAUSE**

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively), hereby files its Reply to the *Response to Order to Show Cause* (Response) filed by Tempo Telecom, LLC (Tempo) on September 27, 2018. In response, Staff states the following:

1. On August 28, 2018, the Commission issued its *Order to Show Cause* (Show Cause Order) requiring Tempo to show cause, within thirty-days of receipt of the Order, why it should not be subject to fines, sanctions, and/or its Eligible Telecommunications Carrier (ETC) designation suspended, canceled, or revoked.

2. On September 27, 2018, Tempo filed its Response. Staff has reviewed Tempo's Response and provides the following in reply.

3. Tempo states that it is now in compliance with its Kansas Universal Service Fund (KUSF) obligations.¹ Tempo, however, did not come into compliance with its KUSF obligations until *after* the Commission issued the Show Cause Order on August 28, 2018. To ensure the Commission has all relevant information pertaining to Tempo's KUSF obligation deficiencies,

¹ Tempo Telecom, LLC Response to Order to Show Cause (Response), ¶ 4.

Staff requested GVNW Consulting, Inc. (GVNW), the KUSF Administrator, to provide a chart identifying each of Tempo's delinquencies, the date the obligation was due, and the date Tempo came into compliance with the obligation from the date Tempo was granted its ETC designation.² Staff also requested that the chart include information pertaining to the party to which GVNW mailed each delinquent notice.³ The chart, included as Attachment 1, confirms Tempo has repeatedly failed to comply with its KUSF obligations since it was granted its ETC designation.

4. Tempo states it has undergone organizational changes in May 2018 and is no longer under the Birch Communications, Inc. (Birch) parent umbrella. Instead, Tempo is now part of Lingo Communications, LLC (Lingo).⁴ Lingo, however, is owned by the existing owners of Birch⁵ and, therefore, Tempo actually remains under the same owners, regardless of the organizational structure, that were in control when the violations occurred. Staff is, therefore, uncertain what impact the organizational change will have on Tempo's compliance with its statutory and regulatory obligations.

5. Tempo also states that prior to the corporate organizational change, it relied on KPMG,⁶ an auditing, tax, and advisory services firm, to act as its agent for KUSF purposes. Tempo claims a lack of awareness of its delinquent KUSF obligations since GVNW sent KUSF correspondence to KPMG and/or also to Tempo's prior address.⁷ Nonetheless, Tempo is the responsible party, both as a provider of intrastate retail telecommunications services and as an ETC in Kansas, to provide contact information to the Commission and GVNW whenever changes occur.

² Order Granting Eligible Telecommunications Carrier Status in Kansas, Docket No. 13-BTKT-403-ETC, June 5, 2013.

³ The chart in Attachment 1 identifies correspondence sent via US Postal Service and does not include correspondence sent via email.

⁴ Response, ¶ 5.

⁵ Ibid.

⁶ Id., ¶ 6.

⁷ Id., ¶ 7.

Furthermore, contrary to Tempo's claims, GVNW sent KUSF-related information to KPMG and Tempo, as shown in Attachment 1 to this Reply. Finally, Staff has never had direct contact with KPMG, but has had direct contact with Tempo on multiple occasions regarding its KUSF delinquent status; therefore, Staff disputes Tempo's claims regarding its lack of knowledge regarding its KUSF obligation status.

6. Tempo states that sanctions and fines are intended to "deter the same behavior in the future or future non-compliance"⁸ and are unnecessary since it: (a) addressed specific KUSF-related directives prior to the deadline ordered by the Commission; (b) has taken steps to address its regulatory reporting processes; and (c) has been assessed penalties by GVNW.⁹ GVNW has assessed Tempo various KUSF-related penalties, which have been paid, however, the penalties do not appear to have acted as a deterrent to Tempo as it continually disregarded such obligations.

7. The Commission recently addressed a contributor's failure to meet its KUSF obligations to report its intrastate retail revenues and pay its KUSF contributions, including delinquencies that allow a company to retain monies collected from subscribers.¹⁰ The Commission, concerned with the company's failure to comply with its KUSF obligations in a timely manner or to take more "affirmative action" to meet its obligations,¹¹ levied a penalty against the company pursuant to K.S.A. Supp. 66-138. K.S.A. 66-138 authorizes the Commission to assess a penalty, ranging from \$100.00 up to \$5,000.00 for each violation, for failure to comply with statutory obligations or Commission orders. The Commission recognized that a penalty levied under K.S.A. 66-138 is not duplicative of any penalty assessed by the KUSF administrator. The Commission levied a \$100.00 per month penalty for each month the company failed to comply with its KUSF obligations.

⁸ Id., ¶ 9.

⁹ Id., ¶ 10.

¹⁰ Order Adopting Audit Report, Docket No. 18-BTKT-033-KSF, July 31, 2018 (18-033 Order).

¹¹ Id., ¶ 10.

8. A penalty should be sufficient enough to deter future non-compliance, however, the KUSF administrative penalties levied against Tempo do not appear to have acted as a sufficient deterrent. The chart in Attachment 1 lists twenty-nine (29) times Tempo has been delinquent with its KUSF obligations since it was granted designation as an ETC in June 2013. Many of the 29 times include two separate KUSF obligation violations - the remittance of its Carrier Remittance Worksheet (CRW) and payment of its KUSF assessment - raising the number of violations to forty-three (43). Applying the \$100.00 minimum penalty allowed under K.S.A. 66-138 on a per violation basis would result in a penalty ranging from \$2,900 to \$4,300.00. Staff, therefore, recommends that the Commission assess Tempo a penalty of no less than \$2,900.00 for its continued failure to meet its KUSF obligations.

9. The revocation of Tempo's ETC designation is not warranted at this time. Staff, however, will notify the Commission of Tempo's future violations of its statutory and/or regulatory obligations.

WHEREFORE, Staff respectfully requests that the Commission assess a penalty of no less than \$2,900.00 against Tempo for its past delinquencies in complying with KUSF obligations, consistent with Paragraph 8 above. Staff further recommends that if the Company remits payment of the assessed penalty within the ordered time, this Docket be closed.

Respectfully Submitted,



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**KUSF Delinquent Chart
For Fiscal Years FY 17 - FY 22
Tempo Telecom, LLC- KS004211**

Delinquent Item	Due Date	Delinquent Notification Date	Notification Recipient(s)	Date Remitted/Paid
March 2013 - February 2014)				
	N/A - Tempo granted ETC status on 6/15/13 and Expanded ETC status 9/10/13			
Company Identification & Operations Form (Attachment B)		October 23, 2013	Ms. Hoke (Tempo)	
		November 21, 2013	Ms. Hoke (Tempo)	
		December 19, 2013	Ms. Hoke (Tempo)	January 4, 2014
4 Quarter Carrier Remittance Worksheet (CRW) and Assessment Payment	October 15, 2013	February 20, 2014	Ms. Hoke (Tempo)	March 3, 2014 (CRW) and April 14, 2014 (Assessment Payment)
Quarter CRW	January 15, 2014	February 20, 2014	Ms. Hoke (Tempo)	March 3, 2014
March 2014 - February 2015)				
Company Identification & Operations Form (Attachment B)	April 15, 2014	May 22, 2014	Ms. Hoke (Tempo)	
		June 30, 2014	Ms. Hoke (Tempo)	
Quarter CRW and Assessment Payment	April 15, 2014	July 28, 2014	Ms. Hoke (Tempo)	July 9, 2014 - Quarterly Reporting Frequency
		August 25, 2014	Ms. Hoke (Tempo)	
		September 22, 2014	Ms. Hoke (Tempo)	
Quarter CRW and Assessment Payment	July 15, 2014	August 25, 2014	Ms. Hoke (Tempo)	
				September 29, 2014 - Received Revised FY 18 Attachment B, company switches from Quarterly to Not Generating. Adds KPMG as agent. Per call with Michelle Springsteen, Company is not currently generating Kansas revenues, but anticipates doing so prior to Feb 2015 and will submit revised Att B and applicable worksheets at that time.
		September 22, 2014	Ms. Hoke (Tempo)	July 15, 2015 - GVNW received 1st - 4th Quarter FY 18 worksheets and related assessment payments. Attachment B still indicates Not Generating.
				August 26, 2015 - Received Revised FY 18 Attachment, company switches from Not Generating to Quarterly. GVNW process the 1st-4th Quarter worksheets.
March 2015 - February 2016)				
Company Identification & Operations Form (Attachment B)	April 15, 2015	May 27, 2015	Mr. Jobe (Tempo)	May 27, 2015 - Annual Reporting Frequency
		June 24, 2015		August 6, 2015 - Received Revised FY 19 Attachment B form indicating a Quarterly Reporting Frequency
Annual CRW & Assessment Payment	April 15, 2015	July 21, 2015	Mr. Jobe (Tempo)	August 6, 2015
(March - May 2015) Quarter CRW	April 15, 2015	N/A	N/A	January 20, 2016 (CRW) & February 4, 2016 (Assessment Payment)
(June - August 2015) Quarter CRW & Assessment Payment	July 15, 2015	August 26, 2015	Mr. Jobe (Tempo)	
		September 22, 2015	Mr. Jobe (Tempo); cc: Ms. Mbenga (KPMG)	
		October 29, 2015	Mr. Jobe (Tempo); cc: Ms. Mbenga (KPMG)	
		November 24, 2015	Mr. Jobe (Tempo); cc: Ms. Mbenga (KPMG)	
		December 28, 2015	Mr. Jobe (Tempo); cc: Ms. Mbenga (KPMG)	
Quarter (Dec 2015 - Feb 2016) CRW & Assessment Payment	January 15, 2016	February 29, 2016	Mr. Jobe (Tempo); cc: Ms. Mbenga (KPMG)	March 4, 2016 (CRW & Assessment Payment)
Worksheet/Late payment/Delinquent Balance Penalties	N/A	October 9, 2015 (\$143.96)	Mr. Jobe (Tempo); cc: Ms. Mbenga (KPMG)	
		November 7, 2015 (\$145.40)	Mr. Jobe (Tempo); cc: Ms. Mbenga (KPMG)	
		December 9, 2015 (\$146.85)	Mr. Jobe (Tempo); cc: Ms. Mbenga (KPMG)	
		January 12, 2016 (\$148.32)	Mr. Jobe (Tempo); cc: Ms. Mbenga (KPMG)	
		February 29, 2016 (\$551.79)	Mr. Jobe (Tempo); cc: Ms. Mbenga (KPMG)	
		March 10, 2016 (\$255.32)	Mr. Jobe (Tempo); cc: Ms. Mbenga (KPMG)	
March 2016 - February 2017)				
Company Identification & Operations Form (Attachment B)	April 15, 2016	May 23, 2016	Mr. Jobe (Tempo)	May 25, 2016 - Monthly Reporting Frequency
Annual True-Up	April 15, 2016	May 31, 2016	Ms. Powell (Tempo)	
		June 7, 2016	Ms. Powell (Tempo); cc: Ms. Mbenga (KPMG)	
		July 7, 2016	Ms. Powell (Tempo); cc: Ms. Mbenga (KPMG)	
		August 8, 2016	Ms. Thomasson (Tempo); cc: Mr. Blakeney (KPMG)	August 9, 2016
16 CRW & Assessment Payment	April 15, 2016	May 31, 2016	Ms. Powell (Tempo)	
		June 7, 2016	Ms. Powell (Tempo); cc: Ms. Mbenga (KPMG)	June 13, 2016
		April 11, 2016 (\$672.90)	Mr. Jobe (Tempo); cc: Ms. Mbenga (KPMG)	
Worksheet/Late payment/Delinquent Balance Penalties	N/A	May 6, 2016 (\$421.76)	Mr. Jobe (Tempo); cc: Ms. Mbenga (KPMG)	
		May 31, 2016 (\$421.76)	Ms. Powell (Tempo)	
		June 7, 2016 (\$425.98)	Ms. Powell (Tempo); cc: Ms. Mbenga (KPMG)	
		July 7, 2016 (\$733.56)	Ms. Powell (Tempo); cc: Ms. Mbenga (KPMG)	
		August 8, 2016 (\$841.68)	Ms. Thomasson (Tempo); cc: Mr. Blakeney (KPMG)	August 9, 2016
		October 10, 2016 (\$21.04)	Ms. Thomasson (Tempo); cc: Mr. Blakeney (KPMG)	
		November 8, 2016 (\$21.25)	Ms. Thomasson (Tempo); cc: Mr. Blakeney (KPMG)	
		December 8, 2016 (\$21.46)	Ms. Thomasson (Tempo); cc: Mr. Blakeney (KPMG)	
		January 6, 2017 (\$21.67)	Ms. Thomasson (Tempo); cc: Mr. Blakeney (KPMG)	January 11, 2017
March 2017 - February 2018)				
Company Identification & Operations Form (Attachment B)	April 17, 2017	May 25, 2017	Ms. Thomasson (Tempo)	July 14, 2017 - Monthly Reporting Frequency
CRW & Assessment Payment	August 15, 2017	September 21, 2017	Ms. Fowler (Tempo); Mr. Blakeney (KPMG)	
		October 18, 2017	Ms. Fowler (Tempo); Mr. Blakeney (KPMG)	

**KUSF Delinquent Chart
For Fiscal Years FY 17 - FY 22
Tempo Telecom, LLC- KS004211**

Delinquent Item	Due Date	Delinquent Notification Date	Notification Recipient(s)	Date Remitted/Paid
March 2017 - February 2018				
er 2017 CRW & Assessment Payment	January 16, 2018	November 22, 2017 February 27, 2018	Ms. Fowler (Tempo) Ms. Fowler (Tempo); KMPG	December 13, 2017
2018 CRW & Assessment Payment	February 15, 2018	March 28, 2017 April 26, 2018 March 28, 2017 April 26, 2018	Ms. Fowler (Tempo); KMPG Ms. Fowler (Tempo) Ms. Fowler (Tempo); KMPG Ms. Fowler (Tempo)	May 9, 2018 (CRW only) May 9, 2018 (CRW only)
March 2018 - February 2019				
Company Identification & Operations Form (Attachment B)	April 16, 2018	May 29, 2018	Ms. Fowler (Tempo)	June 4, 2018 - Monthly Reporting Frequency
2018 CRW & Assessment Payment	April 16, 2018	June 26, 2018	Ms. Bell (Tempo); cc: Mr. Blair (KPMG)	July 13, 2018 (CRW only)
8 CRW & Assessment Payment	May 15, 2018	June 26, 2018	Ms. Bell (Tempo); cc: Mr. Blair (KPMG)	July 13, 2018 (CRW only)
2018 Assessment Payment	February 15, 2018	July 6, 2018	Ms. Bell (Tempo); cc: Mr. Blair (KPMG)	
2018 Assessment Payment	April 16, 2018	August 3, 2018	Ms. Bell (Tempo); cc: Mr. Blair (KPMG)	August 17, 2018
8 Assessment Payment	May 15, 2018	August 3, 2018	Ms. Bell (Tempo); cc: Mr. Blair (KPMG)	August 17, 2018
8 CRW & Assessment Payment	June 15, 2018	July 25, 2018 August 28, 2018	Ms. Thomasson (Tempo) Ms. Thomasson (Tempo)	
8 CRW & Assessment Payment	July 16, 2018	September 25, 2018 August 28, 2018	Ms. Ardyeyev (Tempo); cc: Mr. Lammert (Compliance Solutions) Ms. Thomasson (Tempo)	September 26, 2018 (CRW) & September 27, 2018 (Payment)
		September 25, 2018	Mr. Ardyeyev (Tempo); cc: Mr. Lammert (Compliance Solutions)	September 26, 2018 (CRW) & September 27, 2018 (Payment)
1 CRW & Assessment Payment	August 15, 2018	September 25, 2018	Mr. Ardyeyev (Tempo); cc: Mr. Lammert (Compliance Solutions)	September 26, 2018 (CRW) & September 27, 2018 (Payment)
ksheet/Late payment/Delinquent Balance Penalties	N/A	July 6, 2018 (\$155.67) August 3, 2018 (\$928.28)	Ms. Bell (Tempo); cc: Mr. Blair (KPMG) Ms. Bell (Tempo); cc: Mr. Blair (KPMG)	September 27, 2018

CERTIFICATE OF SERVICE

19-TEMT-082-SHO

I, the undersigned, certify that a true and correct copy of the above and foregoing Staff's Reply to Tempo Telecom, LLC's Response to Order to Show Case was served by electronic service on this 8th day of October, 2018, to the following:

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