

December 2, 2019

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: **Reply Comments of the Minnesota Department of Commerce**
Docket No. P999/CI-19-539

Dear Mr. Wolf:

Attached are the Reply Comments of the Minnesota Department of Commerce in response to the Minnesota Public Utilities Commission's October 29, 2019 Notice of Comment Period on TAP Budget.

Sincerely,

/s/ DIANE DIETZ
Rate Analyst

DD/ja
Attachment



Before the Minnesota Public Utilities Commission

Reply Comments of the Minnesota Department of Commerce

Docket No. P999/CI-19-539

I. BACKGROUND

On January 15, 2019, the Minnesota Public Utilities Commission (Commission) issued its *Order Setting TAP Credit Amount and Surcharge Level and Requiring Local Service Providers to Include TAP Information on Their Websites* in Docket Nos. P999/CI-17-677 and P999/CI-18-112. In that Order, the Telephone Assistance Plan (TAP) credit available to eligible customers increased from \$3.50 to \$7.00 per month. The monthly TAP surcharge, which funds the TAP program, increased from \$.03 to \$.10 per access line. The TAP credit and surcharge changes were implemented on July 1, 2019, or the first billing cycle thereafter. The TAP surcharge and available credit were last changed with the Commission's August 10, 2013 Order in Docket No. P999/CI-13-213.

On August 6, 2019, in Docket No. P999/CI-18-112, the Commission issued its Order Accepting TAP Fund Review for the Six-Month period ending on December 31, 2018 and Approving Outreach Expenditure.

On October 29, 2019, the Commission issued a Notice of Comment period in Docket No. P999/CI-19-539 seeking comments on the annual review of TAP Budget revenues and expenditures as listed in the Commission's September 10, 2019 report filed in Docket P999/CI-19-539. The September 10, 2019 report includes data calculations for TAP covering the six-month period from January 1, 2019 through June 30, 2019.

On November 18, 2019 the Office of the Attorney General (OAG) filed comments recommending that the Commission "direct the TAP/Lifeline Advisory Group to re-raise and re-examine the three questions from the TAP Docket No. P999/CI-18-122 to allow interested parties to refresh their thinking on TAP-related charge, surcharge, and marketing issues and, hopefully, stem the tide of what appears to be a systematic decline in TAP enrollment."¹

II. STATUTORY AUTHORITY

Minnesota Statutes §§ 237.69 - .711 govern TAP.

Minnesota Rule 7817 establishes guidelines for the implementation of TAP.

¹ November 18, 2019 comments of the Office of the Attorney General – Residential Utilities Division in the matter of Telephone Assistance Plan Review in Docket No. P999/CI-19-539, at pages 2 – 3.

III. COMMENTS

A. *THE COMMISSION SHOULD RETAIN THE CURRENT TAP CREDIT AND SURCHARGE LEVELS.*

At the present time, the Department recommends that the Commission retain the existing TAP credit and surcharge levels. The TAP fund balance as of December 31, 2018 was \$1,139,960.² The TAP fund balance increased by \$69,364 to \$1,209,324 as of June 30, 2019.³ Thus, the TAP fund remained fairly stable during the first six months of 2019.⁴ The TAP fund is at a level that has declined over the last six years, but remains sufficient for the near term, based upon the most recent TAP surcharge and credit activity reflected in the staff report issued on September 10, 2019.

2019 \$1.2 million (Docket No. 19-539)

2018 \$1.1 million (Docket No. 18-112)

2017 \$1.1 million (Docket No. 17-677)

2016 \$1.1 million (Docket No. 16-302)

2015 \$1.5 million (Docket No. 15-535)

2014 \$2.0 million (Docket No. 14-470)

2013 \$1.9 million (Docket No. 13-213)⁵

While the TAP credit increase to \$7.00 per month is expected to significantly increase the TAP expenditures (i.e., from \$231,511 during the first six month of 2019 to \$648,924 during the last six months of 2019), TAP revenue is likewise expected to increase (i.e., from \$302,702 during the first six months of 2019 to \$882,333 during the last six months of 2019). Overall, the balance in the TAP fund is projected to increase from \$1,209,324 as of June 30, 2019, to \$1,442,733 as of December 31, 2019.⁶

² Minnesota Public Utilities Commission Memorandum, dated September 10, 2019, from Theresa Staples, TAP Administrator, to Mike McCarthy, Telecom Rate Analyst, Telephone Assistance Program (TAP) January through June 30, 2019, Six Month Review, PUC Docket No. P999/CI-19-539.

³ *Id.*

⁴ \$1,209,324 - \$1,139,960 = \$69,364.

⁵ In the year 2013, the surcharge increased from 2 cents to 3 cents, and the credit increased from \$2.50 to \$3.50.

⁶ The following factors are assumed to stay constant for the purposes of the revenue calculation for December 31, 2019: TAP subscribership was 14,970 as of June 2019, number of wirelines paying TAP surcharges was 1,445,549 lines in June 2019, administrative and related expenses was \$20,184 for the first six months of 2019, and interest revenue on the TAP fund was \$15,004 for the first six months of 2019. These figures were derived from the Minnesota Public Utilities Commission Memorandum, dated September 10, 2019, from Theresa Staples, TAP Administrator, to Mike McCarthy, Telecom Rate Analyst, Telephone Assistance Program (TAP) January through June 30, 2019, Six Month Review, PUC Docket No. P999/CI-19-539.

B. OTHER PROSPECTIVE CHANGES IN THE TAP PROGRAM THAT AFFECT MAY THE TAP FUND.

1. The Launch of the National Verifier Program in Minnesota.

The Lifeline National Eligibility Verifier (National Verifier) is a federal system administered by the Universal Service Administrative Company (USAC) that determines whether subscribers are eligible for Lifeline. The roll out of the National Verifier program includes a soft launch period, where service providers receive access to the National Verifier pre-production environment to test out the system functionalities and to help consumers apply to the Lifeline Program through the National Verifier service provider portal or by mail.

A National Verifier soft launch date has not yet been set for Minnesota, but is expected to occur by the end of 2019. When the National Verifier launches in a state, all Lifeline subscribers in that state will be “reverified,” which is a one-time process to confirm that all existing Lifeline subscribers meet the FCC’s eligibility standards. Reverification will also reset a subscriber’s anniversary date. Subscribers will be recertified annually after the date that they are successfully reverified. The National Verifier will perform all future recertification for all Lifeline subscribers.

At the National Verifier full (hard) launch, service providers must use the National Verifier program when helping consumers apply to the Lifeline Program. Consumers may also apply to the Lifeline Program on their own, through the National Verifier consumer portal or by mail.⁷ The National Verifier program has impacted both existing and prospective subscribers with retaining or obtaining Lifeline benefits. De-enrollments have increased substantially and new enrollments have decreased substantially in states where the National Verifier hard-launch has occurred.⁸

The success of the TAP program is closely linked to the success of the federal Lifeline program. Minnesota Statute section 237.70(a) requires the TAP application to include a statement requiring the applicant to verify participation in a program that confers eligibility for the federal Lifeline Program. Minnesota Rule 7817.0400, subdivision 4, clarifies the association between the TAP and Lifeline programs:

To be eligible for a telephone assistance credit the applicant must: A) be a subscriber who resides in Minnesota or has moved to Minnesota and intends to remain; and B) be eligible for the federal telephone service discount.

⁷ July 24, 2019 “Resolution on the Lifeline National Verifier Launch and Minimum Service Standards” issued by the Committee on Telecommunications and adopted by the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC). See <https://pubs.naruc.org/pub/3C86755C-FD04-1CF1-7558-180073A15B6A>

⁸ *Id.*

In its June 8, 2018 *Order Establishing Auto-Enrollment, Use of National application, and Delegation of Implementation Date* in Docket No. P888/CI-18-223, the Commission memorialized the close link between the TAP and Lifeline programs:

[T]he Commission will take action to move Minnesota to a position more consistent with the FCC handling of the Lifeline program processes. This will centralize and simplify coordination of the Minnesota Telephone Assistance Plan consistent with changes in the Federal Lifeline Program. . . . [T]he Commission will require all companies in Minnesota that offer both Lifeline and TAP to enroll voice customers in TAP at the same time the customer is enrolled in Lifeline.

As a consequence of the close relationship between the TAP and Lifeline programs, a customer who is deemed ineligible for Lifeline benefits or who loses Lifeline benefits through the National Verifier process, will also be deemed ineligible for TAP benefits.

With the launch of the National Verifier program in Minnesota, any resulting de-enrollment in Lifeline or reduction in new enrollment in the Lifeline program will inevitably affect the subscribership in the Minnesota TAP program. Such enrollment declines in the TAP program would likely result in a greater balance in the TAP fund.

2. Minnesota TAP Outreach Program

On August 6, 2019, the Commission approved a proposed outreach plan for the TAP program, in Docket No. P999/CI-18-112. The Outreach plan was proposed by the Commission's Consumer Affairs Office and affirmed by the TAP/Lifeline Advisory Group organized by the Commission. Under the August 6, 2019 Order:

The proposal would improve public awareness of the TAP and Lifeline programs through two broad approaches, one focusing on contact with key government agencies to reach qualified Minnesota residents, and the other focusing on contact with telecom providers. The proposal would require development of training materials as well as communication materials. To evaluate the program's effectiveness, Commission staff will track TAP/Lifeline participation rates and relevant inquiries to the Commission's Consumer Affairs Office.

The planned Outreach program may be occurring at a particularly opportune time given the impending launch of the National Verifier program in Minnesota. The Outreach program may, to some extent, help to ameliorate the adverse impact on Lifeline/TAP subscribership from the launch of the National Verifier program.

3. VoIP providers may no longer contribute to the TAP fund

A recent decision of the US Court of Appeals for the Eighth Circuit has resulted in certain types of Voice over Internet Protocol (VoIP) service providers no longer being subject to the regulatory requirements that apply to certified telecommunications carriers in the State of Minnesota. The September 7, 2018 decision of the US Court of Appeals for the Eighth Circuit in Charter Advanced Services (MN), LLC; Charter Advanced Services VIII (MN), LLC v. Nancy Lange, in her official capacity as Chair of the Minnesota Public Utilities Commission et. al., No. 17-2290, affirmed the decision of the US District Court for the District of Minnesota, finding Charter's VoIP services to be an "information service" under the Federal Telecommunications Act. The court found that Charter's telephone service was an information service as the voice signal leaves the customer's premise and enters Charter's network in internet protocol (IP) format, before it is converted to an analog TDM signal to terminate the call on the public switched telephone network (PSTN).⁹ The net protocol conversion was the basis for the court's determination that the telephony service provided by Charter is an information service. Thus, if a voice call exists the customer premise as an analog signal, and is not converted to an IP format until after it is on the network of the service provider, there would not be a net-protocol conversion to terminate the call on the PSTN and it would not qualify as an information service under the court's decision.

To the extent that landline telephone companies transition their voice services so that they are technically equivalent to that of Charter, customers receiving such service may not be able to participate in the TAP program and VoIP customers may not be assessed the TAP surcharge. It is likely that the net impact will be a reduction to the TAP fund, since some of the VoIP providers offering cable telephony were formerly assessed the fee, even though they did not participate in the TAP program to enable their low-income customers to receive the TAP benefit.

C. TAP/LIFELINE ADVISORY GROUP

In its November 18, 2019 comments in the current docket, the Office of the Attorney General – Residential Utilities and Antitrust Division (OAG) Division noted the significant decrease in TAP enrollment:¹⁰

The TAP six-month review reports have shown declining numbers of TAP subscribers since at least the January through June 30, 2018 time period, and the current report is no exception. Specifically, TAP enrollment has decreased from 17,625 in the January-June 30, 2018 report to 14,970 in the January-June 30, 2019 report. That is a drop of 2,655 subscribers in one year.

⁹ United States Court of Appeals for the Eighth Circuit, Appellate Case 17-2290, at page 6.

¹⁰ November 18, 2019 comments of the Office of the Attorney General – Residential Utilities Division in the matter of Telephone Assistance Plan Review in Docket No. P999/CI-19-539, page 2.

The OAG understands that the CAO proposal has only been in effect since early August 2019, a mere three months ago. Nonetheless, the OAG remains concerned about the continuing decline in TAP enrollment and wants to remain engaged and proactive on this issue.

In its November 18, 2019 comments, the OAG “recommends that the Commission direct the TAP/Lifeline Advisory Group to re-raise and re-examine the three questions from the TAP Docket No. P999/CI-18-122 to allow interested parties to refresh their thinking on TAP-related charge, surcharge, and marketing issues and, hopefully, stem the tide of what appears to be a systematic decline in TAP enrollment.”¹¹

Like the OAG, the DOC is also concerned about the downward trend of enrollment in the TAP program and is concerned the enrollment number may further decrease when the National Verifier Program becomes operational in Minnesota. The TAP/Lifeline Advisory Group may be a venue for addressing TAP/Lifeline enrollment issues facing the programs. The Department supports the recommendation made by OAG in its November 18, 2019 comments.

IV. COMMISSION ALTERNATIVES

1. Maintain the current TAP credit and surcharge levels.
2. Modify the monthly TAP credit and/or surcharge.
3. Direct the TAP/Lifeline Advisory Group to re-raise and re-examine the three questions from the TAP Docket No. P999/CI-18-122 to allow interested parties to refresh their thinking on TAP-related charge, surcharge, and marketing issues.

V. DEPARTMENT RECOMMENDATION

The Department recommends Commission Alternatives 1 and 3.

1. Maintain the current TAP credit and surcharge levels.
3. Direct the TAP/Lifeline Advisory Group to re-raise and re-examine the three questions from the TAP Docket No. P999/CI-18-122 to allow interested parties to refresh their thinking on TAP-related charge, surcharge, and marketing issues.

/ja

¹¹ Id. at pages 2 – 3.

CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce
Reply Comments**

Docket No. P999/CI-19-539

Dated this **2nd** day of **December 2019**

/s/Sharon Ferguson

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