

**STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION**

| | |
|----------------|--------------|
| Nancy Lange | Chair |
| Dan Lipschultz | Vice-Chair |
| Matt Schuerger | Commissioner |
| Katie Sieben | Commissioner |
| John Tuma | Commissioner |

In the Matter of Telephone Assistance
Plan (TAP) Review

Docket No.: P999/CI-17-677

**COMMENTS OF
LEGAL SERVICES ADVOCACY PROJECT**

Introduction

In its NOTICE OF COMMENT PERIOD, issued October 4, 2017, the Minnesota Public Utilities Commission (“MPUC” or “the Commission”) posed several questions for public comment regarding the fees for and operation of the state’s statutory low-income Telephone Assistance Plan (“TAP”).¹ Specifically, the MPUC sought comment on:

- What changes, if any, should the Commission make to the TAP benefit and/or surcharge levels?
- Should the Commission use any of the TAP fund for outreach and promotion of the program, as allowed by Minn. Stat. §237.701, subd. 1(2)?
- If the Commission should use TAP funds for outreach, please comment on any recommended amounts that should be expended, preferred methods of outreach, or organizations which might assist in such outreach.

¹ Minnesota Public Utilities Commission, In the Matter of Telephone Assistance Plan (TAP) Review, PUC Docket No.: P999/CI--17-677, *NOTICE OF COMMENT PERIOD* (issued October 4, 2017).

The Legal Services Advocacy Project (“LSAP”) appreciates the opportunity to offer comments on this matter. LSAP is a statewide division of Mid-Minnesota Legal Assistance, representing the interests of low-income Minnesotans through legislative and administrative advocacy, research, and community education activities. LSAP has long been an interested party in utility regulatory proceedings and in utility legislative proposals affecting our clients, who include low-income Minnesotans, older Minnesotans, and Minnesotans with disabilities.

**The Public Policy Goals of TAP and Lifeline Have Not Changed
Even as the Industry Has Changed**

The telecommunications industry is continually and rapidly evolving. At the same time, connectivity to and affordability of telecommunications services for low-income consumers (i.e., universal service goals) continue to be bedrock public policy and regulatory principles. Arguably, achievement of universal service has never been more important precisely because of the evolution taking place in the industry.

Universal service is a central tenet in telecommunications policy. It sits atop the enumerated list of Minnesota’s statutory “Telecommunications Goals” in section 237.011 of Minnesota Statutes.² The goal of universal service is enshrined in the Telecommunications Acts of 1934 and 1996 and, as the “committee report accompanying the draft [1996] bill [declared], the goal of the new universal service section is: ‘. . .to clearly articulate the policy of Congress that universal service is a cornerstone of the

² Minn. Stat. § 237.011 (listing “supporting universal service” first of eight goals that the Minnesota Legislature has declared “should be considered as the commission executes its regulatory duties with respect to telecommunication services”).

Nation's communication system.”³ The Telecommunications Act of 1996 made “explicit [what was the] implicit authority of the FCC and the States to require common carriers to provide universal service.”⁴

One of the means to reach the goal of universal is through the achievement of robust customer participation in the TAP and Lifeline Programs, which support that critical societal goals. Maximizing participation should remain a priority.

Current Participation Levels are Abysmally Low

Disturbingly, participation in TAP is falling precipitously. Equally troubling is the fact that 38 states have higher participation rates than Minnesota does in the federal Universal Service Lifeline Program – TAP’s corollary and interrelated counterpart.⁵ Participation in TAP has dropped by 58% between 2011 and 2017 – to 23,400 households.⁶ Is the reason due to lack of awareness? Administrative barriers? Business practices that discourage participation? Migration from companies that offer TAP?

Similarly, the participation rate in Lifeline by Minnesota households is a low 17%. According to the Universal Service Administrative Company – the nonprofit corporation to which the Federal Communications Commission (FCC) delegated responsibility for collecting and disbursing funds to support universal service pursuant to

³ David E. Missirian, *Net Neutrality: The Information Highway Which Only the Wealthy Few Will Be Allowed to Travel*, 47 U. TOL. L. REV. 327, 337 (2016).

⁴ *Id.*

⁵ Universal Service Administrative Company, *Lifeline Participation*; at <http://www.usac.org/li/about/process-overview/stats/participation.aspx>; accessed October 17, 2017.

⁶ See Minnesota Public Utilities Commission, *Staff Briefing Paper*, MPUC Docket No.: P999/CI-12-182 In the Matter of the Telephone Assistance Plan (TAP), May 31, 2011 and Memorandum from Theresa Staples, TAP Administrator, to Mike McCarthy, Telecom Rates Analyst (September 14, 2017).

the Telecommunications Act of 1996”⁷ – there are 589,000 households eligible for Lifeline.⁸ Yet fewer than one in five eligible households participate. In contrast, the participation rate in Alaska and Oklahoma exceeds 50%.⁹ In seven states and the District of Columbia, it is more than 40%.¹⁰ In 15 states, it is around one-third.¹¹ What is the reason for the discrepancy in participation when these states are facing the same changes and challenges that are facing Minnesota?

To argue, as some might, that the reason for the eroding participation rate is that consumers are self-selecting out of this program ignores the central premise of the program – that is, that eligibility is restricted to those who are financially in need and, by definition, these programs help improve affordability – and thus continuity – of telephone and telecommunications services. While certainly a percentage of eligible households will refuse to participate, but it is downright illogical that the vast numbers of eligible households are knowingly declining to participate. The embarrassingly low participation rates require some remedial action.

⁷ USAC was “created by the FCC [to] collect and deliver funding through four programs [including Lifeline] focused on places where. . .connectivity needs are critical. These programs serve people in rural, underserved, and difficult-to-reach areas.” Universal Service Administrative Company, *About USAC*; <http://www.usac.org/about/>; accessed October 17, 2017.

⁸ USAC, *Lifeline Participation*, *supra* note 3.

⁹ *Id.* In Alaska, the rate is 51%; in Oklahoma it is 52%.

¹⁰ *Id.* These states are: Florida (42%); Georgia (41%); Kentucky (40%); Louisiana (42%); Maryland (42%); Michigan (44%); and Nevada (46%).

¹¹ *Id.* These states are: Alabama (32%); Arizona (36%); California (35%); Connecticut (33%); Delaware (37%); Illinois (36%); Indiana (30%); Mississippi (37%); New Jersey (34%); Ohio (38%); Pennsylvania (33%); Rhode Island (38%); South Carolina (35%); Tennessee (38%); and West Virginia (32%).

**The Commission Should Identify Both the Reasons for Low Participation
and Efficient and Effective Strategies for Maximizing Participation**

The permissive language of the section 237.701 presupposes that outreach and promotion equate with higher participation levels, and thus necessarily the achievement of the broader public policy goal of universal service. Given the operative statutory framework, naturally the MPUC seeks comment on whether the funds and activities for those approaches should be increased.

Consumer surveys show that lack of awareness of the availability of the programs is certainly one reason for low participation.¹² But research also suggests that “variations in the design and administration of [telephone assistance] programs can [also] have quite consequential impacts on participation levels, significantly altering the ultimate effectiveness of the program in achieving its goals.”¹³

LSAP respectfully suggests that, before asking whether and how TAP funds should be spent on outreach, the Commission needs to ask why participation in these universal service programs in Minnesota is inordinately and unacceptably low and what actions lead to more successful outcomes in the many other. TAP funds should be spent on efforts to facilitate achievement of this state and federal goal of universal service,

¹² Lynne Holt & Mark Jamison, *Re-Evaluating FCC Policies Concerning the Lifeline & Link-Up Programs*, 5 J. TELECOMM. & HIGH TECH. L. 393, 404 (2007) (reporting that four surveys conducted by Public Utility Research Center (PURC) at the University of Florida found that a “primary barrier to Lifeline participation appears to be a lack of public awareness) (citing Lynne Holt & Mark Jamison, *Making Telephone Service Affordable for Low-Income Households: An Analysis of Lifeline and Link-Up Telephone Programs in Florida* (Univ. of Florida Pub. Util. Research Ctr. Report 2006).

¹³ Mark Burton and John W. Mayo, *Understanding Participation in Social Programs: Why Don't Households Pick up the Lifeline?* (2005). Mark Burton currently is a Research Associate Professor in the Department of Economics at the University of Tennessee. <http://econ.bus.utk.edu/departments/faculty/burton.asp>. John W. Mayo is the Founder and Executive Director of Georgetown University's McDonough School of Business, which is listed as a co-author on this paper. <http://cbpp.georgetown.edu/people/john-mayo>

specifically in this case by expanding participation in TAP and Lifeline. But these funds should be spent thoughtfully and wisely.

Therefore, LSAP respectfully recommends that the Commission first take or require actions necessary to answer these questions:

- (1) How does TAP and Lifeline fit into the current and changing telecommunications industry landscape and the recent FCC actions?
- (2) Given that 38 states have achieved higher (some dramatically higher) participation rates for Lifeline than Minnesota has in the same industry environments, what outreach, promotion, and other methods have those states used to achieve those results and can those strategies be adopted in Minnesota?
- (3) What -- according to direct service providers, community organizations that serve the TAP- and Lifeline-eligible populations, and the eligible recipients themselves -- are barriers to participation in these programs.

In other words, LSAP urges the Commission take an evaluative step back. The MPUC should examine how the changing landscape impacts the TAP and Lifeline programs; study the outreach, promotion, and other methods that other states have used to achieve dramatically higher participation rates in Lifeline; and reach out statewide to community organizations serving low-income and diverse communities, including consumers themselves, to identify barriers to and suggested best practices to improve participation.

Once that process has been completed, LSAP would urge the MPUC to order implementation of the most effective methods to increase and maximize participation in TAP (and Lifeline), whether through outreach and promotion or through other activities or a combination of outreach and promotion and other activities.

Authority to Expend TAP Funds in the Manner LSAP Proposes

As the Commission noted, under current law, TAP funds “may be . . . used for . . . for periodic promotional activities, including, but not limited to, radio or newspaper advertisements, to inform eligible households of the availability of the telephone assistance program. . . .” Minn. Stat. § 237.701, subd. 1(2). LSAP believes that, for a variety of reasons, an argument can be made that expending funds in the manner LSAP recommends is within the MPUC’s authority under the current law. First, the statute expressly contemplates the existence of methods other than those enumerated (e.g., radio or newspaper advertisements) that may be more effective to promote participation in the program expenditure of funds for promotional activities. Second, inherent in the mandate to make TAP available and the express permission to promote it is the notion that promotional activities should be the most effective in achieving participation. To authorize the expenditure of funds on ineffective measures would be an absurd interpretation of the plain language of the statute.

LSAP suggests that, though it is true that the statute does not expressly mention determining what methods are most effective, it may be implied that the expenditure of funds for that purpose is within the existing scope of the law. However, if the Commission believes that LSAP’s proposal has merit, but it falls outside the authority granted under the statute, the MPUC should seek clarifying or enabling legislation.

Conclusion

For the reasons articulated above, the MPUC should adopt LSAP's recommendations.

October 24, 2017

Respectfully submitted,

Ron Elwood
Supervising Attorney
Legal Services Advocacy Project
2324 University Avenue, Suite 101
St. Paul, MN 55114
651-842-6909
relwood@mnlsap.org