

September 30, 2015

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

RE: **Comments of the Minnesota Department of Commerce**
Docket No. P999/CI-15-535

Dear Mr. Wolf:

Attached are the comments of the Minnesota Department of Commerce in response to the Minnesota Public Utilities Commission's August 31, 2015 Order Accepting TAP Reports, Retaining Current Benefit and Surcharge Levels, and Setting Schedule for Future Action in the Matter of the Telephone Assistance Plan Annual Review.

The Department is available to answer any questions the Commission may have.

Sincerely,

/s/ DIANE DIETZ
Rate Analyst

/s/ ALIXANDRA COWMEADOW
Rate Analyst

DD/AC/ja
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

**COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE**

DOCKET No. P999/CI-15-535

I. CASE HISTORY

On August 31, 2015, the Minnesota Public Utilities Commission (Commission) issued its Order Accepting TAP Reports, Retaining Current Benefit and Surcharge Levels, and Setting Schedule for Future Action in the Matter of the Telephone Assistance Plan (TAP) Annual Review in Docket No. P999/CI-15-535.

II. STATUTORY AUTHORITY

Minnesota Statutes Sections 237.69 - .711 govern the Telephone Assistance Plan (TAP). In particular, under Minnesota Statute section 237.70, subd. 1, the Commission has been granted authority to develop a TAP.

Minnesota Rules Chapter 7817 establishes guidelines for the implementation of TAP.

III. COMMENTS

A. BACKGROUND

On July 10, 2013, the Minnesota Public Utilities Commission (Commission) issued its Order Establishing New Credit and Surcharge Levels in Docket No. P999/CI-13-213. In that Order, the TAP credit available to eligible customers increased from \$2.50 to \$3.50 per month. The monthly TAP surcharge reduced from \$.06 to \$.03 per access line. The rates were implemented on October 1, 2013, or the first billing cycle thereafter.

On September 8, 2014, the Commission issued its Order Accepting 2013 TAP Reports and Retaining Benefit and Surcharge Levels in Docket No. P999/CI-14-470. In that Order, the Commission retained the existing TAP benefit and surcharge levels.

In its August 31, 2015 Order Accepting TAP Reports, Retaining Current Benefit and Surcharge Levels and Setting Schedule for Future Action, in the current docket; the Commission solicited comments on the TAP surcharge and credit levels. The Order went on to state that the Commission would review comments from interested parties, meet to reexamine all TAP issues, and implement any changes in surcharge or credit levels during or after the January 1, 2016 billing cycle.

On August 31, 2015, the Commission issued a Notice of Comment Period, in the matter of the TAP Annual Review, in the current docket. The Commission directed interested parties to review the staff briefing papers filed on August 12, 2015, along with updated reports, and to file any comments by October 1, 2015.

B. TAP BENEFIT AND SURCHARGE LEVELS

In the Commission's 2013 annual review of TAP benefit and surcharge levels, the Commission chose to increase the monthly TAP benefit and decrease the monthly TAP surcharge in recognition of two developments in federal regulatory law that affected the TAP program – changes affecting the price of local service and changes affecting the number of TAP recipients.¹ Consideration of these two developments is relevant in the current docket.

1. Change in Federal Law Affecting the Price of Local Service

On November 18, 2011, the FCC released its Universal Service Fund-Intercarrier Compensation Report and Order and Further Notice of Proposed Rulemaking.² The FCC adopted a rule to limit high-cost local loop support in instances where end-user rates for basic local telephone service do not meet a price floor established by the FCC. The FCC implemented the local rate floor “beginning with an initial rate floor of \$10 for the period July 1, 2012 through June 30, 2013 and \$14 for the period July 1, 2013 through June 30, 2014.³ Beginning July 1, 2014, the rate floor was suspended at \$14.00 until January 2, 2015, at which point the price floor was set at \$16.00. As of July 1, 2016, the rate floor will be set at the lower of either be \$18.00 or the rate floor level established by the FCC's 2016 urban rate survey. Beginning on July 1, 2017, the rate floor will be the lower of either \$20.00 or the rate floor established by the 2017 urban rate survey.⁴

¹ July 10, 2013 Order in the Matter of the Telephone Assistance Plan Credit and Surcharge Levels in Docket No. P999/CI-13-213.

² WC Docket No. 10-90, GV Docket 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, and WT Docket No. 10-208 (USF-ICC Order)

³ See paragraphs 234 through 247 in the November 18, 2011 Order.

⁴ June 10, 2014 Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, WT Docket No. 10-208, WC Docket No. 14-58, WC Docket No. 07-135, CC Docket No. 01-92.

The FCC's November 18, 2011 Order and subsequent related Orders directly affect Lifeline and TAP subscribers, as well as all other customers of local telephone service provided by companies that receive high cost support. While local carriers are not required to raise their local rates to the FCC determined rate floor level, local carriers with rates below the rate floor level will lose high cost universal service funds on a dollar for dollar basis. As a result, local carriers have raised rates, making local telephone service less affordable for low-income households. Future increases in the rate floor level may make local telephone service even less affordable for low-income households.

2. *Change in Federal Law Affecting the Number of TAP Recipients*

The Commission's July 10, 2013 Order Establishing New Credit and Surcharge Levels included the following statement on page 3:

The FCC has jurisdiction over the federal Lifeline program, which also subsidizes local telecommunications service for low-income households. Local service providers that provide both Lifeline and TAP subsidies use the Lifeline rules to determine eligibility for both programs.⁵

In 2012, the FCC began requiring local service providers to disenroll subscribers that fail to document their eligibility annually.⁶ This has reduced subscribership in both programs by approximately 43%.⁷

The Commission's July 10, 2013 Order (page 3) described the impact of the FCC's mandated annual recertification as follows:

The Department projects the number of access lines in Minnesota at 2,100,237 [for the year 2013]. Last year local exchange carriers reported serving 73,659 TAP customers; this year the Department estimates the number to be 40,580 [as of the second quarter of 2013].

The Commission Staff Briefing Papers issued with the August 5, 2014 Notice of Comment Period in Docket No. P999/CI-14-470, included estimates of the number of TAP subscribers as of the end of the year 2013 that were remarkably close to the post-recertification estimates at 40,412 TAP subscribers.

⁵ See Minn. Rules part 7817.0600.

⁶ See 47 C.F.R. §54.410.

⁷ See generally *In the Matter of the 2012 Lifeline Re-Certification Results*, Docket No. P999/M-12-1315.

The Commission Staff Briefing papers for the August 20, 2015 agenda meeting on Docket No. P999/CI-15-535, estimated the number of TAP subscribers as of the end of the year 2014 to be 33,802.

The Commission Staff Memorandum of September 1, 2015 estimated the number of TAP subscribers for the six-month period ending on June 30, 2015 to be 30,757.

3. *TAP Fund Balance*

The reliability of the fund balance estimate is dependent on the level of TAP subscribership as well as the number of landline telephones that form the funding base for TAP. Since the introduction of the FCC's recertification process in the year 2012, the level of TAP subscribership has decreased to approximately 31,000 households.

In recent years there has been a declining number of landline telephones that form the funding basis for the TAP fund. The number of access lines that are assessed the monthly TAP surcharge decreased from 2,073,415 in the year 2012 to 1,948,566 in the year 2013.⁸ The access line count decreased to 1,885,102 in the year 2014 and 1,737,449 as of the end of June 2015.⁹ The downward trend in access lines is partially due to some companies discontinuing their collection and remittance of the TAP surcharge, arguing that their services are not subject to the Commission's jurisdiction. While the Commission has taken steps to address this issue, in its July 28, 2015 Order the matter of a complaint against the Charter affiliates,¹⁰ further action remains to be taken in this matter. The decline in the number of assessable access lines does not appear to warrant an adjustment to the TAP surcharge or credit levels at this time.

4. *Affordability of Telephone Service*

While the FCC has decided to maintain the existing \$16 price floor until July 1, 2016, additional increases in the price floor are expected to occur in the future. As previously stated, increases in the price floor may make local telephone service increasingly less affordable for low-income subscribers. The TAP credit is currently set at \$3.50 per household. The federal Lifeline credit, currently set at \$9.25 per month, is provided in addition to the TAP credit. Thus, the combined low-income support for eligible Minnesota households is \$12.75, which is about 80 percent of a \$16 monthly telephone bill.

⁸ Id. at page 4.

⁹ September 1, 2015 Commission Staff Memorandum entitled "TAP CY2015, Six Month Review."

¹⁰ July 28, 2015 Order Finding Jurisdiction and Requiring Compliance Filing in the Matter of the Complaint of the Minnesota Department of Commerce Against the Charter Affiliates Regarding Transfer of Customers in Docket No. P6716, 5615/C-14-383.

In addition to the monthly service fee, customers also pay various taxes and fees on their monthly bill. The following fees and taxes are typically added to a monthly bill: (i) federal excise tax of 3 percent, (ii) state and local taxes, (iii) TAP fee of \$.03 per line, (iv) Telecommunications Access Minnesota fee of \$.08 per line, (v) 911 fee of \$.78 per line, (vi) federal access charge/subscriber line charge that goes directly to local telephone companies of up to \$6.50, and (vii) extended area service charges that vary by exchange and by local service provider.¹¹ Taken together, these additional fees and taxes can add \$10 or more to a monthly telephone bill. All taxes and fees should be considered when studying the affordability of telephone service to low income households.

5. *The TAP Surcharge and Credit Levels*

The Department recommends that the Commission maintain the existing TAP credit and surcharge levels. While the FCC's price floor has increased from \$14.00 to \$16.00 since the last time the Commission considered possible changes in the TAP surcharge and credit levels in its September 8, 2014 Order in Docket No. P999/CI-14-470, the price floor is likely to increase in the coming year. At that point, the Commission will have more information to form the basis for considering possible changes to the monthly TAP credit as a means to address potential concerns about affordability of telephone service.

To the extent the Commission decides to maintain the current TAP surcharge and credit levels, the Commission will likely have to revisit the issues sometime before the fourth quarter of the year 2016, when the TAP fund balance may potentially drop in the direction of an unsustainable level. At that time, the FCC's price floor for basic local service will increase to as much as \$18.00.

IV. COMMISSION ALTERNATIVES

1. Maintain the current TAP credit and surcharge levels.
2. Modify the monthly TAP credit and/or surcharge.

V. DEPARTMENT RECOMMENDATION

1. Maintain the current TAP credit and surcharge levels.

/ja

¹¹ Extended Area Service charges are included when calculating the FCC rate floor.

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
Comments**

Docket No. P999/CI-15-535

Dated this 30th day of September 2015

/s/Sharon Ferguson

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