

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

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Matt Schuerger	Commissioner
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
John Tuma	Commissioner

In the Matter of Telephone Assistance Plan
Review

MPUC Docket No. P999/CI-16-302

COMMENTS OF MINNESOTA CABLE COMMUNICATIONS ASSOCIATION

COMES NOW the Minnesota Cable Communications Association (the “MCCA”) and responds to the Minnesota Public Utilities Commission’s (the “Commission”) request for comments regarding whether clarifications or changes should be made to the Minnesota Telephone Assistance Program (herein “TAP”) as administered by the Commission.

I. BACKGROUND.

A. Supported Services. As the Commission’s Notice of Comment Period mentions, on April 27, 2016, the Federal Communications Commission (“FCC”) issued its “*Lifeline Modernization Order*.”¹ The *Order* redirects Lifeline funds, historically dedicated to subsidizing voice telephone services for low income consumers, to be used to subsidize broadband services for low income consumers. The *Order* implements this shift over a 5 and a half year transition period, during which the FCC will gradually decrease federal support for standalone voice services. Specifically, the new FCC rules phase in a requirement that to be eligible for Lifeline

¹ *Lifeline and Link Up Reform and Modernization, et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962 (2016) (herein the “*Lifeline Modernization Order*” or “*Order*”).

support, a voice service must be bundled with broadband service, thereby phasing out support for voice service as a standalone option.²

In contrast to the reformed federal Lifeline program, Minnesota's TAP program provides telephone assistance credits to eligible households "up to the amounts available under the federal matching plan."³ State law defines "federal matching plan" as "any telephone assistance plan formulated by the Federal Communications Commission that provides federal assistance to local telephone subscribers."⁴ The TAP is funded by "assessing a uniform recurring monthly surcharge, not to exceed ten cents per access line, applicable to all classes and grades of access lines provided by each local service provider in the state."⁵ For the purpose of the TAP, an "access line" is defined in statute as:

[T]elephone company-owned facilities furnished to permit switched access to the telecommunications network that extend from a central office to the demarcation point on the property where the subscriber is served. The term includes access lines provided to residential and business subscribers, includes centrex access lines on a trunk-equivalent basis, but does not include private nonswitched or wide area telephone service access lines.⁶

Minnesota Statutes section 237.701 appropriates funding for the TAP program. That section provides that money in the TAP fund may only be used for:

- (1) reimbursement to local service providers for TAP expenses and credits;
- (2) reimbursement of reasonable administrative costs incurred by the commission, including costs incurred to promote the TAP program;
- (3) reimbursement of the statewide indirect cost of the commission; and
- (4) reimbursement of expenses incurred by the Department of Commerce and Department of Human Services for administering data related to TAP eligibility.

² The *Order* carves out an exception from the phase-out of standalone voice service provided by eligible telecommunications carriers ("ETCs") in census block areas in which the ETC is the only Lifeline service provider. *Order* at ¶48.

³ Minn. Stat. §237.70, Subd. 5 (2015).

⁴ *Id.* §237.69. Credits are further limited to not more than 50% of the local exchange rate charged for the local exchange service provided to a household.

⁵ Minn. Stat. §237.70, Subd. 6.

⁶ Minn. Stat. 237.69, Subd. 5.

Minnesota law also requires the Commission to have rules “necessary or appropriate” to administer TAP. The Commission has adopted such rules in part to “permit the implementation of federal matching plans so that the state’s local exchange service telephone customers are afforded the opportunity to acquire the benefits of these federal matching plans.”⁷ Minnesota Rule 7817.0800 provides:

The telephone assistance plan must be combined with the existing federal matching plan. Local service providers shall participate in both plans, except that a provider that is not a designated "eligible telecommunications carrier," as defined by Code of Federal Regulations, title 47, part 54, is not required to participate in the federal Lifeline plan. If and when other federal matching plans are developed, the commission shall seek outside comment on those plans and review each plan and the comments submitted by interested persons. After appropriate proceedings, the commission shall determine whether to incorporate those plans into the telephone assistance plan and require telephone companies to participate.

Minnesota’s rules define a “local service provider” as “a service provider of local exchange service.”⁸ “Local exchange service” is defined under the rule as:

[T]elephone service provided within local exchange areas in accordance with local service provider tariffs. It includes the use of exchange facilities required to establish connections between stations within the exchange and between stations and the toll facilities serving the exchange. It also includes extended area service that is interexchange calling for which a message toll charge is not assessed.⁹

Minnesota Rules further require “local service providers” within the Commission’s jurisdiction to bill the TAP surcharge and collect surcharge revenue.¹⁰ TAP funds collected by

⁷ Minn. R. 7817.0200.

⁸ Minn. R. 7817.0100, Sub. 10a.

⁹ Minn. R. 7818.0100, Sub. 10.

¹⁰ Minn. R. 7817.0300.

local service providers must be remitted to the Department of Public Safety for deposit in the TAP fund.¹¹

B. Eligibility Determinations. The *Lifeline Modernization Order* also establishes a new “National Verifier” system for determining eligibility for the Lifeline program. By December 31, 2019, all 50 states will be required to use the National Verifier to make eligibility determinations for the Federal Lifeline program.¹² The *Order* describes the National Verifier as:

[M]ore than simply a piece of technology; it is a system relying on both human resources and technological elements to increase the integrity and improve the performance of the Lifeline program for the benefit of a variety of Lifeline participants, including Lifeline providers, subscribers, states, community-based organizations, USAC [Universal Service Administrative Company], and the Commission. As described below, the National Verifier will have both electronic and manual methods to process eligibility determinations and will have at its center a Lifeline Eligibility Database (LED), which will contain records of all subscribers deemed eligible by the National Verifier. The National Verifier will also engage in a variety of other functions, such as, but not limited to, enabling access by authorized users, providing support payments to providers, and conducting recertification of subscribers, to add to the efficient administration of the Lifeline program. This Order directs USAC, with the oversight and approval of the Bureau and [Office of Managing Director], to procure the necessary parts to the National Verifier.”¹³

The *Order* further states that “the National Verifier will be able to accommodate and utilize many of the varying state databases available.”¹⁴ The FCC envisions the National Verifier’s electronic certification process will produce “near real-time results.”¹⁵ Subscribers will be able to interact directly with the National Verifier.¹⁶

¹¹ Minnesota Statutes section 237.49 requires that providers collect and remit TAP surcharges along with surcharges for 911 and the Telephone Access Minnesota fund.

¹² *Order* at ¶164.

¹³ *Id.* at ¶126.

¹⁴ *Id.* at ¶¶ 133 and 137. The *Order* specifically envisions using existing state databases to populate the National Verifier database and to build on existing processes used by states.

¹⁵ *Id.*

¹⁶ *Id.* at ¶ 134.

Under the *Order* the FCC says it expects USAC and the FCC’s Wireline Competition Bureau (“Bureau”) to work closely with states, other federal agencies, and Tribal Nations to develop the National Verifier.¹⁷ The FCC suggests that USAC consider “co-enrollment” with states. Prior to initiating these state partnerships, the *Order* requires USAC to submit a proposed partnership plan to the Bureau indicating “how it is congruent with the National Verifier and the Bureau must approve of establishing such a partnership as proposed by USAC.”¹⁸ USAC is also directed to work with the FCC’s Office of Managing Director and Office of Chief Information Officer to ensure that the National Verifier incorporates “robust privacy and data security best practices.”¹⁹

Under Minnesota law, the TAP must “contain adequate provisions to enable eligible subscribers to take advantage of the federal matching plan.”²⁰ Minnesota law also provides that the TAP “must provide telephone assistance credit for a residential household in Minnesota that is eligible for the federal Lifeline telephone discount.”²¹ Minnesota law further provides that the TAP “must be administered jointly” by the Commission, Department of Commerce, and local service providers in accordance with the following guidelines:

(a) The commission and the Department of Commerce shall develop an application form that must be completed by the subscriber for the purpose of certifying eligibility for telephone assistance plan credits to the local service provider. *** The application form must also include a statement that the applicant household is currently eligible for one of the programs that confers eligibility for the federal Lifeline Program.

¹⁷ *Id.* at ¶142.

¹⁸ *Id.* at ¶142.

¹⁹ *Id.* at ¶154.

²⁰ Minn. Stat. §237.70, Subd. 3.

²¹ Minn. Stat. §237.70, Subd. 4a.

(b) Each local service provider shall annually mail a notice of the availability of the telephone assistance plan to each residential subscriber in a regular billing and shall mail the application form to customers when requested.

(c) On completing the application certifying that the statutory criteria for eligibility are satisfied, the applicant must return the application to the subscriber's local service provider. On receiving a completed application from an applicant, the subscriber's local service provider shall provide telephone assistance plan credits against monthly charges in the earliest possible month following receipt of the application.²²

Under the Commission's TAP rules, local service providers must verify the continued eligibility of TAP recipients by using the same verification procedures used for the federal Lifeline program.²³ A provider participating in both the TAP and TAM programs is not required to conduct separate verifications, but may use a single verification process using the federal Lifeline verification procedures.²⁴

The *Lifeline Modernization Order* also streamlines the Lifeline eligibility determination process. It does so by reducing the number of federal programs in which participation automatically qualifies a household for Lifeline assistance. Specifically, the Low Income Heating and Energy Assistance Program ("LIHEAP"), National School Free Lunch Program ("NSLP"), and Temporary Assistance for Needy Families ("TANF") are removed from this list by the *Order*. However, receipt of Veterans Pension or Survivors Pension now also qualify a consumer for the Lifeline program.²⁵ In addition, the *Order* amended the definition of "income" to align with the IRS definition of "gross income" simplifying what a consumer must show in order to be eligible based on the FCC's independent income eligibility test.²⁶ This change, the

²² See Minn. Stat. §237.70, Subd. 7; Minn. R. 7817.0400.

²³ Minn. R. 7817.0600.

²⁴ *Id.*

²⁵ *Order* at ¶173.

²⁶ *Id.* at ¶202.

FCC reasoned, also makes it easier for electronic verification of eligibility by verifying representations of income level through a single source. Finally, the *Order* prohibits state specific eligibility criteria for federal Lifeline support.²⁷

C. Certification of Eligible Telecommunications Carriers. The *Lifeline Modernization Order* also adds a streamlined federal process for certifying Lifeline Broadband Providers (“LBPs”). In doing so, the FCC preempted state authority to designate LBPs.²⁸ However, the *Order* preserves state authority to designate ETCs for Lifeline voice services.

II. SHOULD THE COMMISSION ISSUE ANY CLARIFICATIONS WITH RESPECT TO TAP ELIGIBILITY?

The *Lifeline Modernization Order* has made significant changes to the Lifeline subscriber eligibility process. The *Order* mandates the creation of a centralized national hub of data and communication, the National Verifier, through which consumers will now become certified for Lifeline benefits. The FCC has directed USAC to submit a “Draft National Verifier Plan” by December 1, 2016.²⁹ The *Order* envisions the need for substantial cooperation and coordination from states to build the National Verifier and make it operational.

Minnesota law and the Commission’s rules are closely intertwined with the federal Lifeline program. Thus, the Commission, either on its own, or in partnership with or delegation to the Department of Commerce, may need to engage with USAC to determine as early as possible how Minnesota will transition from its current Lifeline eligibility process to the National Verifier process established in the *Order*. The *Order* envisions “multiple pathways” for populating the LED. Currently, eligibility determinations in Minnesota are made by the service

²⁷ *Id.* at ¶212.

²⁸ *Id.* at ¶239.

²⁹ *Id.* at ¶162.

provider based on information supplied by the subscriber on a state created application form. Going forward, will Minnesota's service providers be responsible for working directly with USAC and the FCC to ensure that currently eligible subscribers are entered into the National Verifier database? Or will subscribers themselves be responsible for re-applying for eligibility through the National Identifier? What role will the states play in executing this transition? How will data coming from different sources be coordinated? The Commission should ascertain a clear understanding of how the transition to the National Identifier eligibility database is going to be executed.

The Commission and Department of Commerce also may need to revise the current TAP/Lifeline application form to reflect the modified subscriber eligibility criteria in the *Order*,³⁰ to remove the NSLP, Minnesota Family Investment Program, TANF, and LIHEAP from the list of programs in which participation qualifies a subscriber for Lifeline eligibility. The removal of these programs from the federal Lifeline eligibility program list would mean the programs must also be removed from the Minnesota TAP eligibility list as stated on the Minnesota application. Minnesota law provides that the TAP “must provide telephone assistance credit for a residential household in Minnesota that is eligible for the federal Lifeline telephone discount.”³¹ If, for example, LIHEAP remained on the list of TAP qualifying programs, a subscriber qualifying for TAP by participating in LIHEAP might be eligible for TAP, but would not be eligible for Lifeline in contravention of Minnesota Statutes section 237.70, Subd. 4a. Similarly, Veterans Pension and Survivors Pension recipients would be added to the list of federal benefits, qualification for which also qualifies a household for Lifeline benefits.

³⁰ A copy of the form is attached as Appendix A.

³¹ Minn. Stat. §237.70, Subd. 4a.

The Commission and the Department of Commerce may also want to amend the TAP/Lifeline eligibility form to eliminate the various methods currently allowed for a subscriber to document household income below the federal poverty guideline. The *Order* amends the FCC's definition of income under 47 C.F.R. section 54.400 to align with the definition of "Gross Income" under 26 U.S.C. section 61 of the Internal Revenue Code.³² Thus, a state, federal, or tribal tax return would suffice for all applicants who are applying for Lifeline based on income below the federal poverty line.

Once the National Verifier is operational for Minnesota, the Commission could abolish the Minnesota TAP application altogether. Again, under Minnesota law, eligibility for TAP must also confer eligibility for Lifeline. It would make sense, therefore, for Minnesota to rely on the National Verifier to certify eligibility for the TAP program, and eliminate its own eligibility process.

Until the National Verifier is operational in Minnesota, current law will remain consistent with federal law. However, once the National Verifier is operating for Minnesota, state law will be in conflict with the new FCC eligibility rules. For example, Minnesota Statutes section 237.70, Subd. 7, codifies the current TAP/Lifeline eligibility process. The statute requires the application form be mailed to subscribers by local service providers. And the form must be returned to the local service provider when completed. Neither of those steps will be correct eligibility application procedure when the National Verifier becomes operative for Minnesota. Corresponding changes will need to be made to the Commission's TAP rules.

³² *Order* at ¶202.

III. SHOULD THE COMMISSION ISSUE ANY OTHER CLARIFICATIONS IN AN ORDER REGARDING TAP?

Minnesota law provides that the TAP program may provide for telephone assistance credits to eligible households “up to the amounts available under the federal matching plan.”³³ The federal matching plan is defined under statute as “any telephone assistance plan formulated by the Federal Communications Commission that provides federal assistance to local telephone subscribers.”³⁴ The *Lifeline Modernization Order* is phasing out support for standalone voice service, except for service provided by ETCs in census block areas in which the ETC is the only Lifeline service provider.³⁵

The Commission or the Department of Commerce may consider publishing a record of areas, if any, in Minnesota where Lifeline service is provided by a single ETC within a particular census block. If the amount of standalone Lifeline voice support for most areas in Minnesota is headed toward zero over the next five and a half years, under section 237.70, Subd. 5, the “amount available under the federal matching plan” will be zero. Thus, the maximum TAP credit available in Minnesota will be reduced to zero except in census block areas where an ETC providing the service is the only Lifeline service provider.

IV. WHETHER TAP FUNDS MAY BE APPLIED TO BROADBAND SERVICE.

Minnesota Statutes sections 237.69-.71 are very clear in authorizing a state low-income assistance program for *telephone* services. The use of the word “telephone” is replete throughout the TAP statute. As a creature of statute, the Commission, has only those powers granted to it by the Legislature or those that can be “fairly drawn and fairly evident from the agency objectives

³³ Minn. Stat. §237.70, Subd. 5 (2015).

³⁴ *Id.* §237.69.

³⁵ *Order* at ¶48.

and powers expressly given by the [L]egislature.”³⁶ In *Qwest*, the Eighth Circuit examined whether this Commission had implied authority to order refunds. The court found that it did not have such implied authority. In reaching this decision, the Court found it significant that the Minnesota Legislature had not “seen fit expressly to grant refund powers to the Commission, although it could have done so and in one instance has at least recognized its use.”³⁷ Reading Minnesota Statutes sections 237.69-.71, there can be no question the Minnesota Legislature has not expressly granted the Commission authority to assess TAP funds and allowed those funds to be used for discounts on broadband services. No such express grant of authority appears anywhere in Minnesota Statutes Chapter 237, and no authority can be implied. Thus, TAP funds can be used only for voice services. MCCA is in full agreement with the Reply Comments of the Department of Commerce filed on May 18, 2016 with the Commission, on this point, which stated that “Minnesota law does not appear to be sufficiently open to interpretation to permit TAP funds to support stand-alone broadband service.”³⁸

V. CONCLUSION.

The Commission is constrained by statute as to what it can do to respond to the FCC’s *Lifeline Modernization Order*. Nonetheless, there are some actions the Commission could take:

1. The Commission, either on its own, or in partnership with or delegation to the Department of Commerce could engage with USAC as soon as possible to determine how Minnesota will transition from its current Lifeline eligibility process to the National Verifier process established in the *Order*.

³⁶ *Qwest Corp. v. Minn. Pub. Utils. Comm’n*, 427 F.3d 1061, 1065 (8th Cir. 2005).

³⁷ *Id.* at 1065.

³⁸ *In re Telephone Assistance Plan (TAP) Review*, Reply Comments of the Minnesota Department of Commerce, MPUC Docket No. P999/CI-16-302 (May 18, 2016).

2. The Commission could revise its TAP/Lifeline application form to conform to the new Lifeline subscriber eligibility criteria.
3. The Commission or the Department of Commerce could publish a record of census blocks, if any, in Minnesota where Lifeline service is provided by a single ETC.

Respectfully submitted,

Dated: July 27, 2016

MINNESOTA CABLE COMMUNICATIONS
ASSOCIATION



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CERTIFICATE OF SERVICE

I, Valerie Mendoza, on behalf of the Minnesota Cable Communications Association, hereby certify that I have this day, served copies of Comments for the TAP Review Docket P999/CI-16-302 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:

COMMENTS OF MINNESOTA CABLE COMMUNICATIONS ASSOCIATION

Dated this 27th day of July 2016.

/s/Valerie Mendoza, Paralegal

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