

July 27, 2016

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-16-302

Dear Mr. Wolf:

Attached are the comments of the Minnesota Department of Commerce in response to the Minnesota Public Utilities Commission's May 25, 2016 Notice of Comment Period concerning the Telephone Assistance Plan Review.

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

Sincerely,

/s/ DIANE DIETZ
Rate Analyst

DD/ja
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

**COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE**

DOCKET No. P999/CI-16-302

I. BACKGROUND

On May 25, 2016, the Minnesota Public Utilities Commission (Commission) issued a Notice of Comment Period in Docket No. P999/CI-16-302. In its Notice of Comment Period, the Commission asked the following four questions:

- Should the Commission issue any clarifications with respect to Telephone Assistance Plan eligibility?
- Should the Commission issue any other clarifications in an Order regarding the Telephone Assistance Plan?
- If any clarifications should be made, please cite to relevant portions of Minnesota Statutes Chapter 237 and other relevant law.
- Should other changes to the Telephone Assistance Plan, its administration, participation rates, or funding levels be considered as a result of the FCC Lifeline Modernization Order? If so, what specific steps would be required to make any such change?

II. COMMENTS

A. *WHAT CLARIFICATIONS SHOULD BE MADE REGARDING TAP ELIGIBILITY REQUIREMENTS?*

Under Minnesota law, the eligibility requirements for the TAP program piggyback on the Lifeline eligibility requirements. Specifically, Minnesota Statute section 237.70, subd. 4a states “[t]he telephone assistance plan must provide telephone assistance credit for a residential household in Minnesota that is eligible for the federal Lifeline telephone service discount.”

Currently, applicants for the Lifeline program (and likewise TAP) become automatically eligible for benefits if they can show they are receiving benefits under the following programs or have income at or below 135% of the federal poverty guidelines:

- Medicaid
- Federal Public Housing Assistance
- Supplemental Security Income (SSI)
- National School Free Lunch Program
- Tribal Programs (i.e., Bureau of Indian Affairs General Assistance, Tribally-administered Temporary assistance for Needy Families or TANF, Tribally-administered Head Start, and Food Distribution Program on Indian Reservations or FDPIR)
- Supplemental Nutrition Assistance Program (SNAP)
- Low-income Home Energy Assistance Program (LIHEAP)
- State Eligibility Programs (including Minnesota Family Investment Program or MFIP and Temporary Assistance to Needy Families or TANF)

On April 27, 2016, the Federal Communications Commission (FCC) released its Third Report and Order, Further Report and Order, and Order on Reconsideration in the matter of Lifeline and Link – Up Reform and Modernization. In its Order, the FCC stated that “the time has come to modernize Lifeline for the 21st Century to help low-income Americans afford access to today’s vital communications network – the Internet, the most powerful and pervasive platform in our Nation’s history.”¹ The Order released on April 27, 2016 (commonly known as the Lifeline Modernization Order) made significant changes to the qualifications and benefits accrued under the Lifeline program in order to “encourage broadband providers to offer supported broadband services that meet standards [the FCC sets] to ensure ratepayers supporting the program are obtaining value for their contributions and Lifeline subscribers can participate fully in today’s society.”²

As part of its Lifeline Modernization Order, the FCC made numerous changes to the eligibility criteria for Lifeline benefits. The FCC established the Veterans Pension benefit and Survivors Pension benefit as Lifeline eligible programs.³ The FCC maintained Lifeline eligibility for SNAP, Medicaid, SSI, and Federal Public Housing Assistance, because the FCC found that these programs maintain low eligibility error rates and are sufficiently accountable.⁴ The FCC removed the eligibility for certain federal assistance programs including LIHEAP, National School Lunch Program, and Temporary Assistance for Needy Families, because “[the FCC found that] these programs do not offer the same advantages in developing a federal eligibility database, preventing waste, fraud and abuse, nor better targeting of the neediest low-income households” as other programs.⁵ The FCC maintained the current set of Tribal-specific eligibility programs.⁶ The FCC removed state specified eligibility criteria for Lifeline support “to allow for more efficient administration that enables

¹ Third Report and Order, Further Report and Order, and Order on Reconsideration in the matter of Lifeline and Link – Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, and the Connect America Fund, adopted March 31, 2016, WC Docket Nos. 11-42, 09-197, and 10-90, page 2, paragraph 1.

² Ibid. at page 3, paragraph 5.

³ Ibid. at page 63, paragraph 175.

⁴ Ibid. at pages 67 – 68, paragraphs 183 – 187.

⁵ Ibid. at page 68, paragraph 188.

⁶ Ibid. at pages 75 – 77, paragraphs 205 – 211.

comprehensive eligibility verification to continue to prevent waste, fraud and abuse.”⁷ The effective date for the revisions to the Lifeline eligibility requirements is December 1, 2016 for new subscribers.^{8 9}

The Department recommends that the Commission issue a clarification Order reflecting the revised eligibility standards set to take effect on December 1, 2016 for new subscribers.¹⁰ The revised eligibility standards, along with other changes in the Lifeline program (and likewise TAP) must also be reflected in an updated Lifeline/TAP application. In its June 8, 2016 Stakeholder Webinar on the Lifeline program, USAC¹¹ stated that neither USAC nor the FCC will create a universal Lifeline application form; this task will be left to the state regulatory agencies. The Commission may wish to create a form to be used by Minnesota’s telephone companies to ease the burden for the companies, to ensure that the form used by all companies provides accurate information, and to ensure a new form is in place for use on December 1, 2016. The Commission’s clarification Order may include the updated application form and, in addition to regulated carriers, would be available for distribution to social service agencies and other individuals and entities involved with eligible consumers to ensure that changes in the Lifeline and TAP programs are properly understood.

B. WHAT OTHER CLARIFICATIONS REGARDING THE TAP PROGRAM SHOULD BE CONSIDERED?

On May 9, 2016, Citizens Telecommunications Company of Minnesota, LLC and Frontier Communications of Minnesota, Inc. (Frontier) jointly filed comments in the current docket.

⁷ Ibid. at page 77, paragraph 212.

⁸ Ibid. at page 60, paragraph 167.

⁹ Under the Lifeline Modernization Order, applicants for the Lifeline program automatically are eligible for benefits if they can show they are receiving benefits under one of the following programs or if they qualify based on income by falling within a given range of the federal poverty guidelines: Medicaid, Federal Public Housing Assistance, Supplemental Security Income (SSI), Tribal Programs (i.e., Bureau of Indian Affairs General Assistance, Tribally-administered Temporary assistance for Needy Families or TANF, Tribally-administered Head Start, and Food Distribution Program on Indian Reservations or FDPIR), Supplemental Nutrition Assistance Program (SNAP), Veterans Pension and Survivors Benefits, or Income at or below 135% of the Federal Poverty Guidelines.

¹⁰ For existing subscribers, the effective date for the revisions to the Lifeline eligibility date will be the particular recertification date for each existing subscriber. In the Lifeline Modernization Order released on April 27, 2016, the FCC decided that existing “Lifeline customer’ eligibility must be recertified every 12 months, as measured from the subscriber’s service initiation date.” The FCC established this policy, calling it “rolling recertification,” in order to create “administrative efficiencies and avoid imposing undue burdens on providers, [the Universal Service Administrative Company] (USAC), [and] the National Verifier. Previously, Lifeline providers were required to annually recertify all subscribers except in states where the state Lifeline administrator or other state agency is responsible for recertification.” Third Report and Order, Further Report and Order, and Order on Reconsideration in the matter of Lifeline and Link – Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, and the Connect America Fund, WC Docket Nos. 11-42, 09-197, and 10-90, page 154, paragraph 416.

¹¹ The FCC chose USAC to collect payments from telecommunications companies in order to fund Lifeline through the Universal Service Fund (USF). USAC is also responsible for managing the distribution of funding for the Lifeline program. Here’s a more in-depth look at the company that manages Lifeline. See <http://miami.cbslocal.com/2015/01/19/the-role-of-usac-managing-the-lifeline-program/>

The Frontier comments included a comment about the FCC's March 31, 2016 Lifeline Reform and Modernization Order. Specifically, Frontier commented that "the Commission should . . . make clear that the state support provided through the TAP credit may also be used for stand-alone broadband service, in conformity with the federal Lifeline program." In its March 31, 2016 Lifeline Reform and Modernization Order, the FCC decided to allow the Lifeline credit to be used to support stand-alone broadband internet access service (BIAS) as well as bundled voice and data service packages.¹² The FCC decision on Lifeline reform came about a year after the FCC "Net Neutrality" decision declaring BIAS to be a telecommunications service. In the FCC's February 26, 2015 decision in the matter of Protecting and Promoting the Open Internet, the FCC reclassified BIAS to be a telecommunications service based on the FCC's "delegated authority to revisit [its] prior interpretation of ambiguous [federal] statutory terms."¹³ The FCC's February 26, 2015 decision declaring BIAS to be a telecommunications service paved the way for the FCC's decision allowing Lifeline credits to be used to support stand-alone BIAS.¹⁴

Minnesota law and the Commission's rules do not provide for the use of TAP benefits to pay for non-voice, broadband services. The Department made the following comments on this issue in its May 19, 2016 Reply Comments in the current docket:

In these reply comments the Department only wishes to comment on Frontier's request that the Commission make clear that "the TAP credit may also be used for stand-alone broadband service, in conformity with the federal Lifeline program." Since Frontier raised the issue, it may be appropriate for the Commission to address it to avoid potential confusion.

Minnesota Statute section 237.70, subd. 5 (nature and extent of credits) sets the criteria for the "telephone assistance" plan based upon the rate charged for "local exchange service." Minnesota Rules pt. 7812.0200 (purpose and construction) states that the "*purpose* of [rules chapter on TAP] is to develop and implement a statewide telephone assistance plan to provide telephone assistance credits *to reduce the local telephone rates of eligible residential households.*" Emphasis added. Minnesota law does not appear to be sufficiently open to interpretation to permit TAP funds to support stand-alone broadband service. However, since this issue is not yet ripe, the Commission may wish to simply clarify that TAP funds are not to

¹² Third Report and Order, Further Report and Order, and Order on Reconsideration in the matter of Lifeline and Link – Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, and the Connect America Fund, adopted March 31, 2016, WC Docket Nos. 11-42, 09-197, and 10-90, page 11, paragraph 30.

¹³ Report and Order on Remand, Declaratory Ruling, and Order in the matter of Protecting and Promoting the Open Internet, adopted February 26, 2015, GN Docket No. 14-28, page 144, paragraph 332.

¹⁴ The FCC's March 15, 2015 decision Promoting the Open internet was upheld in the June 14, 2016 decision of the United States Court of Appeals for the District of Columbia in the case of United States Telecom Association et al v. Federal Communications Commission and United States of America, NO. 15-1063.

be used for stand-alone broadband service unless there is explicit direction to do so from either the legislature or the Commission.

Minnesota law clearly requires TAP credits to be used for “local exchange service.” Unless the Commission interprets the law to say that BIAS is local exchange service, TAP funds may not be used to support stand-alone broadband service, even though the same customer may be eligible for the Lifeline program. If the Commission should agree with Frontier, consideration will need to be given to the funding of the TAP program, which is through a surcharge on telephone lines. Stand-alone broadband customers are not currently assessed a fee for the TAP program.

The Department recommends that the Commission clarify that the TAP program will continue to support eligible customers of telephone service and that customers of stand-alone broadband service will not qualify for the TAP program even though they may qualify for the Lifeline program.

C. *WHAT OTHER CHANGES TO THE TAP PROGRAM, ITS ADMINISTRATION, PARTICIPATION RATES, OR FUNDING LEVELS SHOULD BE CONSIDERED?*

The Department does not recommend any changes to the TAP benefit or surcharge levels or to other administrative aspects of the program at the present time. The Department’s recommendation to maintain the recently approved credit and surcharge levels is based on Minnesota law establishing TAP as a program to benefit eligible subscribers of local telephone service and not stand-alone broadband service. As Lifeline is phased out for stand-alone voice service, it will be appropriate for the Commission to determine whether an increase in the TAP credit is necessary to make local telephone affordable for low-income Minnesota consumers.

III. COMMISSION ALTERNATIVES

- A.
 - 1. Issue an Order clarifying the revisions in the eligibility requirements for the TAP program.
 - 2. Take no action at this time.
- B.
 - 1. Approve the provision of TAP credits to eligible residential households subscribing to stand-alone broadband service, effective December 1, 2016, consistent with the Lifeline program
 - 2. Find that TAP credits may only be provided for telephone service under existing statute and that stand-alone broadband customers will not be eligible for the TAP credit.
- C.
 - 1. Maintain the current TAP credit and surcharge levels.
 - 2. Modify the monthly TAP credit and/or surcharge and make other modifications to the TAP program as deemed appropriate.

VI. DEPARTMENT RECOMMENDATION

The Department recommends Alternative A.1., B.2 and C1.

- A. 1. Issue an Order clarifying the revisions in the eligibility requirements for the TAP program.
- B. 2. Find that TAP credits may only be provided for telephone service under existing statute and that stand-alone broadband customers will not be eligible for the TAP credit.
- C. 1. Maintain the current TAP credit and surcharge levels.

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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-16-302

Dated this 27th day of July 2016

/s/Sharon Ferguson

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Karl	Anderson	ka1873@att.com	AT&T	225 W Randolph St FL 25D Chicago, IL 60606-1838	Electronic Service	No	OFF_SL_16-302_Official
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_16-302_Official
Scott	Bohler	scott.bohler@ftr.com	Frontier Communications Corporation	2378 Wilshire Blvd Mound, MN 55364-1652	Electronic Service	No	OFF_SL_16-302_Official
Linda	Chavez	linda.chavez@state.mn.us	Department of Commerce	85 7th Place E Ste 500 Saint Paul, MN 55101-2198	Electronic Service	No	OFF_SL_16-302_Official
Ron	Elwood	relwood@mnlsap.org	Mid-Minnesota Legal Aid	2324 University Ave Ste 101 Saint Paul, MN 55114	Electronic Service	No	OFF_SL_16-302_Official
Deborah L.	Kuhn	deborah.kuhn@verizon.com	Verizon Wireless	205 N Michigan Ave FL 7 C/O VERIZON Chicago, IL 60601	Electronic Service	No	OFF_SL_16-302_Official
John	Lindell	agorud.ecf@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	Yes	OFF_SL_16-302_Official
Anthony	Mendoza	tony@mendozalawoffice.com	Mendoza Law Office, LLC	1000 University Ave Ste 222 Saint Paul, MN 55104	Electronic Service	No	OFF_SL_16-302_Official
William	Phillips	wphillips@aarp.org	AARP	30 E. 7th St Suite 1200 St. Paul, MN 55101	Electronic Service	No	OFF_SL_16-302_Official
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_16-302_Official