

# Minnesota Public Utilities Commission

## Staff Briefing Papers

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Meeting Date: **September 8, 2016** .....\*Agenda Item #5

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Companies: All local service providers

Docket No. **P999/CI-16-302**

### **In the Matter of Telephone Assistance Plan (TAP) Review**

- Issues:
- 1) Should the Commission issue any clarifications with respect to the TAP program as a result of the FCC Lifeline Modernization Order?
  - 2) Should the Commission take any other action?

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### ***Relevant Documents***

Notice of Comment Period .....	May 25, 2016
Notice of Extended Comment Period .....	June 23, 2016
Verizon's Initial Comments .....	June 27, 2016
Comments of AT&T Corp .....	July 21, 2016
Comments of Citizens Telecommunications and Frontier Communications .....	July 25, 2016
Comments of Minnesota Telecom Alliance .....	July 27, 2016
Comments of Minnesota Cable Communications Association (MCCA) .....	July 27, 2016
Qwest Corporation DBA CenturyLink QC's Comments .....	July 27, 2016
Comments of the Minnesota Department of Commerce .....	July 27, 2016
Reply Comments of Verizon Access Transmission Services .....	August 8, 2016
Reply Comments of Minnesota Cable Communications Association .....	August 8, 2016
Reply comments of Citizens Telecommunications and Frontier Communications .....	August 8, 2016
Reply Comments of the Minnesota Department of Commerce .....	August 8, 2016

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## I. STATEMENT OF ISSUES

Should the Commission issue any clarifications with respect to the TAP program as a result of the FCC Lifeline Modernization Order?

## II. BACKGROUND

On April 27, 2016, the Federal Communications Commission (FCC) issued its *Lifeline Modernization Order* (WC Dockets 11-42, 09-197, and 10-90). The Order has the effect, among other things, of changing the programs that confer eligibility on subscribers to the Lifeline program, and phasing out assistance to subscribers of voice only services. Eligibility changes for new Lifeline subscribers start on December 1, 2016. The FCC will allow the federal Lifeline credit to be used for broadband service alone or to be bundled with voice and data service packages.

The TAP program, governed by Minn. Stats. §§237.69-.71, contains provisions referring to “local service providers” and “local exchange service.” It also states that TAP “must” provide a credit to a residential household that is eligible for the “federal Lifeline telephone service discount.”

On May 9, 2016 Citizens Telecommunications and Frontier Communications (Frontier) filed Comments stating that Minnesota’s TAP fund should be used to support broadband services as the FCC had directed done with the Federal Lifeline program.

On May 18, 2016 the Minnesota Department of Commerce (Department) replied that the Commission did not have authority under existing Minnesota law to use TAP funds to support broadband services. The Department recommended the Commission issue an Order clarifying that TAP funds are not to be used for stand-alone broadband service without explicit direction to so from either the legislature or the Commission, and that the Commission will leave the TAP credit and surcharge levels unchanged at this time.

To address the questions raised by Frontier’s Comments and the Department’s Reply Comments on May 25, 2016 the Commission issued a Notice requesting comments on whether it should offer clarifications as to eligibility for the TAP program effective December 1, 2016, and in particular, whether TAP funds may be applied to broadband service. Comments were requested on the following topics:

- Should the Commission issue any clarifications with respect to TAP eligibility?
- Should the Commission issue any other clarifications in an Order regarding TAP?
- If any clarifications should be made, please cite to relevant portions of Minnesota Statutes Chapter 237 or other relevant law.
- Should other changes to the TAP program, 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?

### III. COMMENTS

#### A. Summary

In the comments and replies received in response to the Notice of Comment Period, Frontier repeated its call for the application of TAP to broadband services while the Department repeated its earlier assertion that Minnesota law does not all doing so. All Comments agree with the Department's position that TAP funds may not be used to support broadband services, except Frontier.

In addition, all parties recognized the need to incorporate the changed list of programs in which subscriber participation qualifies them for TAP and Lifeline. There is general consensus on the value of the State of Minnesota updating its joint TAP/Lifeline application to reflect these changes. There is also consensus on the value of on-going engagement by the State and all parties with the FCC and USAC as the National Verifier program is implemented during the next 3 years.

The Minnesota Telecom Alliance (MTA) suggested that the Commission might consider clarifying that customers need not obtain broadband in order to obtain the TAP subsidy even if it were to become a requirement of Lifeline.

#### B. Minnesota Department of Commerce

**Broadband:** The Department notes that on May 9, 2016 Citizens Telecommunications Company of Minnesota, LLC and Frontier Communications of Minnesota, Inc. (Frontier) jointly filed comments 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." One year before the Lifeline Reform and Modernization Order, the FCC's February 26, 2015 "Net Neutrality" decision declaring BIAS to be a telecommunications service paved the way for the its subsequent decision allowing Lifeline credits to be used to support stand-alone BIAS.

The Department's May 19, 2016, Reply Comments indicated that "Minnesota law and the Commission's rules do not provide for the use of the TAP benefits to pay for non-voice, broadband services." Restating its earlier submittal in its July 27, 2016 Comments, the Department explained:

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

Further, the Department reiterates:

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 standalone broadband service will not qualify for the TAP program even though they may qualify for the Lifeline program.

**Eligibility:** The Department acknowledged the FCC’s removal of LIHEAP, Minnesota Family Investment Program, National School Lunch Program, and Temporary Assistance for Needy Families from the list of programs in which participation qualified an applicant for Lifeline and the addition of the Veterans Pension benefit Survivors Pension program. Addressing the need to apply these changes:

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. 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.

**Other:** The Department did not recommend any changes to the TAP benefit or surcharge levels or to other administrative aspects of the program at the present time.

### C. Frontier Telecommunications

**Broadband:** Unlike all other parties submitting Comments Frontier ... “suggests that a fresh reading of the statute (and the Commission’s rules) under the FCC approach *would* allow for the application of the TAP credit to stand-alone broadband service.” (Emphasis added. See Frontier Comments, P. 2) Frontier presents two steps in support of its rationale:

Minn. Stat. §237.70, subd. 3 states that “The telephone assistance plan must contain adequate provisions...to enable eligible subscribers to take advantage of the federal matching plan.” The legislature’s intent here, it seems, is that the state plan be implemented in such a way as to allow subscribers to obtain the maximum advantage from the federal Lifeline and state TAP programs. Extending the state TAP credit to all customers receiving the federal Lifeline credit would satisfy that intent.

Further, Minn. Stat. §237.70, subd. 4a, states that “The telephone assistance plan must provide telephone assistance credit for a residential household in Minnesota that is eligible for the federal Lifeline telephone service discount.” Under the FCC’s recent action, a stand-alone broadband customer could be eligible for the federal Lifeline credit, and thus should be eligible for the state TAP credit as well.

Frontier rebuts the assertion by the Department and others that the Commission is precluded from extending the TAP credit to stand-alone broadband service stating:

The Department cited Minn. Stat. §237.70, subd. 5, which uses the rate charged for local exchange service as a criteria to be used by the Commission in setting the TAP credit amount. That is true; however, that does not mean that once the Commission has set that TAP credit amount (currently at \$3.50) the TAP credit cannot be extended to services other than traditional voice local exchange service.

The Department also noted that Rule 7817.0200 states that the purpose of the Commission’s Chapter 7817 rules regarding 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”. It is worth noting, however, that the last sentence of Rule 7817.0200 states, “This chapter is to be liberally construed to further these purposes.”

### D. Verizon

**Broadband:** Verizon Access Transmission Services (Verizon) succinctly presented its argument that the Commission does not have statutory authority to extend TAP to broadband services in the wake of FCC action doing so Lifeline Services.

As a creature of statute, the Commission cannot exceed the limited authority granted by Minn. Stat. §§ 237.69, 237.70 and 237.701. *See Peoples Natural Gas Co., Div. of Inter-North, Inc. v. Minnesota Public Utilities Com.*, 369 N.W.2d 530, 534 (Minn. 1985) (being a creature of statute, Commission has only those powers given by the legislature and may not enlarge its powers beyond that contemplated by the legislature). These statutes do not authorize the collection or expenditure of TAP funds to support broadband services. Rather, they refer exclusively to “telephone” and “local exchange” service, neither of which encompasses broadband service. Moreover, Minn. Stat. § 237.701, Subd. 1(1) explicitly limits carrier reimbursement from the TAP fund to “local service providers,” and does not authorize payments to broadband service providers. Absent statutory changes, the Commission has no jurisdiction or authority to collect or disburse TAP funds to subsidize broadband service.

### E. AT&T Corporation

**Broadband:** TAP funds may not be applied to broadband. By statute, the scope of TAP is limited to the provision of “telephone credits” for “local exchange service.” Minn. Stats. 237.70, subds. 2, 5. Furthermore, the Commission’s TAP rules state that “[t]he purpose of this chapter 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. Minn. Rules 7817.0200 (*emphasis added*).

**Eligibility:** AT&T commented that the Commission should clarify eligibility for Minnesota’s Telephone Assistance Plan (“TAP”) in light of changes to the federal Lifeline program adopted by the FCC in its recent Lifeline Modernization Order ... issued April 27, 2016 (WC Dockets 11-42, 09-197, and 10-90). TAP eligibility adopts the FCC’s Lifeline qualifications, which have changed.

The Commission should direct that, beginning with December 1, 2016, the effective date of the FCC’s amendment to Rule 54.409, the federal assistance programs that will qualify a customer for TAP benefits will no longer include LIHEAP, TANF or the School Lunch program but will add the Veterans and Survivor Pension Benefit program. The Commission should further authorize local exchange carriers to amend their tariffs to reflect these changes at that time.

**Other:** AT&T encourages the State of Minnesota to work with USAC, industry, the FCC and others on the planned National Lifeline Eligibility Verifier program.

### F. Minnesota Telecom Alliance

**Broadband:** “Minnesota statutes currently limit Minnesota TAP to voice service only.” This conclusion rests on several statutory provisions.

Minn. Stat. § 237.70 expressly limits the TAP to local telephone service providers that provide local exchange service. Minn. Stat. § 237.70, subdivision 2 reads:

**Scope.** The telephone assistance plan must be statewide and apply to local service providers that provide local exchange service in Minnesota. (Emphasis added.)

"Local service providers" and "local exchange service" are terms that relate specifically to local telephone service (as reflected in Minn. R. Chapter 7817 and Chapters 7811 and 7812). The use of the terms "Local service providers" and "local exchange service" limits payment of TAP support to Local Exchange Carriers.

Minn. Stat. § 237.70 expressly refers to "telephone assistance" and defines that level of assistance available in terms of the rates charged "for local exchange service." Minn. Stat. § 237.70, subdivision 5 reads in part:

**Nature and extent of credits.** The telephone assistance plan may provide for telephone assistance credits to eligible households up to the amounts available under the federal matching plan. However, the credits available under the telephone assistance plan may not exceed:

(1) more than 50 percent of the local exchange rate charged for the local exchange service provided to the household by that household's local service provider; (Emphasis added)

None of these terms would support application of TAP credits to broadband service, much less standalone broadband service even if provided by a Local Exchange Carrier. Providing TAP to support standalone broadband service provided by an entity that was not a Local Exchange Carrier would be even less consistent with these statutes.

Minn. Stat. § 237.70, subd. 2 also limits the scope of the TAP to "local service providers that provide local exchange service in Minnesota." These terms are not broad enough to support payments to providers of service that are not providing "local exchange service in Minnesota," including providers of broadband service that are not providing "local exchange service in Minnesota. That limitation of entities who can receive TAP funding is sensible and consistent with the limitation of funding sources to "each local service provider in the state" as set forth in Minn. Stat. § 237.70, subd. 6.

**Eligibility:** The Minnesota Telecom Alliance (MTA) observed that the Minnesota Rules 7817.0400 incorporate by reference the FCC Lifeline eligibility criteria. "Continuing to use the same eligibility criteria remains appropriate ... and the Commission may wish to clarify ... that TAP eligibility remains the same as the Federal Lifeline plan."

**Other:** MTA notes that there is no statutory requirement for a customer who wants only voice service to obtain broadband in order to receive TAP. Specifically, MTA suggests:

[T]he Commission should clarify its rules to provide that customers may continue to receive TAP support for local telephone service provided by local exchange carriers even if: (1) the Federal Lifeline Program were interpreted to require customers to subscribe for broadband service to remain eligible; and (2) the Minnesota customers did not subscribe for broadband service and thus became ineligible for the Federal Lifeline Program.

### **G. Minnesota Cable Communications Association (MCCA)**

The Minnesota Cable Communications Association (MCCA) provides a good legal and administrative overview of the present TAP and Lifeline programs and changes wrought by the FCC rulemaking.

**Broadband:** MCCA affirms that TAP cannot be used to support broadband:

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.”

**Eligibility:** MCCA notes that changes in eligibility for participation in Lifeline must be incorporated into TAP and be communicated to subscribers and providers. The current TAP/Lifeline application must remove from the list of participation-qualifying programs the NSLP, Minnesota Family Investment Program, TANF and LIHEAP and add the Veterans Pension and Survivors Pension program.

In addition, MCCA raises significant questions regarding the launch of the National Verifier Program on December 31, 2019, and its required use by all states in making Lifeline eligibility determinations. MCCA notes that the USAC will submit a “Draft National Verifier Plan” by December 1, 2016. The Commission and/or Department is encouraged to discern how implementation will occur, especially regarding whether service providers will work directly with USAC and the FCC to ensure that currently eligible subscribers are entered into the new database, or if subscribers be responsible for re-applying. Minnesota Statutes Section 237.70, Subd. 7 codification of the TAP/Lifeline administrative process may also need to be revisited if forms are no longer used or coordinated by service providers as is done now. (See MCCA Comments, p. 7-9)



## H. CenturyLink

**Broadband:** Observing that the FCC's Lifeline program is phasing out voice service credits, CenturyLink observes that the Minnesota legislature and Commission needs to make policy decisions regarding the continuation of TAP, and inclusion of broadband services, changing laws and rules to reflect those decisions.

**Eligibility:** CenturyLink echoes the comments of other's indicating the need to add one, and remove 4 programs from the list of participation-eligible programs for TAP/Lifeline. In addition, CenturyLink cites the FCC's assessment that most subscribers who had qualified for Lifeline through programs no longer available, will be eligible through the remaining programs in which they are anticipated to also be participants.

**Other:** CenturyLink agrees with AT&T's comment on the desirability for everyone to work together in the creation of the National Lifeline Eligibility Verifier Program and its use to determine TAP eligibility.

## IV. REPLY COMMENTS

### A. Frontier Reply Comments

Acknowledging that all other parties disagree with its suggestion to apply TAP to broadband services, Frontier argues parties raise 3 objections which do not prohibit the Commission from deciding to allow TAP credits to be applied to broadband service.

#### **Only local service providers may participate in the TAP credit program**

Verizon, MTA, and AT&T all point to citations in the statute that state that only local service providers may participate in the TAP credit program. Minn. Stat. §237.70 subd. (2) states that, "The telephone assistance plan must be statewide and apply to local service providers that provide local exchange service in Minnesota." Also, Minn. Stat. §237.701 subd. (1) provides that, "Money in the fund may be used only for: (1) reimbursement to local service providers for expenses and credits allowed...". Frontier agrees that these citations make clear that only local service providers may participate in the TAP credit program. However, most local service providers, such as Frontier, provide both local telephone service and broadband service. The restriction of the TAP program to local service providers, like Frontier, does not necessarily prohibit the provider from applying the TAP credits to both its voice-only and broadband customers.

#### **The TAP credit is computed based on the rate for local telephone service**

The Department, MTA, and AT&T all noted Minn. Stat. §237.70, subd. (5), which uses the rate charged for local exchange service as a criteria to be used by the Commission in setting the TAP credit amount. Although this is how the

credit is calculated, this provision does not mean that once the Commission has set that TAP credit amount (currently at \$3.50) the TAP credit cannot be extended to services other than traditional voice local exchange service.

**The goal of the TAP program is stated to be the reduction of local telephone rates**

The Department and AT&T also noted that Rule 7817.0200 states that the purpose of the Commission's Chapter 7817 rules regarding 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." It is worth noting, however, that the last sentence of Rule 7817.0200 states, "This chapter is to be liberally construed to further these purposes."

The Minnesota statute and the Commission rules that created and implemented the TAP program predate the appearance of consumer broadband services. As a result, the statute and rules do not give explicit consideration to broadband services, and certainly do not anticipate the actions taken by the FCC as it modernized its Lifeline program. The absence of the concept of broadband service in the Commission's TAP rules was not the result of a conscious intention by the Commission to exclude that service from the TAP credit. Rather, stand-alone broadband service simply did not exist when the Commission wrote its rules.

In fact, the Legislature has subsequently addressed the topic of broadband in legislation enacted more recently. In Minn. Stat. §237.012, subd. (1) and (2), the statute lays out policy goals that "all state residents and businesses have access to high-speed broadband" and that Minnesota would be in "the top five states for broadband access". Clearly, the economic accessibility of broadband to the low income segment of "all state residents" would be advanced by providing the TAP credit to eligible broadband customers.

**B. Commerce Department Reply Comments**

The Department's Reply Comments focus first on the lapsed "federal matching plan" and secondly on speculation regarding the National Verifier Program which has yet to be defined.

The "federal matching plan" was referenced by both Frontier/Citizens and the MCCA. In their July 26, 2016 comments, Citizens/Frontier cited Minnesota Statute section 237.70, subd. 4a, which states that "the telephone assistance plan must provide telephone assistance credit for a residential household in Minnesota that is eligible for the federal Lifeline telephone service discount."

Citizens/Frontier interprets the language in Minnesota Statute section 237.70, subd. 4a to support their recommendation that "a stand-alone broadband customer could be eligible for the federal Lifeline credit, and thus should be eligible for the state TAP credit as well." With a similar argument, the MCCA states that TAP credits may be provided "up to the amounts available under the federal matching

plan.” The MCCA then notes that, if the level of standalone Lifeline voice support for most areas of Minnesota is headed toward zero over the next several years, under the FCC’s *Lifeline Modernization Order*, the “amount available [for the TAP credit] under the federal matching plan” will also head toward zero.

The Department notes that “federal matching plan” was eliminated by the FCC in its January 31, 2012 Order wherein it set the Lifeline credit at a flat rate of \$9.25 per month, per line.<sup>1</sup> As a result, the level of the TAP credit and the level of the Lifeline credit are no longer linked. Minnesota statutes simply have not been updated to reflect that a federal matching plan no longer exists. Thus, the arguments of Citizens/Frontier and the MCCA with respect to the “federal matching plan” appear to be moot.

The other issue that may not be well understood concerns what the FCC refers to as the “National Verifier.” The MCCA suggests that Minnesota’s TAP application will no longer be necessary if Minnesota relies upon the National Verifier to certify eligibility for the TAP program. It is the Department’s understanding that the processes involving the National Verifier program have not been fully established. No date has yet been set for the National Verifier program to become operational in Minnesota. Since future events will provide guidance as they pertain to the National Verifier, the Department recommends that the Commission take no action concerning the National Verifier program at this time.

### C. Verizon’s Reply Comments

Verizon reiterates that all parties other than Frontier are in agreement that Minnesota law does not authorize the collection or expenditure of TAP funds to support broadband services. Verizon goes on to specifically rebut Frontier’s arguments as follows:

While conceding that the relevant statutes “do not give explicit consideration to consumer broadband services,” Frontier claims that the Commission could give the law a “fresh reading.” Frontier Comments at 2. To support its stance, Frontier offers a truncated quotation from Minn. Stat. § 237.70, Subd. 3, claiming that “the legislature’s intent here, it seems, is that the state plan be implemented in such a way as to allow subscribers to obtain the maximum advantage from federal Lifeline and state TAP programs.” Frontier Comments at 2. However, Frontier replaces the critical words “local service providers” with an ellipsis, attempting to erase the important statutory limitation in Minn. Stat. § 237.70, Subd. 3 that the Minnesota TAP program is only for *local telephone service*, not broadband service.

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<sup>1</sup> January 31, 2012 Report and Order and Further Notice of Proposed Rulemaking in FCC 12-11 in the matter of Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal – State Joint Board on Universal Service and Advancing Broadband Availability Through Digital Literacy Training, paras. 4, 14 and 396. Paragraph 396, footnote 1028 cites to the FCC’s May 7, 1997 Report and Order in FCC 97-157 in the matter of Federal – State Joint Board on Universal Service, para. 326.

Frontier next cites Minn. Stat. § 237.70, Subd. 4a for the proposition that any household eligible for federal Lifeline support is eligible for TAP support, even if the household is not purchasing voice service. However, Frontier again ignores key statutory language that limits TAP program credits to “*telephone* assistance credit.” Minn. Stat. § 237.70, Subd. 4a. (emphasis added). Minn. Stat. § 237.70, Subd. 5 likewise makes clear that the TAP program is limited to local telephone service: “The *telephone* assistance plan may provide for *telephone* assistance credits to eligible households up to the amounts available under the federal matching plan. However, the credits available under the *telephone* assistance plan may not exceed: (1) more than 50 percent of the *local exchange rate* charged for *local exchange service* provided to the household by the household’s *local service provider* ...” (emphasis added). These provisions are limited to local voice service, not broadband, and the Commission may not exceed its statutory authority in the manner Frontier proposes. See *Peoples Natural Gas Co., Div. of Inter-North, Inc. v. Minnesota Public Utilities Com.*, 369 N.W.2d 530, 534 (Minn. 1985) (being a creature of statute, Commission has only those powers given by the legislature and may not enlarge its powers beyond that contemplated by the legislature). This is true despite Frontier’s unsupported assertion that TAP credits can be used for purposes other than those outlined in the statute as long as the amount of the credit is tied to the rate for local exchange service. Frontier Comments at 2-3. Under Frontier’s flawed theory, TAP funds could be used for anything whatsoever as long as the amount doled out is based on local exchange service rates.

Finally, Frontier claims that the final sentence of Commission Rule 7817.0200 – “[t]his chapter is to be liberally construed to further these purposes” – allows the Commission to use TAP funds to subsidize broadband. Frontier Comments at 3. First, the Commission’s rules cannot usurp the statutes they implement, which limit the TAP program to local telephone service. Second, in the sentence quoted by Frontier, “these purposes” refers to the purposes set forth in the preceding sentences, which are limited to local telephone service:

The purpose of this chapter 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, to be jointly administered by the commission, the Department of Commerce, and the local service providers. The purpose of this chapter is also 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.

Minn. R. 7817.0200 (emphasis added).

In short, Frontier misinterprets the law and the Commission may not collect or disburse TAP funds to support broadband services.

#### D. Minnesota Cable Communications Association Reply Comments

The MCCA affirms its agreement with all parties, except Frontier, that Minnesota law does not permit TAP funds to be used to support broadband services.

... Frontier's call for a "fresh reading" of the Minnesota TAP statute is not in accord with Minnesota rules of statutory construction. In Minnesota, a tribunal interpreting a statute must first determine whether a statute, on its face, is ambiguous.<sup>2</sup> Courts construe words and phrases "according to rules of grammar and according to their most natural and obvious usage unless it would be inconsistent with the manifest intent of the legislature."<sup>3</sup> When possible, "no word, phrase, or sentence should be deemed superfluous, void, or insignificant."<sup>4</sup>

MCCA agrees with the comments of the Minnesota Department of Commerce (DOC) and the Minnesota Telephone Alliance (MTA), which cite to the enabling statutes for the TAP, and point out that these statutes consistently and clearly refer to *telephone* service and say nothing about TAP funds supporting broadband services.<sup>5</sup> The legislative intent of the TAP enabling statutes could not be more clear: it is a program designed to support telephone services – and nothing more. The FCC's policy decision to reform the Lifeline program does not alter the intent of the Minnesota Legislature in enacting a state *telephone assistance* program. To supply the Minnesota TAP enabling statutes with the interpretation advocated by Frontier would be to render the words "telephone assistance" and "local exchange service" meaningless and to read such terms out of the enabling statutes.<sup>6</sup> There is no ambiguity in the TAP statute. It is a program the Minnesota Legislature clearly intended for supporting telephone service. Even if the statute were ambiguous, which it is not, there is no evidence of any legislative intent to support broadband service in the TAP enabling statute. To conclude otherwise would be to contravene the "natural and obvious" language of the TAP statute.

The MCCA also clarified the Department's comment that "neither the USAC nor the FCC will create a universal Lifeline application form" (See Department Comments, p.3) to note they would not do so "by December 1, 2016" and encouraged on-going engagement of the Commission with USAC and the FCC regarding the design, or need for, the application once the National Verifier is operational.

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<sup>2</sup> *Kreuger v. Zeman Construction Co.*, 781 N.W.2d 858, 861 (Minn. 2010) (citations omitted).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> DOC Comments at 4-5; MTA Comments at 2-3.

<sup>6</sup> See, e.g., Minn. Stat. §237.70, Subd. 1 ("The Commission shall develop a telephone assistance plan under this section.") and Subd. 2 ("The telephone assistance plan must be statewide and apply to local service providers that provide local exchange service in Minnesota.")

## **V. STAFF ANALYSIS**

**Broadband:** Based on a well-developed record herein, Staff concurs with the Department and all commenting parties (excluding Frontier) that Minn. Stats. §§237.69-.71, contain provisions referring to “local service providers” and “local exchange service” that preclude a reasonable application of TAP to broadband services. Explicit direction by the Commission in this regard will help ensure uniform statewide understanding and administration of the TAP by all involved parties.

**Program Eligibility Changes:** No party disagreed with the applicability of the newly changed eligibility standards for the federal Lifeline program to the TAP. However, while being aware of the addition of the Veterans Pension Benefit Survivors Pension program, commenting parties did not always uniformly acknowledge the FCC’s removal from the list of participation-eligible programs of LIHEAP, Minnesota Family Investment Program (i.e., a “state eligibility program”), National School Lunch Program, and Temporary Assistance for Needy Families. This Commission could choose to repeat the programs listed in the FCC Modernization Order if it chose to do so, although it appears the FCC Order was clear. Staff also expects to issue a Notice to all local exchange carriers regarding the changes to the TAP Program and the program eligibility changes could be repeated there. Those next steps are discussed below.

**Next Steps:** Following the issuance of the Order here, Staff expects to take steps to ensure changes to the TAP program are implemented. First, by statute, the Commission and Department are charged with developing the TAP application, which must be used by subscribers.<sup>7</sup> The program eligibility changes and any other clarifications the Commission issues (such as the eligibility of broadband) will need to be incorporated into a new TAP application and distributed to local exchange carriers. The Commission’s Consumer Affairs Office (CAO) also distributes applications and other materials about the TAP and Lifeline programs to a network of social service providers so that they can distribute TAP applications at the time a low income consumer signs up for other low income programs. Staff is also monitoring the changes to the Lifeline program which are expected to take effect December 1 of this year. These next steps need no formal Commission action; Staff includes them here for purposes of transparency.

**National Verifier:** Some parties such as AT&T and MCCA referenced the National Verifier database the FCC expects to eventually have in operation. This database is anticipated to be a national database, comprised of all 50 states’ databases that contain the names and identifying information of any state resident on any program that would confer eligibility for Lifeline, plus any federal databases that contain similar identifying information. The intent of the national database would be to verify eligibility once a customer applies for Lifeline. As one can imagine, it is an ambitious effort. There will be numerous technical issues to work out, and likely financial arrangements to be made if states are required to share their databases with the FCC’s contractor, USAC.

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<sup>7</sup> Minn. Stat. §237.70, Subd. 7(a): The Commission and 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....

Given the magnitude of the National Verifier project, staff agrees with the Department that it is premature to make any assumptions about this project or how it could affect the state application process for TAP. Since staff is monitoring developments generally on the FCC's Lifeline Modernization Order, staff is also monitoring developments on this Verifier database.

**TAP Fund:** Staff notes that the Department and others commented that the TAP support and surcharge levels should remain unchanged at this time. Staff notes that the prior record in this proceeding lacks supporting data or analysis regarding this issue. While agreeing with the recommendations to leave the subsidy and surcharges both unchanged at present, Staff offers the following update of the TAP Fund for the Commission's consideration.

The TAP Administrator reports that the June 30, 2016 fund balance was \$1,149,769. Compared to the December 31, 2015 balance of \$1,221,333 the fund balance has declined by \$71,565 or about \$12,000 per month during the first half of this year. The number of lines and subscribers also continue to decline overall at a rate resulting in a reduced fund balance as previously contemplated by the Commission.<sup>8</sup> At the present rate of fund additions and withdrawals, the TAP fund remains above its target balance of approximately \$395,000 and is anticipated to do so well into mid-2017 or later.

Staff will continue to monitor the TAP fund on a quarterly basis to determine an appropriate time to recommend changes to stabilize the Fund at, or near, its target balance of \$395,000.

Furthermore, as the State considers possible changes to the TAP program in response to changes to its companion federal Lifeline program, changes to the surcharge and the subsidy may then be timely considered. If and when such changes occur, Staff will reassess TAP fund needs and report to the Commission.

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<sup>8</sup> Commission Order Maintaining Current TAP Credit and Surcharge Levels and Deferring Further Action, June 23, 2016, Docket No. P-999/CI-16-302.

## **VI. COMMISSION OPTIONS AND RECOMMENDATIONS**

- A. 1. Issue an Order confirming that the low income programs which confer eligibility on the federal Lifeline program also confer eligibility on low income customers applying for Minnesota's Telephone Assistance Plan.  
(Recommended by Department of Commerce)
- 2. Take no action at this time.
- B. 1. 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.  
(Recommended by Department of Commerce)
- 2. 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
- C. 1. Maintain the current TAP credit and surcharge levels.  
(Recommended by Department of Commerce)
- 2. Modify the monthly TAP credit and/or surcharge and make other modifications to the TAP program as deemed appropriate.
- D. Other additions the Commission may deem appropriate.

### **Staff Recommendations**

Staff concurs with recommendations of the Department of Commerce, Options B.1 and C.1. Staff does not oppose Decision Option A.1, but will be listing program eligibility on TAP applications and Commission Notices as well.