

P-999/R-87-358 STATEMENT OF NEED AND REASONABLENESS

STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

In the Matter of the Proposed Rule Amendments Governing the Telephone Assistance Plan, Minn. Rules, parts 7817.0100 to 7817.1000.

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DOCKET NO. P-999/R-87-358

STATEMENT OF NEED AND
REASONABLENESS

I. INTRODUCTION

The Minnesota Public Utilities Commission (Commission) proposes to amend its permanent rules governing the Telephone Assistance Plan (TAP). See Minn. Rules, parts 7817.0100 to 7817.1000.

Rule amendments are necessary because of changes in the law enacting TAP. See Laws of Minnesota 1988, chapter 621, subd. 9 to 20. These rule amendments were recommended to the Commission by the TAP Advisory Task Force. The TAP Advisory Task Force consists of representatives of the affected state and local agencies, telephone companies, and citizen groups.

II. STATEMENT OF COMMISSION'S STATUTORY AUTHORITY

The Commission's statutory authority to adopt the rules is set forth in Laws of Minnesota 1988, chapter 621, subd. 18, which provides:

The commission may adopt emergency and permanent rules to implement sections 1 to 16.

The Commission also has general rulemaking authority under Minn. Stat. section 237.10 (1986).

Under these laws, the Commission has the necessary statutory authority to adopt the proposed rule amendments.

III. STATEMENT OF NEED

Minn. Stat. ch. 14 (1986) requires the Commission to make an affirmative presentation of facts establishing the need for and reasonableness of the rules as proposed. In general terms, this means

that the Commission must set forth the reasons for its proposal, and the reasons must not be arbitrary or capricious.

However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention, and reasonableness means that the solution proposed by the Commission is appropriate. The need for the rules is discussed below.

The need for the proposed rule amendments arises from the recent amendments to the law governing TAP. See Laws of Minnesota 1988, chapter 621, subd. 9 to 20. The statutory amendments change:

- how the TAP surcharge is collected;
- who administers the TAP surcharge funds;
- the amount of reimbursement for administrative expenses; and
- who is eligible for TAP credits.

The permanent rules governing TAP are no longer appropriate as a result of these statutory amendments. Therefore, the proposed rule amendments are needed.

IV. STATEMENT OF REASONABLENESS

The Commission is required by Minn. Stat. ch. 14 (1986) to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. Reasonableness is the opposite of arbitrariness or capriciousness. It means that there is a rational basis for the Commission's proposed action.

However, the proposed rules need not be the most reasonable solution to the situation which created the need for rules. The proposed rules are not unreasonable simply because a more reasonable alternative exists or a better job of drafting might have been done.

The reasonableness of the proposed rules is discussed below.

A. Reasonableness of the Rules as a Whole

The overall approach taken by the Commission in proposing these rule amendments was to consult with an Advisory Task Force comprised of representatives of the state and local agencies involved, the telephone companies, and the affected citizen groups.

Consultation with an Advisory Task Force is a reasonable means of preparing proposed rule amendments because it draws on the knowledge and expertise of various entities.

The Advisory Task Force analyzed the changes in Laws of Minnesota 1988, chapter 621, subd. 9 to 20, and the impact of these changes on the permanent TAP rules. The Commission found the Advisory Task Force's recommended rule amendments to be reasonable and consistent with the new law. Therefore, the Commission proposes these rule amendments for adoption.

B. Reasonableness of Individual Rules

The following discussion addresses the specific provisions of the proposed rule amendments.

7817.0100 DEFINITIONS

A new subpart 3a is added to the definitions. Subpart 3a defines "Department of Administration" as the Minnesota Department of Administration. The new TAP law requires the Department of Administration to perform certain duties. See Laws of Minnesota 1988, chapter 621, subd. 16. As a consequence, the Department of Administration has been added to various sections of the rules. See proposed Minn. Rules, part 7817.0300, subp. 3. Therefore, defining the Department of Administration in subpart 4 serves to shorten terminology used elsewhere in the rules and is reasonable because it clarifies this term for the reader.

A new subpart 5a is added to the definitions. Subpart 5a defines "disabled" as it is defined in Minn. Stat. section 363.01, subd. 25 (1986). A definition of disabled is necessary because disabled persons are now eligible for TAP credits. This definition is consistent with the definition of disabled in the new TAP law. See Laws of Minnesota 1988, chapter 621, subd. 9. Therefore, it is reasonable to use this definition of disabled in the proposed rule amendments.

Subpart 6 defines "federal matching plan". The definition has been amended to recognize the change in the definition of federal matching plan in the amended TAP law. See Laws of Minnesota 1988, chapter 621, subd. 10. The new law defines federal matching plan as "any" such plan formulated by the Federal Communications Commission that provides federal assistance to local telephone subscribers. It is reasonable for the rule to be consistent with the statute in this regard.

This subpart has also been amended to clarify that the federal plan cited in the rule definition is only one such federal plan. For example, the Link-Up America plan offers telephone installation assistance to qualified applicants. Hence, it is reasonable to add the language "including" to the rule definition of federal matching plan.

Finally, this subpart has been clarified to recognize that the federal access charge referred to in the definition is an "interstate" rather than an intrastate, access charge. The Federal Communications Commission regulates interstate access charges. Intrastate matters are left to the states to regulate. Therefore, this clarification is reasonable because it avoids misleading the reader.

The definition of "local exchange service" in subpart 10 has two clarifying changes. The word "telecommunication" has been changed to "telephone" to be consistent with the terminology used elsewhere in the rules. The phrase "telephone company" has been added to clarify that the "tariffs"

referred to in the definition are those of the telephone company. These amendments are reasonable because they result in a clearer, more consistent definition.

A similar change has been made in subpart 13 defining "subscriber". The word "telecommunications" has been removed. This amendment is reasonable because it results in the phrase "local exchange service" being consistent with the definition of local exchange service in subpart 10.

A new subpart 14a, defining "telephone assistance fund" has been added to the rule. The telephone assistance fund is a statewide surcharge revenue pool created by the recent statutory amendments. See Laws of Minnesota 1988, chapter 621, subd. 16. A new rule part has been added to the rules to govern the telephone assistance fund. See proposed Minn. Rules, part 7817.0300, subp. 3. Therefore, it is reasonable to shorten the terminology used in the rules and to clarify this term for the reader by adding this definition of telephone assistance fund to the rules.

Subpart 16 defining "telephone company" has been amended by adding the phrase "and also means a company". This phrase is reasonable because it clarifies that TAP applies to telephone companies that provide local exchange service. The word "telephone" has also been removed from the phrase "local exchange service" to be consistent with the definition of local exchange service in subpart 10.

7817.0200 PURPOSE AND CONSTRUCTION

On line 16 on page 2 of the proposed rule, the phrase "exchange service" has been added. This amendment makes the rule part consistent with the definition of "local exchange service" in proposed part 7817.0100, subp. 10, and, therefore, is reasonable.

7817.0300 FUNDING

Subpart 1 governs the uniform statewide monthly surcharge through which TAP is funded. The amendments to subpart 1 reflect the statutory amendments to the TAP law. See Laws of Minnesota 1988, chapter 621, subd. 14.

The new statute on TAP funding changes the level of surcharge. Formerly, the TAP law capped the surcharge level at \$2,500,000 and apportioned that amount between the telephone companies based on their relative number of access lines. The new law removes those requirements and replaces them with the requirement that the surcharge not exceed ten cents per access line.

To reflect these statutory changes, subpart 1 has been amended by adding the phrase "not to exceed ten cents per access line" and by deleting the criteria upon which the surcharge was calculated under the old TAP law (former items A through C). These changes are reasonable because they parallel the legislative amendments.

In addition, subpart 1 has been amended so that telephone companies have the option of assessing the surcharge per access line or combining the TAP surcharge with surcharges for other items, such as the 911 telephone service, or including the surcharge in their rates.

These options stem from the combined local access surcharge provision of the amended TAP statute. See Laws of Minnesota 1988, chapter 621, subd. 1. That subdivision requires telephone companies to collect from each subscriber an amount or amounts representing the total of the surcharges required under Minn. Stat. sections 237.52, 237.70, and 403.11. Minn. Stat. section 237.52 (1987 Supp.) governs the Telecommunication Access for Communication-Impaired Persons plan. Minn. Stat. section 237.70 (1987 Supp.) governs TAP. Minn. Stat. section 403.11 (1986) governs the 911 telephone service.

It is reasonable to allow the companies to implement a surcharge method that is economical and efficient. A particular method is not mandated by the statute. Each of the methods provided for in the rule is reasonable because each method results in the TAP surcharge being collected, as required by statute.

Finally, a clarifying amendment has been made in subpart 1. Beginning on line 34 on page 2 of the proposed rule, one sentence has been made into two sentences. The two sentences tell when the level of surcharge must be redetermined each year and when the redetermined surcharge is effective. This change is reasonable because it makes the intent of the rule more readable and more easily understood.

Subpart 2 has been amended in several respects. Language has been stricken that is no longer appropriate in light of the amended TAP legislation. In addition, a reporting requirement has been added regarding subscribers who do not pay the TAP surcharge.

Use of the surcharge revenues collected by the telephone companies has changed pursuant to Laws of Minnesota 1988, chapter 621, subd. 15. Administrative expenses of the companies have been limited under the new law and the surcharge revenues are remitted to the Department of Administration. Therefore, it is reasonable to remove the language in subpart 2, and rename subpart 2, because the language no longer applies under the new TAP law.

There has also been language added to subpart 2 regarding subscribers who do not pay the TAP surcharge. Telephone companies occasionally experience this problem. Since the TAP surcharge is required by law, companies cannot waive collection of the surcharge from persons who refuse to pay. For this reason, the rule directs telephone companies to notify the Commission if a subscriber does not pay the surcharge.

Subpart 2 requires companies to include the subscriber nonpayment information in their monthly or quarterly report. See proposed Minn. Rules, part 7817.0900, subp. 3, item H. The Commission needs this information to determine the amount of nonpayment for use in its report to the Minnesota Legislature in January, 1989. See Laws of Minnesota 1988, chapter 621, subd. 17. Since the companies alone have the necessary data, it is reasonable to require the telephone companies to report on nonpayment to the Commission.

Existing subpart 3 governing the statewide surcharge revenue pool has been deleted and a new subpart 3 governing the telephone assistance fund has been added. These changes are necessitated by the amended TAP legislation which creates a telephone assistance fund handled by the Department of Administration rather than the Commission. See Laws of Minnesota 1988, chapter 621, subd. 16.

Under the new law, telephone companies must remit the surcharge revenues to the Department of Administration. The Department of Administration must deposit the surcharge revenues in the telephone assistance fund. The Commission then uses the money in the fund to reimburse the telephone companies, the Department of Human Services and itself.

The amount of reimbursement is also specified by statute. See Laws of Minnesota 1988, chapter 621, subd. 16. The telephone companies are reimbursed for the TAP credits they extend and for their expenses, not including the expenses of collecting the surcharge. The Department of Human Services receives up to \$90,000 for the period of January 1, 1988 to June 30, 1988. The Commission receives up to \$25,000 annually.

Since the above changes result from the new TAP legislation, it is reasonable to amend subpart 3 of the rule accordingly.

7817.0400 ELIGIBILITY FOR TELEPHONE ASSISTANCE CREDITS

Subpart 1 is amended in two respects. First, each telephone company must mail notice of TAP's availability each year to each residential subscriber in a regular billing. The notice must state that the subscriber may be eligible for TAP and who to contact for further information. This amendment is required by Laws of Minnesota 1988, chapter 621, subd. 15. Therefore, it is reasonable to include this requirement in subpart 1 of the rule.

Second, subpart 1 is amended to require the telephone company to mail an application form to persons on request. This change is necessitated by Laws of Minnesota 1988, chapter 621, subd. 15, which requires each telephone company to mail the application form to customers when requested. Therefore, it is reasonable to change the rule to comply with the amended TAP law.

Subpart 2 is amended to reflect the fact that there have been changes in the income guidelines in the new TAP law. See Laws of Minnesota 1988, chapter 621, subd. 13. Income within certain specified guidelines is no longer statutorily required. Other criteria are substituted for these previously required income guidelines. For this reason, the phrase "stating income within the guidelines" has been replaced with the phrase "certifying that the statutory criteria for eligibility are satisfied". The new criteria are contained in subpart 4 and are discussed below.

The amendments in subpart 3 are similar to the amendment in subpart 1, discussed above. Income within certain guidelines is no longer the determining factor for eligibility. Moreover, certification as eligible for TAP is one criteria of eligibility. See Laws of Minnesota 1988, chapter 621, subd. 13. The changes in subpart 3 recognize these facts and, therefore, are reasonable.

There is also a change in subpart 3 which is repeated throughout this rule part. The phrase "the Department of Human Services or" has been added wherever the phrase "local agency" appears.

Under the new TAP legislation, the Department of Human Services need not determine eligibility solely through its various offices and agencies. See Laws of Minnesota 1988, chapter 621, subd. 13. The new TAP legislation refers simply to the Department of Human Services. The Department has flexibility in administering the program by performing certain tasks itself or through the local agencies. Therefore, to make this flexibility clear, the rule refers to the Department of Human Services or the local agencies. This amendment is also consistent with the Department of Human Service's current internal procedures and, therefore, is reasonable.

The amendments to subpart 4 reflect the changes in the TAP eligibility criteria under Laws of Minnesota 1988, chapter 621, subd. 13. To be eligible for TAP, the applicant must certify that he or she satisfies items A through D in subpart 4. Making these corresponding changes to subpart 4 is reasonable.

Subpart 5 has been amended as a result of the new TAP legislation. First, the income guidelines have changed pursuant to Laws of Minnesota 1988, chapter 621, subd. 13. Therefore, it is reasonable to remove the obsolete income guidelines from subpart 5 and replace them with the new income criteria of the amended TAP law. Under the new income criteria, reference is made to the Federal Register. This reference is reasonable so that readers of the rule will know where to find the federal poverty income guidelines.

In subpart 6, the timeline for redetermining eligibility has been changed from "the end of" every 12-month period to "at least once" in every 12-month period. This change is consistent with Laws of Minnesota 1988, chapter 621, subd. 15, which requires the Department of Human Services to determine eligibility at least annually, rather than on an annual basis as under the prior TAP law.

Subpart 7 has been amended by removing the requirement that the recipient recertify their eligibility every year. This amendment parallels a change in the TAP law. See Laws of Minnesota 1988, chapter 621, subd. 15. Under the new law, the subscriber need not annually complete a new application form. This change is also reasonable because it lessens the burden on the applicant considerably. That is, recipients no longer need to reapply every year for TAP.

The phrase "on an application form" was also removed from subpart 7. This change means that when an applicant provides eligibility information, it need not be on an application form. This change makes the rule consistent with subpart 3, item A, which requires an applicant to supply documentation in support of eligibility. As a clarifying change to ensure internal consistency, this change is reasonable.

Subpart 8 is amended to reflect two changes in the new TAP law. First, under the new law, telephone companies must provide TAP credits to a subscriber after they receive an application form and the companies must provide TAP credits unless notified that the subscriber is ineligible. See Laws of Minnesota 1988, chapter 612, subd. 15. For this reason, former item A of subpart 8 has been removed. That is, under the new law, telephone companies will only receive notification when a subscriber is found to be ineligible. Moreover, as stated in proposed item A, the telephone

companies must notify a subscriber of certification by placing TAP credits on the subscriber's bill.

Second, under the new law, eligibility need not be redetermined every year. See Laws of Minnesota 1988, chapter 612, subd. 15. Therefore, former item E of subpart 8 has been removed to coincide with the amended TAP legislation.

Finally, subpart 8 has been amended by adding a new item D. Item D requires the Department of Human Services or a local agency to allow the recipient at least 30 days to respond to a request for eligibility verification. Verifying eligibility may require documentation in addition to the application form. See Minn. Rules, part 7817.0400, subpart 3, item A. Therefore, it is reasonable to allow the recipient 30 days to respond.

Existing subpart 9 has been replaced with a new subpart 9 to recognize the fact that eligibility no longer depends on the income guidelines of the original TAP statute. Rather, eligibility depends on the criteria of subpart 4 of this rule. See Laws of Minnesota 1988, chapter 621, subd. 13.

Under proposed subpart 9, failure to verify eligibility under item D of subpart 8, discussed above, is another reason for ineligibility. That is, if a recipient does not respond to a request to verify eligibility, the recipient is deemed ineligible. This is reasonable because TAP credits are only available to eligible subscribers. Unless eligibility can be verified, the subscriber is not entitled to receive TAP credits. The Department of Human Services or a local agency cannot verify eligibility without a response from the recipient. Therefore, this is a valid ground for finding ineligibility.

Finally, a subscriber is ineligible under proposed subpart 9 if there are permanent changes in basic eligibility requirements that result in ineligibility. This is the same language found in the existing subpart 9 and, therefore, is reasonable.

7817.0600 PROVISION AND TERMINATION OF CREDITS

Subpart 1 is amended in several ways. First, language is added to reflect the requirement of Laws of Minnesota 1988, chapter 621, subd. 15, that telephone companies provide credits in the earliest possible month after they receive an application form. That is, the telephone companies must enroll applicants in TAP and provide credits after receipt of an application. This rule amendment is a reasonable means of implementing the statutory requirement.

Second, the sentence stating that credits must be made available within 90 days after the date the surcharge is first assessed has been removed from subpart 1. The surcharge is currently being collected so the need for this sentence no longer exists. The TAP program is up and running and credits are currently available. Therefore, it is reasonable to update the rule in this manner.

Finally, subpart 1 contains a clarifying change in the last sentence. The word "enrollment" has been replaced with the word "certification". An applicant is not enrolled in TAP until the telephone company applies credit against the subscriber's monthly charge. Therefore, a telephone company

can not logically apply credits after "enrollment". It is reasonable to use the more accurate word, "certification", to enhance the readability of the rule and prevent confusion.

Subpart 2 has also been amended to coincide with the amendment in Laws of Minnesota 1988, chapter 621, subd. 15, discussed above for subpart 1. Under the new TAP law, the telephone companies must provide credits unless notified by the Department of Human Services that the subscriber is ineligible. The telephone companies must cease providing credits when notified that the subscriber is ineligible. It is reasonable to amend the rule to reflect this statutory change.

Another situation in which credits cease is when local exchange service terminates. If service terminates, the TAP recipient is no longer a subscriber and is unable to receive the TAP credit. Therefore, this amendment is reasonable.

Finally, the 12 month period for termination of credits has been removed from subpart 2. Since eligibility need not be redetermined every year, this requirement is no longer appropriate. See Laws of Minnesota 1988, chapter 621, subd. 15. Therefore, it is reasonable to remove this requirement from subpart 2.

7817.0900 COMPANY RECORDING, REPORTING REQUIREMENTS

Existing subpart 2 has been amended by dividing the requirements of subpart 2 into two subparts. Dividing subpart 2 into a new subpart 2 and 3 is a reasonable means of making the requirements of the rule clearer and easier to understand.

Proposed subpart 2 allows the telephone companies to report either monthly or quarterly. Formerly, the rule required quarterly reports. The TAP law states that the companies must account to the Commission on a periodic basis on the surcharge revenues, expenses, and credits. See Laws of Minnesota, chapter 621, subd. 15.

Allowing monthly filings prevents a financial hardship on the telephone companies. Under the amended TAP legislation, companies can no longer deduct their expenses and the credits from the surcharge revenues. Instead, they must remit the surcharge revenues to the Department of Administration for deposit in the TAP fund. The Commission then reimburses the companies from the fund after it reviews the companies' reports. See Laws of Minnesota 1988, chapter 621, subd. 15.

If the telephone companies were only allowed to report on a quarterly basis their cash flow may be adversely affected. Whether or not this is true depends on the particular telephone company, the number of subscribers receiving TAP credits, and the amount of the company's expenses. Therefore, it is reasonable to prevent a potential financial hardship by giving companies the option of reporting on a quarterly or monthly basis.

Proposed subpart 3 governs the contents of the report. Item D has been amended to reflect the fact that all surcharge revenues are to be remitted to the Department of Administration and reimbursement must be sought from the Commission. See Laws of Minnesota 1988, chapter 621,

subd. 15. Former item E has been removed for the same reason. That is, the appropriate amount to report is no longer the amount of excess surcharge revenues or surcharge revenue deficiency. Rather, the appropriate amount to report is the amount of reimbursement requested from the TAP fund. These amendments are reasonable because they are consistent with the new TAP law.

A new item has also been added to subpart 3. Proposed item H requires the telephone companies to include in their report a list of the subscribers who did not pay the surcharge. As discussed under proposed part 7817.0300, subpart 2, the Commission needs this information for its report to the Minnesota Legislature in January of 1989. See Laws of Minnesota 1988, chapter 621, subd. 17. The Commission is unable to determine the number of subscribers who do not pay the surcharge. However, the companies have access to this data. Therefore, requiring the companies to include the data in their report is a reasonable means of gathering the necessary information.

Finally, proposed subpart 4, governing the annual report, has been amended to coincide with proposed subpart 2. Subpart 4 allows the telephone companies to submit either a cumulative year-end monthly or quarterly report as an annual report. This approach is reasonable because it prevents a financial hardship on the companies and is administratively efficient.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. section 14.115, subd. 2 (1986) requires the Commission, when proposing rules which may affect small businesses, to consider the following methods for reducing the impact on small businesses:

- (a) the establishment of less stringent compliance or reporting requirements for small businesses;
- (b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (c) the consolidation or simplification of compliance or reporting requirements for small businesses;
- (d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and
- (e) the exemption of small businesses from any or all requirements of the rule.

Minn. Stat. section 14.115, subd. 1 (1986) defines small business as:

Definition. For purposes of this section, "small business" means a business entity, including its affiliates, that (a) is independently owned and operated; (b) is not dominant in its field; and (c) employs fewer than 50 full-time employees or has gross annual sales of less than \$4,000,000. For purposes of a specific rule, an agency may

define small business to include more employees if necessary to adapt the rule to the needs and problems of small businesses.

The Commission notes that in Minn. Stat. ch. 237 (1986), it has been authorized by the legislature to regulate telephone companies in Minnesota. Some of the basic tenets of telephone company regulation are that telephone companies are:

- affected with a deep public interest;
- obligated to provide satisfactory service to the entire public on demand; and
- obligated to charge fair, non-discriminatory rates.

A general freedom from substantial direct competition and the opportunity to make a fair return on investment are among the benefits telephone companies receive from regulation. Given this regulatory scheme, it is clear that the legislature views telephone companies differently from other concerns defined as small businesses. The degree of government intervention in the operations of a telephone company is considerably higher than in other types of businesses.

Even if some small telephone companies could be viewed as "small businesses" as that term is defined, they, nevertheless, would be excepted from this statute. Minn. Stat. section 14.115, subd. 7 (1986) establishes exceptions to the general obligations created by the statute and applies to rules promulgated by the Commission. In pertinent part, it states:

Applicability. This section does not apply to: (c) service businesses regulated by government bodies, for standards and costs, such as nursing homes, long-term care facilities, hospitals, providers of medical care, day care centers, group homes and residential care facilities.

Telephone companies fall within this broad definition. They are certainly service businesses regulated by government bodies for standards and costs. The words following the phrase "such as" merely provide some examples of government regulated businesses and are not exclusive. For the foregoing reasons, Minn. Stat. section 14.115 (1986) is not applicable to this rulemaking procedure.

However, the Commission has considered the methods listed in Minn. Stat. section 14.115 (1986) for reducing the impact of the rules on small businesses.

Methods (a), (b), and (c) address compliance and reporting requirements. Proposed parts 7817.0300, 7817.0600, and 7817.0900, contain compliance and reporting requirements. Each proposed rule part will be discussed in turn.

Proposed part 7817.0300 requires telephone companies to collect surcharge revenues and remit them to the Department of Administration for deposit in the TAP fund. The Commission uses the fund to reimburse telephone companies for certain administrative expenses and for the TAP credits. The Commission anticipates that the result of this legislatively mandated amendment may be that small

telephone companies may not be able to collect enough surcharge revenues to pay for their expenses. Therefore, the burden of complying with the proposed rule is eased by allowing the telephone companies to be reimbursed for certain of their reasonable expenses on a monthly or quarterly basis pursuant to proposed part 7817.0900.

Proposed part 7817.0600 governs the provision and termination of TAP credits. This part describes the time periods and procedures for collecting TAP credits, as well as for ceasing the credits. No distinction is made between large and small telephone companies because TAP is a legislatively mandated statewide program. TAP requires the establishment of a uniform and universal system for providing and terminating credits by all telephone companies that provide local exchange service in Minnesota.

Proposed part 7817.0900 requires the telephone companies to comply with certain recording and reporting requirements. The potential financial burden on the small telephone companies has been lessened by allowing monthly or quarterly reporting. The proposed rule has also been amended by adding a requirement that the companies include in their report a list of the subscribers who do not pay the TAP surcharge. The Commission needs this information from all telephone companies so that it may determine the number of subscribers state-wide who are not paying the surcharge. The Commission needs this information for the report it is required to make to the Minnesota Legislature in January of 1989.

Moreover, the Legislature recognized that the Commission would need the type of information required in proposed part 7817.0900 from all telephone companies. The TAP statute requires all telephone companies to account to the Commission on a regular basis and maintain adequate records and provide the Commission and the Department of Public Service with a financial report. See Laws of Minnesota 1988, chapter 621, subd. 15.

The Commission did not consider method (d) for reducing the impact of the rules on small telephone companies. The proposed rules do not contain design or operational standards.

Method (e) addresses the exemption of small businesses from any or all rule requirements. The essential requirements placed on the small telephone companies by the proposed rule amendments are mandated by Laws of Minnesota 1988, chapter 621, subd. 9 to 20. The law requires the Commission to implement these statutory requirements through rules. The Commission cannot exempt small telephone companies from the requirements contained in the proposed rule amendments. Exempting small telephone companies from any part of the rule requirements would seriously hinder the implementation, administration, and effectiveness of the TAP program.

VI. CONCLUSION

Based on the foregoing, the proposed amendments to Minn. Rules, parts 7817.0100 to 7817.1000 are both needed and reasonable.

Mary Ellen Hennen
Executive Secretary