

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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In the Matter of Annual Consideration of Possible Changes in the Telephone Assistance Plan Surcharge and the Telephone Assistance Plan State Credit for FY 2004

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DOCKET NO. P-999/CI-04-305

In the Matter of Annual Consideration of Possible Changes in the Telephone Assistance Plan Surcharge and the Telephone Assistance Plan State Credit for FY 2005

DOCKET NO. P-999/CI-05-334

ORDER ESTABLISHING VERIFICATION PROCEDURES, ACCEPTING TAP REPORTS, AND MAINTAINING CURRENT SURCHARGE AND CREDIT LEVELS.

PROCEDURAL HISTORY

In 1987, the Legislature created the Telephone Assistance Program (TAP). Funded by a surcharge on telephone lines, TAP provides subsidies, or “credits,” for local telecommunications service to certain low-income consumers.¹ Service providers report periodically on the amount of surcharge revenues collected and credits granted.² The Commission may adjust the amount of the surcharge and credits annually to match the program’s costs to its available funds.³

In 2003 the Legislature changed TAP’s eligibility requirements to mirror the requirements of the federal Lifeline program.⁴ Lifeline subsidizes local telecommunications provided to low-income consumers by designated wireline and wireless “eligible telecommunications carriers” (ETCs).

On April 29, 2004, the Federal Communications Commission (FCC) issued its Lifeline Order.⁵

¹ See generally Minn. Stat. §§ 237.69 - 237.711.

² Minn. Rules pt. 7817.0900.

³ Minn. Rules pts. 7817.0300, subp. 1; 7817.0500.

⁴ Laws of Minnesota 2003, chap. 79, § 3, codified at Minn. Stat. § 237.70, subd. 4a.

⁵ *In the Matter of Lifeline and Link-Up*, Wireline Competition Bureau (WC) Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, FCC 04-87 (rel. April

The FCC largely adopted the recommendations of a board of federal and state policy makers (Joint Board) to provide more ways for low-income consumers to qualify for Lifeline as well as Link-Up, the federal program subsidizing the installation of telephone service.⁶ This order had the effect of broadening the categories of people who could qualify for TAP credits as well. But the FCC's order requires, among other things, that ETCs implement procedures for verifying whether customers receiving Lifeline benefits continue to qualify for those benefits.

On May 20, 2004, the Commission organized a workgroup to explore these developments and recommend how the Commission should proceed.⁷

On December 22, 2004, the workgroup filed its report. The workgroup recommended, among other things, that the Commission refrain from changing TAP's surcharge and credit levels until the Commission had gained more experience regarding the effects of the FCC's order. The workgroup also concluded that most of the requirements of the FCC's order had been fulfilled, but that the Commission still needed to rule on how ETCs should verify that people who received Lifeline benefits continued to qualify for those benefits. The Commission invited comments on this report.

By March 25, 2005, the Commission had received comments from the Minnesota Department of Commerce (DOC), the Minnesota Telecommunications Alliance (MTA), Qwest Corporation (Qwest), Sprint, and jointly from Citizens Telecommunications Company of Minnesota, LLC, and Frontier Communications of Minnesota, Inc. (Citizens/Frontier).

On April 4, 2005, the Commission received reply comments from the DOC and Citizens/Frontier.

The matter came before the Commission on May 5, 2005.

FINDINGS AND CONCLUSIONS

I. Authority to Select Verification Procedures

A. Background

The parties disagree over whether the FCC has preempted Commission authority to select verification procedures, largely because the parties disagree about whether Minnesota "mandates state Lifeline support" or is a "federal default state" as those terms are used by the FCC.

29, 2004) (Lifeline Order).

⁶ 47 C.F.R. § 54.411.

⁷ *In the Matter of Annual Consideration of Possible Changes in the Telephone Assistance Plan Surcharge and the Telephone Assistance Plan State Credit for FY 2004*, Docket No. P-999/CI-04-305 ORDER DEFERRING ACTION AND REQUESTING THE DOC AND RUD-OAG TO CONVENE WORKGROUP.

Lifeline eligibility requirements vary by state. Consumers in states that “mandate state Lifeline support” must meet the state-specified criteria for that support,⁸ and their ETCs must “comply with state verification procedures to validate consumers’ continued eligibility for Lifeline....”⁹ Consumers in states that “do not mandate state Lifeline support” must meet the FCC’s prescribed criteria for that support,¹⁰ and their ETCs must “implement procedures to verify the continued eligibility of a statistically valid random sample of their Lifeline customers to verify continued eligibility” as specified by the FCC.¹¹

The FCC justifies having distinct requirements for different states as follows:

5. Under the [FCC]’s current rules, states and territories have the authority to establish their own Lifeline/Link-Up programs that provide additional support to low-income consumers that incorporate the unique characteristics of each state or territory. [Citations to rules governing “states that mandate state Lifeline support” omitted.] For example, in establishing eligibility criteria, states have the flexibility to consider federal and state-specific public assistance programs with high rates of participation among low-income consumers in the state. State certification procedures and outreach efforts can also take into account existing state laws and budgetary limits. Some states and territories, however, have elected to use the federal criteria as their default standard. These “federal default states” include not only states and territories with their own Lifeline/Link-Up programs that have adopted the federal default criteria, but also states and territories that have not adopted their own Lifeline/Link-Up program. The modifications to the federal default criteria that we adopt in this Order, unless specifically stated otherwise, will affect only federal default states. [Citation to appendix listing federal default states omitted.]¹²

This explanation suggests a dichotomy between “states that mandate state Lifeline support” and “federal default states.”

B. Arguments of Citizen/Frontier

Citizens/Frontier argue that the Commission has the authority to establish its own verification procedures. They quote the FCC’s Lifeline Order as follows:

33. We adopt the Joint Board’s recommendation that all states, including federal default states, be required to establish procedures to verify consumers’

⁸ 47 C.F.R. § 54.409(a).

⁹ 47 C.F.R. § 54.410(c)(1).

¹⁰ 47 C.F.R. § 54.409(b).

¹¹ 47 C.F.R. § 54.410(c)(2).

¹² FCC Lifeline Order, ¶ 5.

continued eligibility for the Lifeline/Link-Up program under both program and income-based criteria....

34. We also adopt the Joint Board's recommendation to allow states that administer their own Lifeline/Link-Up programs the flexibility to design and implement their own verification procedures to validate consumers' continued eligibility....

Citizens/Frontier note that the Minnesota Legislature created a telephone assistance program and requires that the program be coordinated with the federal matching program, Lifeline.¹³ Consequently, they argue that Minnesota is a state that mandates Lifeline support, and thus Minnesota's ETCs must comply with state-specified verification procedures pursuant to 47 C.F.R. § 54.410(c)(1).

C. Arguments of DOC and Qwest

The DOC and Qwest argue that the FCC's reference to states that mandate state Lifeline support really refers to states that establish their own criteria for participation in Lifeline. Because Minnesota relies on the FCC's criteria, the DOC argues, Minnesota is a federal default state and Minnesota's ETCs must comply with the FCC's default verification procedures. The DOC and Qwest note that the FCC's Lifeline Order states:

35. With respect to federal default states, we adopt the Joint Board's recommendation to require ETCs to verify annually the continued eligibility of a statistically valid sample of their Lifeline subscribers [as prescribed by FCC rules].

D. Commission Action

Admittedly, the FCC's Lifeline Order appears to give contradictory signals regarding states that administer Lifeline-like programs according to federal default criteria, and the regulation of ETCs in those states. Giving the FCC's orders and rules a plain reading, Minnesota would appear to be both "a state that mandates state Lifeline support" and a "federal default state."

Pending further clarification, the Commission concludes that because Minnesota has elected to mandate a state telephone assistance plan, FCC rules recognize Minnesota's authority to establish the criteria to qualify for such a plan and verify continuing eligibility, and to coordinate with Lifeline at the same time. Finding the authority to select a verification procedure, the Commission will now consider the merits of alternative procedures.

II. Selection of Verification Procedures

A. Background

The parties disagree about whether each local service provider should be responsible for verifying the eligibility of its own customers, or whether a state agency should perform this function.

¹³ Minn. Stat. § 237.70, subd. 3.

As noted above, the FCC requires each state to establish procedures to verify whether consumers continue to be eligible for Lifeline.¹⁴ The FCC also establishes verification procedures for ETCs in states that do not specify alternative procedures.¹⁵ The FCC directs such ETCs to report the results of their efforts to ask a “statistically valid random sample” of Lifeline customers to certify that they continue to participate in qualifying low-income programs, or to document their income.

B. Support for Verification by Eligible Telecommunications Carriers

The DOC and Qwest argue that each ETC should conduct its own verification in accordance with the FCC’s procedures for “federal default states.” They variously argue that such a policy would

- help coordinate the verification process for ETCs that operate in multiple states,
- avoid the need to develop state-specific procedures, and
- avoid certain legal limitations on how Minnesota governmental agencies may gather, retain and disclose information about individuals.

In making these arguments, the DOC emphasizes that it does not oppose efforts by local service providers to pool their resources to conduct joint verification procedures.

C. Support for Verification by State Agency

Citizens/Frontier, MTA and Sprint favor having verification performed by a state agency such as the DOC. They variously argue that such a policy would –

- keep sensitive customer information, such as income, in the hands of one public entity rather than multiple private ones,
- limit a local service provider’s responsibility for determining TAP eligibility, and therefore liability for making the wrong decision,
- ensure uniformity, and therefore fairness,
- promote efficiency through economies of scale, especially given the FCC’s sampling procedures,
- promote efficiency by building on the DOC’s experience with administering the Telecommunications Relay Service,¹⁶
- facilitate appeals from customers that were found unqualified to continue receiving Lifeline

¹⁴ Lifeline Order ¶ 33.

¹⁵ 47 C.F.R. § 54.410(c)(2).

¹⁶ Minnesota Statutes §§ 237.50-237.56. The Telecommunications Relay Service facilitates telecommunications for people with physical disabilities that impede the use of a standard telephone.

benefits, and

- avoid the risk of unrecovered costs related to the verification process.

MTA also proposes that the administration of TAP be consolidated in a single state agency rather than spread among multiple agencies.

D. Commission Action

Having determined that the Commission has authority to establish Minnesota-specific verification procedures, the Commission now will select the procedures outlined by the FCC for federal default states.

Whatever the potential economies of scale gained by having a state agency conduct statewide verification procedures, they are offset by practical limitations. As the DOC notes, laws constrain the ways that Minnesota agencies may gather and disclose private information. For example, the Minnesota Government Data Practices Act¹⁷ bars state agencies from disclosing “private data on individuals” to any third party – including a local service provider – without first issuing a specific warning and securing the customer’s consent to the disclosure. While the Legislature previously authorized the Department of Human Services to provide such data to the relevant local service providers, this authority was repealed in 2003.¹⁸

In addition, the DOC notes that the federal Health Insurance Portability and Accountability Act (HIPAA) governs the use and disclosure of certain health information, such as Medicaid. To the extent that an agency would need to gather data regarding a customer’s participation in Medicaid, the agency might be constrained by HIPAA requirements.

In contrast to these legal obstacles, the Lifeline Order provides that an ETC itself may verify customer eligibility simply by asking a sample of customers to certify that they still qualify:

35. With respect to federal default states, we adopt the Joint Board’s recommendation to require ETCs to verify annually the continued eligibility of a statistically valid sample of their Lifeline subscribers. ETCs are free to verify directly with a state that particular subscribers continue to be eligible by virtue of participation in a qualifying program or income level. Alternatively, to the extent ETCs cannot obtain the necessary information from the state, they may survey the subscriber directly and provide the results of the sample to [Lifeline’s administrator]. Subscribers who are subject to this verification and qualify under program-based eligibility criteria must prove their continued eligibility by presenting in person or sending a copy of their Medicaid card or other Lifeline-qualifying public assistance card and self-certifying, under penalty of perjury, that they continue to participate in the Lifeline-qualifying public assistance program. Subscribers who are subject to this verification and qualify under the income-based

¹⁷ Minnesota Statutes chapter 13.

¹⁸ Laws of Minnesota 2003, ch. 79, modifying Minn. Stat. § 237.70.

eligibility criteria must prove their continued eligibility by presenting current documentation [of income]. [Citations omitted.]

The Commission finds the FCC's default verification procedures to be a reasonable and practical way to fulfill the federal requirements and ensure that Lifeline funds – and TAP funds – are used for their intended purposes. Consequently, the Commission will direct Minnesota's ETCs to comply with the FCC's verification procedures applicable in federal default states.

In reaching this conclusion, the Commission does not mean to discourage the suggestion that ETCs conduct joint verification procedures. Similarly, the Commission does not mean to discourage parties from studying or making future proposals for having some third party verify customer eligibility. For the present, however, ETCs shall comply with the FCC's procedures.

The Commission will decline to address other matters raised by the parties. Whatever the merits of consolidating TAP's administration in a single agency, the Legislature has allocated specific responsibilities to the Commission, the DOC, and the Commissioner of Public Safety,¹⁹ and the Commission has no authority to change this. Also, the issue of recovering TAP-related costs might better be addressed in the Commission's docket conforming its TAP rules to legislative changes²⁰ rather than in the current docket.

III. TAP Reports, Surcharges and Credits

Local service providers file periodic reports on, among other things, the number of TAP beneficiaries, the number of access lines subsidized, the revenues produced by the surcharge and the costs incurred. These reports reveal that 53,022 customers were receiving the \$1.75 monthly TAP credit as of September 30, 2004, leaving a TAP balance of more than \$3.5 million, and that 54,576 customers were receiving the TAP credit by beginning of 2005, leaving a balance of roughly \$3.6 million.

While the DOC had initially recommended taking measures to reduce the fund balance, the December 22 workgroup report recommended that the Commission refrain from changing TAP's surcharge and credit levels until the Commission had gained more experience regarding the effects of the FCC's Lifeline Order. The Commission adopted this policy pending further comment from the parties. In subsequent comments, no party opposed this recommendation.

Having reviewed the TAP reports filed for the period of July 1 through December 31, 2004, the Commission will accept those reports. Current surcharge revenues appear to be sufficient to maintain current credit levels. And, while the size of the fund balance may warrant changes in the future, a prudent concern for the effect of the recent changes in TAP eligibility criteria prompt the Commission to maintain current surcharge and credit levels for the present.

¹⁹ See generally Minn. Stat. § 237.70.

²⁰ Docket No. P-999/R-04-1957 *In the Matter of Amending the Commission Rules Governing Telephone Assistance Plans*.

ORDER

1. Eligible telecommunications carriers, both wireline and wireless, shall use the procedures prescribed for ETCs in federal default states to verify whether customers in the Lifeline, Link Up or the Telephone Assistance Plan programs continue to qualify for those programs.
2. The local service providers' TAP reports for July 1 through December 31, 2004, are accepted.
3. TAP surcharges and credits shall be maintained at current levels.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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