

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye	Chair
David C. Boyd	Commissioner
Marshall Johnson	Commissioner
Thomas Pugh	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of a Petition by Qwest  
Corporation for Reimbursement of Prior TAP  
Expenses

ISSUE DATE: August 14, 2007

DOCKET NO. P-421/AM-07-837

In the Matter of a Commission Investigation  
into Possible Double-Recovery of TAP  
Reimbursements

DOCKET NO. P-999/CI-07-1074

ORDER VARYING RULES, AUTHORIZING  
REIMBURSEMENT AND INITIATING  
INVESTIGATION

**PROCEDURAL HISTORY**

On June 18, 2007, Qwest Corporation (Qwest) filed a revised request for reimbursement of expenses Qwest incurred from January 2005 through July 2006 to implement Minnesota's Telephone Assistance Plan (TAP).

On June 26, 2007, the Minnesota Department of Commerce (the Department) recommended that the Commission grant Qwest's request. The Department also recommended investigating to see whether any party has double-recovered TAP-related expenses from the Telephone Assistance Fund (TAP fund).

The Commission met on July 26, 2007, to consider this matter.

**FINDINGS AND CONCLUSIONS**

**I. Background**

Minnesota's Telephone Assistance Plan promotes access to telecommunications by subsidizing telephone service for low-income telephone subscribers.<sup>1</sup> A TAP fund collects surcharges on

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<sup>1</sup> Minn. Stat. §§ 237.69 - 237.72.

each telecommunications access line,<sup>2</sup> and local service providers may apply for reimbursement of the cost of providing the subsidy and of administering the plan (excluding the cost of collecting the surcharges).<sup>3</sup> As of 2006 the TAP fund had a balance of \$5.24 million, and provides \$1.36 million of reimbursements annually.<sup>4</sup>

Minnesota Rules, part 7817.0900, subpart 2, directs service providers with more than 100 subscribers to seek reimbursement no later than 30 days after the end of the quarter in which the expenses are incurred. But the Commission may vary its rules whenever 1) enforcement would impose an excessive burden, 2) granting the variance would not harm the public interest and 3) granting the variance would not conflict with other law.<sup>5</sup>

Finally, telecommunications service providers have the option of buying local telephone service from other providers at wholesale rates and then reselling those services to retail customers.<sup>6</sup> While no party cited any law specifically addressing the provision of TAP services at wholesale rates to resellers, both this Commission<sup>7</sup> and the Federal Communications Commission<sup>8</sup> provide for telephone companies to sell Lifeline service<sup>9</sup> (a federal program analogous to TAP) at wholesale rates to resellers.

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<sup>2</sup> Minn. Stat. § 237.70, subd. 6.

<sup>3</sup> Minn. Stat. § 237.70, subd. 7(d)(5); Minn. Rules, part 7817.0300, subp. 4.

<sup>4</sup> *In the Matter of the Annual Consideration of Possible Changes to the Telephone Assistance Plan Surcharge and the Telephone Assistance Plan State Credit*, Docket No. P-999/CI-06-1399, ORDER ACCEPTING TAP REPORTS, RETAINING CURRENT BENEFITS AND REDUCING TAP SURCHARGE (March 29, 2007).

<sup>5</sup> Minn. Rules, part 7829.3200.

<sup>6</sup> 47 U.S.C. § 251(b)(1).

<sup>7</sup> *In the Matter of the Consolidated Petitions of AT&T Communications of the Midwest, Inc., MCImetro Access Transmission Services, Inc., and MFS Communications Company for Arbitration with US WEST Communications, Inc. Pursuant to Section 252 (b) of the Federal Telecommunications Act of 1996*, Docket Nos. P-442, 421/M-96-855; P-5321, 421/M-96-909; P-3167, 421/M-96-729 ORDER RESOLVING ARBITRATION ISSUES AND INITIATING A US WEST COST PROCEEDING (December 2, 1996) at 28.

<sup>8</sup> *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, 11 FCC Rcd 13042 (1996) at ¶ 962.

<sup>9</sup> 47 C.F.R. part 54.

## **II. Positions of the Parties**

Qwest states that it has discounted the wholesale price of local telephone services that it provides to other local service providers for resale to TAP subscribers. According to Qwest, a recent internal audit revealed that Qwest had failed to request recovery of \$54,027.36 worth of TAP discounts, as well as \$79,042.04 of TAP administrative costs, incurred from January 2005 to July 2006. This has prompted Qwest to file a belated request for recovery.

Without addressing the merits of reimbursing wholesale service providers for offering TAP discounts in the future, the Department concludes that Qwest's past choice to provide wholesale TAP discounts in the same manner it provides Lifeline discounts was reasonable. Consequently the Department recommends reimbursing Qwest for previously unreimbursed discounts and administrative costs incurred from January 2005 through June 2006.

But the Department notes that Qwest's practice of offering such discounts creates an opportunity for resellers to double-recover their TAP-related discount costs: once by purchasing the wholesale services with a TAP discount from Qwest, and again by filing for reimbursement from the TAP fund. The Department offers to investigate whether any double-recoveries occurred and to file a report with the Commission; the Department recommends opening a new docket for this purpose.

## **III. Commission Analysis and Action**

As an initial matter, the Commission notes that the regulatory deadline has passed for seeking recovery of TAP-related costs incurred from January 2005 through July 2006. But in this case, insistence on the rule's deadlines would needlessly deprive Qwest of the possibility to pursue reimbursement of costs it incurred in good faith to implement a state program designed to promote the general welfare. The TAP fund has adequate resources to fulfill Qwest's request and meet its other obligations as well. And neither the public interest nor other law compels the Commission to insist on the rule's filing deadlines. Consequently the Commission will vary its rules and consider Qwest's late-filed application for reimbursement.

Based upon a review of Qwest's filing and the Department's analysis, the Commission is persuaded that Qwest's choice to provide the wholesale TAP discounts was reasonable, and its failure to make timely requests for reimbursement was inadvertent. Consequently the Commission will authorize Qwest to recover from the TAP fund \$54,027.36 for the cost of TAP discounts and \$79,042.04 for the administrative costs (other than the cost of collecting the TAP surcharge) incurred between January 2005 and July 2006, as indicated in Qwest's filing of June 18, 2007.

Finally, the Commission will start an investigation into possible double-recovery of TAP reimbursements related to Qwest's resold local services provided from January 2005 through July 2006. The Commission accepts the Department's offer to investigate this matter, and will ask the Department to file a report on its findings within 90 days of this Order.

## ORDER

1. Minnesota Rules, part 7817.0900, subpart 2, is varied to extend the period for Qwest Corporation to file for reimbursement from the Telephone Assistance Fund.
2. The TAP fund shall reimburse Qwest \$54,027.36 for TAP discounts Qwest provided to local service providers that re-sold Qwest's local service between January 2005 and July 2006.
3. The TAP fund shall reimburse Qwest \$79,042.04 for the cost of administering the TAP program (other than the cost of collecting the TAP surcharge) incurred from January 2005 through July 2006.
4. The Commission hereby initiates an investigation into the possible double-recovery of TAP reimbursements related to Qwest's resold local services provided from January 2005 through July 2006. The Commission asks the Department to investigate this matter and file a report on its findings within 90 days of this Order.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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