

**STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION**

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

ISSUE DATE: Feb. 26, 1991

DOCKET NO. P-999/R-90-86

STATEMENT OF NEED AND
REASONABLENESS

I. INTRODUCTION

In 1987 the Minnesota Legislature enacted Minn. Laws, Ch. 340, §§ 13 to 17, which established the telephone assistance plan (TAP). The plan initially provided for a credit to low income telephone subscribers who were at least 65 years old. The statute was amended in 1988 to, among other things, extend the credit to low income handicapped subscribers. The statute was amended again in 1989 to require TAP applicants to provide their social security numbers and to increase the amount allocated to the Department of Human Services for administrative purposes.

The Minnesota Public Utilities Commission (Commission) adopted rules governing the telephone assistance plan in 1988. These rules were amended in 1989 to incorporate statutory changes enacted the previous year. The amendments in this rulemaking are needed to address problems that have arisen in the administration of TAP. The amendments are the product of a collaborative effort between Commission staff and an advisory panel whose members include representatives of industry, affected constituencies and relevant state agencies. The panel met four times to review and comment on drafts of the rule amendments prepared by staff. The amendments discussed below were reviewed and approved by the panel as a reasonable approach to the problems in the TAP program.

II. STATEMENT OF COMMISSION'S STATUTORY AUTHORITY

The Commission's statutory authority to adopt these rule amendments is set forth in Minn. Stat. § 237.71 (1990) which requires the Commission to adopt rules establishing the telephone assistance plan and in Minn. Stat § 237.711 (1990) which permits the Commission to adopt emergency and permanent rules to implement the 1988 amendments to the laws governing TAP. These rule amendments are also authorized by Minn. Stat. § 237.10 which requires the Commission to "prescribe uniform rules and classifications pertaining to the conduct of intrastate telephone business"

III. STATEMENT OF NEED

Minn. Stat. ch. 14 (1990) 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 first problem addressed by the rule amendments is the staggered receipt of company TAP reports. Minn. Rules, part 7817.0900 requires telephone companies with at least 100 subscribers to file monthly or quarterly reports with the Commission documenting their administrative activity related to TAP. Smaller companies are permitted to file reports annually. The Commission is then required by Minn. Rules, part 7817.0300, subp. 3, item A to reimburse the expenses of companies within 60 days after receiving their reports.

This 60 day time period imposes a substantial burden on Commission staff who must determine reimbursement for approximately 100 companies filing in three different reporting periods. Many companies file at various times each reporting period before their monthly or quarterly filing deadlines. Commission staff must, therefore, calculate and distribute reimbursement multiple times each reporting period. Since the Commission cannot know exactly when a particular company will file its report, it is exceedingly difficult to do the planning necessary to reimburse companies in a timely, efficient manner.

The difficulty in meeting the 60 day time limit as currently constituted is evidenced by the legislative auditor's report for fiscal years 1988 and 1989. This report found that only 54% of the reimbursement payments examined for that period were made within the required 60 day period. Minn. Rules, part 7817.0300, subp. 3, item A is amended to address this problem, establishing a single time frame applicable to all companies each reporting period.

The second problem addressed by the rule amendments is the absence of criteria the Commission can use to determine reimbursement of company expenses. Minn. Stat. § 237.70, subd. 7 (d) (5) requires the Commission to compensate companies for their TAP-related expenses. Neither the statute nor the current TAP rule identify these expenses or how they must be calculated. Consequently, the Commission has received wide-ranging, disproportionate requests for reimbursement. For example, in the fourth quarter of 1989, Clements Phone Company claimed administrative expenses of \$644.00 even though only 8 TAP

participants were receiving service from the company. In that same period, Mankato Phone Company, serving almost 300 TAP subscribers, claimed less (attachment 1). Similar incongruities have been common each quarter since TAP was first implemented (attachments 1 and 2). Clearly some companies are claiming more than they are entitled to receive while others may be claiming less.

To deal with these disproportionate and excessive claims, Commission staff have often engaged in lengthy discussions on a case-by-case basis to seek clarification on the amounts these companies have actually spent. This approach has consumed substantial staff time and, therefore, a significant portion of the Commission's \$25,000 allotment to administer TAP. The current system which requires Commission staff to choose between paying excessive, disparate reimbursement requests or spending an inordinate amount of time discussing individual claims is clearly inadequate. Subparts 4 and 5 of the rule amendments address this problem, establishing uniform standards and procedures for determining reimbursement.

IV. STATEMENT OF REASONABLENESS.

The Commission is required by Minn. Stat. ch. 14 (1990) 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 rule need not be the most reasonable solution to the situation which created the need for a rule. The proposed rules are not unreasonable simply because a more reasonable alternative exists or a better job of drafting might have been done.

Nevertheless, for the reasons given below, the Commission believes that its proposed rule amendments are the most reasonable approach to the issues presented based on its own experience and expertise and comments from interested persons.

A. Reasonableness of the Rules as a Whole

The rule amendments in this docket are a reasonable response to the problems discussed above. They reflect broad agreement among affected parties who served on the advisory panel. The rules do not impose any additional duties on companies or subscribers. They merely establish uniform standards and procedures that will reduce the administrative burden on the Commission as well as companies and ensure more accurate, less arbitrary reimbursement of TAP expenses.

B. Reasonableness of Individual Rules

The following discussion addresses the specific provisions of the proposed rules.

Part 7817.0100 DEFINITIONS.

This rule part defines 16 terms used throughout the TAP rules. The proposed amendments to this part add two definitions, one defining "service order record change charge," the other defining "TAP enrollment charge." The proposed amendments to this rule part also add the acronym "TAP" as an abbreviated reference to the telephone assistance plan.

Subpart 12a. Service order record change charge.

This term is added because it is used throughout the proposed amendments as a basis for determining a company's reimbursement for administrative expenses. The definition of the term in this subpart is consistent with the common understanding of the term in the telephone industry. "Service order record change charge" is recognized by regulators and telephone companies operating in Minnesota as the fee a company charges a subscriber for making a change in the subscriber's service. The rule incorporates this commonly understood definition to ensure that the general public is aware of its meaning as applied to TAP.

Subpart 13a. TAP enrollment charge.

This term is added because it is used throughout the proposed rules as a basis for determining a company's reimbursement for administrative expenses. Unlike the service order record change charge, the TAP enrollment charge is a new concept. It can be used under the proposed amendments, in lieu of the service order record change charge, as a basis for determining reimbursement for TAP administrative expenses. It is an important option for companies whose TAP expenses may not be fully or accurately reflected in their existing service order record change charges. The criteria and procedures for determining a company's TAP enrollment charge are set forth in subpart 5 of this rule part; they are discussed below.

Subpart 15. Telephone assistance plan or TAP.

The definition of this term is currently in the TAP rules. The amendment here simply adds the acronym "TAP." Use of this acronym will reduce the length of the TAP rules and enhance their readability. The acronym is widely used and generally recognized by companies, state agencies and consumers affected by TAP.

Part 7817.0300 FUNDING.

This rule part currently provides for the collection of a recurring monthly surcharge by telephone companies to finance the TAP program. It further specifies how these surcharge revenues are to be allocated and used in administering TAP. Subparts 1 and 2 establish the surcharge as the sole source of revenue for TAP and place responsibility for collecting this surcharge on the companies. No amendments to these sections are proposed in this rulemaking. Subpart 3 identifies precisely how the surcharge revenues must be allocated and used. This subpart is being amended. Subparts 4 and 5 are also added in this rulemaking to further delineate the standards and processes to use in determining reimbursement for company administrative expenses.

Subpart 3. Use of surcharge revenues and fund.

This subpart currently has three items. Item A requires the Commission to use money in the telephone assistance fund to reimburse telephone companies for both the TAP credits they extend and the administrative costs they incur. It also requires the Commission to provide this reimbursement within 60 days after a company files its required monthly or quarterly TAP report with the Commission. Item B requires the Commission to reimburse the Department of Human Services (Department) for administrative expenses up to \$90,000 annually. Item C permits the Commission to compensate itself for administrative expenses up to \$25,000 annually.

Item A.

Item A is amended in two respects. First, it is modified to refer only to reimbursement of TAP credits, not administrative expenses. Reimbursement of company administrative expenses is addressed in subpart 4. Second, this item is amended to require reimbursement within 60 days after a company's filing deadline, not 60 days after the date the report is actually filed as provided in the current rule.

Moving the subject of administrative expense reimbursement from this item to subpart 4 will make the rules more comprehensible by ensuring that all the provisions pertaining to administrative expense reimbursement are together under one subpart. As discussed above, the change in the time frame for reimbursement is necessary to help alleviate the burden associated with reimbursing almost 100 companies at potentially 100 different times each reporting period. The amendment will enable Commission staff to calculate and distribute reimbursement for nearly all companies at approximately the same time each reporting period. This, in turn, will result in a much more efficient and orderly reimbursement system.

Item B.

Item B is amended to incorporate the 1989 statutory change that raised the reimbursement amount for the Department of Human Services from \$90,000 to \$180,000. This amount is for the Department's administrative expenses associated with TAP. The amendment does not refer specifically to any dollar amount. Instead, it provides for reimbursement up to the limit specified in the statute. This will ensure consistency between the rule and the governing statute. The amendment incorporates the statutory change enacted in 1989 and accommodates any future changes in the statutory allotment.

Item C.

Item C is changed by replacing the specific reference to the \$25,000 annual allotment for the Commission with a general reference to the statute that sets the reimbursement amount. This will ensure that the rule provision remains consistent with the statute even if the statute is amended.

Item D.

Item D is added to provide the basis for determining reimbursement to companies. It requires the Commission to reimburse company administrative expenses in accordance with subpart 4. Subpart 4 is new material proposed in this rulemaking; it is discussed below.

Subpart 4. Reimbursement of telephone company expenses.

Items A and B.

Item A delineates the telephone assistance fund as the sole source of reimbursement for company expenses. Item B prohibits the Commission from reimbursing companies for the expenses they incur collecting the surcharge. These provisions incorporate Minn. Stat. § 237.70, subd. 7 (d) (5) and help ensure that the statute is implemented.

Item C.

Item C conditions reimbursement on receipt of the company's report required under part 7817.0900. This report provides an account of the company's administration of the TAP program, including such data as the surcharge revenues collected by the company and the credits extended to subscribers. The report is mandated by Minn. Stat. § 237.70, subd. 7 (d) (3) which requires each telephone company "to account to the commission on a periodic basis for surcharge revenues collected by the company . . ." Delaying reimbursement until after this report is received ensures that the Commission has all the information

needed to determine the amount of reimbursement. It also serves as an important incentive to ensure compliance with the statutory reporting mandate.

Item C further requires the Commission to reimburse a company's administrative expenses within 60 days after the deadline for filing the company's report, or when the report is actually filed, whichever occurs later. This requirement replaces part 7817.0300, subpart 3, item A. Under the rule provision being replaced, the 60 day period begins when the report is actually filed, even if filed before the deadline. Item C as proposed changes this by designating the filing deadline as the date on which the 60 day period begins unless the company files after the deadline.

The 60 day period was adopted to prevent any unreasonable delay in providing reimbursement to companies. The change proposed in this rulemaking reduces the burden placed on Commission staff by the current procedure which could require the Commission to reimburse almost 100 companies at different times each reporting period. The proposed amendment does not reduce the amount of time companies are allowed to file their reports; it merely provides a uniform time frame within which the Commission must provide reimbursement. This change will result in more efficient and reliable reimbursement of company expenses.

Item D.

Item D sets forth the formula for reimbursing companies with five or more new TAP participants enrolled in a reporting period. It provides for reimbursement of actual expenses incurred and claimed up to a maximum. The maximum is determined by multiplying the number of new TAP customers enrolled during the period for which reimbursement is sought by either the company's service order record change charge or the company's TAP enrollment charge.

Minn. Stat. § 237.70, subd. 7 (d) (5) requires the Commission to "remit to each telephone company . . . the amount necessary to compensate the company for expenses, not including expenses of collecting the surcharge . . ." Item D implements this statutory requirement. It provides reimbursement for actual expenses claimed as the current rule does; however, it also establishes a maximum reimbursement level depending on the number of TAP participants served by the company.

As discussed above, a number of claims for reimbursement have borne little relationship to the number of TAP participants being served. The Commission has been forced to either pay these inflated claims or engage in lengthy discussions with the claiming companies, attempting to agree on reasonable payment amounts. Item D as proposed provides a uniform method of

determining the maximum reasonable cost of administering TAP for each company. This will ensure that reimbursement amounts do not exceed the actual cost of administering TAP. It will also eliminate the wide disparity in the claims of similarly situated companies and the need to engage in case-by-case discussions with companies each reporting period to determine the compensation they will receive. The result will be a more precise, more equitable, less burdensome and less arbitrary process for reimbursing the TAP-related administrative expenses of companies.

The service order record change charge, proposed in this item as a basis for determining reimbursement, reflects the cost to a company of changing a customer's service. This fee provides a reasonable basis for determining TAP reimbursement. The addition of a TAP credit to a company's specific customer record is similar to a service change in that both require the modification of company records and billing statements. Since the service order record change charge is designed to capture these costs, it should reflect most of the costs associated with administering TAP. If this charge had, in fact, been used in 1989 to determine reimbursement, the total amount paid to reimburse companies would have been 87% of the amount actually provided (attachment 3). This indicates a reasonably close correlation between the service order record change charge and the cost to companies of administering TAP.

The TAP enrollment charge is proposed in this item as another basis for calculating a company's maximum reimbursement. Unlike the service order record change charge, the TAP enrollment charge applies specifically and exclusively to TAP. It provides an alternative for companies that conclude their service order charges do not accurately reflect their costs. This is reasonable since the various service order record change charges of companies were not developed with TAP in mind. The similarity between TAP-related costs and service change costs indicates that the service order charge is likely to adequately reflect the administrative expenses of TAP; however, there are differences that suggest the need for a charge exclusive to TAP.

Item E.

Item E establishes the maximum reimbursement level for companies with fewer than five new TAP participants in a reporting period. This maximum, like the ceiling for companies with five or more new TAP enrollees, is determined using either the company's service order record change charge or the company's TAP enrollment charge. The formula in this item sets the maximum amount at five times either of these charges. It is different from the maximum for larger companies seeking reimbursement under item D in that it is not tied to the specific number of subscribers receiving TAP.

The formula is modified in this item to ensure that companies serving only a small number of new TAP participants are compensated for the fixed costs associated with TAP. All companies are required to send annual notice of TAP to their subscribers. All companies are also required to remit surcharge revenues to the Department of Administration, respond to customer inquiries regarding TAP and report to the Commission on a monthly, quarterly or annual basis. These responsibilities adhere even if a company has no TAP participants. Allowing reimbursement up to five times the company's service order or TAP enrollment charge will ensure that the company is adequately compensated for its TAP expenditures.

Subpart 5. TAP enrollment charge.

This subpart sets forth the procedural framework and criteria for determining a company's TAP enrollment charge. The subpart permits companies to petition the Commission to establish such a charge by submitting a proposed charge along with financial and cost information supporting it as required under item A. The charge must be based on one or more of the nine specific costs identified in item B.

The Commission can accept, modify or reject a company's proposal. When a TAP enrollment charge is approved by the Commission, it becomes part of the company's tariff and serves as an alternative to the service order record change charge for use in calculating the cost of administering TAP. Either charge can then be used as provided in subpart 4, items D or E.

Establishing a tariffed charge as the basis for determining a company's administrative costs will make the reimbursement process considerably more efficient for companies and the Commission. It will, essentially, condense the work now done each reporting period into one Commission proceeding. The enrollment charge resulting from this proceeding will likely last for years, eliminating the need to identify and calculate specific costs each month or quarter.

Item A.

Requiring companies to include financial and cost information as part of their petitions to establish TAP enrollment charges helps ensure that the Commission has the necessary information at its disposal to determine whether the proposed charges are reasonable. It is standard practice to require companies to provide the Commission with financial information and cost studies that enable the Commission to make decisions regarding company filings. For example, part 7810.7800 requires telephone companies to file detailed accounting information along with their petitions for certification of their

depreciation schedules. Similar informational requirements are applied to the filings of gas and electric utilities.

Item B.

The activities identified in item B for use in determining the cost of administering TAP were identified by Commission staff and members of the advisory panel convened to assist in this rulemaking. The costs are specific and encompass the full scope¹ of administrative activities associated with TAP as identified by representatives of the parties responsible for administering the program. Most of the activities identified in this item, including those listed in subitems (2), (4), (5), (8) and (9), are required by statute or other parts of the TAP rules. The other activities are essential to carrying out a company's TAP responsibilities.

Subpart 6. Absence of TAP enrollment service charge.

This subpart makes clear that the service order record change charge must be used to determine a company's maximum reimbursement in the absence of a tariffed TAP enrollment charge. This clarification is needed to ensure that there is no delay in implementing the ceiling on reimbursement established in this rulemaking. Companies are not expected to rush immediately into petitioning the Commission for a TAP enrollment charge. If a company has both charges in its tariff, it may use either one. If a company has only one, it must use that one charge to determine its maximum reimbursement.

This subpart will give companies time to prepare their petitions for approval of TAP enrollment charges. It will also allow companies to refrain from seeking TAP enrollment charges if they conclude that their service order record change charges are adequate. These rule amendments are not intended to require all companies to develop TAP enrollment charges.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.115, subd. 2 (1990) requires the Commission, when proposing rules which may affect small business, to consider the following methods for reducing the impact on small businesses:

¹ The company activities listed in this item do not include those connected with collecting the surcharge since Minn. Stat. § 237.70, subd. 7 (d) (5) prohibits reimbursement for the cost of collecting the surcharge.

- (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. § 14.115, subd. 1 (1990) defines small business as:

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 proposed rule amendments may affect small businesses as defined in Minn. Stat. § 14.115 (1990). The small businesses that may be affected are small telephone companies. As a result, the Commission has considered the above-listed methods for reducing the impact of the rules on small businesses.

Methods (a), (b), and (c) address compliance and reporting requirements. The amendments proposed in this rulemaking do not impose any additional reporting requirements on businesses of any size. Therefore, the methods of reducing the impact of rules on small businesses set forth in paragraphs (a), (b) and (c) are not relevant.

Method (d) is similarly irrelevant to the proposed rule amendments since the amendments do not contain design or operational standards.

Method (e) addresses the exemption of small businesses from any or all rule requirements. The proposed rule amendments directly affect both small and large companies in two ways, neither of which necessitates any special exemptions for small businesses.

First, the rules change the starting point for the time period within which the Commission must reimburse a company for its TAP expenses. Currently, the 60 day period begins to run when the Commission receives the company's report. As amended the period will begin to run from the date the report is due. The purpose of this change is to reduce the burden on Commission staff of reimbursing a multitude of companies at different times each reporting period. Exempting small companies from this requirement would be directly contrary to the purpose of the mandate. The rule amendment reduces the administrative complexity and burden of reimbursement by providing a uniform time frame for compensating companies. An exemption for the many small companies affected by this rule amendment would eliminate the uniformity it seeks to achieve.

Second, the rules place a ceiling on reimbursement for administrative expenses. This ceiling is determined by reference to a formula based on a tariffed charge which is then multiplied by the number of new TAP participants subscribing to the company's service. It is intended to eliminate unreasonably high reimbursement requests received in the past and to reduce the burden on Commission staff and the companies of determining the exact cost of administering TAP each reporting period.

Because many of the unreasonably high reimbursement claims of the past have come from smaller companies it would make little sense to exempt these companies from this requirement. Moreover, the formula provided in this rule amendment should reduce the administrative burden on small as well as large companies. As discussed above, use of the formula involves nothing more than multiplying the number of new TAP participants subscribing to the company's service by the pre-approved amount in the company's tariff. Using this formula, companies will no longer have to determine the exact cost of administering TAP each reporting period.

Finally, the Commission notes that in Minn. Stat. ch. 237, 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.

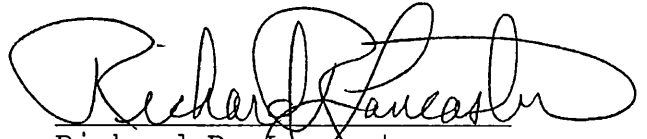
A general freedom from substantial direct competition and the opportunity to make a fair return on investment are among the benefits telephone companies receive from regulation. Given this regulatory framework, it is clear that the legislature views

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.

The Commission considered the possibility of exempting small companies from the requirements of these rule amendments. Since these amendments will have little if any adverse impact on small companies and since uniformity is the overriding purpose of these amendments, an exemption for smaller companies would be unnecessary and inappropriate.

VI. CONCLUSION

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



Richard R. Lancaster
Executive Secretary