STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

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

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

The Minnesota Public Utilities Commission (Commission) proposes to adopt as permanent rules Minn. Rules, parts 7817.0100 to 7817.1000, rules governing the Telephone Assistance Plan (TAP). The proposed rules implement a statewide telephone assistance plan to provide eligible senior citizens with credits on their telephone bills. The proposed rules also permit the implementation of federal telephone assistance plans which benefit Minnesota's local telephone customers.

Implementation of TAP and the proposed rules began with the passage of Laws of Minnesota 1987, chapter 340, sections 13 to 16, establishing TAP. Soon after that, the Commission sponsored a Telecommunications Forum which examined TAP. After considering the concerns presented at the forum and after soliciting outside comment, the proposed rules were drafted in consultation with an Advisory Task Force, a Research Work Group, and a Technical Work Group. The task force and work groups consist of representatives of the affected state and local agencies, telephone companies, and citizen groups. The sponsor of the legislation requiring the proposed rules has also been involved in this process, as has a representative of the Federal Communications Commission.

II. STATEMENT OF COMMISSION'S STATUTORY AUTHORITY

The Commission's statutory authority to adopt the rules is set forth in Laws of Minnesota 1987, chapter 340, sections 13 to 16, which provides in part:

> Sec. 15. [237.65] [Rules.]
> The commission shall adopt rules under the administrative procedure act necessary or appropriate to establish the telephone assistance plan in accordance with this chapter so that the telephone assistance plan is effective as of January 1, 1988, or as soon after that date as Federal Communications Commission approval of the telephone assistance plan is obtained.

Under this law, the Commission has the necessary statutory authority to adopt the proposed rules.

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 proposed rules are needed to ensure that telephone service is available for eligible senior citizens. Telephone service has become a necessity for these citizens. It is vital that they have access to a telephone for emergencies. In addition, senior citizens are often on a fixed income. However, the cost of owning and maintaining a telephone continues to rise. The result is that fewer and fewer senior citizens can afford to own a telephone. The proposed rules are needed to establish the legislatively mandated program designed to counteract this problem.

The need for the proposed rules also arises from the telephone assistance plan of the Federal Communications Commission (FCC) in Code of Federal Regulations, title 47, part 69. The FCC plan provides matching federal assistance to low income households that receive telephone assistance through a state plan. The state plan must be approved by the FCC in order to receive matching federal assistance.

To obtain the benefits of the FCC's federal matching plan, the Minnesota legislature enacted the Minnesota telephone assistance plan (TAP) in Laws of Minnesota 1987, chapter 340, sections 13 to 16, and directed the Commission to adopt rules establishing TAP. Therefore, the proposed rules 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. The reasonableness of the proposed rules is discussed below.

A. Reasonableness of the Rules as a Whole

The Commission approached the problem of establishing the TAP rules in several different ways.

Initially, the Commission discussed TAP and the proposed rules with those interested in telecommunications at its Telecommunications Forum. Thereafter, the Commission solicited outside comment on the proposed rules by publishing notice in the State Register and by mailing notice to all those on the Commission's rulemaking list for telephone matters. The Commission received written comments from the Department of Public Service, the Minnesota Telephone Association, and Northwestern Bell Telephone Company. The Commission reviewed their comments and incorporated their suggestions wherever possible in the proposed rules.

Laws of Minnesota 1987, chapter 340, section 14, subdivision 7, requires that TAP be administered jointly by the Commission, the Department of Human Services, and the telephone companies in accordance with the guidelines set out in that section. The law identifies the responsibilities of each joint administrator. In keeping with those responsibilities, each administrator provided key input on those sections of the proposed rule that dealt with its particular area of administration of the program. The legislative sponsor was an additional resource for the Commission.

As the administrator responsible for the rules, the Commission coordinated this input through an Advisory Task Force, a Technical Work Group, and a Research Work Group. In addition to the joint administrators, the task force and work groups included representatives from other affected state and local agencies and citizen groups. The task force and work groups continue to meet to evaluate TAP and prepare recommendations for the Commission, and ultimately, the legislature.

The Commission also consulted with the FCC to learn what provisions were required in the TAP rule in order to secure FCC approval for the matching plan and to learn what other states had done to receive FCC approval. By comparing the proposed rules to other state plans and receiving guidance from the FCC, the Commission was able to draft rules that are consistent with those states that have received FCC approval.

These approaches are reasonable because they draw on the knowledge and expertise of other affected groups within Minnesota and on the past experiences of other states and the federal government.

B. Reasonableness of Individual Rules

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

Part 7817.0100 DEFINITIONS

Subpart 1 provides the scope of the terms used in parts 7817.0100 to 7817.1000. Delineating the scope of the terms is reasonable to clarify where the definitions apply.

Subpart 2 defines "access line" as it is defined by the legislation governing TAP. See Laws of Minnesota 1987, chapter 340, section 13, subdivision 5. It is reasonable to use this definition in the proposed rules because the legislation requires it, and because it is the definition commonly understood by the those involved in the telephone industry.

Subparts 3,4 and 5 provide that "Commission" refers to the Minnesota Public Utilities Commission; that "Department of Human Services" refers to the Minnesota Department of Human Services; and that "Department of Public Service" refers to the Minnesota Department of Public Service. These definitions serve to shorten terminology used elsewhere in the rules and are reasonable because they clarify these terms for the reader.

Subpart 6 defines the "federal matching plan" by giving the full name of the federal program and providing a citation. The definition further states that the federal program provides matching federal assistance in the form of a waiver of the federal access charge for eligible subcribers that are receiving state assistance. This definition is reasonable because it reduces the amount of terminology needed in other parts of the rule and because it explains what the federal matching plan does.

Subpart 7 defines "household" as a subscriber, a subscriber's spouse, and the minor children with whom a subcriber resides. The definition of "household" is important to the TAP rule because it determines which persons' income is used to verify program eligibility. This definition was agreed upon by the members of the task force and the work groups as the most efficient and effective term for the purposes of determining program eligibility and minimizing the administrative costs of income verification.

All of the members of the task force and work groups recognize that there may be situations in which adult children of the senior subscriber residing with the senior may be contributing to the income of the household. However, adult children were not included in the definition for several reasons.

The first reason is that because the FCC requires that the income of a household be verified before a subscriber can be certified as eligible for assistance, a definition of household was needed that minimized the cost of verification. The administrative cost of verification increases tremendously for each additional person in the household whose income must be verified. For this reason,

the definition of household was limited to the subscriber, the subscriber's spouse, and their minor children (whose income will not be included).

Another reason for excluding adult children from the definition was the practical consideration that the amount of the TAP benefit will be small in comparison to the cost of transferring the telephone listing from the name of the adult child into the name of the senior parent. That cost, and the inconvenience of not having the telephone listing in the adult child's name, led the Commission to agree with the task force and work groups that it was reasonable to believe that most adult children would not go to the trouble of changing the listing to an over-65 parent residing in the child's house solely to qualify for program benefits.

For these reasons, the Commission decided it was reasonable and practical to exclude the income of any adult children residing in a household from the definition of household.

Subpart 8 incorporates the definition of "income" set forth in the Minnesota Property Tax Refund Act. See Minn. Stat., section 290A.03, subdivision 3. This is also the definition set forth in the TAP legislation. See Laws of Minnesota 1987, chapter 340, section 13, subdivison 8. It is, therefore, reasonable to use this standard definition of income.

Subpart 9 defines "local agency" as a county or multicounty agency authorized to administer public assistance programs under Minn. Stat., sections 393.01, subdivision 7, and 393.07, subdivision 2. These sections provide for the establishment, powers, and duties of county welfare boards. This is the rule definition of local agency used by the Department of Human Services. It is reasonable to incorporate the Department of Human Services' definition of local agency because the TAP legislation requires the Department of Human Services, through its various offices and local agencies, to determine eligibility. See Laws of Minnesota 1987, chapter 340, section 14, subdivision 7(b).

Subpart 10 defines "local exchange service" by combining the definitions found in Minn. Rules, parts 7810.0100, subpart 23, and part 7815.0100, subpart 4. Minn. Rules, part 7810.0100, subpart 23, defines local exchange service for the chapter governing telephone utilities. Minn. Rules, part 7815.0100, subpart 4, defines extended area service for the chapter governing inter-exchange calling. Both of these terms refer to different components of local telephone service and together they result in a complete definition of local exchange service. It is reasonable to combine them rather than referring to two different terms throughout the proposed rules.

Subpart 11 defines "permanent changes" for the purposes of determining whether eligibility should be terminated pursuant to part 7817.0400, subpart 9, of the proposed rules. It is reasonable to consider only changes in eligibility that are expected to continue for 12 months or more because the TAP benefits are given for 12 months at a time, and because eligibility must be reverified every 12 months. Therefore, the practical effect of determining eligibility under the proposed rules is that changes lasting at least 12 months are permanent. It is also reasonable to make all the time frames regarding eligibility consistent to promote administrative economy and efficiency and to avoid confusing the program participants.

Permanent changes are further defined to include changes such as increased income, change of residence, or death of the subscriber. Any of these factors may change the eligiblity of a participant under part 7817.0400 of the proposed rules. Therefore, it is reasonable to specify what types of changes could result in a loss of TAP benefits.

Subpart 12 defines "public assistance programs" as those programs administered by the local agencies to provide financial assistance to needy individuals. This is a standard definition of the Department of Human Services and is used in the proposed rules to clarify what sorts of programs will affect eligibility for TAP under part 7817.0400, subpart 4, of the proposed rules. The definition is written broadly so that it will encompass the many financial assistance programs administered by the local agencies.

Subpart 13 incorporates part of the standard Commission definition of "subscriber" found in Minn. Rules, part 7810.0100, subpart 12. The definition of "subcriber" used in the proposed rules is limited to persons and does not include firms, partnerships, corporations, municipalities, cooperative organizations, governmental agencies, etc. This limitation on the definition of subscriber is necessary because the TAP benefits are limited to persons; namely, eligible senior citizens who subscribe to local telephone service. It was therefore reasonable to similarly limit the definition of subscriber to persons.

Subpart 14 defines what the TAP benefits are under the proposed rules. TAP benefits take the form of "telephone assistance credits" that are applied to the local telephone bills of eligible subscribers. The credits reduce the amount of local telephone rates for those residential households that qualify under TAP. The amount of the telephone assistance credit is set forth in part 7817.0500 of the proposed rules. This definition is reasonable because it is accurate and because it serves to shorten and clarify language throughout the proposed rules.

Subpart 15 states that the "telephone assistance plan" means the plan required by Laws of Minnesota 1987, chapter 340, sections 13 to 16, and set out in the proposed rules. This definition is reasonable because it shortens the terminology used in the proposed rules and because it clarifies this term for the reader.

Finally, subpart 16 defines "telephone company" as it is defined in the TAP legislation. See Laws of Minnesota 1987, chapter 340, section 13, subdivision 4. It is reasonable to use the definition set out in the TAP legislation because that definition incorporates the statutory definition of telephone company in Minn. Stat. section 237.01, subdivisions 2 and 3. Minn. Stat., chapter 237, governs telephone and telegraph companies operating in Minnesota and, therefore, provides the most accurate and complete definition of telephone company.

Part 7817.0200 PURPOSE AND CONSTRUCTION

Part 7817.0200 provides that the purpose of the proposed rules 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 Human Services, and the telephone companies. This language combines the ideas expressed in the Scope portion and the Administration portion of the TAP legislation. See Laws of Minnesota 1987, chapter 340, section 14, subdivisions 2 and 7. These statements are therefore consistent with the legislative intent in enacting TAP and requiring these rules.

This part also provides that the purpose of the proposed rules is to permit the implementation of federal telephone assistance plans so that the state's local telephone customers are afforded the opportunity to acquire the benefits of these federal plans. The Commission received many comments from affected persons, agencies, and telephone companies during the Telecommunications Forum, the solicitation of comments, and the task force and work groups meetings requesting that the proposed TAP rules provide for the eventual implementation of other federal telephone assistance plans, such as the Link-Up America Plan.

The Commission agreed with the interested persons who made these requests that the benefits of these federal programs should be made available to Minnesota subscribers. Because the addition of other federal telephone assistance programs would be in the public interest, as demonstrated by the comments received, the Commission proposed rule part 7817.0800 which provides for the incorporation of other federal telephone assistance plans. It is reasonable to explain the Commission's intent in the Purpose section of the proposed rules to make it clear that the Commission will be examining other federal plans for possible implementation in Minnesota.

Lastly, this proposed rule states that the rules will be liberally construed to further the purposes discussed above. It is reasonable to include a general statement of the rules' construction in order to clarify for the affected persons and the general public that the rules will be interpreted so as to be consistent with the general objectives of the rules.

Part 7817.0300 FUNDING

Part 7817.0300, Subpart 1. Uniform statewide monthly surcharge

Subpart 1 of this part states that the funds for TAP are to be collected as a monthly surcharge on all telephone access lines provided by the local telephone companies in Minnesota. Using a monthly surcharge to collect TAP funds is the method mandated by Laws of Minnesota 1987, chapter 340, section 14, subdivisions 6 and 7(d)(1). This method is consistent with the funding of several other state and federal telephone assistance plans. Therefore, it is reasonable to specify this method of funding in the proposed TAP rules.

The subpart explains that the initial surcharge will be assessed beginning with the first billing cycle occurring immediately after the effective date of the rules. The proposed rules, if adopted, will be in effect by January 1, 1988. In order to implement TAP as soon as practicable, it is reasonable to begin assessing the monthly surcharge after the rules are in effect. Coinciding the first monthly surcharge with the first billing cycle is a reasonable method for initiating the surcharge because it fits in with the method for collecting funds already established by the telephone companies. It is administratively efficient and economical.

After the initial determination of surcharge level, the subpart provides that the Commission shall annually redetermine the surcharge level. Redetermination will be required every year for several reasons. First, the initial level of surcharge determination will made in January, 1988. Depending upon the participation levels of the program and the actual level of administrative expenses of the program, it may be neccessary to adjust the surcharge level. Laws of Minnesota 1987, chapter 340, section 14, subdivision 6, gives the Commission the authority to calculate the surcharge and subdivision 7(d)(5) gives the Commission the authority to modify the surcharge.

Second, the TAP credits will be given to eligible subcribers for a maximum of 12 months. See proposed part 7817.0600, subpart 2, items B and C. Since the credits will extend through 1988 before a redetermination of eligibility is necessary, it is reasonable to be consistent and have the surcharge similarly continue through 1988 and be redetermined in 1989, and every year thereafter. For the same reasons as given above, the annual

redetermination of surcharge level will begin with the first billing cycle of the calendar year.

The Commission notes that the proposed rules provide that the surcharge level may be redetermined more often than once every year, as needed to ensure an adequate level of funding. See proposed part 7817.0700. Therefore, the annual requirement does not prevent the Commission from taking action when necessary to adequately fund TAP as long as the surcharge does not generate more than $2.5 million annually.

Items A, B, and C of subpart 1 list the criteria for calculating the level of surcharge. The surcharge cannot collect more than $2,500,000 statewide; the surcharge must be apportioned between telephone companies according to their relative number of access lines; and the surcharge level must be uniform statewide. These criteria reflect the statutory criteria of the TAP legislation in Laws of Minnesota 1987, chapter 340, section 14, subdivisions 6 and 7(d)(1). It is reasonable, therefore, to include these criteria in the proposed TAP rules.

Part 7817.0300, subpart 2. Use of surcharge revenues

This subpart details how the surcharge will be collected, by whom, what the surcharge will be used for, and what will be done with any excess surcharge revenues. The telephone companies are responsible, as co-administrators of TAP, for collecting the surcharge through their telephone bills. The telephone companies shall also use the surcharge revenues to give credits to eligible TAP subcribers and to cover the administrative expenses of the telephone companies. If there are any revenues remaining after the telephone companies give TAP credits and deduct their expenses, the excess revenues shall be put into a statewide surcharge revenue pool and administered by the Commission.

It is reasonable for the telephone companies to collect the surcharge and distribute the credits because they have direct access to the telephone bills of the participants. They are the most administratively efficient and practical resource for performing this aspect of TAP.

Furthermore, the TAP legislation specifies the duties of the telephone companies. Laws of Minnesota 1987, section 14, subdivisions 7(c) and 7(d)(2), states that the telephone companies shall provide TAP credits. Section 14, subdivisions 7(d)(3) and 7(d)(5), make it clear that the telephone companies are entitled to reimbursement for their expenses incurred in administering TAP. Section 14, subdivisions 7 and 7(d)(4), provide that excess surcharge revenues are to be remitted to the Commission for administration as part of the statewide surcharge revenue pool. Thus, it is reasonable to incorporate these statutory duties into the proposed rule.

Part 7817.0300, subpart 3. Statewide surcharge revenue pool

Subpart 3 establishes a revenue pool of any excess surcharge revenues collected by the telephone companies. Items A and B specify that the money in the revenue pool will be used to reimburse the co-administrators of TAP.

A revenue pool is needed because some telephone companies will have excess revenues while other telephone companies will not collect enough surcharge revenues to cover the cost of providing TAP credits and administrative expenses. TAP is intended to provide benefits throughout Minnesota, but not all of the eligible households in the state will receive TAP credits if their telephone company cannot collect sufficient surcharges to cover the costs of providing TAP. On the other hand, telephone companies that may have excess revenues after providing TAP to all eligible households should not reap a windfall benefit by retaining the excess benefits. A reasonable solution is to create a pool of the excess revenues and use that pool to ensure that all eligible households receive TAP benefits, and that the costs of administering TAP are covered.

The proposed rule is also reasonable because it reflects the TAP legislation establishing a statewide surcharge revenue pool and providing for the reimbursement of administrative expenses. See Laws of Minnesota 1987, chapter 340, section 14, subdivisions 7, 7(4), and 7(5).

Items A and B of the proposed rule recognize that the amount of Commission and telephone company administrative expenses should be reasonable and provide for a full or partial reimbursement of Commission expenses. In this way, none of the co-administrators of TAP will receive a financial windfall from the surcharge revenues. This approach is reasonable because the purpose of TAP is to benefit eligible households while keeping the administrative costs to a minimum so that the telephone customers who pay the surcharge are not overcharged. The proposed rule language will provide sufficient protection for both the participants of TAP and the surcharge paying telephone customers, and still ensure that administrative expenses are reimbursed as needed.

In particular, item A provides for full or partial reimbursement of reasonable Commission expenses. As a TAP administrator, the Commission will incur expenses for various activities. These activities will include reviewing the telephone company reports, calculating and providing reimbursements to the telephone companies, handling customer complaints, and contracting to provide the most economical means of implementing the other aspects of TAP such as determining eligiblity, verifying income, providing notices, and in general, overseeing the TAP process.

Item B provides for reasonable telephone company expenses not covered by surcharge revenues previously collected by the telephone company. The telephone companies are also TAP administrators and therefore will incur expenses in collecting the surcharge and dispensing the credits. Under the TAP legislation, the telephone companies are entitled to reimbursement for their administrative expenses. See Laws of Minnesota 1987, chapter 340, section 14, subdivisions 7(d)(3), 7(d)(4), and 7(d)(5). This law also requires telephone companies to maintain a record of their expenses and report to the Commission. See Laws of Minnesota 1987, chapter 340, section 14, subdivision 7(d)(3) and 7(e). Therefore, the proposed rule requires the Commission to reimburse the telephone companies within 60 days of a telephone company's quarterly report. Sixty days is a reasonable amount of time for the Commission to review a company's report and calculate the appropriate amount of reimbursement.

Part 7817.0400 ELIGIBILITY FOR TELEPHONE ASSISTANCE CREDITS

Laws of Minnesota 1987, chapter 340, section 14, subdivision 4, establishes the criteria for determining eligibility for TAP credits. Proposed part 7817.0400 is needed to implement this law. Specifying these criteria in the rule is reasonable because it ensures that local agencies and other people affected by the law are informed of their statutory rights and responsibilities. It is also necessary to add specific conditions under which persons must be found eligible for TAP credits under Laws of Minnesota 1987, chapter 340, section 14, subdivision 4, in order to insure that these criteria are applied uniformly and that TAP credits are administered as uniformly as possible throughout the state as required under Laws of Minnesota 1987, chapter 340, section 14, subdivision 2.

Part 7817.0400, subpart 1. Information provided

Subpart 1 states that information on qualifying for TAP credits must be provided by the local agencies upon request. That information will be in the form of a brochure that describes the eligiblity requirements and application process. In addition, an application form will be offered to the person requesting information.

TAP is a statewide program and information concerning TAP must to be made available to the public in some way. It is reasonable to inform people of the TAP eligiblity requirements through an informational brochure and application form. A brochure is a means of accurately conveying the necessary information. By also providing an application form, persons can immediately apply for TAP credits after determining whether they may qualify. Brochures and application forms can also be picked up at local agency offices and used to apply at a later date. Thus,

brochures and application forms are a convenient and confidential way for people to examine TAP. This method is also reasonable because it costs less to administer than requiring individual interviews for each potential applicant.

Part 7817.0400, subpart 2. Application process

Proposed subpart 2 clarifies that an application must be returned to the local agency. As explained above for subpart 1, it is for the applicant's convenience that application forms can be picked up at the local agency offices and completed at the applicant's leisure. However, since the local agency is required by the TAP legislation to determine eligiblity, the application form must be returned to the local agency for that purpose. See Laws of Minnesota 1987, chapter 340, section 14, subdivision 7(b).

In addition, the application may be made by the subscriber, the subscriber's spouse, or a person authorized to act on the subscriber's behalf. This section of the proposed rule was also added for the applicant's convenience. Since the income of the subscriber's spouse will be considered for the purposes of determining eligibility in proposed subpart 5, and since the spouse is a member of the household potentially receiving TAP credits, it is reasonable to allow the subscriber's spouse to complete the application. Allowing a person authorized to act on the subscriber's behalf to make the application is also reasonable because there may be instances in which a subscriber is unable to apply for TAP credits on his or her own, but is nonetheless entitled to receive TAP credits. It would be unfair to deny TAP credits to these people.

Part 7817.0400, subpart 3. Documenting, verifying, and reviewing eligiblity

Proposed subpart 3 describes who will determine eligibility and the eligibility process. The local agencies have the responsibility to determine eligibility. See Laws of Minnesota 1987, chapter 340, section 14, subdivision 7(b). The federal matching plan similarly requires the state plan to determine eligibililty. Therefore, it is reasonable to state in the proposed rule that the local agencies shall verify income to determine eligibility.

The proposed rule further provides that the local agencies may verify income when eligibility needs to be redetermined or if there are permanent changes in eligibility. The need to redetermine eligibility or terminate eligibility arises from Laws of Minnesota 1987, chapter 340, section 14, subdivision 7(c), and is also discussed under proposed subpart 9.

Because TAP operates on a 12-month cycle, eligibility is redetermined at least every 12-months. However, any changes to

eligibility during or after the 12-month cycle will be permanent changes that render a person ineligible for TAP credits. And, as described in proposed subpart 9, permanent changes render a person ineligible for TAP credits. For this reason, proposed subpart 3 treats redetermination and permanent changes to eligibility in the same manner.

It is reasonable to not automatically require reverification of income for redetermination and permanent eligibility changes because income has already been verified for the original application. After the original application has been certified for eligibility, the recipient has the responsibility under subpart 9 to report any increases in income beyond the TAP guidelines or any other permanent changes in eligibility. Permanent changes include an increase in income and result in a recipient losing his or her eligibility status. Therefore, since the recipient must inform the local agency of permanent changes that result in ineligibility, there is very little need for the local agency to automatically reverify income for redetermination and permanent eligiblity changes.

This approach is also reasonable because it greatly reduces the costs of administrating TAP. Verifying income is one of the largest expenses incurred to implement TAP. Moreover, the need for reverifying income after it has already been verified is not great enough to justify such a high cost. Senior citizens are often on a fixed income and, if there are any changes in income, the changes will most likely be reductions in income.

Item A of proposed subpart 3 requires an applicant to document income or authorize the local agency to verify income. This item recognizes that in order to determine eligibility or verify income, proof of eligibility is necessary. Documentation is a reasonable means of providing this proof. To ease the burden on the applicant, item A further requires the local agency to help the applicant obtain the necessary documents when the applicant does not possess and cannot obtain the documents. Finally, item A makes it clear that documents previously verified and retained by the local agency need not be verified again unless the information no longer applies. This statement is reasonable because it would be an unnecessary duplication of effort and expense to reverify documents that have already been verified. The practical exception would be situations where the documents no longer reflect current circumstances. In those situations, new documentation would be needed.

Proposed item B protects the applicant by requiring prior written consent before the local agencies can request information from sources other than other local agencies, the DHS, or the telephone companies that is not of public record. The applicant is further protected under item B because third parties cannot have access to information about the applicant's eligibility

without prior written consent from the applicant, unless access is granted under the Minnesota Government Data Practices Act, Minn. Stat., chapter 13. It is reasonable to include these statutory protections in the proposed rule so that the applicants are informed of their rights under the law and to ensure that the applicant's rights are not violated by the local agencies.

Proposed item C requires the local agencies to inform recipients of their responsibility to report permanent changes in eligibility to the local agencies within 10 days of any change. Permanent changes are defined in proposed part 7817.0100, subpart 11, and discussed in the corresponding section of this Statement of Need and Reasonableness. It is reasonable to place the burden of reporting permanent changes that may render a recipient ineligible for TAP credits on the recipient because in most instances only the recipient has knowledge of any such changes. Since only eligible persons are entitled to TAP credits, it is unfair to other recipients and the surcharge revenue payers to allow persons who are not entitled to TAP credits to continue receiving these credits. Finally, it is reasonable to require the local agencies to notify recipients of this responsibility so that the recipients are sure to be informed of their responsibility and act accordingly.

Part 7817.0400, subpart 4. Eligibility criteria

Items A, B, and C list the criteria that must be satisified before an applicant can be certified as eligible to receive TAP credits. Proposed items A and B are also specified in Laws of Minnesota 1987, chapter 340, section 14, subdivision 4.

Proposed item A states that the household must not receive telephone service assistance from state programs other than TAP. Currently, there are no other state programs offering telephone service assistance. However, this proposed item was included in the rules to satisfy the TAP legislative criteria cited above. Prohibiting TAP recipients from also receiving non-TAP telephone assistance is reasonable because it prevents multiple recovery of telephone service assistance benefits. Thus, recipients may receive benefits from either TAP or non-TAP programs, but not both.

The proposed item A does not prohibit telephone assistance from federal programs other than the federal matching plan for several reasons. Proposed part 7817.0800 provides for the addition of other federal telephone assistance plans, such as the Link-Up America plan which provides assistance for the initial connection of telephone service. Other states routinely offer both the TAP federal matching plan and the Link-Up America plan. It is reasonable to similarly offer both federal plans in Minnesota because the federal plans provide different benefits and do not result in multiple recovery for telephone assistance.

Proposed part 7817.0800, also provides if other federal telephone assistance plans are offered, they will be incorporated into TAP. That is, the corresponding state plans will become part of TAP. Utilizing TAP in this manner is a reasonable way to ensure that Minnesota customers will receive the benefits arising out of future federal telephone assistance plans and their state plan counterparts.

Proposed item B states that an applicant must be 65 years of age or older. The Minnesota legislature has recognized that senior citizens have a great need for TAP credits. Senior citizens must have access to a telephone for medical and transportation purposes. The high cost of telephone service often jeopardizes access to telephone service for these citizens.

In addition, item B further provides that only those seniors who subscribe to telephone service are eligible for TAP credits. Since the subscriber is financially responsible for paying the telephone bill, it is reasonable to provide TAP credits only to subscribers. This requirement prevents those persons who have a senior citizen as a member of their household from receiving TAP credits if the senior is not responsible for paying the telephone bill. This requirement is a reasonable means of ensuring that only eligible senior citizens will receive TAP credits.

Finally, item C requires that the subscriber is, or is about to become, a Minnesota resident. This is a reasonable requirement because TAP is a statewide program for the benefit of certain Minnesota telephone customers. Non-Minnesota residents and persons who do not intend to remain in Minnesota should not receive benefits targeted for other persons.

Part 7817.0400, subpart 5. Income

Proposed subpart 5 states what the income level must be to be eligible for TAP credits. The income levels listed in subpart 5 are those authorized by Laws of Minnesota 1987, chapter 340, section 14, subdivison 4(3). Therefore, proposed subpart 5 lists the maximum total annual household income, depending on the size of the household, as stated in the TAP legislation.

Subpart 5 also states that income has the meaning given it in Minn. Stat., section 290A.03, subdivision 3. This statement is consistent with the definition of income in proposed part 7817.0100, subpart 8. This statement is also consistent with the definition of income in Laws of Minnesota, chapter 340, section 13, subdivision 8, and is therefore a reasonable choice for the meaning of income for the purposes of determining TAP eligibility.

Furthermore, proposed subpart 5 makes it clear that the income of minor children residing in the subscriber's household will not be

considered for the purpose of determining TAP eligibility. This is a practical consideration which recognizes that minor children will contribute very little to the income of the household. Since there are probably very few minor children residing with senior citizens, the group of minor children that may contribute substantially to the household's income is even smaller. On the other hand, the administrative costs of verifying the income of any person, even a minor child, is very high. Therefore, the high cost of determining whether a rare situation exists makes it reasonable to not consider the income of minor children for the purposes of determining TAP eligibility.

Part 7817.0400, subpart 6. Local agency responsibilities

Proposed subpart 6 gives the local agencies 30 days to determine eligibility once the local agencies receive a TAP application. Thirty days was chosen as a reasonable time for the local agencies to perform the administrative tasks required by the proposed rules, such as verifying income. Moreover, the 30 day application turn-around time is similiar to other assistance programs administered by DHS and the local agencies. Any longer time period would unduly delay receipt of TAP credits and any shorter time period could result in errors in determining eligibility.

Part 7817.0400, subpart 7. Applicant and recipient responsibilities

Proposed subpart 7 requires an applicant to provide current information about circumstances that permanently affect TAP eligibility. This requirement is a reasonable means of facillitating the process used to determine eligibility. It recognizes that eligibility can only be accurately determined by evaluating current and permanent information. Old information may not be accurate and temporary information changes too often to be of value. Moreover, requiring current and permanent information ensures that eligiblity will not have to be redetermined before the 12-month period expires and will, therefore, save administrative expenses and be more convenient for the applicant.

Proposed subpart 7 also requires a recipient to submit a recertificiation form required for redetermining eligibility, before the end of every 12-month period. Annual completion and submission of a recertification form is authorized in Laws of Minnesota 1987, chapter 340, section 14, subdivisions 7(a),(b), and (c). It is reasonable to place the burden of completing a recertification form on the recipient because the recipient has knowledge of any permanent changes in circumstance that would affect continued eligibility.

Part 7817.0400, subpart 8. Notices

Proposed subpart 8 requires the local agency to notify the applicant of the disposition of the application by mail to the applicant's last known address. Notification by mail is a reasonable means of ensuring that applicants are aware of their eligibility status promptly. This method is also reasonable because it will be less expensive administratively than notifying in person or by telephone. Mailing to the applicant's last known address is also reasonable because the local agencies will have this information on the application form which will be current and, therefore, accurate.

Proposed items A through E explain who shall receive notice under different situations. Items A and B cover the situation in which an applicant is certified as eligible for TAP credits. In that situation, the local agency shall notify the applicant and the telephone company. It is reasonable to have the local agency notify both parties, rather than requiring the applicant to notify the telephone company or vice-versa for several reasons. It will take less time to implement TAP and provide TAP credits if the applicant and the telephone company receive notice of certification at approximately the same time. It will also be more convenient for the applicant to not have to notify the telephone company and vice-versa. Finally, the administrative burden on the local agencies will be slight because they already have access to this information.

Proposed items C and D cover the situation in which eligibility is denied or terminated. In that instance, the applicant or recipient has the right to know why his or her eligibility was denied or terminated, his or her right to appeal, and his or her right to reapply for TAP credits. Stating these rights in Item C is a reasonable means of ensuring that applicants and recipients are informed of their rights so that they may exericise them when necessary. Item D is also reasonable because the telephone companies must know when a recipient's eligibility is terminiated so that the telephone company can cease providing credits pursuant to proposed part 7817.0600.

Lastly, proposed item E requires the local agencies to notify the recipient of the need to apply for recertification, sixty days before the end of every 12-month period. As discussed above for proposed subpart 7, recipients must complete and submit a recertification form to the local agencies before the end of every 12-month period. Therefore, it is reasonable for the local agencies to remind recipients of this responsibility before the 12-month period expires. Sixty days was chosen as a reasonable time period because the recipients must be given adequate time to obtain, complete, and submit recertification forms.

Part 7817.0400, subpart 9. Termination of credit

Proposed subpart 9 describes the conditions under which TAP credits will be terminated. TAP credits will be terminated if income limits permanently exceed the maximums listed in above for proposed subpart 5. TAP credits will also be terminated if there are permanent changes in other basic eligibility requirements.

Subpart 9 is consistent with the TAP legislation which provides for the termination of TAP credits in Laws of Minnesota 1987, chapter 340, section 14, subdivision 7(c). It is reasonable to terminate credits if a recipient is no longer eligible because that person is no longer entitled to the credits. To allow TAP credits to continue could ultimately jeopardize TAP and would be unfair to other recipients and to the surcharge revenue payers.

Part 7817.0500 CALCULATION OF CREDITS

This part of the proposed rules specifies who shall calculate the TAP credits, how often the credits shall be calculated, and the criteria on which the calculations shall be based. The Commission is responsible for calculating the TAP credits on an annual basis at the beginning of each year. The calculation criteria are listed in items A through D of the proposed rule.

Laws of Minnesota 1987, chapter 340, section 14, subdivision 7(d)(2), states that the Commission shall establish the level of credit that each telephone company shall provide to the TAP participants. It is reasonable for the Commission to set the level of credit for each telephone company because the Commission is the administrator of the statewide surcharge revenue pool and because the telephone companies will be reporting to the Commission. Since the Commission will have access to this information, it is administratively efficient for the Commission to also determine the appropriate level of credits.

Similarly, Laws of Minnesota 1987, chapter 340, section 14, subdivision 7(c), requires the telephone companies to provide TAP credits for a maximum of 12 months, after which time the credits must cease unless the eligible household is recertified. Laws of Minnesota 1987, chapter 340, section 14, subdivision 7(e), requires the telephone companies to give an annual report to the Commission on the amount of TAP credits given during the year. Reading these two sections together, it is reasonable for the Commission to recalculate the appropriate level of credits every 12 months since the eligiblity for credits will be redetermined at that time and since the provision of credits for the previous year will be reviewed at that time.

This part further provides that the Commission shall redetermine the level of credits at the beginning of each calendar year. The beginning of the calendar year was chosen because the proposed

rules, if adopted, will be in effect January 1, 1988, and TAP will be implemented at that time. As explained above, TAP will be evaluated every year so it is reasonable to redetermine the level of credits on each TAP anniversary.

The criteria for calculating the appropriate amount of credit are laid out in items A, B, C, and D of this proposed rule. These are also the criteria that are laid out in Laws of Minnesota 1987, chapter 340, section 14, subdivisions 5 and 7(d)(2). Taken together, these two subdivisions require that the credits must be uniform for each telephone company in the state and cannot exceed:

- the amount of the federal matching plan credits;
- 50% of the household's local exchange rate; and
- the amount of funds available from the surcharge.

The federal matching plan matches the value of the state plan's assistance up to the amount of the federal subscriber line charge. The federal subscriber line charge is currently $2.60 per access line. That amount will increase to $3.20 on December 1, 1988; and to $3.50 on April 1, 1989. The FCC will waive this charge for eligible TAP participants who are receiving the same amount of TAP credits. Therefore, Minnesota's TAP credits must match the current federal subscriber line charge and it's scheduled increases. Any TAP credits above the federal waiver will not receive a matching federal benefit. For this reason, it is reasonable to specify in item A of the proposed rule that the federal matching plan amounts are one ceiling for the TAP credits.

Item B of the proposed rule specifies a second ceiling for the TAP credits. The credits must not exceed more than 50 percent of the weighted average of the local exchange rate charged for local exchange service provided to the household by that household's telephone company. The 50 percent level chosen by the Minnesota legislature is reasonable. It ensures that all those who receive TAP credits are given a substantial reduction in the amount of their monthly telephone bill while also ensuring that windfall benefits are not given at the expense of those who are funding TAP, the surcharge revenue payers.

Item B further requires a weighted average because telephone companies have more than one rate. There are one-party, two-party, three-party rates, extended area service rates, and so on. The administrative cost of making a customer-specific rate determination for the estimated 30,000 TAP participants is very high. On the other hand, for a greatly reduced administrative cost, the telephone company can calculate the weighted average of all the local exchange rates offered by the company. Moreover, because the average is weighted, very little accuracy is lost by using this method. Therefore, it is reasonable to use a weighted

average when calculating the appropriate level of TAP credits.

Item C is a practical limitation upon the level of TAP credits. The credits must not exceed the level of credits that can actually be funded in accordance with the surcharge limitations in proposed part 7817.0300. This limitation will prevent the Commission from providing more credits than there are revenues. It was similarly reasonable to include this requirement in the proposed rule.

Finally, item D states that the level of credits must be uniform for each company statewide. This limitation ensures that some eligible TAP households do not receive more or less credits than they are entitled to from the telephone company that provides them with telephone service. It is reasonable to prevent discrimination under the proposed rules in this way.

Part 7817.0600 PROVISION AND TERMINATION OF CREDITS

Part 7817.0600, subpart 1. Provision of credits.

Subpart 1 of the proposed rule states who shall provide TAP credits and how they shall be provided. Subpart 1 requires telephone companies to provide TAP credits against monthly charges for each certified household. This requirement is the basic concept underlying TAP. Namely, that eligible households shall receive TAP credits under the proposed rules. Moreover, the TAP legislation makes this requirement in Laws of Minnesota 1987, chapter 340, section 14, subdivision 7(c). It is, therefore, reasonable to include this requirement in the proposed rule.

In addition, subpart 1 requires the telephone companies to make the credits available within 90 days after the date the surcharge is first assessed. The surcharge will be first assessed in January of 1988, after the proposed rules are adopted and TAP goes into effect. See proposed part 7817.0300, subpart 1. Ninety days from that date was chosen as a reasonable time period for the telephone companies to collect the surcharge and make the necessary administrative preparations before giving the credits. This time will also be used to advertise TAP and determine eligibility under proposed part 7817.0400.

Part 7817.0600, subpart 2. Following notice from local agency.

Subpart 2 states that the local agencies are responsible for notifying the telephone company about a household's eligiblity. As explained in proposed part 7817.0400, the local agencies determine TAP eligibility. In keeping with that responsibility, the proposed rule requires the local agencies to notify the telephone companies regarding eligibility. That is a reasonable and practical solution to the problem of how to let the telephone

companies know who is entitled to TAP credits since the local agencies will be the first to know who is eligible.

Item A, B, and C of subpart 2 specify what the telephone company's responsibilities are once it receives notification of eligibility from a local agency. These responsibilities are also set forth in Laws of Minnesota 1987, chapter 340, section 14, subdivision 7(c).

Item A requires a telephone company to apply credits in the month after the month in which the local agency notifies it of eligibility. One month is a sufficient and, therefore, reasonable amount of time for a telephone company to do the administrative work necessary to prepare and provide credits to an eligible household. This item further specifies that the credits are to begin with the telephone company's next monthly billing cycle. This is reasonable because the telephone company's billing cycle is already established. Therefore, the provision of credits will fit into this pre-established billing cycle with the minimum amount of administrative cost and effort.

Item B of subpart 2 requires a telephone company to stop giving credits at the end of every 12 month period, unless notified that eligiblity has been redetermined. This 12 month redetermination period has been discussed earlier in conjunction with proposed part 7817.0500, governing the calculation of credits. The same reasoning applies here for ceasing credits every 12 months, absent a redetermination of eligiblity.

Item C states that a telephone company shall stop providing credits before the end of a 12-month period if eligibility has been permanently terminated. Permanent changes, as defined in proposed part 7817.0100, subpart 11, are those changes that render a subscriber ineligible for 12 months or more. Item C is intended to protect the telephone customers who pay the TAP surcharge from funding TAP credits unnecessarily. It is reasonable to require the termination of credits if a subscriber will no longer be eligible on a permanent basis.

However, due to the high cost of verifying eligibility, it is not reasonable to terminate eligibility for temporary changes. This is true because temporary changes could reverse themselves and render a subscriber eligible again within the same 12-month period. In such a situation, eligiblity would have to be verified for a third time within the same year. Therefore, the number of verifications, and the corresponding administrative cost, would increase for each temporary change in eligibility. The amount of TAP benefit would quickly be consumed by the attendant increase in verification costs. For these reasons, the proposed rule is limited to permanent changes in eligibility.

Part 7817.0700 ADJUSTMENT TO LEVEL OF SURCHARGE AND CREDITS

This proposed rule allows the Commission to adjust the level of surcharge and credits when necessary to stay within the limitations on the level of surcharge and credits set out in proposed parts 7817.0300 (funding) and 7817.0500 (calculation of credits). The Commission was given the authority to make these adjustments in Laws of Minnesota 1987, chapter 340, section 14, subdivision 7(d)(5).

Whenever it appears that the maximum amount of surcharge revenues collected are insufficient to fund the level of credits established by the Commission, the Commission must reduce the level of credits so that the funds being collected can cover the cost of providing the credits. Otherwise, the surcharge revenue pool would be depleted and TAP's future would be threatened. Allowing the Commission to reduce the level of credits in such an instance is a reasonable means of ensuring that TAP is not operated at a deficit.

The proposed rule further allows the Commission to increase the level of credits if there are sufficient surcharge revenues available. Alternately, the Commission may reduce the surcharge so that an unreasonable overcollection of surcharge revenues is prevented. Either of these adjustments may be necessary if there are excess revenues in the statewide surcharge revenue pool. If the level of credits was already at the maximum amount allowed under proposed rule part 7817.0500, then the level of credits could not be raised any higher to accomodate the excess surcharge revenues. In that situation, the level of surcharge may need to be reduced because additional credits could not be given. That is, reducing the level of surcharge could prevent an unreasonable overcollection of surcharge revenues.

Therefore, taken as a whole, this proposed rule will enable the Commission to monitor and make corrections to the collection of surcharges and provision of credits as necessary. This is a reasonable way to ensure an equitable collection and distribution of resouces. It will enable the Commission to more closely match the level of surcharge and credits so that eligible households receive the maximum benefit for each dollar of surcharge revenue.

Under the proposed rule, to adjust the level of surcharges or credits, the Commission must issue an official order and give the telephone companies 30 days notice. It is reasonable to require an official order to protect the rights of all affected persons. It is also reasonable to require 30 days notice so that the telephone companies have sufficient time to make the necessary administrative changes to reset the level of credits.

Part 7817.0800 FEDERAL TELEPHONE ASSISTANCE PLANS

The proposed rule makes it clear that TAP and the federal matching plan must be combined and provided by the telephone companies. These statements are necessary to ensure that the telephone companies offer both TAP and the federal matching plan to eligible households. The federal matching plan, which waives the federal subscriber line charge, is not available without a matching state plan such as TAP. Offering TAP without the federal matching plan would cut the available benefits in half. To ensure that the benefits of both plans are made available, it is reasonable to require in the proposed rule that both plans be offered by the telephone companies.

The proposed rule further provides that the Commission shall decide whether to incorporate federal telephone assistance plans, other than the federal matching plan, when additional federal plans are developed. This provision is included in the proposed rule to ensure that the benefits of any additional federal plans are made available to Minnesota customers in an expeditious manner. Making this statement in the proposed rule is a reasonable way to provide for these benefits.

Moreover, the Commission received requests from both telephone companies and state agencies to include the Link-Up America plan in the TAP rules. The Link-Up America plan is a federal plan designed to assist eligible subscribers with the costs of commencing telephone service. The Advisory Task Force determined that due to the January 1, 1988 implementation date for TAP and due to the varying eligiblity criteria and accounting issues for different federal plans, future implementation of the currently available Link-Up America plan, as well as any future federal plans, should be not be attempted through the TAP rules at this time. However, the Advisory Task Force further recognized that future implementation of these other federal plans should be provided for in the TAP rules so that the benefits of these plans are received. The Commission agreed with the Advisory Task Force that it was reasonable to protect the best interests of Minnesota customers, the telephone companies, and the affected state and local agencies by recognizing the future implementation of these federal plans in the proposed rule.

To protect the interests of the affected customers, telephone companies, and state and local agencies, the proposed rule also sets forth the procedures that will be followed in implementing future federal plans. That is, the proposed rule states that the Commission shall seek outside comments and review the federal plan and the outside comments. Then, after appropriate proceedings, the Commission shall determine whether to incorporate the federal plan into TAP and require the telephone companies to participate in the federal plan.

These procedural requirements are a reasonable means of protecting the interests of the affected customers, telephone companies, and state and local agencies. They ensure that the Commission does not operate in a vacuum and makes its decisions with procedural safeguards and input from interested persons.

Part 7817.0900 COMPANY RECORDING, REPORTING REQUIREMENTS

Part 7817.0900, subpart 1. Records to be maintained

Proposed subpart 1 of the rule requires the telephone companies to keep records on TAP and lists the subject matter of the records. The records must include the surcharge revenues collected, administrative expenses incurred, and credits given under TAP. Laws of Minnesota 1987, chapter 340, section 14, subdivisions 7(d)(3) and 7(e), similarly requires the telephone companies to prepare this information.

It is reasonable to require the telephone companies to maintain records so that, as administrator of the statewide surcharge revenue pool under proposed part 7817.0300, the Commission can review the financial impact of TAP on the telephone companies and their customers. Records are also necessary under proposed part 7817.0300 so that the Commission can determine whether a telephone company is entitled to reimbursement from the surcharge revenue pool. Moreover, the Commission needs this record information to evaluate whether or not adjustments to the surcharge or credits may be necessary under proposed part 7817.0700.

Part 7817.0900, subpart 2. Quarterly report

Subpart 2 requires the telephone companies to submit quarterly reports to the Commission and the Department of Public Service (the DPS) for their review. Laws of Minnesota 1987, chapter 340, section 14, subdivision 7(d)(3), enables the Commission to require the telephone companies to account on a periodic basis concerning TAP surcharge, expenses, and credits. Quarterly reports will provide this information on a periodic basis. Since TAP operates on an annual 12-month cycle, it is reasonable to require periodic reports every quarter of that 12-month cycle.

Moreover, the administrative cost to the telephone companies has been minimized by providing that the quarterly reports are to be cumulative during each 12-month cycle. This will also ease the annual reporting requirement in proposed subpart 3, explained below, because the fourth quarter cumulative report may serve as the annual report.

The quarterly reports are due 30 days after the end of each quarter. 30 days will give the telephone companies sufficient time to gather the necessary information and prepare the report.

Allowing more than 30 days would result in the report being received too far into the next quarter and would defeat the purpose behind reviewing the financial experience of the telephone companies on a quarterly basis.

The DPS will also be reviewing the quarterly reports. The DPS regularly reviews filings submitted to the Commission and submits comments and recommendations based on their review. It is reasonable to require the DPS to review the quarterly reports as an additional protection for the TAP surcharge payers, eligible subscribers, and other telephone companies.

Subpart 2 goes on to require the telephone companies to submit any excess surcharge revenues collected during the quarter to the Commission. As administrator of the statewide surcharge revenue pool under proposed part 7817.0300, it is reasonable for the Commission to collect any excess revenues for the revenue pool. Requiring excess revenues as part of the quarterly report is an administratively efficient and effective means of ensuring that a telephone company does not hold excess revenues. Rather, these funds will be remitted to the Commission and used for such purposes as increasing the level of credits, or reducing the level of surcharge being collected, or reimbursing other TAP administrators as necessary. Furthermore, Laws of Minnesota 1987, chapter 340, section 14, subdivision 7(d)(4), requires the telephone companies to remit excess revenues to the Commission for administration as part of the revenue pool. Therefore, this requirement is reasonable.

Items A through H in subpart 2 list the information that must be included in the quarterly reports. Items A, B, D, and E relate to the surcharge revenues. These items will provide the pertinent accounting information needed to determine whether the correct amount of surcharge was collected, whether the correct number of access lines were charged, whether any excess surcharge revenues were collected, or whether insufficient revenues were collected. Without this information, the Commission cannot evaluate TAP or make any necessary adjustments to the level of surcharge.

Item C requires an itemized list of the telephone companies' administrative expenses. Although the telephone companies pay their administrative expenses out of the surcharge revenues they collect before remitting any excess revenues to the pool, the telephone companies still have the responsibility under the TAP legislation to account for their expenses. See Laws of Minnesota 1987, chapter 340, section 14, subdivision 7(d)(3). Therefore, it is reasonable to include this information in the quarterly reports.

Items G and H require the telephone companies to report on the number of subscribers that received TAP credits during the

quarter, and the monetary value of these credits. As with the items requiring information on the surcharge, these items require information on the credits so that the Commission can evaluate TAP and make any necessary adjustments to the level of credits. It is reasonable to require this information from the telephone companies because they provide the credits and have that information readily available.

Items F, G, and H require information regarding the federal matching plan. Item F requires the telephone companies to report the amount of federal reimbursement under the federal matching plan applied for or received. Items G and H require information on the number of subscribers given waivers under the federal matching plan, and the monetary value of those waivers. This information is necessary for auditing purposes so the Commission can ensure that the telephone companies have not collected the same expenses from two different sources. Administrative expenses associated with the federal matching plan should not be paid by Minnnesota customers, nor should federal customers pay for Minnesota's TAP. Requiring this information in the quarterly reports is a reasonable means of protecting Minnesota customers.

Finally, subpart 2 states that the quarterly reports must be on a form prescribed by the Commission. This requirement is intended to ease the administrative burden on the telephone companies, the Commission, and the DPS. By prescribing the quarterly report format, the telephone companies will be spared the administrative expense of preparing their own form. Moreover, a form that is the same for all telephone companies is reasonable because it will provide a uniform standard for evaluating TAP and will enable the Commission and the DPS to easily compare the companies.

Part 7817.0900, subpart 3. Annual report

This subpart requires the telephone companies to submit annual financial reports and accountings for their experience under TAP. The annual reports must be adequate to satisfy the reporting requirements of the federal matching plan. The Commission has the authority under the TAP legislation to require annual reports that contain such information and assurances. See Laws of Minnesota 1987, chapter 340, section 14, subdivision 7(e).

Subpart 3 also provides that the cumulative fourth-quarter report filed pursuant to subpart 2 may serve as the annual report. As discussed above in subpart 2, this is a reasonable way to keep down the administrative costs for the telephone companies and for the Commission and the DPS.

Since the cumulative fourth-quarter report may serve as the annual report, the same information listed in subpart 2 is required for the annual report. These items are reasonable for

the same reasons that were given above for subpart 2.

Similarly, as for the quarterly reports, the annual reports are due 30 days after the end of each calendar year. 30 days is a reasonable time for the telephone companies to prepare and file the necessary information.

It is also reasonable for the proposed rule to require that the annual report satisfy the federal matching plan reporting requirements. Federal matching plan approval is needed to fulfill a major purpose behind TAP. Without federal approval, half the benefits under the proposed rules, namely the waiver of the federal subscriber line charge, will be lost to eligible Minnesota subscribers. Therefore, the proposed rule makes it clear that the federal matching plan reporting requirements must be satisfied.

Part 7817.1000 APPEALS AND COMPLAINTS

Part 7817.1000, subpart 1. Appeal after termination or denial of eligibility

Subpart 1 of this proposed part states that a TAP applicant or recipient has the right to an appeal if that person is denied or terminated TAP credits. This subpart is a reasonable way to ensure that the rights of TAP applicants and recipients are protected.

Subpart 1 goes on to specify the appeal process. Appeal hearings must be conducted at a reasonable time, date, and place by an impartial referee employed by the Department of Human Services (the DHS). It is reasonable to have the appeal process administered by the DHS because the local agencies determine eligibility pursuant to proposed part 7817.0400. Therefore, the DHS is the logical choice to handle matters related to eligibility for TAP credits. Furthermore, the DHS regularly handles appeals for the other assistance programs it administers such as the Aid to Families With Dependent Children and Food Stamps programs.

Proposed subpart 1 states that the appeals referee employed by the DHS must be impartial. The requirement of impartiality is a reasonable means of ensuring that the appeal decisions are just and do not favor the local agencies over the applicant or recipient. The appeals referee makes a recommendation concerning the outcome of the appeal to the Commissioner of DHS. This process is regularly used by DHS to handle the appeals of its other assistance programs. Since this process is already in place for other DHS assistance programs that are tied to federal programs, it is reasonable to use the same process for TAP which is co-administered by DHS and which is also tied to a federal program.

Moreover, subpart 1 requires that the hearings be conducted at a reasonable time, date, and place. The requirement is a reasonable way to ensure that an appeal is not unduly delayed as a ploy to discourage appeals or favor the local agencies.

Lastly, proposed subpart 1 addresses the evidence and scope of review on appeal. An applicant or recipient may introduce evidence relevant to the issues on appeal; and recommendations of the appeals referee must be based on evidence introduced at the hearing and are limited to a review of the propriety of a local agency's action. The introduction of evidence is necessary and, therefore, it is reasonable to require that the evidence be relevant to the appeal. It also follows that proper appeal decisions must be based on such relevant evidence. And, since the purpose of the appeal is to determine whether the denial or termination of TAP credits was appropriate, it is reasonable to limit the scope of the appeal decision to a review of whether or not the local agency's action in denying or terminating TAP credits was appropriate.

Part 7817.1000, subpart 2. Complaint procedure

Proposed subpart 2 states that complaints against the telephone companies may be referred to the Commission. Complaints against the telephone companies will most likely concern the collection of the surcharge and the provision of credits. Since the Commission is a co-administrator in the area of the surcharge and credits, it is reasonable to allow complaints concerning these matters to be addressed to the Commission.

Subpart 2 further provides that complaints will be investigated by the Department of Public Service (the DPS). After its investigation, the DPS must report the results to the Commission. The DPS was given this investigatory responsibility in Laws of Minnesota 1987, chapter 340, section 14, subdivision 7(f). In addition, the DPS is the enforcement and investigatory arm of the Commission. Therefore, it is reasonable to continue the existing relationship between the Commission and the DPS by delegating any necessary TAP complaint investigations to the DPS.

Similarly, the DPS is given 45 days under the proposed rule to report the results of its investigation to the Commission. This time frame is the minimum amount of time that the DPS needs to conduct a thorough and sufficient investigation and report its results to the Commission. Any longer time period would unnecessarily delay the complaint process and discourage complaints.

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 rules; and

(e) the exemption of small businesses from any or all requirements of the rule.

The proposed rules may affect small businesses as defined in Minn. Stat. section 14.115, subd. 1 (1986). The small businesses that may be affected are the small independent, cooperative, and municipal telephone companies. For this reason, the Commission has considered the above-listed methods for reducing the impact of the rules on these small telephone company 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, use those revenues to extend TAP credits and pay their own expenses, and remit excess revenues to the Commission. The proposed rule further provides that excess revenues will be used by the Commission to pay the reasonable expenses of those telephone companies that do not collect enough surcharge revenues to pay their own expenses. The Commission anticipates that the telephone companies that fit the statutory definition of small business will 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 their reasonable administrative expenses.

Proposed part 7817.0600 provides for the provision and termination of credits. This part describes the time periods and procedure for collecting the surcharge revenues, providing the TAP credits, and ceasing the TAP credits. No distinction was made between large and small telephone companies because TAP is a legislatively-mandated statewide program with a statewide surcharge revenue pool. See Laws of Minnesota 1987, chapter 340,

section 14, subdivision 2. Therefore, TAP requires the establishment of a uniform and universal system for giving and terminating TAP 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 proposed rule contains the minimum amount of information which the Commission needs to evaluate the collection of surcharge revenues and the provision of credits. The proposed rule keeps the reporting requirements to a minimum by clearly stating the eight items needed to evaluate TAP and by prescribing a form for supplying the information.

The legislature recognized that the Commission would need the information required by proposed part 7817.0900 when it enacted Laws of Minnesota 1987, chapter 340, section 14, subdivision 7(d)(3) and 7(e). Those subdivisons require the 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.

The Commission needs this information from all the telephone companies that participate in TAP so that the Commission can fulfill its duty to administer and evaluate TAP. One of the Commission's duties is to adjust the level of surcharge or credits when necessary. See proposed part 7817.0800. The Commission would not receive an accurate picture of TAP and could not determine whether adjustments were warranted if it collected only some of the necessary information from the small telephone companies.

The Commission did not consider method (d) for reducing the impact of the rules on small telephone company businesses. The proposed rules not contain design or operational standards. Therefore, method (d) does not apply to the proposed rules.

Method (e) addresses the exemption of small businesses from any or all rule requirements. The essential requirements placed on the small telephone company businesses by the proposed rules are mandated by Laws of Minnesota 1987, chapter 340, sections 13 to 16. The law requires the Commission to implement these statutory requirements through rules. Therefore, the Commission cannot exempt small businesses from the requirements contained in the proposed rules. As discussed above, exempting the small telephone company businesses 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 Minn. Rules, parts 7817.0100 to 7817.1000, are both needed and reasonable.

Dated: October 16, 1987

Mary Ellen Hennen
Executive Secretary