

Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Date: **June 29, 2016** *Agenda Item # 3

Company: Department of Commerce/TAM (Telecommunications Access Minnesota)

Docket Nos. P999/M-16-227
In the Matter of the Department of Human Services – Telephone Equipment Distribution Program’s Request to Amend their Fiscal Year 2017 Line Item Budget

Issue: Should the Commission approve the TED Program’s Request to Amend their Fiscal Year 2017 Line Item Budget?

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Relevant Documents

Commission, Order Accepting 2015 TAM Annual Report, Accepting TAM’s 2017 Proposed Budget, and Approving TAM Surcharge Reduction to \$0.05 May 24, 2016
Department of Human Services, Request to Amend FY 2017 Budget June 9, 2017
Department of Commerce, Comments on Request to Amend FY 2017 Budget June 9, 2017

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I. Statement of the Issue

Should the Commission approve the TED Program's Request to Amend their Fiscal Year 2017 Line Item Budget?

II. Background

A. The TAM (Telecommunications Access Minnesota) Program

The Telecommunications Access Minnesota (TAM) program was created by the Legislature in 1987 to make Minnesota's telecommunications system fully accessible to communication-impaired persons. Minn. Stat. §§237.50 – 237.56 and Minn. Rules, Chapter 8775 govern the operation of the program. The program has two major components: the Telephone Equipment Distribution (TED) program, and the Minnesota Relay. The program is funded by a monthly surcharge on all wired and wireless access lines, the most recent changes being from \$0.08 to \$0.07 cents in occurring 2015 and from \$0.07 to \$0.05 on August 1, 2016. By law, the surcharge may not exceed \$0.20 per access line.

TAM administers the TED program through an interagency agreement with the Department of Human Services (DHS). TED distributes specialized telecommunications equipment to eligible deaf, hard-of-hearing, speech-impaired and mobility-impaired persons to allow them access to the telecommunications network.

The Commission's role with respect to TED and TAM is outlined in Minn. Stat. §237.52, subd. 2(a), and relates largely to approval of the budget and surcharge as appropriate and adequate:

Subd. 2.Assessment. (a) The commissioner of commerce, the commissioner of employment and economic development, and the commissioner of human services shall annually recommend to the Public Utilities Commission an adequate and appropriate surcharge and budget to implement sections 237.50 to 237.56, 248.062, and 256C.30, respectively. The maximum annual budget for section 248.062 must not exceed \$100,000 and for section 256C.30 must not exceed \$300,000. The Public Utilities Commission shall review the budgets for reasonableness and may modify the budget to the extent it is unreasonable. The commission shall annually determine the funding mechanism to be used within 60 days of receipt of the recommendation of the departments and shall order the imposition of surcharges effective on the earliest practicable date. The commission shall establish a monthly charge no greater than 20 cents for each customer access line, including trunk equivalents as designated by the commission pursuant to section 403.11, subdivision 1.

(Emphasis added)

The Department's role is to administer the overall fund:

237.51 TELECOMMUNICATIONS ACCESS MINNESOTA PROGRAM ADMINISTRATION.

Subdivision 1. Creation. The commissioner of commerce shall:

- (1) administer through interagency agreement with the commissioner of human services a program to distribute telecommunications devices to eligible persons who have communication disabilities; and
- (2) contract with one or more qualified vendors that serve persons who have communication disabilities to provide telecommunications relay services.

For purposes of sections 237.51 to 237.56, the Department of Commerce and any organization with which it contracts pursuant to this section or section 237.54, subdivision 2, are not telephone companies or telecommunications carriers as defined in section 237.01.

Subd. 2. [Repealed, 1995 c 190 s 17]

Subd. 3. [Repealed, 1995 c 190 s 17]

Subd. 4. [Repealed, 1995 c 190 s 17]

§ Subd. 5. Commissioner of commerce duties. In addition to any duties specified elsewhere in sections 237.51 to 237.56, the commissioner of commerce shall:

- (1) prepare the reports required by section 237.55;
- (2) administer the fund created in section 237.52; and
- (3) adopt rules under chapter 14 to implement the provisions of sections 237.50 to 237.56.

The Commission approved the TAM budget and surcharge for Fiscal Year 2017 (ending June 30, 2017) in its May 24, 2016 order in Docket No. P999/M-16-227.

III. Party Comments

Minnesota Department of Human Services

On June 9, 2017, the Minnesota Department of Human Services (DHS) filed a letter requesting Commission approval to amend the TED budget approved last year (as part of the TAM budget) to move funds among TED budget line items to address overspending in the iPad/iPhone pilot program. The TED Budget is part of the FY 2017 DOC-TAM/DHS-TED Interagency Agreement. The Interagency Agreement is attached to the DHS letter as Attachment B. The previously approved FY 2017 TED Budget is Exhibit A in the Interagency Agreement. The DHS request is for approval of the modified FY 2017 TED Budget as presented in Attachment A to the DHS letter of June 9, 2017.¹

DHS explained that during FY 2017, the TED program conducted an iPad and iPhone pilot

¹ The DHS letter was filed one day after the Commission approved the TAM 2016 Annual Report, and the TAM FY 2018 Budget, and Surcharge (Docket Nos. P999/PR-17-5 and P999/M-17-276).

program for the first time. Being a pilot program, it was a challenge predicting how many devices would be distributed. DHS explained that the budget approved was \$90,300, while the amount spent on the pilot was \$217,967.

Thus, the program overspent by \$127,667.

Reallocations between approved budget line items of the TED budget portion of the TAM to accommodate this are typically addressed in advance of spending as provided in the DOC-TAM/DHS-TED Interagency Agreement in 3.1(g)(2). This did not occur. DHS explains that "... excess work caused the staff to focus on responding to consumers [so] the approval of a line item increase was not requested before overspending." (See DHS letter, page 2, paragraph 1.)

Minnesota Department of Commerce

On June 9, 2017, the Department of Commerce (Department) also filed comments. The Department stated that on May 3, 2017, the TED program notified the Department that they went over budget for the iPad/iPhone pilot given higher than anticipated demand, and requested permission to transfer \$40,000 from various line items in to the "Equipment for Distribution" line item. (This has been reduced to \$36,000 in DHS's request to the Commission.)

The Department observed that clause 3.1(g) of Commerce's interagency agreement with DHS states that funds for expenditures specified in the TED program line item budget may not be moved from one line item to another unless in accordance with specific requirements. Clause 3.1(g)(2) of the agreement requires that DHS seek approval from Commerce, in advance, for transfers that are:

- Less than ten percent of the amount in a line item to or from which funds are being transferred but which exceed \$10,000.
- In excess of 10 percent of the amount in a line item to or from which funds are being transferred.

Clause 3.1(g)(3) of the interagency agreement allows the Department to refer to the Commission a transfer request in excess of 10 percent of the amount in a line item to or from which funds are being transferred for determination of the reasonableness of the transfer. The Department observes that both circumstances are met in this instance.

The Department repeats its point that the TED program did not seek budget change approval from the Department in advance of spending as it was required to do under the interagency agreement.

The Department identified the following issues with decision options for each:

1. Whether the Commission should allow the TED Program to exceed the \$90,300 budget for the iPad/iPhone pilot program by \$127,667;
2. Whether the Commission should approve the TED Program's request to exceed the \$285,000 budget for Equipment for Distribution; and,
3. If the budget for Equipment for Distribution can be exceeded, then determine the amount by which it can be exceeded.

The Department “does not have a recommendation regarding the TED program’s request” nor on the specific issues it identified.

IV. Staff Analysis

Funding for the iPad/iPhone pilot project is part of the line item “Equipment for Distribution” in the TED budget, which is part of the TAM budget approved annually by the Commission. After approval, it is administered according to the DOC-TAM/DHS-TED Interagency Agreement.

In its request, DHS is requesting the Commission to modify the TED Program budget approved last year to allow the TED Program iPad/iPhone pilot project to fully recover its \$127,667 cost overrun by reallocating funds from within TED’s budget. Such modifications are typically addressed as provided in the Department/DHS Interagency Agreement in 3.1(g). In this instance, DHS-TED staff failed to do so and seeks to accommodate their overspending as follows:

1. \$91,667 would be covered through the reallocation of funds from *within* the total Equipment for Distribution line item. (Staff calculated this amount using information in DHS letter at page 2, paragraph 2.) No additional authorization is requested by DHS to do reallocate funds within this line item.
2. DHS requests approval for \$36,000 to be covered by transfers *from other line items, to the Equipment for Distribution line item* (i.e., from the line items for Regional Managers, Public Relations, and Professional & Technical Services as shown in DHS letter Attachment A).

In other words, the “transfers” essentially involve establishing new budgets for the affected line items in the TED budget so that actual spending on those line items does not exceed the revised budgets.

While the Commission does review the program report, budget, and surcharge recommendation each year as required by statute, as the sponsoring agency, the Department administers the program and handles all financial accounting related to the budget for the program, during the program’s fiscal year.

It is not clear to Staff that the Commission’s responsibility to review and approve the reasonableness of the program budget under Minn. Stat. § 237.52, subd. 2(a) extends to making determinations about the Department’s administration of the approved budget as provided in Minn. Stat. § 237.51. Staff notes that Minn. Stat. § 237.51 clearly provides that the Department administers the program through an interagency agreement with the DHS, with no role identified for the Commission in that process. While the interagency agreement allows the Department to refer certain line item transfer requests to the Commission for a determination of their reasonableness, the Commission is not a party in that agreement.

Further, Staff is not aware of the Commission having previously been asked to make any determinations about how the Department should manage actual expenditures or reconcile over/under spending on individual line items after having approved a budget.

If the Commission were to act on DHS's request, it is noteworthy that neither DHS nor the Department filings explain the factors the Commission should consider in determining whether the proposed re-budgeting of line items is reasonable or unreasonable. Department and/or DHS representatives may wish to provide such information for consideration.

While it appears that the total expenditures incurred for all line items in the TED program as proposed would not exceed total spending contemplated in the budget approved last year, the Commission may want to confirm this, and Staff's other understandings of the request by DHS directly with the Department and DHS representatives.

Finally, we note that the DHS Telephone Equipment Distribution program had an external management and fiscal audit covering FY 2017. DHS has not shared the audit results with the Department or Commission, but was ordered by the Commission to do so in Docket Nos. 17-5 and 17-276. Until that is done, the Commission has no audit information to guide its consideration of the reasonableness of the re-budgeting request, nor to guide it with respect to determining whether DHS or the Department need to revise their respective budgeting, spending, or accounting processes to help ensure against such incidents occurring again.

V. Decision Options

- A. Should the Commission approve the DHS Request to Amend their TED Program FY 2017 Budget to move into the Equipment for Distribution line item from other line items the following amounts: \$10,000 from Regional Managers; \$20,000 from Public Relations; and \$6,000 from Professional & Technical Services?
 - A.1 Grant the DHS request as stated above;
 - A.2 Deny the DHS request as stated above;
 - A.3 Grant the TED Program's request with modifications to the line items or amounts;
 - A.4 Direct that DHS implement remedial management oversight to prevent future spending without prior approval;
 - A.5 Other action the Commission deems appropriate.