

**Minnesota Public Utilities Commission**  
*Staff Briefing Papers*

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Meeting Date: February 11, 2016 .....\*Agenda Item #3

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

**Docket No.** P999/M-13-138  
In the Matter of TAM Audit

**Issues:** Should the Commission accept the TAM Audit Report?  
  
Should the Commission order actions be taken as presented in the TAM Audit report?

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**I. Relevant Documents**

Commission Order Authorizing Audit .....	June 4, 2013
TAM's Proposed Audit Plan .....	January 28, 2014
Draft RFP .....	October 15, 2014
Commission Review of Draft RFP .....	October 30, 2014
TAM's Proposed Audit Budget .....	February 25, 2015 and March 4, 2015
TAM Audit Report .....	December 17, 2016

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

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## II. STATEMENT OF THE ISSEUES

Should the Commission accept the TAM Audit Report?

Should the Commission order actions be taken as presented in the TAM Audit report?

## III. PROGRAM BACKGROUND

The Legislature established the Telecommunication Access Minnesota (TAM) program to make Minnesota's telecommunications system fully accessible to people with communication impairments. Under Minn. Stat. §§ 237.50-.56, the Minnesota Department of Commerce (Department) is charged with administering TAM and annually reports to the Minnesota Public Utilities Commission (Commission) on TAM Fund (Fund) operations and activities.<sup>1</sup>

All monies in the Fund come from a monthly surcharge on all Minnesota access lines, wired and wireless. These surcharges are collected by telecommunications service providers and remitted to the Department of Public Safety (DPS). (See Minn. Stat. § 237.52, subds. 2 and 3.) The amount of the surcharge is set annually by the Commission, after reviewing the annual report on TAM operations submitted by the Department and annual budget and surcharge recommendations submitted by the Department, Department of Human Services (DHS), and the Department of Employment and Economic Development (DEED). (See Minn. Stat. §§ 237.55 and .52, subd. 2.)

TAM was initially created to support two programs—a telecommunications relay service and a telecommunications-device distribution service—and these remain TAM's core programs and major cost drivers. The Department contracts with vendors to operate the telecommunications relay service and executes an inter-agency agreement with the DHS to distribute

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<sup>1</sup> TAM is managed by one full time Administrator and Commerce Telecommunications Manager who allocates a portion of his time to the TAM program. Commerce administers the TAM fund and manages vendor contracts and interagency agreements. The following outlines the TAM activities and vendors/agencies responsible for providing the activity:

- TAM Administrator manages the budget process and oversees collections and expenses activity.
- Sprint through a vendor contract provides TRS services for Minnesota Relay.
- DHS through interagency agreements provide services for:
  - Minnesota Relay Outreach activity
  - TED Program activity
  - RRC
- DEED through an interagency agreement administers ANB activity.
- Department of Public Safety (DPS) collects TAM surcharge revenue from wired and wireless carriers and remits TAM surcharge revenue to TAM.
- Department of Revenue (DOR) through Minnesota statutes collects prepaid wireless fees and remits such fees to Commerce.

telecommunications devices to persons with communication impairments. DHS has primary responsibility for the telecommunications-device distribution program. Hence, DHS sets program eligibility requirements, determines which devices qualify for distribution, publicizes the program, and distributes qualifying telecommunications devices to eligible Minnesotans.

Over the years the Legislature has also required TAM funding for five additional programs and initiatives, listed below:

- Accessible News for the Blind (ANB), a program administered by the DEED to provide accessible electronic news and other timely information.
- Rural Real-time Captioning (RRC), a program administered by the DHS to provide real-time closed-captioning of local television news programs.
- Commission of Deaf, DeafBlind and Hard of Hearing Minnesotans, a commission whose members are appointed by the Governor, to advocate for equal opportunity for Minnesotans who are deaf, deafblind, and hard of hearing.
- MN.IT Services, the State's information-technology agency, to coordinate efforts to ensure that State technology is accessible and useable.
- Legislative Coordinating Commission (LCC), a commission of the Minnesota Legislature, to provide captioning of the live streaming of legislative sessions and hearings and to administer a consolidated access fund for state agencies.

On June 4, 2013, noting its duty to oversee TAM's budget and operations, the Commission ordered the Department to develop a plan and budget for concluding an audit of the programs funded through the TAM fund.

On June 20, 2014 the Commission accepted the Department's proposed audit description, and ordered a limited scope audit of the collection, remittance and use of TAM funds for Minnesota Relay, RRC, and ANB Program. Excluded from the audit scope were TAM fund expenditures passed by the legislature for: Commission of Deaf Deafblind and Hard of Hearing Minnesotans, MN.IT Services, and the Legislative Coordinating Commission.

In its April 30, 2015 Order Approving Audit Budget, the Commission approved a budget of \$100,000.

On December 17, 2015, the Department delivered the TAM Performance Audit Report.

#### IV. TAM PERFORMANCE AUDIT FINDINGS AND RESPONSES

The limited scope audit was conducted by Examination Resources, LLC (ER) and their results presented in the TAM Performance Audit Report (Audit Report). ER staff obtained data through responses to document requests, on-site interviews, and correspondence with key TAM personnel.

Using 2014 data, ER identified and documented risks associated with each of the following program activities summarized below: collections accounting controls and surcharge collections, budget/expenditures, Minnesota Relay, TED, RRC and ANB. Within this discussion, seven “findings” with specific recommendations for improvement were identified, and responded to by the agencies identified.

##### A. TAM Collections: Accounting Controls

All service providers having wired and wireless telephone access lines in Minnesota capable of originating a TRS call collect a monthly surcharge covering both TAM and 911 emergency service. Funds collected are remitted to the Commissioner of DPS on a monthly, quarterly, or annual basis. (See Minn. Stat. § 403.11, Subd. 1.) DPS subsequently transfers to Commerce the TAM portion of remittances on a daily basis.

Similarly, prepaid wireless services are subject to TAM fees (see Minn. Stat. § 403.161, Subd. 1). Retailers remit a fee per transaction to the DOR for 911 emergency services and TAM fees (see section IV.C. text below immediately preceding FINDING NO.4). DOR deposits collected TAM fees into the TAM fund within 30 days of receipt. Sellers may deduct and keep 3% of the TAM fees collected.

DPS codes and posts funds collected into appropriate accounts using the State Wide Integrated Financial Tools (SWIFT) system. Daily reports are compiled. Each week DPS provides Commerce’s Finance division a collection report. Commerce’s Finance staff do not validate the weekly collections report to the amounts entered into the SWIFT system.

***FINDING NO. 1** – There is not adequate control in place to mitigate the risk of potential coding errors and endure that the surcharge amounts collected by the DPS are accurately transferred to the TAM account. This is based on discussions with DPS staff, documentation review and one instance in which a SWIFT coding error incorrectly transferred funds, only later to be discovered and corrected by Commerce Finance staff. ER recommends a monthly reconciliation should be performed between the amounts reported on the cash collections report and the TAM SWIFT Account balance.*

**COMMERCE RESPONSE NO. 1** – Commerce agrees. Monthly reconciliations of the revenue amounts have begun by comparing transfer amounts in SWIFT to the reports provided by DPS.

**FINDING NO. 2** – To avoid inadvertent changes to entries or formulas, password protections should be added to spreadsheets used by DPS to record collections and calculation of TAM transfer amounts.

**DPS RESPONSE NO. 2** – DPS will password-protect spreadsheets prior to their distribution.

**STAFF ANALYSIS:** The Department agrees with ER's Finding No. 1 and has implemented ER's recommendation. DPS agrees with ER's Finding No. 2 and is implementing ER's recommendation. The agencies appear to have satisfactorily addressed ER's concerns over collections accounting controls. No further actions are required.

#### **B. Surcharge Collections from Wireline and Regular Wireless Carriers**

As of June 2014 there were 56 wireless carriers and 175 wired carriers from whom surcharges collected totaled \$4,352,054.12. From prepaid wireless transactions surcharges totaled \$144,317.75. Carriers are required to submit a remittance form that specifies the number of access lines provided and surcharges collected.

To assess the effectiveness of this process, ER sent a questionnaire (See Audit Report Exhibit A) to a sample of 142 carriers. Of the 67 VoIP carriers mailed, 70% responded. Of the 40 wired carriers mailed, 83% responded. Of the 35 wireless carriers mailed, 63% responded. Eight types of problems were identified among the three carrier groups as detailed in the Audit Report, Table 1. Explanations of the surcharge collection review are presented in the Audit Report on pages 9-13 and on pages 23-24.

**FINDING NO. 3** – Discrepancies identified in the questionnaire responses show some carriers may not be: 1) submitting the correct form based upon services provided; 2) accurately reporting the number of access lines provided; and/or 3) accurately calculating and remitting surcharge fees. ER recommends that TAM:

- Should follow up with carriers identified in Table 1, discrepancy 1 and 2 to ensure accurate reporting of access lines and remittance of correct TAM surcharge fees;

- *May select a sample of carriers for annual compliance review, including conformity between state and federal forms filed and the company's method of surcharge calculation;*
- *May issue a directive providing guidance on the Minnesota forms for determining the number of access lines and the method for calculating the surcharge amount, including guidance on how to adjust for non-collections from customers.*

**COMMERCE RESPONSE NO. 3** – *The Department agrees with the finding and has opened a Department Investigation in Docket No. 15-746. This investigation is addressing proper collection and remittance of TAM and Telephone Assistance Plan (TAP) surcharge revenue. Commerce will work with the Commission and DPS to educate and audit telecommunications carriers in order to facilitate accurate collection, remittance and reporting of TAM, TAP and 911 emergency surcharge revenue.*

**STAFF ANALYSIS:** The Department is in the process of undertaking an appropriate response to ER's finding and recommendation by opening a Department Investigation (Docket No. 15-746). Staff recommends that the Commission direct the Department to report on its investigation plan and status within 60 days of its Order.

### **C. Surcharge Collections from Prepaid Wireless Carriers**

As noted earlier, repaid wireless service sellers remit a fee per transaction to the DOR for 911 emergency services and TAM fees. Sellers may deduct and keep 3% of the TAM fees collected. DOR deposits collected TAM fees into the TAM fund within 30 days of receipt.

The DOR does not provide supporting documentation to TAM for the amount of prepaid wireless fees collected and remitted. DOR requires a data exchange agreement be in place in order to disclose taxpayer data for the purpose and extent necessary to administer the program. TAM does not have such an agreement and instead requests data from DPS which in turn requests information from DOR. As a result, ER reports that it was unable to validate whether retailers or Eligible Telecommunications Carriers (ETC) are properly collecting and remitting prepaid wireless fees.

**FINDING NO. 4** – *TAM does not have the ability to directly communicate with the DOR absent an interagency agreement to do so. Therefore, the DOR does not provide supporting documentation for the amounts of prepaid wireless fees collected and remitted and this prevents TAM oversight of retailers' calculation and payment of prepaid wireless fees. ER*

*recommends that in addition to DPS entering into an interagency agreement with the DOR that TAM do so as well.*

**COMMERCE RESPONSE NO. 4** – *The Department agrees with the finding.*

**STAFF ANALYSIS:** Staff notes the Department’s agreement with ER’s Finding No. 4 and recommendation to establish an interagency agreement with DOR. Staff recommends that the Commission request the Department proceed with an interagency agreement with DOR to receive information on wireless receipts and transfers. Staff also recommends that the Commission ask the Department to report on its implementation plan and status within 120 days of the Order in this proceeding.

#### **D**     **TAM Budgeting and Expenditures**

ER notes that TAM submits an annual budget and surcharge recommendation to the Commission for approval or modification. Input is provided to TAM by the various agencies administrating TAM activities. Programs are paid according to interagency agreement. Each month the TAM administrator compares program budgets to actual expenditures for TAM administration, Minnesota Relay Outreach, TRS, and TED and approves payments. ANB and RCC submit quarterly payment invoices for approval of payment. All programs submit an end of fiscal year report providing “some detail on their line item expenditures.” ER concludes that the budgeting process provides adequate detail and support of program activities and that “expenses incurred are adequately monitored and approved.”

**STAFF ANALYSIS:** Staff notes that ER found TAM budgeting processes to be adequate and provided no findings or recommendations for changes. No further action appears needed.

#### **E**     **Minnesota Relay**

TAM contracts with Sprint to provide telephone relay services (TRS) under a contract that began July 1, 2014 and runs through June 30, 2019. Internet based relay services are paid for by an interstate TRS fund. Non-Internet based relay series (e.g., teletypewriter (TTY), captioned telephone, and speech-to-speech) are administered and funded by the state under the TAM program for Minnesota Relay calls. Quarterly disbursements are made to ANB and RCC based on the invoices submitted and approved by the TAM administrator. At the end of the fiscal year, unspent funds are reimbursed back into the TAM fund and accounted for by individual program.

There were 558,538 Minnesota Relay calls in 2014, although ER reports an overall declining number. Expenditures for relay services in 2014 were \$2,290,747.91, representing 42% of total TAM fund expenditures.

Trained staff facilitate conversations between people having a hearing loss or a speech disability and other individuals. Ongoing training meets federal requirements and includes on-going monitoring, periodic testing and quality review. Customer service representatives log complaints into a system provided by Sprint which provides a monthly report to the TAM administrator.

ER reports that Sprint IT/Audit department provided information indicating adequate security controls with respect to physical access, virtual private network access, workstation log-in's, Hewlett-Packard HP Service Manager and many other systems. No issues were identified with regard to security, service adequacy or the complaint process.

**STAFF ANALYSIS:** Staff notes that the ER found no issues with the Minnesota Relay program and did not recommend any changes. No further action appears needed.

**F. Telephone Equipment Distribution (TED) Program – Application and Verification**

The Telephone Equipment Distribution (TED) Program is administered by the Department through DHS by interagency agreement. TED programs are provided by DHS's Deaf and Hard of Hearing Services Division (DHHSD) which distributes specialized telecommunication devices to eligible Minnesotans, informs them of its availability, and trains them in its use.

There were 763 new program participants of the TED program in 2014. ER observes that DHS has processes and procedures for documenting and verifying application information, including a manual for application processing and a password protected on-line database called "magic". On a quarterly basis, regional managers sample "four to five" files to review for completeness and proper data entry. ER identified no issues with the application and verification process.

**STAFF ANALYSIS:** ER identified no issues with the TED Program application and verification process, and Staff concurs that no further action in this regard appears necessary.

**G. TED Program – SWIFT Coding**

Annual equipment expenditure for 2014 was \$177,513 (12 % of total TED Program expenditures). There were 4,380 deliveries of telecommunications and auxiliary devices in 2014, of which 64% were amplified phones. Other equipment included captioned telephones,



speaker phones, cell phones, and TTYs. DHHS is in the process of issuing an RFP for future tests of iPhones and iPads having access limited only to applicable applications.

Although DHHS used to maintain the equipment inventory, its cost analysis indicated that it was more economical to outsource this activity to the equipment providers who directly provide and maintain devices and provide DHHS with a weekly update.

***FINDING NO. 5** – Certain invoices were initially incorrectly classified in the SWIFT report by DPS Finance or incorrectly allocated to the TED program before being appropriately identified and timely fixed by the TED Program Administrator. ER recommends that “... the TED Program create an expense allocation guide for DPS Finance to follow to ensure expenses are being classified correctly which also makes the reconciliation process more streamlined.”*

***DHS RESPONSE NO. 5** – DHS does not agree with the recommendation as stated. The TED Program has provided an expense allocation guide for DPS Finance in the past.*

**STAFF ANALYSIS:** ER suggests that the TED Program provide DPS Finance an expense allocation guide. DHS disagrees that such a need exists, asserting that it had done so in the past. Staff observes that ER recognized only very a small number of coding errors and that all were identified and corrected through existing routines of administrative oversight. Given the very small number of incidents, that all were timely identified and corrected using present manuals and administrative processes, Staff concurs with DHS that no further actions are needed.

#### **H. TED Program – Equipment Return**

Total expenditure for maintenance, refurbishes and equipment service was \$3,459 during 2014. When a customer calls regarding a device problem, TED staff attempt to resolve it and determine if a repair or replacement will occur. Equipment disposition is tracked in the Magic database.

***FINDING NO. 6** – Terminated customers are not asked to return equipment. TED does not track customers who may have moved out of state or no longer need the device. In such instances equipment should be returned and inventoried. ER recommends that DHS create a process to periodically monitor customer status and state the procedures for customers that no longer need/want equipment or move out of state.*

***DHS RESPONSE NO. 6** – DHS concurs with the finding and recommendation. The TED Program will develop policies and procedures to address this and copy TAM.*

**STAFF ANALYSIS:** Staff notes that DHS indicates that it is proceeding to develop the recommend policies and procedures to monitor customers and manage equipment no longer needed by individual customers. Staff recommends that the Commission be copied upon TAM's receipt of DHS's reporting of its new policies and procedures.

**I. TED Program – Outreach**

TED outreach by DHHS is conducted jointly with Minnesota Relay outreach which had a budget of \$1,000 during 2014. This activity is conducted by staff in each regional office as part of their regular duties. Expenditures are not differentiated between programs.

*FINDING NO. 7 – Outreach performance cannot be determined. Formal plans and goals were not set for the joint outreach for TED and Minnesota Relay. Year end results cannot be compared to plans and goals. ER recommends that metrics for the outreach plan be established.*

*DHS RESPONSE NO. 7 – DHS agrees with the finding. DHS will be requiring well defined formal plans and goals for the fiscal year and collect data to determine outreach activity effectiveness.*

**STAFF ANALYSIS:** Staff notes DHS's agreement and commitment to proceed with formal plans, goals and data collection to assess outreach effectiveness. Staff recommends that the Commission ask DHS to copy both the TAM administrator and Commission with its TED Program outreach plans and goals.

**J. Rural Real-Time Captioning (RRC) Program**

The Rural Real-Time Captioning (RRC) Program has a legislatively capped budget of \$300,000. TAM contracts with DHHS to contract with rural TV stations for local news captioning. Funds are used to pay for captioning services and to reimburse DHHS for administrative costs. Currently there are 4 contracts with rural stations.

ER observed that a process exists by which complaints about quality could be monitored and noted no issues with regard to compliance with its interagency agreement, state statutes or the program expense request or RFP processes.

**STAFF ANALYSIS:** ER's audit identified no program shortcomings and made no recommendations for change. Staff does not recommend further action regarding the RCC program.

**K. Accessible News for the Blind (ANB) Program**

The Accessible News for the Blind (ANB) Program has a legislatively capped budget of \$100,000 to provide news and information to people who are blind and disabled. The program is administered through inter-agency agreement by the Department of Employment and Economic Development (DEED).

No verification of eligibility could be performed in this audit given DEED's determination that data privacy requirements prevented ER from doing so. (See Minn. Stat. 116J.401)

ER concluded that "No issues were identified during review of DEED's compliance with the interagency agreement and Minnesota state statutes, as well as the review of ANB's expense request processes."

**STAFF ANALYSIS:** ER's audit identified no program shortcomings and made no recommendations for change. Staff does not recommend further action regarding the ANB program.

## V. COMMISSION ALTERNATIVES

### A. Should the Commission accept the TAM Performance Audit Report?

1. Yes.
2. No.
3. Other action determined by the Commission.

**Staff Recommendation:** Staff recommends Option 1.

### B. Should the Commission direct the following recommended actions?

- Ask the Department to report to the Commission within 60 days of the Order in this proceeding the Department's investigation plan and status of its investigation in Docket No. 15-746.
- Request that the Department proceed as recommended by ER with an interagency agreement with DOR to receive information on wireless receipts and transfers and report on its implementation plan and status within 120 days of the Order in this proceeding.
- Request that the DHS provide copies to both the TAM administrator and Commission when it has developed the recommend policies and procedures to monitor TED Program customers and manage equipment no longer needed by individual customers.
- Request that when DHS fulfills its commitment to proceed with formal goals, plans and data collection for effective TED Program outreach, that it provide copies to both the TAM administrator and the Commission.

1. Yes.
2. No.
3. Other action determined by the Commission.

**Staff Recommendation:** Staff recommends Option 1.

## **AUDIT PLAN**

**June 20, 2014**

### **As provided in Order Accepting 2013 Annual Report, Approving Proposed FY 2015 Budget, Increasing Surcharge and Addressing Audit**

The Commission directed the Department to develop a plan and budget for concluding an audit of the programs funded through the TAM fund. In response, the Department proposed an audit to assess whether TAM funds are being appropriately collected, and whether the funds appropriated subject to Commission review are being used for their intended purposes. The Department did not propose to audit funds that the Legislature directly appropriates from the TAM fund.

#### **1) Questions to explore**

##### **a) Collection**

- Are carriers appropriately collecting surcharge revenue?
- Are carriers appropriately remitting surcharge revenue?
- Are the appropriate TAM surcharge revenues being deposited into the TAM account?

##### **b) Expenditures**

- Are the appropriate TAM surcharge revenues being deposited into the TAM account?
- Is TAM Fund money being used appropriately?
- Do the contracts associated with the TAM program use TAM funds consistent with their stated purpose?
- Are sound procurement practices being followed?
- Do consumers receiving equipment/services meet eligibility standards?

#### **2) Agencies subject to analysis**

##### **a) Department of Commerce (Department)**

- TAM Fund
- Minnesota Relay

##### **b) Department of Public Safety (DPS)**

- TAM surcharge collection from telecommunications carriers and transfer of surcharge revenue to the Department

##### **c) Department of Human Services (DHS)**

- Telephone Equipment Distribution (TED) Program
- Rural Real-Time Captioning Program
- Minnesota Relay Outreach

**d) Department of Employment and Economic Development (DEED)**

- Accessible News for the Blind Program

**3) Contracts subject to analysis**

**a) Department – TAM Program Contracts**

- Communications Service for the Deaf (including sub-contracts with Sprint Relay and CapTel, Inc.)
- DHS (for the Provision of the TED Program)
- DHS (for the provision of Minnesota Relay outreach services)
- DHS (for the provision of the Rural Real-Time Captioning Program)
- DEED (for the provision of the Accessible News for the Blind Program)

**b) DHS – TED Program Contracts**

- Harris Communications (for specialized telecommunications equipment)
- Teltex, Inc. (for specialized telecommunications equipment)
- Weitbrecht Communications, Inc. (for captioned telephone equipment)
- Sprint Solutions, Inc. (for wireless devices and services)
- GreatCall, Inc. d/b/a Jitterbug (for wireless devices and services)