



DENALI COMMISSION  
OFFICE OF INSPECTOR GENERAL  
ANCHORAGE, ALASKA 99501

**INSPECTOR GENERAL  
MEMORANDUM**

DATE: May 25, 2021

TO: John Torgerson  
Interim Federal Co-Chair, Denali Commission

John Whittington  
General Counsel, Denali Commission

FROM: Roderick H. Fillinger   
Inspector General

SUBJECT: Administrative Review – Cellular Phone Purchase (Report No. 2021.05)

**METHODOLOGY:** This Administrative Review was conducted in compliance with the Inspector General Act of 1978, as amended. Denali Commission records, emails, and information provided by staff was reviewed.

**REFERENCES:** The Inspector General Act of 1978, as amended; Council of the Inspectors General on Integrity and Efficiency Quality Standards for Federal Office of Inspector General (Silver Book), August 2012.

On April 24, 2020, administrative staff of the Commission raised the concern that a former employee had kept his government issued cell phone without following proper procedures. In the past, employees had been required to return government furnished equipment upon separation from the Commission or seek approval for the separating employee's purchase of the item.

Factual Background

Upon departure, a former employee made a request to keep the government furnished phone assigned to the former employee. What the employee who coordinated with AT&T, the service provider for the Commission's cellular phones, believed was being requested was the transfer of only the telephone number, not the number and the equipment. When a Commission employee contacted AT&T about whether it was possible to transfer the number to the employee, the employee was informed that AT&T needed a request for a Transfer of Billing Responsibility, TOBR, from the Commission. Rather than simply transfer the number, however, when the former employee contacted AT&T about keeping the telephone number and completed the

TBOR, the former employee acquired both the number and the phone from AT&T. AT&T also transferred the \$689.00 remaining balance the Commission still owed to AT&T on its financing plan to the former employee. The Denali Commission did not know at the time, but later learned, that when a TBOR is done on a phone purchased under an installment agreement, both the number and the device are transferred. According to AT&T, the balance owed on the financing plan had to be satisfied in full before the telephone number could be transferred. Because of their misunderstanding of the request, the Denali Commission employees believed that they were only permitting the former employee to keep the phone number assigned to his government-issued cell phone, and not the hardware, when they approved the transaction with AT&T.

Notwithstanding the miscommunication concerning what was being requested or approved, the phone is now solely in that former employee's name/possession. AT&T transferred the \$689.00 remaining balance owed by the Commission on the financing agreement from the Commission to the former employee. The phone was purchased originally through the finance agreement with AT&T on July 29, 2019, for \$899.99.

The iPhone at issue was being financed through installment payments made from the Commission to AT&T and was Commission property. Further in support of this conclusion, AT&T informed a Commission employee that it does not enter into "lease" agreements for its iPhones, only financing arrangements. Therefore, it appears that the Federal Management Regulation (title 41 C.F.R. Part 102), which covers the disposition of personal property within the custody and control of executive agencies in the United States, would apply.

During this review, Commission staff informed me of one prior instance where government furnished equipment was sold to a departing employee. The departing employee purchased the employee's assigned government furnished laptop in 2017 when the employee departed the agency. From the available records it appears that the fair market value was determined utilizing the website Gazelle.com. The fair market value and purchase were approved by the General Counsel and Federal Co-Chair. The former employee issued a check for the amount determined to be the fair market value and the laptop was removed from the Commission's inventory. In part, it appears that this determination was based upon the approach of the end of the useful life of the laptop based upon its age. While not explicitly stated, this would support a determination that the laptop was "excess property."

### Federal Management Guidelines

The Federal Management Regulation that governs the disposition of personal property owned or leased by the Federal government prevents the transfer of government-owned property to a non-Federal entity unless that transfer occurs through procedures that are specifically authorized by law. 41 C.F.R. 102-35.30(d). A Commission employee spoke with a contact at GSA, which administers the Federal Management Regulation. The GSA contact stated that the phone was not excess property and should be returned to the Commission. While iPhone models are replaced by new models approximately every 12 months, it is unlikely that a government-issued cell phone only nine months old would be classified as "excess personal property." "Excess personal property" is defined under the Federal Management Regulation as property that is "no longer needed by the activities within your agency to carry out the programs of official functions, as

determined by the agency head or designee.” (41 C.F.R. 102-36.30). Even though the phone may not be excess personal property, there is an additional provision in the regulation that governs sales of just “personal property” that has not been deemed to be excess or surplus. Under certain circumstances, such a sale may be permitted.

The regulations allow for personal property to be sold through a “negotiated sale,” which allows for a buyer and seller to agree upon a sale price, subject to open competition, if feasible. (41 C.F.R. 102-38.100). All other personal property sale procedures allowed by the Federal Management Regulation require that sales only be made after the agency publicly advertises for bids that permit full and free competition. 41 C.F.R. 102-38.55. Since no bids were solicited in this case, the only exception applicable is whether this transaction could qualify as a negotiated sale. As an aside, this section of the Federal Management Regulation would likely explain how the Commission conducted the 2017 sale of a Commission-owned laptop to a former employee who paid the fair market value agreed upon by both parties and approved by the Federal Co-Chair.

A negotiated sale may be used (among other reasons) when the property being sold has a fair market value of less than \$15,000. 41 C.F.R. 102-33.105(a). Counsel for the Commission stated his belief that the remaining payments owed on the cell phone (which the former employee assumed) were the depreciated value of the asset, meaning the Commission seemingly believes that fair market value was paid for this item.<sup>1</sup> A negotiated sale must be approved by the agency head or designee. 41 C.F.R. 102-38.110. Since the sale was for a fixed price that was not negotiable (i.e., the price was the remaining finance payments owed to AT&T), it would likely be considered a negotiated sale for a fixed price. The complete criteria required for a negotiated sale of items at a fixed price are: (1) the items are of a type that GSA’s Bulletin FMR-10 has authorized for a fixed-price sale; (2) the agency head, or designee, determines in writing “that such sales best serve the interest of the government,” and (3) the agency publicizes the sale “to the extent consistent with the value and nature of the property involved.” (41 C.F.R. 102-38.120). Telephones are specifically listed in GSA’s Bulletin FMR-10 as a type of property that may be sold at a fixed price by agencies under these regulations.

## Conclusion

With respect to the sale at issue, it is unclear whether the Commission head, or designee, approved this sale and deemed it to be in the best interest of the government. It is clear, however, that the former employee believed he had taken the necessary steps to acquire the phone from AT&T and had assumed the financial obligation associated with it. The general counsel, in reviewing facts provided to him by the Commission staff, reached the conclusion that \$689.00 paid for the 9-month-old \$899.99 phone represented the fair market value of the phone. There was a lack of clarity on the part of the staff on what exactly the former employee was requesting, but based upon the facts provided, concurrence was communicated to AT&T. Considering these facts, a failure to follow proper procedures rather than misconduct by any individual employee or former employee occurred.

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<sup>1</sup> In May 2020, Apple sold refurbished iPhone XR models starting at \$499. (Source: apple.com refurbished iPhone XR phones for sale, accessed June 3, 2020.)

In the case of the laptop sold to a former employee in 2017, it was clear that the Co-Chair was the one who approved the sale, leaving open the questions of: (i) whether the Federal Co-Chair could approve this sale prior to his departure, even though he had an interest in it; (ii) which employee(s) could have been the Co-Chair's designee in this situation, if any; or (iii) whether the current Co-Chair can retroactively approve this sale in writing and determine that it was in the best interest of the Commission. This analysis is complicated by the fact that when the (now former) Co-Chair assumed ownership of the phone, his communications with Commission staff show that he believed it was not Commission property, but rather, AT&T property. Given this detail, the facts do not support that he used his official Co-Chair position to determine the sale was in the best interest of the Commission or had a designee make that determination on behalf of the Commission. The only option remaining under the regulations is for retroactive approval by the current Interim Federal Co-Chair or a successor. While the Federal Management Regulation requires written approval of the negotiated sale from the agency head or designee, it is silent on when this approval must be obtained. If retroactive approval is not made, then the former employee should return the phone, and appropriate financial arrangements made for the Commission to repurchase the phone.<sup>2</sup>

Based upon the information obtained during this review, the Federal Management Regulations governing the disposition of personal property, and the prior process used by the Commission with respect to government-furnished personal property, I recommend the following:

Recommendation 1: Either this matter be reviewed to determine if retroactive approval by the Federal Co-Chair (or Interim Federal Co-Chair) is appropriate, or if retroactive approval is not appropriate whether the former employee should return the phone and appropriate financial arrangements be made for the Commission to repurchase the phone.

Recommendation 2: The process to be utilized for an employee or departing employee to request to purchase government furnished equipment, including the necessary approvals, be formalized, and communicated to the staff for use in future requests.

The Commission accepted the recommendations. The sale of the cell phone was determined to be a negotiated sale for fair market value after a review of the facts. With respect to the second recommendation, the HR specialist will add a notification requirement to the Federal Co-Chair for any equipment that is proposed to be purchased by a departing employee to ensure that all applicable regulations are followed.

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<sup>2</sup> Return of the phone was made problematic given the occurrence of these events during "stay at home" orders in the course of a global pandemic. The global pandemic and resulting disruptions also occasioned delay in the completion of this review.