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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Reimbursing Employees' Government Use of Private Cellular Phones at a Flat Rate

File: B-287524

Date: October 22, 2001

DIGEST

The Western Area Power Administration (WAPA) plans to implement a one-year pilot program in which employees who meet WAPA's criteria for using a government-issued communication device may elect to use their personally-owned cell phones to complete government-related calls, instead of a government-issued telephone or pager, and receive a tiered flat rate reimbursement. We have no objection to WAPA reimbursing employees for government use of personal cell phones; however, without specific statutory authority, WAPA may not reimburse employees at a flat rate instead of reimbursing for actual expenses.

DECISION

The Western Area Power Administration (WAPA) has requested an advance decision on whether WAPA can reimburse employees for government use of personal mobile telephones at a tiered flat rate based on historical usage. We have no objection to WAPA reimbursing employees for government use of personal cell phones; however, without specific statutory authority, WAPA may not reimburse employees at a flat rate instead of reimbursing for actual expenses.

BACKGROUND

WAPA markets and transmits hydroelectric power and related services to consumers in a service area that covers 15 states and approximately 1.3 million square miles. Due to the extensive travel that is required to reach all of its customers, WAPA considers cellular phones and/or pagers an essential but expensive part of its operations. WAPA, hoping to increase communication and reduce costs, plans to implement a one-year pilot program in which employees who meet WAPA's criteria for using a government-issued communication device may elect to use personally-

owned cell phones to complete government-related calls, instead of a government-issued telephone or pager, and receive a tiered flat rate reimbursement.
WAPA plans to implement the pilot program in its Desert Southwest Customer Service Office (DSW), which provides service to Arizona, California, Nevada, and New Mexico. If the pilot is successful, WAPA hopes to expand the program to its other offices.

As part of the pilot, DSW officials will determine which job positions require mobile communications equipment and then provide the employees holding these positions the choice of using a government-owned cell phone/pager or a privately-owned cell phone. If the participant elects to use a privately-owned phone, the participant must agree to maintain a wireless phone program that will allow for complete regional coverage, as determined by the participant's supervisor, and that will allow participants to pay a flat rate for a specified number of minutes.

Participants will receive payments at the end of each month intended to defray their wireless service costs attributable to government-related use of their cell phones. WAPA will have no ownership of, nor responsibility for maintaining, the telephone equipment itself. WAPA will pay participants either $20, $30, or $60 per month, based on the employee's historical usage of government phone and/or pager service. DSW maintains records of employee use of government cell phones and pagers, and managers will be responsible for determining an employee's payment tier based on both the individual's historical usage as well as the individual's job category. WAPA believes that a flat rate plan, in comparison to a reimbursement plan based on actual expenses, will result in fewer administrative costs and greater employee participation, and thus increased program savings.

According to the record, DSW spends approximately $55,000 per year on service contracts for mobile communications wireless devices, pagers and cellular telephones. Based on the historical costs of all eligible DSW employees, WAPA estimates that as a result of implementing the pilot, DSW will realize annual savings equal to 45 percent of the annual cost of its current service contracts for mobile communications. WAPA stated that this would be in addition to savings realized from not purchasing the communication devices themselves. WAPA estimates that if DSW does not implement the program, it will spend $11,300 over the next 5 to 10 year period to acquire and maintain communications equipment.

DISCUSSION

WAPA's request for an advance decision raises two issues. First, may WAPA reimburse employees for government use of personal cell phones, and second, may WAPA reimburse employees for government use of personal cell phones at a flat rate.

It is well known that 31 U.S.C. § 1348(a)(1) prohibits the use of appropriated funds to install telephones in private residences or for tolls or other charges for residential telephone service.[1] We apply the statute to prevent the misuse of government resources for private or personal business, but not to obstruct the public interest where there is an adequate justification of necessity and adequate safeguards to prevent abuse. See B-280698, Jan. 12, 1999. For example, in B-229406, Dec. 9, 1988, we did not object to a proposal to reimburse an agency official for costs incurred in making long-distance government-related calls from a personal cell phone installed in a private automobile as long as adequate safeguards existed to ensure the government reimbursed employees only for government-related calls. Because the official provided a monthly bill that itemized all phone calls and charges, a safeguard mechanism existed for verifying government calls and separating them from purely personal calls. See also B-227763, Sept. 17, 1987, and B-186877, Aug. 12, 1976.

The primary difference between B-229406, Dec. 9, 1988, and WAPA's proposal is that in the cited decision, all of the government official's cell phone calls and charges were individually itemized on a monthly basis. In contrast, WAPA would like to reimburse employees using a tiered flat rate rather than individually itemizing actual charges.

Absent specific statutory authority, federal agencies are precluded from compensating employees based on a flat fee structure. See 70 Comp. Gen. 645 (1991); 4 Comp. Gen. 30 (1924), reconsidered at A-1014, Apr. 27, 1926 and A-1014, Jan. 7, 1927. This proposition is based on 5 U.S.C. § 5536, which provides that:

> "An employee or a member of a uniformed service whose pay or allowance is fixed by statute or regulation may not receive additional pay or allowance for the disbursement of public money or for any other service or duty, unless specifically authorized by law and the appropriation therefor specifically states that it is for the additional pay or allowance."

Our decisions interpreting this statutory provision have held that paying employees on the basis of an established fee per day is equivalent to a commutation of expense or allowance in addition to salary, and, therefore, is prohibited by this provision. See, e.g., 70 Comp. Gen. 645 (1991); 20 Comp. Gen. 101, 102 (1940). A flat rate plan raises the risk of improperly reimbursing employees for personal use; setting a flat fee tends to result in either a gain or a loss to the reimbursed employee, "which is contrary to the theory of reimbursement on an actual expenses basis." 4 Comp. Gen. 735, 736 (1925).[2]

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[1] For a number of years, the Treasury, Postal Service, and General Government Appropriations Acts have authorized the use of appropriated funds to install and use telephone lines and necessary equipment in employee residences authorized to work at home. See, e.g., Pub. L. No. 104-52, § 620, 106 Stat. 468, 501 (1995).

[2] For example, WAPA stated that if a flat fee reimbursement plan were implemented, some monthly payments to an employee could be greater or less than the actual monthly cost.
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WAPA analogized its flat rate proposal to a rate per mile basis of reimbursement for employees who use a privately-owned vehicle for official government business. The flaw in this analogy is that a rate per mile and similar types of reimbursement plans are authorized specifically by statute. See, e.g. 5 U.S.C. §§ 5704(a)(1), 5707(b)(mileage reimbursement), and 5 U.S.C. § 5702 (per diem for employees traveling on official business). WAPA does not have the statutory authority to reimburse employees for cell phone use in a manner similar to a rate per mile, as required by 5 U.S.C. § 5536.

Reimbursement for actual expenses, however, does not violate section 5536. In a 1991 decision, we held that without specific statutory authority, the Bureau of Indian Affairs could not pay its employees on a fee basis for the use of privately owned transportation, including horses and mules, while conducting official business; however, the agency could reimburse employees on an actual expense basis. 70 Comp. Gen. 645 (1991). In addition, in a 1924 decision, we concluded that the Department of the Interior could not rent a dog team from an employee, but could reimburse the employee for actual expenses he incurred in using his own dog team to carry out his official duties. 4 Comp. Gen. 30 (1924). See also B-31352, Feb. 22, 1943 (Department of Agriculture could not contract with employees for their use of privately owned horses in the conduct of official business at stipulated price per day, but could reimburse employees on an actual expense basis.). Consequently, while WAPA can reimburse employees on an actual expense basis for access to and use of their personal cell phones, it may not reimburse at a flat rate without specific statutory authority.[3] Unfortunately, we have identified no authority that would permit WAPA to impose a flat fee.[4]

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The employee would be able to use any excess funds to cover personal cell phone expenses. However, WAPA's reimbursement plan would permit employees who exceed their payment cost for government calls in any month to claim the additional value if they submit details of the extra expense.

[3] Some flat rate cell phone plans do not itemize cost per call. One option for WAPA would be to prorate government-related calls, for example, as a ratio to personal calls, multiplied by the monthly rate. This, however, would require WAPA to implement additional tracking and accounting procedures.

[4] Because WAPA's proposal is based on reimbursing employees for the availability and use of their personal cell phones for government-related calls, not simply on the cost of individual government-related calls, reimbursing employees on an actual basis solely for the cost of government-related calls may not provide an accurate measure of the program's costs and savings to the government. The underlying premise of WAPA's plan is that it is obtaining, and reimbursing for, the availability of the equipment, not just individual calls made. Therefore, we would not object to WAPA reimbursing employees on an actual expense basis using a reimbursement rate that includes a cost component for the use of the equipment in addition to actual government-related calls made.

We recognize that a flat rate reimbursement plan, if properly managed and overseen, has the potential to be a more efficient and cost-effective way for an agency to reimburse employees for government use of personal cell phones. Where WAPA, or other interested agencies, can document that the benefits of a flat rate reimbursement plan outweigh agency costs, we would encourage the agency to seek legislative authority from the Congress to implement such a plan.

CONCLUSION

We have no objection to WAPA reimbursing employees for government use of personal cell phones; however, without specific statutory authority, WAPA may not impose a flat rate reimbursement plan instead of reimbursing for actual expenses.

Anthony H. Gamboa
General Counsel