

Comptroller General
of the United States

Washington, D.C. 20548

Decision

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Matter of: Use of Appropriated Funds to Pay Long Distance Telephone Charges Incurred by a Computer Hacker

File: B-240276

Date: July 26, 1991

DIGEST

Under 31 U.S.C. § 1348, an agency may pay long distance telephone charges only when required "for official business" and certified as "necessary in the interest of the Government." The Soil Conservation Service may not reimburse the telephone company for charges incurred by an unidentified computer hacker; the agency may pay for charges incurred during an investigation to identify the hacker, however, as incident to the operations of the agency.

DECISION

This responds to a request from the Director, Financial Management Division, Soil Conservation Service (SCS), for an advance decision regarding the use of appropriated funds to pay certain unauthorized long distance telephone charges. The request focuses on the use of appropriated funds to pay for charges in two different circumstances: first, when SCS had no knowledge of any unauthorized use of its telephone system; and second, when SCS knew of the unauthorized use and allowed it to continue in an effort to identify and catch the offender.

Under 31 U.S.C. § 1348(b) (1988), funds appropriated to an agency are available to pay telephone toll charges only when required "for official business" and when the head of the agency certifies that the telephone call "is necessary in the interest of the Government." SCS has determined that the telephone calls made prior to June 11, when it had no knowledge of the use of its system by a computer hacker, were not for official business. Consequently, SCS may not use appropriated funds to pay for these toll charges. SCS may pay, however, for long distance telephone calls made during its investigation with the telephone company into the unauthorized use.

BACKGROUND

SCS has determined that beginning in May 1990, a computer hacker had apparently accessed an SCS computer telephone line and used SCS equipment to randomly dial numbers in an attempt

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to locate other computer systems. The hacker was using the line to make calls to New York, Louisiana, and Ohio, and having them charged as if they were dialed from an SCS Kentucky office computer line. In response, SCS modified security on all of its telephone systems with the exception of this one line, and on June 11, 1990, requested GTE South to tap that line in an effort to locate the hacker. The tap was unsuccessful and was subsequently terminated. SCS has since made efforts to tighten computer security and to secure the line used by the hacker.

DISCUSSION

There are two issues before us: one, whether SCS may pay for toll charges billed in May and incurred up until June 11, 1990, during which time the agency had no knowledge of any unauthorized use, and two, whether SCS may pay for any of the telephone calls which were made between June 11, when GTE South tapped the telephone line, and the date when GTE South terminated the tap.

The rule regarding the use of appropriated funds to pay for long distance telephone calls is contained in 31 U.S.C. § 1348(b). Section 1348(b) provides as follows:

"Appropriations of an agency are available to pay charges for a long distance call if required for official business and the voucher to pay for the call is sworn to by the head of the agency. Appropriations of an executive agency are available only if the head of the agency also certifies that the call is necessary in the interest of the Government."

Section 1348(b) imposes on the appropriate agency official the responsibility to determine, after investigating all of the facts involved in a given situation, whether a long distance call meets this criterion. 56 Comp. Gen. 284 (1976); 44 Comp. Gen. 595 (1965).

With respect to those calls made before June 11, 1990, the rule is easily applied. The SCS has determined that these calls were not related to official business. Our decisions have long held that appropriated funds are not available to pay for long distance telephone calls which have no official purpose and are in no way related to the government's business. In B-172155, Aug. 13, 1971, for example, we rejected the argument presented by a telephone company that notwithstanding the official or personal nature of the telephone call, an agency has a contractual obligation to pay for all calls made from the agency's telephones. We held that contracts with the federal government for telephone services

are subject to the provisions of 31 U.S.C. § 680(a) (the predecessor to section 1348(b)) and that the government is only authorized to pay for official telephone calls. See also B-186820, Feb. 23, 1978; B-164699, July 8, 1968. We conclude, therefore, that SCS may not reimburse GTE South for the charges incurred by the hacker prior to June 11.

Nonetheless, we conclude that SCS may pay for those calls made after June 11, 1990 until the tap was terminated. SCS initiated the tap after becoming aware that its telephone lines were being accessed by a computer hacker. SCS was well within its authority to try to identify the computer hacker; for example, the hacker might be a government employee subject to administrative disciplinary action for unauthorized telephone use. See generally, GAO, Policy and Procedures Manual for the Guidance of Federal Agencies, tit. 7, App. IV(c) (Feb. 12, 1990); 41 C.F.R. § 201-38.007 (1990). And, at the time that SCS became aware that its telephone system was being misused, the agency had an obligation to secure its lines so that its employees would have unfettered access to the telephone system. SCS incurred the costs of these telephone calls incident to agency operations.

for Milton J. Hoster
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