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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-199793

DATE: January 27, 1982

MATTER OF: Federal Secure Telephone Service

DIGEST: General Services Administration proposal to install Federal Secure Telephone Service (FSTS) telephones in private residences for official Government business of a sensitive nature subject to National Security Agency (NSA) guidelines does not violate 31 U.S.C. § 679, which prohibits the expenditure of appropriated funds for telephone service installed in private residences. FSTS system has sufficient safeguards built-in to reduce danger of abuses this statute was intended to address.

This case was presented for an advance decision by the General Services Administration (GSA) which proposes to install Federal Secure Telephone Service (FSTS) telephones for official business in private residences of high level civilian and military officials who have appropriate security clearances and have been certified by their agency heads as having responsibilities involving national security. GSA requests our opinion concerning the applicability of 31 U.S.C. § 679 (1976), which provides that no appropriated funds be expended for telephone installation in private residences, to its proposal. For the reasons set forth below, 31 U.S.C. § 679 is not for application under the circumstances here present. Therefore, we have no objection to the use of appropriated funds for the installation and maintenance of the system proposed.

The FSTS telephone system was developed to minimize the vulnerability of certain telephone communications from various penetration techniques. The telephone, in other words, ensures secure voice communications between parties. GSA is responsible for installation and maintenance of FSTS equipment on a Government-wide basis. The submission states that FSTS

"provides a secure communications capability to a limited number of civilian and military personnel who have appropriate security clearances and are designated by their agencies as having responsibilities involving national security."

Concerning residential installation, GSA states that it anticipates that such installations would amount to about one percent of all FSTS installations. A draft handbook prepared by GSA for residential installation of FSTS requires the agency head to certify in writing that national

security requirements necessitate the placement of an FSTS telephone in a particular private residence. Further, National Security Agency guidelines will be used to determine which officials are eligible for FSTS access, generally.

Once installed in a private residence, the FSTS telephone will be authorized for communication of top secret information. The telephone cannot be activated for use without a key that will be assigned the authorized user by GSA. GSA's draft handbook states that the key will be required to be kept under the user's personal control at all times or otherwise adequately protected. As a further deterrent to unauthorized use, we understand that the telephone may be programmed to preclude operation unless the user first uses a pre-set code. Once properly activated, however, a FSTS telephone could be used for any purpose the user desired. Concerning use for non-official purposes, GSA points out that it will require the agency head to certify that the telephone will be utilized for official business only and that the FSTS telephone is susceptible to the same audit techniques as are used in the Federal Telecommunications System to ensure that official business is being transacted. GSA also points out that the status and integrity of the high level personnel who will be designated to have FSTS service installed in their residences will minimize the likelihood of unofficial use.

GSA requests a decision concerning the applicability of 31 U.S.C. § 679 (derived from section 7 of the Act of August 23, 1912, Ch. 350, 37 Stat. 414 as amended by the act of April 30, 1940, 54 Stat 175) to the installation and maintenance of the FSTS telephone in private residences. In pertinent part this section provides:

"Except as otherwise provided by law, no money appropriated by any Act shall be expended for telephone service installed in any private residence or private apartment or for tolls or other charges for telephone service from private residences or private apartments, ***"

The FSTS system has been developed to ensure secured voice communications. Thus, the question to be resolved is whether the statutory prohibition is to be applied to installations of FSTS telephones in private residences of selected officials who may be required to discuss official matters of a sensitive nature from their homes, where use of such telephones will be limited to official business.

Issued shortly after the statute's enactment, a decision of the Comptroller of the Treasury dated November 12, 1912, 63 MS Comp. Dec. 575, provides background as to the purpose and scope of 31 U.S.C. § 679. There it was stated in part:

"Section 7 of the Legislative, Executive and Judicial Appropriation Act, set out in your letter, was not passed as I understand for the purpose of requiring government employees to bear the expense of telephone messages on public business, but on the contrary, its plain intent was that the Government should not be chargeable with the cost of private and personal messages of such employees. The provision in question was passed to secure the latter purpose and grew out of the fact that a large number of public officers here in the District of Columbia had installed in their private residences telephones at Government expense under the guise of their use for public purposes, when in truth the Government had provided them with sufficient telephones in their public offices to transact all the public business." [See also, Senate Committee on Appropriations on H.R. 24023 (64th Cong.), pg. 251-53, 302-304]

As can be seen, the statute was enacted to stop public officers from obtaining personal telephone service at Government expense. We have held, however, that in certain limited circumstances, this statute would not bar funding of residential telephone service. For example, in the cited November 12, 1912 decision, it was ruled that the statute did not prohibit the installation of telephones in Government buildings provided to forest rangers as residences but which also were used for official purposes. See also 4 Comp. Gen. 891 (1925) and 19 Comp. Dec. 350 (1912), which also recognize this exception to the statutory prohibition.

In B-128144, June 29, 1956, we authorized use of appropriated funds for the cost of installation and maintenance of direct telephone lines from an Air Force Command Post switchboard to private residences of certain high level civilian and military officials to ensure communications in the event of a national emergency. In this case, the Air Force proposed to install telephones in thirty private residences. A direct line was to connect to the private residence and the Command Post. The Command Post was to act as a relay or switchboard to connect callers with those whom they wished to contact. In order to ensure that telephones in the private residences were used for official business only,

the Air Force promulgated regulations to that effect and authorized the Command Post switchboard operator to record conversations and keep records of connections made from the private residences. It was clear that the switchboard was not to act as a substitute for commercial telephones. Rather, these telephones were to be restricted to the conduct of urgent official business in the event of a national emergency. In authorizing the use of appropriations in these circumstances, we presumed that the officials involved would continue to obtain separate telephone service for their personal use in their private residences.

As a general rule however, we have consistently held that 31 U.S.C. § 679 is plain, comprehensive, and constitutes a mandatory prohibition against the payment from appropriated funds of any part of the expense of furnishing personal telephone service to a Government officer or employee in a private residence except for long distance toll charges properly certified as being for public business. We have maintained this position irrespective of the desirability or necessity of such service from an official standpoint and in spite of the fact that the telephones were to be used extensively for official business. See 4 Comp. Gen. 19 (1924); B-175732, May 19, 1976; B-61938, September 8, 1950; 59 Comp. Gen. 723 (1980).

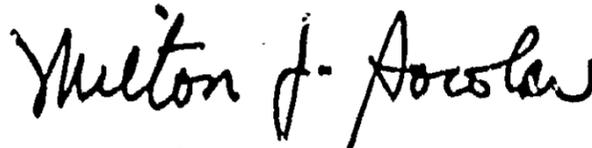
The cited cases, however, including 59 Comp. Gen. 723, supra, are distinguishable from the proposal under consideration here. In the first place, no provisions were made in those cases to assure that private calls would not be made since the telephones to be installed in private residences were no different than those normally installed for private use. In this case, access and use will be controlled. Secondly, the telephones in the cited cases, while desirable from an official standpoint, were, in essence, to serve as a convenience for the Government officials, involved. This is because official calls to and from the officials' residences could have been placed and received, if necessary, from their private telephones, even though this might have caused some personal inconvenience. Here, the official calls to or from private residences could not be made over private telephones because of the need for security.

We therefore regard our decision in B-128144 as controlling in the instant case. GSA advises us that the purpose for which the FSTS system was developed was to ensure secured voice communication of information affecting the national security in appropriate situations. While the possibility exists that FSTS telephones installed in private residences could be used for the personal benefit of the users, we regard this potential for misuse as minimal. GSA will require the agency head to certify that the telephone will be used for official business only in accordance with NSA guidelines. The FSTS telephone will be subject to the same monitoring techniques

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used to supervise the use and operation of the Federal Telecommunications System. Presumably here, as in B-128144, the officials involved will continue to obtain commercial telephone service for personal business at their own expense.

Accordingly, we have no objection to the use of appropriated funds for the installation and maintenance of FSTS telephones in private residences in appropriate circumstances.



Acting Comptroller General
of the United States