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Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: GSA's Billing the Corps of Engineers Consolidated Local Telecommunications Service Termination Charges

File: B-251428

Date: February 16, 1994

DIGEST

The General Services Administration may recover costs associated with an agency's withdrawal from local service through termination charges assessed on the agency. The termination charges may include direct as well as other costs associated with the agency's departure. See Comp. Gen. decisions cited. However, we are unable to conclude on the record before us whether a common distributable (CD) termination charge computed by multiplying the CD rate (GSA's annually estimated monthly overhead cost per line) in effect on the date an agency departs, by the number of lines disconnected, by 12 months, reasonably approximates GSA's cost to efficiently adjust (reduce staffing) to the agency's departure. Nor is such a CD termination charge supported when it is rationalized on the basis of budgetary impact on remaining users. Finally, the record before us does not permit us to conclude whether such a CD termination charge, when predicated on providing stability to GSA's rate structure, is reasonable (cost and other factors considered).

DECISION

This decision responds to a request submitted by Dennis J. Fisher, Chief Financial Office, General Services Administration (GSA), regarding the U.S. Army Corps of Engineers' (Corps') refusal to pay GSA's common distributable (CD) termination charges upon the Corps' withdrawal from GSA's local telecommunications service in Sacramento, California.[1] For the reasons set forth below, we hold that GSA is authorized to recover termination charges that include the direct costs associated with the

[1]GSA submitted its request under GAO, Policy and Procedures Manual for Guidance of Federal Agencies, title 7, § 2.4 C.3 (TS 7-42, February 12, 1990).

Corps' departure as well as other costs incurred by GSA as it takes steps to mitigate the impact of the Corps' departure. However, the record before us does not provide a basis for concluding whether the CD termination charge reasonably approximates GSA's costs.

BACKGROUND

On September 24, 1987, the Corps requested a delegation of procurement authority from GSA in order to obtain Centrex-type service in the Sacramento, California District. The Corps' request included information on, among other things, termination liability, as required by Federal Information Resources Management Regulation (FIRMR) 201-39.006-1, 41 C.F.R. § 201-39.006-1 (1989). The information provided by the Corps included the following statement:

> Termination liability to be determined by GSA. Sacramento District has not entered into any long term agreements for telephone service. Preliminary research shows that under the terms of the GSA/GTE contract, the departure of Sacramento District from the GSA switch will not drop the level of subscribers below the 70% of initial configuration minimum to avoid penalties.

On October 27, 1987, GSA granted approval to the Corps to acquire Centrex services at the Sacramento District office as requested in its September 24, 1987 letter. GSA's letter stated that its approval was based upon information contained in the September 24, 1987 letter and was "contingent upon this office being notified of any changes or discontinuance of service."

On April 17, 1989, GSA notified the Corps that it would be liable for monthly termination liability charges of $26,255.15 from the date the Corps discontinued GSA consolidated local telecommunications service until July 8, 1990, the date that the then current GSA contract with GTE covering the Corps Sacramento system was due to expire. GSA arrived at the monthly termination liability charge by adding the monthly CD charge ($12.45) to the monthly main station rate ($15.10) and multiplying the total ($27.55) by 953 lines (the number of lines to be disconnected in the Sacramento area).

However, as a result of the Corps' delay in acquiring alternative service, the Corps continued to receive service from GSA past July 8, 1990. In July 1991, the Corps issued Telephone Service Requests (SF-145) to GSA for the disconnect of the telephone lines from the Sacramento switch. All lines were disconnected by July 15, 1991.

On November 31, 1991, GSA billed the Corps $177,007.62 for termination charges. The bill was based on CD charges of $175,996.80 computed in accordance with FIRMR Bulletin C-15, Attachment C (January 30, 1991). Unlike the April 17, 1989 notice, GSA's termination charges included only the CD termination charge and not the main station termination charge since the latter was determined to be inapplicable to the Corps when it discontinued service on July 15, 1991. However, the CD charge per line was $14.55, an increase of $2.10 per line over the amount stated in the April 17, 1989 letter.

In February 1992, the billing statement was adjusted downward in the amount of $8,543.06 leaving uncollected the amount of $168,464.56. On May 14, 1992, the Corps notified GSA that it would not pay the billing since in its opinion the termination charge was an unjustified penalty.

LEGAL AUTHORITY

GSA's Local Service Telecommunications Program is managed by the Information Resources Management Service and its operations are financed through the Information Technology (IT) Fund, 40 U.S.C. § 757 (1988).[2] GSA provides local telecommunications service to agencies at designated locations, including Sacramento, California. However, agencies may request exemption from participation in the mandatory program in order to meet unique requirements. If an exemption is granted, agencies may be required to obtain a delegation of procurement authority from GSA in order to procure the necessary service or equipment.

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[2]The IT Fund and its predecessor, the Federal Telecommunications Fund, were established to permit GSA to manage telecommunications activities in a businesslike manner. GSA pays all the telecommunications costs associated with providing services to agencies and recovers these costs from agencies using the services.

GSA regulations provide that GSA charges for consolidated local telecommunications service[3] include expenses for installation, changes in service, a CD charge, and termination. The regulations also cite agencies to FIRMR Bulletin C-15 (January 30, 1991), for further information. 40 C.F.R. § 201-24.102 (1992). Attachment C to the Bulletin sets forth GSA's method for determining termination charges.[4] GSA assesses termination charges on an agency that leaves a mandatory service location or reduces its service requirement during the life of a contract to less than half its requirement at the time the contract was signed. There are three elements making up termination liability charges: (1) CD charges, (2) main station charges, and (3) agency identifiable charges. GSA assessed the Corps CD charges for 12 months after the lines were disconnected from the Sacramento switch on July 15, 1991.

Paragraph 3 of Attachment C regarding calculation of the CD charge, states:

> Since staffing cannot be efficiently reduced after every departure, reducing the number of lines at a given location causes the overhead expenses at that location to be divided among fewer lines. To allow remaining agencies time to budget for the increase, the departing agency will pay GSA 12 months' CD rates using the CD rate in effect on the dat[e] of departure.

We have been informally advised by a GSA official that they compute the CD rate by dividing the total estimated overhead costs for the zone, in this case the Pacific Zone, by the total estimated number of main lines in the zone for the fiscal year during which the CD rate will be in effect. This number is then divided by 12 to attain the monthly zone portion of the CD rate. A similar procedure is followed to determine the GSA headquarters portion of the CD rate. The total estimated overhead costs for GSA headquarters is

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[3]Consolidated local telecommunications service means local communications service provided by GSA to all federal agencies located in a building, complex, or geographic area. 41 C.F.R. § 201-4.001 (1991).

[4]FIRMR Bulletin C-15 canceled FIRMR Bulletin 69, May 18, 1990. Attachment C of FIRMR Bulletin 69 set forth similar requirements concerning collection and computation of termination charges. Both 40 C.F.R. §201-24.102 and FIRMR Bulletin C-15 were in effect on the date of Corps' departure from the local telecommunications system in Sacramento.

divided by the total estimated number of lines in all the zones for the fiscal year during which the CD rate will be in effect. This number is then divided by 12 to obtain the monthly headquarters portion of the CD rate. GSA combines the two numbers to obtain the monthly CD rate per line for the zone. GSA uses the CD rate for the zone to compute both (1) agency service billings and (2) termination charges throughout the applicable year. In this manner, GSA intends to recover its annual overhead costs.

ANALYSIS

The Corps asserts that the CD termination charge is an unjustified penalty. The law establishing the Information Technology Fund, 40 U.S.C. § 757 (1988) (and the predecessor Federal Telecommunications Fund, 40 U.S.C. § 757 (1982)), authorizes GSA to recover termination costs from agencies that withdraw from the Federal Telecommunications System (FTS). 69 Comp. Gen. 112 (1989); B-238181.2, Sept. 17, 1991; B-231044.2, Feb. 6, 1991; B-231044.3, Feb. 6, 1991; and, B-238181, Jan. 9, 1991. GSA may recover termination costs either by adjusting rates to remaining FTS system users or assessing departing agencies the costs associated with their departure from FTS.[5] Furthermore, GSA need not base the costs recovered on the actual incremental costs incurred by GSA as a result of the agency's departure; rather the method used to allocate such costs need only reflect reasonable approximations.

Our prior decisions addressed whether GSA could assess termination charges against agencies ceasing to receive long distance telecommunications services in order to recover (1) the cost of disconnecting access lines without disrupting service to remaining users and (2) the direct cost of carrying excess capacity during the long distance network downsizing. GSA determined the costs to be recovered by applying a formula developed following the first large scale agency withdrawal from the FTS. GSA's experience-based formula established five months as the time normally required to reduce the network after the agency departs. Thus, we have held that the costs that are recoverable as termination charges are those reasonably associated with the agency's departure and therefore fairly

[5]These are not necessarily the only two ways that GSA would be authorized under the law to recover such costs. For example, GSA could recover as part of its service rates amounts necessary to establish reserves to cover such contingencies.

assessed on the departing agency rather than on remaining users.

Consistent with our previous decisions, we conclude that GSA is likewise authorized to recover costs associated with the Corps' withdrawal from local service through termination charges assessed on the Corps. Furthermore, consistent with our prior decisions, GSA should include in the termination charges assessed the direct costs associated with the Corps' departure as well as those costs incurred by GSA as it mitigates the impact of the Corps' departure. The question, then, is whether GSA's method for establishing the amount of CD termination charges reasonably approximates GSA's actual costs. On the record before us, we cannot conclude that it does.

GSA justifies the CD termination charge on the grounds that it is necessary (1) to efficiently reduce staffing, and (2) to give remaining users time to budget for the service rate change. As discussed below, as a general matter, the first ground for imposing a CD termination charge is sound. GSA has not, however, related the justification to its method for computing the amount of the charges.

The first justification is conceptually the same as the one we previously approved, i.e., GSA's recovery of excess costs incurred until it can take steps to mitigate the impact of an agency's departure from the FTS long distance network through network downsizing. However, the record before us does not provide a basis for concluding whether a CD termination charge uniformly computed using a 12 month-period reasonably approximates GSA's cost to efficiently reduce staffing. For example, GSA has not supported its CD termination charge formula with experience-based data as it did for the formula used to assess termination charges on an agency leaving the FTS long distance network.

The second justification presents a question not considered in our prior decisions, i.e., whether termination charges may be assessed based on the budgetary impact an agency's withdrawal has on remaining users. GSA apparently reasons that once the agency has been notified of GSA's rates for local telecommunications service during the ensuing year (that include the CD rate) and takes steps to budget for them within the amounts appropriated by Congress, it becomes increasingly difficult as the year progresses for an agency to absorb service rate changes within its budget.

A long period of time elapses between an agency's preparation of its budget request and the enactment of its appropriations into law for a given fiscal year. As a result agencies routinely absorb within their appropriations cost increases that were not built into their budget requests. We recognize that there may be difficulties presented by any changes to budgetary assumptions, particularly late in the fiscal year when agency budget flexibility is most limited. Conversely, they are least severe early in the fiscal year when agency budget flexibility is greatest. The agency has not, however, established a connection between these increased costs to remaining users and any actual costs to GSA. Thus, the record does not support GSA's recovery from a departing agency of 12-months of GSA's overhead costs incurred after the agency's departure on this basis.

One possible additional justification for CD termination charges is to increase rate structure stability by eliminating the need for GSA to recompute the CD rate every time an agency decreases or increases service. We have no basis for determining the cost and time to GSA in computing service charges to recover overhead costs from remaining users. GSA's method of determining the CD rate appears flexible enough to accommodate changes in overhead costs and the number of users that occur during the fiscal year. Therefore, while stability in GSA's rate structure may provide a basis for recovering post-departure overhead costs from departing users, the record before us does not provide a basis for concluding whether a CD termination charge computed using a 12-month period is reasonable.

Finally, since the CD rate is based upon total estimated headquarters and zone overhead costs divided by the number of estimated lines (nationally and within the zone respectively) in service during the year, GSA may already be adjusting its CD rates to account for an agency's withdrawal from the system during the prior year. If GSA is assessing the CD charge for 12 months from the date of departure, some of the months for which the charges are made will be in the ensuing fiscal year for which a new CD rate will be in effect. However, it is unclear whether GSA when determining new CD rates adjusts its overhead cost estimates (or otherwise adjusts its service rates) to reflect its recovery of that portion of termination charges assessed during the prior year that are attributable to months of the ensuing fiscal year. Therefore, it is unclear whether the present method of assessing CD charges results in a double counting and billing for overhead costs in some circumstances.

Accordingly, while GSA may recover termination charges that include the direct costs associated with the Corps' departure as well as other costs incurred by GSA as it mitigates the impact of the Corps' departure, the record before us does not provide a basis for concluding whether a CD termination charge computed using a 12 month-period reasonably approximates GSA's cost to efficiently adjust to the agency's departure. Similarly, the present record does not support a CD termination charge that is based on a 12-month assessment regardless of when an agency leaves the system, rationalized on the basis of budgetary impact on remaining users. Finally, while GSA rate stability may provide an independent basis for recovering post-departure overhead costs from departing agencies (rather than through adjustments to service rates assessed on remaining users), we have no basis to determine the reasonableness of a CD termination charge computed using a 12-month period when compared to GSA's cost and time to recompute service rates.

James F. Hinchman
For Comptroller General
of the United States