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**DECISION**



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

**FILE: R-188838**

**DATE: April 3, 1978**

**MATTER OF: Impact Assistance to Polar Rural Telephone Mutual  
Aid Corporation**

- DIGEST:**
1. Polar claims reimbursement under section 611, Pub. L. No. 94-431, for capital expenses of furnishing non-tactical telephone services to Government personnel stationed at Safeguard Antiballistic Missile System site. Polar is entitled to impact assistance under section 611 criteria since (1) expenditures are not otherwise recoverable, (2) expenditures are direct result of establishment of Safeguard, and (3) in absence of financial assistance, Polar would sustain unfair and excessive financial burden.
  2. GAO differs with Defense Contract Audit Agency regarding amount of eligible capital expenses under section 611 Pub. L. No. 94-431, in three major respects: (1) interest on loans used for construction of facility is allowable capital expenditure during construction period; ASPR 15-205.17 which bars interest is inapplicable; (2) employees' termination pay is not allowable since it is not a capital expense of purchase and installation of facilities and equipment; and (3) otherwise allowable amount should not be reduced by present value analysis since section 611 contemplates complete reimbursement for eligible non-tactical capital expenditure.
  3. The third criterion of section 611 of Pub. L. No. 94-431 requires a determination by the Secretary of Defense that Polar would sustain an "unfair and excessive financial burden" in absence of financial assistance. Although Polar reportedly is in generally sound financial condition, section 611's purpose is to afford relief because the Safeguard closing removed the anticipated source of repayment for nontactical facilities and equipment. Loss of specific source of repayment results in unfair and excessive burden of repayment for eligible nontactical capital expenditures which should not be passed on to other commercial user-members of Polar.
  4. Measure of assistance under section 611 of Pub. L. No. 94-431 is Polar's financial burden--amount of eligible nontactical capital expenditures not otherwise recovered.

Based on limited review, GAO found eligible expenditures of \$1,112,175. Delegee of Secretary of Defense in determining Polar's entitlement under section 611 should deduct from eligible expenditures repayment from user fees charged to and paid by nontactical customers before the site was closed, including repayment of Rural Telephone Bank loans and general funds.

5. Government has pending claim under tactical operations Safeguard contract with Polar. Although claims are regarded as separate and distinct, may be settled at different times, and exact amount of United States' claim is not yet completely certain, the amount otherwise payable under section 611 should be withheld to the extent necessary to satisfy amount claimed to be due from debtor under the Government's common law right of setoff. Department of Defense should proceed expeditiously to resolve claim against Polar. Pending final determination of Government's claim, Polar should be paid any portion of its section 611 entitlement which exceeds the amount estimated to be due from Polar.

The Finance and Accounting Officer, U.S. Army Corps of Engineers, Baltimore District, has requested an advance decision regarding the payment of impact assistance funds to the Polar Rural Telephone Mutual Aid Corporation, Park River, North Dakota (Polar).

In order to furnish nontactical telephone services to Government personnel stationed at the Safeguard Antiballistic Missile System site (Safeguard) in North Dakota, Polar had borrowed money from the Rural Telephone Bank (RTB) for necessary capital expenditures, intending to repay the loans over a 10 1/2-year period from revenues generated from monthly service charges to Safeguard personnel living in its franchise area. The Safeguard system was dismantled and the site closed unexpectedly as a result of strategic arms limitation agreements and congressional action. Polar sought and obtained specific legislative relief, i.e., section 611, infra. It then filed a claim in March 1976 for impact assistance funds, under that section, alleging that it no longer had a way to recoup its capital expenditures.

The Finance and Accounting Officer received from the Army Ballistic Missile Defense Program Manager, as delegee of the Secretary of Defense, a determination that Polar is entitled to receive \$759,491 under section 611 of Pub. L. No. 94-431, which specifically authorizes impact

assistance to mutual aid telephone cooperatives. In forwarding the determination, the Program Manager stated that Polar had a contract with the Defense Commercial Communications Office (DECCO) to provide tactical communications support to Safeguard, and that based on reviews performed by the Defense Contract Audit Agency (DCAA) and DECCO, the Defense Communications Agency (DCA) had concluded that Polar had been overpaid approximately \$1,400,000 on the contract. It was indicated that the first formal demand against Polar had not been made until the request for section 611 impact assistance had established a potential source of recoupment funds. DCA requested that impact assistance be withheld and that joint negotiation of Polar's impact assistance claim and the DCA claim be undertaken. The Program Manager, however, stated that in his view, each case was separate and distinct and should be judged on its individual merits and settled separately.

The Army Assistant Judge Advocate General recommended that the opinion of the Comptroller General of the United States be obtained prior to payment of any section 611 funds to Polar because of the "questionable legality" of making such payment. Subsequently, the Honorable Milton R. Young, United States Senate, requested our review of the amount of impact assistance proposed to be paid to Polar by the Department of Defense. Both questions--i.e., the amount of assistance and the legality of payment of such assistance will be discussed in this decision.

Included in the Finance and Accounting Officer's submission is an information paper prepared by the Army's Ballistic Missile Defense Program Office. It states in pertinent part the following:

"1. During the period 1970 to 1976, Polar Rural Telephone Mutual Aid Corporation (hereinafter referred to as Polar) furnished nontactical telephone services to personnel stationed at the SAFEGUARD Site in North Dakota. Nontactical, as used here, refers to unofficial, private, residential telephone services paid for by individuals and not the United States Government. There was no contractual arrangement between the United States and Polar covering these nontactical private telephone services. In order to provide these services, Polar had to make capital expenditures for expanded physical facilities such as additional switchboards, cable, poles and buildings. With the untimely shutdown of the SAFEGUARD Site, Polar found itself with an expanded plant, but without the SAFEGUARD private customers from whom it had expected to obtain the necessary revenue to pay for its expanded private telephone service facilities. Since this was a private commercial transaction with individuals, there was no Basic Termination Liability Agreement with the Government under

which Polar could have recovered their expenditures. In this regard, it should be noted that 31 U.S.C. 679 specifically prohibits the expenditure of appropriated funds for telephone service installed in a private residence. \* \* \*.

"2. As a separate transaction, Polar also had a contract with the Defense Commercial Communications Office (DECCO) to furnish tactical communications support to the SAFEGUARD Site. Here there was a Basic Termination Liability Agreement to protect Polar against unexpected shutdown of the Site.

"3. However, when the SAFEGUARD Site shut down prematurely, Polar found that it had no way to recoup some of its capital expenditures specifically made to provide nontactical, private, residential telephone services for SAFEGUARD personnel.

"4. Polar at first sought relief in the form of impact assistance under the provisions of section 610, P.L. 91-511, the basic impact assistance statute for the SAFEGUARD Site, \* \* \*. However, Polar could not qualify for assistance under Sec. 610, because funds under that section only supplement those under other existing federal programs; there was no existing federal agency through which Polar could submit an application for impact assistance; Polar did not qualify as a 'community' as required by section 610 and finally, as stated above, 31 U.S.C. 679 specifically prohibits the use of appropriated funds to pay for private telephone service.

"5. Polar then sought relief from Congress, see letter to Senator Young, dated 17 February 1976 \* \* \*. Senator Young held a meeting concerning the plight of the telephone companies furnishing private telephone services for SAFEGUARD Site personnel \* \* \*. Senator Young asked the Army to draft legislation which, if passed, would allow impact assistance to telephone companies in Polar's situation. \* \* \*

"6. Subsequently, section 611, P. L. 94-431, was passed by Congress \* \* \*.

\* \* \* \* \*

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"8. On 8 November 1976, Polar submitted a request for impact assistance UP Sec. 611, P.L. 94-431, in the amount of \$1,337,562, subsequently revised to \$1,375,815 and again revised to \$1,372,044 \* \* \*."

Section 611 of the Military Construction Authorization Act, 1977, Pub. L. No. 94-431, 90 Stat. 1349, September 30, 1976, provides as follows:

"IMPACT ASSISTANCE, NONPROFIT COOPERATIVES

"Sec. 611. Notwithstanding section 7 of the Act of August 23, 1912 (31 U.S.C. 679), the Secretary of Defense is authorized to use any funds appropriated to carry out the provisions of section 610 of the Military Construction Act, 1971 (84 Stat. 1224), to reimburse nonprofit, mutual aid telephone cooperatives for their capital expenditures for the purchase and installation of nontactical communications equipment and related facilities, to the extent the Secretary determines that (1) such expenditures are not otherwise recoverable by such cooperatives, (2) such expenditures were incurred as the direct result of the construction, installation, testing, and operation of the SAFEGUARD Antiballistic Missile System, and (3) such cooperatives, as a result of the deactivation and termination of such system, would sustain an unfair and excessive financial burden in the absence of the financial assistance authorized by this section."

Section 611 refers to 31 U.S.C. § 679 (1970) which provides in part that "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 \* \* \*." Section 611 also refers to section 610 of the Military Construction Authorization Act, 1971, Pub. L. No. 91-511, October 26, 1970, 84 Stat. 1204, 1224, which includes authorization for the Secretary of Defense to assist "communities" in meeting the costs of providing increased municipal services and facilities to the residents of such communities if the Secretary determines that an immediate and substantial increase in the need was a direct result of work being carried out in connection with the construction, installation, testing, and operation of Safeguard, and that an unfair and excessive financial burden would be incurred by such communities as a result of the increased need for such services and facilities. Such assistance was to be carried out through existing Federal programs. Although Polar initially filed its claim pursuant to section 610, there was initial doubt that Polar could qualify as a "community." Polar appealed to Senator Young who introduced an amendment which subsection became section 611, supra.

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The Military Construction Appropriation Act, 1977, Pub. L. No. 94-367, July 16, 1976, 90 Stat. 993, includes a military construction appropriation for the Army. S. Rep. No. 94-971, 94th Cong., 2d Sess. 46 (1976) on H.R. 14235, which was enacted as Pub. L. No. 94-367, recommended an increase in the Army military construction appropriation to include--

"\$3,500,000 for impact assistance to reimburse non-profit, mutual aid telephone cooperatives for certain capital expenditure losses caused by sudden closure of the SAFEGUARD Antiballistic Missile System, pursuant to section 611 of the authorization bill \* \* \*."

The Conference Committee Report on the bill (H.R. Rep. No. 94-1314, 94th Cong., 2d Sess. 4 (1976)) indicated agreement by the conferees that up to \$3,500,000 might be spent for the impact assistance to nonprofit mutual aid telephone cooperatives for their capital expenditures at Safe-guard sites.

#### Amount of Nontactical Expenditures

As requested, we have reviewed the audit conducted by DCAA of Polar's claim under section 611 of Pub. L. No. 94-431. As a result of this limited review, we have concluded that Polar had capital expenditures of \$1,112,175 which were incurred for the purchase and installation of Safeguard-related nontactical communications equipment and related facilities. A comparison of our calculations with those of DCAA and Polar are summarized in chart form in Appendix I.

This Office differs with the DCAA audit of expenditures in three major respects: allowability of interest during construction; allowance by DCAA of termination pay as a proper item of the claim; and, the application of present value analysis to reduce the amount of the claim.

#### Interest Expense

We believe that under section 611, the interest cost incurred during the construction period to finance the construction of facilities is a proper charge to the capital cost of facility construction. DCAA was in doubt regarding the allowance of such interest in the belief that Armed Services Procurement Regulation (ASPR) 15-205.17 does not allow it. The ASPR provision states that "interest on borrowings (however represented) \* \* \* costs of financing and refinancing operations \* \* \* are unallowable \* \* \*." However, a Federal Communications Commission (FCC) rule, 47 CFR 31.100:2, provides that the "telephone plant under construction" investment account shall include interest during construction. Additionally,

47 CFR 31.2-22 includes as a cost of construction, "Interest during construction [which] includes the amount of interest upon all moneys, including the company's own funds, used in the acquisition or construction of telephone property \* \* \*." ASPR 22-1004 provides that FCC rules, regulations, practices, and decisions concerning rates, cost principles, and accounting practices shall be recognized in procuring communications services from common carriers.

In the Swartzbaugh Manufacturing Company case, ASBCA No. 3118, 57-2 BCA para. 1368 (1957), the rationale for the exclusion of interest rule of ASPR 15-205.17 is stated to be that interest on money borrowed for the purchase of inventory and equipment with which to perform a contract will not be permitted to serve as a base to enhance the profit of a contractor who must borrow to perform his contract as against one who is able to provide his own operating capital. However, section 611 specifically provides for reimbursement for capital expenditures for the purchase and installation of nontactical communications equipment and related facilities. The cost of financing the construction and purchase of such facilities are components of such capital expenditures as recognized by the cited FCC rules which ASPR 22-1004 incorporates by reference. Therefore, ASPR 15-205.17 is not controlling, and the interest costs of constructing the capital equipment in question should have been allowed. In reflecting this interest cost for the construction period in Appendix I, however, we have deducted interest amounts allowed by DCAA in its alternative computation for periods of time after the capital equipment was completed and put in service. We do not believe interest expenses beyond the period of construction are properly charged to capital expenditures. This is why the DCAA and GAO amounts allowed for interest costs are different.

#### Termination Pay

Polar's claim includes termination pay of employees who were discharged because of the deactivation of Safeguard. DCAA allowed this claim in the amount of \$32,700. Section 611 provides for reimbursement for capital expenditures for the purchase and installation of nontactical communications equipment and related facilities. Termination pay of employees terminated because of the deactivation of Safeguard would not appear to be this kind of expense. Moreover, the record forwarded to us by the Finance and Accounting Officer included a memorandum of April 30, 1976, prepared in the Ballistic Missile Defense Program Office, relating to the problems both of Polar and another nonprofit telephone cooperative, subsequent to the Safeguard closure. The memorandum indicates that the language which was drafted in an effort to obtain assistance for the telephone cooperatives (section 611) "would limit payment to capital expenditures (as opposed to claims for severance pay, etc.) made which are determined by SECDEF [Secretary of Defense] to be nonrecoverable.

This is consistent with Senator Young's guidance to get the costs down as low as possible. \* \* \*." (Emphasis added.) This viewpoint is in concert with the express language of the statute. Accordingly, termination pay of Polar employees is not a proper item for consideration under section 411.

#### Present Value Analysis

We also differ with DCAA's application of present value analysis to otherwise allowable claim amounts in order to determine Polar's net allowable claim. DCAA concluded that (disallowing interest during construction) the total amount of the claim is \$1,127,051, less a present value deduction of \$367,560, resulting in a net amount of \$759,491, the amount determined to be payable by the Ballistic Missile Defense Program Manager as delegate of the Secretary of Defense.

The expenditures were largely financed through 10 1/2-year Rural Telephone Bank (RTB) loans which will not terminate for several years. The loans are repaid through quarterly payments of principal and interest. As we understand DCAA's analysis, it would allow Polar a reduced present payment on the basis that the borrowed amounts would not have to be repaid until various future dates, thus justifying the discounting of capital expenditures of \$1,127,051 to \$759,491. According to DCAA, Polar could then invest the moneys received, which at the appropriate future dates, would be sufficient to repay the principal, but not accrued interest, on the loans. DCAA apparently did not consider the quarterly (declining) interest which would have to be paid by Polar until the loans were completely repaid.

The RTB loans were subject to telephone loan contract amendments which include a provision that--

"All amounts received from the Department of Defense on termination of the contract between it and the borrower will be promptly applied upon receipt against the notes covering funds for the service to the Anti Ballistic Missile Complex installation."

Regarding the nontactical portion of these loans, Polar has been of the opinion that it is required upon receipt of any impact assistance payments to immediately use such funds to reduce the outstanding loan balance. It is arguable whether an impact assistance payment received by Polar because of the nontactical facilities and equipment covered by such loans must, by the terms of the above-cited loan contract provision, immediately be used to reduce the outstanding RTB loan balance.



However, as will be discussed further, the primary reason advanced by Polar in requesting congressional assistance was the unfairness and hardship of making the quarterly RTB payments, including both principal and interest, from other than nontactical sources. It appears clear under the circumstances that provision for reimbursement for capital expenditures contemplated that payment of Polar's claim would result in complete repayment of the unrecovered capital expenditures so that there would be no further drain on Polar's other resources. If Polar were paid \$759,491, the reduced amount as proposed by DCAA, and turned over this payment to RTB, \$367,560 of the otherwise allowable claim amount would remain outstanding. (According to Polar, as of March 31, 1976, the date of the reported Safeguard shutdown, the outstanding balance of RTB loans attributed to nontactical purposes was \$1,110,814.66. Payment of \$759,491, would leave an outstanding debt of \$351,323.66.) The remaining obligation, together with interest thereon, would have to be paid from other sources. If the \$759,491 were reinvested by Polar, it would be sufficient to fully meet only the capital portion of each quarterly payment, since DCAA did not include any present payment for the interest component of future quarterly payments. Polar's payment of these amounts from other funds would be a substantial burden, and would in effect diminish the capital reimbursement received.

Either result would be inconsistent with the purpose of section 611-- to reimburse mutual aid telephone cooperatives for unrecovered capital expenditures previously made for nontactical facilities and equipment. In the absence of any indication that the Congress intended to satisfy only part of a section 611 claim otherwise payable, a reduction of Polar's claim by virtue of DCAA's application of present value analysis, is not proper.

#### Unfair and Excessive Burden

The third criterion of section 611 requires the determination by the Secretary of Defense that Polar would sustain "an unfair and excessive financial burden" in the absence of financial assistance under this provision. The Secretary's delegate, the Ballistic Missile Defense Program Manager, as well as the U.S. Army Communications Command, have determined that Polar qualifies under this criterion. DCAA, as well as DECCO and DCA disagree. In the absence of a finding of unfair and excessive financial burden, the cooperative would not be entitled to any financial assistance under section 611.

DCAA personnel advised this Office that in the absence of directives for implementing section 611, they utilized criteria established under ASPR 17-204. This regulation provides for extraordinary relief for a contractor to avoid impairment of its productive ability which is found to be essential for national defense. It is also used where Government activities for which the United States is not legally liable to a contractor

causes an increased cost of contract performance, resulting in loss. DCAA concluded that deactivation of Safeguard will not cause an unfair or excessive financial burden on Polar. DCAA's conclusion was based on the following:

- Polar remains in a very sound financial condition as evidenced by over \$2 million in cash and equivalents as of November 30, 1976.
- Polar's favorable financial position, in part results from substantial margins on military services which DCAA considers to be excessive. DECCO advised Polar on April 13, 1977, of its intent to pursue a claim against Polar for excessive margins charged for military contract services during calendar years 1973-1975.
- Although DCAA projected a negative cash flow for Polar during 1977 of about \$200,000 in the absence of impact claim assistance, \$135,000 of that amount represents payment of patronage dividends. This does not represent a significant problem in view of its current cash position. Also Polar is considering a general increase for its present low commercial rates, which would reduce the negative cash flow.
- DCAA believes there is no immediate need for Polar to repay its military loans because Polar's remaining investment of about \$1.1 million is related to continuing military services. The monthly service charges include a provision for interest on the investment.

Polar's representatives disagree with DCAA, stating that the deactivation will, in their opinion, have a significant adverse impact in the future. Polar's basis for the claim is that it has capital investments which were made to provide communications for the Safeguard system. These investments cannot be recovered from revenue being generated by the small amount of remaining Government communications business. Polar officials believe that the financial burden will continue for years. They also contend that the third criterion of section 611 of Pub. L. No. 94-431 is written to include such financial burden. According to Polar, if the claim is not paid, the only method to recover the investment is to increase the rates of the remaining subscribers, which they feel is unfair.

When Polar first requested assistance, the cooperative's general manager explained in a letter to Senator Young dated February 17, 1976,

that in order to finance the needed facilities and equipment, several loans were obtained, including two RTB loans which were still outstanding and which were to be repaid over a 10-year period by quarterly payments of principal and interest. He stated:

"\* \* \* the premature closing of the ABM system is causing a financial hardship for our cooperative. The North Dakota Public Service Commission approved monthly recurring charges for telephone services to the ABM installation, which would guarantee repayment of our loan obligations without endangering or affecting the rates paid by our normal telephone customers. In other words, the ABM installation was to support itself without being subsidized by our normal or regular customers.  
\* \* \*

It is clear from the legislative history that section 611 was enacted specifically to provide relief to Polar as well as to another North Dakota telephone cooperative. Such assistance was requested on the basis that capital expenditures had been made for nontactical facilities and equipment and that because of the closing of the Safeguard system, the anticipated source of repayment of principal and interest on loans used for this purpose was no longer available. "Unfair and excessive financial burden" thus has reference to the loss of nontactical customers, the specific source of funds for the repayment of the principal and interest of loans used to finance the construction and purchase of the nontactical facilities and equipment. In this context, the shifting of the loan burden to other commercial user-members of the telephone cooperatives would appear to be the very event which enactment of section 611 was to prevent. We therefore see no basis on which to object to the determination of the delegatee of the Secretary of Defense that Polar has sustained an unfair and excessive loss as a result of the deactivation and termination of the system.

#### Amount of Assistance

We believe that the measure of assistance under section 611 is the amount of eligible nontactical capital expenditures not otherwise recovered from user fees paid by nontactical customers before the base closing. Accordingly, amounts representing the diminution of the financial burden should be deducted from the eligible capital expenses of \$1,112,175. Factors such as salvage value of equipment, use for other purposes of buildings and equipment were considered in arriving at the \$1,112,175 amount. However, the repayment for such expenditures from user fees charged to nontactical customers, not included in the prior computation of proper capital expenses, must be considered in arriving at the amount of Polar's financial burden.

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Polar's current information shows that the original amount of RTB notes attributed by Polar to nontactical purposes is \$1,292,963. Polar's previously claimed capital expenses totaled \$1,372,044, leaving a difference of \$79,081, apparently from general funds. However, \$263,699.65 of the claim was disallowed (\$1,372,044-\$1,112,175). Accordingly, the delegate of the Secretary of Defense in determining the amount of "unfair and excessive burden" should consider the repayment of RTB loans and general funds from nontactical user fees, properly attributable to eligible capital expenditures. These amounts should be deducted from \$1,112,175 to determine Polar's entitlement under section 611.

#### Setoff

Finally, we consider whether the amount to which Polar is entitled as impact assistance should be paid without consideration of the Government's claim against Polar in connection with tactical services it rendered in support of Safeguard.

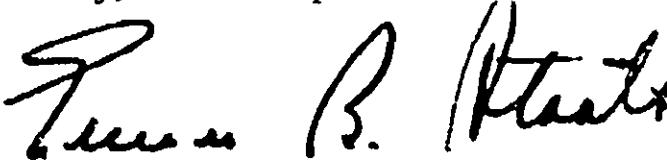
The right of setoff has been held to be inherent in the United States and to be grounded in the common law right of every creditor to apply the moneys of his debtor in his hands to the extinguishment of the amount due him from the debtor. Gratiot v. United States, 40 U.S. 336 (1841); McKnight v. United States, 98 U.S. 176 (1898); Barry v. United States, 229 U.S. 47 (1913). Thus, where a person is both a debtor and creditor to the Government, the accounting officers are required by law to consider both the debts and credits, to setoff one indebtedness against the other, and to certify only the balance. Taggart v. United States, 17 Ct. Cl. 322 (1881). Furthermore, the Government's right to setoff a contractor's debts against contract proceeds extends to debts owed by the contractor as a result of separate and independent transactions. United States v. Munsey Trust Co., 322 U.S. 234 (1947). Additionally, even though the amount due the Government had not been made final under the procedures provided by a contract, this Office has sanctioned the unilateral deduction of the amount estimated by the Government to be due. B-176791, September 8, 1972; B-163625, March 14, 1968. See also Project Map, Inc. v. United States, 486 F.2d 1375 (Ct. Cl. 1973); Dale Ingram, Inc. v. United States, 475 F.2d 1177 (Ct. Cl. 1973).

In view of the foregoing, the Government's claim for overpayments in connection with tactical services furnished under contract by Polar should be setoff against the amount otherwise payable to Polar for impact assistance. This is true even though the claims are regarded as separate and distinct, are settled at different times, and the exact amount of the United States' claim is still in dispute.

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The record before us shows that by letter to Polar dated April 13, 1977, DCA updated its position and gave additional details of its claim for excessive charges for military (tactical) services rendered to Safeguard. It was stated that excess profit margins in calendar years 1973-1975 totaled \$1,564,499, based on a DCAA audit. However, reference was made to Polar's letter of August 18, 1976, which stated that allocations used by DCAA may not have been correct. Based on Polar's reallocations, DCA indicated that there was an overpayment of at least \$756,987. DCA suggested that an attempt be made to agree on the amount of the excessive charges. We do not know whether agreement as to the amount of claimed overcharges has been reached to date.

We believe that the Department of Defense should proceed expeditiously to resolve the Government's claim against Polar in connection with tactical services provided to Safeguard. Pending final determination of the amount of the Government's claim, DCA should consider whether there is any portion of Polar's entitlement under section 611 which exceeds the amount estimated to be due from Polar on the tactical services contract. This amount, if any, should be paid to Polar without further delay.

  
Comptroller General  
of the United States

## APPENDIX I

## APPENDIX I

COMPARATIVE SCHEDULE OF POLAR CLAIM,  
DCAA DETERMINATION AND GAO DETERMINATION OF  
CAPITAL EXPENDITURES UNDER PUBLIC LAW 94-431

Claim Items	Polar Claim (As revised)	Determined by DCAAs		Determined by GAO (including interest during construction)
		Disallowing Interest During Construction	Allowing Interest During Construction	
A 2, 3, 5, 7, 9, 10, 12-14, 17-28, 30, 31, 35-37, and 42-46	\$ 445,825	\$ 441,885	\$ 445,825	\$ 445,825
B 11, 15, 16, 33, and 34	509,129	351,229	351,628	351,628
C 1 and 6, Base housing cable and radio dis- patch system. respectively	130,055	114,798	119,272	117,248
D 4, Headquarters Building	247,929	182,308	189,717	193,257
E 32, Dial house addition-				
Nekoma	4,217	4,131	4,039	4,217
- F 47, Termination pay	34,889	32,700	32,700	-0-
G Subtotal	\$ 1,372,044	\$ 1,127,051	\$ 1,143,181	\$ 1,112,175
H Less: present value deduction	-0-	367,560	375,565	-0-
I Total	\$ 1,372,044	\$ 759,491	\$ 767,616	\$ 1,112,175

## APPENDIX II

## APPENDIX II

### Claim Items Not Questioned by DCAA or GAO

Line A, Appendix I shows various claim items and their summarized amounts claimed by Polar, determined by DCAA, and determined by GAO. The only variance here is in the column headed "Determined by DCAA - Disallowing Interest During Construction." Because we have concluded above that interest during construction is allowable in Polar's claim, further discussion of these claim items is unnecessary.

### Claim Items Questioned by DCAA and GAO in the Same Amounts

Line B, Appendix I shows five claim items and their summarized amounts claimed by Polar, determined by DCAA, and determined by GAO. DCAA questioned Polar's claim for these items on the basis that installation costs were overstated, salvage and reuse values were not considered, and various depreciation adjustments. Based on our review, we concluded that DCAA's computations were reasonable and proper, provided interest during construction was allowed. On this basis, therefore, we agree with DCAA on their determination of costs, including interest during construction, for these items.

### DCAA Did Not Deduct Interest During Construction After the In-Service Date - Claim Items 1 and 6

Line C, Appendix I shows that Polar's claim was \$130,055. Item 1 was for base housing cable (\$56,268) and item 6 was for the radio dispatch system (\$73,787).

DCAA agreed with Polar's claim for item 1. With respect to item 6, DCAA made certain adjustments to correct for salvage and reuse factors. Thus, DCAA allowed \$56,268 for item 1 and \$63,004 for item 6, or a total of \$119,272 as shown on line C, Appendix I.

We agree with DCAA's adjustments for item 6. However, Polar claimed, and DCAA did not deduct, an amount which was designated as interest during construction on both item 1 and item 6, but which included periods of time after they had been put in service. We do not believe this portion of the interest charged is appropriate. Consequently, we made adjustments to reflect this. Shown below are DCAA's computations and our computations.

## APPENDIX II

<u>Item 1</u>	<u>DCAA Computation</u>	<u>GAO Computation</u>
Original cost including total interest charges, excluding depreciation	\$64,900	\$64,900
Less: Interest during construction charged after in-service date	-0-	1,884
Subtotal	<u>64,900</u>	<u>63,016</u>
Less: Depreciation; .35% per month for 38 months or 13.3%	8,632	8,381
Allowed Amount	<u>\$55,268</u>	<u>\$54,635</u>

<u>Item 6</u>	<u>DCAA Computation</u>	<u>GAO Computation</u>
Original cost less DCAA adjustments as explained above	\$84,946	\$84,946
Less: Interest during construction charged after in-service date	-0-	526 a/
Subtotal	<u>84,946</u>	<u>84,420</u>
Less: Depreciation; .833% per month for 31 months or 25.832%	21,942	21,807
Allowed Amount	<u>\$63,004</u>	<u>\$62,613</u>

a/ The total amount of interest charged after the in-service date was \$1,233. However, the excess interest applies to the original cost before adjustments for salvage and reuse (\$198,975). Only that part relating to the adjusted cost should be deducted. Therefore, the ratio of the adjusted cost (\$84,946) to the total cost (\$198,975) must be applied to the excess interest to determine the portion deductible from the adjusted cost as follows:

$$\$84,946 \text{ divided by } \$198,975 = 42.692\%$$

$$42.692\% \times \$1,233 = \$526$$

Thus, based on our review, we conclude that the appropriate amounts for item 1 (\$54,635) and for item 6 (\$62,613) total \$117,248 as show on line C, Appendix I.



## APPENDIX II

## APPENDIX II

DCAA Computation Errors in Determining  
Allowability of Polar's Revised Claim -  
Claim Item 4

Polar originally included 11,077 square feet of its headquarters building (total 21,834 square feet) in its claim. In its revised claim, Polar included only 50 percent of the building (10,917 square feet). The total cost of the building was \$514,655, or an average cost of \$23.57127 per square foot. Thus, Polar's revised claim was for \$257,328 less depreciation of \$9,399 (.2 percent per month for 18 months) or \$247,929 as shown on line D, Appendix I.

Polar's original and revised claims included square foot allocations as follows:

	<u>Total Building</u>	<u>Original Claim</u>	<u>Revised Claim</u>
Common use area	1,062	766	531
Vehicle use area	10,329	5,165	5,165
Other	10,443	5,146	5,221
Total	<u>21,834</u>	<u>11,077</u>	<u>10,917</u>

In its audit, DCAA started with the 11,077 square feet claimed originally and questioned 2,412 square feet of space used for vehicles. We have no reason to question DCAA's determination of the space used for vehicles. DCAA also questioned 235 square feet of the 766 square feet originally claimed for common use, allowing a total of 531 square feet. DCAA did not question the "other" use category. Thus, DCAA determined that 8,430 square feet of the building was allowable. DCAA did not adjust its determination to cover the 75 additional square feet for "other" use claimed by Polar in its revised claim. Since DCAA did not review "other" use, we have no reason to disallow those 75 square feet.

In our analysis, we started with the 10,917 square feet in Polar's revised claim, which already contained the adjustments of 235 square feet for common use space and 75 additional square feet for other use, previously referred to. Therefore, we adjusted only for the 2,412 square feet which had not been recognized in Polar's revised claim.

The following summarizes and compares DCAA's computation and our computation of claim item 4:

## APPENDIX II

## APPENDIX II

	<u>DCAA</u>	<u>GAO</u>
Revised claim amount	\$257,328	\$257,328
Less: disallowance of 2,647 square feet at \$22.866 a/ per square foot	60,528	
2,412 square feet at \$23.57127 per square foot		56,854
Allowable before depreciation	<u>196,802</u>	<u>200,474</u>
Depreciation-.2 percent per month for 18 months	7,035	7,217
Amount allowable	<u>\$189,717</u>	<u>\$193,257</u>

a/ DCAA computed cost per square foot after deducting the cost of interest during construction and this figure was not adjusted when it computed cost on the basis of allowing such interest.

Based on the above, DCAA allowed 8,420 square feet at a cost of \$189,717 and we allowed 8,505 square feet at a cost of \$193,257 as shown on line D, Appendix I.

DCAA Mathematical Error - Claim Item 32

As shown on line E, Appendix I, Polar's claim included \$4,217 for the dial house addition at Nekoma. Polar's original claim for this item was \$3,682 which reflected the cost of the facility less salvage value, and depreciation of \$892. Polar revised its claim based on an adjustment of the depreciation charge from \$892 to \$357. This resulted in Polar's revised claim as follows:

Original claim	\$3,682
Add adjustment for corrected depreciation charges	535
Revised claim	<u>\$4,217</u>

DCAA agreed with Polar's depreciation but erred in their mathematical computation of the amount allowed as follows:

Original claim	\$3,682
Add adjustment for depreciation	357
Amount allowed	<u>\$4,039</u>

## APPENDIX II

## APPENDIX II

Thus, instead of properly adjusting for Polar's corrected depreciation charge, DCAA used Polar's corrected depreciation charge (\$357) to increase the amount allowed - a mathematical error.

Based on our review, we have no basis to question DCAA's determination for this item, except for the mathematical error. Consequently, we conclude that the amount claimed (\$4,217) is appropriate for consideration as shown on line E, Appendix I.



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20541

*J. Feinstein*  
664

APR 3 1978

B-188838

The Honorable Milton R. Young  
United States Senate

Dear Senator Young:

You requested our review of the payment of impact assistance under section 611 of Pub. L. No. 94-431 to the Polar Rural Telephone Mutual Aid Corporation, Park River, North Dakota, in connection with the furnishing of nontactical telephone services to Government personnel stationed at the Safeguard Antiballistic System site during the period from 1970 to 1976.

In our decision of this date, B-188838, a copy of which is enclosed, we agree with the determination of the Army Ballistic Missile Defense Program Manager, as delegate of the Secretary of Defense, that Polar is entitled to impact assistance under section 611.

The delegate of the Secretary of Defense reduced otherwise allowable capital expenses of \$1,127,051 to \$759,491, based on the present value of the monies necessary to reimburse Polar. We disagree with this approach as well as with other aspects of the audit conducted by the Defense Contract Audit Agency. Based upon our limited review, we conclude that eligible capital expenditures for nontactical facilities and equipment total \$1,112,175. However, under section 611 of Pub. L. No. 94-431, the measure of assistance is the amount of eligible nontactical capital expenses not otherwise recovered. In determining this amount, the Army Ballistic Missile Defense Program Manager should deduct from the eligible capital expenses of \$1,112,175, repayment from user fees charged to and paid by nontactical customers, before the site was closed, including the repayment of Rural Telephone Bank loans and general funds.

Additionally, with respect to the Government's pending claim under the tactical operations Safeguard contract with Polar, the amount otherwise payable to Polar under section 611 should be withheld to the extent necessary to satisfy the amount claimed to be due from Polar. The Department of Defense should proceed expeditiously

B-186838

to resolve the claim against Polar. Pending final determination of the Government's claim, Polar should be paid any portion of its entitlement which exceeds the amount estimated to be due to the United States.

Sincerely yours,

(Signed) Elmer B. Staats

Comptroller General  
of the United States

Enclosure