



Comptroller General  
of the United States

7562410

Washington, D.C. 20548

# Decision

**Matter of:** MCI Telecommunications Corporation  
**File:** B-257453  
**Date:** October 5, 1994

Robert H. Koehler, Esq., Michael J. Schaengold, Esq., and Christy L. Gherlein, Esq., Patton, Boggs & Blow, for the protester.  
Thomas C. Papson, Esq., McKenna & Cuneo; and Steven H. Talkovsky, Esq., for AT&T Communications, Inc., an interested party.  
Richard Wolf, Esq., and Paul Brundage, National Aeronautics and Space Administration, for the agency.  
Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Protest alleging that the National Aeronautics and Space Administration (NASA) must immediately either award a separate contract for international calls or instead place such calls via a non-mandatory contract awarded by a Department of Defense (DOD) entity is denied where: (1) NASA is participating in an upcoming governmentwide procurement for such services conducted by the General Services Administration (GSA); (2) GSA expects to complete its procurement by the third quarter of fiscal year 1995; and (3) NASA reasonably concluded that the cost of placing its international calls using the DOD contract will exceed the cost of continuing to use its noncompetitively selected international carrier, AT&T, until GSA awards a governmentwide contract.

## DECISION

MCI Telecommunications Corporation protests the decision of the National Aeronautics and Space Administration (NASA) to abandon a planned procurement of international calling services and to instead wait for a governmentwide procurement currently planned by the General Services Administration (GSA). MCI argues that NASA should take immediate steps to ensure that, until GSA completes its procurement, the agency purchases these services competitively. Thus, MCI urges our Office to require NASA to either: reinstate the agency's abandoned

competition for these services, or immediately begin placing its international calls using the only available competitively awarded contract--i.e., a contract awarded to MCI by the Defense Commercial Communications Office (DECCO) which is available for use by any government agency.

We deny the protest.

#### BACKGROUND

In December 1988, GSA awarded a governmentwide contract for domestic long-distance calling services. This contract is commonly referred to as the FTS 2000 contract; it was awarded jointly to AT&T and U.S. Sprint Communications Company. In accordance with the terms of the FTS 2000 contract, agencies are assigned to Network A or Network B of the contract. NASA was assigned to Network A, and, as a result, its domestic long-distance calls are carried by AT&T. To date, however, there has been no similar governmentwide competition for international calling services. Instead, the only competitively awarded contract for such services, available to the entire federal government, was awarded by DECCO in February 1992.<sup>1</sup>

GSA officials participated in the hearing convened on this protest, and described the agency's deliberations on the subject of competitively procured international calling services. The GSA representatives explained that by memorandum dated October 23, 1989, GSA advised executive branch agencies in the Washington, D.C., metropolitan area that GSA would not provide access to an international carrier beyond September 30, 1990. According to GSA, most of these agencies receive access to AT&T for their international calls because of their participation in the Washington Interagency Telecommunications System (WITS),<sup>2</sup> for which AT&T is the designated international carrier.<sup>2</sup> Hearing Transcript (Tr.) at 22-23. GSA's memorandum also directed agencies to "take the necessary procurement action

---

<sup>1</sup>The DECCO contract was awarded after a competition among AT&T, MCI, and Sprint. MCI won the contract which provides international calling services to Department of Defense facilities, and is available for non-mandatory use by any federal facility located in the continental United States.

<sup>2</sup>WITS provides consolidated Centrex services via a contract awarded to Bell Atlantic in 1989. Prior to award of the WITS contract, GSA managed the Centrex service itself and selected AT&T as the international carrier in 1985. AT&T Post-Hearing Brief at 6. Based on this selection, unless a WITS user has made alternative arrangements its international calls are carried by AT&T.

to obtain their own" international carrier by the end of fiscal year 1990.

Two months later, on December 20, 1989, GSA issued a mailgram to executive agency communications managers in the Washington metropolitan area rescinding the October memorandum and advising agencies not to select their own vendor for these services. The mailgram advised that GSA would consider using the FTS 2000 contract to provide access to international calling services. During the hearing, GSA representatives explained that agencies were not given any follow-up guidance on how these services should be procured for several years. Tr. at 23.

On August 5, 1993, GSA issued a "Memorandum for All Telecommunications Managers" advising agencies that the Competition in Contracting Act of 1984 required that international calls be competitively procured. The memorandum also advised that agencies could either hold their own competitions, or use the non-mandatory DECCO contract, and again warned--as GSA had warned 4 years earlier--that agencies in the Washington, D.C., metropolitan area would not be able to receive international calling services via the WITS contract indefinitely. As in 1989, GSA changed its mind again in a February 1, 1994, memorandum advising that GSA would hold a competition to procure international calling services prior to the end of 1994.

In the interim between August 1993 and February 1994, NASA began to take steps to implement GSA's directive to executive agencies to procure their own international calling services. Tr. at 33. Specifically, NASA representatives indicated the agency's intent to issue a solicitation in February 1994 for international calling services for NASA offices and facilities throughout the country. Although NASA officials conducted meetings and discussions with MCI, and presumably with other carriers, the agency decided not to proceed with the planned procurement when it received GSA's February 1, 1994, memorandum. Tr. at 33.

On March 15, NASA representatives informed MCI of the agency's intent to abandon its planned procurement, which led to MCI's March 29 agency-level protest. By letter dated May 16, NASA denied MCI's agency protest, and on May 31, MCI filed its protest with our Office.

#### ANALYSIS

In essence, MCI claims that NASA is improperly placing its international calls without the benefit of competition. As stated above, MCI requests that our Office require NASA to either restart its competition for these services, or

immediately procure its international calls via the DECCO contract--i.e., from MCI. Based on our review of the record, we conclude that NASA reasonably decided to make no change in its current purchase of these services until completion of GSA's planned governmentwide procurement.

GSA is vested with the authority to purchase, lease, and maintain automatic data processing equipment for federal agencies. 40 U.S.C. § 759(a)(1) (1988). This grant of authority to GSA includes telecommunications services. 40 U.S.C. § 759(a)(2). Unless delegated, this authority is exclusive. CACI, Inc. v. Stone, 990 F.2d 1233, 1235 (Fed. Cir. 1993). The record shows that GSA is, in fact, now proceeding with a procurement for the services at issue in this case. In the hearing on this protest, GSA explained that release of a request for proposals (RFP) is imminent, and that the agency anticipates award of a governmentwide contract for these services by the end of June 1995. Tr. at 27.

As set forth above, GSA has on at least four occasions provided conflicting direction regarding the appropriate route for purchasing international calling services. This lack of direction has resulted in decisions by NASA, as well as other agencies, to begin and then abandon, efforts to hold a competition for these services. See MCI Telecommunications Corp. v. Peace Corps, GSBCA No. 12632-P, Dec. 1, 1993, 1993 BPD ¶ 354.

Despite GSA's lack of guidance, however, we note that there is no disagreement that a competition for these services is required. NASA was prepared to hold its own competition, and is now participating in GSA's upcoming competitive procurement. The issue thus is whether NASA may properly wait for GSA's award, or must take steps in the interim to change its current method of purchasing these services. As discussed below, we conclude that NASA's approach is unobjectionable as a practical response to the agency's need for procuring international calling services until GSA completes a competitive procurement.

MCI's first remedial option--requiring NASA to reinstate its procurement--appears to have been all but abandoned by MCI since its initial protest filing: the record is nearly devoid of any argument whatsoever in support of this contention. A review of the facts shows that before such an approach could result in the competitive purchase of

---

<sup>3</sup>During the hearing, GSA representatives explained that they have established an interagency working group to plan the upcoming procurement, and that NASA is a "prime player" in that effort. Tr. at 25.

international calling services, NASA would have to seek a delegation of procurement authority from GSA, see 40 U.S.C. § 759(b), and would also need to prepare an RFP; issue it; conduct a procurement; and make an award. MCI has offered no evidence to suggest that NASA could complete such action any sooner than GSA will complete its procurement. Accordingly, we see no basis to recommend that NASA reinstate its procurement rather than wait for GSA.

MCI's second remedial option--requiring NASA to purchase its international calls using DECCO's contract with MCI--is also not appropriate under the circumstances here. NASA argues that it should not be required to purchase its interim calls using the DECCO contract because: (1) the DECCO contract requires that NASA obtain these services through an intermediary, DECCO, rather than directly from the provider; (2) MCI's prices under the DECCO contract are higher than AT&T's current rates; and (3) NASA should not be required to bear the administrative burden and associated costs of converting switches at every NASA location without a showing that using MCI's DECCO contract will result in substantial savings.

NASA's contention that the continued purchase of these calls without competition will only be for a limited period until GSA completes its procurement is supported by the record. During the hearing on this protest, Tr. at 25, and in a subsequent filing, GSA has provided detailed estimates of the time required for awarding a governmentwide contract for these services. GSA's estimate anticipates award of a contract prior to the end of the third quarter of fiscal year 1995--only 8 months after the issuance of this decision. In our view, NASA may reasonably accept GSA's proposed timetable in order to determine its course of action in this situation.

We next turn to NASA's position regarding the cost of switching all of its facilities to MCI's DECCO contract, and placing its calls via that contract. NASA's analysis in this area is imprecise. NASA estimates that it places approximately \$1 million in international calls each year, and based on its estimates, the agency's headquarters facility is its greatest user of international calling services. Tr. at 81; Agency Report at 5-7. Although NASA knows that its international calls placed from its headquarters are carried via AT&T (because of the WITS contract), it claims not to know how several of its locations place such calls. NASA admits that at least one facility, the Goddard Space Flight Center, selected AT&T in 1984, using forms generated by AT&T immediately after

divestiture.<sup>4</sup> In our view, the record as a whole suggests that most of NASA's facilities are using AT&T.

MCI has failed to effectively refute NASA's conclusion that it would not be cost effective in the interim for the agency to switch to the DECCO contract. NASA reaches this conclusion based on a comparison of MCI's DECCO rates with the current AT&T government rates.<sup>5</sup> During the course of this protest, when MCI was invited at the hearing to refute NASA's conclusion, MCI initially provided our Office with an analysis that compared MCI's DECCO rates with AT&T rates that were more than 2 years old and obsolete. When AT&T submitted evidence that MCI's analysis was based on rates that had been superseded by publicly available filings with the Federal Communications Commission, MCI revised its filings. However, even MCI's revised filings do not clearly establish that the DECCO rates will be lower than the rates charged by AT&T.

Our conclusion that MCI has not clearly refuted NASA's position is based on a review of filings by both MCI and AT&T--each of which shows slight savings over the other. We find unpersuasive MCI's contention that our Office, and presumably NASA, should reject an AT&T analysis based on NASA's actual calls placed from its headquarters facility and four other facilities during 1-representative month. During the hearing on this protest, MCI suggested that this type of analysis, for this very month--the month of March--would provide the best snapshot for analyzing an agency's calling patterns. Tr. at 79. MCI now argues that a better analysis would be based on the calling patterns of DECCO contract users. We see no basis to reject an analysis of NASA's actual calls, from its largest users of international calling services, in favor of reviewing the calling patterns for the DECCO contract, which has no NASA users.

Given this lack of a clear showing that using the DECCO contract would save money on international calls placed by NASA, and given the fact that there are additional costs associated with the administrative burden of switching

---

<sup>4</sup>At the hearing--held in part because of NASA's claimed inability to identify its international carrier--representatives of Goddard explained that the selection of AT&T in 1984 was made because AT&T was the only carrier able to provide access to all needed international locations. Tr. at 11-12, 71-72.

<sup>5</sup>The current AT&T rates used for comparison are those stated in the Government International Calling Services segment of AT&T's Tariff F.C.C. No. 16. This document is commonly referred to as "AT&T's Tariff 16."

carriers for the 8-month period between the time of this decision and when GSA projects completion of its procurement, we find that NASA reasonably concluded that it would not be in the government's interest to place its international calls via the DECCO contract.

The protest is denied.

/s/ Robert H. Hunter  
for Robert P. Murphy  
Acting General Counsel