



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Federal Communications Commission - Installation of Integrated Services Digital Network Lines

File: B-280698

Date: January 12, 1999

DIGEST

Section 1348(a)(1) of title 31, United States Code, prohibits the use of appropriated funds for the installation of telephones and for charges for telephone service from private residences. We have not applied 31 U.S.C. § 1348 where the telephone service is one of restricted use or involves adequate safeguards and the separate service is essential. Accordingly, we would not object to the Federal Communications Commission's (FCC) installation of dedicated Integrated Services Digital Network (ISDN) lines to transmit data from computers in the private residences of the FCC Commissioners to the agency's local area network. The FCC has imposed adequate safeguards to prevent private use of separate ISDN lines and to protect communications to and from the FCC Commissioners.

DECISION

The Managing Director, Federal Communications Commission (FCC), requests an advance decision, under 31 U.S.C. § 3529(a), on whether the prohibition in 31 U.S.C. § 1348(a)(1) applies to the installation of dedicated Integrated Services Digital Network (ISDN) lines¹ in the residences of FCC Commissioners. Section 1348(a)(1) prohibits the use of appropriations "to install telephones in private residences or for tolls or other charges for telephone service from private residences." For the reasons set forth below, we conclude that section 1348(a)(1) does not apply to FCC's proposed installation of dedicated ISDN lines in the Commissioners' residences. Accordingly, we would not object to FCC's use of appropriated funds to pay for the installation of the ISDN lines if FCC determines that it is a necessary expense of its appropriation.

¹"[A]n ISDN is a network which is designed and constructed to provide a wide range of telecommunication and information services and to transport electrical signals in digital, rather than analog, form." Integrated Services Digital Networks (ISDN), 94 FCC 2d 1289 (1983).

Background

The FCC, headed by five Commissioners, is an independent agency regulating interstate and international communications by radio, television, wire, satellite, and cable. The Commissioners review action taken by FCC staff, pursuant to delegated authority, on their own motion or upon petition for such review by aggrieved parties. 47 C.F.R. § 0.5(c).

FCC states that the Commissioners, as Presidential appointees, are on duty 24 hours a day, and are expected to conduct FCC business at all hours of the day or night. Heavy workloads, extensive travel schedules, and pressing deadlines require that the Commissioners conduct official business outside of the FCC's normal workday. FCC proposes to install dedicated ISDN lines in Commissioners' residences to enable them to edit legal memoranda, draft decisions, prepare speeches, and receive electronic mail transmitted to them directly from the FCC's offices at all hours of the day and on weekends. FCC explains that the ISDN lines will permit only data transmission between computers in the Commissioners' private residences and the agency's local area network (LAN), and that the ISDN lines have data encryption that provides security for the information transmitted to and from the Commissioners. FCC also states that it will configure these lines so that they cannot be used to support voice telephone service.

Analysis

Section 1348(a)(1) of title 31, United States Code, prohibits the use of appropriations for the installation of "telephones in private residences or for tolls or other charges for telephone service from private residences." We have never specifically addressed whether a telephone line used exclusively for data transmission constitutes "telephone service" within the meaning of section 1348(a)(1). A number of our decisions appear to assume that all telephone lines, whether for voice or data transmission, fall within the coverage of section 1348(a)(1). See, e.g., 65 Comp. Gen. 835 (1986) (secured telephone lines for IRS criminal investigators); B-262013, Apr. 8, 1996 (installation of three telephone lines in a private residence for a telephone, computer and facsimile machine); B-247857, Aug. 25, 1992 (telephone lines for computer data transmission between private residence and a government office). Whether this is a correct assumption we need not resolve here since FCC's proposal falls within one of our recognized exceptions to the application of section 1348(a)(1).

A 1912 decision of the Comptroller of the Treasury, issued shortly after the enactment of the prohibition, explained that the "plain intent [of the prohibition] was that the Government should not be chargeable with the cost of private and personal messages of [government] employees." 63 MS Comp. Dec. 575 (1912),

quoted in 61 Comp. Gen. 214, 216 (1982). At that time, according to the Comptroller, "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." 61 Comp. Gen. at 216. Congress enacted the statute to stop public officers from obtaining personal telephone service at government expense. However, as the Comptroller recognized in 1912, Congress did not pass the prohibition to require government officers and employees to bear the expense of telephone service on public business. We have applied the statute, therefore, to prevent the misuse of government resources for private or personal business, but not to obstruct the public interest where there is an adequate justification of necessity and adequate safeguards to prevent the abuse targeted by Congress in 1912.

We have identified two instances where the prohibition does not apply. First, the prohibition does not apply to the installation of a telephone in government-owned quarters serving both as a residence and as an office. See, e.g., 53 Comp. Gen. 195 (1973) (installation of telephone in Army barracks). The second general circumstance is when the telephone service is one of restricted use or involves adequate safeguards and separate telephone service is essential. 65 Comp. Gen. at 837; B-223837, Jan. 23, 1987. The FCC's proposal falls within this second category; hence the statutory prohibition is inapplicable.

The nature of FCC's operations, that is, the regulation of the country's communications systems, requires that FCC protect the information and other data contained in the various legal memoranda, draft decisions and other documents transmitted to and from the Commissioners. Where the interests of the government in ensuring secured communications dictate in favor of separate telephone service, section 1348(a)(1) will not apply. 61 Comp. Gen. at 214. For example, to maintain the security of information regarding confidential tax investigations, the Internal Revenue Service (IRS) needed to install separate, secured telephone lines in the residences of IRS criminal investigators who were supplied portable computers to communicate with the district office computer system. 65 Comp. Gen. at 835. Similarly, the National Mediation Board needed to install dedicated telephone lines to protect communications between mediators located throughout the United States and its Washington, D.C. headquarters. B-247857, Aug. 25, 1992. See also 32 Comp. Gen. 431 (1953) (installation of special telephone in the residence of the Pearl Harbor Fire Marshal); B-223837, Jan. 23, 1987 (installation of telephones in residences of high level NRC officials).

In regulating the country's communications systems, FCC issues licenses authorizing television and radio service, as well as revokes licenses previously

issued, performs policy and rulemaking functions and administers the enforcement program for all mass media services, and ensures that telephone companies provide voice, data and other transmission services at just and reasonable and affordable prices in a nondiscriminatory manner. In any communications to and from Commissioners, in the form of legal memoranda, draft decisions or otherwise, addressing the assignment and enforcement of individuals' legal rights and responsibilities, FCC must protect against premature and inappropriate disclosure of FCC's legal strategies and determinations, as well as any individuals' proprietary information that factors into its strategies and determinations. According to FCC's Managing Director, ISDN lines, unlike ordinary telephone lines, permit the data encryption necessary to ensure security.

The FCC also has demonstrated that adequate safeguards will exist to preclude personal use. Employees using the National Mediation Board's communications system, for example, could dial only the headquarters' electronic mail system. B-247857, Aug. 25, 1992. Other safeguards include subjecting communications to periodic audit and providing for direct billing to the government. See generally 65 Comp. Gen. at 838. The FCC explains it will configure the dedicated ISDN lines for use only to transmit data to the agency's LAN. We consider this a sufficient safeguard to prevent private, personal use of the ISDN lines.

In closing, we note that the Managing Director, pointing out the nature of the Commissioners' workloads, travel schedules and deadlines, explains that the ISDN lines "will enable the Commissioners to edit legal memoranda, draft decisions, prepare speeches and receive e-mails that are transmitted to them directly from the FCC's office, night or day, or weekends, etc." FCC letter, Aug. 14, 1998. In the past, we have held that section 1348(a)(1) prohibited the use of appropriations to fund the installation of separate telephone service in a private residence merely to minimize the burden official telephone calls might impose on the availability of the official's private telephone. See, e.g., 61 Comp. Gen. at 217. In 1995, however, the Congress enacted the necessary authority for agencies to install telephone lines in the residences of employees permitted to work at home. Treasury, Postal Service, and General Government Appropriations Act for Fiscal Year 1996, Pub. L. No. 104-52, § 620, 109 Stat. 468, 501 (1995); 31 U.S.C. § 1348 note. Section 620 makes appropriated funds available for this purpose provided that the head of the agency "certifies that adequate safeguards against private misuse exist, and the service is necessary to support the agency's mission." While section 620, by its terms, does not address Presidentially-appointed officers such as the FCC Commissioners, it would be anomalous for us to overlook the public policy established in section 620 and apply the section 1348(a)(1) prohibition in a manner to preclude government

officials who are on duty 24 hours from the same conveniences as other government employees.

Accordingly, we do not view 31 U.S.C. § 1348 as applicable to FCC's use of appropriated funds for the installation of ISDN lines in Commissioners' residences.

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