



United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Contribution of Telecommunications Services to the D.C. Courts

File: B-286182

Date: January 11, 2001

DIGEST

Verizon Communications has agreed to provide the District of Columbia Court System telecommunications services and equipment valued at \$1.53 million pursuant to a rate case settlement agreement between the Office of the People's Counsel of the District of Columbia and Verizon. The Public Service Commission of the District of Columbia has approved the settlement agreement. We conclude that the District of Columbia Courts may accept this contribution of services and equipment.

DECISION

The District of Columbia Courts requested an advance decision on whether they can lawfully accept and use a contribution of telecommunications services and equipment made available to them as part of a settlement agreement in a rate case between the Office of the People's Counsel of the District of Columbia (OPC) and Bell Atlantic, Washington, D.C., Inc. (BA-DC) (now Verizon Communications).¹ Pursuant to the settlement agreement, Verizon has agreed to provide services and equipment equivalent to \$1.53 million to the District of Columbia Courts for the purpose of developing advanced telecommunications services that promote and facilitate access to the legal system within the District of Columbia Court System. We conclude that the District of Columbia Courts may accept and use the services and equipment directed to them by Verizon pursuant to its settlement agreement with OPC.

¹ For the remainder of the decision, we will refer to both Bell Atlantic-DC (BA-DC) and Verizon Communications as Verizon.

BACKGROUND

On November 12, 1996, the Public Service Commission of the District of Columbia (Commission) approved a settlement agreement between OPC² and Verizon regarding Verizon's application for a price cap plan to replace rate-of-return based incentive regulations. A price cap plan is an alternative form of regulation that uses market-based incentives together with price caps. It reflects a move away from rate-of-return based regulations traditionally used to regulate monopolies. The Commission is a quasi-judicial body that has the authority to approve rates and settlement agreements that are reasonable, just, and nondiscriminatory. D.C. Code § 43-501. The Commission may approve a plan for alternative regulation, such as the plan that Verizon had proposed, if the Commission determines that the plan meets criteria specified in section 3(j) of the Telecommunications Competition Act of 1996. D.C. Code § 43-1452(j). Before approving such a plan, the Commission must consider, for example, whether the plan is in the public interest, will maintain the quality and availability of telecommunications services, and accounts for changes in technology and the structure of the telecommunications industry that are occurring.

The Commission found generally that the price cap plan represents a less burdensome form of regulation and that "market-based incentives, together with the limits on rate increases and Commission oversight, will ensure that the rates charged by [Verizon] will be just, reasonable and nondiscriminatory. . . ."³ The Commission also determined that price cap regulation creates stronger, market-based incentives for Verizon to deploy technology quickly and efficiently, and that "Ratepayers will thus benefit from access to new technology sooner and at a lower cost than under rate-of-return regulation."⁴ The Commission further found that "the plan will encourage [Verizon] to invest in new facilities, offer innovative services and increase usage of the telephone networks."⁵ "The plan will thus promote universal service in the District and help ensure that all District residents have access to the information superhighway as we move into the 21st Century."⁶

As part of the 1996 settlement agreement, OPC and Verizon agreed to establish an "infrastructure fund," consisting primarily of contributions from Verizon, to finance

² The Office of the People's Counsel is an independent agency of the District of Columbia government. By law, OPC is the advocate for consumers of natural gas, electric and telephone services in the District of Columbia. OPC's mission includes advocating the provision of quality utility service and equitable treatment at rates that are just, reasonable, and nondiscriminatory to District ratepayers. D.C. Code § 43-406.

³ Formal Case No. 814, Phase IV, In The Matter Of The Investigation Into The Impact of the AT&T Divestiture And Decision of the Federal Communications Commission on Bell Atlantic – Washington, D.C. Inc.'s Jurisdictional Rates, Order No. 10877 (Nov. 12, 1996).

⁴ Id.

⁵ Id.

⁶ Id.

advanced telecommunications projects in District of Columbia schools, libraries, and community centers.⁷ This element of the agreement was important in the Commission's finding that the proposed price cap plan satisfied the section 3(j) criteria. The Commission found, particularly, that the expected improved access of District of Columbia ratepayers to advanced telecommunications services financed by Verizon's contribution to the infrastructure fund was pivotal in satisfying at least two section 3(j) criteria—that the proposed regulatory plan account for changes in technology (section 3(j)(4)), and that the plan maintain the quality and availability of telecommunications services (section 3(j)(6)).⁸

On November 17, 1999, the Commission approved an extension of the price cap plan and a new settlement agreement between OPC and Verizon.⁹ The parties agreed as part of the new settlement agreement that Verizon would make a contribution of \$1.53 million to a new "infrastructure trust fund" to provide and otherwise facilitate advanced telecommunications services in District of Columbia institutions.¹⁰ On February 28, 2000, the Commission approved articles of incorporation and by-laws for a non-profit corporation¹¹ to administer the infrastructure trust fund. The articles included among the purposes of the corporation to finance advanced telecommunications projects for the District of Columbia Court of Appeals and Superior Court, help to ensure affordable access for District of Columbia residents to advanced telecommunications and computer technologies that promote and facilitate access to the District of Columbia legal system, and establish network connectivity and Internet access between the Courts and their support agencies.¹²

To accomplish these purposes, the Courts and Verizon developed a proposed scope of work calling for the following upgrades:

- Replace all existing inter-building wiring and related local area network electronics,
- Interconnect the Main judicial building with two adjacent buildings and two remote facilities; and

⁷ Id.

⁸ Id.

⁹ Formal Case No. 814, Phase IV, In The Matter Of The Investigation Into The Impact of the AT&T Divestiture And Decision of the Federal Communications Commission on Bell Atlantic – Washington, D.C. Inc.'s Jurisdictional Rates, Order No. 11545 (Nov. 17, 1999).

¹⁰ Id.

¹¹ The Board of Directors of the corporation is composed of a nominee from each of the following organizations: the Mayor's Office, the Public Service Commission, the Office of the People's Counsel, the Chief Judge of the District of Columbia Court of Appeals, and Verizon Communications.

¹² Formal Case No. 814, Phase IV, In The Matter Of The Investigation Into The Impact of the AT&T Divestiture And Decision of the Federal Communications Commission on Bell Atlantic – Washington, D.C. Inc.'s Jurisdictional Rates, Order No. 11620 (Feb. 28, 2000).

- Install, configure, and provide training on the networking equipment.¹³

According to OPC and the Commission, Verizon has agreed to establish a ledger entry system rather than paying monies over to an infrastructure trust fund bank account. Verizon will periodically provide invoices for work performed to the Board of Directors of the infrastructure trust fund for review and approval. Once approved, Verizon will debit and credit the appropriate Verizon accounts.¹⁴

DISCUSSION

The District of Columbia Courts have asked whether the Courts have authority to accept and use telecommunications services and equipment made available to them pursuant to a settlement agreement between Verizon and OPC.

Generally, to prevent a government agency from exceeding the amount that Congress has appropriated to it, a government agency may not augment its appropriation from outside sources without specific statutory authority. In this regard, the “miscellaneous receipts” statute, 31 U.S.C. § 3302(b), requires an official or agent of the government receiving money for the government from any source, absent statutory authority to the contrary, to deposit the money into the general fund of the Treasury. Similar statutes apply specifically to the District of Columbia. Section 446 of the District of Columbia Home Rule Act, as amended, provides that “no amount may be obligated or expended by any officer or employee of the District of Columbia government unless such amount has been approved by Act of Congress, and then only according to such Act.” Pub. L. No. 93-198, 87 Stat. 774 (1973), as amended by Pub. L. No. 105-33, 111 Stat. 251 (1997). Similarly, section 450 of the District of Columbia Home Rule Act, as amended, provides that all money received by the Courts must be deposited in the U.S. Treasury or the Crime Victims Fund. Pub. L. No. 93-198, 87 Stat. 774 (1973) as amended by Pub. L. No. 105-33, 111 Stat. 251 (1997). The objective of the “miscellaneous receipts” statute and other related statutes is to ensure that a government agency does not circuitously augment the amount Congress has appropriated for an activity.

Whether an agency may accept goods and services often depends on whether the agency has statutory authority to accept gifts. Because of the longstanding rule against augmenting appropriations, a government agency may not accept for its own use gifts of money or other property in the absence of specific statutory authority. 16 Comp. Gen. 911 (1937). The Congress provided statutory authority to the District of Columbia to accept and use gifts or donations in annual appropriations acts for

¹³ “Infrastructure Upgrade Requirements Scope of Work Benefits for the District of Columbia Superior Court,” Oct. 26, 2000 (prepared by the District of Columbia Courts and Verizon Communications).

¹⁴ For purposes of this decision, we need not analyze or decide whether we should view this ledger entry system as equivalent to a cash contribution to the infrastructure trust fund. Whether the contribution Verizon has agreed to make is viewed as a contribution of cash or services is not relevant to this decision because, in either case, as explained herein, the Courts may accept the contribution.

fiscal years 1992 through 2000. The annual appropriations acts provided in relevant part that “An entity of the District of Columbia government may accept and use a gift or donation during fiscal year . . . if – (1) the Mayor approves the acceptance and use of the gift or donation . . . ; and (2) the entity uses the gift or donation to carry out its authorized functions or duties” See, e.g., the District of Columbia Appropriations Act, fiscal year 2000, Pub. L. No. 106-113, Sec. 125, 113 Stat. 1501, (1999), and the District of Columbia Appropriations Act, fiscal year 1992, Pub. L. No. 102-111, Secs. 134 (a)(1) and 202(a)(1), 105 Stat. 559 (1991). The District of Columbia Appropriations Act for fiscal year 1994, Pub. L. No. 103-127, Secs. 131 (a)(1) and 202, 107 Stat. 1336, added language that allows the Council of the District of Columbia to accept gifts and donations without first obtaining consent of the Mayor.

Apparently because of the recent change in financing the operation of the District of Columbia Courts, Congress felt the need to specifically extend gift authority to the District of Columbia Courts. The District of Columbia Appropriations Act for fiscal year 2001 now has provided specific authority to the Courts to accept and use gifts and donations. Section 118 of the District of Columbia Appropriations Act for fiscal year 2001, Pub. L. No. 106-522, 114 Stat. 2440 (2000) provides that:

- (1) IN GENERAL. An entity of the District of Columbia government may accept and use a gift or donation during fiscal year 2001 if--
 - (A) the Mayor approves the acceptance and use of the gift or donation (except as provided in paragraph (2)); and
 - (B) the entity uses the gift or donation to carry out its authorized functions or duties.
- (2) EXCEPTION FOR COUNCIL AND COURTS. The Council of the District of Columbia and the District of Columbia courts may accept and use gifts without prior approval by the Mayor.

Accordingly, the Courts currently have specific statutory authority to accept gifts.

Arguably, the goods and services that Verizon has agreed to provide are not a gift but a conveyance. We have defined gifts as “gratuitous conveyances or transfers of ownership in property without any consideration.” 25 Comp. Gen. 637 (1946). In 63 Comp. Gen. 459 (1984) we held that the offer of free exhibit space to a government agency did not constitute a gift because the donor received valuable consideration in the form of increased admission revenues for donating the space. Similarly, Verizon, it could be argued, received consideration from the District of Columbia through the approval of its rate plan and a release from further concessions or requirements; in return, the District of Columbia will receive valuable goods and services. Because Verizon is providing the services as part of an authorized regulatory proceeding made by and for the District of Columbia government and its citizenry, we would find that the Courts have the necessary authority to accept the services if determined to be a conveyance.

Accordingly, we need not address here whether the transaction is more appropriately viewed as a cash gift, a gift of services, or a non-gratuitous

conveyance. We find that, regardless, the Courts have the authority to accept the telecommunications services.

/s/Anthony H. Gamboa
Acting General Counsel