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Comptroller General
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United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Patent and Trademark Office—High-speed Internet Access in Employees' Homes

File: B-308044

Date: January 10, 2007

DIGEST

The United States Patent and Trademark Office (PTO) may reimburse employees for high-speed internet service at employees' homes incident to the agency's telework program. We recommend that PTO periodically review reimbursements to ensure that it has adequate safeguards against private misuse and is reimbursing employees for home internet service used for official purposes.

DECISION

The Acting Chief Financial Officer of the United States Patent and Trademark Office (PTO) has requested an advance decision under 31 U.S.C. § 3529 on the propriety of reimbursing its employees for costs associated with maintaining high-speed internet access at employees' homes incident to the agency's telework program. Letter from Barry K. Hudson, Acting Chief Financial Officer, United States Patent and Trademark Office, to Anthony H. Gamboa, General Counsel, GAO, June 15, 2006 (Hudson Letter). As we explain below, PTO may reimburse employees for high-speed internet access, but we recommend that PTO periodically review reimbursements to ensure that it has adequate safeguards against private misuse and is reimbursing employees for internet service used for official purposes.

Our practice when rendering decisions is to obtain the views of the relevant federal agency to establish a factual record and to elicit the agency's legal position on the matter. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006). In this regard, PTO supplied additional information, including a draft statement of policy and procedures for its proposed reimbursement program, in September 2006. Letter from James A. Toupin, General Counsel, PTO, to Thomas H. Armstrong, Assistant General Counsel for

Appropriations Law, GAO, Sept. 6, 2006 (Toupin Letter), *enclosing* PTO Internet Service Provider Reimbursement Policy for Patents Hoteling Programs (Policy).

BACKGROUND

The Patent and Trademark Office is a federal agency within the Department of Commerce charged with promoting the progress of science and the useful arts by securing for limited times to inventors the exclusive right to their discoveries.¹ PTO proposes a telecommuting program that would permit its employees to telecommute up to 4 days per week from an approved designated alternative work site, typically the employee's home. Hudson Letter. The agency believes the program will improve workforce recruitment and retention, reduce traffic congestion and pollution in the metropolitan Washington, D.C., area, and realize substantial cost savings to PTO. *Id.* PTO expects to have 3,300 employees participating in the program by 2011. *Id.* PTO would require employees to maintain high-speed internet access meeting certain minimum technical requirements at their residence or other designated alternative work site. *Id.* As part of the telecommuting program, PTO proposes to reimburse participating employees for the costs employees incur to maintain such internet access. *Id.*

Employees requesting reimbursement must submit copies of invoices from their internet service provider (ISP) and attest to the appropriate percentage of ISP services used for work-related purposes. *Id.*, Toupin Letter. Employees would be eligible for only 50 or 100 percent reimbursement for ISP connection depending on the amount of monthly business use of the internet service. Toupin Letter. For example, employees requesting the full 100 percent reimbursement would attest to the following: "I hereby certify that my Internet service connection for which I am requesting reimbursement has been used solely for official USPTO purposes (including 'limited personal use' allowed by the USPTO's 'Rules of the Road')." Policy at ¶ 1. Alternatively, employees could sign the following certification for 50 percent reimbursement: "I hereby certify that my Internet service connection for which I am requesting reimbursement has been used in part for official USPTO purposes. Personal use was less than 50% of the total usage." *Id.*

The program would only reimburse the basic rate for ISP connection services per billing period. *See* Policy at ¶12. That is, PTO would not reimburse charges or costs associated with service initiation, activation, installation, or deactivation; taxes; equipment rental fees; or any other miscellaneous charges or fees. *Id.* at ¶ 14; Hudson Letter. Reimbursements also would be limited to the amount PTO would have had to pay to procure these services directly. *Id.* The maximum allowable

¹ *See generally* www.uspto.gov (last visited Dec. 14, 2006). PTO's statutory authorities are found in title 35 of the United States Code.

reimbursable amount for high-speed internet access would be \$100 per month. Policy at ¶ 5.

To ensure that the program only covers ISP connection costs, PTO would deduct amounts from reimbursement requests based on certain required employee disclosures. For example, participating employees would be required to disclose any “free” equipment or other promotional items or rebates that they receive from their ISP. *Id.* at ¶12. PTO would deduct amounts based on the facts and circumstances of each case, including fair market value of the equipment, service agreement terms, and other items. *Id.* Employees also would be required to disclose whether the ISP provides “bundled” services, for example, cable television and/or telephone service along with high-speed internet connection; only the *pro rata* share of ISP costs would be reimbursable. *Id.* at ¶¶ 4(a), 11. Also, if the ISP offers a discount for bundled services, the *pro rata* share of the discount would be applied to the ISP costs to determine the reimbursable amount. *Id.* If bundled services do not provide pricing information sufficient to determine the *pro rata* costs of the ISP component, no ISP costs would be reimbursable. *Id.* at ¶ 4(b).

PTO has imposed other controls that it believes will help ensure that ISP services are reimbursed only for work-related purposes. For example, PTO would measure the productivity of participating employees biweekly, quarterly, and annually. Toupin Letter at 2. Employee performance plans establish standards for required production rates. *Id.* Patent examiners’ work, for example, is primarily production-oriented, measured in precisely defined actions taken with respect to patent applications. *Id.* Examiners’ patent files are also tracked in the agency’s Patent Automated Locating and Monitoring (PALM) system. *Id.* To participate in the telework program, an employee must be rated at least “fully successful” overall in the most recent performance evaluation, not be under any performance or conduct warnings, and must agree to give up the employee’s individual office at PTO headquarters. *Id.* at 3.

DISCUSSION

The Patent and Trademark Office asks whether it may use its appropriations to reimburse employees for home high-speed internet access under its proposed telecommuting program.

Public Law 104-52 authorizes federal agencies to use appropriated funds to install telephone lines and “necessary equipment” and to pay monthly charges in any residence of an employee authorized to work at home, provided that the agency “certifies that adequate safeguards against private misuse exist, and that the service is necessary for direct support of the agency’s mission.” Treasury, Postal Service, and General Government Appropriations Act, 1996, Pub. L. No. 104-52, title VI, § 620, 109 Stat. 468, 501 (Nov. 19, 1995), *reprinted at* 31 U.S.C. § 1348 note.

PTO has determined that internet access is “necessary equipment” for PTO employees authorized to work at home and necessary for direct support of PTO’s mission as required by section 620 of Public Law 104-52. Internet service has become an essential tool in today’s workplace. As PTO explains, patent examiners must have high-speed internet access to telework without diminished performance. We agree. Like telephone service, internet access is necessary for PTO employees, regardless of worksite, and in particular to telework without diminished performance.²

The question remains whether PTO can certify, as section 620 requires, that its proposal provides “adequate safeguards against private misuse.” Over the years, our Office has issued a number of decisions concerning adequate safeguards for cost reimbursements of items and services that would otherwise be considered a personal expense of federal employees. Consistent with section 620, we have not objected to reimbursement plans, for example, for use of personal cell phones for official purposes where adequate safeguards prevent improper reimbursement for personal use.

We found adequate safeguards in a Nuclear Regulatory Commission (NRC) proposal to reimburse employees for the actual costs of maintaining personal cell phone service for official use and the additional costs of official calls actually made or received on the employees’ cell phones. B-291076, Mar. 6, 2003. NRC proposed to (1) reimburse the costs of the employees’ activation plan at an amount no greater than what NRC itself would have paid; and (2) adjust the costs of an activation plan to deduct the value of so-called “free” telephones and accessories, rationalizing that such equipment is not actually free but factored into the plan’s cost by the service provider. *Id.* Importantly, the NRC plan required employees to submit a monthly itemization of calls so that NRC could verify which calls were personal and which were official in nature. *Id.* We advised NRC that where monthly itemizations are unavailable, prorating government-related calls to personal calls with additional tracking and accounting procedures might prove an acceptable safeguard to prevent abuse. *Id.*, citing B-287524, Oct. 22, 2001.

In another case, we objected to a Western Area Power Administration (WAPA) proposal to reimburse employees for government use of personal cell phones at a flat rate, without additional tracking and accounting procedures. B-287524, Oct. 22, 2001. Without those additional procedures, WAPA’s proposal failed to provide

² See, e.g., Department Of Transportation and Related Agencies Appropriations, 2001, Pub. L. No. 106-346, § 359, 114 Stat. 1356, 1356A-36 (Oct. 23, 2000) (requiring executive agencies to establish policies under which eligible employees “may participate in telecommuting to the maximum extent possible without diminished employee performance.”)

adequate safeguards to verify government calls and separate them from personal calls. *Id.*

Here, PTO has proposed a number of safeguards similar to those we considered in NRC's cell phone reimbursement plan. *See* B-291076, Mar. 6, 2003. PTO's proposal would require employees to sign an attestation certifying the employees' proration of business to personal use of ISP services. The agency also would monitor employee performance and productivity on a biweekly, quarterly, and annual basis. *See* 68 Comp Gen. 502 (1989).³

We do not object to PTO's telecommuting program proposal, but recommend that PTO periodically review ISP reimbursements. Periodic reviews, which could include such things as analyses of payment trends, would help support PTO's factual basis for certifying that it has adequate safeguards against private misuse and it is reimbursing employees for home internet service used for official purposes. Pub. L. No. 104-52, § 620. *See also* 35 U.S.C. §§ 3512 (b), (c) (requiring federal agencies to maintain internal controls); GAO, *Policy and Procedures Manual for Guidance of Federal Agencies*, title 7 (Washington, D.C.: May 18, 1993), *available at* www.gao.gov/decisions/ppm7.pdf (last visited Dec. 18, 2006).

CONCLUSION

We do not object to PTO's proposal to reimburse employees for high-speed internet service at the employees' home incident to the agency's telework program. We recommend that PTO periodically review the reimbursements to ensure that it has adequate safeguards against private misuse and it is reimbursing employees for home internet service used for official purposes.



Gary L. Kepplinger
General Counsel

³ Our 1989 decision predates the telework statutes cited above, but its logic remains relevant. We did not object to the compensation of federal employees for work done at home when, among other things, the agency could verify and measure the performance of assigned work against established quantity and quality norms. 68 Comp. Gen. 502.