Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

October 11, 2001

GSBCA 14732

AT&T COMMUNICATIONS,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Richard J. Conway, Robert J. Higgins, J. Andrew Jackson, Peter Morgan, Tina D. Reynolds, Bradley D. Wine, and Tara L. Mehrbach of Dickstein Shapiro Morin & Oshinsky LLP, Washington, DC, counsel for Appellant.

John E. Cornell and Michael D. Tully, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **BORWICK**, **NEILL**, and **DeGRAFF**.

BORWICK, Board Judge.

On May 18, 2001, the Board issued its decision[1] in this appeal under protective order and requested the parties, as well as Sprint Communications, L.P. (Sprint), to suggest redactions of the version of the opinion to be released to the public. Appellant and Sprint submitted proposed redactions; the Government objected to most of them. The Board then asked appellant and Sprint to respond to the Government objections. Appellant and Sprint responded, modifying their suggested redactions in light of the Government objections. This order constitutes the Board's ruling on the requested redactions and the Government's objections. For the reasons below, we reject the majority of appellant's requests, but grant some in part. Sprint maintained one request which we grant.

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[1] AT&T Communications v. General Services Administration, GSBCA 14732 (May 18, 2001) (hereinafter cited as "Decision").

In federal courts there is a strong presumption of public access to judicial records based on the need for federal courts to have a measure of accountability and for the public to have confidence in the administration of justice. General Media Inc. v. Shooker, 1998 WL 401530 (S.D. N.Y. July 16, 1998) (citing United States v. Amodeo, 71 F.3d 1044, 1048 (2d Cir. 1995)). The presumption there is applied on a sliding scale depending on the type of material submitted to the court. Amodeo, 71 F.3d at 1048. The presumption is particularly strong for those documents upon which a court has based its decision. Id. at 1049; Brown & Williamson Tobacco Corp. v. Federal Trade Commission, 710 F.2d 1165 (6th Cir. 1983), cert. den., 465 U.S. 1100 (1984). Where documents are usually filed with the court and are generally available the weight of the presumption is stronger than when the filing with the court is under seal. Id. at 1050. However, where the evidence is submitted under a blanket protective order, the presumption of public access is not weakened. Republic of the Philippines v. Westinghouse Electric Corp., 949 F.2d 653, 661 (3d. Cir. 1991); In re Coordinated Pretrial Proceedings in Petroleum Products Antitrust Litigation, 101 F.R.D. 34, 44 (C. D. Cal. 1984).

The presumption for access is balanced against the countervailing interests of commercial confidentiality, that is, whether the proposed redactions involve commercially sensitive or trade secret information such that disclosure would cause more harm to the firms' competitive positions than non-disclosure would to the public's access interest. In re Coordinated Pretrial Proceedings in Petroleum Products Antitrust Litigation, 101 F.R.D. at 44. The burden of persuasion is on the party seeking to keep judicial documents under seal. United States v. Ackert, 76 F.Supp. 2d 222, 224 (D. Conn. 1999).

Those seeking to maintain the confidentiality of materials used in a judicial decision must show a compelling interest in maintaining the confidentiality of judicial records. In re Adobe Systems, Inc. Securities Litigation, 141 F.R.D. 155, 165 (N.D. Cal. 1992). Factors to be applied include the age of the information, In re Agent Orange Product Liability Litigation, 104 F.R.D. 559, 575 (E.D.N.Y. 1985), aff'd, 821 F.2d 139 (2d Cir. 1987) cert. denied sub nom. Dow Chemical Co. v. Ryan, 494 U.S. 953 (1987), and whether there is evidence that disclosure of the confidential information, will work a clearly defined and serious injury to the business or whether disclosure will create a competitive disadvantage to the party resisting publication of the information. Id. at 574 (citing United States v. International Business Machines Corp., 67 F.R.D. 40 (S.D.N.Y. 1975) and Parsons v. General Motors Corp., 85 F.R.D. 724, 726 (N.D. Ga. 1980)).

Even in the context of the less stringent standard applying exemption four of the Freedom of Information Act, 5 U.S.C. § 552(b)(4) (1994)[2], conclusory and general allegations of competitive harm are insufficient to show that the requested information is confidential. There must be evidence of actual competition and a likelihood of substantial competitive injury. GC Micro Corp. v. Defense Logistics Agency, 33 F.3d 1109, 1113 (9th Cir. 1994).

Here, of course, the issue before us is not public access to the appeal record (those portions of the record submitted under our protective order remain confidential), but public

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[2] That exemption allows withholding of Government documents where disclosure would likely result in substantial competitive injury to private business.

access to our findings of fact and our discussion which are at the heart of the merits decision in this appeal.

We believe that the principles set forth above provide guidance in deciding which portions of our opinion to redact and which portions to make public. Our decision, after all, is the summation and analysis of the evidence taken in the case. We believe the public has as much right to know the basis of appellant's contract claims, the Government's defense to those claims, and the basis for our decision as it does in any case in court. Boards of contract appeals are essentially executive branch trial tribunals for Government contract disputes. 41 U.S.C. §§607(d), 607(g)(1) (Supp. V 1999). These disputes involve matters of public importance, and often, of public interest.

Here, in a decision of 102 pages, 264 findings of fact, and twenty pages of discussion, AT&T seeks redactions to all or parts of sixty-nine findings, twenty-one paragraphs of the discussion, and seven footnotes. See Appellant's Response to Respondent's Objections to Proposed Redactions (July 27, 2001). Sprint seeks a partial redaction to one finding. Sprint's Response to Respondent's Objections to Proposed Redactions (July 27, 2001).

To put matters in context, the information sought to be redacted is not recent. This decision involves a ten-year telecommunications contract that ended in late 1998. The litigation concerns a service reallocation exercise that occurred between April and November 30, 1995, and service transition events that occurred between December 1, 1995, and April 21, 1997. Decision at Findings 25, 85, 220. The technology and events described are at least four years old. AT&T submitted its claim to the contracting officer on August 7, 1998; the contracting officer denied most of the claim on October 2, 1998. Decision at Findings 234, 235.

AT&T argues that:

> there are a number of follow-on contract vehicles of essentially or substantially the same nature as the FTS2000 contract for which AT&T has competed or is competing. In addition, given the small number of competitors in the telecommunications industry, data related to federal contracts is also pertinent to commercial enterprises.

Appellant's Response at 1. AT&T states that the telecommunications industry is "currently in a state of flux and rapid change," characterized by "intense competition in which competitors endeavor to seek any possible competitive edge." Id. at 2. In light of that intense competition AT&T argues:

> [Competitors] are constantly seeking insight into AT&T's prices, business strategies, operations, transition methodologies, staffing decisions and the like. Information related to AT&T's technical and pricing strategies for the Treasury transition, and its performance of the FTS2000 contract would be highly useful to, and eagerly sought out by, AT&T's competitors. If the Board's decision is not carefully redacted, AT&T's competitors could unwittingly be given a window into AT&T's evolving and future business operations, confidential information, pricing strategies, and technical approaches.

Id.

Each party has provided brief general arguments on proposed redactions of specific findings, paragraphs in the discussion, or footnotes. Typical of the Government's view is its response to AT&T's proposed redaction of finding 45, which deals with AT&T's general transition strategy:

> No good reason to redact this paragraph. Rather than revealing specific techniques or technology, this generally describes the strategy taken by AT&T for a contract administration action on a contract that has been closed for years.

Respondent's Objections to Proposed Redactions at 1 (June 27, 2001). Also typical is AT&T's response to the Government's objection:

> Although the FTS2000 contract is closed, this paragraph describes AT&T's strategy for transition of services, which reflects sensitive proprietary information that would be useful to AT&T's current competitors. It should remain redacted.

Appellant's Response at 4.

We now consider the specific requests for redactions. We will first deal with AT&T's proposed redactions, since they are by far the largest in number.

1. The parties agree to the redactions in footnote 11 of the decision. The parties joint request is **GRANTED**.

2. AT&T seeks redaction of all of finding 45, which describes AT&T's generic transition strategy. AT&T states the finding represents sensitive proprietary information that would be useful to AT&T's current competitors. Appellant's Response at 4. This finding describes AT&T's generic transition strategy for this particular contract and its particular requirements contemplated to be performed in 1996. AT&T does not establish that this transition strategy is current, or that the strategy would be applicable to any competitions in which AT&T is now engaged. See Modern Technologies Corp. v. United States, 44 Fed. Cl. 319, 326 (1998), appeal dismissed, 194 F.3d 1329 (Fed. Cir. 1999) (request for redactions of protest opinion denied when litigation was at an end and no showing that redacted information was current and would affect another procurement). AT&T's request for redaction of this finding is **DENIED**.

3. AT&T seeks redaction of footnote 13, which identifies the particular agency's 800 service that AT&T desired to transition. AT&T seeks redaction of that footnote because it reflects AT&T's views of the value of its customer relationship with the agency. Appellant's Response at 4. The General Services Administration (GSA) says that the information does not reveal specific techniques or technology, but general transition strategy on a closed contract. That AT&T values its customer relationship with an agency does not establish that identification of that agency would result in a clearly defined and serious injury to AT&T or that disclosure would create a competitive disadvantage to AT&T. AT&T's

requested redaction of this portion of the opinion is **DENIED**.

4. AT&T seeks redaction of the second sentence of finding 48, and all but the first sentence of finding 50.[3] These findings describe an overall transition approach and a transition schedule for a generic transition. AT&T maintains that these portions describe AT&T's transition methodology and AT&T's strategy for transition of services and reflect sensitive proprietary information which "could be useful" to AT&T's competitors. Appellant's Response at 4. GSA states that these sections of the opinion do not describe "specific techniques or technology" and simply describe generic plans on an old contract. These sections of the opinion describe AT&T's generic transition plans geared to particular contract requirements. AT&T does not establish that this transition strategy is current, or that the strategy would be applicable to any competitions in which AT&T is now engaged or will be engaged in the future. AT&T speculates that the information "could be" useful to competitors, but that statement is an insufficient showing of a likelihood of competitive harm and does not present a compelling reason for redaction. AT&T's request for redaction of those portions of the opinion is **DENIED**.

5. AT&T seeks redactions of GSA's description of AT&T's weaknesses in the coordinated transition plan (CTP) in finding 53, all of finding 54, and the first sentence of finding 56. AT&T argues that "an assessment of AT&T's perceived weakness is confidential information that would be of interest to, and exploited by AT&T's current competitors." Appellant's Response at 4. GSA argues that GSA's evaluation of AT&T's technical proposal for a contract administration action in 1995, stated in broad general terms, is not proprietary information. GSA Objection at 1. We agree with GSA. These findings discuss Government views of AT&T's capability as reflected in the CTP. Those views do not quote information from AT&T's CTP that AT&T has shown would result in competitive harm. The views in these portions of the opinion are Government, not contractor, information. AT&T's request for redaction of those portions of the opinion is **DENIED**.

6. The parties agree as to the treatment of sentences four through six of finding 57. The fourth and fifth sentences will not be redacted and the sixth sentence will be redacted. AT&T's request for redaction of the sixth sentence of finding 57 is **GRANTED**. The parties disagree as to the seventh sentence, which supposedly describes AT&T's "pricing strategy." AT&T argues that this sentence describes AT&T's pricing strategy for the transition of services which reflects sensitive proprietary information that "could be useful" to AT&T's current competitors. Appellant's Response at 5. GSA repeats its argument that the information is generic and old on a closed contract. Respondent's Objection at 1. What this sentence of the finding describes is a pricing practice that conformed to the requirements of the Year 7 price redetermination/service reallocation (PR/SR) document before the institution of a second pricing scenario by the Government. Compare Decision at Finding 27 with Decision at Finding 58 (describing Year 7 PR/SR document's requirement for scenario specific discounts). AT&T has not demonstrated that the information about AT&T's pricing in this sentence reveals any AT&T initiative or competitive strategy not required by the Year 7 PR/SR document. AT&T has not shown a compelling reason for redacting this information. AT&T's request for redaction of this sentence is **DENIED**.

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[3] We do not include citation sentences in the count.

7. The parties agree that, in the first sentence of finding 60, the specific percentages by which AT&T discounted services should be redacted. Appellant's Response at 2; Respondent's Objection at 2. AT&T's request for redaction of this portion of the finding is **GRANTED**. The parties disagree as to whether the second sentence of the finding, dealing with how discounts were applied and billed, should be redacted. The second sentence assists the reader in understanding the basis for AT&T's breach claim. AT&T has not established competitive harm from revelation of the discount billing practice on a contract that ended almost three years ago. AT&T's request for redaction of this portion of the finding is **DENIED.**

8. AT&T requests redaction of finding 61, which discusses the competitive benefits AT&T expected from the Year 7 PR/SR award. Appellant's Response at 5. AT&T has not demonstrated that the publication of expected benefits, which are the benefits any corporation in any business line would achieve from being selected as a supplier, would in any way harm its competitive position. AT&T's request for a redaction of this finding is **DENIED**.

9. AT&T requests redactions of portions of findings 62 and 63, relating to AT&T's price proposal. Appellant's Response at 5. AT&T has not demonstrated that the pricing strategy described in those findings, made in response to particular contract requirements, would have any consequence to its competitive position in future procurements. AT&T objects to the publication of the figure by which AT&T's proposal beat Sprint's proposal, an evaluation conducted in the fall of 1995. Decision at Finding 63. AT&T does not show how knowledge of that figure, which is six years old, harms AT&T's current competitive position. AT&T's request for redaction of these portions of the opinion is **DENIED**.

10. AT&T objects to the phrase in finding 64, in which the Government's procurement analyst lists the price reduction factors influencing the services to be transitioned to meet target revenue shares. Appellant's Response at 5. This Government analysis reveals no specific AT&T pricing information, and even if it did, AT&T has not demonstrated how disclosure of the information harms its competitive position today. The same reasoning applies to AT&T's requested redactions of the Government's figures in footnote 17. In any event, those figures are Government, not contractor, estimates. AT&T's request for redaction of these portion of the opinion is **DENIED**.

11. AT&T requests redaction of portions of finding 88, in which the Government procurement analyst noted technical differences in certain features of Sprint's telecommunications Network B and AT&T's telecommunications network A. Appellant's Response at 5. GSA states that the features and capabilities of the two networks were a matter of public record. GSA's Objection at 2. AT&T disagrees and states that the contractors were not aware of the manner which the competitor's network operated or the specific features on the competitor's network. AT&T's Response at 6. AT&T has not shown that disclosure of the features described on Network A as of 1995-1996 are current today and would harm AT&T's competitive position. The description of network features and differences informs the reader of one cause of the transition troubles described elsewhere in the opinion. Finally, the differences in operation of features such as peg count and hunt sequencing and AT&T's inability to provide features identical to Sprint's were the subject of many customer complaints and were hardly secrets. See Decision at Finding 186. AT&T's request for redaction of this portion of the opinion is **DENIED**.

12. The parties agree to the redactions of finding 89 and footnote 20. AT&T's request for redaction of those portions of the opinion is **GRANTED**.

13. AT&T requests redaction of findings 90 and 91 in their entirety. Those findings relate to AT&T's financial projections of profit and loss on the AT&T contract. AT&T maintains that these paragraphs address internal finances of AT&T, a matter which is of interest to AT&T's competitors. Appellant's Response at 6. GSA neglected to address finding 90, but addresses finding 91, which discusses the same subject matter. GSA objects to the redaction of that finding. AT&T's argument that the figures concern internal finances of AT&T overstates the importance of the data. Those figures were 1995 profit and loss estimates by one office of AT&T for a contract that has been closed for three years. There is no showing that those projections are relevant to AT&T's current financial condition or that release of the information would harm AT&T's competitive position. AT&T's request for redactions of these paragraphs is **DENIED**.

14. AT&T requests redaction of finding 144, which describes the operation of AT&T's peg count feature. Appellant's Response at 6. AT&T's request for redactions of portions of finding 144 is **DENIED** for the same reason the request for redaction of finding 88 is denied. See paragraph 11.

15. AT&T requests redaction of all of finding 150, which describes AT&T's circuit capacity and funding in 1996. Appellant's Response at 6. AT&T has not demonstrated that funding in 1996 for circuit capacity is relevant to AT&T's current financial or competitive position. The identification of the type of circuit (the eighth word in the first sentence of the finding) may be redacted. AT&T's request is **GRANTED IN PART**.

16. AT&T requests redaction of all of finding 155, which describes AT&T's proposed approaches to transition of the IRS 800 service. Appellant's Response at 172. AT&T has not demonstrated that transition strategies which were developed for a particular customer to meet specific contract requirements are current or relevant to AT&T's competitive position today. AT&T request for redaction of this finding is **DENIED**.

17. AT&T requests redaction of all of finding 172, which describes certain of AT&T's actions taken regarding its backbone network during the summer of 1996 on the east coast, including Atlanta, Georgia; Washington, D.C.; and New York, New York. Appellant's Response at 6. AT&T has not demonstrated that its decision regarding its backbone was other than an isolated strategy to meet unique circumstances. AT&T's request for redaction of this finding is **DENIED.**

18. AT&T requests redaction of all of finding 175, which describes the configuration of the peg count feature; finding 177; and part of finding 180. Appellant's Response at 6. Appellant's request for redaction of finding 175 is **DENIED** for the same reasons as the request for redaction of finding 88 is denied. See paragraph 11. The request for redaction of finding 177 is **GRANTED IN PART**. To the extent that this finding describes the internal operation of the peg count feature of which the end user might be unaware, the time interval after the word "because" in the first sentence will be redacted. AT&T's request for partial redaction of finding 180 is also **GRANTED IN PART**. For the same reasons pertaining to finding 177, the second and third sentences of finding 180 will also be redacted.

19. AT&T requests redaction of all of footnote 24. Appellant's Response at 6. The Government correctly notes that much of substance of the footnote is AT&T's restatement of in IRS requirement. Respondent's Objection at 3. However, the last sentence of the footnote involves a description of AT&T's testing capabilities and will be redacted. Appellant's request for redaction of footnote 24 is **GRANTED IN PART**.

20. AT&T requests redactions of findings 184 and 186 and a portion of finding 189. Appellant's Response at 7. The Government argues that this information is not proprietary. Most of the information in those findings concerns customer dissatisfaction with AT&T's performance and is not proprietary contractor information. Finding 186 mentions appellant's efforts at customer premises to solve issues with peg count, attempts which could hardly be secret, and general attempts to satisfy customers. In any event, these findings are relevant to the Government's view of appellant's performance, and the findings are also relevant to the Government's evaluation of AT&T's claims. AT&T has not shown a compelling reason for redacting this information. AT&T's request for redactions of these paragraphs is **DENIED**.

21. AT&T requests redactions of portions of findings 193, 194, and 195. Appellant's Response at 7. GSA argues that findings 193 and 194 should be released. GSA does not mention finding 195. These findings deal with the terms of the contract's Service Level Agreement (SLA) and the circumstances leading to the issuance of the SLA. The findings are relevant to an understanding of the parties' responsibilities under the FTS2000 contract. Appellant has not shown how the information sought to be redacted harms AT&T's competitive position. Appellant's request for redaction is **DENIED**.

22. AT&T requests redactions of portions of findings 201 and all of finding 202. AT&T argues that language regarding transition schedules for the first node of the Treasury Communications System (TCS) is proprietary transition information. AT&T does not establish that this transition strategy is current, or that the strategy would be applicable to any competition in which AT&T is now engaged. AT&T has not established that the schedule was proprietary, since it was known by the customer, the Department of the Treasury. See Decision at Finding 209. Appellant's request for redaction of portions of finding 201 and all of finding 202 is **DENIED**.

23. AT&T requests that finding 212, relating to the Department of the Treasury's analysis of the delay of the first TCS node, be redacted. Appellant's Response at 7. That finding summarizes the customer's view of the causes of transition delay of the first TCS node and is not proprietary contractor information. Even if the finding contained proprietary contractor information, the information in the finding is part of the factual background that explains subsequent Government action on the transition. AT&T has not shown a compelling reason for redacting this information. AT&T's request for redaction of finding 212 is **DENIED**.

24. AT&T requests redaction of certain information in finding 216, related to the presence or absence of a certain capability on AT&T's network A. Appellant's Response at 8. GSA argues that the presence or absence of this capability was a matter of public record. Respondent's Opposition at 4. As indicated in the finding, after the TCS-wide network outage occurred, both the Department of the Treasury and its contractor were aware how

AT&T dealt with this capability. The information is not secret and is no longer proprietary. In addition, the information in the finding forms part of the factual background for subsequent Government action on the transition. AT&T's request for redaction of a portion of finding 216 is **DENIED**.

25. AT&T requests that a portion finding 220 relating to the Department of the Treasury's analysis of alleged unacceptable performance by AT&T be redacted. Appellant's Response at 7. That finding summarizes the customer's view of AT&T's performance and is not proprietary contractor information. Even if the finding included proprietary contractor information, the information in the finding is part of the factual background that explains subsequent Government action on the transition. AT&T has not shown a compelling reason for redacting this information. AT&T's request for redaction of a portion of finding 220 is **DENIED**.

26. The parties agree to redaction of the information in finding 228. The scope of redactions is too broad. To keep the sense of the paragraph, but to protect AT&T's current information, the four-word description of what AT&T was prepared to offer relating to the Customs Radio Network may be redacted. Appellant's request for redaction of that paragraph is **GRANTED IN PART**.

27. AT&T desires partial redaction of finding 231. Appellant's Response at 8. GSA believes the complete finding should be published. Respondent's Objection at 4. That paragraph describes AT&T's backbone circuit configuration, which is proprietary. To keep the sense of the paragraph, the descriptive word following the phrase "AT&T's use of" will be redacted. The other phrase AT&T desires redacted involves which contractor's (AT&T's or Sprint's) pricing was more advantageous to the Government. The phrase involves the limited issue of advantageous pricing to one Government agency no later than 1997. AT&T has not demonstrated that the information is AT&T proprietary or that the information is current such that its publication would harm AT&T's competitive position. AT&T's request for redaction is **GRANTED IN PART.**

28. AT&T desires redaction of revenue figures in finding 233 and finding 234, the initial amount of AT&T's transition breach claim. Appellant's Response at 8. As for finding 233, certainly the taxpayers have a right to know how much their Government paid its telecommunications contractors on a closed contract. Additionally, the revenue figures and the associated percentages are necessary for the reader to understand the Government's litigation position that it substantially met contractual requirements by delivering revenue percentages that were close to the target revenue shares contemplated by the Year 7 PR/SR exercise. AT&T has not established a compelling reason to redact that information. Appellant's request for partial redaction of finding 233 is **DENIED**. Our reasoning also applies to the requested partial redaction of finding 234. The taxpayers have a right to know the amount of damages a Government contractor is seeking from their Government.

29. AT&T requests redactions of all of the figures and percentage mark-ups, material quantities, and unit costs in findings 237 and 240. Appellant's Response at 8. These findings discuss the amounts sought in other claims not related to the transition breach claim and the basis for the amount AT&T claimed. AT&T has not shown a compelling reason for

redacting this information. AT&T has not shown that the information is current or that release of the information would harm its competitive position.[4] Appellant's request for redaction of those findings is **DENIED**.

30. AT&T requests redactions of portions of findings 241 through 248. These findings discuss the basis for other claims not related to the transition breach claim. AT&T has not shown a compelling reason for redacting the requested information, or that the information is current and that release of the information would harm its competitive position. Appellant's request for partial redaction of those findings is **DENIED**.

31. AT&T also seeks redaction of finding 249, which discusses the contracting officer's decision on one claim. Appellant's Response at 10. That finding does not contain contractor proprietary information. Appellant's request for redaction of that information is **DENIED**.

32. AT&T seeks partial redactions of findings 251 through 253 and 255 through 261, and footnote 30, relating to calculation of volume discounts. We conclude that the description of how AT&T charged for network transport volume on its backbone network under the FTS2000 contract is proprietary, assuming (although AT&T does not explicitly say so) that this description is current and applies to other customers. We therefore allow redaction of the phrase between the word "by" and the word "in" in the second sentence of finding 256, the phrase between the word "it" and the word "to" in the last sentence of finding 258, and the phrase between the word "its" and the word "approach" in the last sentence of finding 259. Appellant's request for partial redaction of those findings is **GRANTED IN PART**. Appellant has not demonstrated that the other requested redactions are either proprietary or that release would harm AT&T's competitive position. AT&T also seeks partial redaction of findings 262 and 263, dealing with transition credit. The requested redactions of those findings are **DENIED** for the same reasons that most of the requested redactions of 251 through 253 and 255 through 261 are denied.

33. AT&T requests redactions of portions of the discussion. Our ruling on requested redactions of the discussion tracks our rulings on the findings and associated footnotes. AT&T's request for redaction of the discussion is **GRANTED IN PART** as to the last four words at the end of the third sentence in the first paragraph of the discussion section SVS Billing Dispute. The same reference in the next sentence of the first paragraph will also be redacted. In the fourth paragraph of that section of the discussion, the nineteenth through the twenty-second words of the third sentence and the thirty-seventh through the fortieth word of the fourth sentence will be redacted. The other requested redactions are **DENIED**.

Sprint requests redaction of the third sentence of finding 216. Sprint says that the

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[4] With respect to mark-ups, the AT&T contracting officer testified that AT&T's overhead rate percentage, G&A percentage, and profit percentage were negotiable on a bottom-line figure basis. Transcript at 1398-1400. This witness testified in a conclusory manner that the percentage rates were accurate. Id. at 1400. Nevertheless, AT&T has not convinced us that the percentages in the claim reflect the allegedly confidential actual operative rates in AT&T's business.

redacted feature is not publicly known and that its capability serves as a competitive discriminator in current Government procurements. Sprint Response at 1. For good cause shown, Sprint's request is **GRANTED**.

The Board will not issue a redacted version of the opinion for 30 days to allow the affected parties to consider relief from this order.

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ANTHONY S. BORWICK
Board Judge

We concur:

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EDWIN B. NEILL
Board Judge

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MARTHA H. DeGRAFF
Board Judge