

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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MOTION FOR SUMMARY RELIEF AS TO QUANTUM  
GRANTED: March 29, 2002

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GSBCA 15409, 15449

AT&T COMMUNICATIONS,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Richard J. Conway, J. Andrew Jackson, Robert J. Higgins, and Robert J. Moss of Dickstein Shapiro Morin & Oshinsky LLP, Washington, DC, counsel for Appellant.

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

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

**BORWICK**, Board Judge.

These two appeals involve Universal Service Fund (USF) charges incurred by appellant in the performance of the FTS2000 telecommunications contract. The appeal docketed as 15409 is an appeal from the contracting officer's decision of September 22, 2000, denying appellant's certified claim for payment of \$14,213,129 for the USF charges. The appeal docketed as GSBCA 15449 challenges a separate contracting officer's decision directing appellant to amend its tariff, filed with the Federal Communications Commission (FCC), which passed through the USF charges to the Government.

On July 24, 2001, we granted appellant's motion for summary relief as to entitlement, holding that appellant was entitled to payment of USF charges in accordance with its tariff. We denied appellant's motion for summary relief as to quantum because there were disputed factual matters, i.e., the proper revenue base for applying tariff percentages (appellant maintained the revenue base was \$290,063,866; respondent stated that the revenue base was \$277,956,274) and the proper tariff percentage (4.1% versus 4.9%) applicable from August 1, 1998 through December 6, 1998. AT&T Communications v. General Services Administration, GSBCA 14932, et al., 01-2 BCA ¶ 31,529.

Subsequently, appellant filed a second motion for summary relief as to quantum, agreeing to respondent's position that the revenue base for applying the tariff percentages was \$277,956,274, and agreeing that 4.1 was the proper percentage to apply from August 1 through December 6, 1998.

In response, respondent stated that its \$277,956,274 figure was the upper limit and that the revenue base could be less. Respondent maintained that respondent would require further investigation and possible discovery to arrive at a firm figure for the revenue base. Due to the continuing dispute, we denied appellant's second motion for summary relief as to quantum, but ordered respondent to advise the Board as to when it might complete its investigation and supply a firm figure as to what the revenue base should be. We also rejected respondent's continued request to delay ruling on appellant's motion as to quantum to allow respondent to complete its challenge to the tariff before the FCC. We stated that we would not delay a ruling on quantum on the basis of the doctrine of primary jurisdiction should the matter be ripe for summary relief. AT&T Communications v. General Services Administration, GSBCA 14932, et al. (Mar. 5, 2002).

In its letter dated March 19, 2002, respondent states that its consultant advises that the:

net charges of \$277,956,274 is [sic] an accurate reflection of the revenue base upon which to apply Appellant's USF percentage of 4.9% for the period January 1, 1998 through July 15, 1998 and 4.1% for the period August 1, 1998 through December 6, 1998.

Respondent agrees with its consultant's conclusion. Respondent's Letter from Respondent to the Board. (Mar. 19, 2002).

Since there are no remaining disputed issues of material fact, the matter is ripe for summary relief. The parties agree that applying the tariff percentages for the applicable periods to the revenue base of \$277,956,274 results in an un-reimbursed USF charge of \$12,799,317.

### Decision

Appellant's motion for summary relief as to quantum is **GRANTED**. The Board awards appellant \$12,799,317, plus interest in accordance with the Contract Disputes Act of 1978.<sup>1</sup>

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<sup>1</sup> The appeal docketed as GSBCA 14932 concerns a claim for reimbursement of the same USF charges on the basis of the contract's Tax clause. Proceedings in the appeal are stayed pending the FCC's action on GSA's challenge to AT&T's tariff.

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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