

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

THIS OPINION WAS INITIALLY ISSUED UNDER PROTECTIVE ORDER AND IS BEING RELEASED TO THE PUBLIC IN REDACTED FORM ON OCTOBER 11, 2001. DUE TO THE BOARD'S PRINTING PROCESS, THE PUBLIC VERSION OF THIS OPINION IS IN A SLIGHTLY DIFFERENT FORMAT THAN THE PROTECTED VERSION ISSUED TO THE PARTIES.

GRANTED IN PART: May 18, 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.

Robert H. Koehler, Michael J. Schaengold, James A. Hughes, Jr., William E. Slade, Norah V. Dabney, Robert K. Tompkins, and Thomas Michael Guiffre of Patton Boggs LLP, Washington, DC; and 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.

This is a claim for breach filed by appellant, AT&T Communications (AT&T), against the General Services Administration (respondent or GSA), arising out of the Federal Telecommunications Service (FTS) 2000 contract, and its Year 7 price redetermination/service reallocation (Year 7 PR/SR), for long distance voice and data telecommunications service. AT&T alleges breach by the Government because it was unable to transition the Department of the Treasury's (Treasury's)

long distance voice and data telecommunications service from Sprint Communications Company's Network B to AT&T's Network A within six months as allegedly required by Contract Modification PS251.

We conclude that GSA did not commit a breach. The parties did not negotiate Modification PS251 with the expectation that Treasury would be the transitioning agency; rather, the expectation of the parties in negotiating and signing Modification PS251 was that the Government would assign enough Network B requirements (not necessarily Treasury) to meet a Network A to Network B target revenue split percentage of seventy-six to twenty-four percent. Modification PS251 did not incorporate a six-month transition requirement; the six-month period could be adjusted as necessary by the Government to meet transition exigencies.

GSA, however, did pick Treasury as the transitioning agency. AT&T charges that GSA misrepresented and concealed the terms under which Treasury would transition to Network A before AT&T agreed to Modification PS251, and permitted the Department of the Treasury to hinder, interfere, and eventually suspend transition of services to Network A after Modification PS251 had been signed. Although in a final transition meeting of December 1, 1995, GSA did not advise AT&T of certain Treasury conditions to transition, we cannot conclude that information withheld by GSA was the principal cause of transition delay. AT&T has not shown that it could have transitioned all of Treasury's requirements within six months if it had known of these conditions. While there were difficulties in the transition, we conclude that the difficulties were as much the fault of AT&T as of the Government. AT&T's difficulties in meeting Treasury's specific requirements accounted for much of the transition delay. However, the Government was likely responsible for some of the delay; accordingly, we deny GSA's claim of \$43,690,000 for the late transition.

AT&T complains of Treasury's suspension of transition in April and May of 1997. We conclude that the contract gave GSA the right to delegate transition responsibilities to agencies, and that GSA delegated that responsibility to Treasury in a service level agreement (SLA) which was signed and approved by AT&T. Treasury acted reasonably in expressing reservations regarding continuing with transition.

AT&T is entitled to recover \$ 2,620,176, plus applicable interest, for service initiation charges. AT&T is entitled to payment, without interest, of whatever part of the \$30 million GSA continues to withhold based upon its claim against AT&T. AT&T is entitled to payment, without interest, of \$2,875,000 for the excess transition credit taken by GSA.

GSA is entitled to recover \$1,826,490 for the switched voice service billing dispute. We sustain the decision of the contracting officer on AT&T's claims for peg count and hunt sequencing.

Findings of Fact

The FTS2000 Contracts

Services provided

1. The FTS2000 contract program consisted of two separately awarded, concurrent ten-year contracts for enhanced telecommunications capabilities for the Federal Government. Appeal File, Exhibit 1 at C-15 (¶ C.1.1). We are concerned with AT&T's contract. Under the contractual scheme for both contracts, each contractor was required to deliver six services: switched voice service (SVS) for transmission of voice or data for data speeds up to 4.8 kilobits per second (kbps); switched data services (SDS) for the transmission of data in digital format at 56 kbps and 64 kbps; switched digital integrated service (SDIS)¹ for the digital transmission of voice, data, image, and video at transmission rates of up to 1.544 megabits per second (Mbps); packet switched service (PSS) for the transmission of data in packet form; video transmission service (VTS) for the transmission of both compressed and wide band video; and dedicated transmission service (DTS)² for the point-to-point private line transmission of voice and data. Appeal File, Exhibit 1 at C-19 (¶ C.2.1.1).

Networks A & B and allocation

2. The services were to be obtained from two networks, Network A and Network B, "similar in all respects except for size and each provided by a different contractor over the ten-year contract life." Appeal File, Exhibit 1 at C-15 (¶ C.1.1). The contractual scheme contemplated a percentage allocation of service with sixty percent assigned to Network A and forty percent assigned to Network B, based on revenue. *Id.* Each network was to provide "ubiquitous, nationwide coverage." *Id.* The contracts began in 1988; AT&T was assigned Network A and Sprint was assigned Network B.³ Transcript at 114.⁴ The initial allocation of sixty percent/forty percent was based on a sixty percent/forty percent division of the Federal Telecommunications System (the Government's predecessor long distance telecommunications system) voice grade traffic as of February 1986. Appeal File, Exhibit 1 at C-15 (¶ C.1.1).

3. Telecommunications services and features were to be provided between service delivery points (SDPs). Appeal File, Exhibit 1 at C-21 (¶ C.2.1.7). AT&T was responsible for all aspects of service quality, interconnectivity, and interoperability between SDPs. *Id.* at C-24 (¶ C.2.1.12).

¹ SDIS provides the capability of integrating voice, data, image, and video services by means of digital interconnectivity to FTS2000 users. Supported data rates included 64, 384, and 1.536 Mbps. Appeal File, Exhibit 1 at J-31 (Glossary).

² Dedicated transmission service is the private-line transmission of voice or data. Appeal File, Exhibit 1 at J-16 (Glossary).

³ AT&T and Sprint were called collectively the FTS2000 Service Contractors (FSCs). Appeal File, Exhibit 1 at J-38 (Glossary).

⁴ Transcript citations are to the miniscript version of the transcript.

4. Under the contract, GSA had the authority to allocate network usage between the contractors. Appeal File, Exhibit 1 at C-15 (¶ C.1.1); Transcript at 2134. The contract was mandatory for all federal agencies subject to the Brooks Automatic Data Processing Act, 41 U.S.C. § 759 (1994). Appeal File, Exhibit 1 at C-15 (¶ C.1.1) and H.19 (¶ H.11b.).⁵ Exceptions could be granted by GSA for agencies' unique or special purpose network requirements, with agencies able to appeal a denial of the exception to the Office of Management and Budget (OMB). *Id.* The contract provided further:

c. The Government has the right to add authorized users as defined in paragraph a. at any time during the term of this contract up to the limits specified in H.5. Maximum Contract Limitation. In assigning users to one of the FTS2000 networks, the Government will attempt to: (1) maintain the percentage allocation of revenue in effect for the applicable contract period (2) sustain ubiquitous nationwide coverage from each contractor, and (3) allocate on a whole agency basis, as far as possible.

d. Except as necessary to fulfill the minimum contract guarantee, the Government is not obligated or required to satisfy its requirement for the services described in this contract from the contractor. However, the

⁵ Indeed, Congress prohibited federal agencies subject to the Brooks Act from spending appropriated funds to procure their telecommunications services unless such service was procured by the Administrator of General Services under the FTS2000 program. Statute provided:

(a) None of the funds appropriated by this or any other Act may be expended by any Federal Agency to procure any product or service that is subject to the provisions of Public Law 89-306 [the Brooks Act] and that will be available under the procurement by the Administrator of General Services known as "FTS2000" unless--(1) such product or service is procured by the Administrator of General Services as part of the procurement known as "FTS2000"; or (2) that agency establishes to the satisfaction of the Administrator of General Services that--(A) that agency's requirements for such procurement are unique and cannot be satisfied by property and service procured by the Administrator of General Services as part of the procurement known as "FTS2000"; and (B) the agency procurement, pursuant to such delegation, would be cost-effective and would not adversely affect the cost-effectiveness of the FTS2000 procurement.

(b) After July 31, 1996, subsection (a) shall apply only if the Administrator of General Services has reported that the FTS2000 procurement is producing prices that allow the Government to satisfy its requirements for such procurement in the most cost-effective manner.

Government intends to fulfill FTS2000 requirements from these contracts during the ten-year life of the contracts, unless significant performance problems occur, changes in market pricing occur, or significant changes in technology take place.

e. The contractor shall serve authorized users when assigned in accordance with all requirements of this contract.

f. Due to exceptional circumstances, as defined below, each agency may request service from the unassigned FTS2000 contractor. The agency must first prove that a necessary and unique operational requirement exists, as judged requisite by both FTS2000 Service Oversight Centers [(SOCs)] and secondly, obtain authorization from the Deputy Assistant Commissioner for the Office of Network Services.

Appeal File, Exhibit 1 at H-19 and H-19-1 (¶ H.11).⁶

Differences between Networks A & B

5. Although AT&T's and Sprint's FTS2000 contracts offered similar basic services, they were often considerably different in their network architecture and technical approach. Transcript at 1419-28, 2563-65, 3713-14, 3756, 3759, 4013, 4490-91. Save for national security emergency preparedness, the contracts did not require interoperability between the two networks. Appeal File, Exhibit 1 at C-18 (¶ C.1.3.7). In the area of dedicated transmission service, one aspect of performance unique to AT&T was that AT&T's service delivery point (SDP)⁷ was where the local exchange carrier access circuit entered the customer's building. AT&T would lease access between the local access and transport area (LATA) and the customer's service delivery point from the regional Bell operating company, which would be a subcontractor to AT&T. *Id.* at 158-59, 1430-31. AT&T's contractual responsibility ended at the SDP. *Id.* at 1430-31, 1433-34. In this regard the contract stated that where the contract requires the contractor to provide service to a terminal equipment interface, a secondary service delivery point is defined. The secondary service delivery point

⁶ The contract required each FSC to provide for its network a SOC that would enable the Government to monitor the delivery of service and support contract administration for each FSC's network. Appeal File, Exhibit 1 at C-17 (¶ C.1.3.3). The SOC's were to be within commuting distance of Washington, D.C., and the facilities, software, and equipment were to be designed to permit the Government to perform its role as oversight manager. *Id.*

⁷ The SDP is defined as the "combined physical, electrical, and service interface between the FTS2000 network and network and government premise equipment, off-premise switching and transmission equipment (such as those provided by Centrex and telephone central offices.)" Appeal File, Exhibit 1 at C-22 (¶ C.2.1.7). SDPs could be located on or off Government facilities. The on-premise SDP is normally located at the customer premise at the Federal Communications Commission (FCC)-defined telecommunications point for interconnection of local exchange carrier (LEC) facilities to premise equipment. *Id.*

was separated from the service delivery point "by facilities provided outside the scope of this contract. The contractor shall not be expected to provide wiring for service to the secondary service delivery point." Appeal File, Exhibit 1 at C-22 (¶ C.2.1.7). To complete the network to the actual user, however, another connection would have to run from the SDP to the individual user equipment. Transcript at 335, 546.

6. Under its FTS2000 contract, Sprint provided the inside wiring to customer equipment. Appellant's Hearing Exhibits 3-5, 10; Transcript at 332-35, 861, 1038, 1433-34, 2294, 4491.

Type of contract and standard clauses

7. AT&T's FTS2000 contract provided:

H.3 Type of Contract

This contract is a fixed price, indefinite quantity type contract with economic price adjustments and a form of prospective price redetermination as described in Section H.14.

H.4 Minimum Dollar Guarantee

- a. The minimum dollar guarantee for this contract shall be [\$270 million for Network A,] which shall be obligated within the first four years of the contract. . . .
- b. The Government is under no obligation to purchase service under this contract beyond the minimum dollar guarantee.

Appeal File, Exhibit 1 at H-5 (Amendment 14, Sept. 21, 1988).

8. AT&T's contract also provided:

H.14.3 Selection of Requirements for Reallocation

- a. The government shall select requirements for reallocation between the two networks using a target of 40% for each network's estimated revenue over the remaining life of the contract using prices then in effect and usage forecasts developed by the government.
- b. The government will select requirements for reallocation based on an analysis which identifies those requirements which are the least advantageous to the government as delivered and priced at that point in time. The analysis will include consideration of:

1. Prices compared to the other FTS2000 service contractor and to the external market
2. Service quality
3. Ease and estimated cost of transition
4. Impact on users and their applications
5. Alignment with agency allocations (i.e., on a whole agency basis, with consideration of community of interest and accommodation of consolidated boards, to the extent practicable)
6. Ability to maintain ongoing competition between two contractors through the remaining service life
7. Other factors concerning price, quality, and reliability of service to the Government.

Appeal File, Exhibit 1 at H-21 to -22 (Amendment 8, Jan. 28, 1988).

9. AT&T's contract incorporated by reference standard Federal Acquisition Regulation (FAR) clauses, including: Delay of Work clause, FAR 52.215-15 (Apr. 1984); Changes clause--Fixed Price (Alternate II), FAR 52.243-01 (Apr. 1984); Termination for Convenience clause, FAR 52-249-2 (Fixed Price) (Apr. 1984); and Termination for Default clause, FAR 52.249-08 (Fixed Price, Supply and Service) (Apr. 1984). Appeal File, Exhibit 1 at F-5 (¶ F.2) (Delay of Work), I-10 (¶¶ I.52, 1.60, I.61) (Changes, Convenience and Default). The contract did not include the Pricing of Adjustments clause, GSAR 552-243-71. It did contain the clause found at GSAR 552-243-70. Appeal File, Exhibit 1 at I-15 (¶ 1.76).

Price redetermination (PR) and service reallocation (SR)

10. AT&T's contract also provided:

H.14 Price Redetermination and Reallocation of Service

H.14.1 General

The unit prices and the total estimated price, if any, stated in this contract shall be periodically redetermined in accordance with this clause, except that (1) the prices for supplies delivered and services performed before the first effective date of price redetermination (see H.14.2 below) shall remain fixed and (2) in no event shall the total amount paid under this contract exceed the maximum contract ceiling specified in H.5.

Appeal File, Exhibit 1 at H-21 (Amendment 8, Jan. 28, 1988).

11. For purposes of PR, performance was divided into successive periods, the first period commencing from the date of contract award to the end of month forty-eight, with the second and third periods each lasting thirty-six months from the end of the last preceding period. Appeal File, Exhibit 1 at H-21 (¶ H.14.2) (Amendment 8, Jan. 28, 1988). The general objective of PR was to provide the Government with prices below the lowest possible commercial prices. Id. at B-69 (¶ B.12.1); Transcript at 2149-50.

12. The purpose of SR was to force both AT&T and Sprint to compete with each other for forty percent of their projected FTS2000 revenue over the remaining life of the contract program, in order to encourage the contractors to lower their prices. Appeal File, Exhibit 1 at H-21 (¶ H.14.3); Transcript at 2149-50, 2329-30.

13. At the end of contract period one,⁸ the revenue split between AT&T and Sprint was 47.7 percent and 53.3 percent, respectively. Respondent's Motion for Summary Relief, Exhibit 16. On September 11, 1990, AT&T complained that it was not obtaining the sixty percent of the revenue it had expected and requested that other agencies be assigned to Network A. Appellant's Supplemental Appeal File, Exhibit 2 at A035368. GSA thereupon reassigned the Department of the Navy to Network A. Transcript at 118.

14. GSA ran a PR/SR exercise in year 4 of the contract (Year 4 PR/SR). Appeal File, Exhibit 1 at C-121 (¶ C.7.1). There were three possible outcomes for the Year 4 PR/SR -- an AT&T win, a Sprint win, or a "hold." A hold would mean that the target revenue share would continue to be sixty percent for AT&T and forty percent for Sprint. Id. At the end of the Year 4 PR/SR exercise in October 1992, GSA chose scenario three -- the hold scenario. Transcript at 118.

15. In order to maintain the sixty percent/forty percent target revenue split, on October 1, 1992, through Contract Modification PS110, GSA reallocated the Department of Veterans Affairs (VA) requirements, exclusive of 800 service, from Sprint to AT&T. Appellant's Supplemental Appeal File, Exhibit 4; Transcript at 214-15, 2153.

16. To effect the transition from Sprint to AT&T, the VA purchased channel banks from Sprint at a reduced cost prior to transition to AT&T, since Network A did not provide channel banks to customers. Appellant's Supplemental Appeal File, Exhibit 11 at MTS1028710; Transcript at 1964. According to GSA's Transition Manager for the VA, the VA transition was about half the size of what the Treasury transition turned out to be. Transcript at 2054. The contracting officer's technical representative (COTR) for AT&T's

⁸ AT&T's FTS2000 contract became effective on December 7, 1988. Respondent's Supplemental Appeal File, Exhibit 19 at 00007145. The FTS2000 contracts were divided into three periods, I, II, and III. Contract period I generally covered years 1 through 4 (1989 through 1992), contract period II covered years 5 through 7 (1993 through 1995), and contract period III covered years 8 through 10 (1996 through 1998). Id. at Figure ES-1. However, since the contract started on December 7, 1988, the contract years are slightly different from the calendar years. Id. Contract period III actually started on December 7, 1995. Respondent's Hearing Exhibit 7 at 1.

FTS2000 contract agreed that the Treasury transition was double the size of the VA transition. Id. at 3708-09.

17. As of October 1, 1992, the following cabinet departments, or sub-units of cabinet departments, were assigned to AT&T's Network A: Department of Agriculture and its National Finance Center, New Orleans, Louisiana; Department of Defense and the Department of the Air Force, Department of the Army, Office of the Secretary of Defense, Defense Contract Audit Agency, Canada-United States Permanent Joint Board on Defense, Defense Commissary Agency, Defense Communications Agency, Defense Investigative Service, Defense Logistics Agency, Defense Mapping Agency, Department of Defense Inspector General (Defense Audit Service), and Joint Mexican-United States Defense Commission; Department of Education; Department of Energy; Department of Health and Human Services; Department of the Interior; Department of State; Department of Transportation; and Department of Veterans Affairs (exclusive of 800 service). Ninety-two other agencies, boards, commissions, or offices were also assigned to Network A, including: Central Intelligence Agency, Environmental Protection Agency, Farm Credit Administration, Federal Emergency Management Agency, General Accounting Office, the Government of the District of Columbia, National Aeronautics and Space Administration, Securities and Exchange Commission, and Tennessee Valley Authority. Appellant's Supplemental Appeal File, Exhibit 4.

18. As of October 1, 1992, the following cabinet departments, or sub-units of cabinet departments, were assigned to Sprint's Network B: Department of Housing and Urban Development, Department of Justice, Department of Labor, Department of the Treasury, and Department of Veterans Affairs 800 Service. Thirty-three other agencies, boards, commissions, or offices were also assigned to Network B, including: Administrative Office of the United States Courts, Commodity Futures Trading Commission, Executive Office of the President, Federal Bureau of Investigation (FBI),⁹ Federal Reserve System, Federal Trade Commission, General Services Administration, National Transportation Safety Board, Small Business Administration, the United States Supreme Court, and the United States Tax Court. Appellant's Supplemental Appeal File, Exhibit 4.

Year 7 PR/SR Objectives and Process

19. In October 1994, GSA issued a document to the FSCs entitled Concepts for FTS2000 Price and Quality Management During the Final Phase of the Contracts (the concept paper). Respondent's Supplemental Appeal File, Exhibit 19. In the concept paper, GSA advised that "while the government had no contractual obligation to ensure that the FSCs consistently obtained revenue share applicable to a particular contract period" and "while the Government had met the [contract's] minimum guarantee requirement," the Government, in assigning users to one of the FTS2000 networks, "will make such assignments in accordance with paragraph H.11.c of the contract." Id. at 00007154. In assigning users to one of the FTS2000 networks, the Government would attempt to (1) maintain the percentage allocation

⁹ The FBI was listed separately from the Department of Justice on the modification.

of revenue in effect for that contract period; (2) sustain ubiquitous nationwide coverage; and (3) allocate on a whole agency basis as far as possible. Id.

20. GSA stated that it desired to "maximize competitive incentives" for the Year 7 PR/SR to "achieve maximum cost savings," particularly for those services that account for the bulk of the FTS revenues, SVS and DTS. Respondent's Supplemental Appeal File, Exhibit 19 at 00007157.

21. GSA noted that the Year 4 PR/SR exercise achieved significant reductions of SVS prices but not price reductions for other services. Respondent's Supplemental Appeal File, Exhibit 19 at 00007160.

22. GSA announced that it would conduct a Year 7 PR/SR in 1995. Due to the success of the Year 4 PR/SR, traffic volumes were expected to be higher for the three remaining contract years; a key objective was to provide "appropriate incentives" to achieve favorable pricing "at all volume levels for all services." Respondent's Supplemental Appeal File, Exhibit 19 at 00007161. GSA stated that it would perform SR to achieve the target revenue split resulting from the Year 7 PR/SR decision. The target revenue split percentages would assume a starting revenue split baseline of 60 percent/40 percent between AT&T and Sprint. The Government would not perform additional SR after the Year 7 PR/SR. Id. at 00007163.

23. In the concept paper, GSA advised the FSCs that it would conduct a price/cost evaluation and a technical evaluation. Respondent's Supplemental Appeal File, Exhibit 19 at 00007162. The Government's technical evaluation would be based on the Government's analysis of transition approach and all required planning "to support the transition timeframe." Appeal File, Exhibit 2 at M-4 (¶ M.2.2.1).

24. GSA viewed the Year 7 PR/SR exercise as a matter of contract administration, but used a procurement-like process because the FSCs were familiar with that process. Transcript at 2160. Consequently, GSA issued procurement-type documents to conduct the PR/SR exercise. GSA issued a document in solicitation format, requested cost and technical proposals from the FSCs, and used formal source selection procedures in evaluating the proposals. Id. at 2558-59. The Government convened a Source Selection Evaluation Board and a Source Selection Advisory Council. Id.

Year 7 PR/SR Document

25. On April 4, 1995, GSA issued the Year 7 PR/SR document. Appeal File, Exhibit 2. All terms of that document except sections L and M were later incorporated into AT&T's FTS2000 contract by contract Modification PS251. Appeal File, Exhibit 8 at 2 (¶ b). The Year 7 PR/SR document distinguished between PR and SR. The objective of PR was to

determine, based on consideration of both cost and technical factors, whether to adjust the target revenue split currently in effect between the two FSCs.

Appeal File, Exhibit 2 at C-2 (¶ C.8.1) The objective of SR was to

reallocate FTS2000 forecast traffic (as necessary) to achieve the target revenue split over the remaining life of the contracts based on the scenario chosen in PR and considering the forecast revenue split for the remaining life of the contract.

Id.

26. As in the Year 4 PR/SR, the Year 7 PR/SR anticipated three scenarios. For scenario one, the Year 7 PR/SR document contemplated a "potential target revenue share" of 76 percent for Network A and 24 percent for Network B. Appeal File, Exhibit 2 at C-3 (§ C.8.1). Scenario 2 contemplated a potential target revenue share for Network A at 36 percent and Network B at 64 percent. Scenario 3 was the existing baseline 60 percent/40 percent revenue split. Id. If AT&T won in the scenario one reallocation, it would obtain 40 percent of Sprint's forecasted Network B revenue. Conversely, if Sprint won in the scenario two reallocation, it would obtain 40 percent of AT&T's forecasted Network A revenue. Transcript at 2146-48. Thus, the Year 7 PR/SR process placed 40 percent of each FSC's forecasted revenue "at risk." Appeal File, Exhibit 2 at C-2 (§ C.8.1).

27. The Government did not guarantee the revenue shares for any period of the contract. Appeal File, Exhibit 1 at C-123 (§ C.7.1). However, despite that, the Government stated that its intent in conducting the PR/SR exercise was to "incorporate both FSCs' PR/SR proposals" and to "reallocate traffic in accordance with the selected scenario." Appeal File, Exhibit 2 at C-6 (§ C.8.1). As in the concept paper, the Government repeated in the Year 7 PR/SR solicitation that it did not intend to perform additional SR after the Year 7 PR/SR. Id., Exhibit 2 at C-4 (§ C.8.1).

28. As for the transition process, the Year 7 PR/SR document provided in pertinent part:

C.8.2 Transition

C.8.2.1 Introduction

This section details the transition specifications associated with potential reallocation of FTS2000 services and features. The Government intends to transition the following services and associated features:

- a. SVS including 800 service
- b. DTS

The Government will transition service based on one of the estimated target revenue share scenarios listed in Table C-8.1. In the event of any service reallocations, the Government intends to transition all services and features between networks in an expedited manner as described in Section C.8.2.3.

Following Year 7 PR/SR contract modifications, both FSCs shall be responsible for any transition due to service reallocation. The gaining FSC

shall be responsible for developing the associated plans defined herein and for providing all reallocated FTS2000 services and features for an agency transitioning to its network. The losing FSC shall fully cooperate with the Government and the FSC to effect an orderly and efficient transition of an agency's reallocated services and features. The Government requires both FSCs to adhere to the following general specifications during transition:

- a. Expedited transition of users of FTS2000 services and features with assured continuity and quality of service.
- b. Implementation of all agencies' services and features which are reallocated to the gaining FSC's network.
- c. Establish network interconnectivity to meet numbering plan and service continuity requirements.
- d. Cut over service at a location on a "flash cut" basis whenever and wherever practical. The FSCs shall propose options for cutover activities, such as implementing facility changes at the Local Exchange Carrier Central Office locations.
- e. Continuity and quality of existing FTS2000 services and features to all agencies on the FTS2000 networks throughout the transition.
- f. Adherence to all National Security and Emergency Preparedness (NSEP) requirements, including Telecommunications Service Priority (TSP).
- g. Minimal impact of the normal service implementation and contract modification processes.
- h. All services and features which are contractually required to be available at a Service Delivery Point (SDP) from the FTS2000 network, and which have been ordered by the Government for delivery to the SDP, must be provided to that SDP.
- i. Utilization of Switched Digital Integrated Service (SDIS) access arrangements when appropriate and cost effective.

Appeal File, Exhibit 2 at C-8. The Year 7 PR/SR document stated that: "The Government will identify the agencies, services and features to be reallocated at [the] time of Year 7 PR/SR contract modifications." Appeal File, Exhibit 2 at C-10 (¶ C.8.3.2). The Year 7 PR/SR document did not contain specifications specific to the needs of Treasury or the IRS. Transcript at 288.

29. The Year 7 PR/SR document provided:

C.8.2.2. Implementation of Service and Feature Enhancements

All agency requirements for FTS2000 services and features must be supported by the FSC's networks. If required for the transition, the FSCs shall propose, implement, and demonstrate (at the Government's option) any additional service and feature enhancements necessary to support reallocated agencies' requirements before effecting transition of these specific services or features to the assigned network. All other reallocated services and features supported by the FSC's network may transition immediately.

Appeal File, Exhibit 2 at C-8.

30. During a question and answer session, AT&T inquired about the meaning of this paragraph. Among other things, AT&T asked:

Question # 13. Please clarify the intent of this paragraph. Does the paragraph imply that if the gaining FSC does not support a feature or enhancement (i.e. Advanced 800 Service), then agencies currently subscribing to those services are eliminated from potential reallocation? Does the paragraph imply that if the gaining FSC does not support a service or feature enhancement and the Government is thus unable to transition part of an agency's service, that they will replace that chosen agency with another, and allow the service and/or feature which is unavailable from the gaining FSC to remain with the current FSC?

....

Response to # 13: These inferences are not correct. The intent of this section is to set forth the requirement that if an agency chosen for reallocation has requirements not currently supported by the FSC, then the FSC shall propose, demonstrate, and implement the necessary service/feature enhancements through the contract modification process before effecting any transition of services and features to the assigned network. Please refer to the final document.

Appellant's Supplemental Appeal File, Exhibit 33 at A008304.

User location inventory database

31. The Year 7 PR/SR document provided that the losing FSC:

shall provide to the TCC [Transition Control Center], within 15 calendar days from [the] date of [the] Year 7 PR/SR contract modifications, the current user location inventory database and the traffic database for the agency locations, services and features to be reallocated. The TCC and gaining FSC will review the current user location and traffic data for completeness. Incomplete data will be rejected by the TCC. The losing FSC shall resubmit to the TCC, within 3 calendar days from receipt of notification, corrected user location

inventory/traffic data that was rejected by the TCC. In addition, the losing FSC shall provide to the TCC, within 15 calendar days from [the] date of [the] Year 7 PR/SR modifications, copies of all pending service/orders requests related to the agencies' services and features to be reallocated (reference Table F-5.1).

Appeal File, Exhibit 2 at C-14 (§ C.8.4.3.1).

Coordinated Transition Plan and Site-Specific Cutover Plans

Coordinated Transition Plan

32. The Year 7 PR/SR document required the gaining FSC to submit "no later than 45 calendar days after the Year 7 PR/SR contract modification a coordinated transition plan (CTP)." Appeal File, Exhibit 2 at C-14 (§ C.8.4.3.2). The CTP was to "cover the specific reallocated services and features being added to the gaining FSC's network based on the awarded scenario and Year 7 PR/SR contract modifications." Id.

33. The CTP was to "contain specific schedules and procedures for transition of the FTS2000 services and features designated to be transitioned to the gaining FSC." Appeal File, Exhibit 2 at C-14 (§ C.8.4.3.2). The CTP was, at a minimum, to contain the following:

a. General structuring of the cutover team, organizations involved, approximate number of personnel, tasks assigned by organization, reporting structure, approximate timeframes for activities, escalation procedures, test procedures and restoration procedures.

b. General cutover plans for each agency to be cut over tied to transition timeframes described in the FSC's technical proposal. An agency cutover profile shall be provided for each agency, showing the number of locations by service type associated with each transition phase. . . . The FSC shall update the profile as appropriate based on the specific agency services and features identified for transition in the Year 7 PR/SR contract modifications.

c. A cutover test and service acceptance plan for each service type, including the standard test data forms and procedures for delivery. . . .

d. All documents necessary to cover any specific details pertaining to the transition.

e. Procedures for site specific cutover activities to accommodate migration of traffic due to service reallocation, including cutover notification and scheduling. These procedures shall include timeframes for the various activities associated with cutovers for each type of service. . . .

f. Sample Site Specific Cutover Plan . . . including examples of all forms . . . to be used throughout transition. . . .

g. Interconnection plans and procedures for transitioning services between FTS2000 networks at specific locations and at network locations, that provide interconnection between Networks A and B and also between Networks A and/or B and public networks. Based on the specific agency requirements, the FSCs shall implement all required network interconnections utilizing gateways or other appropriate means to ensure quality and continuity of services for all FTS2000 users, at no additional cost to the Government. . . .

h. Procedures for acquiring user inventories.

i. Coordination plans for cutovers among the gaining and losing FSCs, Government user agencies, the TCC or designee, LECs [local exchange carriers], third party-vendors, and other involved parties.

j. The FSC's design, update procedures, and user interface for the on-line cutover database as described in Section C.8.4.3.5 of the contract, including database including databased information, storage, backup, updates, structure, and plan for user training.

k. Plans for ensuring that integrity of service and performance levels specified in the FTS2000 contracts are met during the transition of traffic due to service reallocation. . . .

l. Detailed procedures for trouble reporting for both FSCs during the transition. . . .

m. Plans for providing any changes to the present FTS2000 Networks A and B.

Appeal File, Exhibit 2 at C-15-17 (¶ C.8.4.3.2).

Site-specific cutover plans

34. The Year 7 PR/SR document required the gaining FSC to produce site-specific cutover plans for each transitioning user location in compliance with the CTP. Appeal File, Exhibit 2 at C-17 (¶ C.8.4.3.3). The site-specific cutover plans were to serve "as working blueprints for day-to-day activities during the transition of user locations." Id. The site-specific cutover plans were to "list activities that will affect each location to be cut over," and to "include any unique requirements, special instructions, policies, and administrative data relative to a user location, such as hours of operations, names of contacts for admission to secure offices, and other special access situations." Id. The gaining FSC was to "determine agency billing and NSEP/TSP [National Security and Emergency Preparedness/Telecommunications Service Priority] requirements of each user location during the site surveys" and was "to ensure these requirements are implemented and satisfied as part of the cutover activities." Id. After receipt of user location inventories, the gaining FSC was to "use and verify all user location inventories when developing the site-specific cutover plans." Id.

35. In a question and answer session, GSA asked how AT&T would ensure the accuracy of data regardless of support from the TCC and Designated Agency Representative or Local Government Contact (DAR/LGC). AT&T stated it would ensure the accuracy of data by telephone interviews, physical site surveys, pre-cutover visits, and review and validation of the losing FSC's location inventory data. Respondent's Supplemental Appeal File, Exhibit 139 at A012986. In the event GSA was denied access to locations prior to cutovers, AT&T stated that it would complete site surveys using data gathered from other sources. Id. at A012987. If complete information were not available, AT&T would use alternate methods to augment procedures for obtaining site information including, but not limited to, information gathered from local equipment vendors, LECs, alternate access vendors servicing a particular location, or information gathered from inside wire vendors serving a particular location. Id.

36. The gaining FSC was to have the responsibility to update the site-specific cutover plans in close coordination with the TCC and the DAR/LGC. Appeal File, Exhibit 2 at C-17 (¶ C.8.4.3.3). The site-specific cutover plans were to "serve as progress reports and master log of cutover activities." Each plan was to be submitted to the DAR/LGC "no later than 15 calendar days prior to each scheduled cutover date" and was to be updated as changes occurred. Id. at C-18 (¶ C.8.4.4.3). The site-specific cutover plans were to include as a minimum:

- a. Agency locations, addresses, contacts and telephone numbers.
- b. Locations and types of all CPE, Centrex, and SDPs involved, including but not limited to, the following when applicable:
 1. Equipment type, vendor, manufacturer, model, revision, version, and option information, as appropriate.
 2. Channel Band and Private Branch Exchange (PBX) signal adjustment capability to meet the gaining FSC's network loss plan.
 3. Automatic Number Identification (ANI) equipment requirements.
 4. Protocol requirements of user applications and equipment.
 5. Special equipment to support user and feature requirements.
- c. The scheduled dates for each location to be cut over.
- d. The location, type and quantity of all access lines involved, between the point of presence (POP) and the SDP;
- e. The agency, local equipment/service provider, and/or maintenance provider responsible for the management of the telecommunications equipment.

- f. Test requirements and approved standard test forms for each service and feature being cutover.
- g. Present and proposed numbering plans including ANI requirements, billing hierarchy, number assignments, and station assignments. The gaining FSC shall specify availability for all items.
- h. Present and proposed access codes.
- i. Summary of originating/terminating traffic at each SDP.
- j. Escalation procedures to follow whenever a cutover activity becomes jeopardized. These procedures shall include a list of Government, FSC, Local Equipment and Service Providers and LEC personnel including their telephone numbers.
- k. Contingency plans for total restoration of service in the event of any unsuccessful cutover activities. The time intervals permitted for completing restoration of service dependent upon the service being restored. The time intervals to restore service shall be described within the contingency plan.
- l. A brief description and schedule of all user training requirements at transitioning locations, if required.
- m. Copy of work access authorization form identifying the vendor technician and the work to be performed. . . .
- n. Interconnectivity provisions . . . as required to maintain continuity and quality of service to the user.
- o. special dialing instructions needed for users to use FTS2000 services and features for on-net and off-net calls.

Appeal File, Exhibit 2 at C-18 to C-19 (§ C.8.4.3.3).

37. The contract provided:

Monitoring Transition Progress

The Government's single point of contact for any transition will be the Transition Control Center (TCC), which will be established at the time of Year 7 PR/SR contract modifications. The TCC will provide oversight and direction for any transition associated with service reallocations. The TCC will be located at a Service Oversight Center (SOC) and under the authority of the FTS2000 Program Manager.

Appeal File, Exhibit 2 at C-10 (§ C.8.3.3). The TCC's responsibilities were:

- a. Providing transition guidance.
- b. Reviewing and recommending approval or rejection of all plans related to service reallocation.
- c. Approving the number of locations to be cut over per phase.
- d. Overseeing downsizing of either Network A or Network B access and network switches.
- e. Overseeing upsizing of either Network A or Network B access and network switches.
- f. Ensuring that the gaining FSC provides user training at transitioned locations, if required.
- g. Reviewing transition testing results, including cutover tests, and recommending service acceptance to the SOC in coordination with Local Government Contact (LGC).
- h. Providing the gaining FSC with the names, addresses, and telephone numbers of the available LGCs and Designated Agency Representatives (DARs) no later than 20 calendar days from the date of Year 7 PR/SR contract modifications.
- i. Providing to the gaining FSC the available user location inventories and traffic data.
- j. Coordinating service requests with SOC personnel that are required to implement service reallocation.
- k. Coordinating requests with the DAR/LGC for service disconnects by the losing FSC.

The TCC may delegate responsibility to the SOC, DAR, or LGC as appropriate and will notify the FSCs, in writing, of any delegation of responsibility as they occur.

Appeal File, Exhibit 2 at C-11 (¶ C.8.3.4) .

38. The responsibilities of the DAR/LGCs were to:

- a. Serve as the central point of contact at affected locations for the gaining FSC's Office of Transition Management (OTM) and for the TCC in all Government-related local transition and activity coordination.

- b. Assist the gaining FSC's OTM during the user locations inventory verification and site surveys by providing any available telecommunications information about the affected locations. Provide other assistance as required, such as building access.
- c. In cooperation with the gaining FSC's OTM, ascertain from the Local Equipment/Service Providers (i.e. non-FTS2000 vendor) whether additional equipment (i.e. not provided through the FTS2000 contracts) is required to support the type and quantity of new FTS2000 access facilities to be installed. Initiate installation of necessary changes.
- d. Upon receipt of information from the OTM regarding the finalized cutover date and location requirements, notify in writing the appropriate Local Equipment/Service Providers no less than 55 calendar days prior to actual cutover.
- e. Provide the gaining FSC's OTM, upon request, with names, agencies, addresses, and telephone numbers of Government designees and technical personnel for each location where services and features will be transitioned.
- f. Monitor cutover activities performed by the gaining FSC's OTM using criteria developed by the TCC.
- g. Notify the gaining FSC's OTM and the TCC of successful service acceptance.
- h. Notify the appropriate FSC's OTM and TCC of any troubles with services and features during the consecutive 72-hour service acceptance test period, and report troubles in writing to the TCC.
- i. Notify the FSC's OTM and TCC for disconnections of services and features after successful service acceptance.

Appeal File, Exhibit 2 at C-11, C-12 (§ C.8.3.5).

39. Each FSC was to establish an OTM, which was "charged with planning and implementing all aspects of the service reallocation from one FTS2000 network to the other." Appeal File, Exhibit 2 at C-12 (§ C.8.4.1).

40. The gaining FSC had the "primary responsibilities for coordinating all aspects of the transition for all agencies' services and features that are reallocated." Appeal File, Exhibit 2 at C-13 (§ C.8.4.2). These responsibilities included (1) developing cutover procedures to facilitate transition activities with the TCC, agency, DAR/LGC, and the losing FSC; (2) administering all plans, policies, and specific transition cutover activities; (3) coordinating all information gathering activities; (4) coordinating all on-site visits to user locations during transition with the DAR/LGC, TCC, FSCs, subcontractors, and any other involved parties; (5) writing service orders; (6) verifying user location inventories; (7) coordinating the

necessary preparations to implement all FTS2000 services and features at the new locations.
Id.

Transition timeframe

41. In the planning process for the Year 7 PR/SR, GSA and its contractor Mitretek Corporation¹⁰ had anticipated a one-year transition timeframe for scenarios one and two and a six-month transition timeframe for scenario three. Appellant's Supplemental Appeal File, Exhibit 25 at MTS1021850-52. In the Year 7 PR/SR document, however, GSA stated that the timeframe to implement all scenarios:

shall be 6 months from [the] date of Year 7 PR/SR contract modifications. . . .
It is the Government's intent that all required transitions be accomplished within a maximum of 6 months unless otherwise notified by the Government. The transition timeframes shall continue until the last location is cut over and reallocated services are accepted by the Government. The Government reserves the right to adjust the transition timeframes based on actual agencies' services and features to be allocated.

Appeal File, Exhibit 2 at C-8 (¶ C.8.2.3).

42. In a question and answer session, Sprint requested that GSA amend the Year 7 PR/SR document to state that the right to adjust the transition timeframe would not relieve the Government of responsibility for Government-caused delays. GSA declined. Appeal File, Exhibit 5 at 15. In response to a GSA question, AT&T stated that it understood that GSA reserved the right to adjust the transition timeframes as necessary. Respondent's Motion for Summary Relief, Appendix, Exhibit 14.

43. The six-month timeframe was picked to maximize expected revenue reductions from the Year 7 PR/SR exercise for the thirty-six months remaining on the contract. Transcript at 2643-44, 4487. Because the agencies to transition were not yet known, the FSCs were to propose transition based on generic (i.e., hypothetical) traffic sets. Appeal File, Exhibit 2 at L-11 (¶ L.18.2.3); Transcript at 2144.¹¹ Originally, AT&T had proposed an eight-month transition for data services. Transcript at 125-26, 3904-05. GSA asked: "Will AT&T comply with the Government's required transition schedule for accomplishing all required transitions within a maximum of six months?" Appellant's Supplemental Appeal File, Exhibit 58 at

¹⁰ Mitretek Corporation was a GSA contractor engaged to provide contract administration services to GSA for the FTS2000 contract. The role Mitretek played in the FTS2000 contract is set forth at length in our one-judge discovery order in AT&T Communications Inc. v. General Services Administration, GSBCA 14732, 99-2 BCA ¶ 30,580. Although the order is a one-judge opinion, there is no dispute about the general role Mitretek played in the administration of the FTS2000 contract.

¹¹ XXXX, XX XXXX, XXXXXXXXXXX XXXXXX XXXXXXXXXXX XX XXX XXX XXXXXXXXXXX XXXXXX XXXXX XX XXXXXXXXXXX XXXX XX XXX XXXXXXXXXXX XXXXXXXXXXX. XXXXXXXXXXX XX XXX.

A000203. AT&T agreed to do so. Id., Exhibit 59 at A040109. In its technical proposal, AT&T therefore proposed a six-month schedule. Id., Exhibit 71 at A014379 (¶ 3.1.1.2.2) and A014861 (Figure 4-2). The contracting officer and AT&T officials involved in the FTS2000 contract testified that they viewed the six-month transition as a contract requirement. Transcript at 125-26, 2392, 3905.¹²

44. The Government suggests that AT&T actually planned for a nine-month transition should it win the Year 7 PR/SR. Respondent's Opening Brief, Proposed Findings of Fact 79-80. A document authored by AT&T's proposal manager to AT&T's President of Government Markets does mention a nine-month transition for a scenario one win. Respondent's Supplemental Appeal File, Exhibit 141. Appellant's product manager for Network A testified that the additional three months were to allow AT&T to install relatively small numbers of circuits or locations that could not be transitioned in the initial six-month period. Transcript at 211. In addition, another witness for AT&T testified that the company's offer for the Year 7 PR/SR exercise was constructed with the expectation that transition of new services to Network A would be accomplished in six months. Id. at 3905. There is a dispute of fact as to whether AT&T planned for a nine-month or a six-month transition in the case of a scenario one win. The evidence is in conflict. Based on the Government's negotiation questions, it is clear that AT&T, in preparing its proposal, did not think a six-month transition was feasible and, for that reason, proposed to complete any transition within nine months. When told by the Government that this was unacceptable, AT&T shortened the transition period to six months. That AT&T actually proposed to effect a transition within six months is beyond doubt. Appellant, however, has not convinced us this was in fact its actual plan.

AT&T technical proposal

45. In its technical proposal, AT&T contemplated the transition of a whole agency from Network B to Network A (which AT&T called opportunity 2).¹³ Appellant's Supplemental Appeal File, Exhibit 71 at A014732 (¶ 3.1.1.2). AT&T stated that opportunity 2 was an alternative "that provides the transitioning agency long-term benefits from both volume aggregation and the wide array of services and features available from Network A." Id. AT&T stated that the same methods and procedures used for transitioning the VA after the year 4 PR/SR would be used. Id. AT&T contemplated transitioning SVS and 800 service on a location-by-location phased approach. Id. at A014787 (¶ 3.1.4). AT&T saw verification of user location inventories as the base for the AT&T FTS2000 network administrators to use in performing switch translations and in programming the user location telephone numbers. Id. at A014804 (¶ 3.1.6.6).

¹² The Commissioner of the GSA Federal Telecommunications Service testified that he regarded the six-month transition not as a requirement but for evaluation purposes only. Transcript at 4488.

¹³ Opportunity one was based on transition of the VA's 800 service from Network B to Network A. Appellant's Supplemental Appeal File, Exhibit 71 at A014717 (¶ 3.1.1.1.1).

46. The inventory data from the losing FSC would form the basis for the cutover database; successful use of the cutover database, plus inventory verification through site surveys and cutover coordination teams, was seen as effective in providing uneventful cutovers at thousand of locations, ranging from one circuit to hundreds of circuits. Appellant's Supplemental Appeal File, Exhibit 71 at A014812 (¶ 3.1.7.1).

47. The cutover database was the principal central coordinating tool for the transition. The cutover database would contain the user location, agency, department or division name, physical address, and LGC name and telephone numbers; the complete mailing and billing address, name, and telephone number of the AT&T OTM's single point of contact for each location; the date and time for initiation of cutover activities; the existing and proposed numbering plans; a summary of all preparatory steps prior to cutover for each location with dates for the initiation of each step by each FSC's OTM; a summary of all activities with dates required to be completed by the LGC at each user location, including the dates when the LGC was to be notified of these activities by the AT&T OTM; a summary of all existing FTS2000 services, features, and facilities at each location, including CPE, interfaces, access lines that would be ordered to provide the location with all necessary FTS2000 services and features, including an ordering schedule, identification of the LAP [Link Access Protocol] providing the facilities, and network node switches; all information necessary to initiate service order requests to add any FTS2000 services and features; and one memorandum field for entering schedule changes. Appellant's Supplemental Appeal File, Exhibit 71 at A014819-20 (¶ 3.1.7).

48. AT&T developed a generic CTP which could be tailored to the needs of each user location. Appellant's Supplemental Appeal File, Exhibit 71 at A014818 (¶ 3.1.7.2). AT&T stated that its CTP would contain an overall transition approach, an analysis of the various transition options, a master transition schedule, a schedule of location cutovers, and a transition approach that defines the overall strategy to be used to transition traffic to Network A. Id. at A014815 (¶ 3.1.7.2).

49. AT&T stated that in order to gain a firsthand knowledge of the existing and new services that would be necessary for each location, site surveys would be completed. Appellant's Supplemental Appeal File, Exhibit 71 at A014875 (¶ 4.3.6). The site survey process would begin five calendar days after the AT&T FTS2000 OTM was presented with the contact information for the DAR/LGCs for the end user locations whose services were to be transitioned. Site surveys would be performed at the site or by telephone, as deemed appropriate by the NSM, the DAR/LGC, and the TCC. All site surveys would be completed within thirty-five calendar days of the contract modification. Id.

50. AT&T proposed the following schedule for meeting the generic traffic timeframe requirements. AT&T anticipated receiving user location inventories and traffic data 20 days after issuance of the contract modification; conducting site surveys between day 20 and day 35; creating service orders between day 21 and day 38; creating a cutover database between day 1 and day 30; verifying location of telephone numbers between day 42 and day 82; establishing local cutover committees between day 48 and day 160; creating site-specific cutover plans between day 60 and day 162; and conducting cutover between day 70 and day 180. Appellant's Supplemental Appeal File, Exhibit 71 at A014862 (Figure 4-3).

51. To the requirement that the gaining FSC implement all agencies' services and features which are reallocated to the gaining FSC's network, AT&T stated that AT&T FTS2000 had existing proven processes in place to cover the implementation of all agencies' reallocated services and features. Appellant's Supplemental Appeal File, Exhibit 71 at A014735.

Government evaluation of AT&T's submissions for PR/SR exercise

52. The Government conducted a technical evaluation of AT&T's Year 7 PR/SR proposal on two criteria -- quality of service and technical proposal. The sub-criteria for quality of service were customer satisfaction, technical performance of FTS2000 services and features, transition effectiveness, and contracting performance. The sub-criteria for the technical proposal were technical response and generic transition plan. The ratings were color based: green for "good," yellow for "satisfactory," and red for "unsatisfactory." Appellant's Supplemental Appeal File, Exhibit 86 at MTS-1025719. AT&T achieved a satisfactory or better rating in all categories. Id.

53. In the area of customer satisfaction, AT&T customers reported they were satisfied with AT&T's telecommunications service and highly satisfied with SVS and DTS service. Appellant's Supplemental Appeal File, Exhibit 86 at MTS-1025720. Weaknesses were noted in the area of service order processing. Id. In the quality of service area processing, AT&T met the contractual technical requirements for all contractor services and features, and successfully met or exceeded the objectives of the contract for combined SVS and SDS grade of service. Id. For transition effectiveness, GSA noted that during the Year 4 SR, AT&T had satisfactorily transitioned SVS and DTS traffic onto its network, and had minimized any adverse impact to users during the transition. Id. at MTS-1025722. GSA noted that in some areas, adherence to the coordinated transition plan was a weakness. Id.

54. In quality of service, GSA found that AT&T met the Government's minimum requirements, but that it could improve its responsiveness to Government requests for information, meeting small business subcontracting plan goals, and quickly resolving or eliminating delays to maintain project schedules. Appellant's Supplemental Appeal File, Exhibit 86 at MTS-1025723.

55. GSA determined that AT&T understood the major considerations and issues of the Year 7 PR/SR requirements, and that AT&T's technical proposal met the specifications and provided a sound approach to accomplishing any transition of services; that AT&T's traffic-handling analysis demonstrated capability of handling the additional traffic associated with the at-risk revenue of scenario one; and that AT&T demonstrated its ability to minimize interruption or degradation of its customers' services. Appellant's Supplemental Appeal File, Exhibit 86 at MTS-1025724.

56. GSA concluded that AT&T's generic transition plan displayed weaknesses in its lack of detail to form a baseline for the coordinated transition plan (CTP) and required improvement to support actual relocation of agency requirements. Nevertheless, GSA concluded that with sufficient Government involvement in the development of the generic CTP, AT&T could overcome its weaknesses to support the "requirement for a six month transition timeframe." Appellant's Supplemental Appeal File, Exhibit 86 at MTS-1025726.

Year 7 PR/SR pricing

57. The Year 7 PR/SR document required each FSC to submit a single set of fixed price tables for all contract services and features for each applicable fiscal year of the three-year period from month 85 through month 120. Appeal File, Exhibit 2 at B-2 (§ B.13.3.1). The price tables were to replace the existing price tables that had been effective until December 7, 1995. Id. On or about June 19, 1995, AT&T submitted its pricing proposal. Appellant's Supplemental Appeal File, Exhibit 18. Prices for SVS were dependent on call volume. Id. at Table 2.2.1.b. Prices for DTS were not volume dependent, but were priced according to the type of circuit. Id. at Table 2.2.6.1. xxxx xxxx xxxxxxxxxxxxxxx xxxxxxxx xx xxxxx
xxxx xxxxx xxx xxxx xxx xxxxxxxxxxxxxxx xxxxxxxxxxxx xx xxxxx xx xxxx xxx xx xxx
xxxxxxxxxxxxxxxx xxxxxxxx. Transcript at 153-54. The proposed prices were unconditional in that the prices proposed would apply no matter which scenario was chosen. Appellant's Supplemental Appeal File, Exhibit 60 at MTS 1017914; Transcript at 127, 2810.

58. The Government was not happy with the first round of prices submitted by each FSC. Transcript at 2811. In its closing statement to PR/SR discussions with AT&T, the Government noted that it "faces extreme downward pressure on budgets, and yet will still be providing AT&T with traffic volumes at least an order of magnitude larger than the vast majority of commercial contracts." Appellant's Supplemental Appeal File, Exhibit 60 at MTS-1017925. The Government expected that AT&T would "reciprocate by offering prices commensurate with the volumes to be produced by the Government." Id. The Government stated that it "decided to request a second round of price submissions." Id.

59. In the second round of submissions:

each FSC at its option, may propose a single overall discount for each of the Year 7 PR/SR scenarios to be applied to the FSC's monthly invoice (exclusive of taxes and SOC charges). This discount must be specific to each scenario, and shall be effective December 7, 1995, through the remainder of the contract, until termination of all services. This discount is to be applied to all of the network's monthly invoices. The sole criterion for this discount shall be the Year 7 PR/SR scenario that the Government selects, with the exception that the discount may be increased . . . with each contract year.

Appellant's Supplemental Appeal File, Exhibit 60 at MTS 1017927. These discounts were conditional upon each FSC winning its advantageous scenario (for AT&T, scenario one). Transcript at 121. In discussions with AT&T and Sprint, GSA urged the FSCs to take advantage of all available mechanisms, including the scenario-specific price table discount previously described (in a letter dated August 25, 1995) by the Government. Appellant's Supplemental Appeal File, Exhibit 60 at MTS-1017914.¹⁴

¹⁴ GSA represented that the Government expects the PR/SR process to yield prices commensurate with the "unprecedented volumes of Government usage." GSA emphasized that "mandatory use of FTS2000 services by Government agencies is expected to continue, (continued...)

60. In response to the call for a second round of price proposals, for a scenario one win, AT&T offered Network A-wide discounts of xxxxx percent, xxxxx percent, and xxxxx percent for contract years 7, 8, and 9 through 10, respectively.¹⁵ This discount applied to the total monthly invoice exclusive of taxes and SOC charges and would be applied to all of the network's monthly invoices. Appellant's Supplemental Appeal File, Exhibit 518 at A003154 (¶ 3.3.6.1). The prices applied to all Network A services delivered, not just to the reallocated services. *Id.* at A003154 (¶ 3.3.6.1); Appeal File, Exhibit 2 at B-3 (¶ B.13.3.3).¹⁶

61. AT&T officials expected competitive benefits from a scenario one win: the positive positioning in the industry resulting from a win of that size; the ability to serve new customers in contract period III, which would be a springboard to a bridge contract after the end of FTS2000; and the competitive advantage accruing to AT&T in any new competition to replace the FTS2000 contract from meeting the agency's requirements in the old contract. Transcript at 130-31. AT&T would also keep the FTS2000 business it already had. *Id.* at 124.

62. For a scenario two or scenario three award, AT&T proposed no network-wide discount. Appellant's Supplemental Appeal File, Exhibit 2 at A003154 (Table 3-14).

63. The FSCs requested that they be permitted to submit another round of best and final offers (BAFOs). Transcript at 4431. On or about November 8, 1995, AT&T submitted its final revised cost proposal. Respondent's Supplemental Appeal File, Exhibit 1608. In its final proposal, AT&T proposed increased volume band discounts for SVS, as well as scenario one discounts, and the combination of these discounts made AT&T's scenario one cost proposal the favored price proposal. *Id.* at 2600, 2672. AT&T's proposal beat Sprint's proposal by about \$63 million, and the cost panel felt that it was in the best interests of the Government to select scenario one as the outcome of the Year 7 PR/SR. Appellant's Supplemental Appeal File, Exhibit 101 at MTS-1020985; Respondent's Supplemental Appeal File, Exhibit 186 at MTS-1018347; Transcript at 2672-73.

GSA's SR evaluation

64. GSA, through its contractor Mitretek, evaluated the baseline revenue percentages from which transition was to occur in the case of a scenario one win. Appellant's Supplemental

(...continued)

so that FTS2000 traffic volumes will remain exceptionally high compared to those of other private telecommunications networks even if Government downsizing should reduce the absolute size of those volumes." Appellant's Supplemental Appeal File, Exhibit 60 at MTS-101794.

¹⁵ AT&T referenced four calendar years since the thirty-six month period for contract period III overlapped the calendar years.

¹⁶ Sprint proposed a consistent 13.3 percent bottom line discount for its scenario two offering. Transcript at 2605.

Appeal File, Exhibit 79; Transcript at 2572. Using BAFO prices and contract period III traffic projections, Network A revenue share was 68.2 percent and Network B revenue share was 31.8 percent. The difference between the Network A target revenue share (76 percent) and projected revenue share was 7.8 percent. GSA and Mitretek concluded that contract services representing an additional 8.2 percent of revenue needed to be transitioned from Network B to Network A, taking into consideration less expensive network charges, scenario discount factors, and volume effects on price. Appellant's Supplemental Appeal File, Exhibit 79 at G003087. Thus, GSA would have to transition services representing 16 percent of revenue from Network B to Network A. Id.; Appellant's Supplemental Appeal File, Exhibit 104 at MTS-1018322.¹⁷

65. GSA's contractor Mitretek studied what services would have to be moved between networks to meet the revenue targets for scenarios one, two, and three. Appellant's Supplemental Appeal File, Exhibit 104. Mitretek used the following criteria in descending order of desirability:

Preference Band 1	<ul style="list-style-type: none">•Total of Government Savings•Number of SDPs Moved
Preference Band 2	<ul style="list-style-type: none">•Volume of Consolidated Traffic•Whole Agency Moves•Communities of Interest
Preference Band 3	<ul style="list-style-type: none">•Balanced Agency Savings•Agency Percentage Savings•Service Moves--Whole Agency•Number of Agencies Moved
Preference Band 4	<ul style="list-style-type: none">•Partial Agency Moves•Service Moves--Partial Agency

Id. at MTS-1018314. The cost savings criterion was most important, followed by minimizing the number of service delivery points moved. Transcript at 2682-83. Whole agency moves were preferred to partial agency moves. Appellant's Supplemental Appeal File, Exhibit 104 at MTS-1018314. Mitretek and GSA presented six alternative agency sets for the Source Selection Advisory Council's (SSAC's) consideration in moving sixteen percent of the program baseline revenue from Network B to Network A. Id., Exhibit 104.

¹⁷ If GSA had chosen scenario three, then GSA would have had to transition services representing 8.2 percent of revenue--\$161 million--from Network A to Network B to retain the 60 percent/40 percent revenue split. Respondent's Hearing Exhibit 5; Transcript at 2575-76. If GSA had awarded scenario two, AT&T stood to lose services representing \$631 million of revenue. Transcript at 2578.

66. The SR Revenue Forecast Agency Profile predicted that of the agencies on Network B, IRS (Internal Revenue Service) 800 service would comprise 8.8 percent of revenue and other Treasury use would comprise 8.45 percent of revenue. The next largest agency on Network B was the Department of Justice at 5.99 percent, followed by the FBI at 1.60 percent. Appellant's Supplemental Appeal File, Exhibit 104 at MTS-1018322.

67. Mitretek had prepared agency sets for the SR phase transition; these sets explored SR options for each of the three scenarios. Appellant's Supplemental Appeal File, Exhibit 104. For scenario one, Mitretek proposed six alternative agency sets. All sets for scenario one included transition of either Treasury or IRS 800 service. Alternative agency set one included transition of all Treasury, including IRS 800 service. Alternative agency set eight included transition of Treasury (excluding IRS 800), the Department of Justice, and the Department of Labor, the Small Business Administration, the Judiciary, and the FBI. Alternative agency set eleven included the IRS 800, the Department of Justice, and the Judiciary. Id. at MTS-1018324.

68. The Source Selection Evaluation Board (SSEB) concluded that the scenario one outcome of the PR/SR exercise would be in the best interest of the Government. Appellant's Supplemental Appeal File, Exhibit 78. The SSEB saw the following impacts flowing from the Government's acceptance of scenario one: AT&T's target revenue share would increase from sixty percent to seventy-six percent; the Government would save \$600 million over the remaining three years of the FTS2000 contract as a direct result of the Year 7 PR/SR; the price of the average long-distance telephone call would drop by twenty-four percent; the Government would save between thirty and forty percent on use of private line circuits; the Treasury Department would move from the Sprint to the AT&T contract; and historic price reductions engendered by the FTS2000 contract would continue. Id. at MTS-1005273.

November 30 meeting

69. The SSAC consisted of representatives from the agencies on Network A and Network B. Appellant's Supplemental Appeal File, Exhibit 76 at 1006283. The Source Selection Authority (SSA) was the Commissioner of GSA's Federal Telecommunications Service. The SSAC and the SSA convened a meeting on November 30, 1995, to complete the Government process of making the PR/SR decisions. Id., Exhibit 75 at 1006289. The meeting lasted one day, from 8:30 a.m. to 5:00 p.m. Id., Exhibit 76 at 1006282. Technical and cost proposal evaluation and the PR decision was in the morning, and the SR presentation, discussion and decision was in the afternoon. Id.

70. GSA and Mitretek briefed the SSAC on the PR process. Transcript at 279. Mr. Brian Carman, then Director of Treasury's Office of Telecommunications Management, was Treasury's spokesperson on the SSAC. Id. at 267, 273.

71. Mr. Carman recollects that during the PR session, it was clear that scenario one was the cost scenario most advantageous to the Government. Transcript at 279. According to Mr. Carman, "That was kind of earthshaking news. Several of us in the room were not entirely prepared for that." Id. at 280. The news was earthshaking because in previous

conversations with GSA and Mitretek before the final BAFO and before the November 30 meeting, Mr. Carman had believed that Sprint would win the Year 7 PR/SR. Id. at 284-85.

72. The meeting then moved on to the SR phase. Transcript at 281. Mr. Carman was in the "hot seat." Until the PR session, Mr. Carman had not expected that the Year 7 PR/SR process would impact Treasury, but now that scenario one was the PR result, "it was fairly obvious to everyone in the room including myself that Treasury would have to be involved in [the SR process] from the standpoint that everyone knew that Treasury was the largest agency on Network B, and it would be difficult to achieve the revenue transition without some involvement from Treasury." Id. at 289.

73. Mr. Carman had had previous discussions with his boss, Mr. James Flyzik, Deputy Assistant Secretary of Treasury for Information Systems, Transcript at 267, in which it was decided that the integration of voice and data telecommunications systems across Treasury bureaus made the use of one vendor the most desirable option. Thus, if part of Treasury were to transition, it would be better for all of Treasury to transition. Id. at 281-82. Mr. Carman had expressed this policy to the SSAC members several times. Id. at 286. During the SR part of the meeting, in examining the agency sets for scenario one prepared by Mitretek, it was apparent to Mr. Carman that the only practical option was agency set one, the transition of all of Treasury to Network A. Id. at 290.

74. Mr. Carman, decided to, in his words, "take the offensive." Transcript at 291. He posed certain Treasury "conditions" to transition. Id. at 292. He told the SSAC that it would be impossible to meet a six-month transition window. Id. Mr. Carman had two principal reasons for believing that transition of all of Treasury would not be possible within a six-month window -- IRS's tax filing season and the installation of a new contractor to run Treasury's Communication System (TCS). The tax filing season, as described by Mr. Carman, was the period from December through the end of May in the next year, during which the IRS would not tolerate any changes to its communications or computers, unless it was operationally essential for them to do so for the tax filing season. Id. at 282. Transition of IRS and the rest of Treasury would not be possible for that reason alone. Id.

75. TCS requires some explanation. As Treasury's data network, the TCS, formerly known as the the Consolidated Data Network (CDN), had been managed through a contract between Treasury and Computer Sciences Corporation (CSC). Transcript at 804. After a recompetition of the network management contract in the fall of 1995, on September 28, 1995, TRW Inc. became the network manager under a ten-year contract worth \$425 million, and the network's name was changed to TCS. Appellant's Supplemental Appeal File, Exhibit 292; Transcript at 271, 1018, 1460, 1968, 3434, 3443, 4208. TCS consists of over 2700 long distance circuits and 5300 other circuits serving 5500 locations covering the continental United States, Hawaii, Alaska, Puerto Rico, and overseas locations in the Bahamas, Canada, and Mexico for the United States Customs Service. Transcript at 305, 812. Mr. Carman knew that TCS was a large and complicated data network that had grown in complexity over the years. Id. at 296-97. He estimated that it would take at least nine months to transition TCS from Network B to Network A. Id. at 297. In 1995 and 1996, TCS was transferring to TRW and simultaneous transition to AT&T was not possible. Appellant's Supplemental Appeal File, Exhibit 166 at G000046455; Transcript at 1053-54.

76. Mr. Flyzik, whom Mr. Carman consulted and briefed around the time of the November 30 meeting, considered a six-month transition of Treasury's telecommunications from Network B to Network A an impossible feat for any telecommunications vendor. Id. at 4218-19. Mr. Flyzik considered eighteen months to be realistic for transition of all of Treasury's telecommunications requirements. Id. at 4219. The current director of the Treasury transition from the FTS2000 contract to the FTS2001 contract believed that it would take at least a year to transition Treasury to Network A. Id. at 1960.

77. Mr. Carman, therefore, desired to make it very clear to the other agencies on the SSAC who were hoping for reduced telecommunications costs resulting from the transition that transition would not occur within six months. Transcript at 299.

78. While Network A and Network B each contained a core set of services, such as SVS and DTS, Treasury knew there were implementation differences between the networks that were not addressed in the PR/SR process. Transcript at 457-58.

79. Thus, the second concern expressed by Mr. Carman was that Treasury receive from Network A the equivalent services it had received on Network B. Transcript at 293. The SSA coined a term, "like-for-like," to describe the concept, which some IRS employees later interpreted to be identical services. Id. A transition manager for Lucent Technologies, a GSA contractor who worked on the transition with Treasury officials, see finding 139 *infra*, testified that like-for-like to IRS meant identically colored equipment. That is, if a pink cabinet had been on site on Sprint's network then AT&T would supply a pink cabinet. Id. at 3252. Ms. Frankie Collins-Brooks, AT&T's transition manager for the Treasury transition, testified that IRS expected that if Sprint had provided white binders, AT&T was expected to supply white binders. Id. at 524, 532.

80. Mr. Carman communicated his conditions to the SSA, and agreed to transition Treasury under those conditions. Transcript at 298, 301.¹⁸ According to Mr. Carman, everyone "breathed a sigh of relief when I said Treasury would transition. Because everyone was prepared for a long and protracted discussion and arm-twisting session to get an effective result." Transcript at 300.

81. Before agreeing to the transition to Network A, Treasury officials did not read the contract to determine whether transition within six months was feasible or whether the features of Network A would meet Treasury's particular requirements. Mr. Flyzik never read the FTS2000 contract or the Year 7 PR/SR document. Transcript at 4220. Treasury's Director of TCS never read the FTS2000 contract, the Year 7 PR/SR document, AT&T's proposal, the terms and conditions of the contract, or Modification 251 that resulted from the Year 7 PR/SR exercise. Id. at 838. Mr. Carman, the Treasury representative on the SSAC, was not personally familiar with the technical differences between Networks A and B and

¹⁸ At the hearing on the merits, the SSA did not recall the specific conversation with Mr. Carman concerning the impossibility of transitioning all of Treasury in six months. Transcript at 4494.

could not evaluate whether AT&T could provide what Sprint had provided, particularly to the IRS. Id. at 349-50. In fact, Mr. Carman testified that, because until the end of the PR/SR process it seemed as if Treasury would not be impacted by transition, no effort was put into "actually anticipating what a transition would take." Id. at 341.

82. The SR selection was based on the revenue split and not on whether Network A (AT&T) could satisfy agency-specific requirements. Transcript at 4458. The director of GSA's TCC for Network A believed that from an operational viewpoint, the selection of Treasury was the worst transition choice, because of the tax season issue and the incipient movement of CDN to TCS. Id. at 1463-64. Justice had wanted to move from Network B to A, and it would have been possible to move all of GSA's consolidated locations to Network A. The TCC director, Mr. William Daniels, believed that these moves would have satisfied a large portion of the transition requirement. Id. at 1464.¹⁹

Department of Treasury Organization and Telecommunications Needs

83. Treasury's four basic functions were: (1) formulating and recommending policy for the United States on financial, economic, taxation, and fiscal issues; (2) serving as the financial agent for the United States; (3) manufacturing sufficient quantities of currency and coins; (4) enforcing the law in regard to the Treasury mission. Appellant's Supplemental Appeal File, Exhibit 39 at 104626. The following bureaus and offices received telecommunications service under the FTS2000 contract: (1) Bureau of Alcohol, Tobacco, and Firearms (BATF); (2) Bureau of Engraving and Printing; (3) Bureau of the Public Debt; (4) Departmental Office; (5) Federal Law Enforcement Training Center; (6) Financial Management Service; (7) Internal Revenue Service (IRS); (8) United States Mint; (9) Office of the Comptroller of the Currency; (10) Office of the Inspector General; (11) Office of Thrift Supervision; (12) United States Customs Service (Customs or USCS); (13) USCS Data Network; (14) Financial Crimes Enforcement Network; (15) Savings Bond Marketing Office; and (16) United States Secret Service. Id. at 104626-73.

84. With regard to FTS 2000 services, IRS was the most important Treasury office on Network B. IRS had requested network modifications to fit its requirements, which caused friction over the years. Other Treasury bureaus felt that IRS received excessive attention. Id. GSA identified some points of contact within IRS as cooperative, but other points of contact as "difficult to work with." Id. GSA was also heavily involved in solving telecommunications issues with the Customs Service while on Network B, including issues involving service outages and restoration; consolidation of Customs offices; and the transition of the Law Enforcement Radio Network. Id. at 104667. In fact, that network had just completed a difficult two and one-half year transition to Network B in December 1995. Transcript at 1484.

¹⁹ The Government suggests that Mr. Daniels was a biased witness because he had been employed by AT&T since August 1997, about six months after leaving his employment with GSA. Transcript at 1406. Respondent's Proposed Findings of Fact 199 at 62-63. During the course of the hearing the panel chairman had occasion to observe the demeanor of Mr. Daniels. We did not find him to be biased as a witness.

GSA and FSC meeting of December 1

85. On November 30, GSA told AT&T that it would learn the result of the Year 7 PR/SR on December 1 at a meeting to be held at the Mitretek building. Transcript at 134-35. Mr. John Doherty, AT&T Vice President, Government Systems Division, and the core members of the AT&T Year 7 PR/SR team attended on behalf of AT&T. *Id.* AT&T did not know the results of the Year 7 PR/SR exercise when it was called to the meeting. *Id.* at 137.

86. Mr. Nicholas Hinko, the GSA contracting officer, announced that AT&T had won the Year 7 PR/SR competition, offered congratulations, and presented AT&T with a copy of Contract Modification PS251. Transcript at 139. The AT&T group reviewed the document, paying a lot of attention to the last page assigning Treasury, including IRS 800 service, to Network A and AT&T. *Id.* at 139. During this meeting with AT&T officials on December 1, GSA officials did not communicate to the AT&T group Treasury's conditions and concerns that Treasury had communicated to GSA the day before. *Id.* at 139-140, 1302-03, 3908-09. Neither did GSA at this time provide information to AT&T that would have put AT&T on notice of possible delays or difficulties in the transition of any FTS2000 contract service within a six-month period. Transcript at 3908-09.

The contract and Modification PS251

87. Modification PS251 provided in pertinent part:

a. Reference Contract Section H.14 [PR/SR]. As a result of the Government's evaluation of the FSCs' Year 7 PR/SR proposals submitted in response to Section H.14 and Government's Year 7 PR/SR Document, Scenario 1 has been determined to be the most advantageous scenario and is hereby implemented as part of the Contract. AT&T shall perform in accordance with the Government's requirements and proposal No. 95-005PRSR as it applies to Scenario 1.

b. The Government's Year 7 PR/SR Document, dated 4 Apr. 95, as amended . . . excepting Sections L, and M, is hereby incorporated into the contract.

. . . .

e. Prices incorporated herein become effective 7 Dec. 95.

. . . .

h. Changes to the FTS2000 network traffic will be necessary as a result of this modification. The following agency will transition from Network B to Network A: Department of Treasury, including IRS 800 service.

Appeal File, Exhibit 8 at 3-4. No unique agency requirements or features were described in the modification. Transcript at 315-16.

88. Mitretek and GSA knew that there were considerable differences between the ability of Network B and the ability of Network A to service Treasury's requirements. For example, Mitretek had analyzed the differences in Network A services for supporting IRS 800 services and concluded that there would be potentially major differences. Mitretek noted that Network B offered the capability to route to another 800 number when the primary number was not available. Network A did not offer that capability. Network B offered the capability to route to an off-net location when on-net trunks were busy. Network A did not offer that capability. Mitretek noted that Network A offered "make-busy arrangements" to on-net locations, while Network B offered make-busy to on-net and virtual on-net locations. Mitretek noted that enhanced 800 management information reports were structured differently by each of the networks. Appellant's Supplemental Appeal File, Exhibit 21 at MTS-1000673-74.

AT&T expectations after receiving Modification PS251

89. AT&T's John Doherty testified that AT&T was pleased that all of Treasury was moving to Network A because Treasury, through the IRS, had one of the largest "800" networks in Government and a large and growing data network. Transcript at 139-40. xxxxxx xxxxxxxx xxx xxxxxxxx xxx xxx xxxx xxxxxxxxxxxx xx xxxxxxx xxxxxx xxxxxxxxxxx xxx xxx xxxxxxxx xxxxxx xxxxxx xxxxxxx xxxxxxxx xx xxxxxxxxxxx xxxxxx xxxxxx xxxxxxxxxxx xxx xxx xxx xxxxxxxxxxx xxxxxx xxxxxxxxxx xxx xxx xxxxxx xxx.²⁰ After the award of scenario one, AT&T Government Markets advised its employees that "we have cause to celebrate over GSA's decision regarding FTS2000 PR/SR! GSA has awarded AT&T 76% of the FTS2000 business for contract years 8-10, by moving the services of the Department of the Treasury. This includes the agency's IRS 800 Network and the recently awarded TCS contract." Respondent's Supplemental Appeal File, Exhibit 164 at A001060. AT&T stated that its "new business will be comprised of the services of [Treasury], including the IRS 800 network and significant data networking opportunities from the recently awarded [TCS] contract." *Id.* at A001061.

90. On December 6, 1995, the AT&T Government Markets Chief Financial Office (CFO) issued an analysis of the expected revenue and profitability of the Year 7 PR/SR award. That office estimated that revenue would be reduced by \$54 million and estimated that measured operating income (MOI) would be reduced from \$44 million to \$15 million.²¹ Respondent's

²⁰ Inbound 800 service is provided when a person is calling an 800 number. xxxxxx xxxxxxxx xx xxxxxx xxxxxxxxxxx xxxxxx xxxxxxxxxxx xxxxxxxx xxxxxxxx xxx xxxxxxxx xxxxxx xxxxxx xxxxxxx xx xxx xxxxxxxxxxx xxx xxxxxxx xxxxxx xx xxxxxxxxxxx xxxxxx Transcript at 144.

²¹ Measured operating income is the measurement of income after the allocation of all fixed costs against a set of revenues. Transcript at 218. As explained by appellant's expert, a credible witness, top-level corporate managers and accountants use MOI as a measure of profitability because they must be concerned with covering all costs. Division managers are concerned with incremental costs and incremental profits, which is revenue minus
(continued...)

Supplemental Appeal File, Exhibit 171 at AO53860. Mr. Doherty testified that regardless of the measurement of MOI, the Year 7 PR/SR award was a valuable piece of business. The network costs considered by the CFO (i.e., the switches, fiber optics, the electronics, customer care capability) were sunk costs, costs AT&T already had incurred. AT&T "already had the network up, we already have circuits working." Transcript at 259. He considered the new business valuable to generate incremental minutes on the backbone network that had already been paid for. Id.

91. A later projection dated December 19, 1995, predicted a revenue drop of \$21.76 million; \$2.72 million per month of that drop would be due to volume band discounts on SVS, with an additional \$13.764 million revenue drop due to contract year eight discounts for the months of October through December 1996. The total predicted revenue drop was approximately \$36 million. Respondent's Supplemental Appeal File, Exhibit 205 at A054146. Mr. Doherty denied that AT&T intentionally delayed transition of Treasury's SVS requirements to Network A because of a desire to stay within higher priced SVS volume bands. Id. at 257-58.

Treasury expectations

92. Treasury Deputy Assistant Secretary Flyzik had been involved with the Executive Branch's National Performance Review. Transcript at 4078-79. He viewed a successful transition as being "a model for Government and playing [a] lead role in Government-wide activities." Id. at 4078.

93. That high-level view was not shared within the individual Treasury bureaus. The GSA contracting officer admitted that the Treasury bureaus were not enthusiastic about having to transition. Transcript at 2388. On December 8, 1995, shortly after the Year 7 PR/SR scenario one award, Mr. Carman and GSA officials briefed the IRS on the scenario one award. Mr. Carman testified that, at that point, word was filtering down to Treasury employees that he had "thrown Treasury over the transom" in terms of the PR/SR decision. Id. at 303; Respondent's Supplemental Appeal File, Exhibit 91.

94. At the December 8 meeting IRS expressed major concerns with the transition, including the upcoming tax filing season. Mr. Carman assured IRS that there would be no transition activity of IRS 800 service during the tax filing season, which the memorandum defined as January through June. Appellant's Supplemental Appeal File, Exhibit 91 at 00006961. IRS also was worried about loss of service functionality (such as wideband/compressed video and the structure of IRS 800 management reports) when service was transitioned to AT&T. Mr. Carman stated that AT&T would be required to provide the same service functionality as was provided on Network B; however, "it [was not] clear how this would be accomplished, i.e., contract mod or some other method." Id. Until a transition process had been put in place by the transition teams, it was business as usual as far as ordering services from Network B (Sprint). Id. at 0006962.

(...continued)
incremental costs of the project. Id. at 1615-17, 3773.

95. Mr. Charles Dubay, the Director of TCS, stated that while Treasury was in the middle of transitioning TCS, it now faced the prospect of a second transition of basic services, i.e., "another challenge . . . in the bureaucracy." Transcript at 818. The TCS transition manager, Ms. Litra Gunter, described people in the Treasury bureaus as "less than happy" about the prospect of transitioning to Network A. Id. at 1060. While the TCS transition manager denied at the hearing on the merits that no one in TCS wanted to transition, she testified exactly to the contrary in her deposition -- that "no one wanted to transition" because "we had concerns and issues about transitioning to a new contract vehicle and it was also coming up on tax filing season." She also testified that "we were ordered to transition, we were mandated to transition." Id. at 1062. In the view of the GSA transition manager, the various agencies within Treasury "didn't want to do it [transition to Network A], and they would raise objections." Id. at 1456.

Who would manage the transition?

96. Shortly after the Year 7 PR/SR modification, according to Mr. Carman, Treasury negotiated with GSA that it would assume the operational role in the transition, with GSA assuming an oversight role. Transcript at 326. Although GSA had a transition team in place, Treasury "was the sole agency involved, and [it] understood what was required to transition Treasury and [it] felt [it] had the technical competency to do so." Id. In one of the early Treasury briefings in January 1996, one of Treasury's stated objectives was a "Treasury Managed Transition." Appellant's Supplemental Appeal File, Exhibit 108 at 002036.

97. During one meeting on or about February 9, 1996, Mr. Flyzik told GSA executives, including the TCC director, that the Department of Treasury would manage the transition and that GSA's role would be strictly oversight. Transcript at 1454. He also emphasized that AT&T and GSA had to persuade Treasury bureaus to transition to Network A. Id.; Appellant's Supplemental Appeal File, Exhibit 139 at 001532. The TCC director believed that this was an abdication of the role of the TCC, which contractually had "a very strong central position" and that "he was not allowed . . . on a de facto basis to present that face to either the vendor or the customer, and . . . many times I had to take a back seat. I felt helplessness in some situations." Id. at 1451. The TCC director's marching orders from GSA leadership were to "satisfy the customer" because GSA was moving away from mandatory use contracts and because, with the repeal of the Brooks Act (40 U.S.C. § 759 (1994)), GSA had lost its role as the lead agency in charge of procurement of automatic data processing equipment for the Federal Government. Id. at 1450, 1554.

Early transition

Transition preparation

98. The AT&T transition manager was Ms. Frankie Collins-Brooks, a graduate of Savannah State University in Savannah, Georgia, with a degree in education. Transcript at 519. AT&T chose Ms. Collins-Brooks as its Year 7 PR/SR transition manager because she had demonstrated a capability of provisioning large Government agencies. Id. at 524. Ms. Collins-Brooks worked for AT&T in commercial marketing from 1979 through 1988 as a

customer systems consultant. Id. She joined the FTS2000 program in 1988 and worked as a process engineer. Id. at 519. She rose within AT&T's FTS2000 organization to become the service provisioning manager for AT&T's Department of Defense (DOD) accounts. Id. at 520. In that position, she was responsible for delivery of all FTS2000 services to AT&T's DOD accounts. Id. Ms. Collins-Brooks worked with the FTS2000 contract for ten years and took courses provided by AT&T in network engineering. Id. at 521-22. The AT&T FTS2000 Division Manager, Ms. Mary Brauer-Cox, who selected Ms. Collins-Brooks, thought her ideal because of her experience in operations and because of her background as a process engineer, i.e., an expert in the science and art of implementing telecommunications service within a particular timeframe. Id. at 525, 1843-44.²²

99. Within two weeks of being notified of the Year 7 PR/SR award, AT&T put together its "A Team" of fifty people, plus managers, to transition Treasury to Network A. Transcript at 526. More individuals would be added as the need arose, but in the beginning, AT&T considered fifty individuals adequate for the job. Id.

100. AT&T started the Year 7 PR/SR process without information from the Government as to exactly what was included in the Treasury transition. In order to gather information, AT&T anticipated performing on-site surveys and having extensive conversations with telecommunications representatives at the different Treasury bureau sites. Transcript at 527-28. AT&T's objective was to deliver services based on AT&T's contract. Id. at 532.

101. After assembling the transition team, one of AT&T's first priorities was to obtain Sprint's user location inventory database required by paragraph C.8.4.3.1 of the contract (Finding 31). Transcript at 535. On December 15, 1995, Sprint delivered to GSA's TCC four computer diskettes allegedly containing Treasury's user inventory locations. Appellant's Supplemental Appeal File, Exhibit 98. The TCC immediately transmitted the diskettes to AT&T, but it was found that two of the four diskettes were blank. Sprint sent replacement disks to GSA on December 18, and GSA sent these to AT&T on December 19. Id., Exhibit 103 at 100410.

102. AT&T examined the disks and found that Sprint's location information was in a Sprint unique number code. AT&T personnel spent all of the Christmas holidays attempting to decode it. Transcript at 535. The inventory that was provided was three years out of date, and the customer located network equipment (CLNE) database was twenty-five percent larger than it had been three years before. Appellant's Supplemental Appeal File, Exhibit 132; Transcript at 4017-18. The inventory provided did not describe the location or type of the CLNE or the location of the inside wiring or channel banks at Treasury locations. Appellant's Supplemental Appeal File, Exhibit 132; Transcript at 4018.

103. The director of GSA's TCC considered the inventories provided by Sprint to be worthless. Transcript at 1467. Sprint's transition chief advised GSA that as a relatively small company, Sprint lacked the capability to keep the detailed databases that AT&T could maintain, and that the inventory was unreliable after 1993. Id. at 1467. GSA was reduced

²² Ms. Collins-Brooks left AT&T in 1998. Transcript at 521.

to "jawboning" Sprint for additional information. Id. In the opinion of the GSA TCC director and the Sprint transition director, the only way AT&T could overcome the disadvantage of the inadequate inventory database was to have intensive conversations with Treasury officials and then conduct site surveys at each of the numerous Treasury locations. Id. at 1468, 4019.

Submission of coordinated transition plan

104. On January 15, AT&T submitted its CTP. Appellant's Supplemental Appeal File, Exhibit 110. AT&T established a bureau master transition schedule calling for transition of major bureaus between February 19 and April 21, 1996. Id. at 000561. AT&T contemplated transitioning IRS (non-tax) between April 1 and May 31, 1996, and IRS (tax) between May 1 and May 31, 1996. Id. Under AT&T's plan, site-specific cutover plans would form the basis for the day-to-day transition activities. Id. at 000565. For transition of SVS, AT&T posited a fifteen-phase transition schedule, running between December 21, 1995, and May 31, 1996. All known locations were already scheduled into phases as indicated in a cutover database, and the actual start times of the cutovers were to be negotiated to take into account local concerns. Id. at 000570.

105. AT&T contemplated eight steps for each phase: establishment of cutover committees; verification of SVS phone numbers; cutover notification and scheduling; presentation of site-specific cutover plans; order due date; completed-by due date; seventy-two-hour waiting period; and notification of completion. Appellant's Supplemental Appeal File, Exhibit 110 at 000580. Within each phase, AT&T allowed sixty-four days for completion of steps one through eight, with a consistent number of days for accomplishment of each step. AT&T allowed twenty-seven days for verification of SVS phone numbers; nine days for cutover notification and scheduling; six days for the site-specific cutover plans; fifteen days for ordering circuits; three days for circuit installation; three days for a seventy-two-hour waiting period; and one day for notification. Between phases, each step was to be spaced a week apart. Thus, for phase one, cutover committees were to be established on December 21, 1995, with verification of SVS phone numbers occurring on January 17, 1996. For phase two, cutover committees were to be established on December 28, 1995. Id. at 000580 (Table 1).

106. Transition plans for the TCS were delayed pending transition of the CDN to the TCS platform. Appellant's Supplemental Appeal File, Exhibit 110 at 000560. Thus, AT&T knew at the beginning of the transition process that the TCS transfer to Network A could not take place until CDN had completed its own transition from CSC to TRW. Id.

107. AT&T's CTP contemplated that the site-specific cutover plans would serve as the blueprint for day-to-day activities during the transition of each location. The site-specific cutover plans were to include unique requirements, special instructions, policies, and administrative data as it related to the specific location. Appellant's Supplemental Appeal File, Exhibit 110 at 000565.

Treasury Management Team

108. Treasury formed a Treasury Management Team (TMT) that was to guide the day-to-day process of transition. TMT was an ad hoc organization not required by the contract, formed as a result of planning activities, and composed of individuals from Treasury, GSA, Sprint, and AT&T. Transcript at 1416.

Early TMT meetings, transition planning, and delays

109. AT&T had planned to conduct its first site surveys on December 26, 1995, but Treasury requested a delay until the first transition meeting was held. Appellant's Supplemental Appeal File, Exhibit 115 at 100560. Bad weather and a Government furlough delayed the first meeting of the TMT until January 16, 1996. Id.; Transcript at 536-37. The opening remarks were presented by Mr. William Wunderlich, a Treasury employee. Appellant's Supplemental Appeal File, Exhibit 112 at 105155. The major work of the transition was to be accomplished through a direct relationship between AT&T and the Treasury bureaus, "with some exceptions." Id. at 105157. Treasury divided the TMT into working groups--SVS, IRS 800 Service, CDN/TCS, Video Conferencing, Administration, DTSMAN,²³ and Other Data and Customs Radio; each group was headed by a Treasury employee. Id. at 10515. Mr. Win Carter headed the IRS 800 working group and Mr. Charles Dubay headed the CDN/TCS working group. Id. at 105157-58. According to the minutes of the TMT, decisions of working groups were to be "final" with issues requiring review to be submitted back to the appropriate team. Id. at 105155.

110. The proposed transition process was to proceed with inventory review, site surveys, meetings to develop site-specific cutover plans, and the writing of service orders using inventory data. Appellant's Supplemental Appeal File, Exhibit 113 at 000474. Ms. Collins-Brooks of AT&T immediately distributed to Treasury bureau representatives at the meeting service inventory binders from Sprint so that each bureau could resolve discrepancies in the Sprint inventory. Id., Exhibit 112 at 105156. At the time of the meeting, Sprint had not provided terminating locations for 800 service, 800 service special features, e-mail users, packet dial users, NSEP requirements, special routing requirements, or delivery addresses for calling cards. Id., Exhibit 113 at 000477.

111. On January 19, the Director of the SOC for Network A, who was present at the meeting, advised the contracting officer that it was clear to all that IRS's insistence that there be no transition during its "tax season" and Treasury's request for site survey delay would make it impossible for the Treasury transition to occur within the six months contemplated by Modification PS251. Appellant's Supplemental Appeal File, Exhibit 115 at 100560.

112. On January 21, the Director of the SOC for Network A forwarded GSA's and Treasury's preliminary comments on the CTP to the GSA contracting officer. Appellant's Supplemental Appeal File, Exhibit 123. On January 31, the contracting officer forwarded these comments to AT&T for discussion at the next TMT meeting, which was scheduled for February 1. Id., Exhibit 124. The principal remarks were that an agency cutover profile for

²³ DTSMAN stands for Digital Telecommunications System Metropolitan Area Network. Appellant's Supplemental Appeal File, Exhibit 223.

each bureau was not provided, the plans in the CTP for changes in Network A did not include mention of possible service enhancement modifications to satisfy Treasury requirements, and the plan should be written for bureau and service lines, not for administrative units of Treasury. Id. at A009151. GSA noted that AT&T had not addressed Switched Data Services, SVS calling cards and 800 services, electronic mail, and wideband video transmission service. Id.

113. On January 25, 1996, following a meeting of the TMT at which participants agreed that weather related delays coupled with two customer-specific issues significantly threatened the six-month timeframe for transition, the contracting officer wrote AT&T that the transition timeframe would be extended "corresponding to the objectives of the transition management team." The two customer specific issues were: (1) IRS's request that no FTS2000 communication services supporting tax related activities be transitioned before the end of the tax season; and (2) Treasury's request that AT&T's site survey work, scheduled for December 25, 1995, be delayed until after the first meeting of the TMT. The contracting officer's letter of January 25 established no new date for completion of the transition, but stated instead that delays such as these as might occur as a result of customer and weather related situations would be minimal. Appellant's Supplemental Appeal File, Exhibit 117 at 00004957. Shortly thereafter, on January 31, when forwarding to AT&T GSA's and Treasury's comments on the proposed CTP (finding 123), the Government advised AT&T of a new target date, namely, 12:01 a.m., July 22, 1996, for completion of the transition. This extension was said to be due to the Government furlough and weather problems which delayed the first TMT meeting. Id., Exhibit 124 at A0009151.

114. In the meantime, Treasury came to realize that there were differences in service features and administrative procedures between Networks A and B. To address these issues, Treasury formed an informal body of Network A users called a transition advisory group to advise Treasury on the features of Network A. Appellant's Supplemental Appeal File, Exhibit 120.

115. The second TMT meeting was held on February 1, and Treasury again raised issues that would impact transition -- who was to pay for the cost of transition and "what will the bureaus transition to." Treasury also wished to know how GSA and AT&T would terminate the services (i.e., bring them to the user's desk). Appellant's Supplemental Appeal File, Exhibit 125 at 0000855. As to that issue, GSA had based the award of Modification PS251 on the expectation that Sprint would sell GSA its channel banks -- about 1300 in all -- and inside wiring as it had done in PR/SR 4. Transcript at 1468-69, 2296. The contracting officer did not brief AT&T on GSA's expectation and does not recall whether anyone else did. Id. at 2296. As of the second TMT meeting, whether Sprint would sell the channel banks to the Government was still an open question, Appellant's Supplemental Appeal File, Exhibit 151, which would not be answered until February 28 and announced at the next TMT meeting on March 7. Id., Exhibits 148, 156.

116. On February 7, AT&T submitted a revised CTP. It submitted a further supplement on February 19. Appellant's Supplemental Appeal File, Exhibit 128; Respondent's Supplemental Appeal File, Exhibit 269. AT&T proposed a twenty-three phase transition schedule by Treasury Service/Bureau geared toward completion of transition on July 22.

Respondent's Supplemental Appeal File, Exhibit 269 at 100523. AT&T explained that the first phases would be devoted to the GSA consolidated locations, virtual on-net locations, and Federal calling cards. Id. at 100533. Video and packet services would transition in phases eleven through twenty-three and electronic mail in phases four through fifteen. Service methodologies to support video applications were under review by the IRS. Non-tax critical services for IRS would transition before May 1, 1996, while tax-critical services would transition after May 1, 1996. During each of the defined phases, dedicated access switched voice and dedicated transmission services would transition from Network B to Network A. CDN transition would be planned and scheduled by a sub-team with representatives from the interested parties. Id. at 100533-34. Adherence to the schedule was dependent upon the availability of the existing channel banks at Treasury sites. The plan stated that "if additional channel banks or digital interface equipment is required, AT&T's Office of Configuration Control and Management will advise Treasury's Transition Manager, GSA's TCC and renegotiate the transition of the specific site to another phase." Id. at 100534.

117. On February 21, in response to AT&T's revised CTP of February 7, Treasury stated that there should be no transition until acceptable arrangements to provide Network B services on Network A had been agreed upon by AT&T, GSA, and Treasury, and a written memorandum of understanding had been executed. Appellant's Supplemental Appeal File, Exhibit 141 at 001575. Treasury also asked that AT&T provide bureau-specific cutover plans. Id. In addition, Treasury requested that IRS 800 service, the CDN/TCS network, the Customs Radio Network, and IRS video conferencing be excepted from the initial six-month transition period, with individual transition schedules being separately and later developed for each activity. Id.

118. AT&T began cutting over circuits at GSA consolidated locations, which were almost exclusively voice circuits. Transcript at 1309-10, 3461. AT&T had scheduled the cutovers to begin on February 14. Appellant's Supplemental Appeal File, Exhibit 140. However, GSA orally stopped cutovers on February 20 and confirmed its decision in writing on February 23. Id. In its letter to AT&T, GSA stated there that the cutovers had halted because the CTP had not been approved, that the transition plans were still under review, and that "recent events" had caused the cutover date to become obsolete. Id. The internal meeting minutes of the GSA TCC the day before, however, state that the cutovers were halted because of the channel bank and reimbursement issues raised by Treasury. Appellant's Supplemental Appeal File, Exhibit 139.

119. On February 27, AT&T objected to what it viewed as GSA's stop work notice. AT&T requested a date certain by which the CTP would be approved and complained about the notion that some services would not transition in 180 days. Appellant's Supplemental Appeal File, Exhibit 143 at 100515-16.

120. In the meantime, at the end of February, Treasury was insisting that AT&T take responsibility for the maintenance and operation of the channel banks and inside wiring at Treasury locations. Appellant's Supplemental Appeal File, Exhibits 144, 145 at 005783. Treasury requested that AT&T act as GSA's agent in purchasing the channel banks now under Sprint's contract, and that AT&T maintain the equipment through a subcontractor.

Appellant's Supplemental Appeal File, Exhibit 146 at 00005783. The TMT met on February 28, and as of that date, whether Sprint would sell its channel banks to AT&T or the Government was still unknown. Id. at 00006917. The issue of equivalent services (or like-for-like) remained a concern; the director of GSA's TCC, who was present at that meeting, assured the TMT that Network A provided equivalent service in terms of data rates, price elements, and level of service. Id. The issue of which services were equivalent was under examination by AT&T, GSA, and Treasury. Respondent's Supplemental Appeal File, Exhibit 288 at 0000904.

121. On the very day the TMT met, Sprint advised GSA that it would need the channel banks and other CLNE for other purposes and would not sell them to AT&T or the Government, but that the CLNE would be left in place until cutover, when the CLNE would be removed. Appellant's Supplemental Appeal File, Exhibit 148.

122. On March 1, GSA conferred with Treasury and AT&T to explore options for providing the channel banks. The least favored approach was to issue a sole-source contract to AT&T for maintenance of the inside wiring. The most favored approach was to modify AT&T's FTS2000 contract to include CLNE and inside wiring for all Network A agencies. It was not known whether regulatory constraints would prevent such a modification. A third approach was to persuade Sprint to change its mind. Appellant's Supplemental Appeal File, Exhibit 149.

123. On March 5, GSA forwarded to AT&T Treasury's comments regarding AT&T's revised CTP. Treasury asked that transition not begin until financial arrangements for reimbursement of transition costs had been agreed to by GSA and Treasury. Treasury requested that AT&T prepare bureau-specific cutover plans to be reviewed and approved by the bureau Transition Manager (TM) prior to cutover. Furthermore, no location would be transitioned without prior approval of the bureau TM. Appellant's Supplemental Appeal File, Exhibit 151 at A015664.

124. On March 6, GSA and Treasury entered into a memorandum of understanding (MOU) that GSA would pay Treasury's costs of transition to Network A. Appellant's Supplemental Appeal File, Exhibit 153.

125. In the latter part of March 1996, AT&T added Mr. R. Gregory Douglas to its transition team, in order to deal with what AT&T deemed to be Treasury's hostility toward transition. Transcript at 1173. That hostility was manifested orally in "screaming fits" by IRS personnel in the field accusing AT&T of misleading, misrepresenting, and lying. Id. at 1174. During TMT and other transition planning meetings, Treasury officials would call AT&T employees "liar," "inept," "incompetent," and "losers." Id. at 1859. Treasury officials would make statements such as, "The people working on this project don't know their rear ends from the hole in the ground." Id. Mr. Win Carter, transition manager for IRS, was said by AT&T employees to be particularly abusive. Id. at 625, 1858-59. Ms. Collins-Brooks testified that throughout the numerous TMT meetings Treasury employees would bang their fists on the table, scream, and yell. Id. at 624. She recollects that this conduct continued "from the beginning to the end." Id. at 625.

126. GSA's Mr. Daniels, who had heard of the unprofessional tone at the TMT meetings, attended one in the late summer of 1996 and found the atmosphere "charged with animosity." Transcript at 1851. Another GSA representative in the meetings described the language Treasury officials used toward AT&T as "a battering, [a] verbal abuse." This witness recalls Treasury officials' use of profanity, such as the phrase, "They'll [referring to AT&T] throw s _ _ up against the wall and see if it sticks." Id. at 3026.

127. On March 7, AT&T submitted a revised CTP. Appellant's Supplemental Appeal File, Exhibit 155. The plan included a cutover schedule for GSA consolidated locations; a specific bureau master transition schedule; and a bureau/site-specific phased cutover schedule for SVS. Id. at A018009-30. For SVS cutover coordination, AT&T instituted a national command center to oversee cutovers at each phase until the phase was completed. Id. at A010102. AT&T also developed an on-line cutover database which included current inventory as provided by Sprint, site survey data, transition schedules, and service activity order per phase. GSA and Treasury had on-line view-only access to this database via AT&T packet dialing service. Id. at A018106. Cutover dates for CDN/TCS, IRS 800 service, and video services were listed as "to be determined." Id. at A0108056.

128. Also on March 7, another TMT meeting took place. It was announced that Sprint would not sell CLNE to AT&T. Appellant's Supplemental Appeal File, Exhibit 156 at 000289. This made AT&T's site visits, which were described as the "key," of greater importance to successful transition. Id. With Sprint not transitioning its equipment, power and space requirements at Treasury locations were a new complicating factor. Id. at 000292. IRS stated that AT&T's window of opportunity was between May 1st and the end of the calendar year, and that if all could not be done within that window, transition might have to take place in 1997. Id. at 000291.

129. AT&T expressed the desire to transition GSA consolidated locations. Appellant's Supplemental Appeal File, Exhibit 156 at 000290. For electronic mail, the working group was "still getting a handle on Bureau requirements." Id. at 000291. In the meantime, in preparation for transition, AT&T installed four gateways between Network A and Network B backbones in Washington, D.C., Chicago, Los Angeles, and Atlanta. Id.

130. During the open discussion, the Customs Service objected to any arbitrary dates in the CTP and stated that it did not wish to be bound by timeframes for transition. Appellant's Supplemental Appeal File, Exhibit 156 at 000293. One Treasury employee expressed concern that IRS was receiving most of the attention and was assured by AT&T that it was adding two people to the AT&T team to ensure that the remaining bureaus were receiving as much attention as IRS. Id.

131. On March 8, AT&T presented a proposal to GSA to purchase CLNE and inside wire for Treasury, pursuant to GSA's sole-source procurement. Appellant's Supplemental Appeal File, Exhibits 157, 160 at 001593.

132. GSA convened a meeting of the TCC on March 14. There had now evolved four levels of transition meetings -- an executive level meeting chaired by Mr. Flyzik; the bi-

weekly TMT meetings; the weekly TCC meetings; and the working group team meetings, which convened as necessary. Appellant's Supplemental Appeal File, Exhibit 160.

133. The TCC stated that April 16 through November 1 was the window of transition for IRS and that "all cuts must be started and completed within these dates." October 16 was deemed to be the start date for the CDN/TCS transition. Appellant's Supplemental Appeal File, Exhibit 160 at 001501.

134. Treasury, particularly IRS officials, were insistent that there be no transition functions performed during the tax season. The TCC Director was told to "keep AT&T out of here until after April 15th, that we don't have time for them. We can't talk with them, we're not going to plan with them, we're certainly not going to transition." So it was "keep AT&T away from me until we get some breathing room." Transcript at 1458-59. A GSA Network A transition employee stated that sites containing tax-related IRS 800 numbers were "off-limits" during tax season. Id. at 1881-82. By off-limits, according to this official, Treasury meant that there was to be no contact between AT&T or LECs and IRS employees at IRS 800 sites during the tax season and no site surveys by LECs or anyone else. Id. at 1883-84. The sites where there was tax-related IRS 800 service (as opposed to non-tax-related IRS 800 service) were not a majority of the physical sites. Id. AT&T did not know until May 21 which IRS 800 sites were tax related or non-tax related. Appellant's Supplemental Appeal File, Exhibit at 201 at A004061; Transcript at 2023.

135. During the tax season, AT&T officials did, in fact, have contact with high-level IRS telecommunications officials such as Win Carter and other members of the IRS 800 working group. However, a witness called by AT&T contended that during this period AT&T also needed close coordination among local government contacts, vendors, and employees of IRS service centers in order to successfully plan and transition IRS 800 service. Transcript at 1496, 2878-79. To transition IRS 800 service to Network A, AT&T contended that it would have to have constant communication with IRS field employees knowledgeable about the physical configuration of call centers, the number of people there, peak calling times, current traffic data, and so forth. Id. at 172-73. This contention contrasts sharply with the answer provided by AT&T to a Year 7 PR/SR pre-award question regarding how AT&T planned to ensure the accuracy of its data if denied access to specific locations prior to cutovers. See Finding 35. In any event, although IRS people were not available, AT&T's Transition Manager stated that AT&T was able to work on other parts of the Treasury transition and that there was quite a lot of other work to do. Id. at 698-99.

136. On March 21, Sprint filed a protest at the GSA Board of Contract Appeals (GSBCA) contesting the award of a sole-source contract to AT&T for the inside wiring. Appellant's Supplemental Appeal File, Exhibit 165. Sprint also filed a protest at the General Accounting Office alleging that the improper mathematical imbalance and improper release of evaluation rankings tainted the procurement. Id., Exhibit 179 at 00006768. Also on March 21, the TCC decided there was to be no transition of CDN to Network A until the CSC/TRW transition of CDN to TCS was completed. Id., Exhibit 166 at G00004655.

137. On March 27, Treasury and GSA agreed to accept the CTP. As of that date, AT&T had identified 212 locations for site surveys and had completed site surveys at 66 locations,

with 143 locations to be scheduled. Appellant's Supplemental Appeal File, Exhibit 171 at 1026. AT&T was also prepared to cut over 73 GSA consolidated locations between March 25 and April 16. Id.

138. The Sprint protest at the GSBCA was settled on March 28 and dismissed on April 1. Appellant's Supplemental Appeal File, Exhibit 172; Sprint Communications Co., L.P. v. General Services Administration, GSBCA 13567-P, 1996 BPD ¶ 48.

139. As of March 28, GSA and AT&T expected to solve the CLNE problem the week after the TMT meeting. Appellant's Supplemental Appeal File, Exhibit 179 at 00006768. The CLNE problem, however, was not solved until May 3, when GSA issued a blanket purchase agreement to Lucent Technologies for the channel banks and inside wiring. Respondent's Supplemental Appeal File, Exhibit 387. Deliveries were expected to start in June. Id. at 002344. Until the CLNE issue was resolved, AT&T could transition only those circuits not using channel banks -- GSA consolidated locations, Virtual On-Net (VON) services, and all locations that had dedicated access lines. Transcript at 568. The services using channel banks -- data services and some IRS 800 service -- could not transition. Appellant's Supplemental Appeal File, Exhibit 269 at A029557; Transcript at 569.

140. On or about March 29, AT&T transition managers received a warning that the transition would be impacted by a corporate project that would consume AT&T's T-3 high speed line capacity. The warning stated that the Olympics were impacting facility requirements and were considered a higher priority. Respondent's Supplemental Appeal File, Exhibit 339 at A053944-45.

141. As of April 10, AT&T had transitioned approximately 160 switches at GSA consolidated locations. Appellant's Supplemental Appeal File, Exhibit 179 at 00006766. Problems were reported at three switches -- Denver, Colorado; St. Paul, Minnesota; and Chattanooga, Tennessee. AT&T agreed to present bureau transition plans to be approved at the bureau level. Id. AT&T did so because it was told by Treasury that the transition would not continue without bureau-specific plans. Transcript at 1499.

142. GSA formally accepted AT&T's CTP on April 17. Appellant's Supplemental Appeal File, Exhibit 183.

143. At the April 9 SVS working group meeting, Treasury requested that AT&T provide detailed transition plans for each 800 service application by May 30. The question of like-for-like services as they related to unique number reports and peg count (see finding 144) were outstanding issues presented by IRS. Id. at 001113.

144. What AT&T called the "peg count" feature of Network A is a feature which counts the number of calls received by a customer, in this case IRS, for on-net service delivery points. Appellant's Supplemental Appeal File, Exhibit 1 at 5.3.2.29; Transcript at 1186-87. On Network A, the peg count information was to be displayed on a customer-provided terminal device at the customer's location. Appellant's Supplemental Appeal File, Exhibit 1 at 5.3.2.29. The "make busy" (as named by AT&T) feature enables a customer to "busy out" (insert a busy signal) on trunk lines so that calls would be diverted to another call center.

Transcript at 4084. AT&T offered this feature under the FTS2000 contract as an option. Id. at 1186-88. Such features were of critical importance for IRS. During tax season, IRS centers receive thousands of call per hour. Id. at 1903-04. Information on the number of calls received was required to satisfy a mandatory reporting requirement to Congress and to monitor, on a real time basis, how service was being provided at IRS sites. Based upon this information, IRS would make adjustments in staffing to accommodate the call volumes. Id. at 1186, 1904, 3281-83.

145. Sprint had a feature similar to peg count under its network that used an electric/mechanical box called a COMTOR (computerized overflow telephone register) box. Transcript at 1186, 4084; Appellant's Supplemental Appeal File, Exhibit 211, at 102580. The COMTOR box, supplied as Government furnished equipment, was antiquated technology. Transcript at 564-65, 1902-05, 4014.

146. As between Sprint's COMTOR box and AT&T's peg count/make busy feature, GSA's TCC director considered AT&T's peg count/make busy features to be far superior due to their ability to provide more timely data and more robust content. Transcript at 1561.

147. Unique Number Report (UNR) is a feature by which the IRS determines how many callers get through to the IRS on their first call attempt, their second attempt, their third attempt, etc. Transcript at 3281. This information is very important to IRS not only for tracking its own business but also for preparing reports to Congress as well. Id. at 1902, 3281. The UNR identifies calls which are coming from unique numbers, without identifying the numbers themselves. Id. at 1196.

148. In March 1996, AT&T advised Treasury that the UNRs were not providing accurate data. Transcript at 1218. AT&T gave the raw data it had collected to Treasury so that Treasury could make an assessment of whether AT&T's raw data was consistent with Treasury's raw data. Id. at 1219. An AT&T programmer had truncated a data field, preventing the data in that field from flowing into other fields. Id. at 1219. This specific programming problem was identified and fixed within a couple of days. Id. at 1220.

149. On or about April 16, Treasury asked that AT&T customize its UNRs per Treasury requirements, by format, delivery options, data elements, and collection interval. Appellant's Supplemental Appeal File, Exhibit 201 at A004062.

150. On May 17, AT&T transition managers reported that xxx circuits necessary to service IRS 800 service would represent ten percent of unfunded circuit capacity requirements for 1996. Respondent's Supplemental Appeal File, Exhibit 408. They wrote higher headquarters for assurance that AT&T could provide the required network capacity. Mr. Robert Douglas, an AT&T division sales manager assigned in the latter part of March 1996 to help with the Treasury transition, testified that the AT&T network was sufficient to handle the additional traffic resulting from the transition. He testified that transition managers were assured that they would have the capacity to install the circuits. Transcript at 1270-72.

151. According to TMT meeting minutes of May 29, thirty GSA consolidated locations were scheduled for cutover on May 30, with thirty-one locations to cut over after that date.

Forty exclusive use locations were cut over. AT&T reported that the bulk of switched voice site surveys should be completed by "the end of this month." Appellant's Supplemental Appeal File, Exhibit 208 at 001111. IRS requested the IRS 800 transition plan on May 30; AT&T reported that it had still not received validated data to be provided by IRS (see finding 110), but that it would submit the plan in any event. Id. at 001112.

152. On May 21, GSA announced that it expected AT&T to act as GSA's agent for coordination of Lucent's installation and maintenance of channel banks and inside wiring. Appellant's Supplemental Appeal File, Exhibit 213 at A015735.

153. On May 30, AT&T presented a CDN/TCS transition plan and the IRS 800 service transition plan. Appellant's Supplemental Appeal File, Exhibits 210, 211. AT&T intended to transition TCS in multiple phases. The initial phase was a pilot test in which twenty-three circuits establishing connectivity at thirty-eight Treasury sites would be transitioned. Id., Exhibit 210 at 001977. AT&T's contract did not require a pilot test, but AT&T agreed to the pilot to please Treasury. Transcript at 891; Appellant's Supplemental Appeal File, Exhibit 240. The TCS transition plan contained an implementation schedule for the pilot test only, not for other TCS sites. Id. at 210 at 001985.

154. Treasury would use the test to acquire an understanding of how TCS transition operated and how well AT&T, Lucent Technologies, and TRW worked together. The pilot test was scheduled to occur between July 8 and July 12. TRW's role included, in part, issuing service order requests to AT&T detailing all requirements and monitoring network and equipment performance. Appellant's Supplemental Appeal File, Exhibit 210 at 001979. AT&T's responsibility included providing Lucent with notification of locations requiring installation of D4 channel banks, providing Lucent with notification of locations requiring inside wire, and design and engineering of all circuits. Id. Lucent's role, in part, was to install the channel banks and inside wiring where required. Id. at 001980.

155. In its IRS 800 plan, AT&T proposed three approaches for IRS to consider: split access installation by 800 number; total access installation by 800 number; or multi-carrier (vertical/geographical) installation. Appellant's Supplemental Appeal File, Exhibit 211 at 102837. The split access approach involved Sprint relinquishing half of the circuits at each IRS 800 site, with the remaining half transitioning the following week. Id. Total access by 800 number involved AT&T connecting to SDPs once Sprint relinquished all terminations at each site. Id. The third approach involved authorization to direct 800 service traffic to more than one exchange carrier. Id. AT&T recommended a combination of the first approach for some IRS 800 services and the second approach for others. Id. at 102849. AT&T had scheduled October 14 as the last date for cutover of IRS 800 services. Id. at 102870. AT&T scheduled customer SVS for cutover as late as September 23. Id. at 102868.

156. On June 6, AT&T presented to the GSA Administrator its view that GSA was mishandling the transition. AT&T maintained that the intent of the contract to move forty percent of Sprint's business on Network B to Network A had been violated; that ninety-eight percent of Sprint's business remained on Network B, causing AT&T a revenue shortfall of \$40 million. Appellant's Supplemental Appeal File, Exhibit 216 at A002475. AT&T

discussed "equitable adjustment alternatives" such as eliminating the scenario specific discount and reverting to October 1, 1995, DTS and SVS prices. Id. at A002477.

157. On June 7, GSA rejected AT&T's IRS 800 Service transition plan because it did not provide for accelerated transition of services. Appellant's Supplemental Appeal File, Exhibit 220.

158. As of June 12, the parties set the following target completion dates for different types of SVS: July 5 -- completion of GSA consolidated locations (248 of 302 locations had been transitioned by June 12); July 31 -- Treasury exclusive use systems (46 of 177 locations had been transitioned); July 12 -- DTSMAN; June 30 -- VON (5228 of 8300 lines had been transitioned); June 30 -- Authorization Code Cards (30,000 of 35,000 cards had been issued). For IRS 800 service, the parties set the beginning of cutover at July 29 with completion of cutover on September 15. The parties set December 31 as the target completion date for CDN/TCS and Customs Radio Network (CRN) and Video Transmission Services. Appellant's Supplemental Appeal File, Exhibit 223 at 3961-62.

159. On June 13, the Contracting Officer stated that IRS 800 Service represented fifty-four percent of the revenue to be transitioned and that CDN/TCS represented twenty-three percent of the revenue to be transitioned. Appellant's Supplemental Appeal File, Exhibit 224. He stated that AT&T had yet to furnish acceptable plans for transition of those services because "Treasury couldn't articulate its requirement." Id. at 00005503. By that he meant that Treasury was not able to effectively communicate to AT&T how the unique features it enjoyed on Network B were to be transitioned to fit on Network A. Transcript at 2402-04. Regarding CDN/TCS, the contracting officer noted that there were "unresolved contractual issues involving Treasury's contracts with CSC and TRW." Id.

160. Mr. Flyzik commented that AT&T would have to sell the Treasury bureaus on transition, while members of the TMT commented that AT&T engaged in too much marketing. Appellant's Supplemental Appeal File, Exhibit 227 at 1012729.

161. By memorandum of June 14, Treasury commented unfavorably on AT&T's transition plan for CDN/TCS. Treasury noted that AT&T took responsibility for providing only the circuits and requested that AT&T take responsibility for the entire process so that like-for-like service would be applicable throughout the life of the project. Appellant's Supplemental Appeal File, Exhibit 228 at 1000074. Treasury asked that Lucent's roles and responsibilities be assumed by AT&T even though Lucent, not AT&T, would be performing the work. Id. at 100076.

162. On June 14, AT&T presented to GSA its plan for transition of IRS video services. Appellant's Supplemental Appeal File, Exhibit 229 at A037221.

163. On June 18, AT&T presented a draft statement of work to Lucent to make Lucent AT&T's agent for installation of channel banks and inside wiring at Treasury sites. Appellant's Supplemental Appeal File, Exhibit 236.

164. On June 19, the Acting Assistant Director, Strategic Planning and Program Administration, Comptroller of the Currency (COC), noted that AT&T was not prepared to provide "like service" to Treasury and that AT&T had not presented a consolidated schedule for transition to Network A. Appellant's Supplemental Appeal File, Exhibit 238 at 002313. The Acting Assistant Director stated that the Comptroller of the Currency expected to transition as an integrated network and that "we need a schedule that has been coordinated with Sprint for a transition of services down to an hour on a given day." Id. at 002314.

165. The Acting Assistant Director of the COC summarized the causes of transition delays: (a) GSA was unprepared to transition Treasury from Sprint to AT&T because it did not consider the basic differences in network architecture between Network A and Network B; (b) GSA had not addressed funding issues (memorandum of understanding resolving the funding issue was in place only since the previous May); and (c) GSA did not know what type of equipment was needed for transition. Consequently, GSA did not take the minimum steps necessary to transition Treasury to Network A. Appellant's Supplemental Appeal File, Exhibit 238 at 002312. The Acting Assistant Director also complained that AT&T was not prepared to provide "like service" to Treasury. Id.

166. On June 21, AT&T submitted revised transition plans for CDN/TCS and IRS 800. Appellant's Supplemental Appeal File, Exhibits 240-41. For CDN/TCS, AT&T stated that it "maintained overall coordination responsibility for total installation of services to include installation of required CLNE (channel banks . . . and inside wire)." Id., Exhibit 240 at 102736. One of TRW's responsibilities was to "monitor[] network and equipment performance and work with AT&T, Lucent, GSA and Treasury to resolve issues." Id.

167. The director of TCS recommended that Treasury reject the transition plan for TCS and put TCS on hold. He thought that "the basic problem with the AT&T plan is that AT&T does not step up to being the single point of contact for circuits and take responsibility for the service. They do not provide like service to [sic] Sprint." Appellant's Supplemental Appeal File, Exhibit 242 at 000419. He particularly objected to TRW's assigned responsibility of coordination of the network, which he deemed unacceptable. He stated that "AT&T accepts no responsibility for end to end service at SDIS sites. When TRW detects a problem they are left with the problem of working with any of three parties to fix the problem, AT&T, Lucent or GSA. Is AT&T or GSA going to pay TRW for serving as circuit integrator?" Id.

168. On June 26, Treasury rejected AT&T's IRS transition schedule methodology (see finding 155) because it did not want to deactivate fifty percent of the trunks servicing certain IRS 800 numbers simultaneously. It requested that AT&T deactivate only fifty percent of any one of the trunk groups and assure successful cutover prior to the deactivation of the next fifty percent associated with any one number. Appellant's Supplemental Appeal File, Exhibit 248.

169. As of June 26, Treasury had not approved AT&T's transition plan for IRS 800 service. Appellant's Supplemental Appeal File, Exhibit 250 at 00006690-91. At the TMT meeting, the participants expressed dissatisfaction with the pace of transition. Treasury stated that unless peg count issues were resolved, there would be no transition of IRS 800 service. Id.

at 00006690. Treasury did not want to proceed with transition of TCS until AT&T had agreed to be the single point of contact for DTS. Id. at 00006691. GSA opined that little problems existed in the transition, but that was to be expected. Id. at 00006689.

170. On July 2, GSA accepted the transition plan for IRS 800 service; GSA authorized AT&T to proceed immediately to implement IRS 800 service transition to Network A. Appellant's Supplemental Appeal File, Exhibit 257.

171. On July 2, AT&T submitted its CDN/TCS transition plan which dealt with the scheduled pilot test, not the complete TCS transition. Respondent's Supplemental Appeal File, Exhibit 1624 at 100611. AT&T agreed to maintain overall responsibility to direct and manage the activities and performance of key vendors supporting AT&T's transition activities. Id. at 100621.

172. During the summer, AT&T decided to implement a "quiet period" from July 1 through August 15, 1996, during which there was to be no activity on hardware installations on the east coast, including Atlanta, Georgia; Washington, D.C.; and New York, N.Y. Respondent's Supplemental Appeal File, Exhibit 397 at A053933. The quiet period affected AT&T's switches that were to be used to service the IRS 800 switches. Transcript at 696.

173. AT&T summarized what it viewed as its difficulties in planning for transition of Treasury services to Network A. Appellant's Supplemental Appeal File, Exhibit 269. Regarding IRS 800 service, AT&T saw the inability of its transition team to contact IRS end users and the lack of adequate information as to IRS 800 circuit inventory as a major impediment to transition of the service. Id. at A029555. AT&T believed that "the GSA solution for CLNE" was a critical input for the development of transition schedules for networks requiring D4 channel banks, i.e., IRS 800 and TCS. Effective planning could only begin once that solution was in place. AT&T was also told that TCS transition to Network A could not take place until thirty to sixty days after the CSC/TRW transition, which was scheduled for completion on August 13. AT&T asked that new DTS orders (as opposed to those that would transition) be directed to AT&T. Treasury refused on the grounds that the CSC billing system would not accept the FTS2000 billing information without a major financial investment. DTS orders continued to go to Sprint. Id. at A029558.

174. AT&T wanted to supply Treasury with peg count/make busy, but Treasury insisted on the COMTOR box. For Treasury, use of the COMTOR box was a "show stopper." Treasury considered continuation of the COMTOR box on Network A part of the "like-for-like" commitment (see finding 79). Transcript at 1905-06. In the summer of 1996, AT&T tried to reverse-engineer its network to support the COMTOR box and found that it would cost about \$1 million of development work to accomplish that task. Id. at 1192-93. On or about July 22, IRS decided to accept AT&T's solution. Appellant's Supplemental Appeal File, Exhibit 279.

175. Peg count/make busy used a personal computer (PC), a dedicated telephone line, and a printer at each IRS call site. Transcript at 1913-14. The parties agreed that AT&T would supply and pay for the PCs and that the PCs would remain AT&T property; GSA would pay the monthly recurring charge for the line to connect the PC; and Treasury would pay for the

176. While there was a contemplated start date of July 29 for transition of IRS 800 service (see finding 158), AT&T was prepared to cut over IRS 800 circuits commencing on July 26. AT&T had to coordinate delivery of the PCs and the set-up of the necessary telephone lines for the PCs with its cutover schedule. At three sites where cutover was scheduled for July 26, IRS stated that it would take about thirty days to coordinate with GSA's Public Buildings Service for the necessary jacks, lines, and power. Respondent's Supplemental Appeal File, Exhibit 599 at 0572.

178. On August 8, GSA issued Modification PS270 to include the UNR feature in the FTS2000 contract. Appellant's Supplemental Appeal File, Exhibit 288.

179. AT&T's peg count/make busy and unique number reports were accepted on or about September 10, with the IRS commenting that the peg count/make busy equipment not only met requirements, but also provided additional capability. Appellant's Supplemental Appeal File, Exhibit 299 at 00003615.

180. AT&T began cutting over IRS 800 service in August, when the issue of hunt sequencing arose. Transcript at 1197. xxxxxxxxxxxxxxxx xx x xxxxxxxxxxxxxx xx xxxxxxxxxxxxxx
xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xx x xxx xxxxxxxxxxx xx x xxxxxxxxxxxxxx xxx xx xxxxxx
xx xxxxxxxx xxxxxxxx xx xxxx xxxxxxxxxxxxxxxxxxx xxx x xxxx xxx xxxxxxxx xxxx xxxxxxxxxxxxxx
xxxxxxxx xxxxxxx xxx xxxxxxxxxxx xx xxx xxx xxxxxxxxxxx xx xxx xxxxxxxxxxx xxxx xxxxxx xxxx
xxxxxxxxxxxxxxxx xxxxxx xxxx xxxx xxx xxxxxxx xxx xxxxxxxxxxx xxxxxx xx xxxx xx xxxx xxxxxxxxxxx
If no channel was open, hunt sequencing would proceed to the next circuit in line.
Appellant's Hearing Exhibit 7; Transcript at 1198-99. Sprint's hunt sequencing, when it
passed through all twenty-four channels of a particular T-1 circuit and found the channels
busy, moved on to the next circuit without first looping back to its original circuit.
Appellant's Hearing Exhibit 7; Transcript at 1202. For telefile applications, i.e., calls that
were answered by a computer instead of a person, Sprint's hunt sequencing method was more
functional since AT&T's application tended to lock up computers on the loop-back portion
of the AT&T methodology. Sprint's methodology did not lock up computers. Transcript at
1202-03.

181. By November 4, 1996, AT&T advised IRS that it had re-engineered its network switches to provide Network B hunt sequencing functionality. Appellant's Supplemental Appeal File, Exhibit 339 at 003826.²⁴

Network A and Transition

182. As of July 31, 1996, transition of SVS was substantially complete, with the exception of IRS 800 service. Appellant's Supplemental Appeal File, Exhibit 274 at G101398.

183. On August 20, GSA reported to the FTS2000 Agency Coordinators Meeting that "the [Treasury] transition to Network A [was] progressing well." Appellant's Supplemental Appeal File, Exhibit 294 at 001202. GSA reported that transition of SVS (save for IRS 800) was essentially complete, that exclusive use SVS locations were seventy-five percent complete and should be finished by the end of August, and that the DTSMAN and VON services were completed. Id. GSA described the transition of IRS 800 service as more difficult, but expected to be completed by the end of September. Video services were expected to transition in October. Id.

184. On October 18, an embarrassing incident occurred in Denver, Colorado. IRS traffic that should have been routed to the Denver Collections Office of IRS was routed to J.C. Penney Co. AT&T resolved the problem in three hours; Treasury thought it should have taken fifteen minutes to correct the problem. Appellant's Supplemental Appeal File, Exhibit 328 at 100089. On October 29, AT&T explained to IRS that a programmer who was manually correcting an erroneous billing code inadvertently entered an incorrect routing telephone number in a different data field. When the database was closed, the incorrect routing number went into effect, redirecting to J.C. Penney calls coming to the IRS Denver Collections Call Center. When the error was brought to AT&T's attention, the maintenance technician did not have access to the correct routing telephone number which had been changed in the routing database. In response, AT&T changed the way it recorded data in the data base so as to give database technicians full information required to correct routing numbers and routes. AT&T also established a team for IRS 800 trouble handling. Id. at 003222-23.

185. The Treasury Transition Report of October 23, 1996, shows that the transition of all IRS 800 numbers was actually completed on October 6, 1996. Appellant's Supplemental Appeal File, Exhibit 324. GSA consolidated services were 100 percent complete, agency exclusive use service was 89 percent complete, DTSMAN was 100 percent complete, VON was 100 percent complete, wideband video transmission service (WVTS) was 94 percent

²⁴ AT&T's technical description was: "AT&T will implement a supplementary software capability, called Sequential Trunk Hunt (with and without memory), in order to meet the IRS's need to continuously keep the lower trunks occupied with calls. This hunting feature provides the IRS with the A sequential hunting feature used previously on Network B. xxxxxxxxxxxx xxx xxxxx xxxxxx xxxxxxxx xx xxx xxxxx xxxxxxxxxxxx xxxxx xxxxxxxxxxx x xxxxxxxxxxx xxxxxxxxxxxx xx xx xxxxx xxxxxxxx xxxxxxxxxxxx" Appellant's Supplemental Appeal File, Exhibit 339 at 003826.

complete, compressed video transmission service (CVTS) was 51 percent complete, TCS was 1 percent complete, non-TCS circuits were 15 percent complete, and CRN was 0 percent complete. Id.

186. AT&T still had to solve remaining operational issues with the special features of peg count/make busy, hunt sequencing, and UNR after transition to Network A. On October 12, AT&T had discussions with IRS about these problems, which were memorialized in its letter to IRS of October 24. Appellant's Supplemental Appeal File, Exhibit 326. AT&T originally deployed the peg count/make busy feature with dial-up lines; AT&T replaced the dial-up lines with dedicated lines and solved printing difficulties with a software fix. Id. at 003669. IRS had reported data problems in the UNRs; AT&T promised accurate UNRs by October 29. One user reported that the PC that produced the UNRs tended to disconnect during the download of the UNR. AT&T promised a software fix of that problem. Id. When the system administrator chose to busy-out lines, the action adversely affected hunt sequencing. AT&T promised a paper examining solutions to the problem. Id. at 003670. IRS also complained about trouble handling procedures. AT&T agreed to meet with IRS to examine a full range of maintenance concerns and to resolve the issue of trouble handling. Id.

187. On or about October 19, GSA prepared a draft cure notice notifying AT&T of AT&T's alleged unsatisfactory performance of the Year 7 PR/SR transition, a condition which endangered performance of the contract. Appellant's Supplemental Appeal File, Exhibit 317. The contracting officer testified that the contents of the cure notice were shared with GSA contracting officials, the GSA Office of General Counsel, and the TCC. Transcript at 2224. The contracting officer did not specifically remember if AT&T knew about a draft cure notice, but did remember telling AT&T officials that if AT&T did not "do something, it's going to get ugly." Id. at 2225.

188. IRS also reported trouble reporting and service performance issues, including the misdirection of IRS calls to J.C. Penney Co., and telecommunications traffic bottlenecks in mid-October at sites in Holtsville, New York, and Rancho Cordova, California. Appellant's Supplemental Appeal File, Exhibit 328 at 100089-90. The problem in California stemmed from an AT&T building fire in Colorado. Id. at 100090.

189. Despite AT&T's promises, see finding 186, Treasury remained unhappy with AT&T's performance and stated its concerns in a letter dated October 25 from Mr. Flyzik to GSA Federal Telecommunications Service Commissioner Robert Woods. Appellant's Supplemental Appeal File, Exhibit 328 at 100086. Treasury identified the three problem areas as peg count terminals and training, UNR and trouble handling, and responsiveness. Treasury stated that when Treasury was selected for transition to Network A, "it was agreed that LIKE OR BETTER SERVICE would result. Treasury feels we are far short of this agreement at this point." Id. Treasury enclosed comments from the IRS and requested assurances that AT&T would solve the issues mentioned in the IRS comments by November 1. Treasury stated that if AT&T was unable to provide such assurances, Treasury would request, and would expect the GSA Administrator to approve, an exception to the use of FTS2000 services for the IRS for the upcoming tax filing season. Id. Problems encountered with peg count/make busy included the modem PC connection noted above, hourly information not rolling into daily reports, a status message appearing every five minutes,

printing troubles, freezes of terminal screens, daily reports not matching up to hourly reports, and inaccurate hourly reports. Id. at 100088.

190. Mr. Flyzik considered that in making these judgments, he was "results oriented," rather than contract oriented. Transcript at 4243-44. According to Mr. Flyzik, while the contract's terms and conditions were not unimportant, his "focus was the mission" of the Department of the Treasury. Id. at 4243.

191. The Board asked Mr. Flyzik why Treasury did not ask GSA to terminate the FTS 2000 contract for default, if AT&T's performance of the transition was as poor as described. Transcript at 4113. Mr. Flyzik testified that while he had discussions with Commissioner Woods about those issues, he believed it was important to maintain the FTS 2000 contract because of the Government-wide cost savings, which would be jeopardized if the Government default-terminated AT&T. Id. at 4114-15.

The Service Level Agreement (SLA)

192. Shortly before November 1996, IRS became convinced that without the optional features such as peg count/make busy and hunt sequencing in place at all IRS sites, the 1997 tax season would not be a success. Transcript at 3289-90. IRS concerns about AT&T's implementation of IRS 800 service were escalated to the Commissioner of the IRS. Id. at 485, 3289. IRS drafted a SLA which was designed to focus the attention of GSA and AT&T leadership on the problems Treasury, and, in particular, IRS were having with implementation of IRS 800 service on Network A and to obtain a strong commitment from AT&T to redouble its efforts to meet the IRS's requirements as to peg count, hunt sequencing, UNRs, and trouble handling. Id. at 485, 3290.

193. The introduction to the SLA stated:

The . . . IRS requires world class FTS2000 telecommunications service. AT&T makes the following commitments to the Department of the Treasury and the . . . GSA to help ensure service readiness and high quality performance during the duration of this contract. This agreement, regarding the FTS2000 contract . . . , does not change the contract; rather, it makes more definite the expectation of the parties to the contract.

Respondent's Supplemental Appeal File, Exhibit 879 at 00003934. The SLA addressed problems with service, performance and trouble handling, unique number reports, peg count/make busy terminals, and hunt sequencing. Id. at 00003934-37. The SLA contained solutions to improve performance in each area. For example, for trouble handling, AT&T promised to provide a specific toll-free number for reporting problems and to assign a trouble ticket number for tracking of each problem. Id. at 00003934. In the section called "General" at the end of the document, the SLA provided:

No further Treasury Data Services will be transitioned until all problems with FTS2000 are resolved to IRS satisfaction and only after submission of a transition plan approved by Treasury and GSA. The data transition plan will

include provisions for live pilot tests as well as detailed information on survey plans, dates, etc.

Id. at 00003938. The SLA was signed by the Administrator of General Services on November 8 and an Executive Vice President of AT&T on November 16. Id.

194. On the day the SLA was executed, the contracting officer learned from Mr. Daniels that instead of sending the cure notice required by the Termination for Default clause, GSA would follow "a different course" and sign the SLA. Transcript at 2227-29. When the contracting officer reviewed the SLA, he considered that it had effectively transferred transition responsibilities from GSA to Treasury; that is, the SLA "ended my ability to forward transition" except for the act of passing transition plans to and from the contractor and the agencies. Id. at 2231. By the time the SLA was signed, the contracting officer considered transition of SVS to be in its final stages, with the transition of DTS remaining. Id.

195. From AT&T's perspective, the SLA made no change in its contractual rights or obligations, but imposed additional requirements that went beyond transition, such as peg count/make busy, methods of hunt sequencing, and types of information to be included in UNRs. Transcript at 179, 1385.

196. By letter dated November 6, Sprint advised GSA of its commitment to meeting IRS's network requirements on or before December 22, provided Sprint received formal notification of the Government's intent to use Network B for IRS 800 service and the remainder of Treasury's telecommunications service before November 8. Appellant's Supplemental Appeal File, Exhibit 349 at 0006723.

TCS transition

197. Mr. Flyzik contemplated that AT&T would first perform the "easy stuff" (GSA consolidated locations and SVS) and then move to the harder tasks -- TCS. Transcript at 4279-80. Mr. Flyzik testified that the TCS transition never got started because AT&T did not satisfy Treasury requirements for SVS. Id. at 4300. He stated that "we were close to within a year of the contract expiring and we still didn't have a [TCS] transition plan that was acceptable." Id. The contracting officer, however, had never issued a stop work order for transition of TCS. Id. at 2237.

The pilot test

198. The pilot test involved the transition of twenty-two circuits at thirty-nine locations. Respondent's Supplemental Appeal File, Exhibit 956 at 003526. The parties scheduled the pilot test to last for one week from July 8 through July 15. The pilot test commenced on July 15, which was one week beyond its scheduled date due to a request from Lucent to obtain resources, and was completed on August 6. Respondent's Supplemental Appeal File, Exhibit 956 at 005326. At the hearing, a Lucent employee confirmed in response to counsel's questions that Treasury never told some of the pilot sites that their circuits had been selected for the pilot. Transcript at 3250.

199. During the conduct of the pilot, test transition of three circuits was canceled. Of the nineteen remaining circuits transitioned, seven were transitioned by the scheduled cutover date; three circuits were transitioned one to four days beyond the scheduled cutover date; six circuits were transitioned six to eleven days beyond the scheduled cutover dates; and one circuit was transitioned seventeen days beyond the scheduled cutover date. Respondent's Supplemental Appeal File, Exhibit 956 at 003528-29. The reason the pilot took three weeks instead of one week was a particular LEC's inability to provide timely access to its circuits. Transcript at 910-11. The AT&T cutover manager described the pilot as a success. Id. at 571. The TCS director testified that the pilot was a success in the sense that the pilot identified potential difficulties and areas of improvement both for AT&T and the Government in moving to a full transition of TCS. Transcript at 892.

200. TRW issued a "lessons learned" document which indicated six problems shown by the pilot: sites unaware of the pilot; power problems; space problems; earthquake regulations; site being moved (resulting in canceled installation); and site point of contact being unavailable to support installation, resulting in a two-week slip of the installation date. Appellant's Supplemental Appeal File, Exhibit 259 at 1314. The TCS director testified at the hearing on the merits that none of the identified problems was the fault of AT&T. Transcript at 910.

The Andover node

201. On October 3, 1996, AT&T submitted its final transition plan for TCS. Respondent's Supplemental Appeal File, Exhibit 768.²⁵ AT&T planned to transition TCS in fourteen phases, targeting fourteen nodes within the network. Id. at C-1. The start-up phase was scheduled to commence on October 7 and to last fifteen working days, or until October 25. Id. at A-1, C-1. The start-up phase targeted the New England region, id. at C-1, and the plan was to move through these nodes until the main hubs of Boston and Andover, Massachusetts, were fully transitioned. Id. The first node in the start-up phase was Andover, the second was Holtsville, New York, and the third was Philadelphia. Id. at D-2.

202. AT&T contemplated transitioning one hundred forty-nine circuits over three weeks, fifty-five circuits the first week, fifty-three circuits the second week, and forty-one circuits the third week. Appellant's Supplemental Appeal File, Exhibit 768 at E-1. AT&T planned to transition between seven and fifteen circuits per day, depending on the day. Id.

203. TRW was the DAR to issue service or circuit order requests to AT&T detailing all requirements, determine the access type required, validate network and equipment performance, and accept installed services. Respondent's Supplemental Appeal File, Exhibit

²⁵ As of the date of the transition plan, the transition project had grown to the transition of over twenty-seven hundred DTS circuits, multiple network nodes, four IRS mega-centers, and five hundred Customs border crossings. Respondent's Supplemental Appeal File, Exhibit 768 at B-1. A node is a central hub location within the regional structure of a TCS network. Transcript at 577. Under this configuration, each individual circuit is usable once cut over. Id. at 739, 894, 3255.

768 at D-4; Transcript at 849-51. After AT&T received circuit orders from TRW, AT&T would have to negotiate with the LECs and with Lucent for installation of access and equipment such as channel banks. Transcript at 614-15. The LEC would acknowledge the order and advise AT&T when it could install access at a customer site. Id. at 617. After a circuit was installed by the LEC, AT&T would then have to test the circuit. Id. For sites such as Andover which used channel banks, id. at 615, AT&T would work with Lucent to secure the channel banks and inside wiring. Id. at 619, 3127-28.

204. Mr. Howard Polivy was the AT&T national transition manager for TCS, and he had ten to twelve non-management people and five managers working to transition TCS. Transcript at 3126-27. To ensure a smooth transition at Andover, Mr. Polivy requested that TRW provide AT&T with circuit orders no later than August 15 so that the everything would be in order for the October start date. Id. at 3148. TRW actually placed about 164 circuit orders with AT&T on August 16 and August 19.²⁶ Respondent's Supplemental Appeal File, Exhibit 656; Transcript at 1132-33, 3163-64, 3253-54.

205. A word of explanation is necessary for the finding immediately above. In its proposed findings of fact, appellant states that "approximately 160 circuit orders" were placed "just before Labor Day." Appellant's Proposed Finding of Fact 175, Appellant's Proposed Findings at 59. Respondent maintains that TRW issued "approximately 167 circuit orders" for the Andover node and delivered them to AT&T on August 16 and 19. Respondent's Proposed Finding of Fact 613, Respondent's Proposed Findings at 145. Ms. Litra Gunter, the TCS transition manager, testified that TRW sent the circuit orders to AT&T on August 16 and 19 by fax or by courier. Mr. Polivy testified that he received the circuit orders just before the Labor Day weekend. The circuit orders themselves, introduced as respondent's supplemental appeal file exhibit 656, are dated August 16 and 19. Ms. Gunter's testimony as to when AT&T received the circuit orders is consistent with the dates as stated on the circuit orders, and we accept her testimony as to the date AT&T received them. Mr. Polivy's testimony is not necessarily inconsistent; he testified as to when he received the circuit orders, not when AT&T received them. We credit the testimony of Lucent's Ms. Sandra Freedman (transcript at 3253) that 164 circuit orders were delivered.

206. Mr. Polivy immediately sent circuit orders to the LEC, but forgot to include between eighteen and twenty circuits in the order. Transcript at 3145-46. On or about October 5, Mr. Polivy realized he had missed ordering between eighteen and twenty circuits. Id. at 3141. He and Ms. Collins-Brooks called the LEC to expedite installation of the circuits. By expedite, he meant provide the installation service at shorter than the normal interval. Id. Mr. Polivy testified that the LEC agreed to expedite installation of some circuits, but he did not recall how many. Id. at 3142.

²⁶ A circuit order was called an FTS 2000 circuit feature request form. The form gave a wealth of site information, local exchange carrier information, and circuit routing information to enable a circuit installer to install the circuit. See, e.g., Respondent's Supplemental Appeal File, Exhibit 656 at 002200 (Circuit ID CKS005505).

207. At a transition meeting on October 8, Mr. Polivy told Ms. Gunter that AT&T would be ready to start the transition on October 15, and that there would be no significant problems. Respondent's Supplemental Appeal File, Exhibit 1633 at 001379; Transcript at 3153. Mr. Polivy did not advise the participants at that meeting of the potential problem with the twenty late circuit orders because he thought he could expedite service from the LEC. Id. at 3154.

208. The Lucent representative at the meeting, Ms. Freedman, was shocked that Mr. Polivy made the representation that AT&T was ready to transition the Andover TCS circuits when, earlier, Mr. Polivy had told her of the late-ordering problem with the twenty circuits. Transcript at 3204-05. Ms. Freedman testified that she confronted Mr. Polivy after the meeting and asked Mr. Polivy why he had lied to the customer. Id. at 3204-05. Ms. Freedman testified that Mr. Polivy stated, "I did as I was told." Id. at 3204. Mr. Polivy does not remember that conversation. Id. at 3156.

209. Several days after the meeting of October 8, the AT&T TCS transition team met and had a circuit-by-circuit review of the Andover transition. Transcript at 3205. Ms. Freedman testified that a significant number of circuits were missing, according to her "enough to shut us down as far as being able to service it in an economical mode." Id. at 3205-06. At a TCS transition meeting on October 15, AT&T reported that access to all the circuits would not be ready until October 17. Respondent's Supplemental Appeal File, Exhibit 761 at 001396. Lucent stated at the meeting that it did not make sense to cut over four sites and then have to return for three sites at a later date. Id. AT&T reported that transition could start on October 18, but that the anticipated completion schedule of November 4 would slip. Id. Treasury -- once again -- reminded the participants that there could be no transition of circuits during tax season -- January 15 through May 15. Id.

210. Ms. Freedman testified that the two-day delay "haunted us all the way through" because technicians would be scheduled to make a single tour of remote sites. It made no sense for technicians to go to remote sites to terminate circuits that were installed and then make separate trips to terminate the later circuits at those sites. Transcript at 3208.

211. The circuit installation began on October 18 and, based on the revised start date, was due to end on November 5. Respondent's Supplemental Appeal File, Exhibit 458 at 003204.²⁷ According to the Treasury summary of the Andover transition, the transition

²⁷ This exhibit is Ms. Gunter's review of the course of transition of the Andover node, which Ms. Freedman agrees accurately summarized the course of that transition. Transcript at 3221.

process involved installation of 169 circuits at 293 locations.²⁸ As of December 18, 162 circuits were cut over to AT&T. Id. at 003204.

212. There were many reasons for the delay of the transition beyond the late placing of the circuit orders. Among the significant issues that Ms. Gunter's summary noted were: confusion about the transition process among transition team members; lack of coordination among team members; AT&T's inability to obtain site access for transition activities; AT&T's inability to meet firm order confirmation dates; failure of the LEC to install circuits by the requested due dates; circuits installed at the wrong addresses; in more than one instance, lack of dial-in circuits necessary to configure channel bank units; and inadequate coordination between vendors and the Government-site points of contact. Appellant's Supplemental Appeal File, Exhibit 458 at 003204-05.

213. Mr. Daniels, the chief of GSA's TCC, testified at the hearing that the problems transitioning the Andover nodes were "normal glitches" and "dispatch glitches," but that there were "no systemic problems with the transition." Transcript at 1505. Mr. Daniels testified that he did not stop the transition of TCS, and that the only thing holding up the transition of services was the SLA. Mr. Daniels testified that there was "movement" to resolve the SLA issues. Id. at 1507.

214. In the fall of 1996, Mr. Dubay, the Treasury TCS Director, formed the opinion that there could be no further transition of TCS after the Andover node was completed. Transcript at 939-40. Mr. Dubay believed that Treasury could not continue transition after tax filing season based on AT&T's performance. Id. at 940. Mr. Dubay assumed that AT&T would only be able to transition other nodes' circuits at the same rate it transitioned Andover and would not, therefore, be able to transition in accordance with AT&T's stated schedules. Id. at 945-46.

215. The GSA contracting officer was not aware of the conclusion reached by Treasury's TCS Director and was of the opinion that transition should continue. Transcript at 2487.

216. On March 11, 1997, a TCS-wide network outage occurred, resulting from operation of a TCS telecommunications circuit procured from AT&T. Appellant's Supplemental Appeal File, Exhibit 449 at 100027. The TCS network requires its switching equipment and nodes to be synchronized to prevent outages. Transcript at 371-72, 896. xxxxxx xxxxxxxx xxxxxx xxx xxxxxxxx. Id. at 371, 373, 1216. Until the outage, GSA, TRW, and Treasury's TCS manager were not aware that under Network A, AT&T did not provide network timing. Appellant's Supplemental Appeal File, Exhibit 449 at 100027. After the outage, AT&T proposed that TCS provide its own network clocking, as was the practice with other Network

²⁸ There is a discrepancy between this finding as to the number of circuits to be transitioned and the finding as to the number of circuit orders TRW delivered to AT&T. See finding 205. Settling this discrepancy is not necessary to resolve the issues in this case, and the possible explanation for the discrepancy is found in the summary's observation that circuits were "added and canceled during this process for numerous reasons." Respondent's Supplemental Appeal File, Exhibit 458 at 003204.

A agencies. Treasury refused that suggestion, as it would add additional complexity and costs to the agency's operations. Id. at 100029.

217. At a TCS working group meeting in early March, AT&T was advised by Treasury personnel that transition of TCS would be canceled and that the Andover node would be transitioning back to Sprint. Appellant's Supplemental Appeal File, Exhibit 430. AT&T had sought confirmation from other individuals and was told that they were unaware of any purported TCS cancellation. Id. at 100238. The GSA representative at the TCS working group meeting questioned whether Mr. Dubay had the authority to halt the transition and whether GSA's upper management would favor such a step. Id., Exhibit 427 at A037595. On March 14, AT&T wrote the contracting officer and requested clarification as to the status of transition no later than March 17. Id. at 100239. GSA did not respond. Transcript at 1316, 2491.

218. Mr. Dubay's recommendation to cancel TCS transition is reflected in the TMT meeting notes of March 26, 1997. The meeting notes state that Mr. Dubay recommended cancellation of the TCS transition, and that there was no official response to the recommendation. Appellant's Supplemental Appeal File, Exhibit 437 at 003563.

219. On March 19, 1997, Mr. Dubay, who was leaving his job eleven days later, issued a memorandum in which he recommended to his successor that TCS transition, which he had already suspended, not resume. Appellant's Supplemental Appeal File, Exhibit 433; Transcript at 1000-01.

220. On April 21, 1997, Mr. Flyzik wrote Mr. Woods concerning alleged unacceptable performance by AT&T during the transition of Treasury services from Network B to Network A. Appellant's Supplemental Appeal File, Exhibit 441. Mr. Flyzik stated that on March 21, despite standing behind the UNR reports until that date, AT&T admitted that there might be a ten to twenty percent error in the UNR reports for March. Id. at 006593. Mr. Flyzik stated that AT&T was unaware of the magnitude of the problem, and that while AT&T was now confident that revised UNR statistics for January, February, and March were essentially accurate, "IRS's confidence is at an all time low." Id. Mr. Flyzik stated that while issues with peg count/make busy had been stabilized, increasing call volumes had resulted in problems of data accuracy. Id. at 0006594. Citing the SLA, Mr. Flyzik stated that "AT&T has lost a great deal of credibility with Treasury and the IRS." Id.

221. The contracting officer testified that he thought the ultimate decision to cancel TCS transition was Mr. Flyzik's. Transcript at 2493. Although Mr. Flyzik did not recall the specific actions Mr. Dubay took regarding TCS, id. at 4345, Mr. Flyzik advised Mr. Doherty of AT&T that no telecommunications manager in the world would begin a transition in April of 1997 on a contract that was due to expire a year later, unless the transition plan had a "modernization flavor" that would offer value to the Treasury beyond the current contract. Id. at 4351.

222. On June 20, Mr. Woods of GSA wrote Mr. Flyzik that "we need to move forward and weigh the potential liabilities the Government may incur if we forego the balance of transition." Appellant's Supplemental Appeal File, Exhibit 457 at 002543. GSA stated that

AT&T was preparing a modified transition plan for TCS, and that "it is our recommendation that all [SVS] be transitioned immediately." Id. Mr. Woods "agreed with suspending any new transition activities at the present time." Id. at 002544. On July 14, however, Mr. Woods wrote Mr. Flyzik that "GSA has not requested any contractual remedies relative to AT&T performance," and that "completing the transition or making some other decision that will bring a final resolution to the transition is of [the] utmost importance." Id.

223. AT&T served notice on GSA by letter of July 25, 1997, that it "asserts a possible right to breach damages and to an equitable adjustment on the FTS2000 contract price. This right would be based on the government's failure to both implement the contractually mandated Year 7 PR/SR service reallocation to AT&T of 40 [percent] of Network B traffic and to comply with its contractual responsibilities for the transition of the Department of the Treasury from Network B to Network A where such failures prevent AT&T from receiving the revenue share promised by PR/SR." Appellant's Supplemental Appeal File, Exhibit 492 at A016289.

Customs Service

Customs Radio Network

224. The Customs Radio Network (CRN) consists of 456 VG7 private line circuits that originate from one site in Orlando, Florida, and terminate at hundreds of radio towers located throughout the United States. Appellant's Supplemental Appeal File, Exhibit 219 at A016570.

225. The Sprint decision not to sell CLNE to AT&T presented acute problems to AT&T in transitioning the Customs Radio Network because of space constraints at the agency's Orlando, Florida, site and customer staff constraints at the hub and remote sites. Appellant's Supplemental Appeal File, Exhibit 219 at A016568. The transition of the CRN from AT&T to Network B had been completed just the year before and the manager of the CRN was not anxious to transition again. Id. AT&T proposed a "swat team" of several technical personnel including a dedicated technical person at the CRN Orlando site and a team of technicians to service the remote sites. Id. AT&T "intend[ed] to thwart any request for a delay or waiver by developing a comprehensive cutover plan that overcomes the equipment, space and staffing issues." Id.

226. AT&T provided a transition plan for the CRN on or about June 1996; however, as of July 1, AT&T had received no formal reply from GSA as to whether the plan was acceptable. At meetings, AT&T had discussions concerning aspects of transition of CRN, but AT&T did not understand that there was a substantive objection to the transition plan. Appellant's Supplemental Appeal File, Exhibit 255 at A022682.

227. On July 15, Mr. Flyzik wrote Mr. Woods that he thought the dates for transition of CRN in AT&T's transition plan were unrealistic, but that his "major issue" was "whether it should actually take place under its present plan." Appellant's Supplemental Appeal File, Exhibit 275 at 000130. Mr. Flyzik stated that "NLECC management does not see any benefit to be gained on a one for one swap out of its analog system, since it plans to introduce digital

equipment to the network in the near future as the technology becomes available." Id. Mr. Flyzik suggested delaying CRN transition to Network A until CRN itself had transitioned from analog to digital technology. Id.

228. AT&T was prepared to offer an xx-xxxxxxxx xxxxxx xxxx network for CRN, but that was dependent upon Customs obtaining the necessary digital equipment from another contractor and providing other necessary equipment to complete the digital network. Appellant's Supplemental Appeal File, Exhibit 402 at 100303.

229. On February 7, 1997, AT&T advised GSA that it was at an impasse with Customs regarding transition of CRN "despite the mandates of the contract." Appellant's Supplemental Appeal File, Exhibit 406 at A017002. On March 27, Customs requested a waiver from transition for CRN. Appellant's Supplemental Appeal File, Exhibit 438. CRN circuits were never transitioned. Id., Exhibit 499.

Customs Data Network

230. Customs had been working actively with AT&T on transition of its Data Center and insisted on like-for-like billing. Customs requested a single account for diverse paths or a bill for diverse paths costing less than \$265,661 per month. Appellant's Supplemental Appeal File, Exhibit 232 at 000170. Customs also wanted provisioning of least busy hunt schemes, which it maintained was not contractually available; resolution of interface issues with the FBI, which would remain a Network B customer; and assurances that TRW could handle the simultaneous transition of the Customs Data Network and the conversion of TCS within the December 1996 schedule. Id. AT&T submitted six versions of a transition plan for the Customs Data Network. Appeal File, Exhibit 9b (AT&T's claim), Exhibit 18 at A006664.

231. On April 3, 1997, Customs requested a waiver from converting to AT&T from Sprint for all non-TCS data services at the Newington, Virginia, Data Center. Appellant's Supplemental Appeal File, Exhibit 439 at 100018. Among the issues raised by Treasury were: non-TCS data services were bundled with TCS data on diversely routed DS3s; AT&T's use of xxxx instead of the current DS3 configuration removed immediately available band-width; Customs was planning its own transition to a fiber-optic ring in 1997, posing the threat of multiple transitions; Customs's access to the National Crime Information Center carried by the Department of Justice on the Sprint network might be compromised; Sprint's pricing and access at the Newington Data Center were advantageous, resulting in substantial savings for the Government; and Customs did not trust AT&T's transition plans. Id. at 100019-20. Customs Data Center circuits did not transition. Appeal File, Exhibit 9b at 10-11.

Extent of Treasury Transition to Network A

232. As of March 1997, the following services had transitioned from Network B to Network A:

<u>Service</u>	<u>Description</u>	<u>Total/Complete</u>
SWITCHED VOICE SERVICES		
●GSA Consolidated Locations	SDPs	303/303
●Exclusive Use Locations	SDPs	150/150
●DTSMAN	SDPs	9/9
●Virtual ON NET	Numbers	8785/8785
●Federal Calling Card	Cards	29604/29604
800 SERVICE		
●IRS 800 Services	Numbers	59/59
●Other 800 Services	Numbers	147/124
VIDEO SERVICE		
●IRS/WVTS	Rooms	81/80
●SCVTS ²⁹	Rooms	94/88
DTS		
●TCS	Circuits	2700/174
●Non-TCS	Circuits	417/232
●Customs Radio Network	Circuits	469/0

Appellant's Supplemental Appeal File, Exhibit 436.

Percentage of target revenue obtained by AT&T and Sprint

233. Respondent's witness, Mr. Robert Menna, an employee of Mitretek, was responsible for managing billing, pricing, and pricing analysis of the FSC providers on the network. Transcript at 2523. He derived the total amount of FTS2000 revenue for contract period III and the percentage of revenue earned by AT&T and Sprint. The total revenue was \$2,010,944,241. Respondent's Hearing Exhibit 7 at 22-23 (Appendix A). Total AT&T revenue was \$1,435,469,762 -- 71.4 percent of the total. Sprint's revenue was \$575,342,479, or 28.6 percent of the total. Id.

AT&T claims restitution

²⁹ SCVTS stands for Switched Compressed Video Transmission Service.

234. By certified claim dated August 7, 1998, to the contracting officer, AT&T claimed, among other items, \$121.89 million, plus interest, "for the discounts that the [GSA] has incorrectly taken from billings by AT&T after the signing of Modification PS251." Appeal File, Exhibit 9 at A005582. AT&T maintained that AT&T offered the scenario one discounts and that "[i]n Modification PS251, to fill its obligations under Scenario [one], GSA agreed that [Treasury] including the [IRS] 800 service would be transitioned to AT&T's network in return for the discounts offered by AT&T." Id. AT&T maintained that GSA did not provide the promised Treasury transition and "that various Treasury organizations delayed for long periods and/or flatly refused to transition to AT&T's network." Id. The core of AT&T's claim for return of the discounts was that GSA had established a six-month requirement for transition, and that upon the signing of Modification PS251, GSA had the obligation to transition all of Treasury within that time period to be entitled to the discounts. Id. at A005603. AT&T argued that the fact that the contract was of the indefinite delivery indefinite quantity type became irrelevant once GSA made the allocation of Treasury work to AT&T. Id.

235. By decision of October 2, 1998, the contracting officer denied this claim. The contracting officer maintained that under the contract, transition was AT&T's responsibility and that AT&T had developed faulty and ineffective transition plans. Appeal File, Exhibit 10 at 3-4. The contracting officer also determined that the Government substantially met the expectation of the parties because AT&T received an average revenue split of 71.80 percent, which was 94.46 percent of the target revenue of 76 percent. Id. at 4. The contracting officer maintained that the objective of SR was to achieve the target revenue and that, in the colorful phraseology of the contracting officer, to the extent the target revenue had not been met, that fact was a "self-inflicted wound that AT&T should endure without remedy." Id. The contracting officer also maintained that the SLA, and AT&T's subsequent actions to meet the terms of the SLA, constituted a waiver of any claim for failure to transition. Id. at 6.

236. On this issue, the contracting officer issued a Government claim. The contracting officer determined that the failure to transition Treasury within six months was AT&T's fault. If AT&T had transitioned Treasury in a timely manner, the Government would have received the benefit of AT&T's lower prices for SVS. The Government claimed damages of \$43,690,000 due to the ten-month instead of six-month transition of SVS. Appeal File, Exhibit 10 at 7. The Government has withheld from AT&T \$30 million of that amount. Transcript at 2512.

Other claims

Peg Count/Hunt Sequencing

237. Appellant claims that providing peg count capability in the way requested by IRS was "beyond those [capabilities] contractually required." Appeal File, Exhibit 9 at A007081. AT&T claims the following extra costs for supplying the IRS's peg count capability:

<u>Description</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Total Cost</u>
Personal computers with software	62	\$1,373.00	\$85,126.00
Paradyne Modems	61	425.00	25,925.00
Installation of PCs and Modems	1 lot	70,893.00	70,893.00
Voice grade lines from LECs			11,261.00
Subtotal			193,205.00
Overhead@153.05%			295,700.25
Subtotal			488,905.25
General & Administrative (G&A) costs @ 27.63%			135,084.52
Subtotal			623,989.77
Profit including Facilities Capital Cost of Money (FCCM) @ 15%			93,598.47
Total			\$717,588

Appeal File, Exhibit 9 at A007084. AT&T purchased the computers from Attronica and installation of the PCs and modems from BancTec. Id. Attronica and BancTec were in effect subcontractors to AT&T for peg count.

238. The indirect rates used in the claim were the provisional billing rates approved by the Defense Contract Audit Agency for use in a cost reimbursement contract covered by the Cost Accounting Standards (CAS) and unrelated to FTS2000. The FTS2000 contract is not a "CAS-covered" contract. AT&T stated that it uses these provisional billing rates for all of its Government contracts. In generating these rates, however, AT&T did not accumulate or segregate costs using the cost accounting system that it used for the FTS2000 contract. Transcript at 1340-42, 1399-1404.

239. In his decision, the contracting officer agreed with the direct cost amounts shown in finding 237 but determined that AT&T's profit rate was too high. He granted two percent profit on computers and modems and determined that since none of the work was performed by AT&T, granting overhead and G&A costs would not be appropriate. Appeal File, Exhibit 10 at 8. For peg count, the contracting officer allowed \$204,426.02. Id. at 9.

240. The costs claimed for hunt sequencing were as follows:

<u>Description</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Total Cost</u>
Lucent Technologies Invoice of 6/25/97	1	\$110,500.00	\$110,500.00
Lucent Technologies Invoice of 10/31/97	1	722,500.00	722,500.00
Subtotal			833,000.00
Overhead@153.05%			1,274,906.50
Subtotal			2,107,906.50
G&A costs @ 27.63%			582,414.57
Subtotal			2,690,321.07
Profit including FCCM at @ 15%			403,548.16
Total			\$3,093,869

Appeal File, Exhibit 9 at A007087. In his decision, the contracting officer again granted direct costs and two percent profit, and refused to grant AT&T overhead and G&A expenses. Id., Exhibit 10 at 12. For hunt sequencing the contracting officer allowed \$849,660. Id. at 24.

SIC waiver

241. AT&T also offered waivers of the service initiation charge (SIC). Appellant's Supplemental Appeal File, Exhibit 518 at A003154 (¶¶ 3.3.6.2, 3.3.6.3). A service initiation charge is a one-time charge associated with installing service for a customer. Transcript at 1404. AT&T stated that it would "waive all Service Initiation Charges (SIC) for reallocated users." Respondent's Supplemental Appeal File, Exhibit 136 at 18 of Executive Summary. AT&T stated that "[f]or scenario one only," AT&T would waive the SICs "associated with Scenario [one] transition as identified in [the aggregated cost engine] ACE, not to exceed the \$5,706,376.51 estimate in ACE for transition." Appellant's Supplemental Appeal File, Exhibit 518 at A003154 (¶ 3.3.6.3). AT&T stated that "[i]f scenario one is awarded AT&T is waiving all transition SICs." Id. at A003151 (¶ 3.3.3.1). AT&T referenced Figure 3-2 of its proposal, which provided a formula for calculating the waived SICs: $A - B = C$, where A was the total SICs for year seven traffic set two, B was the total SICs for year seven traffic set one, and C was the transition SICs waived with scenario one. Id. The ACE was a price and cost model of Government requirements based on actual aggregations of calls and other services such as data traffic. Transcript at 2541-42, 2552. The Government considered the

ACE the only detailed existing forecast and model of total Government requirements that GSA served. Id. at 2542.

242. GSA required each FSC to provide data for cost evaluation purposes. In preparing its cost evaluation data:

AT&T "made the following general notes and assumptions: AT&T will waive all transition related [SICs] if awarded Scenario [one]. Report L-18.2a . . . is provided illustrating the cost benefit of the transition SIC waiver.

Appellant's Supplemental Appeal File, Exhibit 518 at A003148 (¶ 3.3.2). That table, entitled: "Adjusted Network Traffic Set Cost Summary," shows a transition SIC adjustment of \$5,706,376.51 occurring in year seven and no transition cost adjustments occurring in years eight and nine-ten. Growth SIC adjustments occurred in all years of contract period III. Id., Exhibit 273 at A040171.

243. GSA and AT&T engaged in extensive negotiations over the issue of SIC waivers. On or about October 4, 1995, AT&T, in response to a GSA question, stated that the SICs that would automatically be waived are those "associated with Scenario [one] transition . . . for the SIC elements as identified in ACE." Appellant's Supplemental Appeal File, Exhibit 273 at A040172.

244. On or about October 11, 1995, GSA asked AT&T how it proposed to transition services based on the ACE when the ACE had no agency-specific information and did not identify specific SDPs to transition from Network B to A. Appellant's Supplemental Appeal File, Exhibit 273 at A040174. AT&T replied that it "propose[d] to determine the transition SICs which are associated with services included in ACE for the implementation of Scenario [one] based upon the coordinated transition plan that will be determined following GSA's decision to award Scenario [one]." Id.

SIC and Video Services

245. The FTS2000 contract contained two types of video service: CVTS and WVTS. Appeal File, Exhibit 1 at 44-45 (¶¶ B.7.1, B.7.2). The services the ACE identified included CVTS and WVTS, but not SCVTS, which AT&T had added to Network A in 1994. Appeal File, Exhibit 2 at J-11 (Table J-11.2) and J-21 (Figure J-11.2); Exhibit 9D at 9 n.8; Transcript at 1327-28.

246. IRS did not like AT&T's CVTS offering, which it felt was not as high quality as Sprint's CVTS. Transcript at 1325. AT&T explored alternatives with Treasury and offered SCVTS. Appellant's Supplemental Appeal File, Exhibit 135. On March 5, 1996, AT&T demonstrated SCVTS, which was acceptable to the IRS. Transcript at 1327-28. On June 14, 1996, AT&T provided IRS with a video transmission plan which included SCVTS. IRS accepted the plan as of June 27, 1996. Appellant's Supplemental Appeal File, Exhibits 229, 252.

247. Between November 1, 1996, and August 1, 1997, AT&T invoiced GSA for SICs amounting to \$3,780,840.08. Appeal File, Exhibit 9 (SIC Claim), Tab 9 at A006956. GSA withheld \$2,620,176 of that amount because it felt it was entitled to waiver of SIC for SCVTS under the terms and conditions of AT&T's proposal. Transcript at 3392-94. GSA withheld \$1,160,664 in SIC for services that were included in the ACE, but that were transitioned in contract year eight. Appeal File, Exhibit 9 (SIC Claim) at A006890.

248. AT&T filed a claim with the contracting officer claiming the withheld amounts, on the ground that GSA was not entitled to SIC waiver for installation of SCVTS, which was not part of the ACE, and that GSA was not entitled to SIC waiver for those services which were mentioned in the ACE but which were transitioned after contract year eight. AT&T's claim is premised on the notion that SIC waivers were limited to services included in the ACE and limited to services that transitioned in contract year seven. Appeal File, Exhibit 9 (SIC Claim).

249. In his decision, the contracting officer denied the claim, save for a grant of \$69,976 for the monthly recurring charge associated with upkeep of various installed codecs. Appeal File, Exhibit 10. His rationale for denying the SIC for AT&T's SCVTS was that SCVTS was simply a desirable (to IRS) substitute for AT&T's undesirable (to IRS) version of CVTS, that was mentioned in the ACE. Id. at 16. He denied the remainder of the SICs, for services transitioning in contract year eight, because he considered the transition difficulties the fault of AT&T. Id. at 16-17.

SVS billing dispute

250. Originating and terminating access and network transport are components of SVS pricing. Respondent's Hearing Exhibit 7; Transcript at 2717 at Figure 1, Table 2. For SVS network volume, the FTS2000 contract defines network volume as the "total originating traffic minutes carried by the network." Appeal File, Exhibit 1 at B-12-2 (¶ B.1.2.2.1). The contract also provided that usage pricing for access and for transport were to be based on six-second increments. Id. at B-14 (¶¶ B.3.1, B.3.2). The contract also provides that "the network transport charge for any call shall be the network baseline price multiplied by the network volume factor, applied to the call duration." Id. at B-14 (¶ B.3.2). To determine volume, the FSC was required to round the individual duration of a call to the nearest six-second increment, and then determine the network volume by aggregating the rounded calls. Transcript at 3527.

251. In its BAFO, AT&T priced SVS network transport prices at "rates per [six] second increment." Respondent's Supplemental Appeal File, Vol. 14F, Exhibit 136, Table 2.2.1-6 n. 4. AT&T's BAFO also states that "prices in [Table 2.2.1-6] should be multiplied by a factor from Table 2.2.1-7 to apply the appropriate SVS volume discount." Id. at Table 2.2.1.6. Table 2.2.1-7 of AT&T's BAFO sets forth network volume factors to be applied. Those network volume factors are stated in terms of message minutes. Id. at Table 2.2.1-7. However, Figure 2.1.1-1 of AT&T's BAFO, which identifies its volume aggregation rules for pricing under the contract, reflects that the unit of measurement for the network volume factor on Table 2.2.1-7 is "minutes." Id. at Table 2.2.1-7; Transcript at 3539-40, 3542.

252. Every month, along with its invoice, AT&T submitted a report of billing activity (ROBA), which contained information as to the types and amount of Network A services for which AT&T was billing the Government. Respondent's Supplemental Appeal File, Exhibit 855; Transcript at 3564. The ROBA for October 1996 usage indicates 360,142,109.3 call minutes for that month. Respondent's Supplemental Appeal File, Exhibit 855 at A007001. GSA used that data to determine if it was obtaining proper volume band discounts on the network. Transcript at 3565. October 1996 was in contract year eight; for that year the discount factor was .079 for calls above a volume of 357 million. Transcript at 3567.

253. GSA audited AT&T's invoice of October 1996 and determined that AT&T had applied a volume factor of .528, applicable to a lower volume band. Transcript at 3570. GSA's FTS2000 billing organization asked AT&T about the apparent discrepancy between the number of billing minutes as stated on the invoice and the lower discount factor applicable to a lesser number of billing minutes. Id. at 3570-71. AT&T explained that of the total billing minutes, the transport component amounted to 354.4 million minutes, not the 360-plus million minutes reported on the ROBA. Appellant's Supplemental Appeal File, Exhibit 854.

254. After receiving the above information, GSA's billing office turned the matter over to Mitretek for further analysis. Transcript at 3575. Mitretek concluded that the network volumes reported on the monthly invoice often exceeded the network volumes used to compute the network discount factor. Respondent's Supplemental Appeal File, Exhibit 1509. For example in July 1996, AT&T used a network discount factor of .614 when, based on the volume minutes recorded, it should have used the discount factor of .528. The analysis showed that AT&T did the same for the months of September and October 1996. Id.

255. GSA asked AT&T how it was aggregating network volume, and AT&T promised a response. Respondent's Supplemental Appeal File, Exhibit 1044. In the meantime, GSA determined to withhold \$3.3 million from AT&T's invoices for improper volume discounts on the October 1996 invoice, and so notified AT&T on February 6, 1997. Id. at 1084.

256. Between February 6 and February 12, GSA billing met with AT&T billing and learned from AT&T that it was using a method of rounding network minutes other than the six-second increment method. Transcript at 3581. AT&T explained that it calculated its network transport volume usage by xxxxxxxx xx xx xxx xxxx xxxx xxxxxx in its billing system. Respondent's Supplemental Appeal File, Exhibit 1274 at A007032. If a call lasted 60.1 seconds, it would be rounded up to 61 seconds, not 66 seconds. Id. Thus, as AT&T explained, "SVS network transport volumes are based on rounded seconds carried by the network while the ROBA SVS call minutes are based on the total of six second increments. Since a different logic is used to calculate the ROBA volumes than is used to calculate the network transport volumes, the two totals will be different." Id.

257. In addition, certain types of calls -- Infoworx, Locator Service, and packet switched service (PSS) calls with SVS -- were excluded from the volume that was used to determine the volume factor discount in AT&T's volume calculations, although two of the three were

included in the ROBA. Respondent's Supplemental Appeal File, Exhibit 1274 at A007033.³⁰ Although Infoworx ran on AT&T's commercial network, the FTS2000 contract required that "FTS2000 800 service traffic volume using the 4-E ASN architectural transport shall be applied to the FTS2000 transport volumes for billing purposes." Respondent's Supplemental Appeal File, Exhibit 85 at MTS-1019224.

258. On February 12, AT&T, referencing the meetings in early February, asked GSA for an explanation of the withholding. Appellant's Supplemental Appeal File, Exhibit 416. In its letter, AT&T maintained that no specific areas of disagreement were identified in the meetings; that assertion was misleading since GSA had questioned the basis of AT&T's discount calculation and had disagreed with AT&T's logic in calculating network transport discounts. Transcript at 3581. The February meetings were the first occasions during the life of the contract that AT&T had informed GSA that it xxxxxxxx xxxxx xx xxxxxxxxxxxx xxxxxxxxxxxx to determine network volume. Id. at 3584.

259. In its claim submitted to the contracting officer, AT&T maintained that GSA's withholding of the \$3.3 million violated the contract, since based on the contract's language defining the network transport charge as the network baseline price multiplied by the network volume factor, it had the contractual right to determine the network baseline price by rounding call duration to the next whole second instead of the next six seconds. Appeal File, Exhibit 9 (Claim for SVS Usage Charge) at A006964-65. AT&T claimed that its xxxxxxxxxxxx xxxxxxxxxxxx approach and invoicing for SVS usage was consistent and according to approved and historic billing practice. Id. at A00697.

260. The contracting officer denied this aspect of AT&T's claim. The contracting officer concluded that GSA was entitled to withhold the \$3.3 million because the common thread throughout the SVS baseline pricing tables and SVS discount schedules was that call duration was to be expressed in terms of message minutes, i.e., minutes rounded up to the nearest six-second increment. Appeal File, Exhibit 10 at 19. The contracting officer also denied that GSA had been aware of AT&T's billing practice during the life of the contract. The contracting officer stated that GSA was not aware of AT&T's discordant approach because there was no occasion before 1997 when AT&T had revealed it to the Government. Appeal File, Exhibit 10 at 20. According to the contracting officer, the invoices GSA received did not indicate that they were calculated in anything other than message minutes as defined by the contract. Id. at 21.

261. In his decision, the contracting officer calculated the added amount AT&T owed to GSA for the message minutes controversy:

<u>Month</u>	<u>Money Overbilled</u>	<u>Withheld by</u> <u>GSA</u>	<u>AT&T Owes</u> <u>GSA</u>
--------------	-------------------------	----------------------------------	------------------------------------

³⁰ GSA agrees that Packet Switched Service calls with SVS did not have to be included in the volume level for purposes of calculating the volume discount. See Respondent's Proposed Finding 815, Respondent's Proposed Findings of Fact at 205.

Jul-96	\$629,628	\$0	\$629,628
Sep-96	629,213	0	629,213
Oct-96	3,268,699	3,300,000	(31,301)
Dec-97	598,950		598,950
Total			\$1,826,490

Appeal File, Exhibit 10 at 23.

Transition credit

262. GSA estimated that the internal agency cost of transition would be \$10 million. Respondent's Supplemental Appeal File, Exhibit 1608 at 3-20.a (Sept. 25, 1995). The Government said in the PR/SR 7 document that its estimate of its internal transition costs would be added to the FSCs' proposed costs for evaluation. Appeal File, Exhibit 2 at M-9. In response, AT&T's September 25, 1995, cost proposal contained the following paragraph:

3.3.6.2 Scenario One "Internal Agency Costs of Transition" Credit

In addition, for Scenario 1 only, AT&T will credit the 'internal agency costs of transition' required to implement the Scenario 1 (AT&T win) PR/SR outcome not to exceed the \$10 million estimated for Scenario 1 in PR. The Government's estimate of these costs for the PR evaluation for Scenario 1 is \$10 million. Thus, for the purposes of evaluating AT&T's PR 'Second Round Cost Proposal' bid, AT&T has manually shown a \$10 million credit. For the purposes of SR, for Scenario 1 only, a credit for actual 'internal agency costs of transition' will be determined and applied to the December, 1998 invoice, not to exceed the estimated \$10 million required for the evaluation.

Respondent's Supplemental Appeal File, Exhibit 1608. On October 4, 1995, GSA asked AT&T the following question about section 3.3.6.2 of its cost proposal:

In AT&T's proposal to credit internal agency transition costs, the Government assumes that the phrase 'will be determined' means that the amount to be credited will be \$10M, prorated to the actual percentage of network B that is transitioned to Network A in the event of the selection of Scenario 1. For example, if 20% of Network B is transitioned, then the government will be credited \$5M (since 20% is half of the 40% of Network B assumed in ACE to be transitioned).

Appellant's Supplemental Appeal File, Exhibit 64 at A012475. AT&T responded: "The government's assumptions are correct." Id.

263. In its claim, AT&T took the position that the \$10 million credit was conditioned upon implementation of scenario one and asked GSA for a contract interpretation regarding the conditions under which GSA could take the credit. Appeal File, Exhibit 9 at A006551. In his decision, the contracting officer decided that taking the credit did not depend upon the implementation of scenario one, and said that GSA would take the credit "[a]t the appropriate time." Appeal File, Exhibit 10 at 24. GSA later took a credit, in the amount of \$10 million. Transcript at 1333. AT&T never submitted a claim for return of the credit.

264. On October 19, 1998, an appeal of the contracting officer's decision was filed at this Board. We held a hearing on the merits from May 22 through June 15, 2000.

Discussion

AT&T's transition claim

Appellant's argument in its posthearing brief regarding what has come to be called its "transition claim" (Counts I thru IV) is relatively straightforward. AT&T contends that, with the signing of Modification PS251, GSA was obligated to transition all of Treasury's telecommunication requirements within six months in order to take advantage of AT&T's network-wide discounts. This, however, did not occur. The fault, according to appellant, rests entirely with the Government. This, in the opinion of appellant, constituted a substantial breach of the contract and thus entitles AT&T to restitution damages because the offered network-wide discounts were contingent upon all of Treasury's requirements transitioning within that period. See Appellant's Post-Trial Memorandum at 30-61.

Our principal problem with this claim is AT&T's fundamental assumption that its offer of network-wide discounts was contingent upon all of Treasury's requirements transitioning within the six-month period. This is, of course, a critical assumption so far as appellant's claim is concerned. Without it, the claim obviously fails. We are, however, unpersuaded that the discounts in question were offered subject to this condition.

Even if we were to accept as fact that AT&T's Year 7 PR/SR offer was contingent upon the transitioning of all of Treasury's requirements within a six-month period, we would still expect appellant to demonstrate to us that it was in fact ready, willing, and able to carry off the transition within that time and would have done so but for the alleged misrepresentations, withholding of critical information, and general lack of cooperation on the part of the Government. On review of the record before us, we can make no such finding. AT&T cannot blame the Government entirely for the problems associated with the transition of Treasury's requirements. Much of the responsibility for what in retrospect proved to be a highly problematic transition must be shared by AT&T.

Was AT&T's offer of network-wide discounts contingent upon the transition of all of Treasury's requirements within six months?

AT&T's technical proposal for the Year 7 PR/SR was based, as it had to be, on fulfilling generic requirements, not on the expectation that it would be the exclusive provider

for a particular Federal agency. Rather, AT&T's Network A discount pricing was based upon the expectation that it would be assigned unspecified agency requirements to meet the Scenario 1 target revenue share of seventy-six percent. Findings 25-26, 43, 48, 59.

On November 30, 1995, the source selection authority (SSA) and source selection advisory council (SSAC) met to complete the Government process of making the PR/SR decisions. Finding 69. By that time, AT&T and Sprint had submitted their best and final offers, which, in turn, had been evaluated. The source selection evaluation board had already concluded that the Scenario 1 outcome would be in the best interest of the Government. With the acceptance of AT&T's Year 7 PR/SR proposal, AT&T's share of target revenue would presumably rise from sixty percent to seventy-six percent and the Government, over the remaining three years of the FTS2000 contract, would realize a savings of \$600 million. Findings 57-68. Only at this juncture did it become obvious to the SSA and the members of the SSAC that Treasury, as the largest agency on Network B, would have to become involved in the service reallocation process if AT&T was to achieve the target revenue anticipated for Scenario 1. Finding 72. Indeed, the testimony of Treasury's representative on the SSAC reveals that the involvement of Treasury in the source allocation process was an unexpected development for which he and others were not entirely prepared. Finding 71.

It was, therefore, not until November 30, well after the submission of AT&T's best and final Year 7 PR/SR proposal, that the decision was made to transition the Treasury requirements to AT&T's Network A. We, therefore, find no basis whatsoever for concluding that the discounts in that proposal were somehow contingent upon the transition of *Treasury's* requirements to Network A.

Appellant would have us conclude that somehow the deal between GSA and AT&T was not struck until AT&T agreed to the transition of Treasury once it was advised by the contracting officer in a meeting on December 1, 1995, that AT&T's proposal was accepted and that this would involve the reallocation of Treasury to Network A. We think not. The deal was struck when GSA advised AT&T that it had accepted AT&T's standing Year 7 PR/SR proposal. The meeting with AT&T on December 1 was most certainly not for purposes of negotiating further with AT&T or to afford AT&T an opportunity to amend its final proposal. Rather, the meeting was called to advise AT&T that its standing proposal had been accepted. We view the decision to reallocate Treasury's requirements to Network A and mention of this fact at the meeting with AT&T and in Modification PS251 as nothing more than evidence of contract administration undertaken to produce the revenue split anticipated with Scenario 1.

If it cannot be said that AT&T's discount pricing was conditioned upon the transition of *Treasury's* requirements, can it at least be said that this offer was conditioned upon the reallocation of some other agency's requirements, if not Treasury's, within a six-month period? Appellant has not convinced us that there was such a condition, nor would we consider such a condition permissible under the terms of the Year 7 PR/SR process even with regard to the transfer of a generic requirement. AT&T and Sprint were both advised that it was the Government's intent that all required transitions be accomplished within a

maximum of six months. Finding 41. They were, therefore, obliged to complete any transition within that time unless the timeframe for transition were to be adjusted by the Government. The Government, on the other hand, was not bound by the same requirement. Rather, it expressly reserved for itself the right to adjust the transition timeframes based on actual services and features of the agency to be allocated. *Id.* AT&T, in reply to a question asked by GSA regarding its proposal, expressly acknowledged this right of the Government to adjust the transition timeframes as necessary. In a question and answer session, GSA even went so far as to state in reply to a question posed by Sprint that it would not amend the Year 7 PR/SR document to make the Government liable for any Government-caused delay resulting from the exercise of this right to adjust the transition timeframe. Finding 42. Any provision within AT&T's proposal requiring the Government to complete the transition within six months, therefore, would necessarily have been in open conflict with the Government's reservation of this right and would thus have rendered the proposal non-compliant as well.

Was AT&T in fact ready, willing, and able to carry off the transition of Treasury's requirements within six months, and would it have done so but for the alleged misrepresentations, withholding of critical information, and general lack of cooperation on the part of the Government?

Even if one were to concede AT&T's major premise that its discount pricing was conditioned upon the completion of the transition of Treasury's requirements to Network A within six months (which, of course, we do not), we still would expect appellant to demonstrate that it was in fact capable of completing the transition within that period and was precluded from doing so only as a result of the Government imposed delays and interference. The facts, as developed in this case, however, simply do not support such a contention.

We note initially that, under the contract, it was primarily AT&T's responsibility to effect the transition of Treasury to Network A. For the transition resulting from the Year 7 PR/SR exercise, AT&T was "charged with planning and implementing all aspects of the service reallocation from one FTS2000 network to the other." Finding 39. Further, AT&T had the "primary responsibility for coordinating all aspects of the transition for all agencies' services and features that are reallocated." Finding 40. In addition, AT&T was required to propose, implement, and demonstrate any additional feature enhancements necessary to support agency requirements before effecting transition of these specific services or features to the assigned network. Finding 29.

AT&T was to perform transition within six months or within such time as determined by GSA. Findings 41-43. The contract did not tell AT&T how it was to manage the transition or the delivery of service. It left the method of delivering services and the planning and execution of transition to the discretion of AT&T. Finding 28. As such, the specifications were in the nature of performance specifications, with the GSA (and the other Government agencies using FTS2000 services) relying on AT&T expertise and competence to perform adequately. See Technical Systems Associates v. Department of Commerce, GSBCA 13277-COM, et al., 00-1 BCA ¶ 30,684, at 151,557-58 (1999).

Under the contract, other GSA employees, designated agency representatives, and local Government contacts had more limited responsibilities. Finding 38. GSA's transition control center (TCC) was "the single point of contact" for any transition. The TCC was to provide "oversight and direction for any transition associated with service reallocations," including recommending approval or rejection of transition plans. Finding 37.

It is true that once GSA designated Treasury's requirements for reallocation in conjunction with the Year 7 PR/SR, it became increasingly obvious that it would be necessary to adjust the six-month timeframe based upon circumstances particular to the actual agency involved. Indeed, Mr. Carman, Treasury's representative on the SSAC, made this amply clear to the SSA and the other members of the council at their meeting on November 30. Findings 69-74. Further, early in the transition process, GSA extended the target date for the completion of Treasury's transition specifically in view of weather-related delays and two customer-specific issues. Finding 113. The transfers of the Treasury Communication System (TCS), Customs Data Network, and Customs Radio Network to Network A also presented their own peculiar problems which clearly made prompt transition impossible. See Findings 75-78, 106, 133, 224-231.

It is, of course, difficult to analyze the issue of whether AT&T would have succeeded in transitioning all of Treasury's requirements in six months simply because, for a variety of reasons including circumstances particular to the actual agency selected for transition, the question ultimately became a purely hypothetical one. Nevertheless, there did occur during the longer, actual transition period various incidents which convince us that AT&T would have found it impossible to hew to a six-month schedule in any event. Principal among these problems were: (1) the preparation of acceptable transition plans, (2) the accommodation of Treasury's need for special features for IRS, (3) problems which beset and eventually brought to a halt the transition of the TCS network, and (4) a continuing problem with AT&T's service performance and trouble handling.

(1) Acceptable transition plans

AT&T's transition plans were not well thought out or developed with the specificity that generated confidence in its ability to implement a successful transition. In its initial coordinated transition plan (CTP), AT&T failed to provide agency cutover profiles, failed to describe how it would provide service enhancements to meet Treasury's requirements, and failed to discuss transition of switched data service, SVS calling cards and 800 services, electronic mail, and wideband video transmission service. Finding 112. Furthermore, the CTP was structured along Treasury administrative lines, instead of bureau and service lines, which was the logical structure for transitioning Treasury. Id. It was not until February 7, 1996, that AT&T was able to provide a revised plan. Finding 116. But even this was ultimately rejected by the Government for its lack of specificity. Indeed, the cutover of circuits at the GSA consolidated locations, which was scheduled to begin on February 14, was halted on February 20 because the CTP and transition plans were still unapproved. Finding 118. Again, on March 7, AT&T submitted another revised CTP. Finding 127. Finally, on April 17, GSA formally approved AT&T's CTP. Finding 142. Given the criticality of Treasury's multiple missions, we consider that the Government acted reasonably

in insisting on the preparation of bureau-specific plans for the transition of each bureau's requirements. Findings 117, 123, 141.

In the course of commenting on AT&T's draft CTPs, Treasury had requested separate transition plans and schedules for some of its services, such as the IRS 800 service and the Treasury Communication Service (TCS) Network. Finding 117. The transition plan proposed for the IRS 800 service was submitted on May 30, 1996. Finding 153. There were, however, problems with the proposed plan. Findings 155, 157, 166, 168. Not until July 2 was it approved by GSA. Finding 170. The transition plan for the TCS Network encountered even greater difficulties. It too was submitted on May 30, 1996. Finding 153. This plan and a later supplement to it, however, were rejected because AT&T refused to assume overall coordination responsibility for subcontractors or contractors who would perform the TCS transition. Findings 161, 166-167. Eventually, AT&T did agree to maintain overall responsibility to direct and manage the activities and performance of key vendors supporting AT&T's transition activities.³¹ Finding 171. As late as July 2, however, AT&T was unable to put in place a comprehensive plan for the TCS Network transition. By that point in time, it had only developed a transition plan for a TCS pilot. Finding 171. The pilot test was conducted during July and August 1996. Findings 198-200. A proposed final transition plan was eventually submitted by AT&T on October 3, 1996, with start-up to begin on October 7. Finding 201. Various revisions of this plan were submitted in the months which followed owing to the problems encountered in the TCS transfer. Indeed, as late as June 20, 1997, AT&T was said to be preparing a modified transition plan for TCS. Finding 222.

(2) Special features

The problem of Treasury's need for special features or enhancements was a particularly vexing one for AT&T and would undoubtedly have delayed any six-month transition. The so-called "like-for-like" term, originally coined to describe the requirement for equivalent services for the two networks, was obviously reduced to the absurd by some IRS employees who considered it to mean precisely identical services. Finding 79. Nevertheless, it was reasonable for Treasury to assume that the special requirements provided for by Sprint on Network B would be accommodated by AT&T upon transfer to Network A. The Year 7 PR/SR document, which was incorporated into the contract through Modification PS251, expressly provided:

All agency requirements for FTS2000 services and features must be supported by the FSC's [FTS2000 service contractor's] networks. If required for the transition, the FSCs shall propose, implement, and demonstrate (at the Government's option) any additional service and feature enhancements

³¹ In view of paragraph C.8.4.2 of the contract, which required AT&T to "[coordinate] all aspects of the transition for all agencies' services," finding 41, the Government's insistence that AT&T assume overall responsibility was clearly reasonable.

necessary to support the reallocated agencies' requirements before effecting transition of these specific services or features to the assigned network.

Findings 29, 87. AT&T, in arguing its case, refers to Treasury's "extra-contractual demands" or "non-contractual demands." E.g., Appellant's Post-Trial Memorandum at 46. We find the expressions misleading. They suggest that AT&T was under no contractual obligation to provide any additional services and feature enhancements necessary to support Treasury's requirements -- when quite the opposite was true. While the provision of such services and/or feature enhancements may well have required a contract amendment, AT&T, as the gaining FSC was nevertheless under a basic contractual obligation to identify such needs and ensure that they were provided to Treasury, as the transitioning user. Finding 29.

Among the three principal functions which Treasury wished to retain in transitioning the IRS 800 service to Network A were the so-called COMTOR (computerized overflow telephone register) boxes which counted the number of calls from taxpayers that went unanswered and the unique number report (UNR) which counted the number of calls coming into the IRS. These were particularly critical to IRS given its obligations to report on its operations to Congress. Findings 144-145, 147. In addition, shortly after the cut-over of IRS 800 service began in August 1996, the function of hunt sequencing for the delivery of calls through twenty-four channels of a T-1 circuit on Network B as opposed to Network A became a matter of concern. Finding 180.

AT&T expended considerable time in attempting to convince Treasury that its peg count and make busy features were superior to the COMTOR feature previously provided by Sprint on Network B. GSA and Treasury eventually were convinced of this fact. Finding 143-146, 174, 179. From the start, these features proved problematic. Findings 143, 169, 174-177. In early September 1996, the peg count/make busy features were accepted by the Government. Finding 179. Nevertheless, problems persisted. Finding 186. It was continuing concern about the implementation of these features on Network A for the IRS, among other reasons, that prompted the parties in late November to enter into the service level agreement. Finding 192. Unfortunately, IRS was still complaining of data accuracy regarding peg count/make busy as late as mid-April 1997. Finding 220. The situation with the UNR feature was similar. Concern with the accuracy of the reports arose in March 1996. Finding 148. In April, Treasury requested that the UNR feature be customized to match the agency's requirements. Finding 149. A contract amendment covering this feature was agreed upon in August, and in September, the UNR feature was accepted. Findings 178-179. However, as in the case of peg count/make busy features, problems continued to plague IRS on the UNR feature. Finding 186. These problems with the UNR were also addressed in detail in the service level agreement in late November 1996. Nevertheless, problems with the accuracy of UNR data were still unresolved in mid-April 1997. Finding 192, 220. The situation with the hunt sequencing feature was similar. In early November, AT&T advised IRS that the problem which had surfaced in August had been resolved by the re-engineering of AT&T's network switches to provide Network B hunt sequencing functionality. Finding 181. Nevertheless, problems with this feature still existed, and hunt

sequencing was also addressed in detail in the service level agreement signed later in November.³² Finding 192.

In short, given the extensive problems encountered with these three special features required by IRS for the transition of its portion of Treasury's switched voiced service, we can scarcely conclude that AT&T would, in fact, have succeeded in successfully transferring all of Treasury's requirements from Network B to Network A within six months in the absence of any Government delay.

(3) The TCS transition

At a transition meeting with the TCS transition manager on October 8, one day after the scheduled start date in AT&T's proposed TCS transition plan, AT&T's transition manager for the TCS stated that AT&T would be ready to start the TCS transition on October 15 and that there would be no significant problems. Findings 201, 207. This was in fact untrue.

TRW provided the circuit order requests covering the circuits at the first node to be transitioned, namely the Andover node, within a few days of the mid-August deadline set by AT&T to ensure a smooth transition. These requests, however, languished at AT&T's offices until shortly before the Labor Day weekend, when they were finally provided to AT&T's TCS transition manager. As a result, AT&T did not issue the circuit orders to the local exchange carrier (LEC) until early September. Unfortunately, at this time, AT&T overlooked several of the circuit orders already received from TRW. These remaining orders were not issued to the LEC until early October. No mention of these problems was made by AT&T at the transition meeting on October 8. Findings 204-208.

Shortly after this October 8 transition meeting between representatives of the contractor and the Government, it became clear that there were significant problems with the planned TCS transition and that AT&T would not be ready to begin transition by October 15. Findings 209-210. Circuit installation finally began on October 18 with a revised completion date of November 5. Finding 211. Notwithstanding this scheduled completion date, it could not be said that the majority of the circuits for the Andover node were installed until mid-December. Finding 211. There were many reasons for the delays of this first phase of the TCS transition. We have already cataloged many of them in finding 212 and will not repeat them here. Suffice it to say, however, that AT&T must accept responsibility for many of these delays, particularly in view of its overall responsibility under

³² Special features for billing and least busy hunt schemes were also sought by Treasury for its Customs Data Network. In view of the decision ultimately made not to proceed with the transfer of this network owing to Customs's lack of confidence in the six versions of transition plans submitted by AT&T, the features were never implemented. Findings 230-231.

the contract for "planning and implementing all aspects of the service reallocation from one FTS2000 network to the other." Finding 39.

A further problem encountered with the TCS transition, even after suspension of work at the Andover node under phase one, was the network outage which occurred on March 11, 1997. It was determined that the outage was attributable to a TCS circuit procured from AT&T. This event brought to light a fact previously unknown to the Government or to TRW as the manager of Treasury's TCS network, namely, that Network A did not provide network timing. Finding 216. It is surprising that AT&T in its capacity as the gaining contractor responsible for the planning and implementation of *all* aspects of the service reallocation had not previously determined that the TCS network did not provide network timing and that transfer of the TCS to Network A, which likewise did not provide this timing, could result in such a serious outage.

Given these various problems encountered by appellant in the early course of the TCS transition, we find it difficult to believe that, in the absence of any delays called for by the Government, AT&T would have successfully completed the transition of all of Treasury's requirements within a six-month period. This would appear to be especially true if the transition of TCS had proceeded concurrently with SVS. In actuality, of course, it did not. Rather, at Treasury's insistence, it began shortly after the transition of SVS services was substantially complete. Findings 182, 185, 211.

(4) AT&T's service performance and trouble handling

The record for this case unfortunately confirms the existence of considerable user dissatisfaction with AT&T -- some of which led to conduct clearly exceeding the limits of common civility and professionalism. See Findings 125, 126. Inexcusable as such behavior may be, it does appear, in great part from what we have already observed in this section, that there was some justification for Treasury's frustration. By mid-October 1996, GSA had prepared a draft cure notice notifying AT&T of alleged unsatisfactory performance of the Year 7 PR/SR transition. Finding 187. Treasury had identified three problems areas, namely, peg count terminals and training, UNR and trouble handling, and responsiveness. See Findings 188-191.

Eventually, in order to preserve the benefits of the contract, GSA elected not to send AT&T the cure notice then in preparation, but rather to pursue a more positive course by entering into a service level agreement with AT&T in which appellant would commit to redoubling its efforts to meet Treasury's requirements. Finding 192. As already noted, this agreement addressed particular problems relating to peg count/make busy, UNRs, and hunt sequencing. However, it also addressed service performance and trouble handling. Finding 193.

One particularly significant provision in this service level agreement states that no further Treasury Data Services would be transitioned until *all* problems with FTS2000 were resolved to IRS's satisfaction and then only after submission of a transition plan approved by Treasury and GSA. Finding 193. The FTS2000 contract allowed GSA to delegate

transition oversight responsibilities to agencies. Finding 37. In signing the service level agreement, this is, in effect, what GSA did. Once the agreement was signed, Treasury controlled the timing and sequence of the transition. Perhaps even more significantly, AT&T, in signing the agreement, consented to the suspension of the further transition of any data services in the event any problem regarding FTS2000 was deemed by IRS not to be satisfactorily resolved. Given the circumstances leading to AT&T's signature of the service level agreement, we see in AT&T's willingness to sign a tacit admission that there were indeed continuing problems not only with the implementation of special features required by Treasury but also in the related areas of service performance and trouble handling. Nothing in the record suggests that the transition of all of Treasury's requirements within a six-month period, absent any delays attributable to the Government, would not have been plagued with similar problems regarding service performance and trouble handling. Accordingly, we remain convinced that, in this area as well, AT&T would have encountered delays had it attempted to effect a transition of all of Treasury's requirements in a six-month period.

Alleged misrepresentations, withholding of critical information, and general lack of cooperation on the part of the Government

Notwithstanding the problems discussed above regarding AT&T's performance during the transition of Treasury's requirements, appellant contends that it was not these problems which made it impossible to effect the transition in six months, but rather misrepresentations, the withholding of critical information, and a general lack of cooperation on the part of the Government.

Appellant makes much of the fact that the particular problems associated with the actual timeframe for the transition of Treasury's requirements were not promptly disclosed to AT&T. In this regard, GSA is accused of misrepresentations and withholding superior knowledge. Appellant's Post-Trial Memorandum at 34-43. We find these arguments less than persuasive. It is of course true that the contracting officer in his meeting with AT&T officials on December 1, 1995, did not share with them Mr. Carman's concerns regarding the upcoming tax season and the change in contractors for the TCS. In fact, no notice was given initially of possible delays or difficulties in the transition of any of Treasury's requirements. Finding 86. This, however, hardly amounts to misrepresentation made to induce the contractor to propose or offer what it would otherwise not have offered. As we have already noted, AT&T's proposal, which GSA formally accepted on December 1, was premised upon the transfer of generic requirements and not those of Treasury.³³

As we have also already noted, the contract recognized that transition timeframes might have to be adjusted based upon "actual agencies' services and features to be

³³For the same reason, we reject an alternative argument of appellant based on an alleged mutual mistake regarding the ability of Treasury to transition its requirements within a six-month period. Appellant's Post-Trial Memorandum at 43-44. The bargain struck between GSA and AT&T was not premised upon the transition of Treasury's requirements.

allocated." Finding 41. We find nothing in the contract requiring the *immediate* disclosure of facts which would require such adjustments. Indeed, it is clear that on December 1 and even for a period afterwards, GSA itself was unaware of several problems which might impact the transition process. The inadequacy of the user location database and the various problems associated with customer located network equipment are two examples which come readily to mind. See Findings 31, 101-103, 115, 120-122, 128, 131, 136, 138-139. As to those facts which GSA did know on December 1, they do not strike us as so arcane or esoteric as to totally escape the imagining of a contractor as experienced as AT&T. It should not have come as any great surprise to appellant, once it learned that the agency to be transferred to Network A was Treasury, that the exigencies of the tax season would impact the transition or even that Treasury's complex TCS network might pose some unique problems of its own with regard to a prompt transition. See Finding 75. In any event, these facts were brought to light relatively early in the transition process. Findings 106, 111.

What, however, of the alleged lack of cooperation on the part of the Government? Appellant writes:

To find breaches of [the express contractual obligations it assumed in Modification PS251], the Board need look no further than GSA's failure to deliver Treasury's SVS requirements until after a full tax season and its failure to deliver substantially all of Treasury's DTS requirements.

Appellant's Post-Trial Memorandum at 45.

On review of the record, we are left with the impression that appellant has unduly exaggerated the adverse impact of Treasury's insistence that AT&T work around IRS during the course of the tax season. We note, first of all, that any extension of the transition period to accommodate Treasury's concerns with a smooth running tax season is entirely in keeping with the Government's right, under the contract, "to adjust the transition timeframes based on actual agencies' services and features to be allocated." Finding 41. This aside, however, AT&T's transition manager has stated that, although IRS personnel were not available during the tax season to discuss the particulars of transitioning the IRS 800 service, there was still a considerable amount of other work to be done. While it may not have been possible to plan on the operational level for the transfer of the IRS 800 service during this period, planning could continue on higher levels within the agency. Finding 135. Further, AT&T during negotiations had assured GSA that it could readily work around any access problems which might arise prior to cutover. Finding 35. In addition, there was work to be done elsewhere in the switched voice system and indeed even with 800 services other than the IRS 800 services. See Finding 232. Undoubtedly, some delay occurred after tax season as a result of Treasury's late delivery of information identifying precisely which lines among the IRS 800 services were specifically tax related. See Finding 134.

Appellant's allegation, at this juncture, that failure to deliver substantially all of Treasury's dedicated transmission service requirements is further evidence of the Government's lack of cooperation strikes us as particularly inappropriate in view of AT&T's signature of the service level agreement in November 1996. The preamble to the agreement

does, in fact, state that it "does not change the contract; rather, it makes more definite the expectations of the parties to the contract." Finding 193. Nevertheless, the parties expressly agreed that "[n]o further Treasury Data Services would be transitioned until all problems with FTS2000 are resolved to IRS satisfaction and only after submission of a transition plan approved by Treasury and GSA." *Id.* Accordingly, reading the provisions together, we conclude that, in signing this agreement, GSA once again, in order to move a troublesome situation forward, revised the transition schedule. This time the transition was to proceed in an ordered sequence according to which the further transition of data services would be subject first to the resolution (to the satisfaction of IRS) of all other FTS2000 problems and the approval of a transition plan. In signing the agreement, AT&T obviously agreed to proceed in this fashion. We, therefore, reject appellant's claim that the express contractual obligations assumed in Modification PS251 were breached when the further transition of data services did not continue in 1997 as a result of IRS's and Treasury's continuous dissatisfaction with AT&T's attempted resolution of various FTS2000 problems after execution of the service level agreement. *See* Findings 214, 217-222. We find no such breach. We do not view this as failure on the part of the Government to cooperate but rather action taken fully in accord with an agreement entered into by the parties following Modification PS251. That Treasury rather than GSA was the agency that decided on steps leading to further transition was entirely in accord with the service level agreement the parties signed.

In conclusion, we remain unpersuaded that, but for alleged misrepresentation and withholding of critical information as well as general lack of cooperation on the part of the Government, AT&T would have successfully transitioned all of Treasury's requirements to Network A within six months.

It is ironic that each of the parties to this dispute contends that, but for the other, the transition of Treasury's requirements would have been complete within six months. As we have discussed in detail above, we find AT&T's case less than convincing. Nevertheless, we find the Government's case in this regard no more convincing. It may well be that the impact of Treasury's tax responsibilities on the transition process has been exaggerated by AT&T. We are not prepared to say, however, that putting the IRS centers off-limits to AT&T personnel during the tax season had no adverse impact on the initial six-month transition schedule. As for the transitioning of the TCS network, the delay occasioned by the change in contract managers most definitely accounted for some delay in the transition schedule. The record is replete with opinions by various players in the transition drama as to why the transition of Treasury did not proceed as planned. *E.g.*, Findings 156, 160, 164-165, 173. There is unquestionably a grain of truth in some of what each has to say. Both AT&T and the Government must accept some responsibility for the many delays. We remain convinced that delays such as these, however, which stem either directly or indirectly from the nature of the services and features of the agency actually selected for transition, can serve as a reasonable basis for adjustment of the transition timeframe by the Government. The Government, however, cannot have it both ways. If GSA extended the original six-month timeframe for transition in recognition of special services and features of Treasury's requirements (and in this case it most certainly did so), then it must realistically accept some responsibility for the transition not being complete within six months. Given the facts here,

therefore, we find no merit whatsoever in GSA's contention that failure to complete the transition of all of Treasury's requirements within six months was entirely the fault of AT&T.

Indefinite quantity type contract vs. requirements contract

Respondent's overarching response to Counts I through IV of the complaint is that the SR process was only to reach a target revenue split of 76 percent/24 percent and that the target was a goal, not a guarantee. Respondent's Post-Trial Brief, Vol. II, at 10-12. Respondent places particular emphasis on paragraph C.7.1 of the contract, which provided that the Government did not guarantee the revenue shares for any period of the contract. *Id.* Finding 27.

Respondent argues that because the FTS2000 contract was an indefinite quantity contract, AT&T knew or should have known that GSA's estimates of forecasted revenues were not guaranteed. Respondent's Post-Trial Memorandum at 19. It further argues that under an indefinite quantity contract, the Government's only obligation is to order the minimum quantity or dollar amount specified in the contract and that "once the Government has purchased the minimum specified amount from the contractor, it has no further obligations to that company." *Id.* at 24. Accordingly, respondent contends that GSA's estimates of the target revenue "did not amount to a breach." *Id.* at 28.

AT&T's position on this issue is that the indefinite quantity character of the contract became irrelevant once GSA made the allocation of Treasury work to AT&T. Finding 234. It contends that, in Modification PS251, GSA pledged that it "will" transition the Department of Treasury. Appellant reads that sentence as explicit and unconditional. Indeed, AT&T contends that it is the only sentence in the modification that spells out exactly what GSA promised AT&T in exchange for the conditional discounts. Once GSA assigned Treasury to AT&T, therefore, the agency was allegedly required to purchase its FTS2000 services exclusively from AT&T. In short, according to appellant, with the issuance of Modification PS251, the contract was susceptible to interpretation as a requirements contract. Appellant's Post-Trial Reply Memorandum at 4-5.

We do not agree that the sentence in Modification PS251 assigning Treasury to AT&T is the one and only sentence in the modification that spells out exactly what GSA promised AT&T in exchange for its offered discount prices. Rather, the fundamental purpose of this modification was to advise AT&T that Scenario 1 would be implemented. Further, GSA did not promise that it alone could or would effect the transition of Treasury. As we have already noted, under the contract, AT&T, as the gaining contractor, was "charged with planning and implementing all aspects of the service reallocation from one FTS2000 network to the other." Finding 39. If, for reasons attributable to AT&T, the transition was delayed or suspended, the Government is hardly liable for the temporary or continued use of Sprint's Network B. On the other hand, clearly, once a particular Treasury service was successfully transitioned to AT&T's network, then the agency was required to purchase FTS200 services exclusively from AT&T, but certainly not before.

The specific remedy AT&T seeks in its transition claim is restitution. Finding 234. It rests squarely on the proposition that the discount pricing offered by AT&T in conjunction with the Year 7 PR/SR was contingent upon all of Treasury's requirements transitioning within six months. With all due respect to respondent, we do not see the issue of whether AT&T's contract with Modification PS251 remained an indefinite quantity type contract or somehow morphed into a requirements type contract as outcome determinative. Rather, as stated at the start of this discussion, our basic problem with this claim of transition breach in general and for restitution in particular is AT&T's fundamental assumption that its offer of network-wide discounts was contingent upon all of Treasury's requirements transitioning within the six-month period. This is, of course, a critical assumption so far as appellant's claim is concerned. Without it, the claim obviously fails -- regardless of what type of contract we are dealing with. For the reasons already stated, we remain unpersuaded that the discounts in question were offered subject to this condition. We, therefore, affirm the contracting officer's denial of the claim.

Other Claims

Peg Count/Hunt Sequencing

AT&T's claim demanded that GSA pay for the hardware, software, and local service coordination needed in order to implement the peg count/make busy feature. Finding 237. AT&T's claim also demanded that GSA pay for the programming work needed in order to implement the hunt sequencing feature. Finding 240. The contracting officer decided to pay AT&T for its direct costs plus a profit (including facilities capital cost of money) of two percent, but not for its claimed overhead costs of 153 percent, general and administrative costs of 27.63 percent, and profit of 15 percent. Findings 239, 240.

AT&T has not established that it is entitled to be paid anything more for this portion of its claim because there is no evidence to show that AT&T's claimed indirect cost and profit rates bear any relationship to its actual FTS2000 contract indirect cost and profit rates. The indirect cost and profit rates that AT&T used to calculate its claim are provisional billing rates approved by the Defense Contract Audit Agency for use in a cost reimbursement contract covered by the Cost Accounting Standards (CAS) and unrelated to the FTS2000 contract. In generating the provisional rates, AT&T did not accumulate or segregate costs using the cost accounting system that it used for the FTS2000 contract, which is neither a CAS-covered contract nor a cost reimbursement contract. Finding 238. In the absence of any evidence to show that the interim rates it used in order to submit bills for the unrelated cost reimbursement contract work are relevant to determining the FTS2000 contract's indirect cost and profit rates, we deny this portion of AT&T's claim.

SIC Waiver

GSA developed an Aggregated Cost Engine (ACE) in order to compare the proposal that it received from Sprint to the one that it received from AT&T. Only AT&T offered Switched Compressed Video Transmission Service (SCVTS) capability, so SCVTS was not included in the ACE. Both Sprint and AT&T were capable of offering Compressed Video Transmission Service (CVTS), however, so CVTS was included in the ACE. Finding 245.

After GSA chose scenario one, GSA and AT&T agreed that AT&T would provide SCVTS and not CVTS. Finding 246.

A Service Initiation Charge (SIC) is a one-time charge that is incurred when telephone service is installed. Finding 241. The text of AT&T's cost proposal stated three times that it would waive "all" transition-related SICs if GSA chose scenario one. Findings 241, 242. AT&T's cost proposal also stated, "For Scenario 1 only, AT&T will waive service initiation charges associated with Scenario 1 transition as identified in ACE, not to exceed the \$5,706,376.51 estimate in ACE for transition." AT&T's cost proposal referred to figure 3-2, which set out AT&T's formula for calculating the SIC waiver, based upon SICs incurred and SIC waivers granted during contract Year 7. Finding 241. In addition, AT&T included a table in its cost evaluation data that it said illustrated the cost benefit of the transition SIC waiver. The table summarized the costs of network traffic for scenario one, and showed a transition-related SIC waiver of \$5,706,376.51 occurring in Year 7 of the contract and no transition-related waivers occurring after Year 7. Finding 242. During negotiations with GSA, AT&T said that the SICs that would be waived were those associated with the transition if GSA chose scenario one, for the SIC elements identified in the ACE. Finding 243.

GSA withheld \$2,620,176 for SICs incurred in connection with SCVTS, and AT&T's claim demanded payment of this amount. The contracting officer granted \$69,976 of the claim for monthly recurring charges that GSA was obligated to pay. Findings 248, 249. AT&T says that it never agreed to waive SICs for SCVTS. Appellant's Post-Trial Memorandum at 80. GSA argues that AT&T should not be able to collect SICs for SCVTS when it was willing to waive SICs for CVTS, because using SCVTS instead of CVTS was as much for the benefit of AT&T as it was for GSA and Treasury. Respondent's Post-Hearing Brief, Volume II at 86-87. If GSA wanted AT&T to waive SICs related to SCVTS, it should have reached and memorialized an agreement with AT&T regarding a waiver when SCVTS was substituted for CVTS. In its proposal, AT&T offered to waive SICs only for elements that were identified in the ACE, and the ACE did not include SCVTS. GSA cannot accept what AT&T did not offer. This portion of AT&T's claim is granted in the amount of \$2,620,176.³⁴

GSA also withheld \$1,160,664 for SICs imposed in contract Year 8 for elements that were identified in the ACE. The contracting officer denied the portion of AT&T's claim that demanded payment of this amount. Findings 247-249. AT&T says that its proposal limited SIC waivers to Year 7. Appellant's Post-Trial Memorandum at 78-79. GSA says that the proposal contained no such limitation. Respondent's Post-Hearing Brief, Volume II at 85-86. In the text of its proposal, AT&T said flatly three times that it would waive "all" transition-related SICs, and it did not restrict the waiver to contract Year 7. During negotiations, AT&T said that it would waive the SICs associated with the transition, and did not say that the waiver was effective only for contract Year 7. A figure contained in AT&T's proposal

³⁴So far as we know, GSA has not paid AT&T the \$69,976 granted in the contracting officer's decision. If GSA has paid this amount to AT&T, then the amount due should be reduced accordingly.

referred to contract Year 7, however, as did a table contained in its cost evaluation data. Reading the figure and the table to say that the waiver would not apply to SICs incurred after contract Year 7 creates a conflict with the unequivocal statements that AT&T made in the text of its proposal and during negotiations, and we prefer to read these provisions so as to avoid a conflict.

Reading AT&T's proposal as a whole and giving meaning to all of its provisions, we conclude that AT&T offered to waive all transition-related SICs, regardless of whether they were incurred in contract Year 7. The proposal assumes that all transition activities would occur in contract Year 7 and that, therefore, all transition-related SICs would be incurred during that year. Keeping this assumption in mind, there is no conflict between offering to waive all transition-related SICs, and also using contract Year 7 to show how to calculate the waiver and to illustrate the dollar benefit of the waiver. The figure and the table reflected the assumption that all transition-related SICs would be incurred during contract Year 7, and the text of the proposal said that all of those SICs would be waived. Contract Year 7 was not mentioned in order to limit the waiver to something less than all transition-related SICs. Instead, contract Year 7 was mentioned in the context of explaining and illustrating how the waiver of all transition-related SICs would benefit GSA. GSA is entitled to a waiver of all transition-related SICs. This portion of AT&T's claim is denied.

SVS Billing Dispute

For the network transport component of switched voice service, AT&T agreed to provide graduated price discounts that became larger as usage increased. Findings 251, 252, 254. AT&T rounded the duration of calls to the next highest six-second increment in order to measure usage for the purpose of pricing. Findings 251, 252. But, in order to measure usage for the purpose of calculating discounts, AT&T rounded calls up to the xxxxxxxxxx xxxxxxxx. Finding 256. Rounding calls up to the xxxxxxxxxx xxxxxxxx instead of the next highest six-second increment resulted in a lower usage figure and, therefore, smaller discounts. Findings 254-256.

GSA withheld \$3.3 million from AT&T and later decided that AT&T owed an additional \$1,826,490 because AT&T did not provide discounts in accordance with the contract.³⁵ Finding 254-256, 261. AT&T's claim demanded payment of the \$3.3 million. GSA contends that the contract did not permit AT&T to use one method to measure usage for the purpose of pricing and a different method to measure usage for the purpose of calculating discounts, and says that it did not realize how AT&T was calculating its discounts until after October 1996, when it asked AT&T about its method for calculating the discounts. Respondent's Post-Hearing Brief, Volume II at 81-83.

AT&T says that it provided the discounts properly. Finding 259. AT&T says that the contract did not require it to round up to the next highest six-second increment for the purpose of measuring usage when it calculated discounts. It also says that GSA knew or

³⁵ GSA later determined that the \$3.3 million it withheld was excessive by \$31,301. The \$1,826,490 includes a credit for this amount.

should have known how AT&T was calculating its discounts because AT&T had calculated its discounts in the same manner in prior contract years, and because AT&T disclosed its methodology when it used the word "minutes" instead of "message minutes" in one of its pricing tables. Findings 251, 259. Appellant's Post-Trial Memorandum at 81-85.

GSA is entitled to the discounts that it claims. The contract required usage pricing to be based upon rounding to the next highest six-second increment. There is no evidence that GSA realized until this dispute arose that AT&T was rounding up to the xxxx xxxxxxxx xxx xxxxxxxx instead of the next highest six-second increment, when it measured usage for the purpose of calculating discounts. Further, we find nothing in AT&T's proposal that would have put GSA on notice that AT&T intended to round up the next highest six-second increment for the purpose of pricing, but only round up to the xxxx xxxxxxxx xxx xxxxxxxx for the purpose of calculating its discounts. AT&T's pricing tables do not say that there is a difference between "minutes" and "message minutes," much less explain the difference that AT&T now asks us to recognize. If AT&T intended for these terms to have different meanings, it should have stated its intentions clearly in its proposal. GSA's withholdings were proper and we deny this portion of AT&T's claim. AT&T owes GSA an added \$1,826,490.

GSA's Claim

The contracting officer's final decision asserted a claim against AT&T for \$43,690,000 due to the delayed transition of switched voice service. Consequently, GSA withheld \$30 million from AT&T. Finding 236. GSA now says that it should have claimed and withheld only \$18.9 million. Respondent's Post-Hearing Brief, Volume II at 88-89. We do not know whether GSA paid AT&T any of the previously-withheld \$30 million, based upon its revised claim amount.

As explained above in our discussion of AT&T's transition claim, the delayed transition was not entirely the fault of either party to this contract. Thus, GSA is no more entitled than is AT&T to recover for a delayed transition. GSA must release whatever part of the \$30 million it continues to withhold. AT&T is not entitled to interest because it never submitted a claim for the release of this amount. J.S. Alberici Constr., et al., ENGBCA 97-1 BCA ¶ 28,639 (1996), aff'd, Caldera v. J.S. Alberici Constr., et al., 153 F.3d 1381 (Fed. Cir. 1998); Youngdale & Sons Constr. v. United States, 27 Fed. Cl. 516, 566 (1993).

Transition credit

In its claim, AT&T asked GSA for an interpretation of the terms of the contract regarding the credit that AT&T was to provide for GSA's costs of transition. Finding 263. GSA says that the terms of the contract provide for a credit of \$10 million to compensate for its transition costs, and that even if it is not entitled to a credit of \$10 million, it is entitled to a substantial credit. Respondent's Reply to Appellant's Post-Trial Memorandum at 30-31. AT&T says that GSA is entitled to no credit because it did not provide any proof of the transition costs that it incurred. In addition, AT&T says that if GSA is entitled to any credit, the terms of the contract provide for a credit of less than \$10 million because less than forty

percent of Sprint's share of total network traffic transitioned to AT&T's network. Appellant's Post-Trial Memorandum at 80-81.

We do not agree with AT&T that GSA was required to provide proof of its transition costs in order to take the credit. AT&T has not established that either it or GSA, at the time of contracting, thought that GSA could take the credit only if it provided proof of its incurred transition costs. This is not surprising because the cost proposal, which AT&T drafted, does not say that GSA was required to provide proof of its costs in order to take the credit. When GSA asked how the credit would be determined, AT&T said that "the amount to be credited will be \$10 [million], prorated to the actual percentage of [Sprint's network traffic] that is transitioned to [AT&T's network]." Finding 262 (emphasis added). AT&T never said that the amount of the credit would depend upon anything other than the amount of Sprint's network traffic that was transitioned to AT&T's network.

We agree with AT&T that the contract does not entitle GSA to a credit for the entire \$10 million. If 40 percent of Sprint's 40 percent share of network traffic had transitioned to AT&T's network, AT&T's share of total network traffic would have been 76 percent ($60 + [40 \times 40] = 76$) and GSA could have taken a \$10 million credit. Finding 262. AT&T's share of total network traffic was actually 71.4 percent, finding 233, which means that 28.5 percent of Sprint's 40 percent share of network traffic transitioned to AT&T's network ($60 + [.285 \times 40] = 71.4$). Thus, GSA is entitled to a credit of 71.25 percent ($28.5 \div 40 = .7125$) of \$10 million, which is \$7,125,000.³⁶ GSA must return \$2,875,000 of the credit to AT&T. AT&T is not entitled to interest because it never submitted a claim for return of the credit.

Decision

The appeal is **GRANTED IN PART**. AT&T is entitled to recover \$2,620,176 for service initiation charges.³⁷ Interest is payable on this amount at the rate established in the Contract Disputes Act, 41 U.S.C. § 611 (1994). AT&T is entitled to payment, without interest, of whatever part of the \$30 million GSA continues to withhold based upon its claim against AT&T. AT&T is entitled to payment, without interest, of \$2,875,000 for the excess transition credit taken by GSA.

³⁶Another way of arriving at this result is as follows: If 16 percent of Sprint's network traffic had transitioned to AT&T's network, giving AT&T a 76 percent share of total network revenue ($60 + 16 = 76$), GSA could have taken a \$10 million credit. Because 11.4 percent of Sprint's network traffic transitioned to AT&T's network, giving AT&T a 71.4 percent share of total network revenue ($60 + 11.4 = 71.4$), GSA is entitled to a credit of \$7,125,000 ($\$10 \text{ million} \times [11.4 \div 16]$).

³⁷So far as we know, GSA has not paid AT&T the \$69,976 granted in the contracting officer's decision. If GSA has paid this amount to AT&T, then the amount due should be reduced accordingly.

GSA is entitled to recover \$1,826,490 for the switched voice service billing dispute.

ANTHONY S. BORWICK
Board Judge

We concur:

MARTHA H. DeGRAFF
Board Judge

EDWIN B. NEILL
Board Judge