

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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GRANTED IN PART; DISMISSED IN PART:  
May 17, 2001

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GSBCA 15139

SPRINT COMMUNICATIONS COMPANY, L.P.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

David S. Cohen and John J. O'Brien of Cohen Mohr, Washington, DC; and George J. Affe and Anthony L. Cogswell of Sprint Communications Company, L.P., Herndon, VA, counsel for Appellant.

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

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

**NEILL**, Board Judge.

This appeal stems from a dispute between Sprint Communications Company, L.P. (Sprint) and the General Services Administration (GSA) regarding payment of charges included on invoices submitted to GSA under Sprint's Federal Telecommunications System (FTS)2000 contract (the contract). The charges are said to represent contributions Sprint made to the Universal Service Fund (USF) during 1998.<sup>1</sup>

By letter dated August 25, 1998, Sprint submitted a certified claim for \$486,110.76 (later corrected to \$1,466,505.73 by a resubmission received by GSA on August 31, 1998).

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<sup>1</sup>Appellant advises us that it seeks recovery of USF contributions for calendar year 1998 only. The contract at issue here is said to have expired on December 31, 1998. For a subsequent "Bridge Contract" as well as for a recently awarded FTS2001 contract, Sprint states that GSA has agreed that USF contributions are proper charges. Appellant's Memorandum in Support of its Motion for Summary Relief at 2.

The amount is said to represent USF charges included in Sprint's invoices from the start of 1998 up to and including July 1998 (June usage). In the absence of a contracting officer's decision expressly denying this claim, Sprint on October 20, 1999, filed this appeal from a deemed denial of the claim.

The complaint filed by Sprint in this case contains two counts. Count I alleges breach of contract based on the Government's alleged failure to adjust the contract price to reflect this USF charge pursuant to an applicable contract provision dealing with after-imposed federal, state, and local taxes. Count II asserts that the charge must be paid because it is included in a Federal Communications Commission (FCC) tariff covering the FTS2000 contract. Appellant contends that under the filed rate doctrine, it is required to charge -- and GSA must pay -- this charge because it is contained in the applicable tariff. Sprint submitted a motion for summary relief on this second count. By decision dated April 26, 2000, we granted the motion. Sprint Communications Co., L. P. v. General Services Administration, GSBCA 15139, 00-1 BCA ¶ 30,909, motion for reconsideration denied, 00-2 BCA ¶ 30,998.

Our decision granting summary relief to Sprint was limited solely to entitlement. Thereafter, we directed counsel for the parties to proceed with the development of a record on which the Board could rely to decide the quantum of appellant's claim.

On September 1, 2000, Sprint filed a quantum submission which updated its original claim to reflect USF charges contained in all monthly invoices submitted under the contract for the year 1998. The amount charged by Sprint and withheld by GSA was said to total \$4,026,117.15. In addition to this amount, Sprint claims Prompt Payment Act (PPA) interest on the USF charges invoiced but as yet unpaid as of the date on which Sprint submitted its certified claim. Finally, Sprint claims Contract Disputes Act (CDA) interest on its certified claim and on PPA interest already accrued as of the date of Sprint's submission of its certified claim.

Upon receipt of Sprint's quantum submission, GSA asked leave to conduct discovery on and to audit the amounts claimed and billed by Sprint. Specifically, GSA sought to conduct discovery on the following issues:

- Exactly how Sprint's assessments were calculated and what is the basis for its claimed percentage;
- Whether Sprint has passed on any of the reductions in USF assessments or access charges experienced post-Telecommunications Reform Act of 1996 to the Government in the claimed amounts;
- Whether the amount Sprint seeks to flow through to GSA represents only a pass through of its USF assessment, or includes a mark-up or other costs as well;
- Whether the amounts Sprint claims include "old" USF assessments<sup>[1]</sup> (*i.e.*, those subsidies that were in existence prior to the changes brought forth post-Telecommunications Reform Act of 1996 and were already built into Sprint's prices); and

- Whether the Government is being treated fairly by Sprint as required by the May 8, 1997 FCC Order (*i.e.*, Did Sprint pass the benefit of access charge reductions or reduced USF assessments to its commercial business customers, but not to FTS2000 customers? Did Sprint revise any of its tariffs or arrangements with its commercial business customers to negate, eliminate or reduce any net USF or access charge increases, but did not do the same for FTS2000?), etc.

Respondent's Letter to the Board (September 15, 2000) at 1-2. In addition, GSA sought a delay of from nine to twelve months in order to undertake an audit "to ensure that the USF amounts are properly allocable to the contract and that all calculations and bases for Sprint's assessments are accurate, correct and properly derived from source documents." Id. at 3.

Sprint opposed this request of GSA to engage in discovery and conduct an audit. Counsel for Sprint argued to the Board that the issues which GSA wished to explore in discovery ultimately related to the propriety of the tariff rate, its basis, or its reasonableness -- all of which are issues over which the Board, under the filed rate doctrine, does not have jurisdiction. Sprint pointed out the 4.9% rate was part of its published tariff and that its basis, its components, its propriety, and its fairness were all matters which the Board in its entitlement decision had recognized fall within the exclusive jurisdiction of the FCC. As to GSA's request for time to conduct an audit, Sprint opposed this as well. Counsel pointed out that an audit of Sprint's actual claim would involve a simple check of the mathematical computation and could be done expeditiously. Under the tariff, the charge is simply a percentage that is applied to invoiced amounts. On the other hand, an audit of all Sprint's billings, to the extent that they have not been audited already, was said to be independent of the claim and should be handled separately.

The Board agreed with Sprint. At a conference with counsel for the parties on September 29, 2000, the Board denied GSA's request to engage in discovery and to conduct an audit. The presiding judge observed that the reasonableness and propriety of the USF rate in Sprint's amended tariff was no more before the Board in the quantum aspect of this appeal than it was during the consideration of entitlement pursuant to appellant's motion for summary relief based upon the filed rate doctrine. In view of this ruling, counsel for the parties agreed with the Board at the conclusion of the same conference that a record submission for the quantum phase of this case would be appropriate. Conference Memorandum (September 29, 2000).

Counsel then proceeded to make additional submissions regarding quantum as directed by the Board. Upon receipt of appellant's final submission on November 17, 2000, we closed the record for this phase of the appeal. Nevertheless, by order dated February 8, 2001, the Board reopened the record. Counsel for the parties were asked to address certain concerns of the Board which arose after a review of the documentation submitted by appellant. Upon receipt of replies from counsel, the record once more was closed.

### Findings of Fact

1. Sprint's revised FCC No. 4 Tariff, issued December 31, 1997, reads, in part, as follows:

2.6 Payment of Charges (Continued)

....

.2 Carrier Universal Service Charge

In addition to all other rates in this tariff, effective January 1, 1998, business Customers will be assessed a Carrier Universal Service Charge ("CUSC") of 4.9% of all interstate and international retail charges (including usage, non-usage and Prescribed Line Charge).

Appellant's Memorandum in Support of its Motion for Summary Relief, Exhibit 2 (Sprint's FCC No. 4 Tariff at § 2.6.2 (Revised page 10.1)).

2. Starting with the first invoice for calendar year 1998, Sprint began adding a Universal Service Fund (USF) charge (i.e., the "CUSC" mentioned in the tariff quoted above) to all Government contract invoices. The purpose of the charge was to recover from customers those amounts determined by the FCC as Sprint's contribution into the USF. Declaration of Ralph W. Wasko, Sprint's billing services manager for Federal Government billing (Wasko Declaration) (November 16, 2000) ¶¶ 1-2.

3. For each month of calendar year 1998, the total amount of the USF charge said by Sprint to be due for that month was identified as a separate line item on the consolidated monthly invoice submitted to GSA. Wasko Declaration ¶ 3; Appellant's Quantum Submission, Exhibit 2.

4. Backup for this USF line item as well as for other line items in Sprint's monthly invoice is to be found in the charge detail records (CDRs) also provided to GSA every month by Sprint in accordance with contract requirements. Appeal File, Exhibits 24 at 1, 25 at C-70-1.<sup>2</sup> The CDRs are the record of each individual call or service rendered. For each call or service, these records identify, among other things, the calling number, the customer location, the terminating number, the terminating number location, the time, date, duration and call cost amount. If the call or service is subject to the USF rate of 4.9%, this is shown,

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<sup>2</sup> In its Order for Further Proceedings of November 9, 1999, the Board directed that, for purposes of pleading and briefing, the appeal file in this case, GSBCA 15139, should be deemed to be identical to that proposed by the parties for GSBCA 14705, a closely related case which originally involved the same issues as the instant case. For purposes of this decision, we continue to deem the appeal file for GSBCA 14705 as part of the record for the instant case. Any references herein to the "Appeal File" are, therefore, to materials found in the appeal file for GSBCA 14705, which is incorporated by reference into the record for this appeal as well.

as is the precise amount of the USF charge (rounded to the nearest penny). Wasko Declaration ¶¶ 4-5 and Exhibit 1; Appeal File, Exhibit 25 at C-70-1.

5. To enable GSA to understand fully the data contained in each CDR, Sprint provided GSA with a "Data Dictionary" which explained the various codes appearing in each CDR. The code said to be used for USF charges was "Tax Code (1) SA7." Wasko Declaration ¶¶ 5-6.

6. The USF line items in each of the monthly invoices submitted under the contract are nothing more than the numerical sum of all the "Tax Code (1) SA7" amounts shown on the CDRs for the particular month in question. Indeed, the CDR data gave GSA the ability to run numerous reports. Among these, GSA could run a report which would isolate all "SA7" or USF charges. Wasko Declaration ¶ 6.

7. The USF line items in each of the monthly invoices submitted under the contract for 1998 are as follows:

<u>Invoice number and period</u>	<u>Amount</u>
9802, January 1998	\$200,610.86 (less \$40,773.59) <sup>3</sup>
9803, February 1998	\$157,999.00
9804, March 1998	\$172,356.01
9805, April 1998	\$166,401.67
9806, May 1998	\$323,801.02
9807, June 1998	\$486,110.76
9808, July 1998	\$469,608.28
9809, August 1998	\$485,729.05
9810, September 1998	\$485,930.19
9811, October 1998	\$510,531.83
9812, November 1998	\$505,618.22
9901, December 1998	<u>\$510,969.26</u>
	\$4,434,892.55

Appellant's Quantum Submission, Exhibit 2; Appeal File, Exhibit 12.

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<sup>3</sup> This amount was originally billed as \$200,610.86 but was later reduced by \$40,773.59. The reason for this adjustment was that Sprint, when it first began applying the USF rate to services rendered under the contract, mistakenly concluded that the rate was applicable to X.25 packet switched services. It subsequently concluded that this particular type of service, as called for under the contract, was an enhanced service involving the conversion of protocols which excludes it from the definition of telecommunications services and, therefore, renders it free of USF liability. Appellant's Submission on Quantum, Exhibit 1.

8. Of the total \$4,434,892.55 in USF line items set out in Sprint's monthly invoices for 1998, GSA withheld \$4,026,117.15.<sup>4</sup> Appellant's Quantum Submission, Exhibit 2.

9. Under the contract, Sprint was required to maintain a reliable, accurate, and auditable billing system. Appeal File, Exhibit 25 at C-69. A service oversight center staffed by GSA and Government-designated personnel was responsible for checking the FTS2000 bills for reasonableness and correctness and for paying the undisputed portion of all bills. Id. at C-77, C-79, C-80. Copies of GSA correspondence submitted by Sprint confirm that, during 1998, charges on Sprint's monthly invoices were subject to a verification process. A monthly letter from GSA's Billing Verification & Service Order Support Branch to Sprint's Billing and Revenue Assurance Manager would typically advise Sprint that payment of the most recent invoice did not include certain specified charges contained in that invoice but did include payment of other specific charges previously withheld from payment. The amounts withheld from payment of the current invoice and the previous withholdings then being paid would be specifically listed in each monthly letter. Appellant's Quantum Submission, Exhibit 2.

10. GSA has submitted for the record a declaration from an individual who states that she served as the agency's billing manager for Sprint's FTS2000 contract from December 1997. Declaration of Lois E. Sather (Sather Declaration) (October 18, 2000) ¶ 1.<sup>5</sup> This individual declares that, during 1998, her duties included responsibility for the verification and payment of Sprint's FTS2000 bills. This included verification of all charges on the Sprint invoices to ensure the accuracy of the charges in accordance with the FTS2000 contract. She states, however, that any verification of Sprint's FTS2000 bills pertained to charges actually paid by GSA and not to the USF charges withheld by GSA. She further explains that, in light of GSA's decision not to pay these amounts, the agency did not conduct any audit or analysis of them. Nevertheless, she states that GSA did collect these amounts from user agencies pending resolution of its dispute with Sprint over payment of the USF charges. Id. ¶¶ 3-4. Ms. Sather also states that it is her recollection that the dispute behind GSA's decision to withhold payment of the USF charges focused on whether the USF contributions constituted a tax payable under the contract's tax clause. Id. ¶ 3.

11. By letter dated August 25, 1998, Sprint submitted a certified claim for \$486,110.76. This was said to be the amount charged by Sprint for USF contributions on invoices to GSA for services rendered under the FTS2000 contract from January 1 to June 30. The letter makes no mention of PPA interest due on unpaid USF line items contained in invoices submitted prior to this claim. Appeal File, Exhibit 22. The claim letter advised that the claim would be amended as the Government continued to withhold payment of the USF

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<sup>4</sup>Counsel for Sprint has explained that GSA withheld payment of only \$102,193.85 of the total \$510,969.26 USF line item appearing in Sprint's invoice for December 1998. Sprint's Reply to GSA's Response to Appellant's Submission on Quantum at 4. Sprint's claim regarding that invoice is, therefore, for only \$102,193.85.

<sup>5</sup>This declaration appears as Exhibit 1 of GSA's Response to Appellant's Quantum Submission.

line items in Sprint's successive invoices. Shortly thereafter, Sprint realized that the actual sum certain mentioned in its claim letter and certification was incorrect. It promptly resubmitted the same claim letter and a recertification dated August 28, 1998. They show the sum certain to be \$1,466,505.73 rather than \$486,110.76. Other than the corrected number, the text of the second claim letter and recertification remained unchanged. This resubmission was received by GSA on August 31, 1998. Id., Exhibit 23.

12. No contracting officer's decision was ever rendered regarding this certified claim. On October 20, 1999, Sprint filed this appeal from a deemed denial of the claim.

### Discussion

#### The Principal Amount of Sprint's Claim

We agree with Sprint that an audit of its actual USF claim should be a relatively simple exercise. The USF line item, which GSA withheld from payment, was nothing more than the sum of the specific carrier universal service charges of 4.9% levied on individual calls or services identified in the CDRs furnished by Sprint in support of the monthly invoices. Findings 1-4, 6. The data provided in the CDRs appears to have been readily manageable and, with the aid of the Sprint's "Data Dictionary," should likewise have been readily understandable so far as the USF charges are concerned. Findings 5-6.

GSA's billing manager for the Sprint contract tells us that the verification of Sprint's FTS2000 bills pertained to charges actually paid but not to USF charges withheld by GSA. Finding 10. There is, however, little need for further verification of the USF charges for an individual call or service which has been verified already for purposes of actual payment. If the call or service is recognized as one to which the 4.9% charge applies and if the actual calculation of that charge is correct, then we see no reason why it should not be paid. GSA has had in hand for an extended period of time the information which would permit it to make these determinations. We do not know if it actually has audited Sprint's USF claim in this regard. However, it has had both the time and the data necessary to do so, but to date has raised no objections based upon either the application of the USF rate or the calculation of the USF charge with regard any specific calls or services identified in the CDRs.

Our inquiry as to the appropriate quantum to award Sprint in this case does not finish here, however. In the documentation furnished by Sprint in support of its claim are monthly letters from GSA's Billing Verification & Service Order Support Branch. These letters indicate that routinely GSA, in paying Sprint's most recent invoice, would withhold from payment certain specific charges (in addition to the usual USF line item) contained in that invoice. Presumably, this was done because of the need for additional time for the verification process. If and when ultimately verified, these charges would eventually be included in the payment of subsequent invoices -- as the monthly letters from GSA's Billing Verification office routinely indicated. See Finding 9.

These charges on which payment was withheld, to the extent that they became disputed charges on which payment has not been made, present something of a problem for us in determining the quantum in this case. In our decision on entitlement, we concluded

that, in accordance with Sprint's tariff, payment for calls and services must include the applicable 4.9% USF charge. This, however, does not mean that, where the underlying amount on which the USF charge is based remains open to question, the USF charge must now be paid. Once it becomes clear that an underlying charge should be paid, then obviously, based upon our earlier decision, the USF 4.9% add-on should be included in payment of that charge. Until that occurs, however, we have no intention of directing the Government to pay the USF charge on Sprint's billings which remain open to reasonable challenge.

In our order of February 8, we asked counsel to tell us how much of the 1998 charges, to which the USF 4.9% assessment would be applicable, remained unpaid. Sprint reported that \$2,213,380.78 in charges had been disputed but that, of this amount, GSA had eventually determined that \$1,615,867.29 were proper and had provided credits to Sprint for that amount. This leaves a balance of \$597,513.49 in disputed charges for 1998. GSA's figures differ slightly from those of Sprint. GSA calculated the total disputed billings to be \$2,790.23 less than the figure reported by Sprint. Neither party, however, could say with certainty whether the charges in dispute are for services to which a USF assessment would be applicable. Sprint, suggested that we assume that an assessment would be appropriate in each case -- the most favorable position for GSA. Accordingly it proposed a reduction of its claim by \$29,278.16 (i.e., \$597,513.49 x 4.9%).

We calculate the principal amount of Sprint's claim, therefore, as follows: We start with Sprint's original certified claim of \$1,466,505.73 for USF assessments on services rendered from January to June 1998, which was filed in late August 1998. Appeal File, Exhibits 22-23. From this amount we subtract a total of \$29,278.16 to account for USF assessments to which we conclude Sprint is not entitled as long as the charges on which they are based remain in dispute.<sup>6</sup> This yields a net figure of \$1,437,227.57. To this we add the additional updates of this claim covering services rendered during the months of July through December 1998, namely:

July 1998	\$469,608.28
August 1998	\$485,729.05
September 1998	\$485,930.19
October 1998	\$510,531.83
November 1998	\$505,618.22
December 1998	<u>\$102,193.85</u>

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<sup>6</sup>We recognize that some of the disputed charges may have accrued after Sprint submitted its claim in August 1998 and, therefore, reduction of this *initial* submission by the total amount of \$29,278.16 may not be altogether accurate. Nevertheless, a more accurate reduction involving adjustment of the subsequent claim updates covering the remaining months of 1998 would require sorting out from among the millions of dollars of challenged charges the relatively small amount of those which remained disputed. This hardly seems worth the effort considering at once both the complexity of the task and the small difference it might make in whatever award we ultimately make to Sprint in this decision.



\$2,559,611.42

See Findings 7-8. This comes to a total of \$3,996,838.99.

### Prompt Payment Act Interest

Sprint contends that it is entitled to PPA interest on unpaid USF line items contained in invoices submitted prior to the filing of its certified claim in August 1998.<sup>7</sup>

Under the PPA, payment is due thirty days after the Government's receipt of a proper invoice. 31 U.S.C. § 3902 (1994 & Supp. V 1999). The Act also provides that interest penalties are not required when payment is not made because of a dispute over the amount of payment or compliance with the contract. Id. § 3907(c).

GSA contends that Sprint's claim for PPA interest should be rejected for two reasons. The Government first argues that we have no jurisdiction over such a claim because it was never submitted to the contracting officer for decision pursuant to the Contract Disputes Act. GSA's second argument is that, from the start, Sprint's USF line items have been a disputed issue and, therefore, are not entitled to PPA interest. GSA Response to Appellant's Quantum Submission, at 6-9.

We find merit in both of GSA's arguments. The payment of Sprint's USF charges has been mired in controversy ever since Sprint revised its tariff for FTS2000 services toward the close of 1997 and advised GSA in early 1998 that USF contributions would be passed through on the FTS2000 contract "at the rate filed in Sprint's tariffs." Appeal File, Exhibits 7, 9, 14-16. Ironically, the point of disagreement which appears to have received the most attention initially was the issue raised in Count I of Sprint's complaint and which remains unresolved owing to our granting summary relief to Sprint on Count II, namely, whether the USF charge could be recovered under the contract provision dealing with an after-imposed tax, duty, or rate increase.

The Government's first objection to Sprint's PPA interest claim, however, is even more fundamental. Does this Board even have jurisdiction over such a claim? Submission of a qualifying CDA claim for PPA interest is a jurisdictional prerequisite to the Board's consideration of any PPA interest award. Active Fire Sprinkler Corp. v. General Services Administration, GSBCA 15318, 00-2 BCA ¶ 15,318, at 153,753; Ball, Ball, & Brosamer, Inc., IBCA 3542-95, et al., 98-1 BCA ¶ 29,637 (citing McGeary Company, ASBCA 41998, 91-3 BCA ¶ 24,117). We are aware of no CDA claim ever having been submitted to the contracting officer for PPA interest on the unpaid USF line items which are the subject of this appeal. There certainly is no mention of PPA interest in Sprint's claim letters of August

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<sup>7</sup>Sprint concedes that invoice 9802, which covered charges for services rendered in January 1998, is an exception since, as initially presented, it contained an erroneous charge. See Finding 7 n. 3. In the case of this invoice, Sprint seeks PPA interest only for the period beginning after the requisite number of days passed from receipt of a corrected invoice.

1998. Finding 11. Neither are we aware of any decision from the contracting officer on such a claim from which an appeal might have been taken. Accordingly, we agree with GSA that we have no jurisdiction over Sprint's claim for PPA interest and that this claim should, therefore, be dismissed.<sup>8</sup>

### CDA Interest

The Government contends that any CDA interest found due on Sprint's initial certified claim of August 25 must be calculated not from August 25, 1998, but from August 31, 1998, the date on which the contracting officer received the corrected claim letter and recertification. We fail to see why the calculation of interest on the claim cannot begin from the date of the original submission. The revised claim letter, although requesting a different sum, certainly did not introduce any new elements into the claim. The original claim was for withheld payments for USF charges. The claim, as resubmitted a few days afterward, was for the same. The language of the two letters remained unchanged; only the specific sum requested was modified. Finding 11. On the other hand, if it is the contention of the Government that the original certification was defective, this still does not preclude Sprint from recovering interest from the date of the original submission once the sum certain was corrected. The Federal Courts Administration Act of 1992 expressly provides that CDA interest due on a claim for which the certification was previously found to be defective shall nevertheless be paid from the date the contracting officer initially received the claim. Pub. L. No. 102-572, § 907(a)(3), 106 Stat. 4506, 4518 (1992).

In presenting its claim for CDA interest on the withheld payment of USF line items on its monthly invoices, Sprint has used what appears to us to be a reasonable approach for calculating that interest. As Sprint advised the contracting officer when it presented its original claim, the amount of the claim would continue to augment over the course of 1998 as the due date on successive invoices came and went. Sprint, therefore, does not seek interest on the entire amount of its claim from August 25, 1998. Rather it begins the computation of interest at different dates for different segments of its claim. That is to say, it claims interest on the initial claim of \$1,486,110.76 from August 25. On the amounts withheld from payment of successive invoices, it calculates the interest on the amount withheld from the date following the payment due date for each respective monthly invoice. See Appellant's Reply to GSA's Response to Appellant's Submission on Quantum, Exhibit 3.<sup>9</sup>

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<sup>8</sup>Citing Columbia Engineering Corporation, IBCA 2351, 88-2 BCA ¶ 20,595, Sprint contends that we should award PPA interest because GSA collected all Sprint's invoiced amounts for USF from its client agencies and had the use of those funds while it improperly withheld them from Sprint. We find any reliance on Columbia inapposite since that case, unlike the instant case, clearly concerned a CDA claim for withheld principal and PPA interest.

<sup>9</sup>While the methodology used by Sprint appears acceptable, the figure of \$1,466,505.73 used in Sprint's calculations of interest on the initial claim submission

Decision

The appeal is **GRANTED IN PART**. We find that Sprint is entitled to payment of \$3,996,838.99 in USF line items charges withheld from payment of monthly invoices issued by appellant under its FTS2000 contract for services rendered during calendar year 1998. In addition, we find that Sprint is entitled to interest at the Contract Disputes Act rate on the amounts withheld. The calculation of this interest shall be from starting dates (as specified by appellant in its claim) until paid. 41 U.S.C. §§ 611-612 (1994 & Supp. V 1999).

Appellant's claim for Prompt Payment Act interest is **DISMISSED FOR LACK OF JURISDICTION**.

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EDWIN B. NEILL  
Board Judge

We concur:

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ANTHONY S. BORWICK  
Board Judge

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MARTHA H. DeGRAFF  
Board Judge

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should of course be reduced to the amount mentioned earlier in this opinion,  
\$1,437,227.57.