



**Comptroller General  
of the United States**

**Washington, D.C. 20548**

B-261944

July 7, 1995

The Honorable Jim Ross Lightfoot  
Chairman, Subcommittee on Treasury,  
Postal Service and General Government  
Committee on Appropriations  
House of Representatives

Dear Mr. Chairman:

By letter dated June 29, 1995, you advised that during the markup of the 1996 Treasury, Postal Service and General Government appropriations bill, the Subcommittee decided to delete the provision contained in prior appropriations acts requiring federal agency use of the FTS 2000 long distance telecommunications network. Because of concerns raised during Subcommittee consideration, you asked for our advice on the legal effect the deletion would have on the current FTS 2000 contracts. In our opinion, the Administrator of the General Services (GSA) has adequate independent authority to continue to require federal agency use of the FTS 2000 network. Accordingly, there would be no effect, as a legal matter, on GSA's existing mandatory use policy resulting from not including in the 1996 appropriations act the provision currently found in section 622 of the 1995 Treasury, Postal Service and General Government Appropriations Act, Pub. L. No. 103-329, 108 Stat. 2382, 2421 (1994).

The Brooks Automatic Data Processing Act, section 111 of the Federal Property and Administrative Services Act, 40 U.S.C. § 759, governs the acquisition of automatic data processing equipment (ADPE), including telecommunications resources. The Brooks ADP Act authorizes GSA to provide federal agencies with ADPE through purchase, lease, transfer from other federal agencies, or otherwise. 40 U.S.C. § 759(b)(1). GSA may delegate authority to one or more federal agencies to lease or purchase ADPE to the extent the Administrator determines such action to be necessary or desirable. 40 U.S.C. § 759(b)(2).

GSA has issued a regulation requiring the use of FTS 2000 by federal agencies. 41 C.F.R. § 201-24.101 (1994). In addition, the FTS 2000 contract provides that "[t]he FTS 2000 program will be mandatory for all federal agency activities subject

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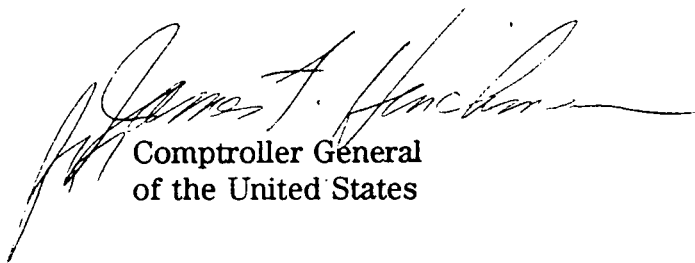
to P.L. 89-306, as implemented by the [FIRMR]." Request For Proposals, section C.1.1, Amendment No. 8: January 28, 1988.

The 1995 Treasury, Postal Service and General Government Appropriations Act currently prohibits the use of any appropriated funds by federal agency subject to the Brooks ADP Act from acquiring any product or service available through FTS 2000 unless exempted by the GSA. The effect of this restriction is that in fiscal year 1995 federal agencies are required to use FTS 2000 unless granted an exemption by GSA. GSA will grant exemptions if the requesting agency establishes that its requirements are unique and cannot be satisfied by the FTS 2000 network and the agency procurement would be cost-effective and would not adversely affect the cost-effectiveness of the FTS 2000 network. Id.; see also 41 C.F.R. § 201-24.101-1(b) (1994).

The appropriations act provision first appeared in the 1989 Treasury, Postal Service and General Government Appropriations Acts, Pub. L. No. 100-440, § 627, 102 Stat. 1721, 1757-1758 (1988). The Senate Appropriations Committee Report accompanying the bill explained that the Committee agreed with the House-initiated provision "because this provision ensures compliance with current law and should provide a significant savings to the Federal Government . . . under Public Law 89-306 as amended (the Brooks Act), GSA is given sole authority for procurement of all ADP and telecommunications resources in the government except for certain military critical systems . . . ." S. Rep. No. 100-387, 100th Cong., 2d Sess. 114 (1988).

In our view, the FTS 2000 appropriation act provision reinforces GSA's mandatory use policy. Absent that congressional directive, the agency has adequate authority as outlined above to sustain its policy of mandatory use. Accordingly, under current law, to the extent GSA remains committed to its mandatory use policy for FTS 2000, it is unnecessary, as a legal matter, to include a mandatory use requirement in the 1996 appropriations act.

Sincerely yours,



James T. Hendon  
Comptroller General  
of the United States