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General Government Division

B-278863

February 27, 1998

The Honorable John McCain  
Chairman, Committee on Commerce,  
Science and Transportation  
United States Senate

Subject: GSA: Federal Communications Commission Planned Move to the  
Portals II Building

Dear Mr. Chairman:

As you requested, this letter provides our observations on whether the Federal Communications Commission's (FCC) move into the Portals building (Portals II) would be in the best financial interest of the government compared to remaining in its current facilities. As agreed, we based our observations on our responses to the following questions concerning the FCC move: (1) Why is FCC being moved to new space? (2) What was the process used to select Portals II as FCC's new location, and based on the procurement records, was that process consistent with relevant laws and regulations? and (3) What additional costs would the government incur if FCC does not move to Portals II. As requested, we also addressed the question of why Portals II was not ready on the date specified in the lease.<sup>1</sup> Our overall observations and the basis for it are summarized below. The specific questions and our responses are contained in enclosures I through IV. Enclosure V contains the background of Portals II, which should be helpful in understanding the steps taken and the decisions made. Also, a site plan showing the location of Portals II is provided in enclosure VIII.

To formulate our observations and to address the specific questions, we reviewed GSA's official procurement file for the Portals II lease, including such documents as the prospectus (the formal summary of the space and funding needs to be approved by GSA's authorizing committees), the Solicitation for Offers (SFO)—(the formal request seeking offerers to provide the lease space for a tenant), the lease and its amendments, and various other documents related to

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<sup>1</sup>This letter updates the information we provided to the House and Senate Appropriations Committees in our letter, GSA: Causes of Delay in the Federal Communications Commission Move to the Portals II Building (GAO/GGD-98-60R, Jan. 30, 1998).

159981

the selection process. We also reviewed pertinent GSA regulations, court decisions related to the Portals II procurement, GSA documents relating to the leases for and condition of FCC's current space, as well as FCC documents relating to the Portals II lease. We toured Portals II; FCC's Headquarters building, which currently houses the largest number of FCC staff; and one other building currently occupied by FCC staff.

We interviewed GSA and FCC officials and asked GSA to estimate any additional costs that would be incurred if FCC did not move into Portals II. We did not independently verify GSA's estimates, nor did we determine the validity of FCC's estimated relocation costs. We reviewed FCC space needs studies done by GSA and FCC consultants, but we did not independently evaluate FCC's space needs; the appropriateness of the Portals II size, design, or equipment; or GSA's determination of responsibility for delays in the completion of Portals II construction.

We gathered some of the information used to respond to this request from other work we had done on the Portals II lease in 1997. The additional information used to address your request was gathered between December 1997 and February 1998. We did our work in accordance with generally accepted government auditing standards.

We requested comments on a draft of this letter from the Chairman of FCC and the Administrator of GSA. Their written comments are discussed near the end of this letter and are reprinted in enclosures VI and VII.

## BACKGROUND

In 1986, GSA identified FCC as a candidate for space consolidation. In September 1987, the House Committee on Public Works and Transportation approved the consolidation of FCC into about 260,000 occupiable square feet. On November 14, 1988, GSA and FCC entered into a memorandum of agreement on the long-range plan for consolidating all FCC's national office activities into a single building. As part of that agreement, GSA agreed to fund all the space programming and the costs of generating the SFO package. FCC agreed to fund certain costs, such as space planning and design services for special requirements; acquisition of systems furniture and equipment, including installation costs; and all telephone equipment and wiring required.

In March 1989, GSA issued an SFO to consolidate FCC's office space in one office building. On December 20, 1991, GSA orally notified the Portals II ownership that it was the successful offeror. However, GSA canceled the SFO in February 1992, citing increased space needs identified by FCC. The Portals II ownership filed a complaint in April 1992 with the U.S. Court of Federal Claims protesting the cancellation of the SFO and requesting injunctive relief. In February 1994, the court enjoined GSA from canceling the SFO and from resoliciting the space for FCC and ordered GSA to proceed with the award. In April 1994, GSA appealed this decision to the U.S. Court of Appeals for the Federal Circuit. On August 1, 1994, the appeals court affirmed the lower court's injunction and directed GSA to proceed with the solicitation process.

Eleven days later, GSA signed a 20-year lease for about 287,000 net usable square feet (NUSF)<sup>2</sup> in the Portals II building to be constructed by the Portals II ownership, the sole remaining offeror in the procurement process. However, by then FCC's space needs had increased to more than 500,000 occupiable square feet. In September 1994, the House Committee on Public Works and Transportation approved an increase in space for FCC to about 450,000 occupiable square feet. Thirteen months later, in October 1995, the Senate Committee on the Environment and Public Works also approved the increase for FCC.

In January 1996, GSA signed a supplemental lease agreement with the Portals II ownership for a total of about 450,000 NUSF, with three options for about an additional 85,000 NUSF. GSA exercised the three options in July and October 1996.<sup>3</sup> On January 5, 1998, through another supplemental lease agreement, GSA secured the right to use the garage and have security control over the entire garage. The remaining 12,000 NUSF in Portals II is to be used by the lessor for retail purposes, including food service.

As provided in the supplemental lease agreements, the new building was to be turned over to GSA in six phases, each consisting of about 89,200 square feet of space, over a 7-month period between July 1, 1997, and February 1, 1998. However, the projected delivery dates to GSA for each phase have slipped about 6 to 7 months, now being between January 3, 1998, and August 18, 1998, as shown in a later supplemental lease agreement. According to the GSA project manager, GSA received notice from the lessor on January 16, 1998, that phase I would be substantially complete as of January 26, 1998. GSA has conducted an inspection and, as of February 18, 1998, was working with the lessor to resolve issues raised in the inspection. As GSA accepts delivery of each phase, it plans to turn over the space to FCC for that agency's installation of furniture and equipment necessary for its use and occupancy of the space.

Among concerns that had been raised about FCC's planned move to Portals II are allegations that GSA was unduly influenced in its decisionmaking on the Portals II lease

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<sup>2</sup>NUSF is the area to be leased for occupancy by personnel and/or equipment. The total space is computed by measuring between the inside finish of the permanent exterior walls of the building or from the face of the convectors (heating ducts) if the convector occupies at least 50 percent of the length of exterior walls. NUSF is computed by deducting the gross area from the total space. The gross area includes such items as toilets and lounges; stairwells, elevators, and escalator shafts; building equipment; service areas, entrance, elevator lobbies, stacks, and shafts; corridors in place, or required to be in place, by local codes and ordinances; and enclosing walls for these items.

<sup>3</sup>Between January and June 1996, GSA received four separate Standard Form 81s, Requests for Space, from FCC. The GSA contracting officer based his decision to exercise the options as separate actions on the fact that the Standard Form 81s were separate. According to GSA, the individual options were each below the level for which congressional approval was required. GSA officials told us that GSA's House oversight committee directed GSA to issue a stop work order, which GSA did on December 10, 1996, on the optional space because of the committee's concern over GSA's exercising the options without first seeking amended prospectus authority. On March 26, 1997, the committee notified GSA by letter that it did not object to GSA's proceeding. GSA lifted the stop work order on March 31, 1997.

by or on behalf of one of the Portals II partners. An assessment of the validity of these allegations was not included within the scope of our review.

Enclosure V contains more detailed information on the government's acquisition of the leased space at the Portals II building—contextual information that should be helpful to the committee in its consideration of concerns that have been raised about the Portals II lease.

### RESULTS IN BRIEF

Despite delays in completing the building, we believe that, at this time, FCC's move to the Portals II building is in the best financial interest of the government and is preferable to FCC's staying in its current locations. We based our observations on the following: (1) most of FCC's current space has major fire-safety code or asbestos-related problems or both, and the leases for all the space currently occupied by FCC will expire by 2003; (2) FCC signed a memorandum of agreement with GSA in November 1988 with the expressed mutual objective to consolidate all FCC's national office activities into a single building; (3) the Portals II building was selected through a process that, except for the cancellation of the original SFO, appeared to meet applicable laws and regulations we reviewed and produced a building that was designed, and is being built, to meet FCC's specific needs at a cost within the authorized limit; and (4) the government is likely to incur substantially greater costs if FCC does not move to Portals II.

Regarding your question about delays in FCC's move to Portals II, various problems, including a lack of funding and congressional concerns that resulted in a stop work order, caused the delays in delivery of Portals II to GSA and FCC's move into the building. GSA has informed us that the design- and construction-related delays were caused by the government, not the lessor.

FCC is being moved to new space because in 1988 FCC and GSA agreed to consolidate FCC's operations, which were then in three separate office buildings, into one facility.<sup>4</sup> The consolidation's objective was to reduce the total amount of leased space, improve FCC's operating efficiency, and reduce its administrative costs. Since 1988, FCC's size has increased to such an extent that in 1998 it occupied space in eight office buildings. Also, five of the office buildings FCC currently occupies have major fire-safety code or asbestos-related problems or both. According to GSA, all of the leases for FCC space will expire between June 1998 and April 2003 and would have to be recompeted. Therefore, FCC would have to move out of some of its current space, at least temporarily, even if it does not move to Portals II. According to FCC officials, FCC needs improved telecommunications capabilities, improved network equipment, auction space, more conference rooms, a consolidated reference room, and new filing space.

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<sup>4</sup>FCC also has a storage facility in Maryland, which it plans to keep for the immediate future. Long-term plans for the building remain uncertain.

The Portals II building was selected to meet FCC's initial square footage needs through a full and open competition in which Portals II was the only offeror among the final three offerors that met both technical and award requirements and the cost authorized for the acquisition by the prospectus approved by the House Committee on Public Works and Transportation. Award factors included such factors as building efficiency, location, building design, and accessibility to current clients. Portals II also offered the lowest price. Given the circumstances facing GSA, including the court decision directing GSA to proceed with the solicitation process, the need to comply with the House Committee on Public Works and Transportation authorization to consolidate FCC's operations, and the reasonableness of the price, GSA's process for procuring additional space in the Portals II building to meet FCC's increased square footage needs appears reasonable to us. Other than the cancellation of the SFO, which was determined to be invalid, no evidence came to our attention indicating that GSA did not comply with the applicable statutory and regulatory requirements we reviewed in selecting Portals II.

For several reasons, if FCC does not move to Portals II, the government is likely to incur additional substantial costs, although the total amount is not known at this time. First, the lease does not contain a "termination for convenience" clause,<sup>5</sup> and GSA has no other basis for terminating the 20-year lease it has signed. Therefore, GSA could be liable for damages, including all or a substantial part of the about \$420 million 20-year cost of the lease, if it attempted to terminate the lease. GSA believes lease termination or a negotiated settlement is not a viable option due to the substantial costs involved, and we agree. Second, if GSA sought to find a substitute tenant, or tenants, identifiable estimated costs for rent at Portals II while it remains vacant would range between about \$18.6 million and \$27.9 million,<sup>6</sup> and costs to redesign the interior of the building to meet the new tenant's needs would be about \$1.4 million. In addition, about \$434,000 per year that FCC has estimated as its consolidation savings would be lost if it does not move to Portals II. Third, GSA told us that if FCC does not move to Portals II, the government would also have to pay for (1) resoliciting FCC's space needs, (2) extending leases for the current FCC buildings until other space is acquired, and (3) adapting the new lease space to meet FCC's needs. The amounts of these costs are unquantifiable at this time.

Although GSA expects FCC's consolidation to reduce FCC's office space needs, the annual total rent cost for Portals II will be about \$8.4 million more than the \$15.4 million FCC currently pays for its office space with short-term leases. In the event that FCC receives additional appropriations, under the terms of a December 1997 Memorandum of Understanding, FCC would reimburse GSA for additional costs related to the relocation. However, as GSA noted, Portals II is new space that replaces FCC's aged and inadequate

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<sup>5</sup>While the Federal Acquisition Regulation does provide that government contracts for the acquisition of supplies or services must contain a termination for convenience clause, it does not apply to leasehold acquisitions of real property.

<sup>6</sup>If the space is ready for occupancy and not occupied, the lease allows for a reduction in the operating expenses for vacant space. GSA expects it will take about 12 to 18 months to find and relocate a substitute tenant, or tenants, for Portals II.

space with modern space that meets the current fire-safety requirements and stricter handicap accessibility requirements.

Portions of Portals II also have features designed specifically for FCC, such as improved telecommunications, improved network systems, up to 40 conference/training rooms for use by FCC's 2,000 employees and 1,000 daily visitors, a large Commission meeting room, a large library, a consolidated reference room, and a central file room, all of which are intended to improve staff productivity and allow FCC to serve the public better. FCC would not gain these benefits, at least for the foreseeable future, if it does not move to Portals II. Further, according to GSA officials, if FCC does not move, GSA will have to re-compete FCC's space requirements, which would likely increase FCC's rent, given market rates and FCC's special requirements.

However, FCC has raised several concerns about moving to Portals II. First, it has security concerns about public access at two building entrances, control of the loading dock area, and control of parking. GSA and FCC are currently discussing FCC's security concerns. Second, FCC was concerned that, as of early February 1998, GSA had not provided the \$24.1 million in fiscal year 1998 relocation costs that it had agreed to provide by October 7, 1997.<sup>7</sup> However, on February 11, 1998, FCC received \$15.3 million of the \$24.1 million, with the remaining \$8.8 million being retained by GSA to pay for contracting and services it was providing for FCC. FCC officials confirmed that they have received \$15.3 million; however, they were concerned that GSA's allocation of the \$24.1 million might not be consistent with FCC's agreements with GSA, and they have asked GSA for an accounting of the funds. In commenting on a draft of this letter, FCC stated that until it has an opportunity to review fully GSA's explanation of the retained amounts, it is not in a position to determine that it will have sufficient funds to complete the move. On February 23, 1998, GSA provided the accounting requested by FCC. To ensure that both agencies are using the same approach, GSA also asked FCC for its spending plan and records of obligations. In commenting on a draft of this letter, GSA said that it intends to transfer an additional \$2.1 million, of the \$8.8 it had retained, to FCC by February 27, 1998. Third, FCC is concerned that if it does not get an increased appropriation for the higher rent, it will not be able to move without adversely affecting its operations because the increased rent could result in less funds for staffing. FCC also noted that many of its employees do not favor moving to Portals II because of its location. However, FCC does not believe that this concern, while important, outweighed the benefits of moving—provided its concerns about security and funding are resolved. Finally, in its comments on a draft of this report, FCC raised an additional concern about the installation of the movable wall system to be used in Portals II. This concern is discussed in the agency comments section at the end of this letter.

Phase I of the Portals II building was not ready for delivery to GSA as originally scheduled on July 1, 1997, for several reasons. According to GSA, the delay was caused by (1) a lack of FCC-appropriated funds to award the contract for the preparation of the design intent drawings (DID)—FCC notified GSA on November 29, 1995, that GSA would

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<sup>7</sup>GSA transferred \$6.2 million to FCC in fiscal year 1997 for FCC's relocation costs.

have to provide the funds for the DID contract; (2) the time involved in negotiating the DID contracts; (3) the late delivery of acceptable DID by the contractor; (4) the extensions granted by GSA's contracting officer on the due dates for the construction drawing submissions requested by the lessor; and (5) a stop work order directed by GSA's House oversight committee.

As a result, the beginning of actual construction of the building was delayed by about 6 to 7 months. Consequently, the lease's official initial substantial completion and delivery date (SCDD) for phase I of the project slipped from July 1, 1997, to January 3, 1998.<sup>8</sup> FCC said that due to the lack of relocation funding, it has not been able to procure specific items and services needed to prepare the new space before moving into the building. To enable it to move into Portals II, FCC requested funds for this purpose in its fiscal year 1996, 1997, and 1998 budget requests. However, Congress did not approve the requested funds in any of these years because of the Appropriations Committees' funding allocations and their concerns about the cost of the relocation and the increased space requirements.

In July 1997, GSA agreed to fund FCC's relocation costs<sup>9</sup> with the understanding that FCC had been unable to obtain congressional authority to fund these costs, but would continue, as an agency priority, to request annual appropriations to reimburse GSA. GSA has made available about \$30 million in fiscal years 1997 and 1998 for this purpose. The items and services that FCC requested to be funded included, among others, duplicate rental costs during the phased move; temporary guard services during the adaptation of the new space for FCC; and purchase, installation, and configuration of movable walls, modular furniture, and telecommunications and network equipment.

#### AGENCY COMMENTS AND OUR EVALUATION

On February 19, 1998, we provided the Chairman, FCC, and the Administrator of GSA with a draft of this letter for comment. On February 24, 1998, we received written comments (see enclosure VI) from FCC's Deputy Chief, Cable Services Bureau and Chairman of the Portals Advisory Committee. FCC did not comment on our overall conclusion that its move to Portals II is in the best financial interest of the government.

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<sup>8</sup>The SCDD is the date on which the lessor is to turn designated sections of the building over to GSA so that FCC can have the interior space adapted to meet its needs. Phase I was delivered January 26, 1998, subject to GSA approval.

<sup>9</sup>In providing funding for FCC's relocation costs, GSA relied primarily on its authority under Section 210(f)(6) of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 490(f)(6), to provide special services to an agency (not included in that agency's standard level user charge) on a reimbursable basis. As explained in Senate Report No. 104-330, which accompanied the Treasury, Postal Service, and General Government Appropriations Act for fiscal year 1997, the Senate Committee on Appropriations stated its intention that to the extent FCC did not receive sufficient funds to cover its relocation costs, funds available to the Administrator of GSA "shall be available for the payment of such expenses."

FCC said that it was not commenting on our conclusions about whether it was reasonable or prudent for GSA to enter into the Portals II leases and agree to the timetables set forth in the January 1996 supplemental lease before it had assurance that Congress would fund the cost of the move because it was not involved in these decisions made by GSA. FCC also raised concerns about a new issue that FCC had not brought to our attention during the course of our work. This issue involves when and where the interior movable wall system at Portals II will be installed.

Concerning FCC's point that it was not involved in GSA's lease decisions, we recognize that GSA, acting as the government's leasing agent, negotiated the final terms of the initial and supplemental leases. However, GSA proceeded based on (1) authorization initially from its House oversight committee in 1987, and both its House and Senate oversight committees in 1994 and 1995, respectively; (2) a 1988 agreement in which FCC agreed to consolidate into one office building and pay for certain relocation costs; and (3) a 1994 U.S. Court of Appeals for the Federal Circuit ruling affirming a lower court's decision that GSA proceed with the solicitation process for the FCC's space requirements. We also note that we do not make any conclusions on the reasonableness of the timetables set forth in the Portals II leases.

FCC's new concern regarding the wall system is that the lessor has proposed to assemble the walls based on a universal space plan that has not yet been refined to reflect the most current space needs of FCC's various offices and bureaus. Since this was not an issue during our work, we were not aware of FCC's concern and did not focus on the installation of the movable walls as a potential further delay in FCC's move. According to FCC, GSA has concurred with the lessor's proposal. That is, to provide flexibility in the office space at the new building, the internal office spaces are being designed so that the office layout can be quickly reconfigured to adjust to changes in personnel assignments, through the use of an adjustable, demountable wall system, known as "V-walls." FCC objects to using a layout configuration that does not reflect FCC's actual organizational and functional purposes.

Regarding FCC's concerns with the funding, security, and the installation of the movable wall system, we agree that GSA and FCC need to resolve these issues.

On February 25, 1998, we received written comments (see enclosure VII) from the Commissioner, Public Buildings Service, GSA, in which GSA agreed with our principal conclusion that FCC's relocation to Portals II is in the best interest of the government. In addition, GSA said that it is continuing to address each issue raised by FCC to avoid further delay and noted that FCC has expressed a desire to consolidate in one location for a long period of time. Further, GSA said that it plans to provide FCC with an additional \$2.1 million by the end of February 1998 to assist in its relocation and that on February 23, 1998, it provided FCC with an accounting of the funds GSA has made available for FCC's relocation. Also, GSA said that it will resolve the security issue without compromising the safety and security of FCC's employees and visitors and without further delaying FCC's move.



Although GSA is confident about being able to resolve the funding and security issues raised by FCC, these issues have existed for several months without resolution. While we are not in a position to determine how the funding and security issues or the recently raised issue on the installation of the movable wall system should be resolved, we believe that GSA and FCC need to resolve them quickly, since each day of further delay will cost the government about \$51,000 in rent for the unoccupied space in Portals II.

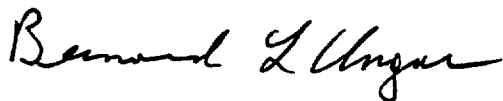
Both FCC and GSA provided specific comments to clarify some of the information presented in the letter, which we have incorporated where appropriate.

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We are sending copies of this letter to the Chairmen and Ranking Minority Members of the Senate Committee on Environment and Public Works; Senate Subcommittee on Communications; House Committee on Transportation and Infrastructure; House Committee on Commerce; Senate Subcommittee on Commerce, Justice, and State, the Judiciary and Related Agencies; House Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies; Ranking Minority Member of the Senate Committee on Commerce, Science and Transportation; the Chairman of FCC; the Administrator of GSA; and other interested committees and subcommittees. Copies will also be made available to others on request.

Major contributors to this letter were Ronald King, Assistant Director; Thomas Keightley, Senior Evaluator; Alan Belkin, Assistant General Counsel; Susan Michal-Smith, Senior Attorney; and Hazel Bailey, Communications Analyst. Please contact me on (202) 512-8387 if you have any questions concerning this letter.

Sincerely yours,



Bernard L. Ungar  
Director, Government Business  
Operations Issues

Enclosures - 8

QUESTION 1

**WHY IS THE FEDERAL COMMUNICATIONS COMMISSION  
BEING MOVED TO NEW SPACE?**

Question 1	GAO Response
Why is FCC being moved to new space?	<p>▶ To consolidate FCC's operations into one office building and one storage facility that will meet its specific needs.</p> <p>The consolidation was intended to</p> <ul style="list-style-type: none"> <li>-- reduce leased space square footage;</li> <li>-- improve efficiency; and</li> <li>-- reduce administrative costs.</li> </ul>

Source: GAO, based on information obtained from GSA and FCC.

GAO RESPONSE

In 1986, GSA identified FCC as a candidate for consolidation. In September 1987, the House Committee on Public Works and Transportation approved the consolidation of FCC into about 260,000 occupiable square feet.<sup>10</sup> On November 14, 1988, GSA and FCC entered into a memorandum of agreement on the long-range plan for consolidating all FCC's national office activities into a single building. GSA and FCC agreed to consolidate FCC's operations into one office building and one storage facility from four buildings—three office buildings in the District of Columbia and one storage facility in Maryland. The purpose of consolidation was to reduce leased space, improve FCC's operating efficiency, and reduce its administrative costs. On July 9, 1987, GSA submitted prospectus number PDC-88W02 to the House Committee on Public Works and Transportation proposing the consolidation of the three FCC office locations into 260,416 occupiable square feet into one building while retaining the 12,000 square feet of storage space in Maryland. The prospectus called for a 20-year lease to ensure stable, long-term housing for FCC, and it estimated the maximum annual cost to be about \$9.4 million. On September 23, 1987, the House committee approved the prospectus for 260,416 occupiable square feet for 30 years<sup>11</sup> at an estimated maximum annual cost of about \$9.4 million. In

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<sup>10</sup>Occupiable square feet is that portion of the gross area that is available for use by an occupant's personnel or furnishings, as well as space that is available jointly to the various occupants of the building, such as auditoriums, health units, and snack bars. Occupiable space is computed by measuring from the occupant's side of ceiling-high corridor partitions, or partitions enclosing mechanical, toilet, and/or custodial space, to the inside finish of the permanent exterior building walls or to the face of the convector (heating ducts) if the convector occupies at least 50 percent of the length of the exterior wall.

<sup>11</sup>According to GSA officials the 30-year term approved by Congress was in error because GSA only has authority to issue leases with 20-year terms. The 30-year term was changed when the amended prospectus was approved by the appropriate House and Senate committees.

1987, the Senate Committee on Public Works and Transportation was not reviewing prospectuses.

After GSA prepared its initial prospectus for FCC's space consolidation, FCC space needs began to increase due to the additional responsibilities Congress assigned to it under such laws as the Cable Television Consumer Protection and Competition Act of 1992, Omnibus Budget Reconciliation Act of 1993, and Telecommunications Act of 1996. Further, FCC wanted additional space, including special purpose space, to support its efforts to implement its mission requirements more effectively. In August 1990, GSA provided an option for about 30,000 additional square feet. In May 1992, a space requirement report, prepared by a GSA consultant, identified FCC's updated requirements as 334,750 occupiable square feet. This was an increase of about 74,300 occupiable square feet over the amount requested in GSA's initial prospectus. In September 1994, another space requirement report, prepared by the same consultant, concluded that FCC needed 545,076 occupiable square feet, or 284,660 occupiable square feet more than GSA requested in its initial prospectus, and over 210,300 occupiable square feet more than was identified as needed in May 1992. The increased space was needed for staff to meet congressional mandates, consolidating all of FCC's public reference rooms, accommodating substantial growth in the number of filings and related files; and filling the operational need for more conference/training rooms, hearing rooms, witness rooms, and areas for public proceedings.

FCC currently occupies about 580,000 NUSF in eight office buildings with short-term leases at an annual cost of about \$15.4 million.<sup>12</sup> The lease on Portals II would reduce NUSF by about 44,900 NUSF to about 535,100 NUSF, at an increased cost of about \$8.4 million annually.<sup>13</sup> According to GSA, while the new space costs more, it will replace FCC's inadequate and aged space with modern space that meets the current fire-safety requirements and stricter handicap accessibility requirements. For example, while an FCC official told us that FCC currently has only 9 formal conference rooms, Portals II will have up to 40 conference/training rooms for use by FCC's 2,000 employees and 1,000 daily visitors. Also, FCC officials told us that the new facility will include a larger Commission meeting room, a much larger library, a large consolidated reference room, and a central file room, all of which are intended to allow FCC to serve the public better. In 1996, FCC estimated that the consolidation would reduce administrative costs by about \$434,000 annually due to improved efficiency of operations in areas such as guard service; mail clerks, laborers, and support service personnel; as well as reduced warehouse space. However, beginning with the original prospectus, GSA has indicated that the reductions in square footage would not offset the increase in lease costs incurred by moving into new

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<sup>12</sup>FCC's storage facility in Maryland has 24,350 NUSF, which brings FCC's total NUSF to 604,339.

<sup>13</sup>The \$8.4 million includes GSA's servicing cost. The \$15.4 million currently being paid by FCC for office space also includes GSA's servicing cost. The lease cost for the 535,130 NUSF at Portals II is currently about \$21 million annually. Adding GSA's annual servicing costs would bring FCC's total lease costs for Portals II to about \$23.8 million annually.

space because lease costs for new office space are higher than lease costs for space in older office buildings.

QUESTION 2

**WHAT WAS THE PROCESS USED TO SELECT PORTALS II AS FCC'S NEW LOCATION, AND BASED ON THE PROCUREMENT RECORDS, WAS THAT PROCESS CONSISTENT WITH RELEVANT LAWS AND REGULATIONS?**

Question 2	GAO Response
<p>What was the process used to select Portals II as FCC's new location, and based on the procurement records, was that process consistent with relevant laws and regulations?</p>	<ul style="list-style-type: none"> <li>▶ Portals II was the only remaining offeror in response to a competitive procurement for FCC's initial space needs that met both the technical requirements and authorized cost limitations.</li> <li>▶ GSA contracted with Portals II for FCC's increased space needs based on GSA's interpretation of a court decision, to maintain FCC's consolidation goal, and because it believed the price was reasonable.</li> <li>▶ It appears that GSA's solicitation of space for FCC was in compliance with applicable laws and its own agency regulations governing the procurement of leased space, except for its cancellation of the SFO in February 1992.</li> </ul>

Source: GAO, based on information obtained from GSA and FCC.

GAO RESPONSE

Portals II was the only remaining offeror in a competitive procurement for FCC's initial space needs, about 260,000 occupiable square feet, that met both technical requirements and authorized cost limitations. GSA relied on Exemption 1 to the Competition in Contracting Act (41 U.S.C. 253(c)(1)), which permits award on an other than full and open competition basis where there is only one responsible source that can meet the government's requirements. To obtain FCC's increased space needs of 162,939 NUSF, GSA had three reasons for using a noncompetitive procurement: (1) it believed that the decision concerning the initial selection of Portals II rendered by the U.S. Court of Appeals for the Federal Circuit gave it the power to use the legal processes available to it in this procurement to accommodate FCC's present and future space needs without resolicitation; (2) it needed to comply with the House Committee on Public Works and Transportation authorization to consolidate FCC in one location, as required by the original prospectus; and (3) it believed that the price offered was reasonable. In addition to the 162,939 NUSF obtained using a noncompetitive procurement, the supplemental lease agreement for the space obtained noncompetitively included three lease options for a total of about 85,000 additional NUSF.

GSA Initially Selected Portals II  
Using a Competitive Process

Using the authority granted by the House Committee on Public Works and Transportation and its approval of prospectus PDC-88W02, GSA published an advertisement on August 1, 1988, seeking expressions of interest for developing a federal complex of 273,500 to 287,160 NUSF of office, storage, and special space to accommodate the consolidation of FCC in downtown Washington, D.C. The three office buildings that FCC was occupying at the time were within the delineated area for source selection. Multiple letters of interest were received by GSA from developers interested in this project.

On March 14, 1989, GSA issued SFO 88-100 for 273,000 to 295,000 NUSF. The SFO stated that price was less important than were technical and other factors. Other factors, in descending order of importance, were building efficiency, location, occupancy date, building design, accessibility to current clients, and offeror qualifications. Seventeen offerors responded to the SFO. By June 1991, GSA determined that 12 of the 17 offerors did not meet the SFO's minimum requirements. Consequently, GSA began negotiations with the five remaining offerors.

GSA's selection process for this acquisition used the "greatest value approach" in which the source selection evaluation is based on technical criteria and the reasonableness of the costs. Best and final offers were requested on September 27, 1991. Four responses were received; however, one offeror had an occupancy date 22 months from the award, which was not consistent with the SFO requirements. On November 6, 1991, selection proceedings were completed. The Source Selection Board ranked the remaining three offers in the following order based on the criteria outlined in the solicitation:

1. Warner Theater building, located on E Street, between 13th and 14th Streets N.W.;
2. City Center located at 1401 H Street, N.W.; and
3. Proposed Portals II building, located at 445 12th Street, S.W.

However, both City Center's and Warner's cost estimates exceeded the estimated maximum annual amount authorized by the House Committee on Public Works and Transportation in the approved prospectus. The Portals II building was the remaining ranked offer, and its cost estimates were within the authorized prospectus limits. Therefore, on December 20, 1991, the Portals II ownership was verbally notified that it was the successful offeror.

On February 10, 1992, GSA canceled the SFO, citing increased space needs identified by FCC. The Portals II ownership filed a complaint in April 1992 with the U.S. Court of Federal Claims protesting the cancellation of the SFO and requesting injunctive relief. In February 1994, the court enjoined GSA from canceling the SFO and from resoliciting the space for FCC and ordered GSA to proceed with the award. In April 1994, GSA appealed this decision to the U.S. Court of Appeals for the Federal Circuit. On August 1, 1994, the appeals court affirmed the lower court's injunction and directed GSA to proceed with the solicitation process. The U.S. Court of Appeals for the Federal Circuit stated that

*"the solicitation should resume where it left off on February 10, 1992. GSA should proceed with due diligence to comply with the spirit of the trial court's injunction and to proceed toward award of SFO 88-100 without unnecessary delay."*

On August 12, 1994, GSA awarded a 20-year lease for Portals II for 287,483 NUSF. Also, GSA conditionally awarded a second lease, for 450,422 square feet, to become effective if appropriate congressional approval was received by December 31, 1994. GSA prepared the second lease to meet FCC's need for additional space that had been identified after the initial procurement process had started.

GSA Used Negotiated Options  
to Obtain Additional Space for FCC

To lease the additional 162,939 NUSF, GSA's contracting officer signed a justification for other than full-and-open competition for leasehold interest in real property. GSA cited three reasons for not using full-and-open competition: (1) the decision of the U.S. Court of Appeals for the Federal Circuit, which GSA interpreted as giving it the power to use the legal processes available to it in this procurement to accommodate FCC's present and future space needs without resolicitation; (2) the need to comply with the requirements in the original prospectus to consolidate FCC's operations into one location; and (3) the price offered was considered reasonable. The justification stated that \$35.91 was the estimated rentable square-foot rate, or \$39.14 per NUSF. GSA surveyed lease costs for three buildings, one in Southwest and two in Northwest Washington, D.C., to determine their rentable square-foot rate. The three buildings' rates were \$33, \$33.50, and \$38 per rentable square foot. GSA concluded that the Portals II square-foot rate was in this range. Five GSA officials concurred with the justification, and the acting senior procurement executive approved it on August 15, 1994.

On September 23, 1994, the House Committee on Public Works and Transportation approved an amended prospectus for 450,416 occupiable square feet at an annual cost not to exceed approximately \$17.5 million. However, the Senate Committee on the Environment and Public Works did not authorize the space until October 24, 1995. Since the required Senate approval was not received by December 31, 1994, GSA renegotiated the second lease. On January 3, 1996, GSA signed a supplemental lease agreement to amend the original lease of 287,483 NUSF to provide for a total of 449,859 NUSF at a total annual cost of about \$17.3 million. The supplemental lease agreement contained three space options of 47,058 NUSF, 29,565 NUSF, and 8,648 NUSF at a rate of \$37.95 per NUSF. These options, if exercised, would raise the total value of the lease to about \$21 million annually. GSA included these options because (1) its lease of 85 percent of the building had already begun, and by exercising the options, GSA would control almost the entire building, thereby enhancing security and maximizing flexibility for future space changes; and (2) the three options would provide more space to meet additional FCC requirements.

GSA Exercised All Three Lease Options for  
Design Expansion and Building Access Control

Between January 10, 1996, and June 14, 1996, FCC submitted four Standard Form 81s, Request for Space, to GSA for a total of 71,888 square feet. When an allowance was included for circulation, the total square footage requested increased to about 79,000 square feet. GSA decided to execute all three space options to allow for design expansion and for complete control of access to the building, since it would now be leasing 98 percent of the Portals II building. On July 2, 1996, GSA exercised the three options, for a total increase in space of 85,271 NUSF. Before exercising the options, GSA had evaluated market alternatives that showed the Portals II lease options were about 4 percent lower than the others considered. On July 3, 1996, GSA's contracting officer, its management, and its legal personnel decided to rescind options two and three in light of concerns that were raised in another pending court case. On October 17, 1996, options two and three were again exercised to meet the needs identified between May and June 1996. On December 10, 1996, GSA issued a stop work order because its House oversight committee expressed concern over GSA's exercising the options for additional space without first seeking approval for an amended prospectus. After consultation with the committee, and after receiving a letter, dated March 26, 1997, from the committee stating that it did not object to GSA's proceeding, GSA lifted the stop work order on March 31, 1997. According to FCC, the stop work order caused space planning work on Portals II to stop for 3 to 4 months.

GSA's Selection of Portals II Appears to Have  
Complied With Applicable Laws and Contracting  
Regulations, Except in One Instance.

No evidence came to our attention that GSA's solicitation of space for FCC was not in compliance with applicable laws and its own agency regulations governing the procurement of leased space, except for its cancellation of the SFO in February 1992. In this regard, GSA identified FCC's requirements, obtained lease prospectus approval from the House Committee on Public Works and Transportation for about 260,000 occupiable square feet, issued an SFO requesting proposals, established a competitive range, conducted discussions with offerors, and evaluated proposals in accordance with the announced evaluation criteria. However, after GSA canceled the SFO, the U. S. Court of Appeals for the Federal Circuit affirmed the decision of the U. S. Court of Federal Claims and held that GSA's basis for canceling the SFO was invalid and did not comply with applicable laws and regulations. The court of appeals reinstated the improperly canceled solicitation and directed GSA to resume the solicitation process.

It appears that GSA followed the Court's decision and thereafter complied with applicable laws and regulations we reviewed in resuming the procurement process, and it subsequently awarded the lease to Portals II. Furthermore, the award to Portals II was consistent with the fiscal year 1988 lease prospectus for approximately 260,000 occupiable square feet. An amended lease prospectus for FCC's increased space requirements for an additional 162,939 NUSF at Portals II was approved by the House Committee on Public Works and Transportation and the Senate Committee on the Environment and Public



Works. Furthermore, before GSA signed the supplemental lease with the Portals II ownership, GSA obtained the required approvals for its justification for other than full-and-open competition to substitute the increased NUSF amount in the lease for Portals II.

GSA's House authorizing committee expressed concern about the manner in which GSA had exercised its three options for 85,271 NUSF because it believed that GSA should have obtained congressional authorization for the additional space before exercising the options. After discussing the issue with GSA, the committee dropped its objection and told GSA to proceed with the work on the optional space.

QUESTION 3

**WHAT ADDITIONAL COSTS WOULD THE GOVERNMENT INCUR IF FCC DOES NOT MOVE TO PORTALS II?**

Question 3	GAO Response
<p>What additional costs would the government incur if FCC does not move to Portals II?</p>	<ul style="list-style-type: none"> <li>▶ GSA estimated it would take 12 to 18 months to find and move a substitute tenant. The cost of the space being unoccupied for this time would be between about \$18.6 million and \$27.9 million.</li> <li>▶ GSA has estimated additional costs of about \$1.4 million to redesign the Portals II building for another agency or agencies.</li> <li>▶ FCC has estimated its consolidation savings of \$434,000 per year would be lost.</li> <li>▶ Unknown costs would be incurred, such as                             <ul style="list-style-type: none"> <li>-- resoliciting FCC's space needs,</li> <li>-- extending leases for the current FCC buildings until new space is found; and</li> <li>-- adapting the new lease space to meet FCC needs.</li> </ul> </li> </ul>

Source: GAO, based on information obtained from GSA and FCC.

GAO RESPONSE

For several reasons if FCC does not move to Portals II, the government is likely to incur additional substantial costs, although the total amount is not known at this time. First, the lease does not contain a termination for convenience clause, and GSA has no other legal basis for terminating the 20-year lease it has signed. GSA could be liable for damages, including all or a substantial part of the about \$420 million 20-year cost of the lease if it attempted to terminate the lease. GSA believes lease termination or a negotiated settlement is not a viable option due to the substantial costs involved, and we agree. Second, if FCC does not move into the Portals II building, GSA estimates that identifiable additional costs range between about \$18.6 million and \$27.9 million for Portals II rent while it remains vacant, and about \$1.4 million would be incurred to redesign the interior of Portals II for another agency or agencies. In addition, about \$434,000 per year that FCC has estimated as its consolidation saving would be lost if it does not move.

Since the leases for the space FCC currently occupies will be expiring over the next few years, and because most of this space has major fire-safety code or asbestos-related problems, or both, there is no assurance that FCC's future annual rental payments will remain at the current level even if it does not move to Portals II as planned. This is because, according to GSA, FCC's space requirements will have to be recomputed. In

addition, other potential costs to acquire new space for FCC if it does not move to Portals II when its current leases expire include the cost of

- resoliciting FCC space needs,
- extending leases for the current FCC buildings until new space is found, and
- adapting the new lease space to meet FCC needs.

These costs are unknown at this time.

Further, there could be unrecoverable costs that are undeterminable at this time for space design and special features built in Portals II for FCC but either removed because of a redesign of the building for a new tenant or kept but not needed by a new tenant.

The following presents potential options and their potential effects on cost, as well as several concerns that FCC has, which could affect when and if it moves.

#### Potential Costs If Portals II Building Lease Were to Be Terminated

The basic rent for Portals II under the lease is about \$21 million a year, or about \$420 million for the entire 20-year period covered by the lease.<sup>14</sup> Since GSA was not required to and, in accordance with standard commercial real estate practices, did not include a termination for convenience clause in its lease with Portals II, GSA would have no legal basis to terminate the lease. In such circumstances, if FCC or an acceptable substitute tenant does not occupy the Portals II building, or if GSA sought a negotiated settlement to cancel the lease, GSA could be liable for all or a substantial part of the total costs of the lease. GSA believes lease termination is not a viable option due to the substantial costs involved, and we agree.

#### Potential Increased Costs If FCC Does Not Move Into Portals II

If FCC does not move to Portals II, GSA would have to continue paying about \$18.6 million a year for unoccupied space in Portals II as well as a minimum of \$15.4 million yearly for the space FCC currently occupies. This \$18.6 million would be in addition to the more than \$14 million GSA would already have paid for unoccupied space in Portals II between July 1997, when the lease required rental payments to begin, and June 1998.<sup>15</sup> Rental payments for unoccupied space would have to be paid until the government was able to move another agency, or agencies, into Portals II. GSA estimates it could take a minimum of 12 to 18 months to identify another tenant, or tenants, redesign and alter the space, and move the new tenant, or tenants, into Portals II. The cost of the unoccupied

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<sup>14</sup>The base rent in the original lease documents was about \$20.6 million. After applying the negotiated operating cost escalations, the current base rent is \$21 million.

<sup>15</sup>On February 18, 1998, FCC officials advised us that they are now looking at some time in August 1998 as the earliest the move can begin, and will not be able to select a firm date until the funding issue is resolved.

space for this time would be between about \$18.6 million and \$27.9 million. Further, the government will continue to incur some costs until the lease for the space previously occupied by whichever agency, or agencies, move into Portals II expires. According to GSA, the leases on the buildings that FCC currently occupies can all be terminated by October 14, 1998. GSA said that one lease for FCC space has termination costs of about \$30,000; the rest of the leases for FCC space can be terminated at no cost to the government. Lease costs for existing space, if any, for another agency that might move into Portals II are unknown at this time.

According to GSA, if a new tenant were to be identified for Portals II, the interior of Portals II would likely have to be redesigned to meet the needs of that particular tenant, incurring an additional cost of about \$1.4 million. Portions of Portals II were designed with special features to meet the unique needs of FCC; another agency might not need or want such features, which include, for example, auction space, printing plant, hearing rooms for administrative law judges, up to 40 conference/training rooms, Commission meeting room, and 5 Commissioners' offices with private bathrooms. This space might have to be redesigned for other uses to meet the needs of another tenant. Also, the floor plans for office space designed for FCC might have to be redone to meet the needs of another tenant. Further, the money that has already been spent on designing and fitting the interior of the building for FCC could be unrecoverable and could end up being spent for items not needed by a new tenant. In addition, FCC has estimated its consolidation savings at about \$434,000 per year, which would be lost if it does not move.

#### Unquantified Costs Associated With FCC's Remaining in Its Current Facility

According to GSA, if FCC were to remain in its current buildings, the government will incur additional costs. The current leases, which expire between June 1998 and April 2003, could be extended for a short term (many have fire-safety code violations and most have already been extended more than once), but GSA says it would have to compete the FCC space requirements. GSA has estimated that this would take about 2 years. Although the lessors of the current buildings could compete for the new long-term leases, the problems in the current buildings would have to be fixed before a new long-term lease could be awarded, according to GSA. Further, if the current lessors were awarded the new leases, FCC staff would likely experience greater disruption and loss of efficiency than if FCC were to move to Portals II because the staff would have to move twice—once to temporary space while renovations were made, then back to the renovated building—rather than just once.

According to GSA, it is also likely that the cost of renovating these buildings, together with the market-driven rates and FCC's special requirements, would increase FCC's rent above current levels. However, the actual costs for extending the current leases for the short term, obtaining a new long-term lease or leases, and adapting the new space to meet FCC needs would not be known until GSA procured the new lease or leases. And, GSA would likely be duplicating many of the costs already incurred in obtaining the Portals II lease.

Further, if FCC does not move to Portals II but still wants to consolidate,<sup>16</sup> GSA officials believe it is likely that another building would have to be built or renovated to meet the 535,000 NUSF needed by FCC. These officials said that GSA would have to repeat the basic process it went through in obtaining the Portals II lease and that the process would likely take 2 to 4 years. Again, GSA would be duplicating many of the costs already incurred in obtaining the Portals II lease. GSA officials said that they are unaware of any existing building that would be available to meet FCC's needs and doubt that new acceptable space in the downtown area could be obtained for all of FCC's staff for less than the Portals II lease costs. Finally, GSA believes that if FCC does not move to Portals II, this would be challenged in court by the lessor. While the lease provides GSA the express right to substitute tenants under the terms of the lease, GSA does not believe that this language renders it immune to a lawsuit. Even if GSA were to prevail based on the express terms of the lease, it anticipates that defense of the lawsuit would be time consuming, leading to additional delays and costs to the government.

#### FCC's Concerns About Moving to Portals II

FCC has several major concerns that could affect its move to Portals II, one of which is security. On January 26, 1998, FCC notified GSA that it would not accept assignment to Portals II unless GSA resolved security issues concerning public access at two building entrances, control of the loading dock area, and control of parking. However, GSA said that the security issue will be resolved without compromising the safety or security of employees and visitors to this facility. Further, GSA said it is confident that the security concerns will not interfere with or further delay FCC's move to Portals II. GSA and FCC are currently discussing FCC's security concerns.

Another concern was that as of early February 1998, GSA had not yet provided the \$24.1 million it had promised in relocation costs in fiscal year 1998. However on February 11, 1998, GSA transferred \$15.3 million of the \$24.1 million to FCC. GSA retained \$8.8 million to pay for contracts and services it was providing for FCC. FCC said that while it had received \$15.3 million, it was concerned that GSA's allocation of the \$24.1 million might not be consistent with its agreements with GSA and had asked GSA for an accounting of the funds. On February 23, 1998, GSA provided the accounting requested by FCC. To ensure that both agencies are using the same accounting approach, GSA also asked FCC for its spending plan and records of obligations. In commenting on a draft of this letter, GSA said that it intends to transfer an additional \$2.1 million, of the \$8.8 million it had retained, to FCC by February 27, 1998. Also, FCC is concerned that if it does not get an increased appropriation for the higher rent that it would have to pay at Portals II, it will not be able to move without adversely affecting operations. FCC believes that, without an increased appropriation, a reduction in staff could be necessary.

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<sup>16</sup>FCC advised us on February 18, 1998, that it still wants to consolidate, but no longer believes it is necessary to consolidate into a single building. FCC officials said that advances made in telecommunication and computer technologies make it less important to have everyone in the same building. FCC believes consolidating into one, two, or three buildings would be acceptable at this time.

FCC also noted that many of its employees do not favor its move to Portals II. The employees do not believe the building's location is as convenient as their current locations because of the lack of nearby conveniences, such as fitness and child care facilities, banks, drug stores, food services, other types of stores, and parking. Also, there are safety concerns among those staff who might have to work outside of normal working hours. However, while FCC officials recognize that these concerns are important, they believe that the concerns do not outweigh the mission-related benefits of moving to Portals II—assuming that FCC's concerns over security and funding are resolved.

To mitigate employee resistance to the move, FCC management, working in cooperation with the National Treasury Employees Union, has produced and distributed to all employees a relocation information guide that provides employees with pertinent information about the Portals II site plan, the building, and workspaces and includes a map of the vicinity showing such things as Metro stations, area restaurants, shops, and other services. In addition, mock-ups of the modular offices and workstations have been set up to enable employees to see the actual workspace concepts to be used and to visualize the office and workstation layouts before the move.

QUESTION 4**WHY WAS THE SPACE AT PORTALS II NOT READY TO MEET THE INITIAL SUBSTANTIAL COMPLETION AND DELIVERY DATE OF JULY 1, 1997, AS SPECIFIED IN THE LEASE?**

Question 4	GAO Response
Why was the space at Portals II not ready to meet the initial substantial completion and delivery date of July 1, 1997, as specified in the lease?	<ul style="list-style-type: none"> <li>▶ Contract for design intent information was not awarded until after first set of DID was due.</li> <li>▶ Acceptable DID were not provided in a timely manner.</li> <li>▶ Project construction drawings were delayed.</li> <li>▶ Stop work order delayed space planning work.</li> <li>▶ Relocation funding has delayed projected move date.</li> </ul>

Source: GAO, based on information provided by GSA and FCC.

GAO RESPONSE

Portals II construction was delayed about 6 to 7 months because of various problems: (1) the contract for DID was not issued until about 2.5 months after the first set of DID were due, (2) problems were encountered in getting acceptable DID in a timely manner, (3) construction drawings were delayed, and (4) a congressionally directed stop work order delayed space planning work. These delays resulted in the phase-I initial SCDD slipping from July 1, 1997, to January 3, 1998. The SCDDs for the remaining 5 phases also have slipped about 6 to 7 months. Additional delays in FCC's planned move to Portals II have also occurred due to the lack of funding for its relocation and other FCC concerns.

Various Problems Caused Delayed Delivery of Portals II to GSA

Portals II construction was delayed about 6 to 7 months because (1) the contract for DID was not issued until about 2.5 months after the first set of DID were due, (2) problems were encountered in getting acceptable DID in a timely manner, and (3) construction drawings were delayed. These delays resulted in the phase-I initial SCDD slipping from July 1, 1997, to January 3, 1998. The SCDD of the remaining five phases also have slipped about 6 to 7 months.

Supplemental Lease Agreement 1, dated January 3, 1996, required that the DID be submitted to the lessor by a specific date for each of the six phases of the project. The initial delay occurred when the contract to prepare the phased DID was not awarded until April 1996—about 2.5 months after the phase-I DID were due. The GSA contracting officer told us that this delay was caused by a lack of appropriated funds from FCC to award the contract and the time involved in negotiating a contract with the lessor, who then had to negotiate a contract with the design firm preferred by FCC, who believed the firm could

complete the work quickly because it was knowledgeable about FCC's requirements. FCC noted that it informed GSA in a letter dated November 29, 1995, that it did not have any funds to contract for the preparation of the DID, which were initially due in intervals beginning February 8, 1996, and that GSA would need to provide the funding.

The DID themselves were delayed for various reasons. The design firm's drawings for phase I of the project, approved by the government, were rejected three times by the lessor because, according to GSA, there were several problems with the computer-aided design disks that resulted in incomplete and inconsistent transmittal of essential information, which made using the disks functionally impossible. After successful submission of phase-I DID to the lessor, GSA pulled back the DID for phases II and III to update them based on changes made to the phase-I DID.

Further, the lessor requested and was granted time extensions to prepare construction drawings. The lease called for the DID to be delivered on specified dates. According to the GSA contracting officer, the extensions were granted because the DID for phases II through V were delivered in shorter sequential intervals than the lease required. For example, the DID for phases IV and V were delivered on the same day. The lease required the lessor to deliver the construction drawings to GSA for review 43 days after receiving the DID for each phase. The lessor wanted 43 days to prepare phase-IV construction drawings followed by 43 days to prepare phase-V construction drawings. This was necessary to ensure an orderly process and distribution of resources through preparation of construction drawings and construction. GSA informed us that after an alternative dispute resolution proceeding before the GSA Board of Contract Appeals, it accepted this approach and granted the time extensions for the construction drawings.

Finally, GSA issued a stop work order on optional space on December 10, 1996, because its House oversight committee expressed concern over GSA's exercising of the options for additional space without first seeking approval for an amended prospectus. GSA said that after consultation with the committee, and after receiving a letter from it, dated March 26, 1997, stating that it did not object to GSA's proceeding, GSA lifted the stop work order on March 31, 1997. The stop work order caused a 3- to 4-month delay in the space planning for the building, according to FCC.

All these delays caused the SCDD for each of the six phases of the project to be delayed as well. Table 1 shows the original and revised delivery schedule dates for both DID and SCDD for each phase of the project. The GSA contracting officer stated that DID and SCDD were renegotiated as a result of government delays.



Table IV.1: DID and SCDD Original and Revised Delivery Schedule Dates

Project phase	DID dates			SCDD dates	
	Original delivery	Revised delivery	Days delayed	Original delivery	Revised delivery
I	02/08/96	08/12/96	186	07/01/97	01/03/98
II	04/10/96	10/23/96	196	08/15/97	02/27/98
III	05/15/96	11/06/96	175	10/10/97	04/11/98
IV	06/24/96	12/10/96	169	11/19/97	05/24/98
V	08/07/96	12/10/96	125	01/02/98	07/06/98
VI	09/20/96	02/07/97	140	02/01/98	08/18/98

Source: GSA.

Lack of Funds for FCC's Relocation  
Has Also Delayed Its Move to Portals II

In addition to the approximately 6- to 7-month delay in turnover of phase I of Portals II to GSA, FCC's move into the building has been further delayed due to the lack of available funds to pay for its relocation costs. Congress did not approve FCC's fiscal year 1996, 1997, and 1998 requests for relocation funds for required items and services FCC said it needed to prepare the building for occupancy. The requested funds were not appropriated because of the Appropriations Committees' funding allocations and the Committees' concerns about the cost of the relocation and the increased space requirements. FCC said it requested \$40 million to acquire and install its furniture and some equipment in the building, as well as to cover other costs it considers essential, including the building system upgrades needed to accommodate FCC operations. These items and services include, among others, the following:

- duplicate rental costs during the phased move,
- adaptation of the new space to meet FCC's needs,
- movable wall system and modular furniture,
- cabling, telecommunications equipment installation and configuration, and
- network equipment installation and configuration.

When Congress did not fund FCC's relocation expenses, GSA agreed, in July 1997, to fund FCC's relocation costs, with the understanding that although FCC had been unable to obtain congressional authority to fund these costs, FCC would continue, as an agency priority, to request annual appropriations to reimburse GSA. In December 1997, FCC and GSA agreed that FCC is under no obligation to reimburse GSA for any relocation and related costs if FCC is unable to obtain such funding through the appropriation process. GSA gave FCC about \$6 million in fiscal year 1997, and on February 11, 1998, GSA transferred \$15.3 million, of the \$24.1 million promised for fiscal year 1998, to FCC. GSA retained \$8.8 million for contracts and services that it was providing for FCC. However,

FCC said that while it had received \$15.3 million, it was concerned that GSA's allocation of the \$24.1 million might not be consistent with its agreements with GSA and had asked GSA for an accounting of the funds. By letter dated February 23, 1998, GSA provided the requested accounting to FCC. Further, so as to ensure that both FCC and GSA are using the same accounting approach, GSA also asked FCC for its spending plan and records of obligation.

GSA's contracting officer said that the initial move date for phase I, with a July 1, 1997, SCDD, would normally have been around September 1997. However, due to the lack of available funding for FCC's relocation, the move schedule has been altered several times. The lessor has reported phase I to be substantially complete as of January 26, 1998, subject to GSA approval, and GSA officials believe that FCC should be able to begin moving into the building in June 1998. FCC said that, as of February 17, 1998, it had not identified a relocation date because it had only received from GSA the fiscal year 1998 relocation funding on February 11, 1998. FCC officials do not believe FCC can begin moving into Portals II any earlier than August 1998 due to the lead time they believe is necessary to arrange for purchase, delivery, and installation of the movable wall sections, modular furniture, and other items. These officials said they would need at least 6 months after they received the funds before they can begin to move. Further, FCC officials expressed concern that if they do not receive an increased appropriation to cover the higher rent at Portals II, FCC's ability to carry out its mission would be adversely affected because a reduction in staff could be necessary.

Based on the terms of GSA's lease for Portals II, GSA began making rental payments for Portals II in July 1997, and by June 30, 1998, these obligated payments will total about \$14 million. Under the agreement between FCC and GSA, FCC is not responsible for the rental payments until it moves into the building.

## BACKGROUND

On July 9, 1987, GSA submitted prospectus number PDC-88W02 to Congress proposing the consolidation of the three FCC office locations into 260,416 occupiable square feet in one building while retaining the 12,000 square feet of storage space in Maryland. The prospectus called for a 20-year lease to ensure stable, long-term housing for FCC. On September 23, 1987, the House Committee on Public Works and Transportation approved the prospectus for 260,416 occupiable square feet for 30 years<sup>17</sup> at an estimated maximum annual cost of about \$9.4 million. (In 1987, the Senate Committee on Public Works and Transportation was not reviewing prospectuses.)

On August 1, 1988, GSA published an advertisement seeking expressions of interest for developing a federal complex of 273,500 to 287,160 NUSF of office, storage, and special space to accommodate the consolidation of FCC offices in downtown Washington, D.C. GSA received multiple letters of interest from developers. On November 14, 1988, FCC and GSA signed a memorandum of agreement to consolidate FCC's offices at a single location. GSA and FCC agreed to consolidate FCC operations into one office building and one storage facility from four buildings—three offices in the District of Columbia and one storage facility in Maryland. The purpose of consolidation was to reduce FCC's leased space, improve its efficiency, and reduce its administrative costs.

On March 14, 1989, GSA issued SFO 88-100 for 273,000 to 295,000 NUSF, which stated that price was less important than were technical and other factors. According to the GSA contracting officer, the formal source selection process used the "greatest value approach," which evaluates offers based on technical criteria and the reasonableness of the costs.

Best and final offers were requested on September 27, 1991. Four responses were received; however, one proposal had an occupancy date 22 months from the award, which was inconsistent with the SFO requirements. On November 6, 1991, selection proceedings were completed. According to the contracting officer, the Source Selection Board ranked the remaining three offers as follows, based on criteria outlined in the solicitation:

1. Warner Theater building, located on E Street, between 13th and 14th Streets, N.W.;
2. City Center, located at 1401 H Street, N.W.; and
3. the proposed Portals II building, located at 445 12th Street, S.W.

However, both Warner's and City Center's cost estimates exceeded the estimated maximum annual cost authorized by Congress in the approved prospectus. The Portals II building was the remaining ranked offer, and its cost estimates were within the authorized prospectus limits. Therefore, on December 20, 1991, the Portals II ownership was orally notified that it was the successful offeror.

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<sup>17</sup>The erroneous 30-year term was changed to a 20-year term when the amended prospectus was approved by the appropriate House and Senate committees.

On February 10, 1992, GSA canceled SFO 88-100, citing FCC's increased space requirements. Two months later, the Portals II ownership filed a complaint in the U.S. Court of Federal Claims protesting the cancellation of the SFO and requesting injunctive relief. On February 28, 1994, the court enjoined GSA from canceling the SFO and from resoliciting the space for FCC and ordered GSA to proceed with the award. In April 1994, GSA appealed this decision to the U.S. Court of Appeals for the Federal Circuit. On August 1, 1994, the appeals court affirmed the lower court's injunction and directed GSA to proceed with the solicitation process. On August 12, 1994, GSA executed a 20-year lease for the Portals II building for 287,483 NUSF.

In September 1994, GSA submitted to Congress a revised prospectus requesting about 545,000 occupiable square feet due to an increase in FCC's space needs. On September 23, 1994, the House Committee on Public Works and Transportation authorized 450,416 occupiable square feet at an annual cost not to exceed approximately \$17.5 million. However, the Senate Committee on the Environment and Public Works did not approve the revised prospectus until October 24, 1995.

To lease the additional 162,939 NUSF, GSA's contracting officer signed a justification for other than full-and-open competition for leasehold interest in real property. Five officials in GSA concurred with the justification, and the acting senior procurement executive approved it on August 15, 1994. On January 3, 1996, GSA and Portals II owners signed Supplemental Lease Agreement Number 1 to amend the original lease to provide a total of 449,859 NUSF at a total annual cost of about \$17.3 million. The amended agreement also contained three space options to lease an additional 47,058 NUSF, 29,565 NUSF, and 8,648 NUSF at a rate of \$37.95 per NUSF. These options raised the total value of the lease to about \$21 million annually.

Between January 10, 1996, and June 14, 1996, GSA received four Standard Form 81s, Request for Space, from FCC for a total of 71,888 square feet. When an allowance was included for circulation, the total square footage was about 79,000 square feet. On July 2, 1996, GSA exercised the three options in the amended agreement for a total increase in space of 85,271 NUSF. Before exercising the options, GSA had evaluated market alternatives that showed the Portals II lease options were about 4 percent lower than the others considered. On July 3, 1996, GSA's contracting officer, GSA management, and its legal personnel decided to rescind options two and three in light of concerns that were raised in another pending court case. On October 17, 1996, options two and three were again exercised to meet FCC needs identified in May and June 1996. According to GSA, its House oversight committee had GSA issue a stop work order in December 1996 on the optional space because of its concern over GSA's exercising the options without first seeking approval for an amended prospectus. According to GSA, the individual options were each below the level for which congressional approval was required. On March 26, 1997, when GSA received a letter from the committee stating that it did not object to GSA's proceeding, GSA lifted the stop work order the same month.

Thus, GSA has leased a total of 535,130 NUSF at an annual cost of about \$21 million at the Portals II building for FCC. Subsequently, on January 5, 1998, through a supplemental lease agreement, GSA obtained the right to use the garage and have security control over

the entire garage. The remaining 12,000 NUSF in Portals II are to be used by the lessor for retail purposes, including food service.

COMMENTS FROM THE FEDERAL COMMUNICATIONS COMMISSION

Federal Communications Commission  
Washington, D.C. 20554

February 24, 1998

Mr. Bernard L. Ungar  
Director  
Government Business Operations Issues  
United States General Accounting Office  
441 G St., N.W. Mail Room 2A10  
Washington, D.C. 20548

Dear Mr. Ungar:

The Federal Communications Commission appreciates the opportunity to offer further comments on the General Accounting Office's Report concerning the FCC's planned move to the Portals II building.

The FCC was not involved in GSA's decision to enter into the initial lease for 287,483 NUSF at Portals II on August 12, 1994, nor in GSA's decision to sign a supplemental lease for additional space at the Portals on January 3, 1996. The FCC therefore does not offer comments on the Report's conclusions with respect to whether it was reasonable or prudent for GSA to have entered into these leases and, in particular, to have agreed to the timetables in the supplemental lease before it had assurances that Congress would provide funding to cover the costs of the move.

Funding issues may continue to have a significant impact on the timing of the move. Thus far, Congress has declined to appropriate any money to cover move expenses or the FCC's increased rental expenses, despite FCC requests for such funding in fiscal years 1996, 1997, and 1998. Further, the FCC cannot absorb the increased rental costs, in the amount of \$8.4 million annually, without significant staff cuts that would impair its ability to perform its statutory mission.

GSA entered into a written agreement to transfer to the FCC move funding in the amount of \$24.1 million. However, the FCC has received only \$15.3 million, and it received these funds on February 12, 1998, four months later than promised. Late yesterday, GSA notified the FCC that it would transfer an additional \$2.1 million to the FCC by February 27, 1998. Until we have had an opportunity to review fully GSA's explanation of the retained amounts, the FCC is not in a position to determine that it will have sufficient funds to complete the move.

The FCC also remains concerned that issues relating to security

in the Portals building be fully and adequately resolved. On January 5, 1998, without prior FCC knowledge, GSA entered into an agreement with the lessor to permit unimpeded public access at certain entrances to persons who indicate that they are proceeding to the building's restaurant facility, which is privately leased by the lessor. The FCC is discussing with GSA the serious security issues raised by this agreement.

Adequate security can be maintained in the Portals building only if sign-in and related procedures are consistently used at all entrances to the building, as provided for by the applicable Federal Government standards. These procedures are a critical element in ensuring the safety of the public and FCC employees.

The FCC's security concerns are not hypothetical and may have a grave impact on the safety of all of the building's occupants. In addition to having received many bomb threats over the years, FCC employees frequently are the targets of threats by persons who seek to enter the building. Through the use of sign-in procedures that were implemented after the Oklahoma City bombing, in accordance with the relevant Federal Government standards, the FCC now has security procedures in its current headquarters office space that enable security personnel to refuse entry to all persons who make threats against FCC personnel or property. Since April, 1995, there have been 30 "Keep Out" or "Barred" notices issued against such persons.

Our position is premised on tragic experience. Several years ago, and before the FCC used these procedures, an FCC employee was shot and killed outside the FCC field office in New York. Prior to the shooting, the assailant, a mentally unstable woman, had also entered the FCC's current headquarters building in Washington, D.C., and had freely roamed through the offices within the building. At the time, FCC staff employees were quickly able to assess her disturbed mental state but did not have the training or ability to detain her or appropriately to evaluate any dangers that she might have presented. Sign-in and other security procedures would have allowed trained security personnel to evaluate potential dangers to FCC employees prior to permitting her entry.

The FCC believes that security measures regarding public entry, including sign-in procedures, should be at least equivalent to the measures now in place in the FCC's current headquarters building. The FCC does not believe there are any sound reasons to compromise the security of the public and its employees. GSA has informed the FCC that it will make additional findings and recommendations regarding security this week. We hope that will resolve the issue.

Recently, another issue has arisen that could have a serious impact on the costs and benefits of the FCC's planned move. To increase the flexibility of the new headquarters office space at the Portals, the internal office spaces of the building are

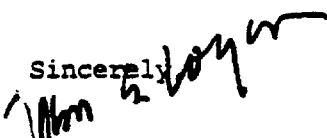
designed so that they can be quickly reconfigured to adjust to changes in personnel assignments, through the use of adjustable, demountable walls known as "V-walls." GSA has long been aware that, to maximize the accuracy of the office configurations before the walls are assembled, space planners had intended to issue final directions for the assembly of the walls as close as possible to the actual move. (As just one example, in recent months, a significant number of agency personnel from the FCC's Compliance and Information Bureau have been transferred to the FCC's Common Carrier Bureau, which will affect the final planning for space allocated to those bureaus.)

The Portals lessor has now proposed to assemble the walls based on a "universal space plan" that has not yet been refined to reflect the most current space needs of the various offices and Bureaus of the Commission. GSA has informed the FCC that it concurs in this proposal.

If the lessor's proposal is carried out, the new building's internal configuration will not achieve many of the planned benefits of the FCC's consolidation because it will not organize the FCC's operating units in a manner that is consistent with their actual organizational and functional purposes. Moreover, reassembling the internal walls to reflect the FCC's actual internal office space needs would require a very significant expenditure of funds that the FCC does not have. The FCC has objected to the proposal to use an internal configuration not reflecting the FCC's actual organizational and functional purposes. It has received no assurances at this time that its objections will be heeded.

The funding, security, and space planning issues discussed above must still be resolved before the Portals move can be successfully implemented. The FCC is committed to using its best efforts to resolve these issues.

Sincerely,

  
John E. Logan  
Chairman, Portals Advisory  
Committee and Deputy Chief,  
Cable Services Bureau



COMMENTS FROM THE GENERAL SERVICES ADMINISTRATION

**U.S. GENERAL SERVICES ADMINISTRATION**  
Public Buildings Service

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February 25, 1998

Mr. Bernard Ungar  
Director  
General Government Division  
General Accounting Office  
441 G Street, NW  
Washington, DC 20548

Re: B-278863 – GSA: Federal Communication Commission Planned Move to the Portals II Building

Dear Mr. Ungar:

Thank you for the opportunity to review the draft report concerning the Federal Communications Commission's (FCC) move to the Portals II building. We have no objections to the findings you have reached in your report. Specific technical comments are discussed in the enclosure to this letter.

We agree with your principal conclusion that the FCC's relocation to Portals II is in the best interest of the government. As you note in your report, this acquisition was initiated in 1987, was the subject of a full and open competition with multiple offerors, was the subject of protracted litigation, and was awarded and renegotiated based on an adverse decision in 1994 from the U.S. Court of Appeals for the Federal Circuit. Over the past eleven years, the government has expended substantial efforts and resources to procure a new consolidated headquarters for the FCC. The findings in your report make it very clear that the costs of any further delays to the taxpayer will be significant. The General Services Administration (GSA) has done, and is doing, what it can do within its existing authorities to make this move happen without further delay. GSA is continuing to address and resolve each issue as it is raised by FCC so that any additional delay is minimized.

In this regard, we note that FCC has raised several issues with your office that GSA does not believe accurately reflect the circumstances. First, in footnote 16 on page 31, you state that on February 18, 1998, the FCC advised GAO that "although it still wants to consolidate" it "no longer believes it is necessary to consolidate into a single building" because of advances in technology. According to your report, the "FCC believes consolidating into one, two or three buildings would be acceptable at this time." This is an abrupt change in the

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p. 21.

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FCC's long held position about the need for co-location in a single location. We do not know who said this and can not imagine that he or she speaks authoritatively for the FCC. Co-location in one building has been a driving consideration in this procurement – from the time the specifications for the procurement were drafted in 1987. The FCC was quite insistent, in fact, on the need for co-location during discussions on their requirements. In any event, such a change in FCC's preferences would provide no basis to discount the costs of not moving the FCC into the Portals II building and certainly provide no basis for GSA to reconsider the FCC's consolidation into the Portals II building at this very late date.

Second, we point out that the FCC is now effectively in control of its move to the Portals II. We have transferred \$6 million in fiscal year 1997, \$15.3 million in February, 1998, and expect to transfer an additional \$2.1 by the end of February, 1998 to assist the FCC in the costs of relocation and build-out. We have signed a Memorandum of Agreement specifying that repayment of these costs is expected, but is required only in the event the FCC obtains appropriations. As noted in your report, notwithstanding the transfer of these funds, FCC has taken the position that it needs an accounting (which we have provided by letter of February 23, 1998) and that it needs at least six months after the funds are transferred as lead time for the installation and delivery of the furniture. In this regard, we offered to procure the furniture for the FCC and we believe, based on the volume of this kind of procurement that GSA does, that we could have expedited the procurement.

GSA is working expeditiously to accomplish the FCC's relocation into the Portals II building and it is clearly in the best interest of the government for the FCC also to proceed expeditiously: it has the funds and should proceed to procure the necessary items without further delay.

Third, the FCC has raised the issue of security concerns as a possible reason to delay its move into the Portals II building. As we indicated in our previous letter to you, we are aware of those concerns and do not intend to compromise the safety and security of the employees of, and visitors to, the FCC's headquarters. The security concerns can be resolved without further delaying the move.

For all the reasons cited in your report, the FCC's relocation to Portals II makes sense for the government and the taxpayers. We appreciate the opportunity to review your draft report. If you have any questions regarding the letter and the enclosure, please call Anthony Costa, Chief of Staff, on 501-1100.

Sincerely,

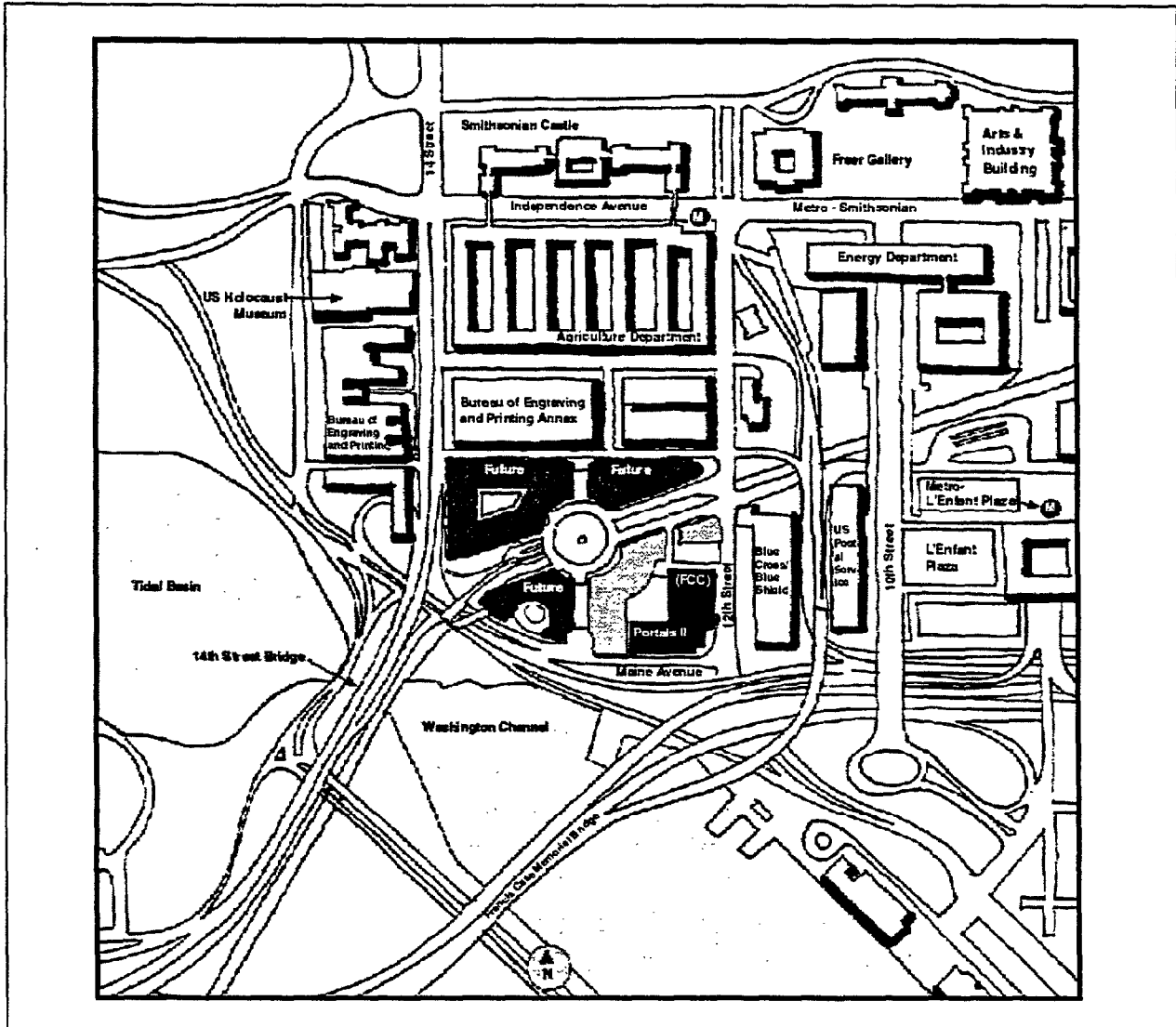


Robert A. Peck  
Commissioner

Enclosure (as stated)

SITE PLAN SHOWING LOCATION OF PORTALS II

Figure 1: Location of Portals II Building



Source: FCC Headquarters Relocation Guide.

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