



Fairbanks North Star Borough Office of the Mayor

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FOR IMMEDIATE RELEASE: October 9, 2015, Fairbanks, Alaska – AT 9:00 AM

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Fairbanks North Star Borough is pleased with the Regulatory Commission of Alaska Ruling vs. Alaska Communications Systems

The Regulatory Commission of Alaska has rejected most of the costs that Alaska Communications Systems (ACS) had demanded from the FNSB last year for subscriber list information for use in the Borough's 911 system. ACS's demand, up to \$175,000 for the initial year--was sharply reduced, and the tariff that was approved will result in approximately \$275 per year for ACS.

During the time period from May to November 2014, ACS had not been providing daily updated name, address and telephone information changes for those subscribers with new or migrated landline service for E911 services. These updates are critical and provide accurate dispatch information to first responders in emergency situations.

Here is a brief timeline of actions:

- In November 2014, the superior court granted FNSB'S request for a preliminary injunction order requiring ACS to provide the daily updates, however it left the issue of the appropriate cost if any, up to a regulatory agency.
- In January 2015, ACS filed its proposed tariff with the Regulatory Commission of Alaska (RCA). The FNSB along with the Kenai Peninsula Borough, the Municipality of Anchorage, and the State of Alaska Department of Public Safety, filed objections.
- On October 8, 2015 the order of approval setting the rate for supplying subscriber list information was received. This order establishes that ACS can **only** charge \$0.04 per each initial listing and \$0.06 per each updated listing.
- As a result of this decision, ACS is now required to file revised tariff sheets consistent with RCA's decision, including revising terms objected to by FNSB.

FNSB Mayor Luke Hopkins said, "This is an appropriate decision by the RCA. I agree, it is a proper and fair rate to pay for the service providers efforts. Much thanks to the FNSB Legal Department led by Assistant Attorney Jill S. Dolan and FNSB Emergency Operations Director David Gibbs for their efforts in bringing this matter to resolution."

Attachments:

1. Order Setting Rates for Supplying Subscriber List Information, Approving Tariffs in Part, and Requiring Tariff Sheets, for CA ruling numbers: U-15-008, Order No. 9; U-15-009, Order No. 10; U-15-010, Order No. 10; U-15-011, Order No. 11.
2. Separate Statement of Commissioner Norman Rokeberg, concurring in part and dissenting in part.

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STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

T.W. Patch, Chairman
Steven McAlpine
Robert M. Pickett
Norman Rokeberg
Janis W. Wilson

In the Matter of the Tariff Filing Designated as)
TA137-117 Filed by ACS OF FAIRBANKS, LLC)
d/b/a ALASKA COMMUNICATIONS SYSTEMS,)
ALASKA COMMUNICATIONS, ACS LOCAL)
SERVICE, AND ACS)

U-15-008

ORDER NO. 9

In the Matter of the Tariff Filing Designated as)
TA177-359 Filed by ACS OF THE NORTHLAND,)
LLC d/b/a ALASKA COMMUNICATIONS)
SYSTEMS, ALASKA COMMUNICATIONS, ACS)
LOCAL SERVICE, AND ACS)

U-15-009

ORDER NO. 10

In the Matter of the Tariff Filing Designated as)
TA196-251 Filed by ACS OF ALASKA, LLC d/b/a)
ALASKA COMMUNICATIONS SYSTEMS,)
ALASKA COMMUNICATIONS, ACS LOCAL)
SERVICE, AND ACS)

U-15-010

ORDER NO. 10

In the Matter of the Tariff Filing Designated as)
TA541-120 Filed by ACS OF ANCHORAGE, LLC)
d/b/a ALASKA COMMUNICATIONS SYSTEMS,)
ALASKA COMMUNICATIONS, ACS LOCAL)
SERVICE, AND ACS)

U-15-011

ORDER NO. 10

**SEPARATE STATEMENT OF COMMISSIONER NORMAN ROKEBERG,
CONCURRING IN PART AND DISSENTING IN PART**

I concur that the "additional hourly rate" should be denied. However, I dissent from approval of the tariff for the \$0.04/\$0.06 rates for the reasons set forth in the record by the FNSB, KPB, AST, and APD. I found it particularly noteworthy that

1 ACS had not previously requested compensation from KPB for the \$0.04/\$0.06 rates
2 during the approximately eight years since the ACS bundled contract for E911 services
3 had terminated.

4 DATED AND EFFECTIVE at Anchorage, Alaska, this 8th day of October, 2015.

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Norman Rokeberg, Commissioner



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STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

T.W. Patch, Chairman
Steven McAlpine
Robert M. Pickett
Norman Rokeberg
Janis W. Wilson

In the Matter of the Tariff Filing Designated as)
TA137-117 Filed by ACS OF FAIRBANKS, LLC)
d/b/a ALASKA COMMUNICATIONS SYSTEMS,)
ALASKA COMMUNICATIONS, ACS LOCAL)
SERVICE, AND ACS)

U-15-008
ORDER NO. 9

In the Matter of the Tariff Filing Designated as)
TA177-359 Filed by ACS OF THE NORTHLAND,)
LLC d/b/a ALASKA COMMUNICATIONS)
SYSTEMS, ALASKA COMMUNICATIONS, ACS)
LOCAL SERVICE, AND ACS)

U-15-009
ORDER NO. 10

In the Matter of the Tariff Filing Designated as)
TA196-251 Filed by ACS OF ALASKA, LLC d/b/a)
ALASKA COMMUNICATIONS SYSTEMS,)
ALASKA COMMUNICATIONS, ACS LOCAL)
SERVICE, AND ACS)

U-15-010
ORDER NO. 10

In the Matter of the Tariff Filing Designated as)
TA541-120 Filed by ACS OF ANCHORAGE, LLC)
d/b/a ALASKA COMMUNICATIONS SYSTEMS,)
ALASKA COMMUNICATIONS, ACS LOCAL)
SERVICE, AND ACS)

U-15-011
ORDER NO. 10

**ORDER SETTING RATES FOR SUPPLYING SUBSCRIBER LIST INFORMATION,
APPROVING TARIFFS IN PART, AND REQUIRING TARIFF SHEETS**

BY THE COMMISSION:

1 Summary

2 We approve the requested rate for supplying Subscriber List Information
3 to E911 service providers of \$0.04 per each initial listing and \$0.06 per each updated
4 listing filed by ACS of Fairbanks, LLC d/b/a Alaska Communications Systems, Alaska
5 Communications, ACS Local Service, and ACS; ACS of the Northland, LLC d/b/a
6 Alaska Communications Systems, Alaska Communications, ACS Local Service, and
7 ACS; ACS of Alaska, LLC d/b/a Alaska Communications Systems, Alaska
8 Communications, ACS Local Service, and ACS; and ACS of Anchorage, LLC d/b/a
9 Alaska Communications Systems, Alaska Communications, ACS Local Service, and
10 ACS (collectively, ACS). We deny ACS's requested additional hourly rate. We require
11 ACS to file revised tariff sheets consistent with our decision.

12 Background

13 We suspended the tariff filings designated as TA137-117, TA177-359,
14 TA196-251, and TA541-120¹ filed by ACS.² We designated the Fairbanks North Star
15 Borough (FNSB), the Kenai Peninsula Borough (KPB), the Alaska State Troopers
16 (AST), and the Anchorage Police Department (APD) as parties.³

17 On April 21, 2015, we held an informal conference to discuss mediation
18 and/or settlement. No qualified mediator was available and willing to accept an
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20 ¹TA137-117, filed January 12, 2015; TA177-359, filed January 12, 2015;
21 TA196-251, filed January 12, 2015; TA541-120, filed January 12, 2015; Tariff
Supplements, filed January, 21, 2015, February 2, 2015, and February 3, 2015.

22 ²Order U-15-008(1)/U-15-009(1)/U-15-010(1)/U-15-011(1), *Order Suspending*
23 *Tariff Filings, Designating Parties and Inviting Intervention, Requiring Filings,*
24 *Scheduling Informal Conference, Designating Commission Panel, Appointing*
Administrative Law Judge, and Addressing Timeline for Decision, dated February 26,
2015 (Order U-15-008(1)).

25 ³Order U-15-008(1) at 3-4; Order U-15-009(2)/U-15-010(2), *Order Granting*
26 *Petition to Intervene*, dated March 19, 2015; Order U-15-011(2), *Order Granting Petition*
to Intervene, dated April 10, 2015.

1 engagement within a time period acceptable to the commission. A procedural schedule
2 was approved.⁴

3 ACS filed the testimony of Paul D. Linnee, Twana M. Knapp, and Lisa
4 Phillips.⁵ FNSB filed the testimony of David Gibbs, Bill Witte, and Mayor Luke
5 Hopkins.⁶ KPB filed the testimony of Carrie Henson and Mayor Mike Navarre.⁷ FNSB
6 and KPB jointly filed the testimony of George Molczan and William Doolittle.⁸ APD filed
7 the testimony of H. Scott Meyer, Marilyn Banzhaf, and Karleen Wilson.⁹

8 On August 11-13, 2015, we held an evidentiary hearing during which ACS
9 presented testimony from Paul D. Linnee,¹⁰ Twana M. Knapp,¹¹ and Lisa Phillips.¹²

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12 ⁴Order U-15-008(3)/U-15-009(4)/U-15-010(4)/U-15-011(4), *Order Adopting*
13 *Procedural Schedule and Extending Suspension Periods*, dated June 23, 2015.

14 ⁵*Prefiled Direct Testimony of Paul D. Linnee on Behalf of ACS*, filed June 30,
15 *Prefiled Direct Testimony of Twana M. Knapp on Behalf of ACS*, filed June 30,
16 *Prefiled Direct Testimony of Lisa Phillips on Behalf of ACS*, filed June 30, 2015;
17 *Prefiled Reply Testimony of Lisa Phillips on Behalf of ACS*, filed July 28, 2015.

18 ⁶*Prefiled Testimony of David Gibbs*, filed July 23, 2015, as supplemented
19 *Prefiled Testimony of Bill Witte*, filed July 23, 2015; *Prefiled Testimony*
20 *of Mayor Luke Hopkins on Behalf of FNSB*, filed July 23, 2015.

21 ⁷*Prefiled Testimony of Carrie Henson*, filed July 23, 2015; *Prefiled Testimony of*
22 *Mayor Mike Navarre on Behalf of the Kenai Peninsula Borough*, filed July 23, 2015.

23 ⁸*Prefiled Testimony of George Molczan on Behalf of FNSB and KPB*, filed
24 *July 23, 2015; Prefiled Testimony of William Doolittle on Behalf of FNSB and KPB*, filed
25 *July 23, 2015.*

26 ⁹*Prefiled Direct Testimony of H. Scott Meyer on Behalf of Municipality of*
Anchorage, Anchorage Police Department, filed July 23, 2015; *Prefiled Direct*
Testimony of Marilyn Banzhaf on Behalf of Municipality of Anchorage, Anchorage Police
Department, July 23, 2015; *Prefiled Direct Testimony of Karleen Wilson on Behalf of*
Municipality of Anchorage, Anchorage Police Department, filed July 23, 2015.

¹⁰Tr. 288 (T-1 Linnee).

¹¹Tr. 351 (T-2 Knapp).

¹²Tr. 497 (T-3 Phillips) (T-4 Phillips Reply).

1 FNSB presented testimony from David Gibbs,¹³ Bill Witte,¹⁴ and Mayor Luke Hopkins.¹⁵
2 KPB presented testimony from Carrie Henson¹⁶ and Mayor Mike Navarre.¹⁷ All parties
3 stipulated to the admission into evidence of the prefiled testimony of H. Scott Meyer,
4 Marilyn Banzhaf, and Karleen Wilson.¹⁸ FNSB and KPB did not present or offer into
5 evidence the prefiled testimony of George Molczan and William Doolittle.

6 The parties filed closing briefs in lieu of closing arguments.¹⁹

7 Discussion

8 E911 Service Overview

9 Enhanced 911 (E911) service is 911 service that uses a 911 caller's
10 telephone number to derive that caller's location so that police, fire, emergency medical
11 and other response resources can be dispatched to a location to aid that caller. This
12 location information is particularly important in emergency situations when
13 communication is difficult or if a call is disconnected. E911 service has to provide
14 accurate and verified locations because otherwise emergency responders may respond
15 to an incorrect or nonexistent address.²⁰

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17 ¹³Tr. 740 (T-14 Gibbs) (T-15 Gibbs Supplement).

18 ¹⁴Tr. 635 (T-11 Witte).

19 ¹⁵Tr. 544 (T-8 Hopkins).

20 ¹⁶Tr. 586 (T-10 Henson).

21 ¹⁷Tr. 566 (T-9 Navarre).

22 ¹⁸Tr. 500 (T-5 Wilson) (T-6 Meyer) (T-7 Banzhaf).

23 ¹⁹ACS's *Post Hearing Closing Brief*, filed August 20, 2015 (ACS Closing Brief);
24 *Kenai Peninsula Borough's Post-Hearing Closing Brief*, filed August 27, 2015 (KPB
25 *Closing Brief*); *Municipality of Anchorage's Closing Brief*, filed August 27, 2015 (MOA
26 *Closing Brief*); *Closing Brief*, filed August 27, 2015; *Fairbanks North Star Borough's*
Closing Brief, filed August 27, 2015 (FNSB Closing Brief); *ACS Post-Hearing Reply*
Brief, filed September 1, 2015 (ACS Reply Closing Brief).

²⁰ACS's *Response to Order No. 1 and to the Opposing Parties' Objections*, filed
March 31, 2015 (ACS's Response to Order No. 1), at 2-3; T-9 at 3.

1 In an E911 system, a 911 call is first routed to a selective router populated
2 with Automatic Location Information (ALI). The router is typically operated by the
3 incumbent local exchange carriers (LECs) and receives calls from competitive and
4 incumbent LECs over dedicated trunks. The router identifies the number and using the
5 ALI, routes the call to the appropriate Public Safety Answering Point (PSAP). A PSAP
6 is a call center run by the E911 service provider and is responsible for answering 911
7 calls and dispatching the appropriate emergency services. There may be multiple
8 PSAPs within the same exchange or one PSAP may cover multiple exchanges. The
9 PSAP uses ALI in its Database Management System (DBMS) to efficiently dispatch
10 appropriate emergency service.²¹

11 LECs supply the information contained in the ALI database and DBMS
12 and that information goes through a verification process. LECs generate a broad range
13 of information, called Service Order Information (SOI), when they sign up customers for
14 service, modify service to existing customers, or delete records when customers
15 disconnect or port their telephone number to another telecommunications service
16 provider.²² Data that is irrelevant to the actual physical subscriber line, e.g. payment
17 account information or email addresses, is removed and the resultant data is referred to
18 as Subscriber List Information (SLI).²³ SLI is put in a format required by National
19 Emergency Number Association (NENA) standards and is then extracted and uploaded
20 to the E911 DBMS. A LEC removes additional data from SLI resulting in ALI, which
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23 ²¹*In the Matter of Framework for Next Generation 911 Deployment*, 25 F.C.C.
24 Rcd. 17869 (2010), 2010 WL 5179810 at ¶¶ 13-14; *In the Matters of IP-Enabled Servs.*
25 *E911 Requirements for IP-Enabled Serv. Providers*, 20 F.C.C. Rcd. 10245 (2005), 2005
26 WL 1323217 at ¶¶ 12-15.

²²Tr. 253-255, 264.

²³Tr. 262.

1 only contains the information relevant to 911 service.²⁴ The process of editing down
2 SOI into ALI is largely automatic and performed by a LEC database program.²⁵ This
3 process usually happens on a daily basis, with the daily uploads only containing
4 changes from the previous day.²⁶

5 The DBMS compares this new data to the Master Street Address Guide
6 (MSAG). The MSAG is a database containing a record of the exact spelling of street
7 names, valid address ranges, and other address elements recognized by emergency
8 service providers.²⁷ The MSAG is normally created and maintained by the municipality,
9 borough or local government entity.²⁸ Once the data is verified by the MSAG, the
10 DBMS populates the selective router database and the DBMS ALI database.²⁹

11 Mismatches between the SLI and MSAG – which can be the result of a
12 typographical error, a street extension which has not been communicated to the MSAG
13 administrator, or a number of other errors – are communicated back to the LEC via an
14 automated error file.³⁰ The LEC must correct this “fallout” before the record can be
15 entered into the selective router database and DBMS ALI database.³¹

16 ACS's Requested Rates

17 ACS asks us to approve tariff filings proposing to provide SLI to E911
18 providers as a tariffed service. ACS proposes to offer SLI at a rate of \$0.04 per each
19 initial listing and \$0.06 per each updated listing based on a Federal Communications

20 ²⁴Tr. 263.

21 ²⁵Tr. 409.

22 ²⁶*Letter of Objection*, filed February 17, 2015 (FNSB Comment), at 4-5; Tr. 493.

23 ²⁷FNSB Comment at 4-5; Tr. 265.

24 ²⁸Tr. 264.

25 ²⁹FNSB Comment at 5.

26 ³⁰Tr. 266, 307-314, 326-330.

³¹FNSB Comment at 5.

1 Commission (FCC) order establishing those rates as presumptively reasonable for
2 providing SLI to directory publishers.³² In addition to these per listing rates, ACS
3 proposes an hourly reconciliation and validation of fallout rate of \$110.66 per hour
4 based on a blended loaded labor rate and composite hourly rate of overhead costs.³³
5 ACS argues that the \$0.04 and \$0.06 rates include costs for providing initial SLI, but do
6 not include costs to reconcile any fallout from an E911 operator's MSAG.³⁴

7 We approve a tariff filing on a finding that the rates are just and
8 reasonable.³⁵ Additionally, we analyze whether rates are unduly discriminatory or
9 unreasonably preferential.³⁶ 47 U.S.C. § 222(g) states that a telecommunications
10 carrier must provide subscriber list information under nondiscriminatory and reasonable
11 rates, terms and conditions.

12 ACS Is Legally Entitled to Compensation for Providing SLI

13 ACS asserts that it has historically provided SLI and other related services
14 under negotiated contracts for E911 services with local governments with the cost of
15 SLI included in the contract rate. Because it no longer has these contracts with local
16 governments, it now seeks to collect compensation for providing SLI as a standalone
17 service.³⁷ ACS presents four arguments why it is legally entitled to compensation for
18 providing and validating SLI for E911 purposes. First, ACS argues that 47 U.S.C.
19 § 222(g) establishes ACS's right to receive compensation for providing SLI.³⁸ Second,

21 ³²TA137-117 at 1-2; TA177-359 at 1-2; TA196-251 at 1-2; TA541-120 at 1-2.

22 ³³TA137-117 at 1-2; TA177-359 at 1-2; TA196-251 at 1-2; TA541-120 at 1-2.

23 ³⁴TA137-117 at 1-2; TA177-359 at 1-2; TA196-251 at 1-2; TA541-120 at 1-2.

24 ³⁵AS 43.05.381.

25 ³⁶AS 42.05.301.

26 ³⁷ACS's Response to Order No. 1 at 4-7.

³⁸ACS Closing Brief at 2-3.

1 ACS contends that SLI is provided pursuant to tariffed rates at a number of locations
2 across the country.³⁹ Third, ACS contends that AS 29.35.131 authorizes charges for
3 the provision of SLI.⁴⁰ Fourth, ACS asserts that statutorily authorized surcharges in
4 AS 29.35.131 provide a mechanism for paying for SLI.⁴¹

5 The parties opposing ACS argue that ACS is not legally entitled to
6 compensation by E911 providers for providing SLI. FNSB argues that ACS is a
7 designated carrier of last resort and receives significant funding through the Universal
8 Service Fund and is therefore obligated to use its own facilities to provide E911 to its
9 subscribers.⁴² KPB argues that 47 U.S.C. § 222(g) requires LECs to provide SLI, but
10 does not require 911 providers to compensate LECs for doing so. It argues that ACS is
11 inserting words into the statute.⁴³

12 We agree with ACS's arguments that it is entitled to compensation. First,
13 under 47 U.S.C. § 222(g) a telecommunications carrier is required to provide SLI to
14 E911 providers and is entitled to compensation from those providers for doing so.

15 47 U.S.C. § 222(g) states:

16 Notwithstanding subsections (b), (c), and (d) of this section, a
17 telecommunications carrier that provides telephone exchange service or a
18 provider of IP-enabled voice service (as such term is defined in section 615b
19 of this title) *shall provide information described in subsection (i)(3)(A) of this*
20 *section* (including information pertaining to subscribers whose information is
21 unlisted or unpublished) that is in its possession or control (including
22 information pertaining to subscribers of other carriers) on a timely and
unbundled basis, *under nondiscriminatory and reasonable rates, terms, and*
conditions to providers of emergency services, and providers of emergency
support services, solely for purposes of delivering or assisting in the delivery
of emergency services. (Emphasis added.)

23 ³⁹ACS Closing Brief at 3-5.

24 ⁴⁰ACS Closing Brief at 5-7.

25 ⁴¹ACS Closing Brief at 7-8.

26 ⁴²FNSB Closing Brief at 6-7.

⁴³KPB Closing Brief at 3.

1 We find no ambiguity in this statute that exchange carriers are entitled to compensation
2 under this statute.

3 Second, as shown by ACS in sample tariff exhibits and witness testimony,
4 we find providing SLI is a service for which telecommunications carriers are regularly
5 compensated.⁴⁴

6 Lastly, ACS argues that AS 29.35.131 authorizes a municipality to pay for
7 SLI information and the surcharge authorized in the statute provides a mechanism for
8 doing so. We agree. Because these arguments are so closely related, we address
9 them together.

10 AS 29.35.131(a) provides that a municipality “may purchase or lease the
11 enhanced 911 equipment or service required to establish or maintain an enhanced 911
12 system at public safety answering points from a local exchange telephone
13 company” To pay for this service, AS 29.35.131(a) states that a municipality may
14 levy a surcharge up to \$2 per month for each wireless telephone number and for each
15 local exchange access line for wireline telephones. Any surcharge above \$2 must be
16 approved by voters in the 911 service area.

17 The statute gives guidance on what the surcharge may and may not be
18 used for. AS 29.35.131(i)(5) states that surcharge may be used for “expenses required
19 to *develop and maintain all information necessary* to properly inform call takers as to
20 location address, type of emergency, and other information directly relevant to the 911
21 call-taking and transferring function, *including automatic location identification and*
22 *automatic number identification databases.*” (Emphasis added.)

23 We find little ambiguity in this statute. Providing and updating SLI is an
24 essential part of creating and maintaining an E911 system so that an emergency
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26 ⁴⁴T-1 Linnee at 5; Tr. 239-241; LP-2 through LP-12.

1 service can be delivered to a valid address. AS 29.35.131 authorizes municipalities to
2 collect a surcharge to pay for ALI database updates.

3 Having established that telecommunications carriers are entitled to
4 compensation for providing SLI, we now address who is required to bear those costs –
5 the taxpaying public as a whole or only that subset who are customers of ACS. ACS
6 argues that E911 service benefits the entire taxpaying public and therefore the E911
7 providers through the taxpaying public should bear the costs.⁴⁵ FNSB and KPB claim
8 that cost recovery should be from ACS's customers, not E911 providers.⁴⁶

9 Consistent with the principle that cost causers should be the cost payer,
10 we agree with ACS and find that the taxpaying public is the ultimate beneficiary of 911
11 services.⁴⁷ Therefore, the municipalities and 911 service providers should bear the cost
12 of LECs supplying SLI. Thus, ACS is entitled to compensation from FNSB and KPB
13 and any other E911 provider to which it provides SLI.

14 \$0.04/\$0.06 Rate Approved

15 ACS asks for a rate of \$0.04 per initial SLI listing and \$0.06 per updated
16 SLI listing (\$0.04/\$0.06 rates) using as a proxy the FCC adopting those rates for
17 providing SLI to directory publishers. 47 U.S.C. § 222(e) requires telecommunications
18 carrier to provide SLI to directory publishers. The FCC adopted the \$0.04/\$0.06 rates as
19 “presumptively reasonable” rates under 47 C.F.R. 64.2325.⁴⁸ ACS argues that its

20 _____
21 ⁴⁵ACS Reply Closing Brief at 13-15.

22 ⁴⁶FNSB Closing Brief at 7-10; KPB Closing Brief at 9-13.

23 ⁴⁷Tr. 157, 435-436.

24 ⁴⁸Tr. 369. T-3 Phillips at 9-10 (citing *Implementation of the Telecommunications*
25 *Act of 1996: Telecommunication Carriers' Use of Customer Proprietary Network*
26 *Information and Other Customer Information*, Third Report and Order in CC Docket No.
96-115, Second Order on Reconsideration of the Second Report and Order in CC
Docket No. 96-98, and Notice of Proposed Rulemaking in CC Docket No. 99-273, FCC
99-227, 14 FCC Rcd. 15550, 1999 WL 700528) (Implementation Report and Order).

1 actual costs are more than \$0.04 and \$0.06 but given the dollars at issue, the relatively
2 limited number of listings for which the rates will be levied, and the difficulty and cost of
3 conducting a full-blown rate study, it requested the \$0.04/\$0.06 rates in order to prevent
4 a protracted dispute.⁴⁹

5 The parties opposing ACS argue that ACS has not provided cost
6 justification for the \$0.04 and 0.06 rates or the \$110.66 rate;⁵⁰ ACS's tariffs are not
7 clearly drafted and should be rejected,⁵¹ and ACS's tariffs are not just or reasonable
8 and are discriminatory.⁵²

9 The information provided to E911 service providers and directory
10 providers is different but still analogous.⁵³ More information must be provided to E911
11 providers than to directory publishers and that information must be verified, precise and
12 accurate, and in a NENA compliant form.⁵⁴ Due to these differences, the presumptive
13 rates for 47 U.S.C. § 222(e) are not presumptive for 47 U.S.C. § 222(g). However, the
14 two types of information are not grossly dissimilar. Lacking any other persuasive law or
15 evidence, the rates under 47 U.S.C. § 222(e) serve as a useful proxy. Therefore, we
16 find the rates are just and reasonable rates and not unduly discriminatory or
17 unreasonably preferential for the SLI listing service. We approve ACS collecting \$0.04
18 per initial SLI listing and \$0.06 per updated SLI listing for providing SLI to E911
19 providers.

21 ⁴⁹T-3 Phillips at 12.

22 ⁵⁰FNSB Closing Brief at 13-18; KPB Closing Brief at 17-19; MOA Closing Brief at
23 1-4.

24 ⁵¹FNSB Closing Brief at 10-13.

25 ⁵²FNSB Closing Brief at 18-20; KPB Closing Brief at 13-20.

26 ⁵³T-3 Phillips at 11; Tr. 276-277.

⁵⁴T-3 Phillips at 11; Tr. 408-409.

1 ACS has consistently asserted that provision of SLI was “bundled” into its
2 contracts to provide E911 services for municipalities and E911 providers, including
3 FNSB, KPB and the Municipality of Anchorage.⁵⁵ Thus, by its own admission, ACS has
4 already been compensated for the initial SLI listings to populate the DBMS of these
5 counterparties. Therefore, ACS may not charge for providing initial listings which ACS
6 had previously provided while contracted with Alaska entities to provide E911 services.
7 We allow ACS to charge for initial listings it subsequently provides after the expiration of
8 any former or existing contract.

9 Additional Hourly Rate Denied

10 ACS requests that in addition to the \$0.04/\$0.06 rate, we approve an
11 hourly rate of \$110.66 for reconciling errors or fallout when the information provided by
12 ACS is rejected from E911 service providers (hourly rate).⁵⁶ We deny the requested
13 hourly rate.

14 ACS argues that ACS could provide service to its customers without the
15 extra verification required by E911 service providers and therefore it should be
16 compensated for the extra verification process.⁵⁷ ACS witnesses argued that “fault isn’t
17 the issue here”⁵⁸ and because ACS is statutorily required to provide E911 compliant
18 data,⁵⁹ it should be compensated for any reconciliation work, regardless of where the
19 error originated.⁶⁰ On the record presented, we find this argument without merit.

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22 ⁵⁵ T-3 Phillips at 6; Tr. 440-442

23 ⁵⁶ TA137-117 at 1-2; TA177-359 at 1-2; TA196-251 at 1-2; TA541-120 at 1-2.

24 ⁵⁷ Tr. 348-349.

25 ⁵⁸ Tr. 415.

26 ⁵⁹ Tr. 350.

⁶⁰ Tr. 349-350, 414.

1 We find that ACS is statutorily required under 47 U.S.C. § 222(g) to
2 perform the extra work to provide E911 compliant SLI. The extra verification and
3 reconciliation of fallout is a necessary element of SLI under 47 U.S.C. § 222(g) and is
4 included in the \$0.04/\$0.06 rate. Without first verifying it, SLI would be inadequate for
5 E911 operators to use and thus not deserving of any compensation.⁶¹ Put differently,
6 verifying SLI is a standard process of providing accurate and useful SLI to E911
7 providers and is not a “relatively rare case”⁶² that warrants additional compensation.

8 Further, ACS has failed to factually demonstrate that this is a relatively
9 rare case and the additional hourly rate is just and reasonable. First, the hourly rate is
10 unreliable and it cannot be verified or audited. ACS currently lacks any time or record
11 keeping system. Indeed, ACS admits that tracking time might actually take as much
12 time as performing the verification.⁶³ ACS witnesses testified that a time tracking
13 program is in the process of being created.⁶⁴ We cannot, however, approve a tariff
14 based on an untested, hypothetical future program.

15 ACS provided examples of errors and estimated billing charges in exhibits
16 LP-18 and LP-19. Nevertheless, these exhibits are just that, estimated, demonstrative
17 billing charges, not reliable evidence based on actual time costs.⁶⁵ ACS witnesses also
18 testified that reported errors were historically attributed to ACS’s practices and/or its
19 employees.⁶⁶ Additionally, there is no mechanism in place for E911 operators to

21 ⁶¹Additionally, providing inaccurate SLI might also violate our requirements of
22 standards of service under AS 42.05.291(a).

23 ⁶²Implementation Report and Order at ¶ 102.

24 ⁶³Tr. 343-344.

25 ⁶⁴Tr. 339-341, 343-345.

26 ⁶⁵Tr. 399.

⁶⁶Tr. 307-314, 326-330.

1 identify on invoices who caused the error.⁶⁷ Without being able to know who erred we
2 cannot find the additional hourly charge justifiable nor can we find the charge just,
3 reasonable and non-discriminatory.

4 Next, ACS also proposes to bill a minimum one hour charge per month
5 regardless of whether it actually performed one hour's worth of labor or not. This
6 minimum charge is neither just nor reasonable. As discussed above, ACS proposes to
7 levy this charge without an accurate record keeping system. Testimony showed that
8 most fallout requires less than five minutes to correct.⁶⁸ ACS should not receive the
9 windfall of an hour's wage for five minutes of work. Finally, the combined hourly rate
10 includes a factor for outside plant personnel.⁶⁹ Due to the reliability and accessibility of
11 the accuracy of the various MSAG systems, this is likely unneeded personnel and an
12 unnecessary time cost when MSAG protocols can identify an accurate location address.

13 For all the reasons stated above, we find that ACS failed to establish an
14 additional hourly rate beyond the \$0.04/\$0.06 rate. We deny ACS's tariff filing as to the
15 additional hourly rate.

16 Tariff Sheets

17 We require ACS to refile tariff sheets that comply with this order.

18 Third Party Language

19 In addition to the refiling requirements set forth above, ACS has agreed to
20 amend section 4.14.1.4 of its proposed tariff sheets⁷⁰ to clarify language regarding third
21 parties.⁷¹ We require ACS to correct this language in its refilled tariffs.

22 _____
23 ⁶⁷Tr. 343-345.

24 ⁶⁸T-3 Phillips at 17.

25 ⁶⁹H-1 at 2, H-3 at 2, H-4 at 2, H-5 at 2.

26 ⁷⁰Tariff sheets 4.134, 4.126, 4.121, and 4.212.

⁷¹Tr. 376.

1 Final Order

2 This order constitutes the final decision in these proceedings. This
3 decision may be appealed within thirty days of this order in accordance with
4 AS 22.10.020(d) and Alaska Rule of Appellate Procedure 602(a)(2). In addition to the
5 appellate rights afforded by AS 22.10.020(d), a party has the right to file a petition for
6 reconsideration in accordance with 3 AAC 48.105. If such a petition is filed, the time
7 period for filing an appeal is tolled and then recalculated in accordance with Alaska Rule
8 of Appellate Procedure 602(a)(2).

9 **ORDER**

10 THE COMMISSION FURTHER ORDERS:

11 1. The requested rates for supplying Subscriber List Information to E911
12 service providers of \$0.04 per each initial listing and \$0.06 per each updated listing filed
13 January 12, 2015, by ACS are approved as discussed in the body of this order.

14 2. The proposed hourly rate of \$110.66 for reconciling errors or fallout
15 when the information provided by ACS is rejected by E911 service providers by ACS is
16 denied.

17 3. By November 9, 2015, ACS shall file new tariff sheets that conform to
18 the text in the body of this order.

19 DATED AND EFFECTIVE at Anchorage, Alaska, this 8th day of October, 2015.

20 BY DIRECTION OF THE COMMISSION
21 (Commissioners Robert M. Pickett and Janis W. Wilson,
22 not participating. Commissioner Norman Rokeberg
23 concurring in part and dissenting in part with
24 separate statement.)

