

TC98-004

CB/TS

TC98-004

DOCKET NO.

In the Matter of IN THE MATTER OF THE APPLICATION OF ACS SYSTEMS, INC. FOR A CERTIFICATE OF AUTHORITY TO PROVIDE TELECOMMUNICATIONS SERVICES IN SOUTH DAKOTA

Public Utilities Commission of the State of South Dakota

DATE	MEMORANDA
1/14/98	Filed and docketed;
1/15/98	TC Fee filing;
2/20/98	Received Certificate of Authority from Sec of State,
2/23/98	Indemnity Bond,
3/16/98	Order Granting COA,
3/16/98	Docket Closed

**Lance J.M. Steinhart**  
Attorney At Law  
6455 East Johns Crossing  
Suite 285  
Duluth, Georgia 30097

Also Admitted in New York  
and Maryland

Telephone: (770) 232-9200  
Facsimile: (770) 232-9208

January 13, 1998

**VIA AIRBORNE EXPRESS**

Mr. William Bullard  
Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501-5070  
(605) 773-3201

RECEIVED

JAN 14 1998

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Re: ACS Systems, Inc.

Dear Mr. Bullard:

Enclosed please find one original and ten (10) copies of ACS Systems, Inc.'s Application for Registration of a Telecommunications Company.

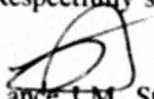
Please note that Exhibit A, the Certificate of Authority from the Secretary of State, is not attached. We have applied for the certificate and will forward a copy to the commission upon receipt.

In order to expedite the processing of this application, I would like to suggest that all requests for information by the analyst be made by either telephone or facsimile. I will make every effort to respond on the day of the request.

I have also enclosed a check in the amount of \$250.00 payable to the "South Dakota Public Utilities Commission" for the filing fee, and an extra copy of this cover letter to be date stamped and returned to me in the enclosed self-addressed prepaid envelope.

If you have any questions or if I may provide you with any additional information, please do not hesitate to contact me.

Respectfully submitted,

  
Lance J.M. Steinhart  
Attorney for ACS Systems, Inc.

Enclosures

cc: Ernest Ellis

**APPLICATION FOR REGISTRATION  
OF ACS SYSTEMS, INC.  
FILED WITH THE  
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF THE )  
APPLICATION OF )  
ACS SYSTEMS, INC. )  
FOR AN ORDER ) Docket No. \_\_\_\_\_  
authorizing the registration )  
of applicant as a )  
telecommunications company )

**APPLICATION**

Application is hereby made to the South Dakota Public Utilities Commission for an Order authorizing ACS Systems, Inc. ("Applicant") to register as a telecommunications company within the State of South Dakota. The following information is furnished in support thereof:

1. **Name, Address and Telephone Number of Applicant**

ACS Systems, Inc.  
2510 N. Hill Avenue, Suite 230  
Santa Ana, California 92705-5542  
(714) 622-4444

All inquiries regarding complaints and regulatory matters should be addressed to:

Lance J.M. Steinhart, Esq.  
6455 East Johns Crossing, Suite 285  
Duluth, Georgia 30097  
(770) 232-9200  
(770) 232-9208 (Fax)

2. Registered Agent

The name and address of the Applicant's registered agent are:

National Registered Agents, Inc.  
300 South Phillips Avenue, Ste. 300  
Sioux Falls, SD 57102

3. Description of the Applicant

Applicant was incorporated in the State of California on December 16, 1985. Applicant is a wholly-owned subsidiary of Fidelity National Financial, Inc., a publicly-held Delaware corporation, the stock of which is traded on the New York Stock Exchange. Its duration is perpetual. Applicant has applied for authority to transact business as a foreign corporation in the State of South Dakota and will file a copy of its Certificate of Authority as Exhibit A upon receipt. A copy of the Applicant's Articles of Incorporation is attached as Exhibit B hereto.

4. Facilities

Applicant does not own or maintain any transmission facilities or switching equipment in the State of South Dakota. The Applicant will provide services through Frontier, AT&T and Qwest, its underlying carriers.

5. Stockholders

The names and addresses of all 5% or greater stockholders of

Applicant are as follows:

Name and Address	Shares Owned	Percentage of all Shares Issued and Outstanding and Voting Control
Fidelity National Financial, Inc. 3938 State Street, Suite 210 Santa Barbara, CA 93105	3,000	100%

6. Officers and Directors

The name and address of the officers and directors of

Applicant are as follows:

OFFICERS

Mark J. Attaway	President
Jeff A. Sanderson	President R&D
Allen D. Meadows	Executive VP, CFO and Treasurer
Andrew F. Puzder	Executive VP and Assis. Sec.
M'Liss Jones Kane	Sr. VP and Sec.
Sherry Popovicia	Assis. VP
Ernest Ellis	VP of Telecommunications

DIRECTORS

William P. Foley, II  
Patrick F. Stone  
Allen D. Meadows

All of the above officers can be reached at ACS Systems, Inc.,  
2510 N. Hill Avenue, Suite 230, Santa Ana, California 92705-  
5542, (714) 622-4444.

7. Corporate Ownership

The name and address of any corporation, association or similar organization holding a five percent (5%) or greater ownership in the Applicant is as follows:

Fidelity National Financial, Inc., 3938 State Street, Suite 210,  
Santa Barbara, CA 93105.

8. Subsidiaries owned or controlled by Applicant

None

9. Description of Services

Applicant is a switch-based reseller which intends to offer 1+ direct dialing, 800 toll free, travel card and prepaid calling card service through the resale of telephone services provided by facilities-based interexchange carriers. As a reseller, Applicant has no points of presence in the State of South Dakota, thus Applicant neither owns, leases, nor operates any switching, transmission, or other physical facilities in the State of South Dakota, and no such facilities will be used by Applicant in providing service in the State of South Dakota. Rather, Applicant will be engaged in reselling services provided by facilities-based carriers within the State of South Dakota. Upon receiving certification, Applicant intends to provide services throughout the State of South Dakota.

Applicant intends to provide these services to customers on a jurisdictionally interstate basis subject to the FCC's jurisdiction and Applicant intends to provide these services on jurisdictionally intrastate basis pursuant to certification,

registration or tariff requirements, or on an unregulated basis, in all fifty states except Alaska, subject to the jurisdiction of various public service and utilities commissions. Applicant is currently in the process of obtaining all required authorizations from the FCC and the state regulatory agencies. Applicant is currently authorized to provide service in Colorado, Iowa, Michigan, Montana, New Jersey, Pennsylvania, Texas, Utah, Virginia and Wyoming.

Applicant intends to provide high quality service, with an industry standard blocking rate less than P.01. Its services will be available on a full-time basis, twenty-four hours a day, seven days a week, to customers within the geographic boundaries of the State of South Dakota.

10. Financial Qualifications

Applicant is financially qualified to provide intrastate interexchange telecommunications services within South Dakota. In particular, Applicant has adequate access to the capital necessary to fulfill any obligations it may undertake with respect to the provision of intrastate telecommunications services in the State of South Dakota. See Exhibit C which is attached hereto, Applicant's parent company's (Fidelity National Financial, Inc.) Form 10Q for the quarter ended September 30, 1997 which was filed with the SEC, which demonstrates that Applicant has the financial ability to provide the services that it proposes to offer.

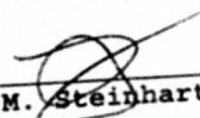
11. Tariff

A copy of Applicant's proposed tariff is attached as Exhibit D hereto.

WHEREFORE, the undersigned Applicant requests that the South Dakota Public Utilities Commission enter an order granting this application.

DATED this 15 day of July, 1998.

ACS Systems, Inc.

By:   
Lance J.M. Steinhart, Its Counsel

6455 East Johns Crossing  
Suite 285  
Duluth, Georgia 30097  
(770) 232-9200



STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

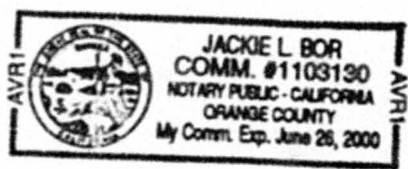
Mark Attaway, being first duly sworn, deposes and says that he is the President of ACS Systems, Inc., the Applicant in the proceeding entitled above, that he has read the foregoing application and knows the contents thereof; that the same are true of his knowledge, except as to matters which are therein stated on information or belief, and to those matters he believes them to be true.

*[Handwritten Signature]*  
\_\_\_\_\_  
Mark Attaway

Subscribed and sworn to before this 12th day of JAN, 1998

*[Handwritten Signature]*  
\_\_\_\_\_  
Notary Public

My Commission expires: 6-26-2000



*SD*

LIST OF EXHIBITS

- A - CERTIFICATE OF AUTHORITY
- B - ARTICLES OF INCORPORATION
- C - FINANCIAL INFORMATION
- D - PROPOSED TARIFF

EXHIBIT A - CERTIFICATE OF AUTHORITY

EXHIBIT B - ARTICLES OF INCORPORATION

1360130

ARTICLES OF INCORPORATION  
OF  
ACS SYSTEMS, INC.

ENDORSED  
FILED  
In the office of the Secretary of State  
of the State of California

DEC 16 1985

MARCH FONG EL. Secretary of State  
Sharon K. Hawkins  
Deputy

I

The name of this corporation is: ACS SYSTEMS, INC.

II

The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California ("GCL") other than banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III

The name and address in the State of California of the corporation's initial agent for the service of process, is: JOSEPH R. DAVIS, Attorney at Law, 2790 Harbor Boulevard, Suite 313, Costa Mesa, California 92626.

IV

The corporation is authorized to issue only one class of shares of stock and the total number of shares which the corporation is authorized to issue is 300,000 shares.

Dated this 10th day of December, 19 85.

R. Castelo  
R. CASTELO Incorporator

I hereby declare that I am the person who executed the foregoing Articles of Incorporation which execution is my act and deed.

R. Castelo  
R. CASTELO Incorporator

EXHIBIT C - FINANCIAL INFORMATION

Form 10Q for the quarter ended September 30, 1997

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM 10-Q

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF  
THE SECURITIES EXCHANGE ACT OF 1934

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF  
THE SECURITIES EXCHANGE ACT OF 1934

For the Quarter Ended September 30, 1997

Commission File Number 1-9396

FIDELITY NATIONAL FINANCIAL, INC.

(Exact name of registrant as specified in its charter)

<u>Delaware</u> (State or other jurisdiction of incorporation or organization)	<u>86-0498599</u> (I.R.S. Employer Identification Number)
<u>17911 Von Karman Avenue, Irvine, California</u> (Address of principal executive offices)	<u>92614</u> (Zip Code)

(714) 622-4333

(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days.

YES ( X )      NO ( )

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

\$ .0001 par value common - 16,276,062 shares as of November 11, 1997

Exhibit Index appears on page 12 of 13 sequentially numbered pages.



FORM 10-Q

QUARTERLY REPORT

Quarter Ended September 30, 1997

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Part II: OTHER INFORMATION

Items 1.- 4. of Part II have been omitted because they are not applicable with respect to the current reporting period.

Item 5. Omitted because it is not applicable with respect to the current reporting period.

Item 6. Exhibits and Reports on Form 8-K 12

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

FIDELITY NATIONAL FINANCIAL, INC.

(Registrant)

By: /s/ Allen D. Meadows  
Allen D. Meadows  
Executive Vice President  
Chief Financial Officer

Date: November 11, 1997

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES  
 CONDENSED CONSOLIDATED BALANCE SHEETS  
 (In thousands, except share data)

	September 30, <u>1997</u> (Unaudited)	December 31, <u>1996</u>
<b>ASSETS</b>		
Investments:		
Fixed maturities available for sale, at fair value	\$ 174,008	\$ 166,329
Equity securities, at fair value	84,438	43,578
Other long-term investments, at cost, which approximates fair value	8,366	5,542
Short-term investments, at cost, which approximates fair value	15,272	873
Investments in real estate and partnerships, net	<u>7,175</u>	<u>11,352</u>
Total investments	289,759	227,674
Cash and cash equivalents	80,329	63,971
Trade receivables, net	50,502	54,355
Notes receivable, net	8,659	11,317
Prepaid expenses and other assets	60,304	55,072
Title plants	51,661	50,701
Property and equipment, net	35,045	38,617
Income taxes receivable	<u>—</u>	<u>7,589</u>
	<u>\$ 576,259</u>	<u>\$ 509,296</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Liabilities:		
Accounts payable and accrued liabilities	\$ 52,154	\$ 53,987
Notes payable	150,918	148,922
Reserve for claim losses	188,333	187,245
Deferred income tax liabilities, net	15,053	7,604
Income taxes payable	<u>12,523</u>	<u>—</u>
	418,981	397,758
Minority interest	3,489	1,287
Stockholders' equity:		
Preferred stock, \$ .0001 par value; authorized, 3,000,000 shares; issued and outstanding, none	—	—
Common stock, \$ .0001 par value; authorized, 50,000,000 shares in 1997 and 1996; issued, 19,855,014 as of September 30, 1997 and 19,412,694 as of December 31, 1996	2	2
Additional paid-in capital	68,376	61,271
Retained earnings	<u>116,001</u>	<u>91,019</u>
	184,379	152,292
Net unrealized gains on investments	23,785	12,334
Less treasury stock, 5,492,138 shares as of September 30, 1997 and December 31, 1996, at cost	<u>54,375</u>	<u>54,375</u>
	<u>153,789</u>	<u>110,251</u>
	<u>\$ 576,259</u>	<u>\$ 509,296</u>

See Notes to Condensed Consolidated Financial Statements.

**FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF EARNINGS**  
(In thousands, except per share data)

	Three months ended		Nine months ended	
	September 30,		September 30,	
	1997	1996	1997	1996
	(Unaudited)		(Unaudited)	
<b>REVENUE:</b>				
Title insurance premiums	\$ 141,060	\$ 126,757	\$ 381,432	\$ 346,543
Escrow fees	20,771	16,414	58,365	50,242
Other fees and revenue	22,148	19,824	63,995	56,009
Interest and investment income, including realized gains and losses	<u>13,936</u>	<u>3,697</u>	<u>25,773</u>	<u>11,924</u>
	<u>197,915</u>	<u>166,692</u>	<u>529,565</u>	<u>464,718</u>
<b>EXPENSES:</b>				
Personnel costs	57,036	52,851	171,854	159,735
Other operating expenses	37,953	38,184	119,115	110,574
Agent commissions	63,285	53,429	157,919	131,773
Provision for claim losses	9,981	9,273	26,041	25,048
Interest expense	<u>2,389</u>	<u>2,332</u>	<u>7,167</u>	<u>6,908</u>
	<u>170,644</u>	<u>156,069</u>	<u>482,096</u>	<u>434,038</u>
Earnings before income taxes	27,271	10,623	47,469	30,680
Income tax expense	<u>11,414</u>	<u>4,306</u>	<u>19,484</u>	<u>12,272</u>
Net earnings	<u>\$ 15,857</u>	<u>\$ 6,317</u>	<u>\$ 27,985</u>	<u>\$ 18,408</u>
Primary earnings per share	<u>\$ 1.06</u>	<u>\$ .44</u>	<u>\$ 1.90</u>	<u>\$ 1.29</u>
Fully diluted earnings per share	<u>\$ .85</u>	<u>\$ .38</u>	<u>\$ 1.57</u>	<u>\$ 1.11</u>
Primary weighted average shares outstanding	<u>14,999</u>	<u>14,321</u>	<u>14,692</u>	<u>14,249</u>
Fully diluted weighted average shares outstanding	<u>19,544</u>	<u>18,717</u>	<u>19,410</u>	<u>18,643</u>
Cash dividends per share	<u>\$ .07</u>	<u>\$ .06</u>	<u>\$ .21</u>	<u>\$ .19</u>

See Notes to Condensed Consolidated Financial Statements.

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES  
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS  
(In thousands)

	Nine months ended	
	September 30,	
	1997	1996
	(Unaudited)	
Cash flows from operating activities:	\$ 27,985	\$ 18,408
Net earnings		
Reconciliation of net earnings to net cash provided by operating activities:		
Depreciation and amortization	10,816	8,478
Net increase (decrease) in reserve for claim losses	968	(1,277)
Provision for possible losses on real estate and notes receivable	819	363
Gain on sales of investments, real estate and other assets	(14,342)	(2,600)
Amortization of LYONs original issue discount and debt issuance costs	4,742	3,899
Other	(35)	127
Change in assets and liabilities, net of effects from acquisition of subsidiaries <sup>af</sup> :		
Net (increase) decrease in trade receivables	532	(8,740)
Net (increase) decrease in prepaid expenses and other assets	(3,551)	2,573
Net decrease in accounts payable and accrued liabilities	(231)	(1,788)
Net increase in income taxes	<u>20,112</u>	<u>7,294</u>
Net cash provided by operating activities	<u>47,815</u>	<u>26,737</u>
Cash flows from investing activities:		
Proceeds from sales of property and equipment	15,742	1,521
Proceeds from sales of real estate	4,567	—
Proceeds from sales and maturities of investments	171,932	143,627
Collections of notes receivable	3,186	9,353
Additions to title plants	(735)	(695)
Additions to property and equipment	(16,338)	(8,340)
Additions to investments	(205,082)	(148,939)
Additions to notes receivable	(2,324)	(8,225)
Investments in real estate and partnerships	(1,048)	(700)
Acquisition of subsidiaries, net of cash acquired	(1,128)	(10,544)
Sale of subsidiary, net of cash	<u>3,792</u>	<u>—</u>
Net cash used in investing activities	<u>(27,436)</u>	<u>(22,942)</u>

See Notes to Condensed Consolidated Financial Statements.  
(continued)

**FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (continued)**  
(In thousands)

	Nine months ended	
	September 30,	
	1997	1996
	(Unaudited)	
<b>Cash flows from financing activities:</b>		
Borrowings	\$ 8,169	\$ 10,897
Debt service payments	(10,565)	(6,030)
Reissue of treasury stock	—	2,109
Dividends paid	(2,934)	(2,602)
Stock options exercised	<u>1,309</u>	<u>407</u>
Net cash provided by (used in) financing activities	<u>(4,021)</u>	<u>4,781</u>
Net increase in cash and cash equivalents	16,358	8,576
Cash and cash equivalents at beginning of period	<u>63,971</u>	<u>47,431</u>
Cash and cash equivalents at end of period	<u>\$ 80,329</u>	<u>\$ 56,007</u>
<b>Supplemental cash flow information:</b>		
Income taxes (refunded) paid	<u>\$ (642)</u>	<u>\$ 10,493</u>
Interest paid	<u>\$ 3,149</u>	<u>\$ 3,355</u>
<b>Noncash investing and financing activities:</b>		
Dividends declared and unpaid	<u>\$ 1,044</u>	<u>\$ 888</u>
Value of stock issued in acquisition of First Title Corporation	\$ 3,760	\$ —
Value of stock issued in acquisition of Ifland Credit Services	3,000	—
Value of stock issued in acquisition of Nations Title Inc.	<u>—</u>	<u>2,130</u>
	<u>\$ 6,760</u>	<u>\$ 2,130</u>

See Notes to Condensed Consolidated Financial Statements.

## Notes to Condensed Consolidated Financial Statements

### Note A - Basis of Financial Statements

The financial information included in this report includes the accounts of Fidelity National Financial, Inc. and its subsidiaries (collectively, the "Company") and has been prepared in accordance with generally accepted accounting principles and the instructions to Form 10-Q and Article 10 of Regulation S-X. All adjustments, consisting of normal recurring accruals considered necessary for a fair presentation, have been included. This report should be read in conjunction with the Company's Annual Report on Form 10-K for the year ended December 31, 1996. Certain reclassifications have been made in the 1996 Condensed Consolidated Financial Statements to conform to the classifications used in 1997.

### Note B - Dividends

On September 16, 1997, the Company's Board of Directors declared a cash dividend of \$0.07 per share, payable on October 10, 1997, to stockholders of record on September 26, 1997.

### Note C - Sale of American Title Company

Effective July 1, 1997, the Company sold a majority interest (60%) of its subsidiary American Title Company ("ATC"), an underwritten title company, to certain members of ATC's management. ATC will function as an exclusive agent of the Company. The sale price of the 60% interest was \$6.0 million resulting in a realized gain of approximately \$1.3 million before applicable income taxes.

### Note D - Acquisitions

On April 4, 1996, the Company purchased 17% of the outstanding common stock of National Alliance Marketing Group, Inc. ("National"), a California corporation, for \$566,667; together with a warrant to acquire an additional 14% of National common stock. In addition, the company loaned \$1,200,000 to National at closing at a rate of prime plus one percent. Subsequently, the Company agreed to increase the credit facility from \$1,200,000 to \$1,700,000. In consideration for the increase in the credit facility National agreed to increase the warrant shares which the Company can purchase. If the entire \$1,700,000 was borrowed the Company could purchase an additional 34% of the outstanding shares of National. After receiving approval of the transaction from the California Department of Insurance, the transaction closed on July 12, 1996. National is the parent company of Alliance Home Warranty Company, a California insurance company. Alliance sells home warranty plans to buyers of resale homes, primarily in the Central and Southern California markets. A home warranty contract generally promises the repair or replacement of major operating system and built-in appliances inside a home for a period of one year. On July 3, 1997, the Company converted the outstanding note balance in conjunction with the exercise of the warrants and now owns 51% of the outstanding common stock of National. The outstanding balance of the notes receivable due from National at conversion was approximately \$1.6 million.

On July 22, 1997, the Company purchased 1,000,000 shares of common stock of GB Foods Corporation, which represents approximately 15.5% of the outstanding common stock of GB Foods Corporation, for a purchase price of \$5.0 million. Additionally, the Company purchased warrants to acquire an additional 3,500,000 shares of GB Foods Corporation at various prices ranging from \$5.00 - \$7.50 for a purchase price of \$800,000. 1,500,000 million warrants are exercisable at \$5.00 per share, 1,000,000 million warrants are exercisable at \$7.00 per share and 1,000,000 million warrants are exercisable at \$7.50 per share. In conjunction with the common stock purchase, the Company gained control of three seats on the GB Foods Corporation Board of Directors. The purpose of the investment is consistent with the Company's strategic goal to diversify into non-interest rate sensitive businesses. The Company's investment in GB Foods Corporation will be accounted for under the equity method.

On August 22, 1997, the Company acquired the common stock of First Title Corporation, a title company with fourteen offices throughout the southeastern United States. First Title has been merged into a subsidiary of the Company. First Title was acquired for \$4.7 million; payable in 80% common stock of the Company (230,362 shares or \$3.3 million) and 20% cash (approximately \$900,000). This transaction has been accounted for as a purchase.

On September 18, 1997, the Company acquired the common stock of Island Credit Services ("ICS"), a credit reporting company headquartered in Lexington, Kentucky, for a purchase price of \$3.75 million. ICS has been merged with Credit Reports, Inc. The purchase price was payable 80% in common stock of the Company (154,686 shares or \$3.0 million) and 20% cash (\$750,000). This transaction has been accounted for as a purchase.

Effective as of October 1, 1997, the Company acquired Bron Research, Inc. ("Bron"), a flood certification company headquartered in Austin, Texas. The purchase price paid by the Company for the acquisition was \$9.85 million, paid in 475,702 shares of Company common stock. Bron now operates as Fidelity National Flood, Inc. This transaction has been accounted for as a pooling-of-interests.

On October 9, 1997, the Company acquired the common stock of Credit Reports, Inc. ("CRI"), a credit reporting company headquartered in Scottsdale, Arizona, with operations in California, Colorado, Nevada and Oregon. CRI has been merged with ICS. The purchase price for CRI was \$200,000, payable in 10,414 shares of Company common stock. This transaction has been accounted for as a purchase.

Also on October 9, 1997, the Company acquired the common stock of Express Network, Inc. ("ENI"), a provider of attorney services such as courier, messenger, courthouse filing, process serving, investigation and reprographics. ENI provides services to legal firms in Los Angeles, Orange County, San Diego, Riverside and San Francisco, California. The purchase price for ENI was \$10.55 million; payable in 50% common stock of the Company (274,689 shares or \$5.275 million) and 50% cash (approximately \$5.275 million). Approximately \$2.8 million of the cash portion of the purchase price will be paid in equal installments over a four-year period. This transaction has been accounted for as a purchase.

#### Note E - Subsequent Events

On October 17, 1997, Fidelity National Financial, Inc., in a private transaction, purchased \$45 million aggregate principal amount at maturity of its outstanding Liquid Yield Option Notes due 2009 (the "LYONs") from Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") for an aggregate purchase price of \$27.2 million (or \$605 per \$1,000 principal amount at maturity of LYONs). The purchase price was paid in the form of 1,152,381 shares of the Company's common stock (the "Exchange Shares"). The Company also paid Merrill Lynch, the excess of a base price of \$23.625 per Exchange Share over the actual sales price (less \$0.05 per share in commissions) realized by Merrill Lynch for sales of up to 502,381 Exchange Shares. The Company also paid Merrill Lynch, for each day, an amount in cash to be determined by multiplying the Net Carry Amount (number of Exchange Shares multiplied by \$23.625) by the Applicable Rate (LIBOR plus 2.50%). The Company's payment obligations were subject to reduction for dividends on Exchange Shares received by Merrill Lynch during the period. The Company paid the foregoing amounts to Merrill Lynch in cash of approximately \$790,000 on November 7, 1997. The purchase of the LYONs increased stockholders' equity by approximately \$24.7 million while reducing outstanding debt by approximately \$24.3 million. Additionally, an extraordinary loss due to the early retirement of debt of approximately \$1.7 million, net of applicable income taxes, will be recorded in the fourth quarter of 1997.

Effective October 23, 1997, the Company sold its small business investment company subsidiary FNF Ventures, Inc., to certain members of FNF Ventures, Inc.'s management. The sale price was \$2.8 million, resulting in a realized gain of approximately \$800,000 before applicable income taxes.

#### Note F - Recent Accounting Pronouncements

In March 1997, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards No. 128, "Earnings per Share" ("SFAS 128"), effective for fiscal years ending after December 15, 1997. SFAS 128 introduces and requires the presentation of "basic" earnings per share which represents net earnings divided by the weighted average shares outstanding excluding all common stock equivalents. Dual presentation of "diluted" earnings per share, reflecting the dilutive effects of all common stock equivalents, will also be required. The diluted presentation is similar to the current presentation of fully diluted earnings per share. Management has not determined whether the adoption of SFAS 128 will have a material impact on the Company's financial position or results of operations.

In June 1997, the FASB issued Statement of Financial Accounting Standards No. 130, "Reporting Comprehensive Income" ("SFAS 130"). SFAS 130 establishes standards for the reporting and display of comprehensive income and its components (revenue, expenses, gains and losses) in a full set of general-purpose financial statements. SFAS 130 requires all items that are necessary to be recognized under accounting standards as components of comprehensive income to be reported in a

financial statement that is displayed with the same prominence as other financial statements. SFAS 130 does not require a specific format for that financial statement, but requires that an enterprise display an amount representing total comprehensive income for the period covered by that financial statement. SFAS 130 requires an enterprise to (a) classify items of other comprehensive income by their nature in a financial statement and (b) display the accumulated balance of other comprehensive income separately from retained earnings and additional paid-in capital in the equity section of a statement of financial position. SFAS 130 is effective for fiscal years beginning after December 15, 1997. Management has not determined whether the adoption of SFAS 131 will have a material impact on the Company's financial reporting.

In June 1997, the FASB issued Statement of Financial Accounting Standards No. 131, "Disclosures about Segments of an Enterprise and Related Information" ("SFAS 131"). SFAS 131 establishes standards for public business enterprises to report information about operating segments in annual financial statements and requires that those enterprises report selected information about operating segments in interim financial reports issued to stockholders. It also establishes standards for related disclosures about products and services, geographic areas and major customers. This statement supersedes FASB Statement No. 14, "Financial Reporting for Segments of a Business Enterprise," but retains the requirement to report information about major customers. It amends FASB Statement No. 94, "Consolidation of All Majority-Owned Subsidiaries," to remove the special disclosure requirements for previously unconsolidated subsidiaries. SFAS 131 requires, among other items, that a public business enterprise report a measure of segment profit or loss, certain specific revenue and expense items, segment assets, information about the revenues derived from the enterprise's products or services and major customers. SFAS 131 also requires that the enterprise report descriptive information about the way that the operating segments were determined and the products and services provided by the operating segments. SFAS 131 is effective for financial statements for periods beginning after December 15, 1997. In the initial year of application, comparative information for earlier years is to be restated. SFAS 131 need not be applied to interim financial statements in the initial year of its application, but comparative information for interim periods in the initial year of application is to be reported in financial statements for interim periods in the second year of application. Management has not determined whether the adoption of SFAS 131 will have a material impact on the Company's financial reporting.

#### Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Total revenue for the third quarter of 1997 increased 19.0% to \$197.9 million from \$166.7 million for the third quarter of 1996. Total revenue for the nine-month period ended September 30, 1997 increased 14.0% to \$529.6 million from \$464.7 million for the comparable 1996 period. The quarter over quarter increase can be attributed to increased title premiums, escrow fees, other fees and revenue and investment income. The increase in title premiums for the quarter and nine-month period ended September 30, 1997 compared to the 1996 period is primarily the result of the Company's expanded presence in agency operations resulting from the Company's acquisition of Nations Title Inc., which closed on April 1, 1996, and favorable market conditions. Additionally, agency premiums were positively impacted by the sale of a majority interest of American Title Company (formerly an underwritten title company subsidiary of the company, to American Title Company Management). The sale of ATC, which was effective July 1, 1997, results in a shift of approximately \$9.6 million of premiums from direct operations to agency operations as ATC is now one of the Company's largest agents.

The following table presents information regarding the components of title premiums (dollars in thousands):

	Three months ended				Nine months ended			
	September 30,		September 30,		September 30,		September 30,	
	1997	% of Total	1996	% of Total	1997	% of Total	1996	% of Total
Title premiums from direct operations	\$ 51,507	43.7%	\$ 58,919	46.5%	\$181,094	47.5%	\$178,982	51.6%
Title premiums from agency operations	79,453	56.3%	67,838	53.5%	200,338	52.5%	167,561	48.4%
Total title premiums	\$141,060	100.0%	\$126,757	100.0%	\$381,432	100.0%	\$346,543	100.0%

The increase in escrow fees and other fees and revenue can be attributed to favorable title order openings and closings in our direct operations which began to trend upward at the end of the first quarter and have remained strong, as well as positive price and transaction trends in the real estate resale market, particularly in California, the nation's largest title insurance market and an area in which the Company has a strong presence. Additionally, the increase in other fees and revenue has been favorably affected by increased contributions made by the Company's title-related services subsidiaries, such as real estate information and technology services, foreclosure publishing and posting, recording services home-warranty and exchange intermediary services.



Interest and investment income increased 275.7% to \$13.9 million in the third quarter of 1997 from \$3.7 million in the third quarter of 1996. For the nine-month period ended September 30, 1997, interest and investment income was \$25.8 million, a 116.8% increase over the \$11.9 million of interest and investment income earned in the comparable 1996 period. The increase in interest and investment income earned during the 1997 periods is due to an increase in net realized gains with a slight impact from an increase in the invested asset base compared to the same periods in 1996. Net realized gains from the sale of investments were \$10.4 million in the third quarter of 1997 as compared to net realized gains of \$601,000 in the corresponding 1996 period. Included in the quarter and nine-month periods net realized gains are a gain from the sale of the Company's former home office building of \$4.3 million, a gain from the sale of ATC of \$1.3 million and net gains from the sale of investment securities of \$5.0 million. These amounts are prior to applicable income taxes. Net realized gains for the nine-month periods ended September 30, 1997 and 1996 were \$14.3 million and \$2.6 million, respectively. The Company has shifted the emphasis in its fixed income portfolio from taxable to non-taxable securities during 1997.

The Company's operating expenses consist primarily of personnel costs and other operating expenses which are incurred as title insurance orders are received and processed by the Company's direct operations. Title insurance premiums and escrow fees are recognized as income at the time the underlying real estate transaction closes. As a result, revenue lags approximately 60-90 days behind expenses and therefore gross margins may fluctuate.

Personnel costs include both base salaries and sales commissions (direct operations) paid to employees and are the most significant operating expense incurred by the Company. These costs generally fluctuate with the level of direct orders opened and closed and with the mix of revenue between direct and agency operations. Personnel costs, as a percentage of total revenue, have decreased to 28.3% for the three-month period ended September 30, 1997 compared to 31.7% for the corresponding period in 1996. Personnel costs as a percentage of total revenue for the nine-month period ended September 30, 1997 have decreased to 32.5% from 34.4% for the corresponding 1996 period.

Other operating expenses consist primarily of facilities expenses, title plant maintenance, premium taxes (which insurance underwriters are required to pay on title premiums in lieu of franchise and other state taxes), escrow losses, courier services, computer services, professional services, general insurance, trade and notes receivable allowances and depreciation. Other operating expenses decreased as a percentage of total revenue to 19.2% in the third quarter of 1997 from 22.9% in the third quarter of 1996. As a percentage of total revenue, other operating expenses for the nine-month period ended September 30, 1997 decreased to 22.5% from 23.3% for the same period in 1996.

The Company previously implemented and remains committed to aggressive cost control programs which will help maintain operating expense levels consistent with the levels of title-related revenue production; however, certain fixed costs are incurred regardless of revenue levels, resulting in period over period fluctuations.

The period over period fluctuations in personnel costs and other operating expenses are primarily the result of the fluctuations in total revenue, as well as the changes in the direct operation and agency operation title premium mix.

The addition of Nations Title Inc. title premiums, which are primarily agency-related, has provided a balance between direct operations and agency operations revenue. Additionally, the sale of ATC has shifted costs from personnel costs and other operating expenses to agent commissions.

Agent commissions represent the portion of policy premiums retained by agents pursuant to the terms of their respective agency contracts. Agent commissions were 79.7% of agent policy premiums in the third quarter of 1997 compared to 78.8% of agency policy premiums in the third quarter of 1996. The fluctuation in the third quarter of 1997 compared to the third quarter of 1996 is due to the conversion of ATC to an agency operation and the related increase in commission expense. Agent commissions were 78.3% of agency policy premiums in the first nine months of 1997 compared to 78.6% in the first nine months of 1996. Agent commissions and the resulting percentage of agency premiums retained by the Company varies according to regional differences in real estate closing practices and state regulations.

The provision for claim losses includes an estimate of anticipated title claims and major claims. The estimate of anticipated title claims is accrued as a percentage of title premium revenue based on the Company's historical loss experience and other relevant factors. The Company monitors its claims experience on a continual basis and adjusts the provision for claim losses accordingly. The Company believes that as a result of its underwriting and claims handling practices, as well as the refinancing business of prior years, the Company will maintain a trend of favorable claim loss experience. The Company has provided for claim losses at 7.0% of title insurance premiums prior to the impact of major claims expense, recoupments

and the impact of certain state promulgated title premium rates. Application of these factors resulted in a net provision for claim losses as a percentage of premiums of 7.1% and 7.3% for the three-month periods ended September 30, 1997 and 1996, respectively, and 6.8% and 7.2% for the nine-month periods ended September 30, 1997 and 1996, respectively.

Interest expense is incurred by the Company in financing its capital asset purchases and certain acquisitions. Interest expense consists of interest related to the Company's outstanding debt and the amortization of original issue discount and debt issuance costs related to the Liquid Yield Option Notes ("LYONs"). Interest expense of "non-LYONs" debt totaled \$1.0 million and \$1.0 million for the three-month periods ended September 30, 1997 and 1996, respectively; and \$3.1 million and \$3.0 million for the nine-month periods ended September 30, 1997 and 1996, respectively. The LYONs related component of interest expense amounted to \$1.4 million for the third quarter of 1997 and \$1.3 million for the third quarter of 1996; and \$4.1 million and \$3.9 million for the nine-month periods ended September 30, 1997 and 1996, respectively. Interest rates being paid by the Company on certain "non-LYONs" debt in 1997 are lower than those paid in 1996 as a result of decreases in certain rates (e.g., LIBOR) to which certain of the interest rates being paid by the Company are indexed.

Income tax expense for the three-month periods ended September 30, 1997 and 1996, as a percentage of earnings before income taxes was 41.9% and 40.5%, respectively. Income tax expense for the nine-month periods ended September 30, 1997 and 1996 was 41.0% and 40.0%, respectively. The fluctuations in income tax expense as a percentage of earnings before income taxes are attributable to the characteristics of net income, i.e., operating income versus investment income; and the components of investment income, taxable versus non-taxable.

#### Liquidity and Capital Resources

The Company's insurance subsidiaries and wholly-owned underwritten title companies collect premiums and pay claims and operating expenses. Fluctuations in operating cash flows are primarily the result of increases or decreases in revenue. The insurance subsidiaries also have cash flow sources derived from investment income, repayments of principal and proceeds from sales and maturities of investments and dividends and distributions from subsidiaries. Positive cash flow from the insurance subsidiaries is invested primarily in short-term investments, medium-term bonds and certain equity securities. Cash, cash equivalents and short-term investments held by the Company's insurance subsidiaries and underwritten title companies ("UTCs") provide liquidity for projected claims and operating expenses.

The Company's cash requirements include debt service, operating expenses, taxes and dividends on its common stock. As a holding company, the Company receives cash from its subsidiaries as reimbursement for operating and other administrative expenses it incurs. The reimbursements are executed within the guidelines of various management agreements between the holding company and its subsidiaries. The Company also receives funds from dividend distributions from its insurance subsidiaries and UTCs. The insurance subsidiaries and UTCs are restricted by state regulations in their ability to pay dividends and make distributions. Each state of domicile regulates the extent to which the Company's title underwriters and UTCs can pay dividends or make other distributions to the Company. The Company believes that all anticipated cash requirements for current operations will be met from internally generated funds and short-term bank borrowings through existing credit facilities.

The short- and long-term liquidity requirements of the Company and its subsidiaries are monitored regularly to match cash inflows with cash requirements. The Company and subsidiaries forecast their daily cash needs and periodically review their short- and long-term projected sources and uses of funds, as well as the asset, liability, investment and cash flow assumptions underlying these projections.

Part II: OTHER INFORMATION

Item 6. Exhibits and Reports on Form 8-K

(a) Exhibits:

Exhibit 11 Computation of Primary and Fully Diluted Earnings Per Share

(b) Reports on Form 8-K:

Form 8-K dated September 23, 1997 - Fidelity National Financial, Inc. Announces Management Changes

Form 8-K dated November 3, 1997 - Fidelity National Financial, Inc. Announces Purchase of its Liquid Yield Option Notes due 2009 for \$27.2 Million

Form 8-K dated November 5, 1997 - Combined Revenue and Net Earnings for Fidelity National Financial, Inc. and Bron Research, Inc.

## EXHIBIT 11

FIDELITY NATIONAL FINANCIAL, INC. AND SUBSIDIARIES  
 COMPUTATION OF PRIMARY AND FULLY DILUTED  
 EARNINGS PER SHARE  
 (In thousands, except per share amounts)

	Three months ended September 30,		Nine months ended September 30,	
	1997	1996	1997	1996
	(Unaudited)		(Unaudited)	
Primary net earnings	\$ 15,857	\$ 6,317	\$ 27,985	\$ 18,408
Add: Amortization of original issue discount and debt issuance costs, net of income tax effect, applicable to LYONs	<u>818</u>	<u>785</u>	<u>2,432</u>	<u>2,322</u>
Fully diluted earnings	<u>\$ 16,675</u>	<u>\$ 7,102</u>	<u>\$ 30,417</u>	<u>\$ 20,730</u>
Weighted average shares outstanding during the period	14,019	13,724	13,928	13,644
Common stock equivalent shares - primary	<u>980</u>	<u>597</u>	<u>764</u>	<u>605</u>
Common and common stock equivalent shares for purpose of calculating primary earnings per share	14,999	14,321	14,692	14,249
Incremental shares to reflect full dilution	<u>4,545</u>	<u>4,396</u>	<u>4,718</u>	<u>4,394</u>
Total shares for purpose of calculating fully diluted earnings per share	<u>19,544</u>	<u>18,717</u>	<u>19,410</u>	<u>18,643</u>
Primary earnings per share	<u>\$ 1.06</u>	<u>\$ .44</u>	<u>\$ 1.90</u>	<u>\$ 1.29</u>
Fully diluted earnings per share	<u>\$ .85</u>	<u>\$ .38</u>	<u>\$ 1.57</u>	<u>\$ 1.11</u>

EXHIBIT D - PROPOSED TARIFF

TELECOMMUNICATIONS SERVICES TARIFFTITLE SHEETSOUTH DAKOTA TELECOMMUNICATIONS TARIFF

This tariff contains the descriptions, regulations, and rates applicable to the furnishing of service or facilities for Telecommunications Services furnished by ACS Systems, Inc. ("ACS"), with principal offices at 2510 N. Hill Avenue, Suite 230, Santa Ana, California 92705-5542. This tariff applies for services furnished within the State of South Dakota. This tariff is on file with the South Dakota Public Utilities Commission, and copies may be inspected, during normal business hours, at the company's principal place of business.

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ISSUED: January 14, 1998

ISSUED BY: Ernest Ellis, VP of Telecommunications  
2510 N. Red Hill Avenue, Suite 230  
Santa Ana, California 92705

EFFECTIVE:

ACS SYSTEMS, INC.

ORIGINAL SHEET 2

SOUTH DAKOTA PUC TARIFF NO. 1

TELECOMMUNICATIONS SERVICES TARIFF

CONCURRING, CONNECTING OR

OTHER PARTICIPATING CARRIERS AND

BILLING AGENTS

1. Concurring Carriers - None
2. Connecting Carriers - None
3. Other Participating Carriers - None
4. Billing Agents - None

ISSUED: January 14, 1998

ISSUED BY: Ernest Ellis, VP of Telecommunications  
2510 N. Red Hill Avenue, Suite 230  
Santa Ana, California 92705

EFFECTIVE:

ACS SYSTEMS, INC.

ORIGINAL SHEET 3  
SOUTH DAKOTA PUC TARIFF NO. 1  
TELECOMMUNICATIONS SERVICES TARIFF

CHECK SHEET

Sheets 1 through 30 inclusive of this tariff are effective as of the date shown at the bottom of the respective sheet(s). Original and revised sheets as named below comprise all changes from the original tariff and are currently in effect as of the date on the bottom of this sheet.

<u>SHEET</u>	<u>REVISION</u>
1	Original
2	Original
3	Original
4	Original
5	Original
6	Original
7	Original
8	Original
9	Original
10	Original
11	Original
12	Original
13	Original
14	Original
15	Original
16	Original
17	Original
18	Original
19	Original
20	Original
21	Original
22	Original
23	Original
24	Original
25	Original
26	Original
27	Original
28	Original
29	Original
30	Original

\* New or Revised Sheet

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EFFECTIVE:



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TELECOMMUNICATIONS SERVICES TARIFFTARIFF FORMAT

A. Sheet Numbering: Sheet numbers appear in the upper right corner of the page. Sheets are numbered sequentially. However, new sheets are occasionally added to the tariff. When a new sheet is added between sheets already in effect, a decimal is added. For example, a new sheet added between pages 11 and 12 would be page 11.1.

B. Sheet Revision Numbers: Revision numbers also appear in the upper right corner of each sheet where applicable. These numbers are used to indicate the most current page version on file with the Commission. For example, 4th Revised Sheet 13 cancels 3rd Revised Sheet 13. Consult the Check Sheet for the sheets currently in effect.

C. Paragraph Numbering Sequence: There are nine levels of paragraph coding. Each level of coding is subservient to its next higher level:

- 2.
- 2.1
- 2.1.1
- 2.1.1.A
- 2.1.1.A.1
- 2.1.1.A.1.(a)
- 2.1.1.A.1.(a).I
- 2.1.1.A.1.(a).I.(i)
- 2.1.1.A.1.(a).I.(i).(1)

D. Check Sheets: When a tariff filing is made with the Commission, an updated Check Sheet accompanies the tariff filing. The Check Sheet lists the sheets contained in the tariff, with a cross reference to the current Revision Number. When new sheets are added, the Check Sheet is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (\*). There will be no other symbols used on this sheet if these are the only changes made to it (i.e., the format, etc. remains the same, just revised revision levels on some sheets). The tariff user should refer to the latest Check Sheet to find out if a particular sheet is the most current on Commission file.

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TELECOMMUNICATIONS SERVICES TARIFF

SYMBOLS

The following are the only symbols used for the purposes indicated below:

- (C) to signify change in regulation
- (D) to signify a deletion
- (I) to signify a rate increase
- (L) to signify material relocated in the tariff
- (N) to signify a new rate or regulation
- (R) to signify a rate reduction
- (T) to signify a change in text, but no change in rate or regulation

ISSUED: January 14, 1998

ISSUED BY: Ernest Ellis, VP of Telecommunications  
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EFFECTIVE:

TELECOMMUNICATIONS SERVICES TARIFFSECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS

Access Line - An arrangement from a local exchange telephone company or other common carrier, using either dedicated or switched access, which connects a Customer's location to ACS's location or switching center.

Authorization Code - A numerical code, one or more of which may be assigned to a Customer, to enable ACS to identify the origin of the Customer so it may rate and bill the call. Automatic number identification (ANI) is used as the authorization code wherever possible.

Commission - Used throughout this tariff to mean the South Dakota Public Utilities Commission.

Customer - The person, firm, corporation or other legal entity which orders the services of ACS and is responsible for the payment of charges and for compliance with the Company's tariff regulations.

Company or ACS - Used throughout this tariff to mean ACS Systems, Inc., a California Corporation.

Holiday - New Year's Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. Holidays shall be billed at the evening rate from 8 a.m. to 11 p.m. After 11 p.m., the lower night rate shall go into effect.

Prepaid Account - An inventory of Telecom Units purchased in advance by the Customer, and associated with one and only one Authorization Code as contained in a specific Prepaid Calling Card.

Prepaid Calling Card - A card issued by the Company, containing an Authorization Code which identifies a specific Prepaid Account of Telecom Units, which enables calls to be processed, account activity to be logged, and balances to be maintained, on a prepayment basis.

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ISSUED: January 14, 1998

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ACS SYSTEMS, INC.

TELECOMMUNICATIONS SERVICES TARIFF

ORIGINAL SHEET 8  
SOUTH DAKOTA PUC TARIFF NO. 1

Telecom Unit - A measurement of telecommunications service equivalent to one minute of usage between any two points within the State of South Dakota.

Telecommunications - The transmission of voice communications or, subject to the transmission capabilities of the services, the transmission of data, facsimile, signaling, metering, or other similar communications.

Underlying Carrier - The telecommunications carrier whose network facilities provide the technical capability and capacity necessary for the transmission and reception of Customer telecommunications traffic.

ISSUED: January 14, 1998

ISSUED BY: Ernest Ellis, VP of Telecommunications  
2510 N. Red Hill Avenue, Suite 230  
Santa Ana, California 92705

EFFECTIVE:

TELECOMMUNICATIONS SERVICES TARIFFSECTION 2 - RULES AND REGULATIONS2.1 Undertaking of the Company

This tariff contains the regulations and rates applicable to intrastate resale telecommunications services provided by ACS for telecommunications between points within the State of South Dakota. Resale services are furnished subject to the availability of facilities and subject to the terms and conditions of this tariff in compliance with limitations set forth in the Commission's rules. The Company's services are provided on a statewide basis and are not intended to be limited geographically. The Company offers service to all those who desire to purchase service from the Company consistent with all of the provisions of this tariff. Customers interested in the Company's services shall file a service application with the Company which fully identifies the Customer, the services requested and other information requested by the Company. The Company reserves the right to examine the credit record and check the references of all applicants and Customers. The Company may examine the credit profile/record of any applicant prior to accepting the service order. The service application shall not in itself obligate the Company to provide services or to continue to provide service if a later check of applicant's credit record is, in the opinion of the Company, contrary to the best interest of the Company. The Company may act as the Customer's agent for ordering access connection facilities provided by other carriers or entities when authorized by the Customer, to allow connection of a Customer's location to a service provided by the Company. The Customer shall be responsible for all charges due for such service arrangement. The Company does not own any switching, transmission or other physical facilities in South Dakota.

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ISSUED: January 14, 1998

EFFECTIVE:

ISSUED BY: Ernest Ellis, VP of Telecommunications  
2510 N. Red Hill Avenue, Suite 230  
Santa Ana, California 92705

TELECOMMUNICATIONS SERVICES TARIFF

- 2.1.1 The services provided by ACS are not part of a joint undertaking with any other entity providing telecommunications channels, facilities, or services, but may involve the resale of the Message Toll Services (MTS) and Wide Area Telecommunications Services (WATS) of underlying common carriers subject to the jurisdiction of this Commission.
- 2.1.2 The rates and regulations contained in this tariff apply only to the resale services furnished by ACS and do not apply, unless otherwise specified, to the lines, facilities, or services provided by a local exchange telephone company or other common carriers for use in accessing the services of ACS.
- 2.1.3 The Company reserves the right to limit the length of communications, to discontinue furnishing services, or limit the use of service necessitated by conditions beyond its control, including, without limitation: lack of satellite or other transmission medium capacity; the revision, alteration or repricing of the Underlying Carrier's tariffed offerings; or when the use of service becomes or is in violation of the law or the provisions of this tariff.

**2.2 Use of Services**

- 2.2.1 ACS's services may be used for any lawful purpose consistent with the transmission and switching parameters of the telecommunications facilities utilized in the provision of services, subject to any limitations set forth in this Section 2.2.
- 2.2.2 The use of ACS's services to make calls which might reasonably be expected to frighten, abuse, torment, or harass another or in such a way as to unreasonably interfere with use by others is prohibited.

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ISSUED: January 14, 1998ISSUED BY: Ernest Ellis, VP of Telecommunications  
2510 N. Red Hill Avenue, Suite 230  
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EFFECTIVE:

- 2.2.3 The use of ACS's services without payment for service or attempting to avoid payment for service by fraudulent means or devices, schemes, false or invalid numbers, or false calling or credit cards is prohibited.
- 2.2.4 ACS's services are available for use twenty-four hours per day, seven days per week.
- 2.2.5 ACS does not transmit messages, but the services may be used for that purpose.
- 2.2.6 ACS's services may be denied for nonpayment of charges or for other violations of this tariff.
- 2.2.7 Customers shall not use the service provided under this tariff for any unlawful purpose.
- 2.2.8 The Customer is responsible for notifying the Company immediately of any unauthorized use of services.

2.3 Liability of the Company

- 2.3.1 The Company shall not be liable for any claim, loss, expense or damage for any interruption, delay, error, omission, or defect in any service, facility or transmission provided under this tariff, if caused by the Underlying Carrier, an act of God, fire, war, civil disturbance, act of government, or due to any other causes beyond the Company's control.
- 2.3.2 The Company shall not be liable for, and shall be fully indemnified and held harmless by the Customer against any claim, loss, expense, or damage for defamation, libel, slander, invasion, infringement of copyright or patent, unauthorized use of any trademark, trade name or service mark, proprietary or creative right, or any other injury to any person, property or entity arising out of the material, data or information transmitted.

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ISSUED: January 14, 1998

ISSUED BY: Ernest Ellis, VP of Telecommunications  
2510 N. Red Hill Avenue, Suite 230  
Santa Ana, California 92705

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TELECOMMUNICATIONS SERVICES TARIFF

- 2.3.3 No agent or employee of any other carrier or entity shall be deemed to be an agent or employee of the Company.
- 2.3.4 The Company's liability for damages, resulting in whole or in part from or arising in connection with the furnishing of service under this tariff, including but not limited to mistakes, omissions, interruptions, delays, errors, or other defects or misrepresentations shall not exceed an amount equal to the charges provided for under this tariff for the long distance call for the period during which the call was affected. No other liability in any event shall attach to the Company.
- 2.3.5 The Company shall not be liable for and shall be indemnified and saved harmless by any Customer or by any other entity from any and all loss, claims, demands, suits, or other action or any liability whatsoever, whether suffered, made, instituted, or asserted by any Customer or any other entity for any personal injury to, or death of, any person or persons, and for any loss, damage, defacement or destruction of the premises of any Customer or any other entity or any other property whether owned or controlled by the Customer or others.
- 2.3.6 The Company shall not be liable for any indirect, special, incidental, or consequential damages under this tariff including, but not limited to, loss of revenue or profits, for any reason whatsoever, including the breakdown of facilities associated with the service, or for any mistakes, omissions, delays, errors, or defects in transmission occurring during the course of furnishing service.

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TELECOMMUNICATIONS SERVICES TARIFF

- 2.3.7 The remedies set forth herein are exclusive and in lieu of all other warranties and remedies, whether express, implied, or statutory, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**2.4 Responsibilities of the Customer**

- 2.4.1 The Customer is responsible for placing any necessary orders and complying with tariff regulations. The Customer is also responsible for the payment of charges for services provided under this tariff.
- 2.4.2 The Customer is responsible for charges incurred for special construction and/or special facilities which the Customer requests and which are ordered by ACS on the Customer's behalf.
- 2.4.3 If required for the provision of ACS's services, the Customer must provide any equipment space, supporting structure, conduit and electrical power without charge to ACS.
- 2.4.4 The Customer is responsible for arranging access to its premises at times mutually agreeable to ACS and the Customer when required for ACS personnel to install, repair, maintain, program, inspect or remove equipment associated with the provision of ACS's services.
- 2.4.5 The Customer shall cause the temperature and relative humidity in the equipment space provided by Customer for the installation of ACS's equipment to be maintained within the range normally provided for the operation of microcomputers.

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TELECOMMUNICATIONS SERVICES TARIFF

- 2.4.6 The Customer shall ensure that the equipment and/or system is properly interfaced with ACS's facilities or services, that the signals emitted into ACS's network are of the proper mode, bandwidth, power and signal level for the intended use of the subscriber and in compliance with criteria set forth in this tariff, and that the signals do not damage equipment, injure personnel, or degrade service to other Customers. If the Federal Communications Commission or some other appropriate certifying body certifies terminal equipment as being technically acceptable for direct electrical connection with interstate communications service, ACS will permit such equipment to be connected with its channels without the use of protective interface devices. If the Customer fails to maintain the equipment and/or the system properly, with resulting imminent harm to ACS equipment, personnel or the quality of service to other Customers, ACS may, upon written notice, require the use of protective equipment at the Customer's expense. If this fails to produce satisfactory quality and safety, ACS may, upon written notice, terminate the Customer's service.
- 2.4.7 The Customer must pay ACS for replacement or repair of damage to the equipment or facilities of ACS caused by negligence or willful act of the Customer or others, by improper use of the services, or by use of equipment provided by Customer or others.
- 2.4.8 The Customer must pay for the loss through theft of any ACS equipment installed at Customer's premises.
- 2.4.9 If ACS installs equipment at Customer's premises, the Customer shall be responsible for payment of any applicable installation charge.

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TELECOMMUNICATIONS SERVICES TARIFF

2.4.10 The Customer must use the services offered in this tariff in a manner consistent with the terms of this tariff and the policies and regulations of all state, federal and local authorities having jurisdiction over the service.

2.5 Cancellation or Interruption of Services

2.5.1 Without incurring liability, upon five (5) working days' (defined as any day on which the company's business office is open and the U.S. Mail is delivered) written notice to the Customer, ACS may immediately discontinue services to a Customer or may withhold the provision of ordered or contracted services:

2.5.1.A For nonpayment of any sum due ACS for more than thirty (30) days after issuance of the bill for the amount due,

2.5.1.B For violation of any of the provisions of this tariff,

2.5.1.C For violation of any law, rule, regulation, policy of any governing authority having jurisdiction over ACS's services, or

2.5.1.D By reason of any order or decision of a court, public service commission or federal regulatory body or other governing authority prohibiting ACS from furnishing its services.

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2.5.2 Without incurring liability, ACS may interrupt the provision of services at any time in order to perform tests and inspections to assure compliance with tariff regulations and the proper installation and operation of Customer and ACS's equipment and facilities and may continue such interruption until any items of noncompliance or improper equipment operation so identified are rectified.

2.5.3 Service may be discontinued by ACS without notice to the Customer, by blocking traffic to certain countries, cities or NXX exchanges, or by blocking calls using certain Customer authorization codes, when ACS deems it necessary to take such action to prevent unlawful use of its service. ACS will restore service as soon as it can be provided without undue risk, and will, upon request by the Customer affected, assign a new authorization code to replace the one that has been deactivated.

2.5.4 The Customer may terminate service upon thirty (30) days written notice for the Company's standard month to month contract. Customer will be liable for all usage on any of the Company's service offerings until the Customer actually leaves the service. Customers will continue to have Company usage until the Customer notifies its local exchange carrier and changes its long distance carrier. Until the Customer so notifies its local exchange carrier, it shall continue to generate and be responsible for long distance usage.

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TELECOMMUNICATIONS SERVICES TARIFF2.6 Credit Allowance

- 2.6.1 Credit allowance for the interruption of service which is not due to the Company's testing or adjusting, negligence of the Customer, or to the failure of channels or equipment provided by the Customer, are subject to the general liability provisions set forth in 2.3 herein. It shall be the obligation of the Customer to notify the Company immediately of any interruption in service for which a credit allowance is desired. Before giving such notice, the Customer shall ascertain that the trouble is not being caused by any action or omission by the Customer within his control, or is not in wiring or equipment, if any, furnished by the Customer and connected to the Company's facilities.
- 2.6.2 No credit is allowed in the event that service must be interrupted in order to provide routine service quality or related investigations.
- 2.6.3 Credit for failure of service shall be allowed only when such failure is caused by or occurs due to causes within the control of the Company or in the event that the Company is entitled to a credit for the failure of the facilities of the Company's Underlying Carrier used to furnish service.
- 2.6.4 Credit for interruption shall commence after the Customer notifies the Company of the interruption or when the Company becomes aware thereof, and ceases when service has been restored.
- 2.6.5 For purposes of credit computation, every month shall be considered to have 720 hours.

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EFFECTIVE:

TELECOMMUNICATIONS SERVICES TARIFF2.6 Credit Allowance

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2.6.6 No credit shall be allowed for an interruption of a continuous duration of less than two hours.

2.6.7 The Customer shall be credited for an interruption of two hours or more at the rate of 1/720th of the monthly charge for the facilities affected for each hour or major fraction thereof that the interruption continues.

Credit Formula:

$$\text{Credit} = \frac{A}{720} \times B$$

"A" - outage time in hours

"B" - monthly charge for affected activity

2.7 Restoration of Service

The use and restoration of service shall be in accordance with the priority system specified in part 64, Subpart D of the Rules and Regulations of the Federal Communications Commission.

2.8 Deposit

The Company does not require deposits to commence service.

2.9 Advance Payments

ACS does not require advance payments.

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2.10 Payment and Billing

- 2.10.1 Service is provided and billed on a billing cycle basis, beginning on the date that service becomes effective. Billing is payable upon receipt. A late fee will be assessed on unpaid amounts 30 days after rendition of bills.
- 2.10.2 The customer is responsible for payment of all charges for services furnished to the Customer, as well as to all persons using the Customer's codes, exchange lines, facilities, or equipment, with or without the knowledge or consent of the Customer. The security of the Customer's Authorization Codes, subscribed exchange lines, and direct connect facilities is the responsibility of the Customer. All calls placed using direct connect facilities, subscribed exchange lines, or Authorization Codes will be billed to and must be paid by the Customer. Recurring charges and non-recurring charges are billed in advance. Charges based on actual usage during a month and any accrued interest will be billed monthly in arrears.
- 2.10.3 All bills are presumed accurate, and shall be binding on the customer unless objection is received by the Company in writing within 30 days after such bills are rendered. No credits, refunds, or adjustments shall be granted if demand therefore is not received by the Company in writing within such 30 day period.

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ISSUED: January 14, 1998ISSUED BY: Ernest Ellis, VP of Telecommunications  
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TELECOMMUNICATIONS SERVICES TARIFF**2.11 Collection Costs**

In the event Company is required to initiate legal proceedings to collect any amounts due to Company for regulated or non-regulated services, equipment or facilities, or to enforce any judgment obtained against a Customer, or for the enforcement of any other provision of this tariff or applicable law, Customer shall, in addition to all amounts due, be liable to Company for all reasonable costs incurred by Company in such proceedings and enforcement actions, including reasonable attorneys' fees, collection agency fees or payments, and court costs. In any such proceeding, the amount of collection costs, including attorneys' fees, due to the Company, will be determined by the court.

**2.12 Taxes ,**

All federal, state and local taxes, assessments, surcharges, or fees, including sales taxes, use taxes, gross receipts taxes, and municipal utilities taxes, are billed as separate line items and are not included in the rates quoted herein.

**2.13 Late Charge**

A late fee of 1.5% per month or the amount otherwise authorized by law, whichever is lower, will be charged on any past due balances.

**2.14 Returned Check Charge**

A fee of \$15.00 will be charged whenever a check or draft presented for payment for service is not accepted by the institution on which it is written.

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TELECOMMUNICATIONS SERVICES TARIFFSECTION 3 - DESCRIPTION OF SERVICE3.1 Computation of Charges

- 3.1.1 The total charge for each completed call may be a variable measured charge dependent on the duration, distance and time of day of the call. The total charge for each completed call may also be dependent only on the duration of the call, i.e. a statewide flat rate per minute charge. The variable measured charge is specified as a rate per minute which is applied to each minute. All calls are measured in increments as set forth in the Rates Section of this tariff. All calls are rounded up to the next whole increment.
- 3.1.2 Where mileage bands appear in a rate table, rates for all calls are based upon the airline distance between the originating and terminating points of the call, as determined by the vertical and horizontal coordinates associated with the exchange (the area code and three digit central office code) associated with the originating and terminating telephone numbers. If the Customer obtains access to the Company's network by a dedicated access circuit, that circuit will be assigned an exchange for rating purposes based upon the Customer's main telephone number at the location where the dedicated access circuit terminates. The vertical and horizontal (V & H) coordinates for each exchange and the airline distance between them will be determined according to industry standards.

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3.1.3 Timing begins when the called station is answered and two way communication is possible, as determined by standard industry methods generally in use for ascertaining answer, including hardware answer supervision in which the local telephone company sends a signal to the switch or the software utilizing audio tone detection. Recognition of answer supervision is the responsibility of the Underlying Carrier. Timing for each call ends when either party hangs up. ACS will not bill for uncompleted calls.

3.2 Customer Complaints and/or Billing Disputes

Customer inquiries or complaints regarding service or accounting may be made in writing or by telephone to the Company at:

2510 N. Hill Avenue, Suite 230  
Santa Ana, California 92705-5542  
(888) 322-7797

Any objection to billed charges should be reported promptly to ACS. Adjustments to Customers' bills shall be made to the extent that records are available and/or circumstances exist which reasonably indicate that such charges are not in accordance with approved rates or that an adjustment may otherwise be appropriate. Where overbilling of a subscriber occurs, due either to Company or subscriber error, no liability exists which will require the Company to pay any interest, dividend or other compensation on the amount overbilled.

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The Company will respond within seventy two (72) hours of receipt of an inquiry. If the Customer is dissatisfied with the Company's response to a complaint or inquiry, the Customer may file the Commission for resolution of the conflict. The South Dakota Public Utilities Commission can be reached at:

500 East Capitol  
Pierre, SD 57501-5070  
(605) 773-3201  
(800) 332-1782

If a Customer accumulates more than One Hundred Dollars (\$100.00) of undisputed delinquent ACS 800 Service charges, the ACS Resp. Org. reserves the right not to honor that Customer's request for a Resp. Org. change until such undisputed charges are paid in full.

**3.3 Level of Service**

A Customer can expect end to end network availability of not less than 99% at all times for all services.

**3.4 Billing Entity Conditions**

When billing functions on behalf of ACS or its intermediary are performed by local exchange telephone companies or others, the payment of charge conditions and regulations of such companies and any regulations imposed upon these companies by regulatory bodies having jurisdiction apply. ACS's name and toll-free telephone number will appear on the Customer's bill.

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TELECOMMUNICATIONS SERVICES TARIFF3.5 Service Offerings

## 3.5.1 1+ Dialing

The customer utilizes "1+" dialing, or "101XXXX" dialing followed by "1 + ten digits" for interLATA calls, or dials "101XXXX" followed by "1 + 7 digits" or "1 + 10 digits" for intraLATA calls.

## 3.5.2 Travel Cards

The Customer utilizes an 11 digit "toll-free" access number established by the Company to access a terminal. Upon receiving a voice prompt, the Customer uses push button dialing to enter an identification code assigned by the Company, and the ten digit number of the called party.

## 3.5.3 800 Service (Toll-Free)

This service is inbound calling only where an 800, 888 or other toll-free prefix number rings into a Customer's premise routed to a specific telephone number or terminated over a dedicated facility.

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## 3.5.4 ACS Prepaid Calling Cards

This service permits use of Prepaid Calling Cards for placing long distance calls. Customers may purchase ACS Prepaid Calling Cards at a variety of retail outlets or through other distribution channels. ACS Prepaid Calling Cards are available at a variety of face values ranging from five dollars (\$5.00), in one dollar (\$1.00) increments. ACS Prepaid Calling Card service is accessed using the ACS toll-free number printed on the card. The caller is prompted by an automated voice response system to enter his/her Authorization Code, and then to enter the terminating telephone number. ACS's processor tracks the call duration on a real time basis to determine the number of Telecom Units consumed. The total consumed Telecom Units for each call is deducted from the remaining Telecom Unit balance on the Customer's ACS Prepaid Calling Card.

All calls must be charged against Prepaid Calling Card that has a sufficient Telecom Unit balance. A Customer's call will be interrupted with an announcement when the balance is about to be depleted.

In order to continue the call, the Customer can either call the toll-free number on the back of the ACS Prepaid Calling Card and "recharge" the balance on the card using a nationally recognized credit card, or the Customer can throw the card away and purchase a new one. Calls in progress will be terminated by the Company if the balance on the ACS Prepaid Calling Card is insufficient to continue the call and the Customer fails to enter the number of another valid ACS Prepaid Calling Card prior to termination.

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A card will expire 12 months from the date of purchase, or the date of last recharge, whichever is later. The Company will not refund unused balances.

A credit allowance for ACS Prepaid Calling Card Service is applicable to calls that are interrupted due to poor transmission, one-way transmission, or involuntary disconnection of a call. To receive the proper credit, the Customer must notify the Company at the designated toll-free customer service number printed on the ACS Prepaid Calling Card and furnish the called number, the trouble experienced (e.g. cut-off, noisy circuit, etc.), and the approximate time that the call was placed.

When a call charged to an ACS Prepaid Calling Card is interrupted due to cut-off, one-way transmission, or poor transmission conditions, the Customer will receive a credit equivalent of one Telecom Unit.

Credit allowances for calls pursuant to ACS Prepaid Card Service do not apply for interruptions not reported promptly to the Company or interruptions that are due to the failure of power, equipment or systems not provided by the Company.

Credit for failure of service shall be allowed only when such failure is caused by or occurs due to causes within the control of the Company.

The Company will block all calls beginning with the NPA "900" and NXX "976" calls, therefore such calls can not be completed.

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## 3.5.5 Directory Assistance.

Access to long distance directory assistance is obtained by dialing 1 + 555-1212 for listings within the originating area code and 1 + (area code) + 555-1212 for other listings. When more than one number is requested in a single call, a charge will apply for each number requested. A charge will be applicable for each number requested, whether or not the number is listed or published.

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## 3.5.6 Specialized Pricing Arrangements.

Customized service packages and competitive pricing packages at negotiated rates may be furnished on a case-by-case basis in response to requests by Customers to the Company for proposals or for competitive bids. Service offered under this tariff provision will be filed with the Commission. Specialized rates or charges will be made available to similarly situated Customers on a non-discriminatory basis.

## 3.5.7 Emergency Call Handling Procedures

Emergency "911" calls are not routed to company, but are completed through the local network at no charge.

## 3.5.8 Promotional Offerings

The Company may, from time to time, make promotional offerings to enhance the marketing of its services. These offerings may be limited to certain dates, times and locations. The Company will notify the Commission of such offerings as required by Commission rules and regulations.

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SECTION 4 - RATES

4.1 1+ Dialing

4.1.1 **Commercial Customers**

\$0.199 per minute

A \$5 per month service charge applies.

Calls are measured in 6 second increments with an 18 second minimum per call.

4.1.2 **Residential Customers**

\$0.239 per minute

A \$5 per month service charge applies.

Calls are measured in one minute increments.

4.2 Travel Cards

4.2.1 **Commercial Customers**

\$.205 per minute

A \$.25 per call service charge applies.

Calls are measured in one minute increments.

4.2.2 **Residential Customers**

\$.245 per minute

A \$.25 per call service charge applies.

Calls are measured in one minute increments.

In addition, a charge of \$.35 per call will apply for all calls originated from a payphone.

4.3 Toll Free

4.3.1 **Commercial Customers**

\$0.181 per minute

A \$10 per month per number service charge applies.

Calls are measured in 6 second increments with an 18 second minimum per call.

4.3.2 **Residential Customers**

\$0.221 per minute

A \$10 per month per number service charge applies.

Calls are measured in one minute increments.

In addition, a charge of \$.35 per call will apply for all calls originated from a payphone.

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TELECOMMUNICATIONS SERVICES TARIFF

4.4 Prepaid Calling Cards

\$.25 Per Telecom Unit

Cards will be decremented by one Telecom Unit for each minute or fractional part of a minute for intrastate calls. These rates apply twenty-four hours per day, seven days per week. A service charge of \$.35 per call will apply for all calls originated from a payphone.

4.5 Directory Assistance

\$.65

4.6 Returned Check Charge

\$15.00

4.7 Rate Periods

	Monday - Friday	Sat.	Sun.
8 a.m. to 5 p.m.*	Daytime Rate Period		
5 p.m. to 11 p.m.*	Evening Rate Period		Evening Rate Period
11 p.m. to 8 a.m.*	Night/Weekend Rate Period		

\* To, but not including

When a message spans more than one rate period, total charges for the minutes in each rate period are calculated and the results for each rate period are totaled to obtain the total message charge. If the calculation results in a fractional charge, the amount will be rounded down to the lower cent.

ISSUED: January 14, 1998

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**Lance J.M. Steinhart**

Attorney At Law  
6455 East Johns Crossing  
Suite 285  
Duluth, Georgia 30097

Also Admitted in New York  
and Maryland

Telephone: (770) 232-9200  
Facsimile: (770) 232-9208

January 13, 1998

**VIA AIRBORNE EXPRESS**

Mr. William Bullard  
Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501-5070  
(605) 773-3201

Re: ACS Systems, Inc.

Dear Mr. Bullard:

Enclosed please find one original and ten (10) copies of ACS Systems, Inc.'s Application for Registration of a Telecommunications Company.

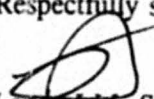
Please note that Exhibit A, the Certificate of Authority from the Secretary of State, is not attached. We have applied for the certificate and will forward a copy to the commission upon receipt.

In order to expedite the processing of this application, I would like to suggest that all requests for information by the analyst be made by either telephone or facsimile. I will make every effort to respond on the day of the request.

I have also enclosed a check in the amount of \$250.00 payable to the "South Dakota Public Utilities Commission" for the filing fee, and an extra copy of this cover letter to be date stamped and returned to me in the enclosed self-addressed prepaid envelope.

If you have any questions or if I may provide you with any additional information, please do not hesitate to contact me.

Respectfully submitted,

  
Lance J.M. Steinhart  
Attorney for ACS Systems, Inc.

Enclosures  
cc: Ernest Ellis

THIS CHECK IS VOID WITHOUT A COLORED BACKGROUND AND AN ARTIFICIAL WATERMARK CERTIFICATION SEAL ON THE BACK - HOLD AT ANGLE TO VIEW SEAL



ACS Systems, INC.  
2510 Redhill Ave. Ste. 220  
Santa Ana, CA 92705

CITIBANK DELAWARE  
ONE PENNS WAY  
NEW CASTLE, DE 19720

34503155

62-20/311

DATE	AMOUNT
01/09/98	*****250.00

Pay

TWO HUNDRED FIFTY AND 00/100 \*\*\*\*\*

Dollars

TO THE ORDER OF  
**SOUTH DAKOTA PUBLIC UTILITIES  
COMMISSION**

SIGNATURE HAS A COLORED BACKGROUND - BORDER CONTAINS MICROPRINTING

⑈34503155⑈ ⑆031100209⑆ 39115219⑈

ACS Systems, INC.

CITIBANK DELAWARE  
345.1010.

STUB CHECK NO. 34503155  
1 of 1 DATE 01/09/98

INVOICE		PAYMENT ADVISE	GROSS	DISCOUNT	NET
NUMBER	DATE				
010998	01/09/98	PUBLIC SERVICE FILING FEE	250.00		250.00
TC 98-004					
Totals			250.00		250.00

460082 SOUTH DAKOTA PUBLIC UTILITIES

South Dakota  
Public Utilities Commission  
State Capitol 500 E. Capitol  
Pierre, SD 57501-5070  
Phone: (605) 773-3705  
Fax: (605) 773-3809

# TELECOMMUNICATIONS SERVICE FILINGS

These are the telecommunications service filings that the Commission has received for the period of:

01/09/98 through 01/15/98

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact Delaine Kolbo within five days of this filing.

DOCKET NUMBER	TITLE/STAFF/SYNOPSIS	DATE FILED	INTERVENTION DEADLINE
<b>REQUEST FOR CERTIFICATE OF AUTHORITY</b>			
TC98-004	Application by ACS Systems, Inc. for a Certificate of Authority to operate as a telecommunications company within the state of South Dakota. (Staff: TS/CH) "Applicant is a switch-based reseller which intends to offer 1+ direct dialing, 800 toll free, travel card and prepaid calling card service through the resale of telephone services provided by facilities-based interexchange carriers."	01/14/98	01/30/98

Important Notice: The Commission is compiling a list of internet addresses. If you have an internet address please notify the Commission by E-mailing it to Terry Norum at [terryn@puc.state.sd.us](mailto:terryn@puc.state.sd.us) Faxing the address to the Commission 605-773-3809

**Lance J.M. Steinhart**  
Attorney At Law  
6455 East Johns Crossing  
Suite 285  
Duluth, Georgia 30097

RECEIVED

FEB 20 1998

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Also Admitted in New York  
and Maryland

Telephone: (770) 232-9200  
Facsimile: (770) 232-9208

February 19, 1998

**VIA FACSIMILE AND  
OVERNIGHT DELIVERY**

Ms. Tammy Stangohr  
Utility Analyst  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501-5070  
(605) 773-3201

Re: ACS Systems, Inc.  
Docket No. TC 98-004

Dear Tammy:

Enclosed please find eleven (11) copies of ACS Systems, Inc.'s Certificate of Authority issued by the Secretary of State.

I have also enclosed an extra copy of this cover letter to be date stamped and returned to me in the enclosed self-addressed prepaid envelope I have provided.

If you have any questions or if I may provide you with any additional information, please do not hesitate to contact me. Thank you.

Respectfully submitted,



Lynn Burlingame  
Assistant to Lance J.M. Steinhart  
Attorney for ACS Systems, Inc.

Enclosures

cc: Mr. Ernest Ellis



# State of South Dakota



## OFFICE OF THE SECRETARY OF STATE

### CERTIFICATE OF AUTHORITY

I, JOYCE HAZELTINE, Secretary of State of the State of South Dakota, hereby certify that the Application for a Certificate of Authority of ACS SYSTEMS, INC. (CA) to transact business in this state duly signed and verified pursuant to the provisions of the South Dakota Corporation Acts, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I hereby issue this Certificate of Authority and attach hereto a duplicate of the application to transact business in this state under the name of ACS SYSTEMS NETWORK, INC.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at Pierre, the Capital, this February 17, 1998.

JOYCE HAZELTINE  
Secretary of State

RECEIVED

FEB 21 1998

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

INDEMNITY BOND  
to the  
PEOPLE OF THE STATE OF SOUTH DAKOTA

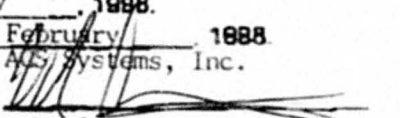
Bond No. 7011212  
Premium: \$575.00/annum.

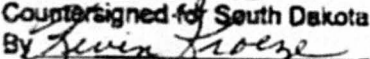
We, ACS Systems, Inc. the principal and applicant for a CERTIFICATE OF AUTHORITY to resell long distance telecommunications services within the State of South Dakota, and Amwest Surety Insurance Company, as an admitted surety insurer, bind ourselves unto the Public Service Commission of the State of South Dakota and the consumers of South Dakota as Obligee, in the sum of \$25,000.00.

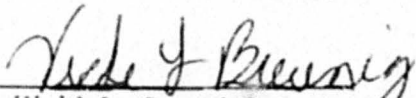
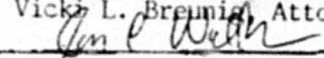
The conditions of the obligation are such that the principal, having been granted such CERTIFICATE OF AUTHORITY subject to the provision that said principal purchase this Indemnity Bond, and if said principal shall in all respects fully and faithfully comply with all applicable provisions of South Dakota State Law, and reimburse customers of for any prepayment or deposits they have made which may be unable or unwilling to return to said customers as a result of insolvency or other business failure, then this obligation shall be void, discharged and forever exonerated, otherwise to remain in full force and effect.

This bond shall take effect as of the date hereon and shall remain in force and effect until the surety is released from liability by the written order of the Public Service Commission, provided that the surety may cancel this Bond and be relieved of further liability hereunder by delivering thirty (30) days written notice to the Public Service Commission. Such cancellation shall not affect any liability incurred or accrued hereunder prior to the termination of said thirty (30) day period.

Dated this 3rd day of February, 1998.  
To be effective this 10th day of February, 1988.

By   
Amwest Surety Insurance Company  
Surety

*Original Bond is  
in Helaine's bottom  
desk drawer.*  
Countersigned this 9<sup>TH</sup> day of  
February, 1998  
Countersigned for South Dakota  
By   
Resident Agent

By   
Vicki L. Breunig, Attorney-in-Fact  
By   
Attorney in Fact  
Jon C. Walker

Boen & Associates  
P.O. Box 89010  
Sioux Falls, S.D. 57105

# LIMITED POWER OF ATTORNEY

## Amwest Surety Insurance Company

EXPIRATION DATE **10-28-99**

POWER NUMBER **0000798880**

### READ CAREFULLY

This document is printed on white paper containing the artificial watermarked logo ( ) of Amwest Surety Insurance Company (the "Company") on the front and brown security paper on the back. Only unaltered originals of the POA are valid. This POA may not be used in conjunction with any other POA. No representations or warranties regarding this POA may be made by any person. This POA is governed by the laws of the State of California and is only valid until the expiration date. The Company shall not be liable on any limited POA which is fraudulently produced, forged or otherwise distributed without the permission of the Company. Any party concerned about the validity of this POA or an accompanying Company bond should call your local Amwest branch office at (602) 263-1112

KNOW ALL BY THESE PRESENT, that Amwest Surety Insurance Company, a Nebraska corporation (the "Company"), does hereby make, constitute and appoint  
**VICKI L. BREUNIG  
JON C. WALKER  
NANCY L. WALKER**  
AS EMPLOYEES OF UNION LIFE & CASUALTY INSURANCE

its true and lawful Attorney-in-fact, with limited power and authority for and on behalf of the Company as surety to execute, deliver and affix the seal of the company thereto if a seal is required on bonds, undertakings, recognizances, reinsurance agreement for a Miller Act or other performance bond or other written obligations in the nature thereof as follow:

- Bid Bonds up to \$\*\*1,000,000.00
- Contract (Performance & Payment), Court, Subdivision \$\*\*5,000,000.00
- License & Permit Bonds up to \$\*\*5,000,000.00
- Miscellaneous Bonds up to \$\*\*5,000,000.00

and to bind the company thereby. This appointment is made under and by authority of the By-Laws of the Company, which are now in full force and effect.

I, the undersigned secretary of Amwest Surety Insurance Company, a Nebraska corporation, DO HEREBY CERTIFY that this Power of Attorney remains in full force and effect and has not been revoked and furthermore, that the resolutions of the Board of Directors set forth on this Power of Attorney, and that the relevant provisions of the By-Laws of the Company, are now in full force and effect.

### Telecommunications Permit

Bond No. 7011212 Signed & sealed this 3rd day of February, 1998 *Karen G. Cohen*  
for ACS Systems, Inc. Karen G. Cohen, Secretary

This POA is signed and sealed by facsimile under and by the authority of the following resolutions adopted by the Board of Directors of Amwest Surety Insurance Company at a meeting duly held on December 14, 1995:

RESOLVED, that the President or any Vice President, in conjunction with the Secretary or any Assistant Secretary, may appoint attorneys-in-fact or agents with authority as defined or limited in the instrument evidencing the appointment in each case, for and on behalf of the Company, to execute and deliver and affix the seal of the Company to bonds, undertakings, recognizances, and suretyship obligations of all kinds, and said officers may remove any such attorney-in-fact or agent and revoke any POA previously granted to such person.

RESOLVED FURTHER, that any bond, undertaking, recognizance, or suretyship obligation shall be valid and bind upon the Company:

- (i) when signed by the President or any Vice President and sealed (if a seal be required) by any Secretary or Assistant Secretary, or
- (ii) when signed by the President or any Vice President or Secretary or Assistant Secretary, and countersigned and sealed (if a seal be required) by a duly authorized attorney-in-fact or agent, or
- (iii) when duly executed and sealed (if a seal be required) by one or more attorneys-in-fact or agents pursuant to and within the limits of the authority evidenced by the power of attorney issued by the Company to such person or persons.

RESOLVED FURTHER, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any POA or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company; and such signature and seal when so used shall have the same force and effect as though manually affixed.

IN WITNESS WHEREOF, Amwest Surety Insurance Company has caused these presents to be signed by its proper officers, and its corporate seal to be hereunto affixed this 14th day of December, 1995.

*John E. Savage*  
John E. Savage, President

*Karen G. Cohen*  
Karen G. Cohen, Secretary

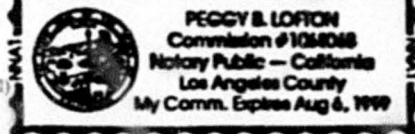
State of California  
County of Los Angeles

On December 14, 1995 before me, Peggy B. Lofton Notary Public, personally appeared John E. Savage and Karen G. Cohen, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me all that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature *Peggy B. Lofton*  
Peggy B. Lofton, Notary Public

(Seal)



5230 Las Virgenes Road, Alhambra, CA 91302 TEL 818.871.2000

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE APPLICATION OF ) ACS SYSTEMS, INC. FOR A CERTIFICATE OF ) AUTHORITY TO PROVIDE ) TELECOMMUNICATIONS SERVICES IN ) SOUTH DAKOTA )	ORDER GRANTING CERTIFICATE OF AUTHORITY  TC98-004
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On January 14, 1998, the Public Utilities Commission (Commission), in accordance with SDCL 49-31-3 and ARSD 20:10:24:02, received an application for a certificate of authority from ACS Systems, Inc. (ACS).

ACS is a switch-based reseller which intends to offer 1+ direct dialing, 800 toll free, travel card and prepaid calling card service through resale of telephone services provided by facilities-based interexchange carriers. A proposed tariff was filed by ACS. The Commission has classified long distance service as fully competitive.

On January 15, 1998, the Commission electronically transmitted notice of the filing and the intervention deadline of January 30, 1998, to interested individuals and entities. No petitions to intervene or comments were filed and at its regularly scheduled March 10, 1998, meeting, the Commission considered ACS' request for a certificate of authority. Commission Staff recommended granting a certificate of authority as ACS had furnished the Commission with a surety bond.

The Commission finds that it has jurisdiction over this matter pursuant to Chapter 49-31, specifically 49-31-3 and ARSD 20:10:24:02 and 20:10:24:03. The Commission finds that ACS has met the legal requirements established for the granting of a certificate of authority. ACS has, in accordance with SDCL 49-31-3, demonstrated sufficient technical, financial and managerial capabilities to offer telecommunications services in South Dakota. The Commission approves ACS' application for a certificate of authority. As the Commission's final decision in this matter, it is therefore

ORDERED, that ACS' application for a certificate of authority is hereby granted, effective March 14, 1998. It is

FURTHER ORDERED, that ACS shall file informational copies of tariff changes with the Commission as the changes occur.

Dated at Pierre, South Dakota, this 16<sup>th</sup> day of March, 1998.

<b>CERTIFICATE OF SERVICE</b>	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By	<i>William Kecks</i>
Date	3/17/98
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

*James A. Burg*  
\_\_\_\_\_  
JAMES A. BURG, Chairman

*Pam Nelson*  
\_\_\_\_\_  
PAM NELSON, Commissioner

*Laska Schoenfelder*  
\_\_\_\_\_  
LASKA SCHOENFELDER, Commissioner

# SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

## CERTIFICATE OF AUTHORITY

To Conduct Business As A Telecommunications Company  
Within The State Of South Dakota

Authority was Granted March 10, 1998, effective March 14, 1998  
Docket No. TC98-004

*This is to certify that*

**ACS SYSTEMS, INC.**

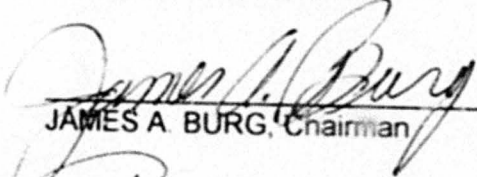
*is authorized to provide telecommunications services in South Dakota.*

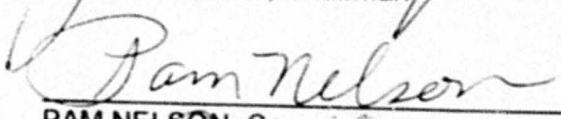
This certificate is issued in accordance with SDCL 49-31-3 and ARSD 20:10:24:02, and is subject to all of the conditions and limitations contained in the rules and statutes governing its conduct of offering telecommunications services.

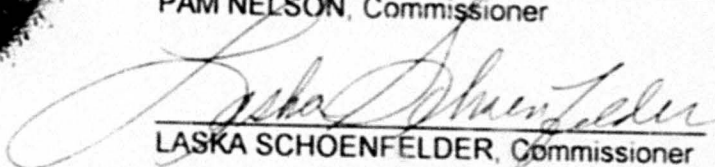
Dated at Pierre, South Dakota, this 16<sup>th</sup> day of March, 1998.

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION;



  
JAMES A. BURG, Chairman

  
PAM NELSON, Commissioner

  
LASKA SCHOENFELDER, Commissioner