



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Scott P. Johnson

SUBJECT: SEE BELOW

DATE: September 4, 2007

Approved

Date

9/5/07

**SUBJECT: RESPONSE TO CIVIL GRAND JURY REPORT REGARDING CITY'S
EMERGENCY COMMUNICATIONS SYSTEM SUPPORT FEE (ECSS)**

RECOMMENDATION

Accept this staff response to the Civil Grand Jury Report regarding the City's Emergency Communications System Support Fee (ECSS).

OUTCOME

To address the findings and recommendations stipulated in the Civil Grand Jury Report.

EXECUTIVE SUMMARY

The purpose of this memorandum is to respond to the Civil Grand Jury report, attached as Exhibit A, regarding the City's Emergency Communications System Support Fee (ECSS). This report responds to each of the findings and recommendations made by the Civil Grand Jury and identifies actions already taken by City staff to improve the administration of this important program, and address the Grand Jury's recommendations.

BACKGROUND

On June 21, 2007, the Civil Grand Jury released a report entitled: "San José 911 Surcharge: Telephone Companies Put the City on Hold". The report focused on the City's challenges in gathering data from phone companies on their telephone services, the accuracy of fee calculations without the actual telephone line count, and the potential drain on the City's General Fund, if the allowable revenue is not fully recovered due to insufficient data provided to the City.

The report details three findings and provides three recommendations; these findings and recommendations are detailed and responses are provided in the analysis section below.

ANALYSIS

The California Penal Code, Section 933(c) requires that a governing body of the public agency which has been subject to a Grand Jury final report shall respond within 90 days to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under control of the governing body. The same California Code, Section 933.05(a), contains guidelines for responses requiring the City to state one of the following in response to the Grand Jury findings:

- The respondent agrees with the finding.
- The respondent disagrees wholly or partially with the finding and provides explanation.

In addition, for each Grand Jury recommendation, the City is required to report one of the following actions:

- The recommendation has been implemented, with a summary regarding the implemented action.
- The recommendation has not yet been implemented, but will be implemented in the future, with an implementation time frame.
- The recommendation requires further analysis, with an explanation and the scope of the parameters of an analysis or study, and a time frame for the matter to be prepared for discussion, which shall not exceed six months from the date of publication of the Grand Jury report.
- The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

Listed below are the findings from the Grand Jury report along with staff's responses.

F1: Subscriber information necessary to enforce the ECSS Fee ordinance is not being collected from the telephone providers because the City has not negotiated a mutually acceptable non-disclosure agreement with the telephone companies.

City Response: The City partially disagrees with this finding for the following reasons:

- The Finance Department collects subscriber information on a monthly basis from service providers. The form used to collect this information is attached as Exhibit B.
- One major service provider has asked the City for a non-disclosure agreement. The City and the service provider are unable to agree on the terms of the agreement, however, the service provide continues to submit subscriber information to the City. Although the company is not reporting on the number of exempt lines, nor is the company separately reporting for branch lines and individual access lines, the company most recently has cited the inability of it's current computer database to produce the requested information, not the lack of a non-disclosure agreement, as the reason for not providing the exempt line and branch line information.

F2: The Finance Department has never requested a compliance audit of any telephone company records either to collect the detailed data needed for calculations or to ensure that whatever information has been reported is accurate.

City Response: The City partially disagrees with this finding, for the following reasons:

- Upon inception of the ECSS program the Finance Department created a form to collect subscriber information from telephone service providers, which is submitted to the Finance Department on a monthly basis. All companies known to be providing telephone service within the City are returning these forms, along with their payments.
- In an effort to validate data received from the telephone service providers, the Finance Department has asked the telephone companies on several occasions to provide additional information on the number of access lines that they service. On July 30, 2004, and November 3, 2005, letters were sent to all the known service providers requesting this information. See Exhibit C for letter form. The majority of letters sent were not answered by the service providers. In some cases, the providers contacted staff to state that they were already certifying the accuracy of the information on the monthly remittance.
- The Finance Department will make a presentation concerning a cost benefit analysis to Public Safety, Finance and Strategic Support Committee on November 15, 2007 regarding conducting compliance audits of telephone service provider records.

F3: The ordinance authorizing this fee is not being enforced because of inaccurate calculation of allowable revenue. The ECSS Fee is being collected based on an estimated number of exempt and non-exempt telephone lines rather than on actual line counts.

City Response: The City partially agrees with this finding. The City agrees with the statement that the ECSS Fee is being collected based on an estimated number of exempt and

non-exempt telephone lines rather than on actual line counts. However, the City disagrees with the finding that the ordinance is not being enforced because of inaccurate calculation of allowable revenue. The City calculates the allowable revenue that can be collected from the ECSS Fee by completing a detailed analysis of all allowable costs in both the Police and Fire Departments, and the projected revenue stream generated by the fee, excluding projected fee exemptions.

The City is currently using a projection for the number of exempt lines as a percentage of total lines to determine the fee exemption that is subtracted from the allowable revenue to be collected from the ECSS fee. In the absence of actual line count information, the City based its most recent line count projection on data from the *Trends in Telephone Service, Industry Analysis and Technology Division Wireline Competition Bureau, February 2007* report, which included data on the number of statewide telephone lines and lifeline exemptions. The City believes this is a reasonable methodology that generates a fee that is consistent with the ordinance.

The City does agree, however, that the use of actual exempt line counts obtained from service providers would be ideal for determining the deductions for exemptions in the allowable revenue calculation.

Listed below are the recommendations from the Grand Jury report along with staff's responses in accordance with the four action guidelines noted on page 2 of this report.

R1: The Finance Department and the City Attorney actively negotiate with telephone companies who are subject to the ECSS Fee to conclude an acceptable nondisclosure agreement to allow complete and accurate data collection in support of the fee by December 31, 2007.

City Response: This recommendation is only applicable to the one service provider that has cited lack of a non-disclosure agreement, as one reason for the basis of refusal to supply detailed information on branch lines and exempt lines. The Finance Department and the City Attorney's Office have attempted to negotiate a nondisclosure agreement with this provider when the fee was first adopted. The language in the service provider's proposed agreement would significantly have prohibited the City from sharing information with the Council or the Grand Jury. The Finance Department and the City Attorney's Office will follow-up with this company in an effort to secure an acceptable non-disclosure agreement; however, as indicated below; there are other impediments to getting more detailed line count information than is currently available.

R2: The Finance Department performs compliance audits on subject telephone companies to determine reporting accuracy and completeness as directed by the ordinance.

City Response: The Finance Department will make a presentation concerning a cost benefit analysis to Public Safety, Finance and Strategic Support Committee on November 15, 2007 regarding conducting compliance audits of telephone service provider records. In addition, the Finance Department will continue to work with all service providers to get the requested single, trunk and exempt lines counts. However, it should be noted that one of the major telephone service providers has indicated that in order to meet our request for this information they would have to make programming changes to their computer system. The cost of these changes is estimated to be up to \$600,000. The service provider is willing to make the programming changes if the City paid for them. The City's ECSS ordinance allows for 1/8 of 1% of the fee to offset the providers cost to administer the program, this particular provider contends that the programming costs are above the administrative offset that they are already receiving.

R3: The San José City Auditor conduct a performance audit of the ECC to ensure that procedures for calculation, assessment, collection and allocation of the ECSS Fee, are in compliance with the City Ordinance.

City Response: The San Jose City Auditor concurs with the recommendation to conduct a performance audit of the Emergency Communications Center, to ensure that procedures for calculation, assessment, collection, and allocation of the Emergency Communications System Support Fee, are in compliance with the City's ordinance. The San Jose City Auditor will include this assignment in the City Auditor's proposed 2007-08 Audit Workplan recommended for approval to the San Jose City Council, Rules and Open Government Committee. The expected completion of the audit is March 2008.

EVALUATION AND FOLLOW-UP

The Finance Department and the City Attorney's Office will follow-up with the one company in question to secure an acceptable non-disclosure agreement; however, as indicated above; there are other impediments to getting more detailed line count information than is currently available. Staff will cooperate with the City Auditor's Office for any information they may need to conduct the performance audit of the ECC which is now on their 2007-08 Work Plan. The Finance Department will make a presentation concerning a cost benefit analysis to Public Safety, Finance and Strategic Support Committee on November 15, 2007 regarding conducting compliance audits of telephone service provider records.

POLICY ALTERNATIVES

N/A

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**

- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**

- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This item does not meet any of the criteria above.

COORDINATION

This memorandum has been coordinated with the City Manager's Budget Office, the Offices of the City Attorney and City Auditor and the Departments of Police and Fire.

FISCAL/POLICY ALIGNMENT

N/A

COST SUMMARY/IMPLICATIONS

N/A

BUDGET REFERENCE

N/A

HONORABLE MAYOR AND CITY COUNCIL

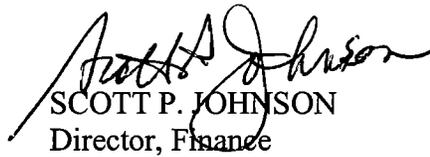
September 4, 2007

Subject: Response Civil Grand Jury Report City's Emergency Communications System Support Fee (ECSS)

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CEQA

Not a project.


SCOTT P. JOHNSON
Director, Finance

For questions, please contact Scott P. Johnson, Director of Finance at 535-7000.

Attachments

EXHIBIT A (Page 1 of 12)



June 21, 2007

COPY

Honorable Chuck Reed
Mayor
City of San Jose
200 East Santa Clara Street
San Jose, CA 95113

Dear Mayor Reed and Members of the City Council:

The 2006-2007 Santa Clara County Civil Grand Jury is transmitting to you its Final Report, **San Jose 911 Surcharge: Telephone Companies Put the City on Hold.**

California Penal Code § 933(c) requires that a governing body of the particular public agency or department which has been the subject of a Grand Jury final report shall respond within **90 days** to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. California Penal Code § 933.05 contains guidelines for responses to Grand Jury findings and recommendations and is attached to this letter.

PLEASE NOTE:

1. **As stated in Penal Code § 933.05(a), attached, you are required to "Agree" or "Disagree" with each APPLICABLE Finding(s) F1, F2, F3. If you disagree, in whole or part, you must include an explanation of the reasons you disagree.**
2. **As stated in Penal Code § 933.05(b), attached, you are required to respond to each APPLICABLE Recommendation(s) R1, R2, R3, with one of four possible actions.**

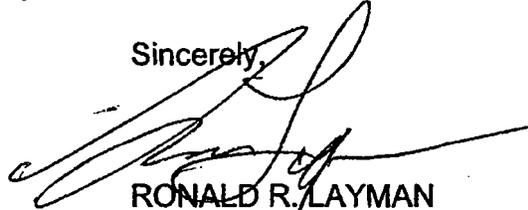
Your comments are due in the office of the Honorable Catherine A. Gallagher, Presiding Judge, Santa Clara County Superior Court, 191 North First Street, San Jose, CA 95113, no later than **Monday, September 24, 2007.**

EXHIBIT A (Page 2 of 12)

Honorable Chuck Reed
June 21, 2007
Page 2

Copies of all responses shall be placed on file with the Clerk of the Court.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ronald R. Layman', written over a horizontal line.

RONALD R. LAYMAN
Foreperson
2006-2007 Civil Grand Jury

RRL:dsa
Enclosures (2)

Cc: Les White, Interim City Manager
Margaret McCahan, Assistant to the City Manager
Richard Doyle, City Attorney
Scott Johnson, Director of Finance
David McPherson, Deputy Director, Finance Department
Mark Brogan, Financial Analyst, Finance Department
Larry Lisenbee, Budget Director, City Manager's Budget Office

COPY

California Penal Code Section 933.05, in relevant part:

933.05. (a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding.
- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.



2006-2007 SANTA CLARA COUNTY
CIVIL GRAND JURY REPORT

(ENDORSED)
FILED
JUN 21 2007

KIRI TORRE
Chief Executive Officer
Superior Court of CA County of Santa Clara
BY D. ALDYCKI DEPUTY

**SAN JOSE 911 SURCHARGE:
TELEPHONE COMPANIES PUT THE CITY ON HOLD**

Summary

In June 2006, the San Jose City Council approved and the Mayor signed an ordinance that extended the Emergency Communications System Support (ECSS) Fee until June 2009. The ECSS Fee was originally adopted in August 2004 and was set to expire at the end of December 2006. The 2006-2007 Santa Clara County Civil Grand Jury was interested in the origin and purpose of this fee and whether it was being collected and used exclusively for its intended purpose.

Interviews with officials from the San Jose City Manager's Budget Office, the San Jose City Finance Department, and the Emergency Communications Center (ECC) confirmed that the process of collecting the ECSS Fee from the telephone companies and the allocation of the funds to the ECC is done as stipulated in City Ordinance No. 27229. However, the Grand Jury is concerned that the ECC expense reimbursement from the fee is inaccurate because telephone companies do not report information about their telephone services as required by the ordinance. Telephone companies contend that information is confidential for business reasons, but the ordinance provides protection through the use of nondisclosure agreements with the City of San Jose.

The revenue from this fee for Fiscal Year 2006-2007 was projected at more than \$20.6 million and represented 88 percent of ECC funding. The San Jose City Auditor has never conducted an audit of the ECSS Fee; therefore, the Grand Jury recommends an audit of this process as an objective evaluation of the calculation, assessment, and administration of the ECSS Fee. The Grand Jury further recommends that the San Jose City Attorney and Finance Department negotiate an acceptable nondisclosure agreement with telephone companies that will ensure accurate telephone subscriber statistics for calculation of the fee.

Background

In the wake of Proposition 13, "People's Initiative to Limit Property Taxation" in June 1978, General Fund support of the City's public services has been reduced over the years as property tax revenues have decreased as a percentage of total revenues. As a result, many services have transitioned from tax supported to fee-for-service funding. These include a wide array of services from increased developer permit fees, to park and recreation facility fees, to planning, public works, and fire prevention. On August 17, 2004, the Mayor of San Jose signed an ordinance to establish an ECSS Fee to pay for the operation of the ECC. This ordinance required a small monthly fee from most telephone customers to help fund the City's 911 emergency dispatch services.

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The justification for charging a fee to telephone subscribers is that only people who have telephones can call 911 for emergency services. As stated in the ordinance, "Subscribers to telephone service derive significant benefits from ongoing operation of the modernized integrated system installed at the San Jose Emergency Communications Center" in the form of more efficient dispatch of services to a 911 emergency request. The ordinance concludes that "...an Emergency Communications System Support Fee charged to subscribers to telephone service in the City is the most practical and equitable mechanism to provide revenue..."

The ECSS Fee ordinance was to expire on December 31, 2006. On June 20, 2006, the Mayor of San Jose signed City Ordinance No. 27785 to extend the fee through June 30, 2009.

The Grand Jury studied how the ECSS Fee is calculated, how it is collected from telephone subscribers through the telephone companies, and whether the money is being spent exclusively for those operating and project costs allowed by the ordinance.

Discussion

The ECSS Fee rate is calculated by the Budget Office. The City Council must approve the rate every year based on the Budget Office calculation and recommendation. Collection of the fee from telephone companies and reimbursement of ECC operating expenses from the ECSS Fee Fund is administered by the Finance Department. The Grand Jury interviewed two Budget Office officials and two Finance Department officials to understand the policies and procedures surrounding the assessment and administration of this fee.

The purpose of the fee is to recover operating costs of the ECC. The fee is charged on most personal and business telephone lines and cell phones in the City; certain telephone lines are exempt from this fee, including lifeline customers, telephone companies, pay phones, nonprofit hospitals and educational institutions, and government offices. Therefore, total operating costs of the ECC are not recovered and, by ordinance, the operating and program costs for exempt telephone lines may not be paid from ECSS Fee revenue.

All telephone companies that deliver service within the City are notified by the Finance Department of the ECSS Fee rate and which telephone lines are exempt from the charge. Each company must complete a monthly form detailing the amount collected and remit those funds to the Finance Department. This money is deposited in the ECSS Fee Fund and is transferred periodically to the General Fund to reimburse it for paying ECC operating expenses. In Fiscal Year 2005-2006, the ECSS Fee generated \$21.5 million from 80 telephone service providers in the City.

The fee amount is calculated by the Budget Office at the beginning of a fiscal year based on estimates, consisting of the annual expense budget for the ECC and the estimated annualized number of telephone lines in the City. The total allowable revenue from the fee is calculated at the end of the year from actual ECC costs and

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telephone company statistics. Then, differences between the revenue generated by the rate based on estimates and reimbursement of actual ECC expenses are reconciled. The Grand Jury is satisfied that the financial component of the fee calculation and its allocation is accurate. However, the Grand Jury found that data on the actual number of telephone lines are inaccurate.

Without accurate telephone line data, it cannot be determined whether the fee is over- or under-collecting allowable expenses for the ECC. Collecting statistics about telephone subscribers relies on the cooperation of telephone companies. However, it is the responsibility of the Finance Department to ensure that data provided by the telephone companies are complete and accurate. If the actual number of telephone lines in the City is higher than the estimates used by the Budget Office, then too much revenue is being collected; likewise, lower actual telephone line counts means under collection of revenue. Further, if the distribution of exempt and nonexempt telephone lines is unknown, then disallowed ECC expenses might be paid from ECSS Fee revenues.

The Grand Jury was informed that most telephone companies have refused to provide the requested information necessary to accurately compute the ECSS Fee. The Finance Department has written letters to the telephone companies requesting detailed supporting documentation regarding their remittances, but the telephone companies assert that this information is confidential and would jeopardize their competitive advantage with other companies if made public. The Finance Department is authorized by the ordinance to sign nondisclosure agreements with telephone companies to ensure that all data would be kept confidential. The City Attorney's Office must approve the language of any nondisclosure agreement; however, in the two and one-half years since the ordinance went into effect, there has been only one attempt to negotiate such an agreement with a telephone company.

This failure to collect accurate telephone line data causes a potentially significant financial drain on the General Fund. In Fiscal Year 2005-2006, \$21.5 million was collected from the ECSS Fee to cover total ECC expenditures of \$25.3 million. In calculating the ECSS Fee rate, the Budget Office assumes that 10.36 percent of all telephone lines are exempt from the fee so, according to these estimated line counts, the City could have collected \$22.7 million from the fee. Although the actual amount collected was less than the estimated amount allowed, the Budget Office did not reimburse the General Fund even with this lower amount of total collections. Since the Budget Office knows its telephone line data are suspect, it increased its estimated exemptions to 22 percent to ensure that costs associated with exempt lines would not be paid from this fee. While an estimated \$22.7 million was allowed by the fee and \$21.5 million was collected, only \$19.8 million was actually repaid to the General Fund, representing a potential loss of \$2.9 million of taxpayer money that should have been collected from telephone subscribers.

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Fiscal Year 2005-2006

ECC Expenses paid from General Fund	\$25.3 million
Estimated ECSS Fee Exemptions	10.36%
Allowable General Fund Reimbursements from ECSS Fee Revenue	\$22.7 million
Actual ECSS Fee Revenue	\$21.5 million
Actual Amount Reimbursed to General Fund from ECSS Fee Revenue	\$19.8 million
Allowable General Fund Reimbursements less Actual Amount Reimbursed	- \$2.9 million

In reality, actual telephone line counts might show that there are many more exempt lines than estimated and that the total allowable ECSS Fee revenue is much less than calculated. This would mean that the General Fund would be responsible for even more ECC expense than is currently covered. However, the conservative reimbursement strategy adopted by the City assumes that 22 percent of all telephone lines are exempt from the fee.

Conclusion

The Finance Department recognizes that failure to collect accurate telephone line data is a problem, but their efforts to correct the problem have been inadequate. The Finance Department sends letters to all telephone companies as part of its annual ECSS Fee review process that specifically identifies and requests missing information, but these letters are largely ignored. One avenue of investigation authorized by the ordinance is on-site compliance audits of telephone company data, but to date the Finance Department has never conducted such an audit. Even if telephone companies do comply with full reporting requirements, audits of source data are the only way to ensure that reported data are complete and accurate.

Those interviewed at the Budget Office and Finance Department believe that accurate subscriber data from the telephone companies would only result in an increase or decrease of 2 or 3 percent in the surcharge rate. That represents a change of as much as \$0.05 per telephone line in the monthly surcharge, an additional cost or savings of \$0.60 per year for each subscriber line. While this might represent an insignificant financial impact on the average individual telephone subscriber, the aggregate represents a significant impact on the City's General Fund. The updated projections in the Fiscal Year 2007-2008 City Manager's Budget Request indicate a \$16.2 million General Fund deficit. Accurate data in assessing the ECSS Fee could conservatively alleviate \$1 million to \$2 million of that shortfall depending on the actual exemptions allowed based on actual telephone company data.

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The data collection process is compromised by lack of an acceptable nondisclosure agreement with the telephone companies. There has been no attempt to negotiate with telephone companies regarding their concerns about terms of a nondisclosure agreement. After the telephone company in question rejected the nondisclosure agreement proposed by the City Attorney, the Finance Department should have solicited suggestions from telephone companies on nondisclosure agreement language and facilitated a resolution with the City Attorney.

In Fiscal Year 2006-2007, the ECSS Fee revenue represents 88 percent of the ECC budget, that is, \$20.6 million of a \$23.5 million budget; the remaining 12 percent is paid from the General Fund and represents costs associated with subscribers exempt from the fee. The purpose of the ordinance, the amount of money involved, and the lack of full enforcement of the ordinance requires an objective review of the process. The City Auditor has never been asked to audit the assessment and management of the ECSS Fee. The Grand Jury concludes that the City should improve administration of this ordinance by having the Auditor examine the process and suggest improvements to internal controls.

Findings

The following findings were reviewed with the subject agency:

- F1:** Subscriber information necessary to enforce the ECSS Fee ordinance is not being collected from the telephone providers because the City has not negotiated a mutually acceptable nondisclosure agreement with the telephone companies.
- F2:** The Finance Department has never requested a compliance audit of any telephone company records either to collect the detailed data needed for calculations or to ensure that whatever information has been reported is accurate.
- F3:** The ordinance authorizing this fee is not being enforced because of inaccurate calculation of allowable revenue. The ECSS Fee is being collected based on an estimated number of exempt and nonexempt telephone lines rather than on actual line counts.

Recommendations

The Grand Jury recommends that the San Jose City Council require the following actions be taken:

- R1:** The Finance Department and the City Attorney actively negotiate with telephone companies who are subject to the ECSS Fee to conclude an acceptable nondisclosure agreement to allow complete and accurate data collection in support of the fee by December 31, 2007.
- R2:** The Finance Department perform compliance audits on subject telephone companies to determine reporting accuracy and completeness as directed by the ordinance.
- R3:** The San Jose City Auditor conduct a performance audit of the ECC to ensure that procedures for calculation, assessment, collection, and allocation of the ECSS Fee are in compliance with the City ordinance.

Bibliography

- Area Manager SBC. *Fax Cover Sheet and Nondisclosure Agreement sent to City of Cupertino*, April 5, 2004.
- Attorney for SBC. *Letter to San Jose City Attorney Rejecting Proposed Nondisclosure Agreement*, January 18, 2005.
- Attorney for SBC. *Letter to San Jose City Attorney Re December 6, 2004, ECSS Fee Status Report to City Council*, December 10, 2004.
- City of San Jose, City Manager's Budget Office. *Emergency Response Fee Cost Calculation Worksheets*, Fiscal Year 2004-2005.
- City of San Jose, City Manager's Budget Office. *Emergency Response Fee Cost Calculation Worksheets*, Fiscal Year 2005-2006.
- City of San Jose, City Manager's Budget Office. *Emergency Response Fee Actual Costs and Revenues Worksheets*, Fiscal Year 2005-2006.
- City of San Jose, City Manager's Budget Office. *Emergency Response Fee Cost Calculation Worksheets*, Fiscal Year 2006-2007.
- City of San Jose, City Manager's Budget Office. *Emergency Response Fee Cost Calculation Worksheets*, Fiscal Year 2007-2008.
- City of San Jose, Finance Department. *Letter to Pacific Bell Telephone Company Re ECSS Fee Annual Fee Review*, February 16, 2006.
- City of San Jose, Finance Department. *Representative ECSS Remittance Forms*, January 2007.
- City of San Jose Finance Department Official, to Santa Clara County Civil Grand Juror. *eMail*, April 17, 2007.
- City of San Jose Finance Department Official, to Santa Clara County Civil Grand Juror. *eMail*, April 19, 2007.
- City of San Jose, Office of the City Attorney. *Letter to Attorney for SBC Re Proposed Nondisclosure Agreement*, January 7, 2005.
- City of San Jose, Office of the City Manager. *2007-2008 City Manager's Budget Request*, February 28, 2007.
- City of San Jose, Office of the City Manager. *Budget Addendum #4 – Emergency Response Fee*, May 17, 2004.

Bibliography - continued

City of San Jose Ordinance No. 27229. *Amends Title 8 of the San José Municipal Code to add a new Chapter 8.20 establishing an Emergency Communication System Support Fee and amending Chapter 4.80 of Title 4 to add a new Part 51 establishing the Emergency Communication System Support Fee Fund, August 25, 2004.*

City of San Jose Ordinance No. 27785. *Amending Sections 8.20.200 and 8.20.370 of Chapter 8.20 of Title 8 of the San José Municipal Code to extend the date for imposition of the Emergency Communications System Support Fee through June 30, 2009 and to clarify the requirements and procedures applicable to claims for refund of the fee, June 13, 2006.*

Santa Clara County Civil Grand Juror, to City of San Jose Finance Department Official. *Email, April 9, 2007.*

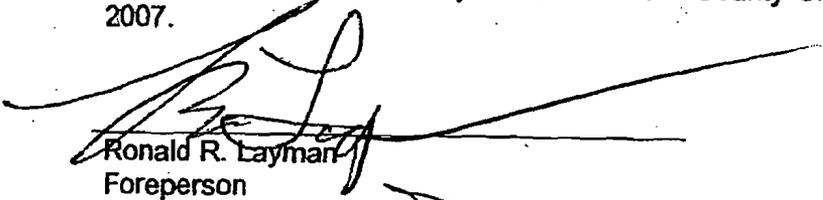
Santa Clara County Civil Grand Juror, to City of San Jose Finance Department Official. *Email, April 18, 2007.*

Interviews

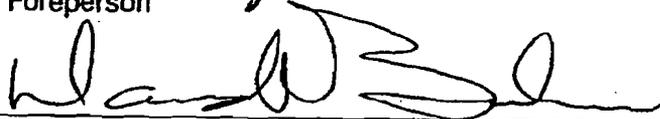
January 12, 2007	City of San Jose City Manager's Budget Office official City of San Jose Finance Department official
March 26, 2007	City of San Jose City Manager's Budget Office officials City of San Jose Finance Department officials

EXHIBIT A (Page 12 of 12)

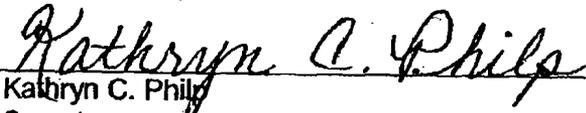
PASSED and ADOPTED by the Santa Clara County Civil Grand Jury on this 22nd day of May 2007.



Ronald R. Layman
Foreperson



David M. Burnham
Foreperson Pro tem



Kathryn C. Philp
Secretary



EXHIBIT B

Finance Department

Emergency Communication System Support Fee

Service Supplier:	Period/Month
Address:	
City, State, Zip:	

1.	TOTAL NUMBER OF ACCESS LINES	
2.	Number of Exempt Access Lines per San Jose Municipal Code (SJMC) 8.20.220	
3.	Total Access Lines subject to fee (subtract line 2 from line 1)	
4.	Access Line fee rate	\$1.75
5.	TOTAL AMOUNT DUE FOR ACCESS LINES (Multiply line 3 by line 4)	\$

6.	TOTAL NUMBER OF TRUNK LINE COUNT	
7.	Number of Exempt Trunk Lines per SJMC 8.20.220	
8.	Total Trunk Lines subject to fee (subtract line 7 from line 6)	
9.	Trunk Line fee rate	\$13.13
10.	TOTAL AMOUNT DUE FOR TRUNK LINES (Multiply line 8 by line 9)	\$

11.	TOTAL DUE (Add lines 5 and 10)	\$
12.	Adjustments*	\$
13.	Service Supplier Administration Deduction (SJMC 8.20.310(D)) (1/8 of 1% of Emergency Communication System Support fee collected)	\$
14.	10% 1 st Penalty, if not postmarked by the last day of the month the remittance is due	\$
15.	Interest – If fees due remitted within 30 days from due date (# of days past due X 0.000328767 X [sum of line 11 + line 14]	\$
16.	10% 2 nd Penalty, if remitted more than 30 days after due date	\$
17.	Interest – If fees due remitted more than 30 days after due date (# of days past 30 due X 0.000328767 X [sum of line 11 + line 14 + line 15 + line 16]	\$
18.	TOTAL FEE DUE (add lines 11 thru 17)	\$

I declare under penalty of perjury that, to the best of my knowledge and belief, the statements herein and on attachments are true, correct, and complete.

Name

Telephone #

Title

Date

*Itemize and Explain on Attachment (line 12)

EXHIBIT C (Page 1 of 3)

July 30, 2004

To Whom It May Concern:

The purpose of this letter is to request information regarding the number of access lines that your company provides to customers in San Jose. The City requests that this information be provided by August 31, 2004. For the purpose of this request, we are including within the term "access line" a connection from a single mobile or wireless telephone, where the principal place of use of the telephone, as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Section 124(8), is a location within the City of San Jose. We are making a similar request for information from to all other known providers of telephone service in San Jose.

On June 22, 2004, the San Jose City Council directed City staff to be prepared to implement an Emergency Communication System Support Fee if the State legislature adopted a budget that would have an adverse affect on City General Fund revenue of more than \$1.5 million.

Although legislative action on the State budget is still somewhat uncertain, City staff must be prepared to report back to Council on possible implementation of this Fee very soon after the State Budget is adopted.

If implemented, the San Jose Emergency Communication System Support Fee would be charged to City residents who have telephone service capable of accessing the City's emergency communication system (9-1-1). As occurs with similar fees in other jurisdictions, most notably the City and County of San Francisco and the County of Santa Cruz, telephone service providers would be responsible for collecting the fee and remitting it to the City. Both land lines and wireless service are proposed to be covered by the Fee. The target date for initiating collection of the Fee is January 1, 2005.

Revenue derived from the fee would be used to fund the personnel that are directly involved in answering 9-1-1 calls. Fee revenue would not be used to pay emergency response costs. If the Fee is adopted, Council has indicated they would reevaluate the need for the Fee two years after implementation, to assess the status of the State budget actions that will trigger the Fee.

If we are unable to obtain timely, complete and accurate information from providers regarding

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the number of access lines actually provided to customers within San Jose, we would rely on information obtained from the California Public Utilities Commission, and from our records regarding wireless service, for establishment of the initial Fee. Using this information, our current estimate of the total number of access lines in San Jose is 1.6 million.

We look to receiving the requested information from your company. Please remit the requested information to:

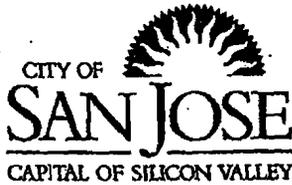
**City of San Jose Finance Department
Attn: Dat Vu
801 N. First Street, Room 217
San Jose, CA 95110**

If you have any questions concerning this letter, or the City Council direction related to a San Jose Emergency Communication System Support Fee, please contact Mike Ryder, Principal Budget Analyst at (408) 277-5111.

Sincerely,

**Andy Heath
Deputy Director of Finance**

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Finance Department

November 3, 2005

Re: Enhanced Emergency Communication System Support Access (ECSS) Lines in the City of San Jose

Dear Sir or Madam:

As part of the annual fee review process stated in San José Municipal Code 8.20.30, we would like to request information that would help us evaluate the total number of access lines maintained by all telephone, cell phone and VOIP service providers in the City of San Jose from January 1, 2005 to December 31, 2005.

We need actual data from January 1 to October 31, 2005; provide estimated data for November and December, 2005. Please complete the table below and mail this letter back no later than December 5, 2005, to Revenue Management at the address printed below this letter.

CY 2005	Single Line	Trunk Line
Actual (Jan-Oct)		
Estimate (Nov-Dec)		
Total		

The City of San José appreciates your valuable contribution to the City's strong commitment of providing to its residents and businesses an enhanced Emergency Communication System Support (ECSS). If you have questions or require additional information, please call Romy Manuel at (408) 535-7009 or Dat Vu at (408) 535-7006.

Sincerely,

Mark Brogan
Financial Analyst
Revenue Management