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Certificated utilities in this state have received their grandfather certificates without a hearing or notice of hearing and have been granted more than their fair share of service areas, and have been granted areas within cities not served by them. Only an application was required to be filed with certain relevant information to grant a grandfather certificate, and most utilities had to make no showing other than to describe its area and scope of operations on the grandfather date.

Municipally owned and operated utilities, on the other hand, must come before the commission as if they were a brand new utility desiring to operate in an area with a certain utility service for the first time. The burden of proof would be upon the municipally owned and operated utilities that it would be to the public convenience and necessity to operate in each and every area in which it had previously operated prior to regulation. The existing utility, where there is a service area conflict, would be the utility to be protected by the commission from the invasion of the certificated area by the upstart municipality, and the municipally owned and operated utilities would in most every case suffer an extreme loss of its operating territory. Municipal and bond revenues would be impaired, and the ability of the utilities to expand could be effectively destroyed. A city would undoubtedly have to hire experts and expend thousands of dollars of the consumer's money in trying to prove to the commission that it is entitled to serve a territory which conceivably could be, but in fact is not, served by the existing certificated utility.

The absence of the above section violates every concept of due process and fundamental fairness. Surely a municipally owned and operated utility should not have to bear the expense of proving public convenience and necessity, and/or of a long drawn out court fight to prevent its property being taken without due process of law and its bonding being impaired by the absence of such a right. The commission would be flooded by public convenience and necessity hearings, and without doubt many municipally owned and operated utilities would, in effect, be out of business, if the commission procedures take the not unusual two or three years for hearing and decision.

17. AS 42.05.193. Add new section to read:

"The commission upon obtaining jurisdiction and after notice and hearing shall proceed to delineate the service areas between public utilities with conflicting service areas in order to avoid duplicating facilities and services, and the commission shall consider and make full findings as to each of the following standards and preferences in making the

Interlocking

delineation of the service areas:

(1) The commission shall consider the capabilities of the utilities involved to furnish an economically feasible and adequate service to the public in the areas in conflict without excessive or major extensions of facilities to serve the areas. The commission shall consider the ability of the utilities to expand their services and facilities into areas other than those in conflict in order to maintain appropriate expansion and a proper level of service.

(2) In areas where the conflicting facilities are close, but not intersecting or crossing, the commission shall apportion the service areas between the existing facilities in order that the existing facilities may be utilized to the fullest extent possible without duplication or unreasonable extensions of service between the existing facilities.

(3) In areas where the conflicting utility facilities are intermingled, each utility may continue to serve its existing customers. The commission shall apportion the service area to enable each utility to recoup its investment in the facilities and to make the best economic utilization of the existing facilities with the fewest and least expensive extensions of facilities.

(4) Where the facilities of one utility are substantially surrounded by the facilities of the other utility, the surrounded utility may continue to serve the existing customers within the enclave and such other customers in the proximity of the existing facilities as may enable the utility to recoup its investment and to make the best economic use of the existing facilities with the fewest and least expensive extension of facilities in the enclave.

(5) In contiguous areas where there are no existing facilities and no present demand, but a significant demand for services in the near future is likely, the commission, all other matters being equal, shall include the service area within the service area of the utility nearest the area to be served if the utility is ready, willing and able to furnish an adequate service at reasonable rates to the area and such service is economically feasible.

(6) In areas where there are no existing facilities and no present demand and a significant demand for electric utility services in the near future is unlikely to arise, the commission, particularly when an area exceeds five acres, shall not include the area within any service area until a reasonable demand or need for the service exists.

(7) In delineating any service area within a municipality, the commission shall give a preference to the municipally owned and operated utility if the municipality is ready, willing and able to serve the service area in conflict, and the extension of the municipal utility facilities into the area would be economically feasible. In delineating service areas outside municipalities, a municipally owned and operated utility shall be given the same and equal consideration as any other public utility. Hw

(8) Where a customer may be served by the existing facilities of more than one utility, the commission shall consider the customer's preference.

(9) The public utilities may, with the approval of the commission, assign, exchange, or otherwise transfer in writing to each other customers, facilities or service areas.

(10) "service area" as used in this section, includes any territory in which the utility is furnishing service to the public, or any territory which a utility claims is an extension of the territory in which the utility is presently providing service."

Comment: This section would provide the commission with reasonable guidelines to delineate areas and to protect municipal utilities from unfortuitous commission action based on the sole fact that cooperatives have received prior certificates from the commission. The section would permit the commission to apportion the service area with the least possible additions of new facilities and to avoid the taking of property without due process payment of just compensation.

The section illustrates the fact that the commission just cannot order a utility to abandon facilities and customers at the whim of the commission. If the legislature intends to "clean up" service areas, the legislature must provide other legislation which will contain provisions for the payment of just compensation for the facilities and business lost. Because any such matter will be appealed to the courts, jurisdiction in the courts in the first instance will save the affected utilities and the state thousands of dollars and time in having only one procedure. Besides, the commission has no expertise in such matters.

Any legislative action does not establish standards and the vested rights of cities is totally unacceptable to cities which recognize the announced prejudice of the commission to protect its regulated utilities.

The City of Anchorage is working on a bill which it intends to propose to the legislature to resolve the conflict problem as to duplicating and intermingled facilities, based on legislation from other jurisdictions having the same problem. The City legislation would not involve commission action. ||

18. AS 42.05.221(a). Amend the first sentence to read:

appear good amendment

"Except as otherwise provided in this section, no public utility may discontinue or abandon a service for which a certificate has been issued by the commission unless upon the application of the public utility and if after notice and opportunity for hearing the commission finds that discontinuance or abandonment {WILL NOT MATERIALLY HARM THE PUBLIC INTEREST} is not required by public convenience and necessity.

Comment: The same test set forth in (b) for resumption should be required for discontinuance. A discontinuance of service may be justified on the grounds of economic feasibility, lack of facilities, etc., even though the public interest might be "materially harmed".

19. AS 42.05.231. Delete in line 22, page 9 the language

"includes but is not limited to" and lines 28-29 stating: [FAILURE TO COMPLY WITH THE PROVISIONS OF THIS CHAPTER OR THE RULES, REGULATIONS OR ORDEPS OF THE COMMISSION]"

Comment: No utility should be placed in the position of having to guess what might be good cause for the loss of its certificate to operate, where the "not limited to" language grants the commission unlimited grounds. If the commission may revoke a certificate, the

Need citation both ways. Amend.

standards for revocation should be specifically set forth. Blanket provisions such as this have been stricken as being unconstitutional. *111*

The fourth ground is extremely and unreasonably punitive. In the first place, no allowance is made for a lawful failure to comply with a commission order, etc. In the second place, there are ample grounds for enforcement of a commission order both civilly and criminally. The purpose of the public service commission is to "regulate" a utility and not to have the power of life or death over that utility. The commission did not create or finance the utility, nor should it have the unrestrained authority to revoke a certificate upon the slightest pretext that an insignificant regulation of the commission has been violated. In view of the prior section, which does not require "reasonable" rules or regulations, this provision is extremely onerous. The ability of the commission to revoke a certificate upon the slightest pretext can lead to great abuses of power because a utility must live in fear of punitive action in a variety of unknown ways, including specially designed orders and regulations to be punitive. *Query?*

SERVICES AND FACILITIES - JOINT USE

20. AS 42.05.251(a). Amend the first sentence to read:

"Each public utility shall furnish and maintain reasonably adequate [EFFICIENT, SAFE AND REASONABLE] service and facilities. *Prop. OK?*

Comment: The amendment would change the statute back to the existing language. The added words seem to be innocuous enough, but they do underly a basic concept of more commission control and authority.

For example, what are "safe" services and facilities? By the addition of this little word, the legislature makes the public service commission the guardian and inspector for the state of the safety of every utility and utility plant in this state. It is submitted that there are other local and state laws and methods of enforcement of this provision which could permit the revocation of a certificate for what the commission thinks is a minor safety violation. If a safety problem exists the commission can refer the matter to the proper authority.

The commission is further given the power to inquire into management prerogatives and utility financing to an unreasonable extent. In the first place the word "adequate" generally includes efficiency. In the second place, the word "efficient" is not

qualified by the word "reasonably" and this qualification is important. There is little doubt in this state that many utilities exist which do not have efficient service and facilities if only because of the economic feasibility to provide them. The word "reasonably" implies that a utility cannot do what it does not have the resources to do. Again the commission has arbitrary authority to dictate to a utility how the utility shall conduct its business, even though adequate facilities are provided.

21. AS 42.05.251(c). Delete on lines 16-17 the language:

"including the crossing of facilities".

Add the following sentence:

"In so doing, the commission shall conform to the standard practices of the industry."

Comment: It is not clear what the phrase "the crossing of facilities" means, a term more appropriate to Luther Burbank. The phrase could mean that the state and municipalities would no longer have any authority to control over roads and rights-of-way, a not too unlikely a possibility, in view of prior public service commission attempts to destroy the operations of the city electric utility by having the state highway department deny permits. The commission apparently acknowledges that it cannot handle today's business let alone handle all right-of-way permits. 17

The addition of the sentence would require the commission, as much as possible, to adhere to the standards of the industry. A utility and its management necessarily is bound by certain national standards in its practices and equipment, and a nascent public service commission hardly has the wisdom to change these standards. The utilities should have some objective standard by which they are protected against arbitrary and unreasonable commission action.

22. AS 42.05.251(d). Amend to read as follows:

"Whenever the commission, upon its own motion or upon complaint, after providing reasonable notice and opportunity for hearing finds that the service or facilities of a public utility are unreasonable, [UNSAFE] inadequate, [INSUFFICIENT], or unreasonably discriminatory, or otherwise in violation of this chapter, the commission shall determine and prescribe by regulation or order the reasonable [,] and [SAFE] adequate [SUFFICIENT] service or facilities to be

observed, furnished, enforced or employer [INCLUDING ALL SUCH REPAIRS, CHANGES, ALTERATIONS, EXTENSIONS, SUBSTITUTIONS OR IMPROVEMENTS IN FACILITIES] as shall be reasonably necessary and proper for the [SAFETY] accommodation [,] and convenience of the public and shall fix the same by its order or regulation." *Over*

Comment: Changes are to clean up and delete unnecessary language in view of the prior comments concerning safety and in that adequate certainly includes sufficient service. The "including" language is not necessary in view of the prior comprehensive language.

23. AS 42.05.271(a). Amend the first section to read:

"A public utility having sewers, conduits, utilidors, poles, pole lines, pipes, pipelines, mains or other distribution or transmission facilities shall, for reasonable compensation, permit another utility to use them when public convenience and necessity requires such use and the use will not then or in the planned foreseeable future result in substantial injury to the owner, or in substantial detriment to the service to the customers of the owner.

Comment: The planned upgrading or change in facilities may create, not now but a future situation which would cause substantial injury.

24. AS 42.05.271(b). Amend by inserting in line 8, page 12, after "public utility" the words:

"subject to regulation by the commission". *Foot note?*

Comment: No interconnection should be required by a regulated to a nonregulated utility. At present telephone toll facilities are owned and operated by the federal government. The federal government has always used its leverage of not being subject to regulation in enforcing its will upon all telephone utilities in this state. No utility in this state should be required to connect merely because ACS expects the Alaska consumers to subsidize its entire operations by unfair toll separation settlements or other actions.

25. AS 42.05.301. Add a new subsection (b) to read:

"(b) In providing for testing, standards and measurements of meters or appliances, the commission shall conform to the standard practices of the industry." ?

Comment: Again industry standards should be followed by the

commission, as the commission undoubtedly should adopt such standards when required.

26. AS 42.05.311. Add a new sentence after the first sentence to read:

"In so doing, the commission shall conform to the standard practices of the industry."

Comment: Again the commission would be required to do what it probably would do in any event.

RATES AND RATE SCHEDULES

27. AS 42.05.321(c) Amend to read:

"The commission may reject for filing all or part of a tariff which does not comply with the reasonable form or filing regulations of the commission. The commission may reject upon notice and hearing all or part of a tariff which is not consistent with this chapter or the reasonable regulations of the commission. A tariff or provision so rejected is void."

Comment: The commission should be able to reject a tariff which does not meet the minor, ministerial form and filing requirements of a tariff without notice and hearing. However, the commission should not arbitrarily be permitted to reject a tariff without a notice and hearing, and a public utility should be protected from arbitrary action, in having its vital rates denied without reason and hearing.

28. AS 42.05.321(d). Add a new subsection to read:

"Special arrangement contracts affecting rates and charges shall likewise be filed with the commission."

Comment: A utility at times, because of unusual or special circumstances not precisely covered by tariff, will enter into an agreement to furnish a utility service. Such agreements are usually made with a large user of electric power for example, because of the load and other factors not commonly present. Wholesale contractors for power are another source of agreement. The act should be made clear that these agreements are permissible under special circumstances.

29. AS 42.05.321(e). Add a new section to read:

"A municipality is entitled to a fair and reasonable rate of return in fixing the rates of municipally

owned and operated utility, and a municipality may include in the utility revenue requirements a franchise fee and an amount the utility, if investor owned, would have paid to the municipality for taxes."

Comment: This section would insure that a municipally owned and operated utility will not be treated differently than an investor owned utility as to rates. A municipally owned and operated utility is entitled to the same return on its invested capital and should meet the same requirements as to franchise fees and taxes as would an investor owned utility.

29. AS 42.05.351(b). Delete this section.

Comment: This section apparently serves no good purpose if the commission does have the jurisdiction over the utility furnishing the toll. At present the commission has no jurisdiction over ACS and it is difficult to determine what this specific section intends. On the other hand, it appears that the utility "demanding" the charge is the culprit. Telephone utilities in Alaska operate as the collector of ACS tolls in return for which they obtain a certain toll settlement charge per call. The local telephone company has absolutely no authority over the rates charged by ACS, or over any connecting carrier. A local interconnecting company should not be responsible for irresponsible toll rates. A telephone toll rate is not the sum of various segments of rates, but is related to other factors. A ten mile call in Los Angeles is much more expensive than a ten mile call in rural Nebraska, because the plant, expenses and service necessary is much more complicated and expensive. However, the wisdom of a toll rate should be left to the commission, and certainly this provision could be a commission regulation or policy. Unless there is some unknown justification for this section, it should be omitted.

30. AS 42.05.361(b). Delete this subsection.

Comment: In this section the public service commission makes no decision but the vital rights of the utilities involved are left to "professional consultants" to decide the issue. If the commission does nothing except to select an arbitrator, the section should say so. But this the courts can do. If the parties desire to arbitrate the matter, the parties should provide for their own arbitrator and mode of arbitration. The costs of this section could be prohibitive. In a telephone toll separation settlement controversy, both sides could expend twenty-five or fifty thousand dollars apiece to prepare its case, and then have to spend an additional twenty-five or fifty thousand dollars apiece for the commission's consultants who must examine both utilities. The additional expense is unwarranted, and the consultants are not given any kind of standards by which valuable rights are to be tested.

31. AS 42.05.371(a). Amend the first sentence to read:

"[UNLESS THE COMMISSION OTHERWISE ORDERS NO] Changes may be made by a public utility in its rates, classifications, rules, regulations or practices where any contract or agreement relating to a rate, classification, rule, regulation or practice upon [EXCEPT AFTER] thirty days notice to the commission and to the public."

Comment: The present statute, and the usual regulatory practice, is to permit a utility to file a rate which will become effective within thirty days and which will be the lawful rate unless objection to the rate is made within the thirty day period of time. Again the commission desires arbitrary powers to tell a utility how that utility is to be operated, when it may file a tariff and when a tariff becomes effective. A utility cannot operate and meet its financial commitments under this discretionary provision. Under the language perhaps the public utility could never change a tariff if the commission merely decides to order otherwise. The utility cannot wait months or years while the commission decides what it is going to do and the rate should become effective without commission interference upon suspension or punitive action.

32. AS 42.05.381(b), (d) Delete these subsections.

Comment: This suspension provision does not exist in the present statute and a commission suspension of seven months is totally unreasonable.

Once a rate is not charged, then the utility is the loser forever. City bonds and bondholders would be affected if a rate could not go into effect for a period of up to eight months (including the initial filing period). The suspension provision does not even contain a date in which the commission must act, and conceivably the commission could suspend a new tariff change which had been in actual operation for several months. Subsection (d) would give the commission the power to escrow a proposed rate increase, a much fairer provision. But the costs of such escrow would probably exceed any refund to the average small consumer in Alaska. Again no period is given in which the commission may order an escrow, and the commission should act within the thirty day objection period. (Subsection (e) should also be changed to eliminate the suspension language.) With the commission meeting generally only once a month and the demonstrated slow decision process of the commission the commission should first justify to the legislature that it has the maturity to exercise a suspension clause before such power is granted to the commission,

and not to a court. Let the commission operate and show to the legislature that a suspension clause is necessary and will be administered properly before the power is given to cripple the ability of a utility to earn a timely and reasonable rate of return. In other words, if the commission is wrong the utility will have lost seven or eight months of its ability to earn a fair rate of return and to protect its finances and investment.

33. AS 42.05.391(b). Add a new subsection (b) to read:

"No order of the commission shall change or affect any rates established or to be maintained under the covenants of any general obligation or revenue bonds of a municipality."

Comment: The contractual rights of bondholders should not be subject to possible impairment.

34. AS 42.05.401. Delete this section. The punitive nature of this bill is again demonstrated by this particular provision which enables the commission, at any time, to order reparations for perhaps ten or twenty years. In any event, once a tariff has been filed and no objection has been made to the tariff then no reparations should be required. If experience and facts show an abuse, then perhaps this power could be granted to the commission, otherwise, the utilities must have some indication and body of law and experience on which to draw to avoid what may be unlawful charges subject to reparation. If the commission is doing its job, a tariff change would be analyzed and proper proceedings instituted before reparations are necessary.

35. AS 42.05.411. Delete this section.

Comment: See above comments.

ACCOUNTS RECORDS AND REPORTS

36. AS 42.05.431(a). Amend to read:

"Each public utility shall use and follow a system of public utility accounting prescribed by order of the commission [.] except where the public utility uses and follows a system of federal regulatory agency. The Commission shall prescribe wherever possible a generally recognized system of public utility accounting.

Comment: Most of the large utilities in the state are required to maintain records by a federal regulatory agency which have developed generally accepted forms of utility accounting. The commission should not put a utility at the expense of adopting a whole new system of accounting merely to suit commission procedures. Where there is no federal regulation, then the commission should, nevertheless, follow recognized systems of public utility accounting wherever possible as these systems are generally used by most utilities and would enable accurate comparisons with other utilities.

36. AS 42.05.431(b). Amend line 23, page 20, by inserting "reasonable" before the word "regulation".

Comment: This requirement could cost a utility thousands of dollars and the utility, even with the inclusion of the word "reasonable", would probably have to spend thousands of dollars preparing the necessary reports and statistics. The maintaining of records is quite expensive, and it is doubtful that smaller communities in this state could keep up the required accounts and reports except at prohibitive costs. A continuing property record requires expert accounting preparation and supervision.

37. AS 42.05.451(a). Insert in line 8, page 21, the words "by reasonable regulation" after the word "determine". Amend line 13, page 21, by inserting "allow" for "determine allowable". If the commission is to establish rates of depreciation, the commission should do so by regulation so that all public utilities affected may have an opportunity to be heard and to be guided by a proper regulation. The last sentence has been changed to require the commission to allow depreciation expense rather than to let stand the impression that the commission need not so allow.

38. AS 42.05.451(b). Delete this subsection.

Comment: This subsection is vague and evidently serves no good purpose. If the section is merely an attempt to establish an evidentiary rule, the commission can certainly do this by its reasonable regulations governing its proceedings. In any forecast "estimates" must be given because no actual depreciation and "statements" of depreciation under the section are inexplicable. If the subsection cannot be understood, the section should be stricken.

39. AS 42.05.481. Insert in line 17, page 22, the words "person authorized by it" for "of its employees". Insert in line 19, page 22, the words "or their affiliated interests", after the words "public utilities". Insert on line 20, page 22, the words "or its employees". ~~Insert in line 19, page 22, the words "or their affiliated interests" after the words "public utilities".~~ Insert on line 20, page 22, the words "or its affiliated interest"

after the words "public utility".

Comments: The commission should have the authority to designate persons, such as its consultants, other than employees to examine records. The Section should make clear that affiliated interest records may be inspected.

FINANCIAL AND MANAGEMENT REGULATIONS

40. AS 42.05.501. Insert in line 8, page 23, the words:

"or may become impaired by continuation of current practices" after the word "impaired".

Comment: The proposed amendment would eliminate the "lock the barn door after the horse is stolen" situation, because it would make clear that practices which would impair the capital should be immediately stopped.

41. AS 42.05.511. Delete the second and third sentences of the subsection, lines 15-19, page 23.

Comment: Once the utility has somehow managed to receive a profit, what business is it of the commission to determine how that profit is to be distributed? Certainly the by-laws or ordinances are supposed to prevail, and the distributees would have their lawful recourse in the event that some ordinance or by-law was not followed. Just how the commission should interfere with corporate business in a matter which has nothing to do with the rates and services of the utility is not clear. What evil is to be avoided by this section is not explicit, and if there is a particular problem, then that problem should be dealt with openly. Again, the all powerful, arbitrary commission is promoted.

JUDICIAL REVIEW, PENALTIES AND ENFORCEMENT

42. AS 42.05.531(a). Insert "AS 44.65.510,.520,.540,.560,.570" for AS 44.62.560" in line 26, page 23. See comment No. 10.

43. AS 42.05.531(b). Delete in line 3, page 24, the words "and other process".

Comment: The words "and other process" are unknown in effect. Injunction is a normal remedy by which a commission order is enforceable, and whether dire, unpredictable consequence may ensue is unknown. If a reasonable explanation can be given as to how the court would otherwise act to enforce the order, other than an injunction, perhaps that form of relief should be provided.

44. AS 42.05.541. Reenact new section to read:

"A public utility which knowingly and willfully violates any provision of this chapter, or a rule, regulation or requirement, or order adopted under this chapter, or a term or condition of a certificate is guilty of a misdemeanor, and upon conviction is punishable for each offense by a fine of not more than \$500.00."

Comment: This section illustrates the cops and robbers approach to the entire bill. The commission is the "good guy" and all utilities, including everybody that works for a utility, or is affiliated with a utility, is a "bad guy" who needs to be brought to justice. The vagaries of the proposed criminal section would place every employee of a public utility in jeopardy, particularly when the intricacies of utility regulation are present. A simple violation would subject a minor employee to criminal sanction. The commission has civil means of enforcement of its orders without resort to criminal process which in practice is a last resort in any event. The above amended section has been taken from the Motor Carrier Act, AS 42.10.410, and appears to be a more reasonable provision, passed by a prior legislature.

45. AS 42.05.551, .571, .581(a), .591(a). Delete these sections and subsections.

Comment: These provisions are unconscionable. These provisions transform the public service commission into a court of law for no good reason. If a utility has not acted properly, the utility may be coerced by court action or deterred by criminal violation. A third, additional "civil penalty" may be applied to anyone who happens to be concerned with the violation and that person is subject to a fine without any legal safeguard other than to have an "opportunity to be heard" in the commission kangaroo court. A penalty may be levied even if a person in ignorance or negligently violates, or aids or abets any violation of any of the what should be numerous technical provisions, orders, rules or regulations of the commission. This concept of a civil penalty certainly is foreign to commission regulation, and probably unconstitutional in making the commission a court. If there is to be a civil penalty, the activities of the commission should be specifically spelled out in great detail so that a person may know in fact and law what he is supposed to do to avoid the commission kangaroo court.

GENERAL PROVISIONS

46. AS 42.05.611. Amend to read as follows:

"A public utility may exercise the power of eminent domain for public uses authorized by law, except as to publicly owned property. This section does not authorize the use of a declaration of taking by any public utility which does not have that power under another law."

Comment: A utility should not be permitted to condemn state, borough, and city properties and rights-of-way which should at all times be responsible to public needs. The other amendment makes clear that the declaration of taking is not limited if otherwise granted.

47. AS 42.05.621. Add a section as follows:

"Nothing in this chapter shall be interpreted to limit the power of a municipality to regulate and control, in the manner and to the extent provided by law, a public utility not otherwise subject to the express provisions of this chapter. Jurisdiction and control of public streets and rights-of-way within a municipality shall be vested in the municipality."

Comment: The amendment reinstates the present existing AS 42.05.620 with the addition that control of streets would remain with the municipality. In other words, the public service commission cannot authorize Anchorage Natural Gas to excavate under the city streets without meeting the city requirements. Nor can the commission supersede the city's building code, electrical safety code, etc. The extent of commission regulations should be to establish service areas and to review the rates and service provided by a public utility. This bill creates a commission with powers so broad that the commission, even with the best intentions, could not even review the paperwork necessary to review its jurisdiction.

48. AS 42.05.621(c). Add a new section to read:

"The commission shall have concurrent jurisdiction with a municipality as to a franchise held by a public utility subject to regulation by the commission. Except when the commission acts on its own motion, the jurisdiction of the commission shall be to decide appeals from the franchise holder or grantor as to a decision of the grantor concerning rates or services."

Comment: A franchise holder obtains valuable rights from a city in exchange for a promise to render a service at certain rates. It would be manifestly unjust for a utility to obtain a franchise from a city, and then to evade its responsibilities under the franchise by obtaining the franchise and then turning around to the commission for different rates and service. The commission could still act in the public interest, but would give the franchise grantor the first opportunity to enforce the franchise on a local level. The commission just does not have the tools to enforce all franchises, and the local entity is the best means of seeing that the franchise is enforced.

49. AS 42.05.622. Add a new section to read:

"(a) The attorney general may, upon the complaint of the commission, or upon the complaint of customers of a municipally owned and operated utility residing outside the municipality, commence an action in the superior court in the judicial district in which the entity is located for relief to

(1) Order the municipality to cease and desist from imposing unreasonable rates or charges upon customers residing outside the boundaries of the municipality; or

(2) Order the municipality to cease and desist from any unreasonable difference in the standard of service provided nonresident customers of the utility.

(b) The consumers and the consumer's complaint shall meet all requirements of a complaint as required in § 672 of this chapter.

(c) The rates, charges or service of a municipality for a public utility service furnished beyond the corporate boundaries shall not be considered unreasonably discriminating solely by reason of the fact that a different rate, charge or standard of service exists for a similar service within its corporate limits.

Comment: This section would give consumers outside municipal boundaries the additional right to address a grievance to the attorney general over municipal service outside the boundaries. In view of the lack of justified complaints in this area, the commission and attorney general should be able to resolve the matter before the courts without costly commission jurisdiction.

50. AS 42.05.631. Amend the first sentence to read:

"At the conclusion of any public hearing held under this chapter the commission shall determine the cost and may apportion the costs among the parties, including the

commission, as shall be [IT CONSIDERS] just."

Comment: The sentence as written is ungrammatical because the apportionment provision has been left out. The City of Anchorage has just experienced the arbitrary use of this section by the commission. The intent was not to give the commission arbitrary power to unreasonably assess costs, as the commission has done, and the objective standards should be made certain by striking the words "it consider". This provision is certainly unjust in many ways, because the utility, which may be brought into a public hearing by the commission, must pay for its share of the costs, even when it is not at fault.

51. AS 42.05.641(b). Amend to read as follows:

"With each application, except one filed under §192 of this chapter, filed with the commission pursuant to §191 of this chapter, the applicant shall pay the commission a fee of \$50.00.

52. AS 42.05.651. Add a sentence to read:

"The superior court may permit an examination of the information filed upon a showing of good cause for the examination."

Comments: Secrecy of information is proper, provided that the statute does not preclude a legitimate reason or purpose for the examination. A court should permit the examination if good cause is shown.

53. AS 42.05.671. Insert "reasonable" after the word "by" on line 29, page 27, and on line 4, page 28.

54. AS 42.05.673. Add a new section to read:

"(a) A complaint involving the service, rates, charges, rules or regulations of a public utility shall first be made to the utility pursuant to such reasonable procedures as the utility or municipality owning and operating the public utility may prescribe. The decision of the utility or municipality on the complaint may be appealed to the commission.

(b) A complaint involving the rates, charges, rules or regulations of the utility may be appealed to the commission only if the complaint when first made to the utility was signed by not less than 25 directly affected consumers of the utility, or signed by

the executive officer of a municipality when the complaint is made by a municipality.

(c) An appeal to the commission need not be in any particular form, but shall be in writing and verified, and shall state that the complainant has exhausted his administrative remedies as provided by the rules of the public utility. The commission may prescribe a fee for filing complaints. The commission shall proceed, with or without notice, to make an investigation of the complaint which it considers necessary or convenient. No order affecting a rate, toll, charge, schedule, regulation, practice or act complained of may be entered by the commission without giving the public utility a public hearing.

(d) The public utility may file a complaint as to any matter affecting its own rates or service with the same effect as a consumer or user.

(e) The commission shall not have any jurisdiction over disputed claims for debt between the utility and a customer, or any other billing or collection of a utility rate, charge or tariff.

Comment: The protagonists of commission regulation have insisted that no person outside a city has a forum, but they would have such a forum before the commission. Strangely, S.B. 128 does not provide for any complaints by consumers. Throughout the bill there are numerous references to the commission acting "upon a complaint", but nothing is stated as to how these complaints are to be made. It appears that the commission could act upon an anonymous complaint over the telephone by a person not even a consumer of a utility. Nothing is more fair than to require a person having a complaint to first exhaust his complaint with the utility involved, rather than to engulf the commission with hundreds of disputes. The commission is also entitled to some protection from unwarranted complaints. Complaints as to service should be appealable on an individual basis, but complaints involving rates, charges and other matters of a general application should be substantial enough before commission intervention is necessary. An individual has recourse before the utility, utility board or city council.

54. AS 42.05.691(b) - (d). Delete the subsections, and add new subsection to read:

"(b) The provisions of this chapter do not apply to municipally owned and operated public utilities."

Comment: This act should not apply to municipally owned and operated utilities within or outside the corporate boundaries. A discussion of this amendment is too lengthy to include in this commentary. The intent of the Alaska Constitution is that municipalities should have local authority to the fullest extent possible and that "home rule" means home rule without state interference.

55. Section 5. Delete "certificate" on line 20, page 30. Add new section to read:

"The existing rates, charges, tariffs, rules and regulations, service and service area of a municipally owned utility shall continue and remain in full force and effect unless otherwise ordered by the commissioner under the provisions of this Act."

Comment: The deletion is necessary because all certificates are not grandfather certificates. The amended sentence is necessary to protect the cities' rights pending commission action. If a city's application takes two or three years to process through the courts, the city should be permitted to operate without a certificate under its existing policies.

Karl L. Walter, Jr.,
City Attorney,
City of Anchorage, Alaska

KLW:LCM

TRANSMITTAL MEMORANDUM

March 4, 1969

Johnson

By: Don Hall
Executive Director
Alaska Public Service Commission

Re: SB 128 Comments and Suggestions

Major Policy Decisions

In transmitting my comments on SB 128 I think it is important to inform everyone who is interested in the Bill that the Alaska Public Service Commission did not submit any legislative proposal to extend its jurisdiction in any manner whatsoever. Specifically it did not recommend that gas and oil pipelines or municipally owned and operated utilities be regulated. This does not indicate that the Commission is either for or against the idea. The Commission's reason for taking a neutral position on this important subject is first, because it feels such legislation should properly emanate from other sources and second, because it believe any attempt to suggest legislation in this area would be misinterpreted as a self-serving bureaucratic effort motivated solely by a desire to arrogate additional powers to the Commission.

Chairman Clouse and Commissioners Lounsbury and Zerbetz and I were given an opportunity to review early drafts of the Administration's proposed legislation affecting the APSC. We made numerous suggestions which, for the most part, are embodied in SB 128. I have not commented on the wisdom or need for regulating municipal utilities or pipelines because the Commission feels, as I previously indicated, that this is a matter requiring major policy decisions which already have been decided by the Administration and rightfully should be resolved by the legislative process.

Funding

I have been informed that the Commission's original budget proposal, seeking an appropriation of \$347,800, was to be submitted at the time SB 128 was introduced. This budget was designed mainly to enable the Commission to meet the greatest regulatory challenge in its history--that of preparing, in advance, to regulate the purchaser of the Alaska Communication System. Incidentally (although it has nothing to do with SB 128) the ACS Sale bids were opened March 1, 1969 and it is my understanding that I will be designated to represent Governor Miller, and the State of Alaska, in the evaluation of the bids at Scott Air Force Base in Illinois. Arrangements have been made for financial and engineering consultants, specializing

in communications, to assist me. This work will begin March 10, 1969 if present plans can be effectuated.

The Commission's original budget, submitted September 30, 1968 is based upon recommendations of professional consultants engaged to advise the Commission on how it should be organized and staffed. It contains the following statement of significance to the enactment of SB 128:

"If history repeats itself, legislation will again be introduced to place municipally-owned and operated public utilities under the Commission's regulatory jurisdiction. In the event this should occur this budget, which is based primarily on regulating the ACS purchaser, will also be adequate to regulate the municipals unless new laws are enacted requiring expensive new regulatory programs."

Because our original budget did not provide funding for the regulation of gas and oil pipeline companies I have since informed Commissioner Sharrock of the Commerce Department that the Commission will need an additional \$8,500 for this purpose in the event SB 128 becomes law.

It was not possible, under established budgetary procedures, to budget presently established positions at pay ranges equal to those recommended by our consultants. Our vacant position of Utilities Engineer, for example, was budgeted at pay range 20 because we are not permitted to budget it at pay range 23 which our consultants feel is necessary to attract qualified applicants. Since June 30, 1968, we have advertised this position in national trade magazines and in local newspapers, but it is still vacant--which indicates the consultants are right. As I understand it, however, their recommendations cannot be implemented unless the Personnel Department agrees with them.

What I have done, at Commissioner Sharrock's request, is the only thing I could do under the circumstances; namely, submit P-402 forms of the Personnel Department in respect to the six new positions included in our original budget and to up-grade existing positions to the pay ranges recommended by our consultants. In addition, I have submitted detailed figures to Commissioner Sharrock showing the budget increases that will be required for these purposes and to provide \$20,000 for the purpose of initially paying hearing officer costs that may be incurred under sec. 42.05.631 of SB 128, and AS 42.05.610 of the present law. These figures show that our original budget will have to be increased to \$409,700 (or \$61,900) to cover the aforementioned costs.

If all of our budget proposals are approved the Commission will wind up with sixteen authorized positions instead of the ten positions it has. It should be apparent, however, that the new positions will remain vacant if the salaries are not adequate. This undoubtedly explains why we still have three vacant positions, and only seven people actually on the job--which makes our staff smaller than any of the other 56 Commissions except the Virgin Islands.

If SB 131, SB 214 and SB 215 are enacted significant additional funding will be required, but since I have not yet seen the last two measures I am unable, at this time, to do anything except direct attention to the fact that they present an additional funding problem which cannot be ignored if they are enacted.

Commission's Minimum Requirements

Experience has demonstrated the fact that the present law under which the Commission operates is deficient in a number of respects. The correction of these deficiencies was the main thrust of the proposed legislation which the Commission submitted to Mr. Walter L. Kubley, the Governor's Legislative Assistant. Most of these proposals are embodied in the following thirteen sections of SB 128:

<u>Section 42.05</u>	<u>Page</u>
.091(b)	3
.121	3-4
.371	16-17
.381	17-18
.391	18
.431	20
.521	23
.621(b)	26
.641	27
.681(2)(B)	28-29

The foregoing should not be taken as a blanket endorsement of the sections listed. To the extent that comments have been made, they should, of course, be considered. In addition to the specific comments relating to the above-listed sections, I feel it is also important that the comments regarding omissions be given consideration. These include my first two comments relating to the title of the Act as well as the two matters discussed under the heading of "Specific Omissions" plus the additional definitions set forth in my comments designated as sections .681(6)(F), .681(7), .681(8), and .681(9).

SB 128 and SB 54 Compared

I find that SB 54 contains 31 sections that are substantially the same as those in SB 128. These comparable sections are shown in the following tabulation:

<u>SB 128 Section*</u>	<u>Section Heading Used in SB 128</u>	<u>Comparable Section in SB 54*</u>
.131	Annual Report	.135
.141	General Powers and Duties of the Commission	.125
.181	Hearing Officers and Agents	.095
.191	Certificates Required	.235
.201	Application	.245
.211	Conditions of Issuance	.255
.231	Modification, Suspension or Revocation of Certificates	.235
.251	Standards of Service and Facilities	.345
.271	Joint Use and Interconnection of Facilities	.355
.281	Failure to Agree upon Joint Use or Inter- connection	.365
.291	Standards for Measurement	.385
.301	Testing of Meter Standards	.395
.321	Tariffs; Filing and Inspection	.305
.331	Adherence to Tariffs	.295
.341	Rates to be Just and Reasonable	.275
.351	Discrimination in Rates	.285
.371	Tariff Changes	.315
.381	Suspension of Tariff Filing or Contract	.325
.391	Power of Commission to Fix rates	.335
.461	Subsidiary Business Accounts	.435(b)
.481	Inspection of Books and Records by Commission	.175(a)
.501	Impaired Capital	.465
.511	Distribution of Surplus, Profits and Operating Margins	.475
.521	Effect of Rules, Regulations and Orders	.505
.531	Review and Enforcement	.515
.541	Violation a Misdemeanor	.525
.601	Joinder of Actions	.535
.611	Eminent Domain	.565
.621(b)	Regulation by Municipality	.575
.641	Regulatory Fees	.555

*Sec. 42.05 omitted preceding sub-sections shown.

Conclusion

Although there will undoubtedly be heated arguments regarding extending the Commission's jurisdiction to industries and operations that are now exempt from regulation, the Commission is hopeful the Legislature will not allow such controversies to overshadow, and perhaps eclipse, the genuine need for constructive legislation which is desperately needed to enable the State of Alaska to effectively regulate the purchaser of the Alaska Communication System. Our Annual Report and our original budget both emphasize this as its primary goal.

The purchaser of the ACS will be selected before the end of the fiscal year and the final transfer of the facilities is now scheduled to occur on July 1, 1970. Public Law 90-135 requires that the purchaser obtain a certificate of public convenience and necessity from the APSC prior to the date of transfer. Consequently, it is imperative that laws be enacted during this session of the legislature which will enable the Commission to certificate and effectively regulate the purchaser. The sections of SB 128 which will enable the Commission to do the job properly have been set forth under the heading of "Commission's Minimum Requirements." Most of these sections are comparable to sections in SB 54. It would be a travesty of justice to deny the Commission this non-controversial legislation because of arguments that may develop over provisions that are controversial.

The eyes of the Nation are on Alaska right now, because of its involvement in the sale of the ACS. We simply cannot afford to fall on our face in meeting the challenge of regulating the purchaser. Yet I am confident this is exactly what will happen if the Commission is not given the laws and financial resources it must have to perform its regulatory functions in a manner that will reflect credit on the State of Alaska.

By Don Hall

March 4, 1969

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COMMENTS OF DON HALL, EXECUTIVE DIRECTOR OF
ALASKA PUBLIC SERVICE COMMISSION, ON SB 128

Sub-section
of
SB 128

Title Almost every other state in the nation has the name of the state as part of the name of its commission (i.e. New York Public Service Commission, California Public Utilities Commission, Washington Utilities and Transportation Commission). Therefore, I strongly urge we officially designate our Commission as the Alaska Public Service Commission.

.010 Not in SB 128, but should be so that name can be changed to Alaska Public Service Commission.

.020(a) Line 13: Insert "Alaska" after "The" and before "Public".

.020(b) Line 16: Suggested revision: One of the three members shall be appointed by the Governor to serve as chairman of the Commission during the term of the appointing governor. This is substantially like the wording of the comparable law in Washington State (see RCW 80.01.010). Reason: This will enable each new governor to designate the chairman of the Commission during his term of office and prevent an outgoing governor from saddling the new one with his appointee. Governors like to name the heads of the various agencies of government. Also SB 128 provides \$300 additional compensation for the Chairman.

.081 P. 3, Line 1: Don't understand meaning of word "civil". The term should be clarified if its meaning is not common knowledge.

.091(b) If the state can afford to pay 5 Commissioners \$6000 a year (as provided in SB 54) it should certainly be able to afford \$6000 for three Commissioners plus \$300 more for the Chairman. Consultants engaged by the Commission recommended a salary range of \$5000 to \$6000.

.141(3) The way this section now reads, the Commission would have the power to alter and amend "fair and reasonable rates" etc. If a rate is already fair and reasonable there would be no need to alter or amend it. I suggest the following revision.

(3) make and fix just, fair and reasonable rates, classifications, rules, regulations, practices, services and facilities;

(4) alter and amend ~~un-~~unfair and unreasonable rates, classifications, rules, regulations, practices, services and facilities.

Re-number secs. (4), (5) and (6) to (5), (6) and (7).

.151(b)

Line 21: Add following sentence:

The commission shall apply analogous rules of the superior court in regulating the appearance before it of attorneys not admitted to practice in this state.

Reason: This proposal stems from the attached communication from Mr. Stanley Howitt, Executive Director of the Alaska Bar Association. In all the states I have knowledge of the state public service commission includes in its rules of practice and procedure a section titled "Appearance and Practice Before the Commission" which states who may appear before it in a representative capacity. I know of no other state which prohibits attorneys in other states from appearing before it. However, it is not uncommon for them to require that out-of-state attorneys be qualified and entitled to practice before the highest court of record of their own state.

The APSC is a quasi-judicial agency and should, therefore, be accorded the same right of waiver that a superior court has when it is performing its judicial functions.

The Commission engaged the services of a hearing officer in the so-called "Cook Inlet Telephone Case" (Cause No. U-66-24 et al.) who had the case 679 days during which time there were 8 days of hearings, 12 briefs with an aggregate total of 239 pages, and a hearing transcript of 1312 pages. From the time the first application was filed until the Commission entered its final order, the total elapsed time was 969 days. Much of the delay and resulting expense to the parties was due to the fact that several of them were represented by attorneys who had little or no experience. The hearing officer's bill for his services was \$13,310.50 so the State (specifically the Secretary of State) certainly shared in the cost. Were it not for the fact that some of the attorneys were knowledgeable in the field of public utility law, the case would have been even more expensive to all concerned.

I can sympathize with the desire of Alaska attorneys to get all the business they can but I can also see why the law gives our superior courts the right to allow out-of-state attorneys to represent those who appear before it. Whatever the reasons may be that superior courts have this privilege, by law, it should apply with equal force to the APSC.

.181(b)

Does the term "special agent" include the contractual hiring of an accountant or engineer to make a special investigation of a company such as the Anchorage Natural Gas Company and the Alaska Pipeline Company or engaging the services of an attorney to prepare rules of practice and procedure? If so, would it be possible to appoint them without a contract for personal service which is the way that hearing officers are now appointed? These questions should be clarified in the law if there are any doubts--hopefully in a way that simplifies, rather than complicates.

the procedure that has heretofore been required to engage the services of professional engineers or accountants.

- .191(c) The words "appropriate action" leave much to be desired. I suggest the addition of a sentence reading somewhat as follows: Appropriate action shall include, but not be limited to voluntary agreements between competing utilities subject to approval by the commission and compulsory arbitration by order of the commission.

It has been my observation that the problem of competition between utilities and the resulting duplication of facilities is pretty much limited to electric utilities in the cities of Kenai, Fairbanks and Anchorage.

- .211 Line 25: After word "may" insert words "or shall".
- .221(a) P. 9, Line 3: Strike "unless" and insert "except after".
P. 9, Line 4: Strike first word "the"; change "of" to "by"; and strike word "if".
- .221(b) P. 9, Line 15: After "resumed", insert these words "and the resumption is found to be economically feasible".
- .311 Consumers should never be permitted to use testing equipment or apparatus. I suggest the following revision of the third sentence: Upon payment of a reasonable fee, as provided in a utility tariff accepted by the commission for filing, a utility customer may demand that a scientific test be conducted as to the accuracy of any equipment or apparatus ^{used} by a utility to measure the utility services or commodities it furnishes.
- .321 P. 15, Line 2: Change "is" to "and".
- .371(a) P. 16, Line 25: Change heading to read as follows:
NEW OR REVISED TARIFFS AND CONTRACTS
Reason: This section deals with contracts as well as tariffs; so the fact should be indicated in the heading. The section should also cover new rates, classifications, rules, regulations or practices and new contracts as well as changes in existing tariffs or contracts.
- .371(b) P. 17, Line 9: Change as follows:
New tariff and contract rates, classifications, rules, regulations and practices and revisions thereof shall be filed in the manner provided in sec. 321(a) of this chapter.
- .371(c) P. 17, Line 11: Change as follows:
Upon the filing of a new tariff or contract, or the revision of an existing tariff or contract, the commission, upon complaint or upon its own motion, without notice, may initiate an investigation of the reasonableness and lawfulness thereof.

- .401 This section was included at the suggestion of the Assistant Attorney General assigned to the APSC. It is not at all unusual in comparable laws of other states but the need for it is more common in the regulation of transportation companies. Washington State has one like it (RCW 80.04.020) which has been on the books since 1937. I was with that Commission from 7/10/34 to 9/30/67 but cannot recollect that it was ever implemented in respect to a public utility. Several people have already expressed concern about this section. Actually, I doubt that they have good cause to worry about it, but they certainly cannot be blamed for worrying. Consequently, if it should become a major issue I would suggest that it be deleted or amended to make it apply only when a utility charges more than the rates in its effective tariff. After all if a utility charges the rates in its tariff (as required by Sec. 42.05.331 of SB 128) it should not be required to make reparations except to the extent it deviates from its tariff.
- .481 P. 22, Line 17: After "employees" insert agents or consultants. Reason: Section 42.05.361(b) provides for the employment of consultants and section 42.05.181 provides for the appointment of agents; so the fact should not be ignored is this section.
- .491(a) P. 22: Revise as follows:
The commission may investigate the management of a public utility including but not limited to salaries fixed by the recipient and salaries established in the absence of arms-length bargaining and payments to affiliated interests for services rendered or for the purchase, sale, lease, rental or exchange of any property, right, or thing, or loans to or from affiliated interest, and any practice which may adversely affect the cost or quality of the services or commodities furnished by the utility.
- .491(b) Revise as follows:
When any unreasonable managerial practice, payment, or loan is found to exist, the commission may, after providing reasonable notice and an opportunity for hearing, order the public utility to take such corrective action as the commission may require.
Reason: Two of the biggest loopholes in utility regulation relate to self-serving decisions by the management of the utility or by their corporate affiliates. These decisions sometimes include placing holding company officers on the payroll of a utility at high salaries when the services they perform for such salaries are minimal. Closely held corporations, as well as partnerships and individual proprietorships often succumb to the temptation of fixing their own salaries at unreasonably high levels--thus enabling them to virtually control their own rate of return. Holding companies that control local operating companies sometimes charge the local utility an excessive amount for services rendered, for interest on loans, or for the sale, lease or exchange of any property, right or thing. I know, because I administered the affiliated interest law of the Washington Utilities and Transportation Commission for 17 years-- and the above proposed revision contains some of the suggested language I have used (see RCW 80.08.12).

.631

P. 26, Line 20: Strike words "Investigation and" from heading. Reason: the word "investigation" does not appear in this section; so it should be omitted in the heading or else the section should be re-worded so as to clearly include investigations.

This section is the same as AS 42.05.610 of the present law. I seriously question the advisability of including it in SB 128 unless it is revised to require a hearing on the costs prior to entering an order and more realistic and precise criteria are specified for determining the amount assessed the various parties. I say this because I believe it is almost impossible to successfully apply any degree of mathematical precision to the criteria the Commission is now required to consider in assessing hearing costs; namely:

- ability to pay
- evidence of good faith
- other relevant factors
- mitigating circumstances

Moreover, there is a need to specify exactly what costs the Commission may include as hearing costs. Does it include the traveling expenses of the Commission and its staff? Does it include the costs of any investigation prior to the hearing? Is it limited to the hearing officer's fees and expenses plus time charges of reporters? Then there is the question of who should pay the costs initially--the Secretary of State (who has been paying them) or the Commission. In the Cook Inlet case the hearing officer's fee was over \$13,000 and the Secretary was not funded to pay the bill. I think he had to get it from the Governor's emergency fund. No matter which agency pays the hearing costs initially, it should be funded for it and the law should designate the agency. Judging from past experience, it is estimated that \$20,000 will be required to pay hearing officer costs most of which, hopefully, can be recovered. It should be emphasized, however, that the Commission's current budget request does NOT include this \$20,000.

P. 26, Line 22: .631 is same as AS 42.05.610 except for omission of words "of the hearing and shall by order apportion" after the word "costs"

For all practical purposes, this section could well be limited to apportioning the fees and expenses of hearing officers. The parties now pay for their own copy of hearing transcripts and the Commission gets one free if any other party orders one. The hourly rate paid for court reporters is not so great that the Commission could not pay it--and, next to the hearing officer's fee, this is the next largest expense of a hearing.

There is a possibility that the State might eventually decide it would be cheaper to hire its own full-time hearing officer.

.641(a) P. 27, Line 7: Insert word "intrastate" between "from" and "operations".

Under the provisions of SB 123 the Alaska Pipeline Company will become subject to regulation. For this reason, I suggest that consideration be given to whether or not it would be fair to collect a regulatory fee from the Pipeline Company on the basis of its sales to Anchorage Natural Gas Corporation and then require ANG to pay a regulatory fee on its gross revenues. This would result in a double regulatory fee on the same gas--which would then be passed on to ANG's customers. Under these circumstances I think it would be wise to add a sentence reading substantially as follows:

"Gross operating revenues from intrastate sales to a utility for resale to its customers shall be excluded from gross operating revenues for the purpose of this section."

Such a provision would relieve the Pipeline Company from/gross revenues represented by sales to ANG but would require a fee on revenues from sales to the military bases and other customers. paying a regulatory fee on

.681 P. 28, Line 15: Strike "microwave". Microwave is not a service. It is only one means by which service can be provided.

P. 28, Line 16: Make it communication services instead of communications service.

P. 28, Line 20: If the State really wants to regulate LPG (propane or butane) distribution systems the fact should be made clear.

Reason: Petrolane, in Anchorage, apparently intends to take the position that propane is not a petroleum product. If the APSC is given authority to regulate the Alaska Pipeline Company it should be noted that funds for that purpose have not been included on the Commission's original budget request. Obviously any such request would be improper under the present law. If the Pipeline Company is brought under regulation there will undoubtedly be an immediate demand to investigate it. This will probably necessitate the employment of an accounting consultant at an estimated contractual cost of \$8500. In this particular case I feel that independent professional consultants should be engaged for any investigation that is required so that the Commission can at least partially insulate itself against any accusation of bias.

.681(5)

There appears to be no question but that this section, when read in conjunction with Sec. 42.05.681(2)(D), would extend the Commission's regulatory jurisdiction to the Alaska Pipeline Company--which, perhaps, may be its primary objective. There is a possibility, however, that it may go much much farther than was actually intended. For example, there is a relatively short natural gas pipeline between the Beluga power plant of Chugach Electric Association and the gas well that supplies the plant. In my opinion this transmission line would be furnishing natural gas to a "limited portion of the public" and would therefore become a public utility. I doubt that any such thing was intended.

AS 42.05.645 of the present law specifically exempts the following from regulation by the APSC:

A. A person engaged in the production or gathering of natural gas or petroleum, and the plant, pipeline or system used for these purposes.

B. A person engaged in the distribution of natural or manufactured gas, or petroleum or petroleum products "to industrial customers only and not to the public generally" and the "plant, pipeline, or system used for these purposes."

C. Any plant, pipeline, or system used to distribute any concentrate or liquid substance by the owner or operator thereof "used solely for transportation."

The above provisions were enacted into law in 1968. As a result the Commission dismissed a proceeding then in progress to determine the regulatory status of the Kenai Pipeline Company. SB 128 would, in effect, cancel the 1968 amendment.

I also understand there is a pipeline from the Port Dock in Anchorage to the International Airport which is used to transport jet fuel. This is presumably a pipeline used to furnish petroleum or petroleum products to a "limited portion of the public" and would therefore be regulated.

There would undoubtedly be other pipelines that would come within the definition of the term "public utility" as defined in SB 128.

In keeping with the Commission's position of neutrality in respect to the extension of its regulatory authority, I would prefer not to express an opinion on this matter. However, I feel obligated to point to the possible ramfication of SB 128 as written and to suggest that the matter be given careful consideration with due regard to the question of whether or not there is an actual need to extend the Commission's jurisdiction to all of the pipelines which would be made subject to regulation under SB 128. If specific exemptions are desired the bill should be amended, or additional funding be provided.

- .681(6)(F) New Section to read as follows:
"Any corporation 5% or more of whose voting securities are owned or held, directly or indirectly, by a public utility or by any corporation designated in secs. (A) (B) and (C) of this sub-section.
Reason: To make it clear that the subsidiaries of public utilities are affiliated interests as well as the owners of their voting securities. Subsections (A) (B) and (C) define up-stream affiliates; (F) would take care of down-stream affiliates.
- .681(7) "tariff" means any or all rates, charges, tolls, rules or regulations of a utility relating to commodities or services furnished by a utility to the general public for compensation and every map, page, adoption notice, instrument or other document filed with the Commission setting forth the terms and conditions under which utility services or commodities are offered to the public together with instruments of concurrence and all other documents and data setting forth the terms of a utility's business relations with any other utility insofar as they affect the general public either directly or indirectly.
- .681(8) "telephone exchange" means an operating unit consisting of one or more central offices together with the associated plant and switching equipment used in furnishing communication services within a defined geographic area embracing a city, town, village or area in which the subscribers served have a general community of interest.
- .681(9) "telephone" means the transmission of voice communications, or in some cases, data or signals, by means of wire lines or Hertzian waves, between subscriber stations or central office stations located within one or more telephone exchanges or specified service areas, but excluding transmissions wholly within a radiocommunication system which is not interconnected with a telephone exchange or long lines system or another radiocommunication system.
- .691(a) P. 30, Line 3: Place period after word "utility" and strike the rest of the line.

SIGNIFICANT OMISSIONS

I

No provision for power of Commission to assess the costs of special investigations against the utilities investigated. The present law gives the Commission this power--but only in connection with proceedings involving the valuation of utility property (see AS 42.05.270). There are 57 regulatory commissions, including the District of Columbia and Puerto Rico. Twenty-four (24) of them have this power, including California, New York, Michigan, Pennsylvania, Washington, Arizona, Wisconsin, Wyoming, etc.

The Washington State law provides as follows:

.80.20.020. Cost of investigation may be assessed against company. Whenever the commission in any proceeding upon its own motion or upon complaint shall deem it necessary in order to carry out the duties imposed upon it by law to investigate the books, accounts, practices and activities of, or make any valuation or appraisal of the property of any public service company, or to investigate or appraise any phase of its operations, or to render any engineering or accounting service to or in connection with any public service company, and the cost thereof to the commission exceeds in amount the ordinary regulatory fees paid by such public service company during the preceding calendar year or estimated to be paid during the current year, whichever is more, such public service company shall pay the expenses reasonably attributable and allocable to such investigation, valuation, appraisal or services. The commission shall ascertain such expenses, and, after giving notice and an opportunity to be heard, shall render a bill therefor by registered mail to the public service company, either at the conclusion of the investigation, valuation, appraisal or services, or from time to time during its progress. Within thirty days after a bill has been mailed such public service company shall pay to the commission the amount of the bill, and the commission shall transmit such payment to the state treasurer who shall credit it to the public service revolving fund. The total amount which any public service company shall be required to pay under the provisions of this section in any calendar year shall not exceed one percent of the gross operating revenues derived by such public service company from its intrastate operations during the last preceding calendar year. If such company did not operate during all of the preceding year the calculations shall be based upon estimated gross revenues for the current year. /1961 c 14 §80.20.020. Prior: 1939 c 203 §2(a); RRS § 10458-6a(a).7

80.20.030 Interest on unpaid assessment--Action to collect. Amounts so assessed against any public service company not paid within thirty days after mailing of the bill therefor, shall draw interest at the rate of six percent per annum from the date of mailing of the bill. Upon failure of the public service company to pay the bill, the attorney general shall proceed in the name of the state by civil action in the superior court for Thurston county against such public service company to collect the amount due, together with interest and costs of suit. /1961 c 14 § 80.20.030. Prior: 1939 c 203 § 2(b); RRS § 10458-6a(b).7

80.20.040 Commission's determination of necessity as evidence. In such action the commission's determination of the necessity of the investigation, valuation, appraisal or services shall be conclusive evidence of such necessity, and its findings and determination of facts expressed in bills rendered pursuant to RCW 80.20.020 through 80.20.060 or in any proceedings determinative of such bills shall be prima facie evidence of such facts. /1961 c 14 § 80.20.040. Prior: 1939 c 203 § 2(c); RRS § 10458-6a(c).7

80.20.050 Order of commission not subject to review. In view of the civil action provided for in RCW 80.20.020 through 80.20.060 any order made by the commission in determining the amount of such bill shall not be reviewable in court, but the mere absence of such right of review shall not prejudice the rights of defendants in the civil action. /1961 c 14 § 80.20.050. Prior: 1939 c 203 § 2 (d); RRS § 10458-6a(d).7

80.20.060 Limitation on frequency of investigation. Expenses of a complete valuation, rate and service investigation shall not be assessed against a public service company under this chapter if such company shall have been subjected to and paid the expenses of a complete valuation, rate and service investigation during the preceding five years, unless the properties or operations of the company have materially changed or there has been a substantial change in its value for rate making purposes or in other circumstances and conditions affecting rates and services. /1961 c 14 § 80.20.060. Prior 1939 c 203 § 2(e); RRS § 10458-6a(e).7

Please note the provision for an opportunity to be heard and the 5-year limitation on the frequency of a "complete valuation, rate and service investigation."

If it should be decided that SB 128 should be amended to include authority to assess costs of an investigation against the utilities investigated, possibly it could be included as part of sec. 42.05.631.

II

SB 128, as written, provides for APSC investigations, upon complaint, in the following sections: 42.05.221(b), .231, .251(c) and (d), .371(c), .381(a), .401.

I am of the opinion some safeguards should be included in SB 128 to protect utilities and the Commission from needlessly spending time and money to deal with frivolous, unfounded, or harassing complaints. Attached hereto is a Xerox copy of an article in the February 8, 1969 issue of Telephony (p. 44) indicating what Colorado proposes to do to solve the problem. I am not sure I agree with Colorado's proposed solution to the problem, but the article does indicate that, potentially at least, there is a problem. At a recent meeting of Alaska City Managers, which I attended, considerable concern was expressed about the possibility that the cities, if regulated, would be subjected to the expense of defending every single complaint. I agree that they should be concerned and that the law should protect utilities in some manner.

We have a few regulated utilities that have only one customer; so the present Colorado law (and one like it in Washington State) could not be used as a guide since they allow 25 or more customers to file a complaint. It seems to me that the best procedure would be to insert in the law somewhere a provision to the effect that the Commission may in its rules of practice and procedure establish the terms, conditions, and restrictions applicable to the filing of complaints. Since the rules themselves could not be adopted without giving the public a chance to be heard, the Commission presumably could not be arbitrary or unreasonable. Further, if experience should demonstrate the need for a subsequent change, it could be accomplished without revising the law.

*No
rather give
power for formal investigation
as in Josephson bill*

Courts and Commissions

west Tennessee member of the commission. He has been on the Tennessee commission since 1953, and served as chairman in 1957-58 and 1963-64.

North Carolina asks Bell for improvements under raise

The North Carolina State Utilities Commission on Jan. 17 reversed a former decision and ordered Southern Bell Tel & Tel Co. to file a detailed list of service improvements it would institute if a company request for rate charges were approved and put into effect (TELEPHONY, Jan. 11).

In an order of Dec. 18, setting a public hearing on the company's rate request, the commission stated that "the proceeding would not be considered as a general case."

In the order of Jan. 17, it said "such a conclusion was based, at least in part, upon the understanding that the tariff filing was part of Southern Bell's service improvement plan, and was not offered primarily for revenue purposes."

Since the Dec. 18 order, the North Carolina attorney general's office and the North Carolina Consumer Council have raised the question of whether the real reason for the rate request is service improvements or increased profits. Both argued, contending the matter should be considered a general rate case and that the question whether the company's service has improved or declined in recent years also should be a matter for study.

In the Jan. 17 order reversing its former stand, the North Carolina commission said, "In view of the questions raised at the prehearing, the commission is now of the opinion that Southern Bell should specify in a verified pleading whether the tariff filing in question is part of a

service improvement plan . . . and if so, should specify in detail the facts and details of such service improvement plan."

The commission asked that the list of service improvements planned be filed by Jan. 24 and if details are not provided by that date, the company's request would be considered solely on the basis of whether it is reasonable as a revenue-generating device, and without regard to promised improvements.

Southern Bell has proposed a 50-cent increase in service charges on private one-party lines, a \$2 increase in installation fees and reductions up to \$3.50 a month in some zone and mileage charges.

A company spokesman has said the changes would bring in about \$2 million in additional revenue during the first year, and that the extra income is needed to carry out the company's planned service improvements.

Colorado bill would erase right to protest rates

A bill aimed at streamlining Colorado's public utility laws would also take away a right of utility customers to protest unreasonable rates, it was reported Jan. 8.

Colorado law now allows 25 or more customers to file a complaint with the Colorado Public Utilities Commission, and the commission is required to consider it. The proposed law, written by an interim study committee, would delete that provision.

Consumers still would be able to complain indirectly about utility rates, it was explained. But in order to get an investigation and hearing, they would first have to convince their city council, county commissioners or the state commission that their complaint had merit.

The 78-page bill, printed for

Have written for copy of this bill

Introduction Jan. 8 in the Colorado Senate, is designed generally to modernize the laws dealing with the commission.

It repeals obsolete wording of many sections.

It also writes into law the tradition of having both major political parties represented on the three-man commission.

Elimination of the provision for customer complaints was recommended to the study committee by the commission. The commission said under the present law "a single disgruntled customer can very easily obtain not only 25, but a considerable number of signatures, to institute a rate proceeding that could be wholly without merit."

Commissioner Howard Bjelland, starting his second six-year term, said he has no clear recollection of any commission inquiry arising from a consumer complaint. He said he felt the provision ought to be repealed, anyway, to avoid a potential waste of time and money.

It would be "pretty expensive" for a public utility (such as the Public Service Co. of Colorado or Mountain States Tel & Tel Co.) to answer an unfounded complaint in a public hearing, Bjelland said. And in the end, the cost of such a hearing would be paid by consumers, he pointed out.

Chief sponsor of the bill, Sen. George Jackson (R., Colorado Springs) said the committee discussed the possibility of requiring more than 25 customers to sign complaints, but concluded it would be better to repeal the whole thing. An alternative to repealing the provision would be to require a greater number of signatures on customer petitions, Jackson said.

Oklahoma hearings begin on unauthorized Bell charges

Hearings began on Jan. 30 before the Oklahoma Corporation Commission on the joint applications of several business firms,

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February 10, 1969

TO: Donald E. Hall, Executive Director
Public Service Commission
338 Denali
Anchorage, Alaska

Neil Harper, Chairman and
Commissioner of Surface
Alaska Transportation Commission
338 Denali
Anchorage, Alaska

Mr. William Burns
Commissioner of Air Commerce
338 Denali
Anchorage, Alaska

Cosby E. Steen, Commissioner
Department of Highways
Box 1467
Juneau, Alaska

Thomas J. Moore, Commissioner
Department of Labor
Box 1149
Juneau, Alaska

John Cook, Director
Workmen's Compensation Division
Department of Labor
Box 1149
Juneau, Alaska

Subject: Unauthorized Practice of Law by Out-of-State
Attorneys before Administrative Agencies

Gentlemen:

A number of cases have been reported to the Alaska Bar Association concerning the unauthorized practice of law by out-of-state counsel before administrative agencies such as the Public Service Commission, Alaska Transportation

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Commission, Department of Highways-Contract Claims Board and Air Commerce Commission.

This memorandum is to advise you that under the present law, out-of-state attorneys may not appear before administrative agencies even if they are associating with Alaska counsel. Usually however, no attempt has been made by the out-of-state attorney to associate.

The conclusion reached by the Alaska Bar Association on this matter is based upon the fact that there is no provision whatsoever for appearances of out-of-state attorneys before administrative agencies in law, by court rule, or by rule of the Board of Governors. The occasional appearance of an out-of-state attorney in the courts of the state is governed by Rule 81, Rules of Civil Procedure. Out-of-state attorneys are allowed to appear in the state courts on a case by case basis. But such appearances are at the discretion of the Court, and the Court may deny such appearances if such action is warranted. This rule was promulgated by the court system itself. There is no similar rule regarding out-of-state attorney appearances before administrative agencies and therefore the statutory provisions would apply. The provision in point is A.S. 08.08.230 which reads as follows:

"Section 08.08.230. Unlawful Practice a Misdemeanor. Any person not an active member of the Alaska Bar who engages in the private practice of law or represents himself as entitled to engage in the private practice of law in the state other than as permitted by this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both."

There is no other provision in the chapter 8 of Title 8 of Alaska Statutes to permit the appearances before administrative agencies by outside counsel. Appearances before administrative agencies have been defined as the practice of law by the Alaska Supreme Court in the case of Application of Babcock, 387 P.2d 694 (Alaska 1963) wherein the Court stated at page 697:

"One is engaged in the practice of law when he, for a valuable consideration, engages in the business of advising persons, firms, associations or corporations as to their rights under the law, or appears in a representative capacity as an advocate in the proceedings pending or prospective, before any court, commissioner, referee, board, body, committee, or commission constituted by law or authorized to settle controversies, and there, in such representative capacity, performs any act or acts for the purpose of obtaining or defending the rights of their [sic] clients under the law. Otherwise stated, one who, in a representative capacity, engages in the business of advising clients as to their rights under the law, or while so engaged, performs any act or acts either in court or outside of court for that purpose, is engaged in the practice of law." (Underlining added).

and the Court further stated that the practice of law is:

"Not limited to appearing in court, or advising and assisting in the conduct of litigation, but embracing the preparation of pleadings, and other papers incident to actions and special proceedings, conveyancing, the preparation of legal instruments of all kinds, and the giving of all legal advice to clients. State v. Chamberlain, 132 Wash. 520, 232 Pac. 337, 338. It embraces all advice to clients and all actions taken for them in matters connected with the law. Rhode Island Bar Ass'n v. Lesser, 68 R.I. 14, 26 A.2d 6, 7." (Underlining added).

In order to eliminate this area of unauthorized practice of law, you are asked to submit to the Alaska Bar Association

1/29/71

the following information for the years 1967-1968-1969 to date:

1. A list of all out-of-state attorneys who have appeared before your administrative agency at hearings or in any other proceeding.
2. The docket number of the hearing or proceeding.
3. Please indicate if the out-of-state attorney attempted to associate with Alaska counsel.
4. Please state the name of the client who was represented by the out-of-state attorney.

We intend to inform the out-of-state attorneys whose names you submit to us of the fact that they are engaged in the unauthorized practice of law in this state.

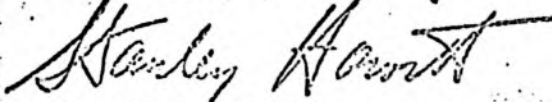
We would appreciate your aid and assistance with regard to future hearings and proceedings in which out-of-state counsel attempt to represent clients within this state. Please serve us with a notice of such appearances so that we can raise proper objections. We also request that your agency take action to prevent such unauthorized practice of law from occurring.

We are aware that this matter has been going on for a considerable length of time owing to the fact that the Alaska Bar Association has not previously notified your agency and requested your assistance to eliminate this area of unauthorized practice of law. With the inauguration of a bar office and the employment of a full time staff, this situation is now altered so that the association is in a position to go forward and clarify and define this area of unauthorized practice. Permitting this unauthorized practice to continue over a period of time does not give it any legal status.

It might be mentioned furthermore, that even when an out-of-state attorney attempts to associate with Alaska counsel, at the present time there is no provision to permit this activity and his activities in the proceedings or hearings is still considered unauthorized practice of law.

We would appreciate your immediate assistance in this matter. Should you have any questions, please do not hesitate to inquire.

Very truly yours,



Stanley Howitt,
Executive Director and
State Bar Counsel

SH:sb

cc: Department of Revenue
Pouch S
Juneau, Alaska

G. Kent Edwards
Department of Law
Pouch K
Juneau, Alaska

Board of Governors

H

B

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MEMORANDUM**State of Alaska**
DEPARTMENT OF COMMERCE

TO: The Honorable Barry Jackson
Chairman, House Judiciary Committee
State Legislature

DATE : February 20, 1970

Through: W. L. Kubley, Commissioner
Department of Commerce

FROM: John K. Robertson, Director
Division of Banking, Securities
Small Loans & Corporations
Department of Commerce

SUBJECT: Truth-In-Lending

Attached are copies of a pamphlet issued by the Federal Reserve System concerning their Regulation Z.

It is felt that as you study and prepare this type of legislation for Alaska, that these might be helpful as the national banks in the state are now subject to this regulation as are finance companies. State banks are currently subject to Federal Deposit Insurance Corporation regulations which are basically the same as Regulation Z.

What you ought to know about

FEDERAL RESERVE
REGULATION



Truth In Lending Consumer Credit Cost Disclosure

EFFECTIVE JULY 1, 1969

This print includes the Amendment and Interpretations issued through September 11, 1969

May 1994
Right to Life

Life in Lending
Consumer Credit
Cost Disclosure

About This Pamphlet

If you extend consumer credit, then you must become familiar with Regulation Z on Truth in Lending. You will be responsible, as a creditor, for complying with the Regulation.

This pamphlet tells you how Regulation Z affects your business. It tells you what you must let your customers know when you offer or extend them consumer credit—including agricultural credit and real estate credit.

Here is what you'll find on the following pages:

- List of Federal Agencies that will enforce Regulation Z—as well as give you more information.
- Questions and Answers—answers to some of the questions you may ask. There are six sections: (1) general questions (2) finance charges and annual percentage rate (3) open end credit (4) loans and other types of credit (5) real estate credit and rescission (6) the advertising of credit. At the end of each answer you will find a reference to the section of Regulation Z that applies.
- Model forms to guide you.
- Example of a table.
- Regulation Z and the Law reprinted in its entirety—in center section.

Please note that the outside pamphlet material has been stated as simply and clearly as possible. However, for exact information on what you must do to comply with the law, you must read thoroughly the applicable sections of Regulation Z.

This new Regulation comes into effect on July 1, 1969, and covers exactly what you must disclose in writing to your customers and clients when you extend, arrange or just offer them credit.

Its Purpose

The purpose of Regulation Z is to let borrowers and customers know the cost of your credit so that they can compare your costs with those of other credit sources and avoid the uninformed use of credit. Regulation Z does not fix maximum, minimum, or any charges for credit.

Two Important Points to Bear in Mind

The *finance charge* and the *annual percentage rate* are really the two most important disclosures required by this regulation. They tell your customer, at a glance, how much he is paying for his credit and its relative cost in percentage terms.

The Businesses Affected

Regulation Z applies to: banks, savings and loan associations, department stores, credit card issuers, credit unions, automobile dealers, consumer finance companies, residential mortgage brokers, and craftsmen—such as plumbers and electricians. It also applies to doctors, dentists and other professional people, and hospitals. In fact to any individual or organization that extends or arranges credit for which a finance charge is or may be payable or which is repayable in more than four installments.

Material in this pamphlet has been prepared by the Board of Governors of the Federal Reserve System.

Enforcement

Specific responsibilities for enforcement of Regulation Z are divided among nine Federal agencies. A complete list of these agencies and the types of businesses they cover follows this section.

Penalties Under The Truth in Lending Act

If you fail to make disclosures as required under this legislation, your customer may sue you for twice the amount of the finance charge—for a minimum of \$100, up to a maximum of \$1000—plus court costs and attorney's fees. And if you willfully or knowingly disobey the law or Regulation Z and are convicted you could be fined up to \$5000, or be imprisoned for one year, or both.

New Credit Forms and The Ones You Use Now

If you have taken the proper steps to get any needed new credit forms before July 1, 1969, and find they cannot be delivered to you by that date, then you may be able to use your existing forms. But they must show clearly the information a customer must be given under Regulation Z. You may do this by adding to or altering your forms. However, after December 31, 1969, you may no longer do this.

Annual Percentage Rate—Tables

Figuring out the annual percentage rate of the cost of credit on individual transactions can be very complex in some instances. Chart makers can furnish you with specialized tables to meet your business needs. If you do not have special tables, and wish to obtain a set of tables that apply to all creditors you may write to your nearest Federal Reserve Bank or to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

From these sets of tables you can determine annual percentage rates or the amount of the finance charge for a given rate. Volume I, which costs \$1, provides four tables:

FRB100—M Covering up to 60 monthly payments with rates from
2% to 61.75%

FRB200—M Covering 61 to 120 monthly payments with rates from
2% to 41.75%

FRB300—M Covering 121 to 480 monthly payments with rates from
2% to 21.75%

FRB100—W Covering up to 104 weekly payments with rates from
2% to 61.75%

Volume II, also available at the cost of \$1, gives another set of tables with instructions, for use with Volume I above. It will help you work out annual percentage rates on irregular payment or multiple advance transactions.

Further Information

If you want more information or have any questions after studying this pamphlet, including Regulation Z, you can get help from the Federal agencies listed on the next page. You'll find trade associations and Chambers of Commerce helpful, too.

Federal Agencies

From the list that follows, you will be able to tell which Federal Agency covers your particular business. Any questions you have should be directed to that agency. These agencies are also responsible for enforcing Regulation Z.

National Banks

Comptroller of the Currency
United States Treasury Department
Washington, D.C. 20220

State Member Banks

Federal Reserve Bank serving the area in which the State member bank is located.

Nonmember Insured Banks

Federal Deposit Insurance Corporation Supervising Examiner for the District in which the non-member insured bank is located.

Savings Institutions Insured by the FSLIC and Members of the FHLB System (except for Savings Banks insured by FDIC)

The FHLBB's Supervisory Agent in the Federal Home Loan Bank District in which the institution is located.

Federal Credit Unions

Regional Office of the Bureau of Federal Credit Unions, serving the area in which the Federal Credit Union is located.

Creditors Subject to Civil Aeronautics Board

Director, Bureau of Enforcement
Civil Aeronautics Board
1825 Connecticut Avenue, N.W.
Washington, D.C. 20428

Creditors Subject to Interstate Commerce Commission

Office of Proceedings
Interstate Commerce Commission
Washington, D.C. 20523

Creditors Subject to Packers and Stockyards Act

Nearest Packers and Stockyards Administration area supervisor.

Retail, Department Stores, Consumer Finance Companies, and All Other Creditors

Truth in Lending
Federal Trade Commission
Washington, D.C. 20580



Some general questions and answers

Q: What types of credit are covered under Regulation Z?

A: Generally, credit you extend to people for personal, family, household or agricultural uses, not exceeding \$25,000.

(Reg. Z/226.2 (k))

But ALL real estate credit transactions for these purposes are covered regardless of the amount.

(Reg. Z/226.3 (c))

Q: What types of credit are not covered?

A: The following are not affected by Regulation Z: (Reg. Z/226.3)

- 1. Business and commercial credit—except agricultural credit.**
- 2. Credit to Federal, State and local governments. (However, governmental units extending credit to individuals are affected by this law.)**
- 3. Transactions in securities and commodities accounts with a broker dealer registered with the Securities & Exchange Commission.**
- 4. Transactions under certain public utility tariffs.**
- 5. Credit over \$25,000—except real estate transactions.**

Q: Can a State law be substituted for Regulation Z?

A: Yes it can, provided The Federal Reserve Board makes that determination as provided by law. Any determination made will be published

(Reg. Z/226.12). Creditors should be guided by Reg. Z/226.6 (b) and (c) in the meantime.

Q: What happens if I not only follow Regulation Z but also elect to follow inconsistent State law?

A: In these cases the State disclosure may be shown on a separate sheet. They may also be shown on the same statement as the Federal disclosures. But in this event they must appear separately and below the Federal disclosure, clearly marked that they are inconsistent with the Federal disclosures, and separated by a dividing line. Regulation Z is very specific on these points. (Reg. Z/226.6 (c))

Q: Is any special terminology prescribed?

A: Yes, certain terminology is specified that must be used in making disclosures required by the Regulation. (Reg. Z/226.6 (a); Reg. Z/226.7 (b) (c); Reg. Z/226.8 (b) (c) (d); Reg. Z/226.9 (b); Reg. Z/226.11 (c))

Q: Do disclosures have to be made in the order they appear in the Regulation?

A: No, but they must be listed in an order which will be meaningful to your customer. The examples of forms illustrate ways in which this may be done. (See pages 18 to 29 of this pamphlet.) (Reg. Z/226.6 (a))

Q: What terms are used to describe credit transactions in the Regulation?

A: The Regulation divides all consumer credit transactions into two broad categories; open-end credit, and credit other than open-end. These are discussed in subsequent sections of these Questions and Answers.

Q: How long do I have to keep records?

A: You should keep evidence of compliance for two years. (Reg. Z/226.6 (i))

Q: Will anyone inspect my records?

A: If asked by the proper agency you must show your records relating to disclosure and evidence of compliance. (Reg. Z/226.6 (i))



Some questions and answers on the finance charge and annual percentage rate

Q: What is the finance charge?

A: It is the total of all costs which your customer must pay, directly or indirectly for obtaining credit. (Reg. Z/226.4)

Q: What costs are included in the finance charge?

A: Here are some of the more common items that you must include in your finance charge. See Reg. Z/226.4 for others and for qualifications which apply.

1. Interest.
2. Loan fee.
3. Finders fee or similar charge.
4. Time price differential.
5. Amount paid as a discount.
6. Service, transaction or carrying charge.
7. Points.
8. Appraisal fee (except in real estate transactions).
9. Premium for credit life or other insurance, should you make this a condition for giving credit.
10. Investigation or credit report fee (except in real estate transactions).

Q: Are all costs part of the finance charge?

A: No, some costs which would be paid if credit were not employed may be excluded. However, you must itemize and show them to your customer. (Reg. Z/226.4 gives a complete list.) Here are a few examples:

1. Taxes.
2. License fees.
3. Registration fees.
4. Certain title fees and other legal fees.
5. Some real estate closing fees.

Q: In what form is the finance charge to be shown to the customer?

A: It must be clearly typed or written, stating the dollars and cents total and the annual percentage rate. The words "finance charge" and "annual percentage rate" must stand out especially clear. (Reg. Z/226.6 (a))
In the sale of dwellings, the total dollar finance charge need not be stated, although the annual percentage rate must be included.

Q: What is the annual percentage rate?

A: Simply put, it is the relative cost of credit in percentage terms.
(Reg. Z/226.5 (e))

Q: Are maximum or minimum rates specified in Regulation Z?

A: No. Regulation Z does not fix maximum, minimum, or any charges for credit. But it requires that you show whatever rate you do charge.

Q: Do you ever have a choice about how you state the annual percentage rate?

A: Before Jan. 1, 1971 you have the option to disclose the annual percentage rate in dollar terms. For example—" \$11 finance charge per year per \$100 of unpaid balance." However, beginning Jan. 1, 1971, the rate *must* be stated as a percentage. (Reg. Z/226.6 (j))

Q: How accurate must the annual percentage rate be?

A: Accurate to the nearest one quarter of one percent. (Reg. Z/226.5)

Q: How is the annual percentage rate computed?

A: It depends on whether the credit is *open end* (Reg. Z/226.5 (a)) or *other than open end* credit. (Reg. Z/226.5 (b))

REGULATION



Some questions and answers about open end credit

Q: What is open end credit?

A: Typically it covers most credit cards and revolving charge accounts in retail stores, where finance charges are usually made on unpaid amounts each month. (Reg. Z/226.2 (r); Reg. Z/226.7)

Q: What must an open end credit customer be told under this law?

A: If it is a *new* account, then your customer must receive these specific items in writing to the extent applicable: (Reg. Z/226.7 (a))

1. The conditions under which the finance charge may be imposed and the period in which payment can be made without incurring a finance charge.
2. The method used in determining the balance on which the finance charge is to be made.
3. How the actual finance charge is calculated.
4. The periodic rates used and the range of balances to which each applies.
5. The conditions under which additional charges may be made along with details of how they are calculated.
6. Descriptions of any lien which you may acquire on a customer's property.
7. The minimum payment that must be made on each billing.

Q: What about customers who already have open end accounts on July 1, 1969?

A: The same information must be sent to them by July 31 if the account has an unpaid balance on July 1. Where no balance is owed on that date, the same information must be supplied on or before the first billing that

follows use of the account. (Reg. Z/226.7 (f))

Q: Are periodic statements necessary on open end accounts?

A: Yes, but only where there is an unpaid balance over \$1 or where a finance charge is made. (Reg. Z/226.7 (b))

Q: What sort of information must accompany a monthly statement?

**A: Where applicable, you must give customers this information:
(Reg. Z/226.7 (b))**

1. The unpaid balance at the start of the billing period.
2. The amount and date of each extension of credit and identification of each item bought.
3. Payments made by a customer and other credits: this includes returns, rebates and adjustments.
4. The finance charge shown in dollars and cents.
5. The rates used in calculating the finance charge plus the range of balances to which they apply.
6. The annual percentage rate.
7. The unpaid balance on which the finance charge was calculated.
8. The closing date of the billing cycle and the unpaid balance at that time.

Q: Where must this information appear?

A: Some items must appear on the actual face of the statement. Others may be shown on the reverse side; or, on a separate form enclosed in the same envelope. (Reg. Z/226.7 (c))

Q: How is the annual percentage rate determined on open end credit?

A: The finance charge is divided by the unpaid balance to which it applies. This gives the rate per month or whatever time period is used. The result is multiplied by 12 or the other number of time periods used by you during the year. (Reg. Z/226.5 (a))

Here's an example:

A typical charge of 1½ % is made on an unpaid balance where bills are sent out monthly. The annual percentage rate would be twelve times 1½ % or 18 %.

Other methods for calculating the annual percentage rate on open end credit are detailed in Reg. Z/226.5 (a) and Reg. Z/226.7 (b) (6).

REGULATION



Some questions and answers about credit other than open end

Q: What types of credit are included?

A: Both loans and sales credit—in every case for a specified period of time where the total amount, number of payments, and due dates are agreed upon by you and your customer. Typically, it is used in buying or financing the purchase of “big ticket” items. A good example is a loan from a finance company to buy an automobile. Another example is credit extended by a store to buy a washing machine, a television set, or other major appliance. It also includes a single payment loan. (Reg. Z/226.8)

Q: What must the credit customer be told in these types of transactions?

A: You must present to your customer in writing the following information as applicable, plus additional information relating to the type of credit extended. (Reg. Z/226.8 (b))

1. The total dollar amount of the finance charge; except in the case of a credit transaction to finance purchase of a dwelling.
2. The date on which the finance charge begins to apply, if this is different from the date of the transaction.
3. The annual percentage rate. (For exception see Reg. Z/226.8 (b) (2) (i) (ii))
4. The number, amounts and due dates of payments.
5. The total payments—except in the case of first mortgages on dwelling purchases.
6. The amount you charge for any default, delinquency, etc. or method you use for calculating that amount.

7. Description of any security you will hold.
8. Description of any penalty charge for prepayment of principal.
9. How the unearned part of the finance charge is calculated in the case of prepayment. Charges deducted from any rebate or refund must be stated.

Q: Are there any other things customers must be told?

A: That depends on the transaction—whether it is a loan or a credit sale:

Q: In the case of a loan, what do I have to tell my customers?

A: In addition to the information given your customer, as previously indicated, you must also provide this information: (Reg. Z/226.8 (d))

1. The amount of credit to be given to your customer. This includes all charges which are part of the amount of credit extended but are not a part of the finance charge. This information must be itemized.
2. Amounts that are deducted as prepaid finance charges and required deposit balances.

Q: Regarding credit sales, what additional information do I give these customers?

A: Again, you must give your customers all the information in the answer to the second question in this section, and the following additional information as applicable: (Reg. Z/226.8 (c))

1. The cash price
2. The down payment, including trade-in
3. The difference between the two
4. All other charges, itemized, that are included in the amount financed but not part of the finance charge
5. The unpaid balance
6. Amounts deducted as prepaid finance charges or required deposit balances
7. The amount financed
8. The total cash price, finance and all other charges. (This does not apply to the sale of a dwelling.)

Q: When must customers receive all this information on loan or credit sales?

A: Before the credit is extended. (Reg. Z/226.8 (a))

Q: Must this information be given to customers in writing?

A: Yes. You must include the information on the face of the note or other instrument evidencing the obligation, or on a separate sheet that identifies the transaction. (Reg. Z/226.8 (a))

Q: Are monthly statements required?

A: No. But if you do send out monthly statements, you must show clearly

the annual percentage rate, and the period in which a payment must be made to avoid late charges. (Reg. Z/226.8 (n))

Q: How is the annual percentage rate calculated on loans or credit other than open end?

A: By the actuarial method—payments are applied first to interest due and any remainder is then applied to reduce principal. (Reg. Z/226.5 (b))

Q. What are examples of the actuarial method?

A: Here are two simple examples:

1. A bank loan of \$100 repayable in equal monthly installments over one year is made, at a 6% add-on finance charge. The annual percentage rate would be 11%. The borrower would repay \$106 over one year. He would only have use of the full \$100 until he made his first payment, and less and less each month as payments are made. The effect is that the actual annual percentage rate is almost twice the add-on percentage rate.
2. Using the same example as above with the 6% finance charge discounted in advance. The annual percentage rate would be 11½% because the customer would only receive \$94 and have to repay \$100. He would have full use of only \$94 of the loan up to the time he makes his first payment.

Q: But isn't the actuarial method very complicated?

A: Yes, it is. Recognizing this, the Federal Reserve Board has prepared tables showing the annual percentage rate based on the finance charge and the number of weekly or monthly payments to be made. These tables are available from the Federal Reserve Board and Federal Reserve Banks at a nominal cost. (Reg. Z/226.5 (c))

Q: Must I use the Board's Annual Percentage Rate tables?

A: No. You may wish to purchase specially prepared tables for your type of business from one of several table or chart publishers. Trade associations and financial institutions can be helpful also. (Reg. Z/226.5 (c) (2))

Q: Must the creditor always show the annual percentage rate?

A: Generally yes, except that on credit other than open end credit, if the finance charge is \$5 or less, and applies to credit of \$75 or less, it need not be shown. The same exception applies to a finance charge of \$7.50 or less on credit of more than \$75. (Reg. Z/226.8 (b) (2) (i) & (ii))



Some questions and answers about real estate

Q: Is real estate credit covered under Regulation Z?

A: Yes. All real estate credit *in any amount* is covered under this Regulation when it is to an individual and not for business purposes, unless the business purpose is agriculture.

Q: Does real estate credit cover more than mortgages?

A: Yes, very definitely. Any credit transaction that involves any type of security interest in real estate of a consumer is covered.
(Reg. Z/226.2 (w), (x) (y) & (z))

Q: Are there any special provisions that apply to real estate credit?

A: Two basic points:

1. You do not have to show the total dollar amount of the finance charge on a credit sale or first mortgage loan to finance the purchase of the customer's dwelling. (Reg. Z/226.8 (c) (8) and (d) (3))
2. In many instances, your customer has the right to cancel a credit arrangement within three business days if his residence is used as collateral for credit. (Reg. Z/226.9)

Q: Must a creditor inform his customer of the right to cancel?

A: Yes. He must furnish the Notice prescribed by the Regulation.
(Reg. Z/226.9 (b))

Q: What must the customer do to cancel a transaction under the Regulation?

A: A customer may cancel a transaction

1. By signing and dating the Notice to customer required by Federal law, which he receives from the creditor, *and* either
(a) mailing the Notice to the creditor at the address shown on the Notice,

- or* (b) delivering the Notice to the creditor at the address shown on the Notice either personally or by messenger (or by other agents),
- or* 2. by sending a telegram to the creditor at the address shown on the Notice. A brief description of the transaction which the customer wishes to cancel should be included in the telegram.
- or* 3. by preparing a letter (or other writing) which includes a brief description of the transaction which he wishes to cancel, *and* either (a) mailing the letter (or other writing) to the creditor at the address shown on the Notice.
- or* (b) delivering the letter (or other writing) to the creditor at the address shown on the Notice either personally or by messenger (or by other agents).

Q: What if the customer telephones that he is going to cancel?

A: *A telephone call to the creditor may not be used to cancel a transaction; WRITTEN notice of cancellation is required.* If the customer takes one of the above steps to cancel within the three day period, he has effectively cancelled the transaction.

Q: What if I haven't received the notice of cancellation in three days?

A: You should allow time for a mailed letter or telegram sent within the three day period to be delivered, and determine that your customer has not cancelled the transaction.

Q: Does this right of cancellation apply to a first mortgage on a residence?

A: A first mortgage to finance the purchase of your customer's residence carries no right to cancel. *However*, a first mortgage for any other purpose and a second mortgage on the same residence may be cancelled.
(Reg. Z/226.9 (g))

Q: What happens regarding cancellation in the case of a mechanic's lien or similar security interest acquired by a craftsman who works on credit?

A: Take a craftsman, for example, who charges his customers a finance charge or allows payment in more than four installments. His customer does have a right to cancel, but only within three business days. Unless there is an emergency the craftsman should wait three days before starting work.
(Reg. Z/226.9 (c))

Q: Suppose a customer needs emergency repairs and cannot wait for three days?

A: A customer may waive his right to cancel a credit agreement if credit is needed to meet a bonafide personal financial emergency and if failure to start repairs would endanger him, his family, or his property.
(Reg. Z/226.9 (e))

REGULATION



Some questions and answers about the advertising of credit

Q: Does Regulation Z affect credit advertising?

A: Yes it does. It affects all advertising to aid or promote any extension of consumer credit regardless of who the advertiser may be. An association, for example, which advertises that its members extend consumer credit is subject to the advertising provisions of Regulation Z.

Q: What kinds of advertising are affected?

A: All types of advertising: television, radio, newspapers, magazines, leaflets, flyers, catalogs, public address announcements, direct mail literature, window displays, billboards, etc. (Reg. Z/226.2 (b))

Q: How does Regulation Z affect your advertising as a creditor?

A: Generally, you may not advertise that the down payment, installment plan or amount of credit can be arranged unless you usually arrange terms of this type. (Reg. Z/226.10 (a))

Q: How else is credit advertising affected?

A: If it is open end credit see Reg. Z/226.10 (c). For credit *other* than open end see Reg. Z/226.10 (d). If you advertise in catalogs, see Reg. Z/226.10 (b). But generally you are not permitted to advertise any specific credit term unless all other terms involved are stated clearly and can be easily seen.

Typical formats of disclosures under Regulation Z are shown on the following pages for demonstration only. They are not intended for the requirements of your business. For full information, please refer to the provisions of the Regulation.

EXHIBIT A

Example of a retailer's statement, prepared by a manual billing operation, for an account on which the finance charge is determined by a single periodic rate or a minimum charge of 50 cents applicable to balances under a specific amount. It also assumes that the finance charge is computed on the previous balance before deducting payments and/or credits. Separate slips shall accompany each statement, identifying all charges and credits and showing the dates and amounts thereof.

Any Store U.S.A.

MAIN STREET—ANY CITY, U.S.A.

(Customer's name here)

AMT. PAID \$ _____

TO INSURE PROPER CREDIT RETURN THIS PORTION WITH YOUR PAYMENT

PREVIOUS BALANCE	FINANCE CHARGE 50 CENT MINIMUM	PAYMENTS	CREDITS	PURCHASES	NEW BALANCE	MINIMUM PAYMENT
<p>FINANCE CHARGE IS COMPUTED BY A "PERIODIC RATE" OF % PER MONTH (OR A MINIMUM CHARGE OF 50 CENTS FOR BALANCES UNDER \$) WHICH IS AN ANNUAL PERCENTAGE RATE OF % APPLIED TO THE PREVIOUS BALANCE WITHOUT DEDUCTING CURRENT PAYMENTS AND/OR CREDITS APPEARING ON THIS STATEMENT.</p> <p style="text-align: center; font-weight: bold; font-size: small;">NOTICE</p> <p>PLEASE SEE ACCOMPANYING STATEMENT(S) FOR IMPORTANT INFORMATION.</p>	▲					
<p>PAYMENTS, CREDITS OR CHARGES, RECEIVED AFTER THE DATE SHOWN ABOVE THE ARROW, WHICH IS THE CLOSING DATE OF THIS BILLING CYCLE, WILL APPEAR ON YOUR NEXT STATEMENT. TO AVOID ADDITIONAL FINANCE CHARGES PAY THE "NEW BALANCE" BEFORE THIS DATE NEXT MONTH.</p>					▲	

ANY STORE, U.S.A. MAIN STREET, ANY CITY, U.S.A.

This form, when properly completed, will show how a creditor may comply with the disclosure requirements of the provisions of paragraphs (b) and (c) of §226.7 of Regulation Z for the type of credit extended in this example. This form is intended solely for purposes of demonstration and it is not the only format which will permit a creditor to comply with disclosure requirements of Regulation Z.

**ILLUSTRATION OF FEDERAL DISCLOSURES ON A PERIODIC STATEMENT
FOR A RETAIL OPEN END CREDIT ACCOUNT
(Section 226.7)**

Applicable Disclosures Shown on Exhibit A (opposite page)	Regulation Z Reference (226.7)
1. "Previous Balance"	(b) (1) & (c) (1)
2. Purchases	(b) (2) & (c) (1)
3. "Payments"	(b) (3) & (c) (1)
4. "Credits"	(b) (3) & (c) (1)
5. "Finance Charge" (showing minimum charge)	(b) (4) & (c) (1)
6. "Periodic Rate" (showing balance to which applicable)	(b) (5) & (c) (2)
7. "Annual Percentage Rate"	(b) (6) & (c) (1)
8. Balance on which Finance Charge Was Computed (with explanation of how balance was determined)	(b) (8) & (c) (2)
9. Closing Date of the Billing Cycle	(b) (9) & (c) (1)
10. Balance at Closing Date, "New Balance"	(b) (9) & (c) (1)
11. Date or Period for Payment to Avoid Additional Finance Charges	(b) (9) & (c) (1)

Other Disclosures Applicable to Example but not Illustrated on Exhibit A

(These disclosures would be made on separate slips which would
accompany statement but which are not illustrated here.)

1. Date of Each Purchase (b) (2) & (c) (1)
2. Brief Identification of Each Purchase (b) (2) & Footnote 7
3. Brief Identification of Credits Other Than Payments (b) (3) & Footnote 8

Other Disclosures Not Applicable to Example Illustrated on Exhibit A

Regulation Z prescribes other disclosures to be made on open end credit account periodic statements which are not applicable to the illustrated example, such as, where there is more than one periodic rate (b)(5), more than one annual percentage rate (b)(6), charges for insurance 226.4 (a)(5) and (6), etc.

EXHIBIT B

Example of a retailer's descriptive statement, prepared by an automated billing operation, for an account on which the finance charge is determined by a single periodic rate or a minimum charge of 50 cents applicable to balances under a specified amount. It also assumes that the finance charge is computed on the previous balance before deducting payments and/or credits.

(FACE OF FORM)

Any Store U.S.A.

MAIN STREET—ANY CITY, U.S.A.

(Customer's name here)

YOUR ACCOUNT NUMBER IS _____

TO INSURE PROPER CREDIT RETURN THIS PORTION WITH PAYMENT

BILLING DATES		To Your PREVIOUS BALANCE	We Added Your FINANCE CHARGE 50c MINIMUM	We Deducted Your		We Added Your PURCHASES
NEXT MO.	THIS MO.			PAYMENTS	CREDITS	

TRANSACTION NO.	DATE	STORE	DEPT. NO.	DEPARTMENT NAME	CHARGES	PAYMENTS & CREDITS

<p>To Avoid Additional Finance Charges, Pay The "New Balance" Before Your Billing Date Next Month.</p>	<p>This Is Your NEW BALANCE</p>	<p>This Is Your MINIMUM PAYMENT</p>	<p>ANNUAL PERCENTAGE RATE</p>	<p> </p>
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NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION

(REVERSE SIDE OF FORM)

PAYMENTS, CREDITS OR CHARGES RECEIVED AFTER YOUR BILLING DATE "THIS MONTH" WILL APPEAR ON YOUR NEXT STATEMENT. YOUR FINANCE CHARGE IS COMPUTED BY A SINGLE PERIODIC RATE OF _____ % (OR A MINIMUM CHARGE OF 50 CENTS FOR BALANCES UNDER \$ _____) WHICH IS AN ANNUAL PERCENTAGE RATE OF _____ % APPLIED TO YOUR "PREVIOUS BALANCE" WITHOUT DEDUCTING CURRENT PAYMENTS AND/OR CREDITS APPEARING ON THE FACE OF THIS STATEMENT.

DEPT. NO.	DEPT. NAME	DEPT. NO.	DEPT. NAME	DEPT. NO.	DEPT. NAME
1	MEN'S ACCESSORIES (Shirts, Ties, Socks, etc.)				
2	MEN'S CLOTHING (Suits, Sportcoats, Outerwear, etc.)				

(In this form of billing, this side of the statement contains a listing of all departments and a brief description of the merchandise sold in each.)

ANY STORE, U.S.A., MAIN ST., ANY CITY, U.S.A.

This form, when properly completed, will show how a creditor may comply with the disclosure requirements of the provisions of paragraphs (b) and (c) of §226.7 of Regulation Z for the type of credit extended in this example. This form is intended solely for purposes of demonstration and it is not the only format which will permit a creditor to comply with disclosure requirements of Regulation Z.

ANOTHER ILLUSTRATION OF FEDERAL DISCLOSURES ON A PERIODIC STATEMENT FOR A RETAIL OPEN END CREDIT ACCOUNT

(Section 226.7)

Applicable Disclosures Shown on Exhibit B (opposite page)	Regulation Z Reference (226.7)
1. "Previous Balance"	(b) (1) & (c) (1)
2. Purchases	(b) (2) & (c) (1)
3. "Payments"	(b) (3) & (c) (1)
4. "Credits"	(b) (3) & (c) (1)
5. "Finance Charge" (showing minimum charge)	(b) (4) & (c) (1)
6. "Annual Percentage Rate"	(b) (6) & (c) (1)
7. Balance on Which Finance Charge was Computed	(b) (8) & (c) (2)
8. Closing Date of the Billing Cycle	(b) (9) & (c) (1)
9. Balance at Closing Date, "New Balance"	(b) (9) & (c) (1)
10. Date or Period for Payment to Avoid Additional Finance Charge	(b) (9) & (c) (1)
11. Date of Each Purchase	(b) (2) & (c) (1)
12. Brief Identification of Each Purchase by Symbol Relating to an Identification List Printed on the Reverse Side	(b) (2) & Footnote 7
13. Brief Identification of Credits Other Than Payments by Symbol Relating to an Identification List Printed on the Reverse Side	(b) (3) & Footnote 8

Other Disclosures Applicable to Example Which Appear on Reverse Side of Exhibit B

1. "Periodic Rate" (showing balance to which applicable) (b) (5) & (c) (2)
2. "Annual Percentage Rate"
3. Reference to the Finance Charge (showing minimum charge). (b) (4) & (c) (2)
4. Reference to the Balance on Which Finance Charge was Computed (with explanation of how balance was determined)
5. Identification List to Identify Transactions

Other Disclosures Not Applicable to Example Illustrated on Exhibit B

Regulation Z prescribes other disclosures to be made on open end credit account periodic statements which are not applicable to the illustrated example, such as, where there is more than one periodic rate (b) (5), more than one annual percentage rate (b) (6), charges for insurance 226.4 (a) (5) and (6), etc.

**ILLUSTRATIONS OF FEDERAL DISCLOSURES
ON A RETAIL INSTALLMENT CONTRACT**

(Section 226.8)

Applicable Disclosures Shown on Exhibit C (opposite page)	Regulation Z Reference (226.8)
1. "Cash Price"	(c)(1)
2. "Cash Downpayment"	(c)(2)
3. "Trade-In"	(c)(2)
4. "Total Downpayment"	(c)(2)
5. "Unpaid Balance of Cash Price"	(c)(3)
6. Other Charges Individually Itemized (not finance charges)	(c)(4)
7. "Amount Financed"	(c)(7)
8. "Finance Charge"	(c)(8)(i)
9. "Deferred Payment Price"	(c)(8)(ii)
10. Date Finance Charge Begins to Accrue	(b)(1)
11. "Annual Percentage Rate"	(b)(2)
12. Number, Amount, and Due Dates of Payments	(b)(3)
13. "Total of Payments"	(b)(3)
14. Identification of Security Interest	(b)(5)
15. Identification of Property to Which Security Interest Relates	(b)(5)
16. Method of Computing Any Unearned Portion of the Finance Charge . . .	(b)(7)
17. Identification of Creditor	(a)
18. Charges for Credit Life, Accident, Health or Loss of Income Insurance	226.4(a)(5)

Other Disclosures Not Applicable to Example Illustrated on Exhibit C

Regulation Z prescribes other disclosures to be made in connection with credit sales depending on the terms of the transaction and type of security interest taken by the creditor. For example:

	§226.8
"Prepaid Finance Charge"	(c)(6)
"Required Deposit Balance"	(c)(6)
"Balloon Payment"	(b)(3)
Default, Delinquency or Similar Charges	(b)(4)
After Acquired Property	(b)(5)
Security for Future Indebtedness	(b)(5)
Penalty Charge	(b)(6)
Unearned Finance Charge	(b)(7)
Property Insurance	226.4(a)(6)
Real Property Security	226.9

EXHIBIT D

Example of disclosures on a promissory note for non-sale credit for which a finance charge is added to the amount financed and the obligation is repayable in installments.

PROMISSORY NOTE

(City)

(State)

____ 19____

For value received, undersigned maker(s), jointly and severally, promise to pay to the order of _____ at the above place _____ dollars (\$_____) in _____ consecutive monthly payments of \$_____, each beginning one month from the date hereof and thereafter on the same date of each subsequent month until paid in full. Any unpaid balance may be paid, at any time, without penalty and any unearned finance charge will be refunded based on the "Rule of 78's". In the event that maker(s) default(s) on any payment, a charge of _____ may be assessed.

1. Proceeds	\$ _____
2. _____ (Other charges, itemized)	_____
3. Amount financed (1 + 2)	\$ _____
4. FINANCE CHARGE	_____
5. Total of payments	\$ _____
ANNUAL PERCENTAGE RATE	_____ %

Signed _____

This form, when properly completed, will show how a creditor may comply with the disclosure requirements of the provisions of paragraphs (b) and (d) of §226.8 of Regulation Z for the type of credit extended in this example. This form is intended solely for purposes of demonstration and it is not the only format which will permit a creditor to comply with disclosure requirements of Regulation Z.

**ILLUSTRATION OF FEDERAL DISCLOSURES ON A PROMISSORY
NOTE FOR A LOAN
(Section 226.8)**

Applicable Disclosures Shown on Exhibit D (opposite page)	Regulation Z Reference (226.8)
1. "Amount Financed"	(d) (1)
2. Other Charges Individually Itemized (not finance charges)	(d) (1)
3. "Finance Charge"	(d) (3)
4. "Annual Percentage Rate"	(b) (2)
5. Number, Amount, Due Dates of Payments	(b) (3)
6. "Total of Payments"	(b) (3)
7. Charges for Default or Late Payment	(b) (4)
8. Method of Computing Any Unearned Finance Charge	(b) (7)
9. Identification of Creditor	(a)

Other Disclosures Not Applicable to Example Shown in Exhibit D

See comment under similar heading on Page 23.

**ILLUSTRATION OF FEDERAL DISCLOSURES ON A SEPARATE
STATEMENT FOR A LOAN REPAYABLE IN INSTALLMENTS
(Section 226.8)**

Applicable Disclosures Shown on Exhibit E (opposite page)	Regulation Z Reference (226.8)
1. Identification of Transaction	(a)
2. "Amount Financed" including itemized charges other than finance charges. (Note §226.4(b))	(d) (1)
3. "Finance Charge"	(d) (3)
4. "Annual Percentage Rate"	(b) (2)
5. Number, Amount, and Due Date of Payments	(b) (3)
6. "Total of Payments"	(b) (3)
7. Default, Delinquency, or Similar Charge	(b) (4)
8. Identification of Security Interest	(b) (5)
9. Identification of Property to Which Security Interest Relates	(b) (5)
10. Method of Computing Any Unearned Portion of the Finance Charge	(b) (7)
11. After-acquired Property Subject to Security Interest	(b) (5)
12. Security for Future Indebtedness	(b) (5)
13. Identification of Creditor	(a)
14. Credit Life, Accident, and Health Insurance	§226.4 (a) (5)
15. Property and Liability Insurance	§226.4 (a) (6)

Other Disclosures Not Applicable to Example Shown in Exhibit E

Regulation Z prescribes other disclosures to be made in connection with loan credit which are not applicable to the illustrated example, such as, prepaid finance charge (d) (2) required deposit balance (d) (2) and balloon payment (b)(3), etc.

EXHIBIT F

NOTICE OF RIGHT OF RESCISSION

The following form is the form of notice of the right to rescind a transaction required to be given to customers under certain circumstances set forth in Section 226.9 of Regulation Z. This exhibit is set in capitals and lower case letters of 12 point bold faced type, the minimum size permissible under Regulation Z.

(Identification of Transaction)

Notice To Customer Required By Federal Law:

You have entered into a transaction on _____ which may
(Date)
result in a lien, mortgage, or other security interest on your home. You have a legal right under federal law to cancel this transaction, if you desire to do so, without any penalty or obligation within three business days from the above date or any later date on which all material disclosures required under the Truth in Lending Act have been given to you. If you so cancel the transaction, any lien, mortgage, or other security interest on your home arising from this transaction is automatically void. You are also entitled to receive a refund of any downpayment or other consideration if you cancel. If you decide to cancel this transaction, you may do so by notifying

(Name of Creditor)

at _____
(Address of Creditor's Place of Business)

by mail or telegram sent not later than midnight of _____ You
(Date)
may also use any other form of written notice identifying the transaction if it is delivered to the above address not later than that time. This notice may be used for that purpose by dating and signing below.

I hereby cancel this transaction.

(Date)

(Customer's signature)

EXHIBIT F

The following paragraph may appear on the face or the reverse side of the notice shown on the opposite page. If it appears on the reverse side of the notice, the face of the notice shall state, "See reverse side for important information about your right of rescission."

EFFECT OF RESCISSION. When a customer exercises his right to rescind under paragraph (a) of this section, he is not liable for any finance or other charge, and any security interest becomes void upon such a rescission. Within 10 days after receipt of a notice of rescission, the creditor shall return to the customer any money or property given as earnest money, downpayment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the customer, the customer may retain possession of it. Upon the performance of the creditor's obligations under this section, the customer shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the customer shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the customer, at the option of the customer. If the creditor does not take possession of the property within 10 days after tender by the customer, ownership of the property vests in the customer without obligation on his part to pay for it.

EXHIBIT G

**SAMPLE PAGE FROM TABLE FOR COMPUTING ANNUAL PERCENTAGE RATE
FOR LEVEL MONTHLY PAYMENT PLANS**

EXAMPLE

Finance charge = \$35.00; Total amount financed = \$200; Number of monthly payments = 24.

SOLUTION

Step 1—Divide the finance charge by the total amount financed and multiply by \$100. This gives the finance charge per \$100 of amount financed. That is, $\$35.00 \div \$200 = .1750 \times \$100 = \17.50 .

Step 2—Follow down the left hand column of the table to the line for 24 months. Follow across this line until you find the nearest number to \$17.50. In this example \$17.51 is closest to \$17.50. Reading up the column of figures shows an annual percentage rate of 16%.

NUMBER OF PAYMENTS	ANNUAL PERCENTAGE RATE															
	14.00%	14.25%	14.50%	14.75%	15.00%	15.25%	15.50%	15.75%	16.00%	16.25%	16.50%	16.75%	17.00%	17.25%	17.50%	17.75%
	(FINANCE CHARGE PER \$100 OF AMOUNT FINANCED)															
1	1.17	1.19	1.21	1.23	1.25	1.27	1.29	1.31	1.33	1.35	1.37	1.40	1.42	1.44	1.46	1.48
2	1.75	1.78	1.82	1.85	1.88	1.91	1.94	1.97	2.00	2.04	2.07	2.10	2.13	2.16	2.19	2.22
3	2.34	2.38	2.43	2.47	2.51	2.55	2.59	2.64	2.68	2.72	2.76	2.80	2.85	2.89	2.93	2.97
4	2.93	2.99	3.04	3.09	3.14	3.20	3.25	3.30	3.36	3.41	3.46	3.51	3.57	3.62	3.67	3.73
5	3.53	3.59	3.65	3.72	3.78	3.84	3.91	3.97	4.04	4.10	4.16	4.23	4.29	4.35	4.42	4.48
6	4.12	4.20	4.27	4.35	4.42	4.49	4.57	4.64	4.72	4.79	4.87	4.94	5.02	5.09	5.17	5.24
7	4.72	4.81	4.89	4.98	5.06	5.15	5.23	5.32	5.40	5.49	5.58	5.66	5.75	5.83	5.92	6.00
8	5.32	5.42	5.51	5.61	5.71	5.80	5.90	6.00	6.09	6.19	6.29	6.38	6.48	6.58	6.67	6.77
9	5.92	6.03	6.14	6.25	6.35	6.46	6.57	6.68	6.78	6.89	7.00	7.11	7.22	7.32	7.43	7.54
10	6.53	6.65	6.77	6.88	7.00	7.12	7.24	7.36	7.48	7.60	7.72	7.84	7.96	8.08	8.19	8.31
11	7.14	7.27	7.40	7.53	7.66	7.79	7.92	8.05	8.18	8.31	8.44	8.57	8.70	8.83	8.96	9.09
12	7.74	7.89	8.03	8.17	8.31	8.45	8.59	8.74	8.88	9.02	9.16	9.30	9.45	9.59	9.73	9.87
13	8.36	8.51	8.66	8.81	8.97	9.12	9.27	9.43	9.58	9.73	9.89	10.04	10.20	10.35	10.50	10.66
14	8.97	9.13	9.30	9.46	9.63	9.79	9.96	10.12	10.29	10.45	10.62	10.78	10.95	11.11	11.28	11.45
15	9.59	9.76	9.94	10.11	10.29	10.47	10.64	10.82	11.00	11.17	11.35	11.53	11.71	11.88	12.06	12.24
16	10.20	10.39	10.58	10.77	10.95	11.14	11.33	11.52	11.71	11.90	12.09	12.28	12.46	12.65	12.84	13.03
17	10.82	11.02	11.22	11.42	11.62	11.82	12.02	12.22	12.42	12.62	12.83	13.03	13.23	13.43	13.63	13.83
18	11.45	11.66	11.87	12.08	12.29	12.50	12.72	12.93	13.14	13.35	13.57	13.78	13.99	14.21	14.42	14.64
19	12.07	12.30	12.52	12.74	12.97	13.19	13.41	13.64	13.86	14.09	14.31	14.54	14.76	14.99	15.22	15.44
20	12.70	12.93	13.17	13.41	13.64	13.88	14.11	14.35	14.59	14.82	15.06	15.30	15.54	15.77	16.01	16.25
21	13.33	13.58	13.82	14.07	14.32	14.57	14.82	15.06	15.31	15.56	15.81	16.06	16.31	16.56	16.81	17.07
22	13.96	14.22	14.48	14.74	15.00	15.26	15.52	15.78	16.04	16.30	16.57	16.83	17.09	17.36	17.62	17.88
23	14.59	14.87	15.14	15.41	15.68	15.96	16.23	16.50	16.78	17.05	17.32	17.60	17.88	18.15	18.43	18.70
24	15.23	15.51	15.80	16.08	16.37	16.65	16.94	17.22	17.51	17.80	18.09	18.37	18.66	18.95	19.24	19.53
25	15.87	16.17	16.46	16.76	17.06	17.35	17.65	17.95	18.25	18.55	18.85	19.15	19.45	19.75	20.05	20.36
26	16.51	16.82	17.13	17.44	17.75	18.06	18.37	18.68	18.99	19.30	19.62	19.93	20.24	20.56	20.87	21.19
27	17.15	17.47	17.80	18.12	18.44	18.76	19.09	19.41	19.74	20.06	20.39	20.71	21.04	21.37	21.69	22.02
28	17.80	18.13	18.47	18.80	19.14	19.47	19.81	20.15	20.48	20.82	21.16	21.50	21.84	22.18	22.52	22.86
29	18.45	18.79	19.14	19.49	19.83	20.18	20.53	20.88	21.23	21.58	21.94	22.29	22.64	22.99	23.35	23.70
30	19.10	19.45	19.81	20.17	20.54	20.90	21.26	21.62	21.99	22.35	22.72	23.08	23.45	23.81	24.18	24.55
31	19.75	20.12	20.49	20.87	21.24	21.61	21.99	22.37	22.74	23.12	23.50	23.88	24.26	24.64	25.02	25.40
32	20.40	20.79	21.17	21.56	21.95	22.33	22.72	23.11	23.50	23.89	24.28	24.68	25.07	25.46	25.86	26.25
33	21.06	21.46	21.85	22.25	22.65	23.04	23.44	23.84	24.24	24.64	25.04	25.44	25.84	26.24	26.64	27.04
34	21.72	22.13	22.54	22.95	23.37	23.78	24.19	24.61	25.02	25.44	25.86	26.28	26.70	27.12	27.54	27.97
35	22.38	22.80	23.23	23.65	24.08	24.51	24.94	25.36	25.79	26.23	26.66	27.09	27.52	27.96	28.39	28.83
36	23.04	23.48	23.92	24.35	24.80	25.24	25.68	26.12	26.57	27.01	27.46	27.90	28.35	28.80	29.25	29.70
37	23.70	24.16	24.61	25.06	25.51	25.97	26.42	26.88	27.34	27.80	28.26	28.72	29.18	29.64	30.10	30.57
38	24.37	24.84	25.30	25.77	26.24	26.70	27.17	27.64	28.11	28.59	29.06	29.53	30.01	30.49	30.96	31.44
39	25.04	25.52	26.00	26.48	26.96	27.44	27.92	28.41	28.89	29.38	29.87	30.36	30.85	31.34	31.83	32.32
40	25.71	26.20	26.70	27.19	27.69	28.18	28.68	29.18	29.68	30.18	30.68	31.18	31.68	32.19	32.69	33.20
41	26.39	26.89	27.40	27.91	28.41	28.92	29.44	29.95	30.46	30.97	31.49	32.01	32.52	33.04	33.56	34.08
42	27.06	27.58	28.10	28.62	29.15	29.67	30.19	30.72	31.25	31.78	32.31	32.84	33.37	33.90	34.44	34.97
43	27.74	28.27	28.81	29.34	29.88	30.42	30.96	31.50	32.04	32.58	33.13	33.67	34.22	34.76	35.31	35.86
44	28.42	28.97	29.52	30.07	30.62	31.17	31.72	32.28	32.83	33.39	33.95	34.51	35.07	35.63	36.19	36.76
45	29.11	29.67	30.23	30.79	31.36	31.92	32.49	33.06	33.63	34.20	34.77	35.35	35.92	36.50	37.08	37.66
46	29.79	30.36	30.94	31.52	32.10	32.68	33.26	33.84	34.43	35.01	35.60	36.19	36.78	37.37	37.96	38.56
47	30.48	31.07	31.66	32.25	32.84	33.44	34.03	34.61	35.21	35.81	36.41	37.01	37.61	38.21	38.81	39.41
48	31.17	31.77	32.37	32.98	33.59	34.20	34.81	35.42	36.03	36.64	37.25	37.86	38.48	39.10	39.71	40.33
49	31.86	32.48	33.09	33.71	34.34	34.96	35.59	36.21	36.84	37.47	38.10	38.74	39.37	40.01	40.65	41.29
50	32.55	33.18	33.82	34.45	35.09	35.73	36.37	37.01	37.65	38.30	38.94	39.59	40.24	40.89	41.55	42.20
51	33.25	33.89	34.54	35.19	35.84	36.49	37.15	37.81	38.46	39.12	39.79	40.45	41.11	41.78	42.45	43.12
52	33.95	34.61	35.27	35.93	36.60	37.27	37.94	38.61	39.28	39.96	40.63	41.31	41.99	42.67	43.36	44.04
53	34.65	35.32	36.00	36.68	37.36	38.04	38.72	39.41	40.10	40.79	41.48	42.17	42.87	43.57	44.27	44.97
54	35.35	36.04	36.73	37.42	38.12	38.82	39.52	40.22	40.92	41.63	42.33	43.04	43.75	44.47	45.18	45.90
55	36.05	36.76	37.46	38.17	38.88	39.60	40.31	41.01	41.74	42.47	43.19	43.91	44.64	45.37	46.10	46.83
56	36.76	37.48	38.20	38.92	39.65	40.38	41.11	41.84	42.57	43.31	44.05	44.79	45.53	46.27	47.02	47.77
57	37.47	38.20	38.94	39.68	40.42	41.16	41.91	42.65	43.40	44.15	44.91	45.66	46.42	47.18	47.94	48.71
58	38.18	38.93	39.68	40.43	41.19	41.95	42.71	43.47	44.23	45.00	45.77	46.54	47.32	48.09	48.87	49.65
59	38.89	39.66	40.42	41.19	41.96	42.74	43.51	44.29	45.07	45.85	46.64	47.42	48.21	49.01	49.80	50.60
60	39.61	40.39	41.17	41.95	42.74	43.53	44.32	45.11	45.91	46.71	47.51	48.31	49.12	49.92	50.73	51.55

The table shown on the opposite page (Exhibit G) is one page out of the tables compiled by the Federal Reserve Board to assist creditors in figuring out the annual percentage rate of the cost of credit, or the amount of the finance charge for a given rate. These tables are described on page 4 of this pamphlet.

**Board of Governors
of the
Federal Reserve System**

**TRUTH IN LENDING
REGULATION Z
INTERPRETATIONS**

As of September 11, 1969, thirty-nine interpretations of Regulation Z have been issued by the Board. Although the interpretations are listed in the table of contents under the main section of the Regulation to which they relate, in some cases an interpretation may be applicable to more than one section. In these cases, cross references are shown in the table of contents.

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**TRUTH IN LENDING
INTERPRETATIONS OF REGULATION Z
SECTION 226.2**

**SECTION 226.201—LAY-AWAY PLANS AS
EXTENSIONS OF CREDIT**

Many vendors offer Lay-Away Plans under which they retain the merchandise for a customer until the cash price is paid in full and the customer has no contractual obligation to make payments and may, at his option, revoke a purchase made under the plan and request and receive prompt refund of any amounts paid toward the cash price of the merchandise.

A purchase under such a Lay-Away Plan shall not be considered an extension of credit subject to the provisions of Regulation Z.

5/5/69

**SECTION 226.202—SECURITY INTEREST—
CONFESSION OF JUDGMENT—
COGNOVIT NOTES**

Under § 226.2(z) "security interest" is defined to include confessed liens whether or not recorded and, in general, to include any interest in property which secures payment or performance of an obligation. In certain transactions involving a security interest, under § 226.9 the customer has a right of rescission.

In some of the States, confession of judgment clauses or cognovit provisions are lawful and make it possible for the holder of an obligation containing such clause or provision to record a lien on property of the obligor simply by recordation entry of judgment; the obligor is afforded no opportunity to enter a defense against such action prior to entry of the judgment.

Since confession of judgment clauses and cognovit provisions in such States have the effect of depriving the obligor of the right to be notified of a pending action and to enter a defense in a judicial proceeding *before* judgment may be entered or recorded against him, such clauses and provisions in those States are security interests under § 226.2(z) and for the purposes of § 226.7 (a)(7), § 226.8(b)(5), and § 226.9. This is the case even if the judgment cannot be entered until after a default by the obligor.

Confession of judgment clauses and cognovit provisions which, by their terms, exclude a lien on all real property which is used or is expected to be used as the principal residence of the cus-

tomers, would not bring a transaction under the provisions of § 226.9.

5/26/69

**SECTION 226.203—OPEN END CREDIT
DISTINGUISHED FROM OTHER CREDIT**

The fundamental qualification for "open end credit" under § 226.2(r) is that consumer credit be extended on an account pursuant to a plan under which (1) the creditor may permit the customer to make purchases or obtain loans from time to time directly or indirectly from the creditor, as the plan may provide; (2) the customer has the privilege of paying the balance in full or in installments; and (3) a finance charge may be computed by the creditor from time to time on an outstanding unpaid balance. Under an open end credit account plan, it is contemplated that there will or may be repetitive transactions on a revolving basis.

In certain cases, a form of contract or note relating to a single transaction provides that the finance charge be computed from time to time by application of a rate to the unpaid balance and stipulates required minimum periodic payments. However, the obligor has the privilege of making larger and more frequent payments than stipulated or paying the obligation in full at any time without penalty. The question arises as to whether the creditor should make disclosures in such circumstances under § 226.7 for open end credit accounts or under § 226.8 for credit other than open end.

Although the terms of such a contract or note meet the second and third requirements for such a plan, they do not meet the first of such requirements nor the basic qualification that consumer credit be extended on an account pursuant to a plan. Therefore, disclosures in this case are required to be made under § 226.8.

5/26/69

SECTION 226.3

**SECTION 226.301—AGRICULTURAL
PURPOSES—WHEN EXEMPT FROM
THE REGULATION**

Under § 226.3(a), the Regulation does not apply to "Extensions of credit to organizations, including governments, or for business or commercial purposes, other than agricultural purposes." The definition of "organization" in § 226.2(s)

includes a corporation, trust, estate, partnership, cooperative, or association as well as governmental entities. The question arises as to whether the Regulation applies to extensions of credit to organizations, including governments, for agricultural purposes.

Extensions of credit to organizations, including governments, for agricultural purposes are exempt from the Regulation.

5/26/69

SECTION 226.4

SECTION 226.401—SERVICE CHARGES ON ACCOUNTS NOT PAID WITHIN A GIVEN PERIOD OF TIME

Some vendors bill their customers for property or services purchased under the terms of a credit plan which requires that the full amount of each billing be paid within a stipulated period after billing, with no privilege of paying in instalments. If a bill is not paid within that stipulated period of time, the vendor imposes a service charge periodically on the unpaid balance until the account is paid in full. The question arises as to whether Regulation Z applies to such transactions.

When in the ordinary course of business a vendor's billings are not paid in full within that stipulated period of time, and under such circumstances the vendor does not, in fact, regard such accounts in default, but continues or will continue to extend credit and impose charges periodically for delaying payment of such accounts from time to time until paid, the charge so imposed comes within the definitions of a "finance charge" [§ 226.2(q)] applicable in each case to the amount of the unpaid balance of the account. Under such circumstances the credit so extended comes within the "open end credit" in § 226.2(r), the vendor is a creditor as defined in § 226.2(m), and the disclosures required for open end credit accounts under § 226.7 shall be made.

4/22/69

SECTION 226.402—TERM OF INSURANCE COVERAGE

Under § 226.4(a)(5) and (6) certain disclosures of insurance premium costs, if applicable, are required. The question arises as to whether such amounts of cost disclosed must include the cost of insurance for the full term of the transaction.

Under § 226.4(h) the cost of insurance for the full period of insurance coverage which the creditor will require shall be disclosed if the cost of the insurance premium is required to be included in the finance charge. However, if the cost of insurance is

not required to be included in the finance charge, the cost to be disclosed need only be the cost of premiums for the term of the initial policy or policies written in connection with the transaction, accompanied by a statement of the type of insurance and the term thereof.

5/5/69

SECTION 226.403—DISCLOSURE OF COST OF PROPERTY INSURANCE WHEN NOT OBTAINABLE FROM OR THROUGH THE CREDITOR

In many cases a creditor requires insurance against loss or damage to property or liability arising out of its use but such insurance is not obtainable from or through him. The question arises under § 226.4(a)(6) as to whether such a creditor must make any disclosures to avoid having to include the insurance premium in the finance charge.

Irrespective of whether such insurance may be obtained from or through the creditor, if the creditor requires property insurance and wishes to exclude the cost from the finance charge, he is required to state clearly and conspicuously to the customer that he may choose the person through which the insurance is to be obtained. However, if the insurance is not obtainable from or through the creditor, he is not required to disclose the cost of that insurance, unless, of course, the premiums are included in the "amount financed, in which case it would have to be disclosed under § 226.8(c)(4) or (d)(1), as the case may be.

5/26/69

SECTION 226.404—PREMIUMS FOR VENDOR'S SINGLE INTEREST INSURANCE REQUIRED BY CREDITOR

Under § 226.4(a)(6), charges or premiums for insurance, written in connection with credit transaction, against loss of or damage to property may be excluded from the finance charge if the creditor makes the disclosures required under that subparagraph. Under § 226.4(a)(7), a premium or other charge for any other guarantee or insurance protecting the creditor against the customer's default or other credit loss is included in the finance charge. The question arises as to whether Vendor's Single Interest (V.S.I.) coverage, when required by the creditor to be written in connection with a transaction, is insurance of the type described in § 226.4(a)(6) or in § 226.4(a)(7).

V.S.I. coverage is written only in connection with a credit transaction and indemnifies the creditor against, among other perils, conversion, em-

bezzlement, and secretion of the collateral by the customer; and amounts payable on account of loss are payable only to the creditor; and the amount of any indemnity payable under the policy is directly related to the amount of the credit loss, in that such indemnity can never exceed the amount of the unpaid principal balance of the debt. The insurer has no liability under a V.S.I. policy unless, at the time the policy was written, no payment was more than a specified number of days past due, and a claim under the policy is not valid unless the customer has defaulted in payment. Additionally, many V.S.I. policies indemnify the creditor against expense incurred in transporting the collateral to the creditor from the place of repossession.

V.S.I. coverage is, therefore, insurance which protects the creditor against the customer's default or other credit loss, and when required by the creditor to be written in connection with any transactions, the premium therefor is included in the finance charge under § 226.4(a)(7).

8/1/69

SECTION 226.405—PROPERTY INSURANCE WRITTEN IN CONNECTION WITH A TRANSACTION—OBTAINED FROM OR THROUGH THE CREDITOR

Footnote 4 to § 226.4(a)(6) specifies that a policy of insurance against loss or damage to property or liability arising out of its use is not considered to be "written in connection with" a transaction when it " . . . was not purchased by the customer for the purpose of being used in connection with that extension of credit." Therefore, whenever such a policy is purchased by the customer for the purpose of being used in connection with a specific extension of credit, it is insurance "written in connection with" that transaction.

If the customer elects to purchase such insurance otherwise than from or through the creditor, the creditor is not required to disclose the cost of the insurance or include the premium in the finance charge. However, if the cost of such insurance is to be financed through the creditor, the premiums must be included in the "amount financed" and disclosed under § 226.8(c)(4) or (d)(1), as the case may be.

9/11/69

SECTION 226.5

SECTION 226.501—USE OF RANGES OR BRACKETS TO DETERMINE PERIODIC RATE OF FINANCE CHARGE ON OPEN END ACCOUNTS

Section 226.5() of Regulation Z, in effect, gives a creditor the option in certain circumstances of stating (1) two or more separate annual percentage rates (e.g., the rate on a \$700 balance might be stated as 18% on balance to \$500 and 12% on balance over \$500), or (2) a single annual percentage rate determined by the "quotient method" resulting from applying the rates to a total balance (e.g., in the example above, an annual percentage rate of 16¼% on a \$700 balance).

Section 226.5(a)(2), which relates to the use of ranges or brackets to compute periodic finance charges, does not prevent a creditor who uses such brackets from exercising the options referred to in section 226.5(a)(1).

4/2/69

SECTION 226.502—ANNUAL PERCENTAGE RATE ON SINGLE ADD-ON RATE TRANSACTIONS

The application of a single add-on rate to transactions of varying maturities, when converted to an annual percentage rate determined by the actuarial method, results in minor variations. Such annual percentage rate variations on maturities up to 60 months are so insignificant that separate computations are unwarranted.

The question arises as to whether a creditor may disclose a single annual percentage rate on all such transactions based upon the highest rate which will arise from the application of the same single add-on rate to each of such transactions.

When the same add-on rate is applied to all transactions within a range of maturities up to 60 months, and provided that all payments on each transaction are equal in amount and due at equal intervals of time within the limits provided by § 226.5(d), a single annual percentage rate may be disclosed, in which case it shall be the highest annual percentage rate that may be applicable to any such transactions.

5/26/69

SECTION 226.503—MINOR IRREGULARITIES—MAXIMUM IRREGULAR PERIOD LIMITS

Section 226.5(d) specifies certain minimums in determining what minor irregularities in first payment periods may be disregarded in determining the annual percentage rate. The question arises