

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 86/2

2491 HJ SB 397 - SB 504

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A PERFORMANCE REPORT ON THE
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD

January 30, 1984

Audit Control Number

04-1149-84-R

Commissioner, Department
of Revenue

Robert D. Heath

Deputy Commissioners,
Department of Revenue:

Taxation
Treasury

Bruce M. Botelho
Milton B. Barker

Members of the
Alcoholic Beverage Control Board

Chairman
Member
Member
Member
Member

William K. Smith
Wesley D. Wallace
Donald J. House
E. L. Holloway
Jane C. Perkins

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

JUNEAU, ALASKA 99811

January 30, 1984

Members of the
Legislative Budget and Audit Committee.

In accordance with the provisions of Title 24 of the Alaska
Statutes, the attached report is submitted for your review.

A PERFORMANCE REPORT ON THE
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD

January 30, 1984



Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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PURPOSE OF THE REPORT

In accordance with the provisions of Alaska Statutes 24.20.271(1) and 44.60.050 (Sunset legislation) an examination of the Alcoholic Beverage Control Board was conducted to determine if the Board has been operating in an efficient and effective manner and if the Board should be reestablished.

As required by legislative intent, this report should be considered during the legislative oversight function in determining if the Alcoholic Beverage Control Board should be reestablished. Per the 1983 amendment to AS 44.66.010(A)(1), the Board is scheduled to terminate on June 30, 1984.

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Enforcement. The ABC Board currently employs five investigators - three operating from the Anchorage central office, one operating from the Fairbanks field office, and one operating from the Juneau field office. One Anchorage Investigator position is vacant. Services provided include (1) surveillance and inspections of licensed premises, (2) investigations to obtain information to be used in criminal and civil proceedings and investigations into suspected licensing violations, (3) public appearances relating to ABC laws and regulations, and (4) assisting the licensing staff in handling inquiries from the general public.

ORGANIZATION AND FUNCTION

The Alcoholic Beverage Control Board (hereinafter referred to as the ABC Board or the Board) was established in 1959 by Title 4 of the Alaska Statutes as a regulatory, quasi-judicial agency. The Board is vested with the powers, duties, and responsibilities for the control of alcoholic beverages, including the power to propose and adopt regulations, and to hear appeals.

Members are appointed for three-year terms by the Governor and serve at his pleasure subject to confirmation by the Legislature. Membership is limited by statute to five persons (two liquor industry representatives, three non-industry representatives). A director, also appointed by the Governor, serves as executive officer and is responsible for enforcement of Title 4 liquor laws and regulations developed by the Board. Although he is not a member of the Board, the director may cast a tie-breaking vote. Under the direction of the Board, the director may issue, renew, transfer, revoke or suspend licenses or permits.

Title 4 prescribes the type of licenses, fees, and specific activities allowed under each license classification (see schedule of license types and fees in Appendix C). Fees are payable at the time of application. To renew an already existing liquor license, the application must be filed (and the corresponding fees paid) on or before February 28. On January 1, 1984 the Board adopted emergency regulations to set a moratorium on the issuance of certain new license within the State. The primary purpose of the moratorium is to avail time to the Board to reevaluate its current criteria for license application approvals. This moratorium will be in effect until April 30, 1984.

The staff of the ABC Board is divided into three major functions: administration, licensing, and enforcement. A brief description of the services provided by those functions follows.

Administration. The director of the ABC Board provides all administrative support needed by the Board including overseeing all staff functions, preparing budget documents, and directing the preparation and implementation of administrative and public hearings, and directing special enforcement investigations.

Licensing. The licensing staff currently consists of three full-time employees responsible for issuing and receiving application forms, maintaining records and files for all licenses, collecting fees, issuing all licenses and permits authorized by the Board, and answering inquiries from the general public on routine licensing matters.

REPORT CONCLUSION

Policy Issues

This review contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting those practices are not within the scope of this review but require legislative consideration. In debating these decisions the legislative oversight committees should take into consideration the findings and recommendations presented in this report, so that the potential impact of the policy changes can be evaluated.

Report Conclusions

Title 4 of the Alaska Statutes established the ABC Board to control the manufacture, barter, possession and sale of alcoholic beverages in the State in order to protect the public's health, safety, and welfare. We believe that there is a demonstrated need for this control to continue to exist. In order to operate in a more efficient and effective manner the following recommendations should be implemented:

1. The ABC Board should improve documentation of its enforcement efforts.
2. The ABC Board should strengthen communications with law enforcement officers.
3. The ABC Board should establish procedures to monitor license fee refunds.
4. The ABC Board should improve its activity reporting system.
5. The Department of Revenue should review the ABC Board's transmittal of receipt procedures and establish procedures to transmit funds more efficiently.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The ABC Board should improve documentation of its enforcement efforts.

The ABC Board is mandated by statute to control the manufacture, barter, possession, and sale of alcoholic beverages in the State. When a violation is observed or reported, the ABC Board staff would issue a notice of violation, initiate an investigation, or file a criminal complaint. An enforcement file is maintained by the ABC Board to document actions taken. Our review of these files disclosed weaknesses in the following areas:

Investigations

Upon completion of an investigation by the enforcement staff a written report is prepared. The report is reviewed by the enforcement supervisor and submitted to the Director and/or Board for final action. Our review disclosed that adequate documentation is not maintained on enforcement activity. For instance, 16 of 25 enforcement files reviewed did not contain documentation of final action resulting from the Director and/or Board review. In addition, a review of 25 administrative files maintained by the Director showed that 17 files did not contain documentation of the informal conference held with the licensee and final resolutions made.

In order to improve the efficiency and effectiveness of operations, the ABC Board should implement procedures to ensure files are complete. Enforcement files should contain documentation of enforcement activity from inception to final resolution.

Notice of Violation (NOV)

The ABC Board utilizes an NOV to communicate to licensees that a violation allegedly occurred. NOVs of an by themselves carry no penalty, and present regulations do not require the licensee to respond to the NOV. Our review of 25 NOVs showed only 9 responses were received from licensees.

An NOV or an accumulation of NOVs could lead to the filing of an accusation or could initiate an investigation. In addition, NOVs may be reviewed by the Board in considering whether to suspend, revoke, or renew a license.

To provide for fair and balanced consideration by the Board, Director or enforcement officers, all licensees should be required to provide a written response to an NOV. The response should become a part of the decision on whether or

not additional action is warranted. Consideration should also be given to the assessment of a penalty to the licensee when no response is received after the issuance of an NOV.

Recommendation No. 2

The ABC Board should strengthen communications with law enforcement officers.

Our review of the ABC Board's law enforcement activities showed that the staff relies primarily on the services of local law enforcement officers to aid in enforcing liquor laws. To promote local enforcement, annual license fees, excluding wholesale fees, collected from licenses issued within a municipality are refunded semi-annually to the municipality.

Total license fees refunded to 40 municipalities in Fiscal Year 1983 was \$809,980. According to the ABC Board staff, they are unsure of what services are provided by several municipalities. No reports have been submitted by 20 of the 40 municipalities.

Alaska Statute 04.11.610(b) states that if the officers of a municipality fail to actively enforce local ordinances, laws of the United States and the State, and the regulations relating to the manufacture and sale of alcoholic beverages, the Commissioner of Revenue may deny the refund, until the Board finds the enforcement of the ordinances, laws and regulations is resumed. Alaska Statute 04.11.610(c) also provides for the recovery of any amount erroneously refunded.

As of January 1984, the ABC Board implemented procedures to monitor the number of reports received from law enforcement officers. We encourage the Board to continue this effort. In addition, the Board should review its enforcement requirements and inform all municipalities of the types of reports and/or services expected from each to ensure liquor law enforcement.

Recommendation No. 3

The ABC Board should establish procedures to monitor license fee refunds.

If an application for an alcoholic beverage license or permit is denied by the ABC Board, the applicant is required by Board procedures to submit a claim for a refund of the license fee paid. Upon receipt, the claim is reviewed and endorsed by the ABC Board's staff. The claim is then forwarded to the Department of Revenue for processing.

A review of the ABC Board's records showed that no reconciliation is performed between the amount requested and the amount disbursed. In addition, no accounting is maintained of the number and amount of unclaimed refunds. Discussion with the ABC Board's staff disclosed that several applicants are long overdue in submitting their claims. For example, four claims processed in Fiscal Year 1983 totalling \$2,200 were for refunds resulting from denials made prior to 1979.

Unclaimed refunds are a liability to the State and should be accounted for accordingly. Therefore, we recommend that the ABC Board establish procedures to automatically refund licensee fees when the denial action taken by the Board is known to be final. Supervisory review and approval should be required on all refunds processed. Refunding procedures should also include a summary of outstanding refunds, and a reconciliation of the amount requested to the amount disbursed.

Recommendation No. 4

The ABC Board should improve its activity reporting system.

Statistical information summarizing Board actions, licensing activities and enforcement activities is compiled annually by ABC Board's staff. These statistics are utilized as performance indicators for in-house and budgetary reporting. Our review of Fiscal Year 1983 summaries disclosed the following weaknesses:

- A. Enforcement activity summaries do not adequately reflect staff performance. For example, investigations are reported when completed. The man-hours required to conduct each investigation varies directly with the purpose and scope of the investigation. One investigation may take several months to complete, however no accounting is maintained on the man-hours required.
- B. Activity summaries are not accurate. Two material reporting errors were found as a result of our review. Total licenses revoked by the Board were erroneously reported at thirty-seven instead of four. The reported figure included thirty-three actions which should have been classified as denials or non-renewals. In addition, total investigations were reported at seventy-four, however only fifty were recorded.

The ABC Board should develop and implement policies and procedures to adequately measure staff performance and to promote accurate reporting of its activities.

Recommendation No. 5

The Department of Revenue should review the ABC Board's transmittal of receipt procedures and establish procedures to transmit funds more efficiently.

Revenues collected by the ABC Board consisting of application and license fees are deposited approximately once a week in a non-interest bearing bank account. Due to staff limitations and time allotted for bank verification, a check for the amount deposited is not prepared until several days later and forwarded to the Division of Treasury.

A review of the ABC Board's bank statements showed that the average monthly balance for Fiscal Year 1983 was \$87,828. Interest income is lost as a result of transmittal delays by the ABC Board. The Department of Revenue should establish procedures to have funds wire transferred to the Division of Treasury upon deposit or authorize the establishment of an interest bearing depository account to be maintained by the ABC Board.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analysis indicates both positive and negative attainments of the ABC Board and how its activities relate to the public need factors defined by AS 44.66.050. This analysis is not intended to be comprehensive in nature.

I. The extent to which the board, commission or program has operated in the public interest.

Public protection gained through licensing to control the manufacture, possession and sale of alcoholic beverages has been adequately provided by the ABC Board. However, operational efficiency and effectiveness should be improved. See Recommendations 1 through 5 of this report.

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personal matter.

The 1980 revisions to Title 4 have, for the most part, been beneficial to the operation of the ABC Board. However, those sections which deal with suspension and revocation of licenses and permits place severe restrictions upon the ability of ABC to suspend and revoke licenses for the illegal act of licensee employees.

The Board is also restricted in meeting its statutory responsibilities in protecting the public health, safety and welfare by the size of the enforcement staff which consists of one agent in Juneau, one in Fairbanks and three, including a supervisory agent in Anchorage. Including the supervisory agent, there are only five agents with inspection and enforcement responsibilities for 1,513 licensed premises. However, one other Anchorage Investigator position is vacant.

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

The last major revisions to Title 4 of the Alaska Statutes were the result of action by the 1980 session of the Legislature. The ABC Board participated in the process of developing those revisions

- IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

The ABC Board has met an average of ten times during 1982 and 1983. During each year they have met at least once in each of the four judicial districts. Each meeting has been adequately advertised and open to all interested persons. Staff of the ABC Board are located in Anchorage, Juneau and Fairbanks and are available to answer inquiries of the general public during all normal business hours. We believe this has provided an adequate forum for allowing public input on Board regulations and decisions.

- V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

As noted in IV above, the Board has provided an adequate forum for obtaining input from the public.

- VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

As noted in past reviews the number of formal hearings continue to be few in number. However, the ABC Board has the authority to hold its own hearings on protests which it exercises as a part of its regularly scheduled meetings. Hearings in this manner have been accomplished in a timely manner since the Board meets at least ten times each year.

- VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

Our review of licensing activity of the ABC Board to determine whether all statutory qualifications of licensees were being met revealed no exceptions. The Board has therefore, presented qualified applicants to serve the public.

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

No discrepancies were noted during our review of the ABC Board affirmative action program.

IV. The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to I and II above and to the previous section, Findings and Recommendations.

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APPENDIXES

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APPENDIX A

STATE OF ALASKA
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
REVENUE COMPARED WITH EXPENDITURES
Fiscal Years 1981, 1982 and 1983
(UNAUDITED)
(Note 1)

	<u>1981</u>	<u>1982</u>	<u>1983</u>
Revenue (See Schedule 1)	\$1,494,489	\$1,548,393	\$1,592,957
Expenditures	<u>(556,589)</u>	<u>(562,178)</u>	<u>(605,131)</u>
<u>Excess of Revenue Over Expenditures</u>	<u>\$ 937,900</u>	<u>\$ 986,215</u>	<u>\$ 987,826</u>

Schedule 1
Revenue Collected

<u>Types of License</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>
Liquor License Application	\$ 83,250	\$ 86,350	\$ 86,950
Pub	100	400	400
Beverage Dispensary	771,050	773,200	799,050
Club	39,500	39,300	41,200
Common Carrier	25,800	29,050	30,500
Restaurant	60,750	69,600	73,550
Roadhouse	-0-	-0-	-0-
Retail Store	330,700	335,400	341,500
Wholesale General	138,500	156,000	146,700
Wholesale Malt Beverage	13,200	21,600	27,900
Miscellaneous (Note 2)	<u>31,639</u>	<u>37,493</u>	<u>45,207</u>
<u>Total</u>	<u>\$1,494,489</u>	<u>\$1,548,393</u>	<u>\$1,592,957</u>

Note 1

This revenue/expenditure comparison was prepared from available records and discussions with ABC Board personnel. The records were not audited by us and accordingly we do not express an opinion on the ABC Board Revenue Compared with Expenditures, nor the Schedule of Revenue Collected.

Note 2

Includes recreational-site licenses, caterer's special events and conditional contractor's permits.

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APPENDIX B

STATE OF ALASKA
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
NUMBER OF LICENSES BY TYPE
Fiscal Years 1981, 1982, and 1983

<u>Types of License</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>
Pub	1	1	1
Beverage Dispensary	620	634	645
Club	63	65	65
Common Carrier	72	88	94
Restaurant	182	215	223
Roadhouse	-0-	-0-	-0-
Retail Store	438	445	448
Wholesale General	15	16	16
Wholesale Malt Beverage	7	7	8
Miscellaneous (Note 1)	<u>9</u>	<u>12</u>	<u>13</u>
<u>Total</u>	<u>1407</u>	<u>1483</u>	<u>1513</u>

Note 1

Includes recreational-site licenses, caterer's special events and conditional contractor's permits.

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APPENDIX C

STATE OF ALASKA
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
DESCRIPTION OF LICENSE TYPES AND FEES

<u>Source</u>	<u>Description</u>	<u>Annual Fee</u>
Application Fee	For each license application.	\$ 50
Beverage Dispensary	To sell or serve on the licensed premises alcoholic beverages for consumption on the licensed premises only.	1,250
Restaurant or Eating Place	To sell beer and wine for consumption only on the licensed premises.	300
Club	To sell alcoholic beverages for consumption only on the licensed premises.	600
Bottling Works	To operate a bottling works where beer and wine may be bottled and sold.	250
Brewery	To operate a brewery where beer is manufactured and bottled or barreled for sale.	500
Winery	To operate a winery where wine is manufactured and bottled or barreled for sale.	250
Package Store	To sell alcoholic beverages to a person in response to a verbal solicitation for purchase received from the person present on the licensed premises or in response to a written solicitation made by a person known to the license for a purchase to be received by the person making the solicitation.	750
Retail Stock	To sell the remaining stock of a package liquor store when the owner wishes to close or terminate business. Sale may only be to licensed persons.	100

<u>Source</u>	<u>Description</u>	<u>Annual Fee</u>
General Wholesale	To sell alcoholic beverages in the original package, and wine in bulk, in quantities of not less than five gallons to holders of licenses.	\$1,000 First \$100,000 of sales plus \$500 - 10,000 on additional sales
Wholesale Malt Beverage and Wine	To sell malt beverages and wine in the original packages in quantities of not less than five wine gallons to holders of licenses.	200 First \$20,000 of sales plus \$300 - 10,000 based on additional sales
Distillery	To operate a distillery where alcoholic beverages are distilled and bottled or barreled for sale.	500
Community Liquor	Authorizes a municipality to operate a beverage dispensary or a package store or both subject to the same conditions and fees applicable to beverage dispensary or package liquor store licenses.	1,250 Beverage Dispensary 750 Package Store
Common Carrier Dispensary	To sell alcoholic beverages for consumption aboard a vehicle, boat, aircraft, or railroad buffet car licensed by the State or federal agency for passenger travel.	350 Per vehicle, boat, aircraft or railroad car
Recreational Site	To sell beer and wine at a recreational site during and one hour before and after a recreational event which is not a school event, for consumption on designated areas at the site.	400
Pub	To sell beer and wine for consumption only at designated premises located on the campus of an accredited college or university.	400
Caterer	Authorizes the holder of a beverage dispensary license to sell or dispense alcoholic beverages at conventions, picnics, social gatherings,	50

<u>Source</u>	<u>Description</u>	<u>Annual Fee</u>
	sporting events or similar affairs held off the holder's licensed premises.	
Special Events	To sell or dispense beer or wine for consumption at designated premises for a specific occasion and limited period of time. Only a nonprofit organization may acquire the permit.	\$50 Per day
Conditional Contractor	To sell beer or wine for consumption only on designated premises for one year from the date of issuance of the permit at construction sites which are located outside a city and inside the boundaries of a military or naval reservation.	600

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DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH S
JUNEAU, ALASKA 99811
PHONE: (907) 465-2300

February 24, 1984

Mr. Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, AK 99811



Dear Mr. Wilkerson:

This letter is in response to recommendations contained in your Performance Report of the Alcoholic Beverage Control Board dated January 30, 1984.

Recommendation No. 1 - The A.B.C. Board should improve documentation of its enforcement efforts.

We agree. Conclusions from and final actions from investigations, informal conferences and administrative hearings will be more precisely documented and recorded in pertinent files.

Recommendation No. 2 - The A.B.C. Board should strengthen communications with law enforcement officers.

We agree. This is an ongoing task for the board and its staff. We hope the monitoring procedures implemented recently will produce improved communications with other agencies.

Recommendation No. 3 - The A.B.C. Board should establish procedures to monitor license fee refunds.

We agree. Procedures to process and assess disposition of denied applications and related refund of license fees will be established.

Recommendation No. 4 - The A.B.C. Board should improve its activity reporting system.

We agree.

Item A. A man-hour reporting system for investigators is in place.

Item B. The discrepancy for total investigations reported resulted from "information only" notations by investigators on their daily reports erroneously recorded by clerical staff as "completed" investigations. Improved communication and control within the enforcement staff has begun to prevent this kind of error from reoccurring.

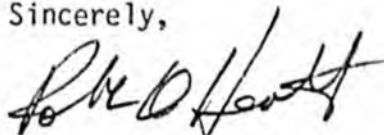
Mr. Gerald L. Wilkerson, CPA
Legislative Auditor
February 24, 1984
Page 2

Recommendation No. 5 - The Department of Revenue should review the A.B.C. Board's transmittal of receipt procedures and establish procedures to transmit funds more efficiently.

We agree. The department is vigorously reviewing cash receipt management in all departments at the present time.

On behalf of the A.B.C. Board and its staff we commend your staff who performed this audit for their professionalism and conduct. Thank you for your constructive and appropriate recommendations.

Sincerely,



Robert D. Heath
Commissioner of Revenue

RDH:PLS:m11

cc: Patrick L. Sharrock, Director
A.B.C Board
A.B.C Board Members

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BILL SHEFFIELD
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 6, 1984

The Honorable Jalmar Kerttula
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator Kerttula:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill appropriating a total of \$314,205 to the Alaska Court System.

The first section of the bill appropriates \$285,000 from the general fund to offset the deficit created by underfunding the FY ~~83~~⁸⁴ cost-of-living pay increase. When funds were appropriated for that increase, the level of funding was set at approximately 75 percent of the estimated cost of the increase for existing employees. In addition, pay increase funds were not provided for the eight new positions received by the trial courts in FY 84. The court system has attempted to reduce the deficit by extending vacancies, eliminating overlaps, and reducing overtime to the extent possible. Through these efforts, the trial courts will have realized a savings of \$400,000 by the end of this fiscal year.

The second section of the bill appropriates \$29,205 from the general fund to pay FY 83 outstanding obligations for library materials. Inadvertently, invoices were not processed in a timely manner, and the court system has actually lapsed sufficient funds to cover these claims.

Additional backup material will be furnished to the finance committee.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Sheffield".

Bill Sheffield
Governor



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

303 K Street
Anchorage, Alaska 99501

ROBERT G. FISHER
Manager of Fiscal Operations

January 23, 1984

Carolyn Martin
Senior Budget Analyst
Office of Management & Budget
Pouch AM
Juneau, AK 99811

Dear Carolyn:

Accompanying this letter is the Court System's request for a supplemental appropriation in the amount of \$285,000 for the trial court budget request unit for fiscal year 1984. The additional funds are requested to offset the deficit in the current year budget, which was created by the underfunding of the FY 83 84 general cost-of-living pay increase.

When funds were appropriated for the pay increase, the level of funding was set at approximately 80% of the estimate cost of the increase for existing employees. Additionally, pay increase funds were not provided for the new positions received by the trial courts in FY 84. The requested funds will cover the projected underfunding deficit in the current year. The Court System has requested funds in the FY 85 operating budget to cover the on-going cost of the pay increase in the next fiscal year.

The Court System has made every effort to reduce the deficit through other means. However, no other funds are available and full staffing is needed in the trial courts to keep pace with the high rate of growth in caseload.

Sincerely,

Robert G. Fisher
Fiscal Officer

RGF/11

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FY 84 SUPPLEMENTAL REQUEST ANALYSIS

	1	2	3	4	5	6	7	8	9	10
	FY 82 ACTUAL	FY 83 FINAL AUTH	FY 83 ACTUAL	FY 84 GOV. AMEND. BUDGET	FY 84 INITIAL AUTH.	FY 84 CURRENT AUTH.	FY 84 EXPENDITURES + ENCUMBRANCES 7/1 to	FY 84 OTHER OBLIGATIONS 7/1/ to 12/31	FY 84 PROJECTED EXPENDI- TURES + 1/1 to 6/30	FY 84 (DEFICIT) OR EXCESS
PERSONAL SERVICES	17,213.7	19,941.3	19,940.3	20,271.3	21,635.2	21,635.2	9,633.8	128.4	12,158.0	285.0
TRAVEL										
CONTRACTUAL SERVICES										
COMMODITIES										
EQUIPMENT										
LANDS, BLDG.										
GRANTS, CLAIMS										
MISCELLANEOUS										
TOTAL										
FEDERAL RECEIPTS										
REQUIRED GF MATCHING										
OTHER GENERAL FUND										
INTER-AGENCY RECEIPTS										

AGENCY: Alaska Court System

BRU: Trial Courts

COMPONENT: Trial Courts

Revised _____

SB408



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

303 K Street
Anchorage, Alaska 99501

ROBERT G. FISHER
Manager of Fiscal Operations

January 23, 1984

Carolyn Martin
Senior Budget Analyst
Office of Management & Budget
Pouch AM
Juneau, AK 99811

Dear Carolyn:

The Court System is requesting a supplemental appropriation for \$30,000 for several unpaid prior year bills for library materials from Commerce Clearing House. The bills originated in fiscal years 1982 and 1983. The unpaid amounts are \$803.85 and \$29,205.00, respectively. The Court System lapsed sufficient funds in each fiscal year to cover the unpaid claims.

Due to changes in personnel, I have not been able to ascertain the reason the bills were not paid in a timely manner. Nevertheless, the charges are valid and must be paid. A statement is enclosed, which provides information on the unpaid bills. The statement has been amended to reflect the correct amount due.

It is requested that these obligations be included in the FY 84 Miscellaneous Claims Supplemental Appropriation.

Sincerely,

Robert G. Fisher
Fiscal Officer

RGF/11

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REPEAL OF POOLED MUSIC COPYRIGHT LAW

AS 45.50.330-.460

It is recommended that Alaska's 1939 pooled music copyright law, AS 45.50.330-.460, be repealed. The law is archaic, obsolete, imposes massive useless paperwork burdens on State agencies, and is of doubtful validity in light of subsequent federal legislation and court decisions.

1. Obsolete. The law was adopted by the Alaska Territorial Legislature in 1939 in response to conditions and practices then existing in the licensing and use of copyrighted musical compositions. In the forty-three years since then, the industry has changed dramatically, but the Alaska law remains as an anachronism.

2. Repeals by Other States. In the late 1930's several states adopted similar statutes. These statutes have now been repealed in Washington, Florida, Montana, Nebraska, Tennessee and Wyoming.

3. Conflict with Federal Law. The validity of the Alaska law is doubtful in light of post-1939 developments in federal statutory and case law. These developments include a comprehensive revision of copyright law under the Federal Copyright Act of 1976, which pre-empted State copyright laws, and two consent decrees governing licensing of copyrighted musical works.

4. Useless Collection and Accumulation of Paperwork. The Alaska law requires that massive amounts of paperwork be filed with and retained by the Department of Administration, none of which serves any useful purpose. The filings create expensive and unnecessary administration and storage problems and have not been used by either the public or the State. Comparable information is available to the public from the Federal Copyright Office.

COPY JUDICIARY MEMBERS

W. EUGENE GUESS 1932-1975
JOSEPH RUDD 1933-1978
THEODORE E. FLEISCHER
FRANCIS E. SMITH, JR.
HERBERT BERKOWITZ
MICHAEL G. BRIGGS
DAVID H. BUNDY
HARRIS SAXON
PHILLIP J. EIDE
GARY A. ZIPKIN
JOSEPH M. WILSON
GORDON E. EVANS
LOUIS R. VEERMAN
CLIFFORD W. HOLST
RICHARD M. ROSSTON
JAMES D. LINXWILER
JOSEPH J. PERKINS, JR.
PEGGY MENTELE
DANIEL WEBER
GLENN E. CRAVEZ
PATRICK J. COUGHLIN
LYNN M. ALLINGHAM
TRICIA COLLINS
MARK E. WILKERSON
DEBRA J. BRANDWEIN
KIRSTEN TINGLUM
ROBERT A. BASSETT

LAW OFFICES OF
ELY GUESS & RUDD
A PROFESSIONAL CORPORATION
510 L STREET
SEVENTH FLOOR
ANCHORAGE, ALASKA 99501
TELEPHONE [907] 276-5121
TELEX [090] 25-292
TELECOPIER [907] 279-8354

318 FOURTH STREET
JUNEAU, ALASKA 99801
TELEPHONE [907] 586-3210
TELECOPIER [907] 586-3762

OF COUNSEL:
ROBERT C. ELY
JOSEPH A. McLEAN

March 29, 1984

Senator Bill Ray
Pouch V
Juneau, Alaska 99811
(Mail Stop 3100)

Re: SB 427
Repeal of
AS 45.50.330-.460
Our File 3300.16

Dear Senator Ray:

Thank you for meeting with Gordon Evans and me last Tuesday regarding SB 427.

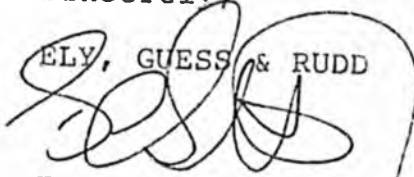
I trust that you found our answers to your questions responsive. And I hope that the background we provided with respect to the U.S. Copyright Law and the history of our client's operations fully explained the context of ASCAP's interest in the repeal of AS 45.50.330 through .460.

I would like to emphasize once again that ASCAP has no "ulterior motives" in wishing to see SB 427 passed. Its earlier passage would not have affected in the least our client's activities in Alaska or the litigation in which its members have engaged in Alaska. Its passage hereafter will not affect in any way our pending litigation (we have only one suit unresolved at this time). In short, our interest in the passage of SB 427 is as simply explained as we said: ASCAP would like to be relieved of a filing requirement which serves no public interest of any kind. The balance of the existing statutory scheme is generally procedural or redundant with federal law, would generally be made irrelevant by the repeal of the filing requirements, and should, we believe, be repealed also.

Senator Bill Ray
Page 2
March 29, 1984

Thank you again for meeting with us. If you have any further questions of any kind, I hope you will not hesitate to call me. And I do hope that you will agree that SB 427 should be passed.

Sincerely,

ELY, GUESS & RUDD


Francis E. Smith, Jr.

FES:gm

HELENE M. ANTEL
MICHAEL W. DUNDY
BRIAN W. DURRELL
DAVID R. MILLEN
DOUGLAS S. PARKER
JAMES N. REEVES
THOMAS K. WILLIAMS

LAW OFFICES
BOGLE & GATES
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
SUITE 525
900 WEST FIFTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 276-4357 TELEX: 090-26-695
TELECOPIER: 907-276-4152

PLEASE REPLY TO ANCHORAGE OFFICE

SEATTLE OFFICE
THE BANK OF CALIFORNIA CENTER
SEATTLE, WASHINGTON 98164
CABLE "BOGLE SEATTLE"
(206) 682-8161 TELEX: 32-1087
WASHINGTON, D. C. OFFICE
SUITE 900
ONE THOMAS CIRCLE, N. W.
WASHINGTON, D. C. 20005
(202) 293-3600 TELEX: 89-7410

February 15, 1984

The Hon. Bill Ray, Chairman
Senate Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Senate Bill No. 427 (Our File No. 1221/01249)

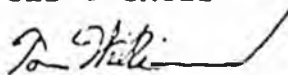
Dear Senator Ray:

The enclosed letter explains in somewhat more detail why SB 427 (repealing Alaska's 1939-vintage law on pools for licensing the public performance of copyrighted music) should be passed.

My initial reaction if I were in your position would probably be to do nothing with this legislation unless I was sure in my own mind that there was no further need for these laws and that the interests of the Alaskan public would not be compromised by such a repeal, so I can understand it if your feelings are similar. However, there really are sound reasons for repealing these laws, and the public will not be harmed by doing so. With all respect, I urge you to schedule a hearing of the Judiciary Committee on this bill in the near future, so that you can satisfy yourself whether such is the case or not. Additional reasons for repeal, besides those in my letter, could also be presented and explained at such a hearing.

Very truly yours,

BOGLE & GATES



Thomas K. Williams

cc (w/ encl.): Senate Judiciary Committee Members

Edward W. Chapin, Broadcast Music, Inc.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

March 15, 1984

The Honorable Richard D. Eliason
Chairman, Senate Labor and Commerce
Committee
Alaska State Senate
Pouch V
Juneau, AK 99811

Re: SB 427

Dear Chairman Eliason:

We have received your inquiry of March 6, asking for our comments on SB 427, which would repeal AS 45.50.330 -- 460, the pooled music copyright law. In response to your request, we have reviewed the state law, federal copyright law, and applicable case law. We conclude that AS 45.50.330 -- 460 is obsolete and should be repealed.

The pooled music copyright law was enacted by the Alaska Territorial Legislature in 1939. The law was similar to legislation adopted at about that same time in several states. The purpose of these laws was to prevent certain practices that existed in the music industry at that time. Since then, because of changes in the industry itself and in federal law, each of the states that enacted a pooled music copyright law has repealed its legislation, except Alaska.

The pooled music copyright law has, for the most part, been pre-empted by federal copyright law. It offers no protection to the copyright owner or to the general public beyond that available under the federal statutes. The one purpose it might now serve is providing information to owners and the public, but even that function is covered by the federal copyright act. The information that the law requires the Departments of Revenue and Administration to file is readily available in printed form from the U.S. Copyright Office.

We find no reason to retain the pooled music copyright law. Its only remaining function appears to be to create an ad-

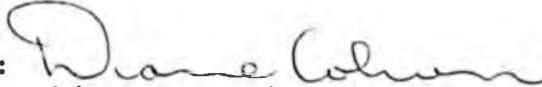
The Honorable Richard D. Eliason
Chairman, Senate Labor & Commerce Committee

March 15, 1984
Page 2

ministrative burden for two agencies of the state. We recommend
its repeal.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: 
Diane T. Colvin
Assistant Attorney General

NCG:DTC::eja

- CALONGAR -



ALASKA STATE LEGISLATURE - SENATE
COMMITTEE ON LABOR AND COMMERCE

SENATOR RICHARD I. ELIASON
CHAIRMAN

POUCH V • JUNEAU, ALASKA 99811
(907) 465-3844

OFFICIAL BUSINESS

MEMORANDUM

TO: Sen. Bill Ray, Chair
Senate Judiciary Committee
FROM: Sen. Dick Eliason *DE*
DATE: March 9, 1984
RE: SB 427 - "An Act repealing the pooled music copyright law"

As requested I reviewed the above-referenced legislation and I am now reporting my findings to you.

This legislation will repeal AS 45.50.330-45.50.460, which requires persons holding certain pooled copyrights on musical works to file lists of these copyrights with the State. The purpose of these filings is to allow the public to "avoid using the copyrighted compositions and to avoid conflict with them". In fact, however, no one ever examines these filings any more. In 1983 only one person examined the files in the Department of Revenue or the duplicate files at the Department of Administration.

Repeal of the state law would not make the information unavailable to the Alaskan public. Federal copyright laws require the same information to be filed with the Copyright Office, and copies of the lists of copyrighted materials may be purchased from the Federal Superintendent of Documents. A new list is published every six months.

Additional back-up information is attached.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date _____

REQUEST

Bill/Resolution No: SB 427
 Title: Act repealing the pooled music copyright law.
 Sponsor: Fahrenkamp
 Requestor: Senate Judiciary
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Revenue
 Program Category Affected: Commissioner's Office
 BRU, Program of Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
<u>OPERATING</u>						
100 PERSONAL SERVICES	-	-0-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 SUPPLIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
<u>TOTAL OPERATING</u>	-	-0-	-	-	-	-
<u>CAPITAL</u>	-	-0-	-	-	-	-
<u>REVENUE</u>	-	-0-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
<u>TOTAL</u>	-	-0-	-	-	-	-

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis.

Prepared By: Bruce M. Botelho
 Division: Revenue

Phone: 465-2300
 Date: 03/07/84

Approved by Commissioner: *Bruce M. Botelho*
 Agency: Revenue

Date: 3/8/84

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Analysis for SB 427

The Department of Revenue is in favor of repeal of sections AS 45.50.330-45.50.460. In the last five years the department has had only one request for information pertaining to these statutes. It is important to note that Alaska is the only state in the Union that continues to have such a law on its books.

Position Paper

SB 427

February 28, 1984

This bill will repeal AS 45.50.330-45.50.460, which requires persons holding certain pooled copyrights on musical works to file lists of these copyrights with the State.

The Department of Administration believes that AS 45.50.330-45.50.460 should be repealed and, therefore, favors passage of this legislation.

We feel that the statute is unnecessary and of no significant benefit. In the past eight months only one person has inquired about filing information. We anticipate no staff reduction due to passage since it is one of the minor miscellaneous duties of a secretary.

Frances H. Rose

Frances H. Rose
Special Assistant to the Commissioner
Department of Administration

Date

2/29/84

A. Rudd for

Commissioner Lisa Rudd
Department of Administration

Date

3-1-84

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: February 28, 1984
Page 1 of 2

REQUEST

Bill/Resolution No.: SB 427
 Title: An Act repealing the pooled music copyright law
 Sponsor: Fahrenkamp
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Administration
 Program Category Affected: _____
 BRU, Program or Subprogram(s) Affected: _____
 Commissioner's Office _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS: None

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for any Analysis.

Prepared By: Frances H. Rose *Frances H. Rose*
 Division: Commissioner's Office

Phone: (907) 465-2200
 Date: 2-29-84

Approved by Commissioner: Lisa Rudd *L. Rudd*
 Agency: DEPARTMENT OF ADMINISTRATION

Date: 3-1-84

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

HELENE M. ANTEL
MICHAEL W. DUNDY
BRIAN W. DURRELL
DAVID R. MILLEN
DOUGLAS S. PARKER
JAMES N. REEVES
THOMAS K. WILLIAMS

LAW OFFICES
BOGLE & GATES
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900 WEST FIFTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 276-4557 TELEX: 090-26-695
TELECOPIER: 907-276-4152
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WASHINGTON, D. C. OFFICE
SUITE 900
ONE THOMAS CIRCLE, N.W.
WASHINGTON, D. C. 20005
(202) 293-2600 TELEX: 89-7410

February 15, 1984

The Hon. Bill Ray, Chairman
Senate Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Senate Bill No. 427
(Our File No. 1221/01249)

Dear Mr. Chairman:

I am writing for myself and on behalf of our client, Broadcast Music, Inc. ("BMI"), to advise that we support the passage of SB 427, which would repeal Alaska's pooled-music copyright law (AS 45.50.330 - 45.50.460). This law, which was passed in 1939, has become badly outdated as circumstances have changed and the federal copyright statutes have been comprehensively rewritten in the 45 years since then.

The Alaska law applies to societies or organizations like BMI and ASCAP, which are formed by owners of the copyrights to copyrighted musical works to license the public performance of those works on behalf of the copyright owners. Such organizations then collect royalties from the public performances and distribute them back to the copyright owners.

Essentially, the Alaska law requires each such organization to file each year a list of all the copyrighted musical compositions that it licenses. The purpose of these filings is to allow the public to "avoid using the copyrighted compositions, if they so desire, and [to] avoid conflict with them, and avoid committing innocent infringements of the works." AS 45.50.360. In fact, however, no one ever examines these filings any more. In 1983 not one person examined the files at

Senator Bill Ray
February 15, 1984
Page 2

the Department of Revenue or the duplicate files at the Department of Administration.

Repeal of the state law would not make the information unavailable to the Alaskan public. Federal copyright laws require the same information to be filed with the Copyright Office, and copies of the lists of copyrighted materials may be purchased from the federal Superintendent of Documents. A new list is published every six months.

A further reason for repealing the Alaska law is the great change in conditions from those in 1939. At that time there was only one organization licensing the performance of copyrighted music, and its dominant position allowed abuses that prompted Florida, Montana, Nebraska, Tennessee, Wyoming and Washing, as well as Alaska, to enact remedial legislation in the late 1930s. Since that time other licensing organizations have been formed, so that there is more competition and less opportunity for monopolistic abuse. Moreover, the two largest organizations, ASCAP and BMI, operate under direct supervision of the federal courts, pursuant to their respective consent decrees that were entered in federal antitrust litigation against them.

In 1976 Congress passed a comprehensive revision of the federal copyright statute, effective January 1, 1978. This legislation replaced the dual system of copyright laws, one federal and the other by the states, and created a unified federal system instead. This complete federal system eliminates the need for state laws to "fill in the gaps" that had been left in prior federal copyright law. Congress not only eliminated the need for state copyright laws with the enactment of its comprehensive federal system, but it also eliminated the state laws themselves by exercising its preemption power (see 17 U.S.C. § 301) under the Supremacy Clause of the United States Constitution.

As the result of these changes, the states that enacted legislation in the late 1930s to remedy the then-prevailing abuses with music copyrights have repealed their statutes, except for Alaska. It is time for us to recognize these changes as our sister states have done.

Senator Bill Ray
February 15, 1984
Page 3

Finally, it is not easy or cheap to prepare these filings with the State. Each report by ASCAP, for example, takes up about half of a full-sized drawer in a filing cabinet. By the same token, it is not cheap for the State to keep these voluminous files. Yet the continued presence of these laws on the books requires both the filers and the Departments of Revenue and Administration to suffer these needless expenses.

Had I been personally aware of this situation when I was still Commissioner of Revenue, I would have advocated repealing these statutes as a prime example of wasteful, pointless paperwork imposed by state government on the public. It is our understanding from the officials in the State of Washington that they have been pleased by the repeal of that state's pooled-music law in 1982 and by being relieved from keeping the massive files required under that law. I believe the Departments of Revenue and Administration would likewise wish to be spared the time, expense and space that are needed for their files under Alaska's law.

The biggest problem with a bill like SB 427 is that there is no large constituency to support it. Clearly, the public is indifferent to whether these filings continue or not, since no one ever looks at them. There is only a small handful of organizations that are subjected to the burden of filing. Without a constituency to support such a bill, the easiest course is simply not to advance it out of committee.

I respectfully urge you not to let the bill die, but to hold a hearing on it before your committee. If possible, please schedule such a hearing in the near future so that, if you are satisfied that these statutes are no longer necessary to protect and promote the interests of the public, there will still be time for the bill to have a realistic chance of passage during this Session.

Please do not hesitate to call me at 276-4557 or to write me at the address above, if you have any questions on this subject or if you decide to hold a hearing on the bill. I can arrange for testimony before the committee on behalf of BMI if there is to be a hearing.

BOGLE & GATES

Senator Bill Ray
February 15, 1984
Page 4

Very truly yours,

BOGLE & GATES

A handwritten signature in dark ink, appearing to read "Thomas K. Williams", written over a horizontal line.

Thomas K. Williams

cc: Members of the Senate Judiciary Committee

Edward W. Chapin, Counsel
Broadcast Music, Inc

LAW OFFICES OF
ELY, GUESS & RUDD

A PROFESSIONAL CORPORATION
318 4TH STREET
JUNEAU, ALASKA 99801
TELEPHONE 19071586-3210

510 L STREET
ANCHORAGE, ALASKA 99501
TELEPHONE 1907 276-5121
TELEX [090] 25-292

WILHELM GUESS 1932-1975
JOSEPH RUDD 1933-1978

ROBERT C. E.
THEODORE E. LEISCHER
FRANCIS F. SMITH, JR.
HERBERT BERKOWITZ
MICHAEL G. BRIGGS
DAVID H. BUNDY
HARRIS SAXON
PHILLIP J. EIDE
GARY A. ZIPKIN
DONN T. WORNELL
JOSEPH M. WILSON
GORDON E. EVANS
JOSEPH A. McLEAN, OF COUNSEL
LOUIS R. VEERMAN
CLIFFORD W. HOLST
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LOUIS AGI
JOSEPH J. PERKINS, JR.
PEGGY MENTELE
SUSAN R. SHARROCK
DANIEL WEBER
GLENN E. CRAVEZ
LYNN M. ALLINGHAM
TRICIA COLLINS
JOHN A. McDONAGH
PAUL S. STAHL

* ADMITTED IN D.C. AND ALASKA
OTHERS ADMITTED IN ALASKA

May 18, 1983

Ms. Gladys Williamson
Department of Administration
Pouch "C"
Juneau, Alaska 99811

Re: American Society of Composers, Authors
and Publishers
Our File No. 3300.10

Dear Ms. Williamson:

This letter is written with reference to our recent telephone conversations regarding the documents and other materials filed each year on behalf of the American Society of Composers, Authors and Publishers (ASCAP). Under requirements of AS 45.50.330-.460, the original of the filing is delivered to the Department of Revenue and a duplicate copy is filed with the Commissioner of Administration for public review.

It is my understanding that apparently there has been little, if any, public review of these documents since the law was enacted. The Alaska statute had been based on the Washington state law, which was repealed this year apparently because nobody had made use of the public review provision. Accordingly, it may be appropriate to consider possibly seeking repeal of the Alaska statute for the same reason, thus cutting down on the paperwork and archival requirements of the State. Any such repeal effort, however, would not be undertaken until the 1984 legislative session.

In the meantime, and in order to help ascertain whether in fact any use is being made of the documents on file for public review, it would be appreciated if you would attach to the documents in your office a sign-up/tally sheet similar to the enclosed sample. It would merely have any person reviewing the documents note this fact and the date of his or her review so that early in 1984 a compilation of that

Ms. Gladys Williamson
Page -2-
May 18, 1983

information could be provided to the Legislature to support the repeal effort.

Thank you in advance for your assistance in this matter. If you have any questions, please let me know.

Very truly yours,

ELY, GUESS & RUDD

Gordon E. Evans
Gordon E. Evans

Enclosure:

cc: Francis E. Smith, Jr., Esq.

GEE/pm

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS

LIST OF PERSONS REVIEWING ANNUAL FILING
OF COPYRIGHTED WORKS OF ASCAP MEMBERS

Name (Printed)	Signature	Date

S

B

453

JUNEAU BAR ASSOCIATION

February 22, 1984

Senator Bill Ray
Chairman, Senate Judiciary Committee
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

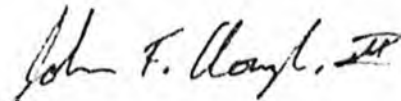
Re: Senate Bill No. 453, "An Act relating
to the Commission on Judicial Conduct;
and providing for an effective date."

Dear Senator Ray:

The Juneau Bar Association has been asked to comment upon Senate Bill 453 relating to the Commission on Judicial Conduct currently pending before your Committee. After reviewing this bill and discussing it with other members of the Juneau Bar as well as members of the Commission on Judicial Conduct, we strongly recommend the passage of this legislation. I have asked Mr. Michael M. Holmes to present this letter to your Committee as part of his testimony pertaining to the bill.

Thank you for the opportunity to comment on this legislation.

Very truly yours,



John F. Clough, III
President, Juneau Bar Association

JFC:gp

AN ACT RELATING TO THE COMMISSION ON JUDICIAL CONDUCT
AND PROVIDING FOR AN EFFECTIVE DATE.

- Section 1. Changes the name and make-up of the Commission on Judicial Qualifications
Name will be the Commission on Judicial Conduct
3 Judges or Justices
3 members who have practiced law for 10 yrs.
3 public members
- Section 2. Provides that the Commission shall inquire into an allegation that a judge, within a period of not more than 6 yrs. before the start of the current term, committed an act that constituted conduct in violation of the Code of Judicial Conduct.
- Section 3. Substitutes AS 44.62.310 (d), relating to Agency meetings public, for AS 44.62.310 (c) (2) ****(SEE ACCOMPANYING STATUTES)
- Section 4. Provides that the commission may informally and privately admonish the judge or recommend counseling.
- Section 5. Provides that acts of the commission are not valid unless concurred in by a majority of the members serving on the commission at the time the act is taken.
- Section 6. New Section.....
(b) Makes all records, files and reports of the commission confidential unless:
(1) Judge, in writing, waives confidentiality;
(2) the subject matter of the hearing has become public; then provides what the commission shall do.
(3) formal charges have been filed;
(4) there is an inquiry by the Alaska Judicial Council, then provides that the Judicial Council shall maintain the confidentiality of the information it receives.
- new*
Section 7. New section which provides that the commission may request the judge to submit to a physical or mental examination. If the judge refuses, the fact that he refused may affect the decision on the hearing, adversely.
- Section 8. Changes the name from Commission on Judicial Qualifications, to Commission on Judicial Conduct.
- Section 9. July 1, 1984 effective date.

Quoted in Ketchikan Retail Liquor Dealers Ass'n v. State, ABC Bd., Sup. Ct. Op. No. 1963 (File No. 3697), 602 P.2d 434 (1979).

Stated in Kingery v. Chapple, Sup. Ct. Op. No. 858 (File No. 1554), 504 P.2d 831 (1972).

Cited in Boehl v. Sabre-Jet Room, Inc., Sup. Ct. Op. No. 3 (File No. 17), 349 P.2d 585 (1960).

Am. Jur. 2d reference. — 2 Am. Jur. 2d, Public Administrative Law, §§ 553-775.

Article 6. Agency Meetings Public.

Section

- 310. Agency meetings public
- 312. State policy regarding meetings

Sec. 44.62.310. Agency meetings public. (a) All meetings of a legislative body, of a board of regents, or of an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money, are open to the public except as otherwise provided by this section. Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. This section does not apply to any votes required to be taken to organize the afore-mentioned bodies.

(b) If excepted subjects are to be discussed at a meeting, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that come within the exceptions contained in (c) of this section shall be determined by a majority vote of the body. No subjects may be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. No action may be taken at the executive session.

(c) The following excepted subjects may be discussed in an executive session:

- (1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the government unit;
- (2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;
- (3) matters which by law, municipal charter, or ordinance are required to be confidential.

(d) This section does not apply to

(1) judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding;

- (2) juries
 - (3) parole
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 - (5) meeti
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Jet Room, Inc.,
No. 17, 349 P.2d

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- (2) juries;
- (3) parole or pardon boards;
- (4) meetings of a hospital medical staff; or
- (5) meetings of the governing body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges or discipline.

(e) Reasonable public notice shall be given for all meetings required to be open under this section.

(f) Action taken contrary to this section is void. (§ 1 art VI (ch 1) ch 143 SLA 1959; am § 1 ch 48 SLA 1966; am § 1 ch 78 SLA 1968; am § 1 ch 7 SLA 1969; am §§ 1, 2 ch 98 SLA 1972; am § 2 ch 100 SLA 1972; am § 1 ch 189 SLA 1976)

Effect of amendment. — The 1976 amendment added the second and third sentences of subsection (a).

A meeting of the board of governors of the Alaska Bar Association in Hawaii in 1978 was not subject to the

requirements of this section. Horowitz v. Alaska Bar Ass'n, Sup. Ct. Op. No. 2059 (File Nos. 4310, 4311), P.2d (1980).

Am. Jur. 2d reference. — 2 Am. Jur. 2d, Administrative Law, §§ 281, 282.

Sec. 44.62.312. State policy regarding meetings. (a) It is the policy of the state that

- (1) the governmental units mentioned in AS 44.62.310(a) exist to aid in the conduct of the people's business;
- (2) it is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;
- (3) the people of this state do not yield their sovereignty to the agencies which serve them;
- (4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;
- (5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created.

(b) AS 44.62.310(c)(1) shall be construed narrowly in order to effectuate the policy stated in (a) of this section and avoid unnecessary executive sessions. (§ 3 ch 98 SLA 1972)

Revisor's note. — AS 44.62.312(a) is based on Cal. Gov't C.A., sec. 54950

Cross reference. See note under AS 44.62.310.

Legislative history report. — For report on ch. 98, SLA 1972 (SB 253), see 1972 House Journal, p. 158.

Article 7. Legislative Review of Rules.

Section

320. Legislative annulment of regulations and review

AN ACT RELATING TO THE COMMISSION ON JUDICIAL CONDUCT
AND PROVIDING FOR AN EFFECTIVE DATE.

- Section 1. Changes the name and make-up of the Commission on Judicial Qualifications
Name will be the Commission on Judicial Conduct
3 Judges or Justices
3 members who have practiced law for 10 yrs.
3 public members
- Section 2. Provides that the Commission shall inquire into an allegation that a judge, within a period of not more than 6 yrs. before the start of the current term, committed an act that constituted conduct in violation of the Code of Judicial Conduct.
- Section 3. Substitutes AS 44.62.310 (d), relating to Agency meetings public, for AS 44.62.310 (c) (2) ***** (SEE ACCOMPANYING STATUTES)
- Section 4. Provides that the commission may informally and privately admonish the judge or recommend counseling.
- Section 5. Provides that acts of the commission are not valid unless concurred in by a majority of the members serving on the commission at the time the act is taken.
- Section 6. New Section.....
(b) Makes all records, files and reports of the commission confidential unless:
(1) Judge, in writing, waives confidentiality;
(2) the subject matter of the hearing has become public; then provides what the commission shall do.
(3) formal charges have been filed;
(4) there is an inquiry by the Alaska Judicial Council, then provides that the Judicial Council shall maintain the confidentiality of the information it receives.
- Section 7. *new* New section which provides that the commission may request the judge to submit to a physical or mental examination. If the judge refuses, the fact that he refused may affect the decision on the hearing, adversely.
- Section 8. Changes the name from Commission on Judicial Qualifications, to Commission on Judicial Conduct.
- Section 9. July 1, 1984 effective date.

DRUG ABUSE POLICY OFFICE
WHITE HOUSE 202/456-1414
Mrs. Sue Daoulas
Dr. Carlton Turner

COLUMBIA UNIVERSITY
Dr. Gabriel G. Nahas 212/694-3455

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Dr. Mario Perez-Reys

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Dr. Richard Garey 504/588-2290

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Dr. Forrest Tennant 213/919 1879

S

B

504

(DID NOT PASS WITH BILL)

D R A F T

Letter of Intent

The Judiciary Committee has considered and heard testimony regarding SB 504, an act relating to unauthorized access to or use of computer and telecommunications services. The version of the bill approved by the committee provides that a person may be prosecuted for theft of services if the person obtains cable, subscription, or pay TV services, known to be available only for compensation, by deception or other means to avoid payment for the services. AS 11.46.200(a)(1).

Section 2 of the bill, however, provides that a person may not be prosecuted for theft of cable, subscription, or pay TV services if the service was obtained through the use of a device designed to receive electromagnetic signals directly from a satellite, commonly referred to as a "home earth station". This means that, under state law, a person who owns a home earth station (now or in the future) may watch whatever signals the earth station will pick up - including signals broadcast by cable or pay TV distributors. The bill would not affect the application of any federal laws which may regulate this behavior.

With the exception of services obtained through a home earth station, the bill makes it a crime (theft) for a person to view, without payment of a fee, cable or pay TV services which are known to be available only for compensation. The bill does not prohibit the possession or use of any electronic device, except the use of a "descrambler", (whose only function is to descramble signals which have been scrambled to prevent unauthorized receipt or viewing). For example, a person may use an antenna in the 2 GHz range to listen to amateur radio transmissions, or to listen to broadcasts from a space shuttle. But the use of the same antenna to receive programming services broadcast by Multivisions in Anchorage would constitute theft of services if the person lives in an area where Multivisions service was available through the payment of a fee.

Multivisions



November 30, 1983

Mr. Clark King
Alaska Cable Television Association
1725B Douglas Highway
Douglas, Alaska 99824

Re: Proposed Anti-Theft Legislation

Dear Clark:

Per your request, I have reviewed a proposed work draft of a bill dealing with theft of telecommunications services. My comments on this draft are as follows:

1. The proposed addition of AS 11.46.200(c) would be extremely detrimental to any theft of service program. This subsection would allow, as a defense to prosecution the fact that a telecommunications provider (for whatever lawful reason) might choose not to sell to particular groups or individuals. For example, many premium movie services such as HBO prohibit exhibition of their programming in certain areas such as public viewing areas. Companies such as Multivisions (MVL) are therefore precluded from selling HBO in some situations. As I read the bill, a person could demand HBO service from MVL, be refused and then be insulated from prosecution if he intercepted our signal.

Similarly, 11.46.200 c (1) (B) seems to say that any non-commercial use of intercepted programming is permissible. This is, of course, totally unacceptable. Copyright laws, our contracts with program suppliers and, in some cases, FCC requirements prohibit companies such as MVL from allowing unauthorized interception of signals for any purpose.

2. 11.46.200 (c) (2) would exempt from prosecution all "pirate" microwave antennas such as those used to steal Visions programming in Anchorage. Under present state law and federal law, any unauthorized interception of microwave or other telecommunication signals is illegal. Interception of signals that are delivered in any part by wire or cable is also in violation of federal wiretap statutes. The proposed wording of AS 11.46.200 would be contrary to all of this present legislation.

4792 Business Park Blvd.
Anchorage, Alaska 99503
907/562-2400

Mr. Clark King
November 30, 1983
Page 2

3. The proposed new AS 11.46.482 (a)(5) would make sale of pirate microwave antennas Class C felony. I agree with this approach and believe ACTA should support this provision.
4. Section 7 of the proposed bill would clarify the definition of "services" for purposes of theft of services statutes to specifically include CATV and microwave communications. This clarification is well drafted and should be adopted.

Apparently, the reason for the proposed language discussed in 1 and 2 above is a desire to avoid interference with "home earth station" users in rural areas who cannot otherwise access satellite programming. Two comments are in order. First, there is no doubt under present law that many satellite signals can be lawfully received by home earth stations. Second, in the case of copyrighted material such as Home Box Office (HBO), nothing in the proposed state legislation can avoid the fact that unauthorized reception of such material is unlawful under federal law. As a practical matter, no cable operator or DCS or STV system is going to harass earth station users outside of their service areas. In fact, by trying to legitimize theft of copyrighted programming, the proposed bill may encourage HBO and other suppliers to take action against such individuals.

The proposed bill as presently drafted is unacceptable and would be a setback for theft of service efforts in Alaska. ACTA should work with the Administration to obtain legislation clearly prohibiting theft of service in all forms. It should be relatively easy to protect legitimate home earth station users and I would be happy, on behalf of ACTA, to meet with the appropriate people in the Administration to discuss this matter and to assist in preparing a revised draft. Please feel free to contact my office with any questions on the above.

Sincerely,

Theodore D. Berns

TB/ak

cc: Robert J. Gould

NCTA BOARD OF DIRECTORS' MEETING

THE MADISON HOTEL
WASHINGTON, D.C.
SEPTEMBER 22-23, 1983

THEFT OF CABLE SERVICE

Theft of service has become a major problem for the cable industry. NCTA estimates that as much as \$400 million in revenues were lost to cable pirates in 1982. In New York City alone, it believes that some 5,000 illegal hookups are depriving Manhattan Cable of \$1 million per year.

As theft of cable service has increased, cable operators have become more aggressive in trying to root out the problem. Cox Cable has conducted a massive public relations campaign to curb cable theft in San Diego. Cox has also employed New York's theft of service statute to prosecute several individuals for unauthorized reception of Cox's service. Cablevision in New Jersey and ARTEC in Virginia have utilized their respective states' theft of service statutes to prosecute cable pirates. Storer Cable relied upon Florida's theft of service statute to gain damages and an injunction against an individual who was selling and installing equipment that was being used to receive Storer's cable service at net cost.

Finally, Manhattan Cable recently brought a federal lawsuit against 27 individuals and 3 taverns who were illegally receiving Manhattan Cable's services. In addition to relying upon New York's theft of service law, Manhattan Cable claims that the defendants violated Section 605 of the Communications Act and the federal wiretap law.

The cable industry's efforts in this area have been hampered by the fact that the law has not kept pace with the theft of service problem. This report will examine the existing federal and state theft of service laws, the weaknesses of those laws, and the steps that are being taken to correct them.

Federal Laws

There are primarily two federal laws governing unauthorized reception of communications -- Section 605 of the Communications Act and the federal wiretap statute. Section 605 outlaws unauthorized interception of radio communications which are not intended for reception by the general public. Private parties can enforce this provision by bringing a civil damage suit against the interceptor. Section 2511 of the wiretap law prohibits interception of any wire or oral communications. Moreover, Section 2512 criminalize the manufacture, possession, distribution or advertising of equipment or

devices that are primarily useful for the surreptitious interception of wire or oral communications. Finally, Section 2520 of the statute authorizes parties whose communications have been intercepted to sue for damages.

These two statutes, however, may be of limited use in combating theft of cable service. For example, although cable service is not intended for reception by the general public, it is questionable whether cable services are "radio communications" for the purpose of Section 605. Although it can be argued that cable should fall within Section 605, there is no case law on the issue.^{1/} The wiretap law is inadequate because it does not cover the interception of visual communications, such as video or text.^{2/}

To correct these deficiencies in existing law, the Senate included theft of service language in S.66. Section 610(a) of that bill outlaws unauthorized reception of broadband (cable) services. A cable operator could rely on this provision in a civil damage action against a cable pirate. Additionally, Section 610(b) of the bill states that cable services are "wire communications" for the purposes of the wiretap statute. This change, of course, would subject pirates to civil and criminal liability under that law. Equally important, the Senate proposal would permit cable operators to use Section 2512 of the wiretap statute to reach those who manufacture, possess, distribute and advertise unauthorized converters, decoders and similar equipment.

S.66 having passed the Senate, the House Telecommunications Subcommittee is currently drafting cable deregulation legislation. NCTA has been assured that the draft bill will contain comprehensive language concerning theft of cable service, but the Association has not yet seen any specific proposals. Cox Cable is working on an equally comprehensive theft of service legislative proposal that could be tacked on to cable deregulation legislation or introduced as a separate bill.

-
- 1/ Courts have ruled that Section 605 applies to theft of MDS and STV signals. Those over-the-air radio offerings, however, clearly fall within the class of "radio communications" protected by Section 605.
 - 2/ Also, although the statute refers to "wire communications," it only applies where the wire is provided by a common carrier which cable, of course, is not.

State Laws

Although all fifty states have theft of service laws, state statutes have not always been effective against cable pirates. Only 28 states, for example, have specifically outlawed theft of cable service. As a result, cable operators in other states face the troublesome task of seeking relief under statutes which outlaw theft of "telecommunications" or "public utility" services. Further, many state theft laws make intent to steal an essential element of the offense, thus encumbering the cable operator with difficult problems of proof. Many of those laws also do not reach the possession, sale or distribution of equipment that can be used to steal cable service. Finally, most state theft laws prescribe criminal penalties which can only be enforced by the state attorney general.

Fortunately, many states are moving to correct these defects in their theft of service laws. In the past two years, for example, six states have enacted specific cable theft of service laws ^{3/}. Additionally, many states are amending the mechanics of their theft of service statutes to make it easier for a cable operator to protect his services from unauthorized reception. New York, for example, recently enacted theft of cable service legislation which (1) prohibits the manufacture, possession, or distribution of any equipment with the knowledge that it will or could be used to steal cable service; (2) states that the possession, distribution, or manufacture of equipment that can be used to steal cable service without written consent of the cable operator shall be prima facie evidence of intent to steal service; and (3) authorizes cable operators to bring civil actions to enforce the statute. Seventeen other states have recently considered bills that would provide similar protections to cable operators.

NCTA has compiled a handbook of the various state theft of service laws. The Association is also drafting a model theft of cable service law for use by state cable associations.

^{3/} California, Louisiana, Michigan, New Jersey, New York and Oklahoma.

THEFT OF SERVICE

"COOKBOOK"

Prepared for California Cable
Television Association

by

The CCTA Theft of Service Committee

7/83
R. McRann, Chairman
J. Haber
T. Smith

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- THE PROBLEM
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- GAINING LAW ENFORCEMENT/COMMUNITY SUPPORT
- CAMPAIGN OBJECTIVES
- PUBLIC NOTICE
- PUBLIC IMAGE/ATTITUDE
- APPENDIX - COX CABLE SAN DIEGO - Results

INTRODUCTION

Theft of cable services has been an ever increasing problem to the cable industry. No cable system is without it. The more program channels the cable system adds to its service, the more desirable the product becomes. Cable TV has now become something that people understand. The public has become more sophisticated in how cable works and how to get it without paying for it. Everyone knows at least one other person who pirates cable TV signals in one form or another. From unauthorized connections to tampered or illegal converters, the problem is growing.

The NCTA has estimated that the cable industry is losing 700 million dollars annually to an estimated 6.75 million illegal users. There will always be cable theft, but there is something that can be done to reduce it. It starts with legislation, tougher cable theft laws, and a willingness on the part of cable management to use the tools at its disposal to crack down on cable piracy.

The following report outlines the steps that can be taken to reduce/eliminate theft of service, including a review of California Penal Code Section 593d and its effect on one system.

THE PROBLEM OF ONE CABLE TV SYSTEM:

o PROFILE

- 370,000 Homes Passed
- 225,000 Basic Subscribers
- 12.3% Unauthorized Hookups = 45,000
- Estimated 30,000 Tampered Decoders

o EQUIPMENT

- Basic Oak T-35
- Pay Oak MC-35 (HBO/Showtime/Galavision)
Oak TC-35/56 (Playboy/Cinemax)

o SYSTEM REVENUE LOSS

--	45,000 x \$19.37 x 12	\$10,460,000
--	30,000 x \$ 8.00 x 12	<u>2,880,000</u>
	TOTAL	\$13,340,000

THE PROBLEM, NATIONWIDE - 1983

- o 30,000,000 Basic Subscribers
- o 12.3% Unauthorized Hookups = 3,690,000
- o 5% Estimated Tampered/Defeated Decoders = 1,500,000
- o Nationwide Revenue Lost:

--	3,690,000 x \$17.00 x 12	\$752,760,000
--	1,500,000 x \$ 8.00 x 12	<u>144,000,000</u>
	TOTAL	\$896,760,000

RECOGNITION OF THE THEFT OF SERVICE PROBLEM:

Before any cable system can begin to tackle a theft of service problem, there first must be an acceptance by management that the problem exists to an extent that something must be done about it. Generally, management has a tendency to down play the extent of service theft because of other "higher priorities." System maintenance, customer service, installation and marketing programs are part of the cable system's day to day operation. At some time in the system's growth, there comes a realization that the penetration of services is not meeting the budget objectives. When revenue is effected, it may be time to analyze the extent of cable piracy, its causes and effect on the system. The data on the preceding page shows that service theft is a monumental problem for all cable systems.

ANALYSIS OF THE PROBLEM:

In order to calculate the extent of cable piracy in the system, some measurements must be taken. Sample street or tap audits will have to be performed. Converter security should be investigated by doing random converter exchanges and inspections. The random samples should be large enough and reflect a cross section of the system's demographics. Once this data has been compiled and applied to the homes passed figures, a theft of service profile can be developed and a dollar revenue loss can be calculated.

PLAN DEVELOPMENT:

After service theft losses have been calculated, the system can assign the proper priority to a plan designed to reduce theft and recover revenue losses. In order to develop an effective plan, the system needs to identify the causes of service theft and their effect on the system. A long-range plan should be implemented that will both fix the problem internally and develop a theft of service campaign that ideally seeks voluntary compliance by the cable system's homes passed base before legal action is taken.

SYSTEM SECURITY:

Before any external theft of service campaign can be developed, a thorough internal program must be implemented to eliminate the cable system's own contribution to cable theft. This includes:

- Investigations into employee theft, with resulting terminations, prosecution and restitution.
- Pre-employment screenings and background checks on new employees.
- Procedures cleaned up to close loopholes in inventory control, field control, returned boxes, etc.
- Cable drop/tap security, particularly in multi-unit complexes and high churn areas.
- Improve decoder/converter security thereby reducing tampering.

- Consolidation and synchronization of converter tracking data bases.
- Improvement of installation/disconnect control procedures.
- Cable drop relabeling and identification procedures, particularly in multi-unit complexes.
- Where economically feasible, change decoders or traps to addressable products.

In addition, a system security/audit program should be established to police the system and uncover theft of service situations or conditions that contribute to it. Before a cable system looks toward implementing any external theft of service campaign, it must have made major inroads toward eliminating its internal contribution to the service theft problem.

REVIEW OF THE CABLE THEFT LAW:

In 1982, the California Legislature passed an amendment to PC 593d that provides for significant criminal and civil penalties for those who manufacture, sell, distribute or use illegal cable equipment. The law became effective on January 1, 1983 and now provides every California cable system with the tools necessary to recapture lost revenue. Violators can receive jail sentences of up to one year and fines that total \$25,000 for the most serious violations. (See attached copy of Amended Penal Code Section 593d.)

GAINING LAW ENFORCEMENT/COMMUNITY SUPPORT:

As a corporate citizen in the communities that we do business, cable systems have the right to seek protection under the umbrella of the law and should do so. In order to obtain real protection, the cable system will have to enlist support from the community authorities. The most effective method to gain support is to make a presentation of the system's theft of service problems to the community's highest ranking officials. Ask for their support and for protection under the law. Suggest forming a task force with high ranking law enforcement officers to develop a plan to attack the problem. Be sure to outline the steps the system has already taken to reduce service theft situations internally. Offer to assign key system employees to do much of the leg work of the task force to keep community time and costs at a minimum.

The results of the cable theft task force meetings should be the formation of the steps, procedures, stages and responsibilities that each party will perform in the plan to crack down on cable piracy. It should be determined what and how evidence of cable theft should be obtained and what form the complaint should take. Agreement on the timing of each phase of the plan should be established.

CAMPAIGN OBJECTIVES:

The primary objectives of a theft of service campaign should be to eliminate service theft through voluntary compliance and the recovery of lost revenue through the purchase of cable services from those involved in service theft.

To accomplish these objectives, the public must be made aware of the intent of the cable system to crack down on signal theft by prosecution of violators. Cable pirates must be given an opportunity to avoid prosecution and to save face. A "no questions asked" form of amnesty should be offered for violators who voluntarily comply with the cable system's offer to resolve the theft of service situations through either a converter exchange program or billing for those who do not have a service account.

The cable system's sales force should be used to man some type of converter exchange booth on the company's property. Most of the cable pirates will be receptive to subscribing to additional services at the time of voluntary compliance, providing the atmosphere is of a positive nature.

PUBLIC NOTICE:

As previously mentioned, the public must be made aware of the rules of the game and the consequences of not complying. A public awareness campaign must be launched to reach as many people as possible. The first step in this phase should be an open letter to subscribers outlining the extent of the service theft problem, the effect it is having on honest subscribers who, in effect, are subsidizing neighbors who have chosen not to pay. The letter should announce the launching of the theft of service campaign and the cable system's intentions to get tough with violators.

The campaign launch date should begin with a press conference. The local media, as well as community officials, should be invited. A prepared statement should be available that tells the extent of cable theft, both locally and nationally. It should explain the losses the cable system is experiencing, the effect on the honest subscriber and the franchise tax losses to the community. Attempt to have the District Attorney or some other top law enforcement official make a statement to the press on his or her support of the campaign and their intent to enforce the cable theft law by prosecuting violators.

A local ad campaign should immediately follow the press conference using as much newspaper print, radio and TV spots as is feasible. The more publicity from the campaign, the better the results will be.

PUBLIC IMAGE/ATTITUDE:

Plan ahead for the resulting coverage by the news media. Some inquiries will be positive, while some may be negative. Avoid having the cable system obtain the image as being the "bad guy" using scare tactics to get the "little guy."

Over the years, the public has developed the attitude that cable theft is a minor unenforceable infraction. They think of it as a challenge to beat the system; nobody wants to pay for TV. The campaign should be designed to change the public attitude. The theme should take the stand that cable signal theft is "no laughing

matter." It is theft, a crime just like shoplifting. Those who are stealing cable services are not only ripping off the cable system, but even more so--the general public. A business can absorb theft by adjusting prices, but in the end, it is the general public who ends up being the victim.

Public attitude is generally against big business, big government and public utilities. The support is not there for a cable system to make more money by making the "little guy" pay. The news media is aware of this and will seek the opportunity to do an investigative report showing the cable system to be the "bad guy." If the cable system is not careful, a negative image could develop from the campaign.

Public relations should be the guiding force in a campaign of this type. The public attitude must be changed and be developed into supporting the effort of the cable system to eliminate cable theft. Cable theft has reached the point that it no longer can be ignored. If the cable system is stunted, if it can no longer grow to its full potential, then who is the loser? Everyone is the loser.

APPENDIX - COX CABLE RESULTS

RESULTS THROUGH 7/15/83

0 9,900 DECODERS TURNED IN SINCE 2/21/83

0 3,200 ILLEGAL DECODERS DISCARDED (EST.)

0 6,100 ADDITIONAL SERVICES PURCHASED (62%)

0 1,300,000 RECOVERED TO DATE

-- 3,200 x \$19.37 x 12 \$ 743,000

-- 6,100 x \$ 8.00 x 12 586,000

TOTAL \$1,329,000

0 45 WARRANTS SERVED ON ILLEGAL HOOK-UPS

-- 18 CASES IN COURT AS OF 7/15/83

-- 27 CASES PASSED UP

-- ONE CONVICTION:

o \$300 FINE

o 3 YEAR PROBATION

o FINGERPRINTS ON FILE

Senate Bill No. 1505

CHAPTER 1342

An act to amend Section 593d of the Penal Code, relating to unauthorized cable television connections.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1505, Montoya. Unauthorized cable television connection.

Existing law provides that every person who knowingly and willfully makes unauthorized connections, whether physically, electrically, or inductively or attaches any unauthorized device or devices to any cable, wire or other component of a franchise cable television system or to a television set for the purpose of intercepting any program carried by a franchised cable television system is guilty of a misdemeanor punishable by a fine not exceeding \$200 or imprisonment in the county jail not exceeding 30 days.

This bill would extend such prohibition to the making or maintaining of any modification or alteration to any device installed with the authorization of a franchised or otherwise duly licensed cable television system, for the purpose of intercepting or receiving any program or other service carried by the system. A violation of the provision would constitute a misdemeanor punishable by a fine not exceeding \$1,000 or by imprisonment in the county jail not exceeding 90 days or both. Each connection or attachment would constitute a separate violation.

The bill would also do all of the following:

(1) Prohibit every person who, without authorization, knowingly and willfully manufactures, imports into the state, distributes, sells, offers to sell, possesses for sale, or advertises for sale any device, or plan or kit for a device, or printed circuit, designed to decode, descramble or otherwise make intelligible any encoded, scrambled or other nonstandard signal carried by that cable television system. It would make a violation a misdemeanor punishable by a fine not exceeding \$10,000 or by imprisonment in the county jail, or both. A second or subsequent conviction would be punishable by a fine not exceeding \$20,000 or by imprisonment in the county jail for up to one year, or both.

(2) Permit any franchise cable television system to bring an action against the person who committed the violation for specified damages.

(3) Permit a franchise or otherwise duly licensed cable television system to bring an action to enjoin and restrain specified violations.

(4) Provide that it is not a necessary prerequisite to such actions that the plaintiff suffer, or be threatened with, actual damages.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 593d of the Penal Code is amended to read:

593d. (a) Every person who knowingly and willfully makes or maintains an unauthorized connection or connections, whether physically, electrically, or inductively, or purchases, possesses, attaches or maintains the attachment of any unauthorized device or devices to any cable, wire or other component of a franchised or otherwise duly licensed cable television system or to a television cable or set, or makes or maintains any modification or alteration to any device installed with the authorization of a franchised or otherwise duly licensed cable television system, for the purpose of intercepting or receiving any program or other service carried by a franchised or otherwise duly licensed cable television system which such person is not authorized by that cable television system to receive, is guilty of a misdemeanor punishable by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding 90 days, or both. For the purposes of this section, each such purchase, possession, connection or attachment shall constitute a separate violation of this section.

(b) Every person who, without the express authorization of a franchised or other duly licensed cable television system, knowingly and willfully manufactures, imports into this state, distributes, sells, offers to sell, possesses for sale, or advertises for sale any device, or any plan or kit for a device or for a printed circuit, designed in whole or in part to decode, descramble or otherwise make intelligible any encoded, scrambled or other nonstandard signal carried by that cable television system, is guilty of a misdemeanor punishable by a fine not exceeding ten thousand dollars (\$10,000) or by imprisonment in the county jail, or both. For the purpose of this subdivision, "encoded, scrambled or other nonstandard signal" shall include, without limitation, any type of signal or transmission that is not intended to produce an intelligible program or service without the aid of a decoder, descrambler, filter, trap or some similar device. A second or subsequent conviction is punishable by a fine not exceeding twenty thousand dollars (\$20,000) or by imprisonment in the county jail for up to one year, or both.

(c) Any person who violates the provisions of this section shall be

liable to the franchised or otherwise duly licensed cable television system for the greater of the following amounts:

(1) Five thousand dollars (\$5,000).

(2) Three times the amount of actual damages, if any, sustained by the plaintiff, plus reasonable attorney's fees.

(d) Any franchised or otherwise duly licensed cable television system may, in accordance with the provisions of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, bring an action to enjoin and restrain any violation of this section, and may in the same action seek damages as provided in subdivision (c).

(e) It is not a necessary prerequisite to an action pursuant to this section that the plaintiff has suffered, or be threatened with, actual damages.

SEC. 2. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

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SECTION 1. Section 69560 of the Government Code is amended to read:

69560. In the County of Alameda there shall be 23 judges of the superior court.

SEC. 2. The sum of one hundred eighty thousand dollars (\$180,000) is hereby appropriated from the General Fund to the State Controller for allocation and disbursement to local agencies pursuant to Section 2231 of the Revenue and Taxation Code to reimburse such agencies for costs incurred by them pursuant to this act.

CHAPTER 974

An act to add Section 593d to the Penal Code, relating to cable television.

[Approved by Governor September 22, 1973. Filed with Secretary of State September 23, 1973.]

The people of the State of California do enact as follows:

SECTION 1. Section 593d is added to the Penal Code, to read: 593d. Every person who knowingly and willfully makes unauthorized connections, whether physically, electrically, or inductively, or attaches any unauthorized device or devices to any cable, wire or other component of a franchised cable television system or to a television set, for the purpose of intercepting any program carried by a franchised cable television system which such person is not authorized to receive, is guilty of a misdemeanor punishable by fine not exceeding two hundred dollars (\$200) or by imprisonment in the county jail not exceeding 30 days.

SEC. 2. Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to this section nor shall there be any appropriation made by this act because the Legislature recognizes that during any legislative session a variety of changes to laws relating to crimes and infractions may cause both increased and decreased costs to local government entities and school districts which, in the aggregate, do not result in significant identifiable cost changes.

CHAPTER 975

An act to amend Section 4305 of, and to repeal Chapter 4 (commencing with Section 4501) of Division 2 of, the Public Utilities Code, relating to transportation.