

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5774 HOUSE JUDICIARY



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Item 5

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

March 16, 1989

MEMORANDUM

TO: Representative Lyman Hoffman

ATTN: Bob Herron

FROM: Sandi Depue *S. Depue*
Administrative Officer

RE: Bills which Prohibit Facsimile Transmission of Unsolicited Advertising Material
Research Request 89.315

Attached are copies of bills from Connecticut, Oregon and Washington which prohibit the facsimile ("FAX") transmission of unsolicited advertising material. Also attached are three articles relating to "junk FAX transmissions."

According to Steve Graff of the National Conference of State Legislatures, there are currently no state laws regarding junk FAX transmissions; the problem is a relatively new issue.

If you need further information, please let me know.

Attachments

cc: Terry Cramer
Division of Legal Services

STATE OF CONNECTICUT 3
Proposed Bill No. 6620 Page 1 of 1 4
Referred to Committee on ENERGY AND PUBLIC UTILITIES 5
LCO No. 3002 6
Introduced by REP. MANIA, 63rd DIST. 7
General Assembly 8
January Session, A.D., 1989 9

AN ACT PROHIBITING THE TRANSMITTAL OF UNSOLICITED COMMERCIAL 11
MESSAGES THROUGH THE USE OF MACHINES WHICH SEND OR RECEIVE 12
FACSIMILES THROUGH THE TELEPHONE. 13

Be it enacted by the Senate and House of Representatives in 15
General Assembly convened: 16

That the general statutes be amended to prohibit the 17
transmittal of any unsolicited commercial messages through the 18
use of a machine which sends or receives facsimiles through the 19
telephone. 20

STATEMENT OF PURPOSE: To protect owners of machines which send or 23
receive facsimiles through the telephone from receiving any 24
unsolicited commercial messages. 25

STATE OF CONNECTICUT 3
Proposed Bill No. 5396 Page 1 of 1 4
Referred to Committee on JUDICIARY 5
LCD No. 1049 6
Introduced by REP. TULISANO, 29th DIST. 7
General Assembly 8
January Session, A.D., 1989 9

AN ACT PROHIBITING UNSOLICITED FACSIMILE MACHINE MESSAGES. 11

Be it enacted by the Senate and House of Representatives in 13
General Assembly convened: 14

That the general statutes be amended to provide that no 15
person shall use a machine that electronically transmits 16
facsimiles of documents through connection with a telephone 17
network to transmit unsolicited advertising material for the sale 18
of any real property, goods or services. 19

STATEMENT OF PURPOSE: To prohibit the use of a fax machine to 22
transmit unsolicited advertising messages. 23

House Bill 2227

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Joint Interim Task Force on Telecommunications)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Prohibits use of automatic dialing and announcing devices and recorded message for certain telephonic solicitations. Prohibits use of "fax" machines to transmit unsolicited advertising material.

A BILL FOR AN ACT

1 Relating to telecommunications; creating new provisions; and amending ORS 646.608.

2 **Be It Enacted by the People of the State of Oregon:**

3 **SECTION 1.** Section 2 of this Act is added to and made a part of sections 1 to 20, chapter 447,
4 Oregon Laws 1987.

5 **SECTION 2.** (1) No person shall use an automatic dialing and announcing device to call for any
6 purpose any unlisted, unpublished, emergency or toll free long distance number.

7 (2) As used in this section, "automatic dialing and announcing device" means equipment that
8 dials programmed telephone numbers and plays a recorded message when the call is answered.

9 **SECTION 3.** No person shall use a machine that electronically transmits facsimiles of docu-
10 ments through connection with a telephone network to transmit unsolicited advertising material for
11 the sale of any realty, goods or services.

12 **SECTION 4.** ORS 646.608 is amended to read:

13 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
14 ness, vocation or occupation the person does any of the following:

15 (a) Passes off real estate, goods or services as those of another.

16 (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-
17 proval, or certification of real estate, goods or services.

18 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-
19 ciation with, or certification by, another.

20 (d) Uses deceptive representations or designations of geographic origin in connection with real
21 estate, goods or services.

22 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
23 ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a
24 sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.

25 (f) Represents that real estate or goods are original or new if they are deteriorated, altered,
26 reconditioned, reclaimed, used or second-hand.

27 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
28 or that real estate or goods are of a particular style or model, if they are of another.

29 (h) Disparages the real estate, goods, services, property or business of a customer or another
30

NOTE: Matter in bold face in an amended section is new; matter *(italic and bracketed)* is existing law to be omitted.

1 by false or misleading representations of fact.

2 (i) Advertises real estate, goods or services with intent not to provide them as advertised, or
3 with intent not to supply reasonably expectable public demand, unless the advertisement discloses
4 a limitation of quantity.

5 (j) Makes false or misleading representations of fact concerning the reasons for, existence of,
6 or amounts of price reductions.

7 (k) Makes false or misleading representations concerning credit availability or the nature of the
8 transaction or obligation incurred.

9 (L) Makes false or misleading representations relating to commissions or other compensation to
10 be paid in exchange for permitting real estate, goods or services to be used for model or demon-
11 stration purposes or in exchange for submitting names of potential customers.

12 (m) Performs service on or dismantles any goods or real estate when not authorized by the
13 owner or apparent owner thereof.

14 (n) Solicits potential customers by telephone or door to door as a seller unless the person pro-
15 vides the information required under ORS 646.611.

16 (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give
17 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of
18 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or
19 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,
20 discount or other value is contingent upon occurrence of an event subsequent to the time the cus-
21 tomer enters into the transaction.

22 (p) Makes any false or misleading statement about a prize, contest or promotion used to publi-
23 cize a product, business or service.

24 (q) Promises to deliver real estate, goods or services within a certain period of time with intent
25 not to deliver them as promised.

26 (r) Organizes or induces or attempts to induce membership in a pyramid club.

27 (s) Makes false or misleading representations of fact concerning the offering price of, or the
28 person's cost for real estate, goods or services.

29 (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any
30 known material defect or material nonconformity.

31 (u) Engages in any other unfair or deceptive conduct in trade or commerce.

32 (v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under
33 ORS 698.640, whether in a commercial or noncommercial situation.

34 (w) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.

35 (x) Violates ORS 646.850 (1).

36 (y) Violates any requirement of ORS 646.661 to 646.686.

37 (z) Violates ORS 128.821, 128.836, 128.856 to 128.866 or 128.891.

38 (aa) Violates ORS 646.883 or 646.885.

39 (bb) Violates section 3 of this 1989 Act.

40 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
41 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.

42 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
43 need not prove competition between the parties or actual confusion or misunderstanding.

44 (4) No action or suit shall be brought under paragraph (u) of subsection (1) of this section unless

HB 2227

1 the Attorney General has first established a rule in accordance with the provisions of ORS 183.310
2 to 183.550 declaring the conduct to be unfair or deceptive in trade or commerce.
3

HOUSE BILL NO. 1513

State of Washington 51st Legislature 1989 Regular Session
by Representatives Jacobsen, Todd, Anderson, Heavey, K. Wilson,
Dellwo, Beck, Bowman and Appelwick

Read first time 1/27/89 and referred to Committee on Energy &
Utilities.

1 AN ACT Relating to the use of facsimile devices for commercial
2 solicitation; and adding a new section to chapter 80.36 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. Sec. 1. A new section is added to chapter 80.36
5 RCW to read as follows:

6 (1) As used in this section:

7 (a) A "facsimile device" is a device that is capable of receiving
8 and copying on to paper reasonable reproductions or facsimiles of
9 documents and photographs that have been transmitted electronically
10 or telephonically over telecommunication lines.

11 (b) "Commercial solicitation" means the unsolicited electronic or
12 telephonic transmission to a facsimile device for the purpose of
13 encouraging a person or persons to purchase property, goods, or
14 services.

15 (2) No person may make a transmission to a facsimile device for
16 purposes of commercial solicitation. This section applies to all
17 commercial solicitation intended to be received by facsimile devices
18 within the state.

19 (3) A violation of this section is a violation of chapter 19.86
20 RCW. It shall be presumed that damages to the recipient of
21 commercial solicitations transmitted to a facsimile device are five
22 hundred dollars.

23 (4) Nothing in this section shall be construed to prevent the
24 Washington utilities and transportation commission from adopting
25 additional rules regulating transmissions to facsimile devices.

LEGISLATIVE BILL DIGEST

HB 1513

Restricting the use of facsimile devices for commercial solicitation.

Prohibits transmissions to facsimile devices for the purpose of commercial solicitation.

Makes violations unfair business practices and presumes damages in the amount of five hundred dollars to the recipients of commercial solicitations transmitted to a facsimile device.

AMENDED BILL COMPARED TO ORIGINAL: The original bill contained an absolute prohibition of commercial solicitation through fax.

Fiscal Note: Not Requested.

House Committee - Testified For Original Measure in Committee:
Ravelle Brickman; Pauline Bowers.

House Committee - Testified Against Original Measure in Committee:
None Presented.

House Committee - Testimony For: It is a great inconvenience and costly to Fax machine owners to receive advertising over their machines.

House Committee - Testimony Against: None Presented.

Archives
News

LIFESTYLES

SECTION 3 March 13, 1989

A MATTER OF FAX

Hot gadget often just a high-tech headache

By DONNA FREEDMAN
Daily News reporter



One of the hottest accessories in Los Angeles these days is a fax machine for

your car phone. It says "prestige." It says "status."

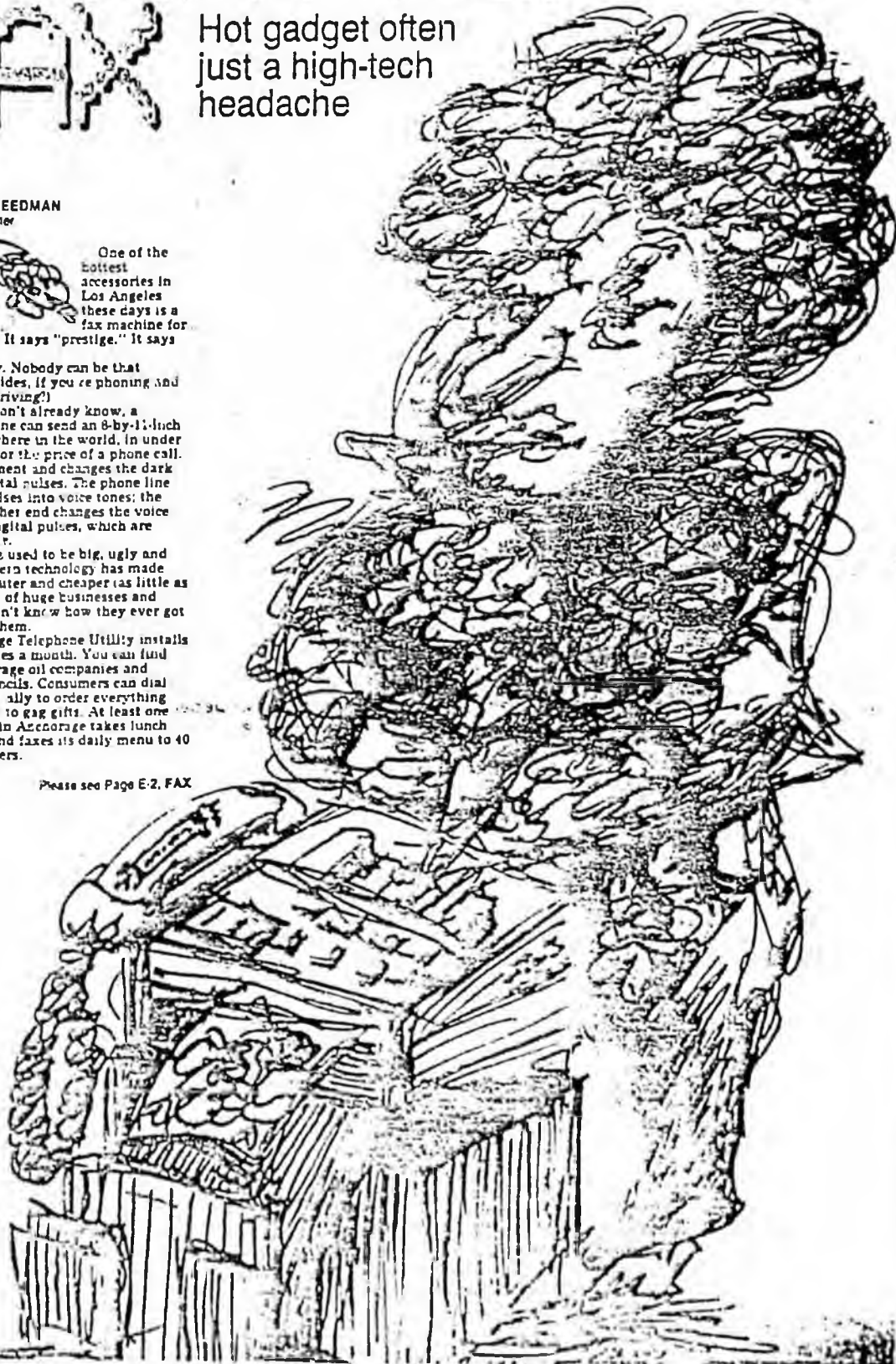
I say baloney. Nobody can be that important. (Besides, if you're phoning and faxing, who's driving?)

In case you don't already know, a facsimile machine can send an 8-by-11-inch document anywhere in the world, in under half a minute, for the price of a phone call. It scans a document and changes the dark marks into digital pulses. The phone line converts the pulses into voice tones; the phone on the other end changes the voice tones back to digital pulses, which are printed on paper.

The machines used to be big, ugly and expensive. Modern technology has made them smaller, cuter and cheaper (as little as \$700). Managers of huge businesses and small offices don't know how they ever got along without them.

The Anchorage Telephone Utility installs about 33 fax lines a month. You can find faxes in Anchorage oil companies and village city councils. Consumers can dial locally or nationally to order everything from auto parts to gag gifts. At least one sandwich shop in Anchorage takes lunch orders by fax and faxes its daily menu to 40 regular customers.

Please see Page E-2, FAX.



FAX: High-tech miracle, or waste of paper?

Continued from Page E-1

Not that faxes are strictly business. Rich kids in Beverly Hills fax each other their homework assignments. On television's "Murphy Brown," a character played by Candice Bergen once got tanked at a company party and faxed her chest to the West Coast.

Local disc jockey Greg Wilkinson asks listeners to fax him weird things. The strangest so far was a photocopy of someone's edible underwear. Nothing as good as the "Murphy Brown" stunt: "No body parts," Wilkinson says.

Etiquette specialists may have to incorporate fax facts into their next books. Is it acceptable to send wedding invitations by fax? What about RSVPs? And can the happy couple fax its thank-you notes?

Then there's fax flirting: If a faxer in another office seems funny and charming, are you allowed to strike up an electronic conversation,

or ask for a date?

At least one entrepreneur is making a buck on this sort of thing. SinglesFax, an electronic personals column in New York, matches up wary singles to exchange faxes before agreeing to date. It may be a new trend: "safe fax."

A potentially serious issue is fax advertising. Fax owners are a direct-marketer's dream: the ultimate captive audience. You can't hide from advertisers once they have your fax number. And it gets better: they tie up your line to send you something you never asked for — and you get to pay for the paper!

Luis Marquez owns a new Anchorage company specializing in fax-direct advertising. So far he has several customers, and a list of 1,600 fax numbers.

He says he doesn't send obnoxious ads, and only faxes after regular business hours. He invites people to fax him back if they'd like their number taken off his list.

"I'm being very responsible about this," Marquez insists. He says the cost of paper is negligible: two to four cents a page.

Sean Elder of The Office Place disagrees. Paper can cost from 4 to 7 cents a sheet, he says, and as much as 10 cents a sheet when you add the cost of regular fax machine maintenance.

He also says that after business hours is when some fax machines are busiest — phone rates are lower then. Someone trying to send legitimate documents "might not be able to get through because someone was flooding the lines with junk mail," Elder says.

Ken Longacre is one of Marquez's customers; he recently had 750 health insurance bidding proposals sent out. He says that about 25 people were interested, that two faxes were "completely irate" and that half a dozen asked to be excluded from future faxings.

"You're going to step on some toes," Longacre ad-

mits, "but you're also generating a lot of business."

As someone with toes, I'm concerned. I get hundreds of pieces of junk mail a year. It doesn't cost me anything to throw it away. But how much paper would all those pizza coupons and magazine solicitations use? When would the business stuff be able to get through?

And imagine calling all those advertisers and asking them to remove you from their lists. Sure sounds like a pleasant way to spend a couple of years — that is, assuming they agree to do it.

It's just another delightful consequence of technology. We got the wonders of computers, and viruses started cropping up. Now that the nation is hooked on faxes, we won't be able to escape from somebody who wants to sell us life insurance or slightly irregular pantyhose.

Chalk it up to the fax of life. And if you care to discuss the subject, feel free to call or write. Please don't fax.

she says.

Researchers say that a shift in social attitudes — including changes in sexual mores and the family, and a redefinition of women's roles — has lessened the stigma of being an unmarried mother or single parent, which in turn has had a significant impact on the number of babies placed for adoption. That shift in social attitudes occurred during the time when abortion became legal.

The vast majority of babies who are placed for adoption are the children of teen-age mothers, but about 42 percent of teen-agers end their pregnancies with abortion.

No statistics are available on the number of married women or couples who place babies for adoption, but family-planning experts say that the number is small.

According to the Alan Guttmacher Institute, a non-profit group specializing in reproductive research, 19 percent of women who have abortions are married, and women over age 40 and 51 percent of their pregnancies with abortion. About 35 percent of women who have abortions have either one or two children, according to

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EXAMINATIO

MARCH 6 TO MAR

Heading Off 'Junk Fax' at the Wire

By KIRK JOHNSON
Special to The New York Times

HARTFORD, Jan. 19 -- Don't fax me, I'll fax you. Under a bill proposed in the Connecticut General Assembly, that would be the official message here to businesses, direct marketers and others who send unsolicited advertisements — "junk fax" — over the telephone wires.

The bill, proposed by a legislator who confesses to a philosophical dislike for facsimile technology, would make it a civil offense to bother people with unwanted fax messages. Fines could be \$200 or more, though details of the proposal have not been worked out.

What has furrowed a few brows is that not even the bill's author, Representative Richard D. Tulisano is sure that junk fax is much of a problem in Connecticut or anywhere else. And the ultimate fate of the bill is anyone's guess.

But Mr. Tulisano, a Democrat, said he thinks the proliferation of the machines, two million of which have been sold nationwide in the last few years, will sooner or later bring on fax attacks by people selling products or services — and tying up fax machines in the process. Similar bills are before the Washington and Oregon state legislatures this year.

"I don't want to wait until the horse has escaped, and then worry about it," Mr. Tulisano said.

Fax technology, which allows in-

stantaneous transmission of documents from one machine to another, has transformed business communication in thousands of offices. And though the use of the machines as a sales tool is apparently not widespread, marketing experts agree with Mr. Tulisano that the volume will grow.

For example, a company in In-

vinc, Calif., called Mr. Fax, has compiled a data base of 500,000 fax numbers and is looking for more, even offering gifts to people who provide more numbers — a free Mr. Coffee for 100 numbers and a Sony Watchman for 1,000 numbers. Although Mr. Fax is now using its data base to market only its own fax paper, the idea is that

the company, and others like it, could allow other businesses to use their data bases.

"We feel that we aren't really participating in junk fax," said Elliott Segal, vice president in charge of marketing at Mr. Fax, which transmits about 60,000 fax sheets a week to its clients. Mr. Fax takes orders for its paper, quite naturally, by fax machine.

Already, some local businesses have begun advertising by fax. In Hartford, which has about 20,000 fax machines, according to an estimate by the Southern New England Telephone Company, such advertisements are sent occasionally by local car dealerships. One such ad says a dealer will take \$100 off on a Honda if a buyer brings in the fax sheet.

Meanwhile, the number of potential targets for advertisers is growing. At the city's largest employer, the Aetna Life and Casualty Company, the 1,000 people who work in the company's three office buildings communicate by fax, and an internal directory is published by the company to make it easier.

One problem that people like Mr. Segal see in the antifax bills is exactly how the laws should be worded so as not to violate free speech protections. In Connecticut, as well as in Washington and Oregon, no public hearings have been held and the final wording of the proposals has not been worked out.



hall of this century invested then was spirituality, abster- grandeur

Eger was the h- bilitated at the Jam is especially from- sion his painting, sented, among th- and the Dancer" i- its controversial al- of the human by- common with so- Sometimes the wo- borrowing from th- with Eger's "Dw- and Art's "Meda- (1941-42) which lo- gether in this show.

Janis has also- striking contrast to- a remedy — from- (1967) by Art with- with Giacometti's- and anguished "S- made at the same- metrically opposed- artists who were- Not could many p- apart in time th- Eger. It has been- Janis Gallery to p- artists whose work- late. Fittingly for a- sary celebration, I- been included in o- "Giacometti Meda- Eger" is an occasi- portance.

"Giacometti Meda- Eger" remains on- Janis Gallery, 100 A- through March 11.

Phillippe Favier

John H. Inman, 60, 10- 20 West 14th Street- Through Feb. 4.

Imagine Matisse's s-

Continued >>

ny a production, director, unton has staged Ham's previously But "A Tale of is Mr. Quinton's opened this week the first non-Lud- here in 20 years- of something ar-old Mr. Quin- stult in my think- had to live up to is the mistake- something. That's

SP achieved wide- rde, and at his- ce of gaming- nence, for his- in both male- id his wild, way- like "The Mys- I" "The Artificial


id that this is a- " Mr. Quinton- same as before. me crazy was- it could be the- e to the realiza- a the same. To- ould be danger- all us. Because

thing that hap- says "It's very- But it was not

ss, is in a state- what the state- he adds "It's- I level. There's- ople, and I'm

hopes some of- ave appeared- the years, like- I be available

THE LAW

 From Goddesses to Dolphins

  A New and Powerful Partner

ART

 An Antic Hymn to City Life

An Antic Hymn to City Life

SPORTS

 Behind the Ickey



Computers/Communications

Wonders of technology brought cheap communications. Great, but one consequence is a bad case of information overload—a nuisance for consumers, a headache for marketers.

Prepare for E-mail attack

DIRECT MAIL OPERATORS send so many "urgent" mailgrams that most people don't even open the envelopes now. Solicitors hit you at night with so many phone solicitations that you shelled out the extra bucks for an unlisted number. Then they got through with random dialers. So you bought an answering machine. And now they've invaded your computer and your fax machine with junk mail. Is there no peace?

This is the information age that the futurists talked about, the day when telephone technology, fax machines and electronic mail would make communication cheap and plentiful. Too plentiful.

Says Mitchell Kapor, the former chairman of Lotus Development Corp.: "It's a well-known phenomenon in large corporations that when you come back from a long weekend you'll find 50 pieces of electronic mail in your mailbox, spend hours going through it, and end up with most of it being stuff you don't want to see." Kapor protects himself at home with an unpublished telephone number, and opts for a public electronic mail address for his computer. Yet the unwanted messages still come through.

By David Charbock

So many unwanted messages are floating around that the wanted ones sometimes get lost in the shuffle. And so we have what could perhaps be called a war of access, fought on a battleground of chips and software. Everyone, it seems, is screaming for your attention. Among the callers' weapons are electronic white pages, power dialers that can do 20,000 calls a day, and systems that hunt down unpublished fax numbers.

Defensive strategies? These include fax switchboards with software to route unwanted calls into answering machines and call blockers that reject calls from specific unwanted numbers. Tomorrow's strategies will include software that filters out sales pitches from electronic mail by looking for telltale words like "insurance" and "financial planner."

The ultimate gatekeeper for the busy executive or the very private individual is, of course, another human being. But secretaries and butlers are expensive. For most people, then, the answer to junk communications will be found in call blockers, software filters and screening devices that enable communication targets to dig an electronic moat around themselves.

The roots of this emerging electronic warfare are to be



found in the very success of semiconductors, which have made talk cheap. But with information, more can be less—a phenomenon once quantified by MIT Professor Itzhak de Sola Pool. Tracking various media from 1960 to 1977, De Sola Pool found that there has been a rapid growth (9% annually) in data made available in the form of periodicals, television, radio, phone calls, mail, faxes and telexes. At the same time there has been a much slower growth (3% annually) in data consumed. Out there at the margin, in short, only about a third of the extra information is getting through. We are suffering from information overload. The transmission of information, while becoming cheaper, is becoming less efficient. The De Sola Pool study concluded that even while transmission costs are dropping, it is costing more to send a message and have it sink in.

While senders are spending more to reach out, some receivers are spending more not to be touched. Survey Sampling, a Fairfield Conn. research firm, says 28% of all U.S. households have an unlisted number. Los Angeles is 56% unlisted.

New Jersey Bell, which already charges customers \$12.50 a year for the privilege of not having their numbers published, is offering another defense this year, Caller ID, in some parts of its territory. For \$78 a year plus a onetime charge of \$60 for a readout device, a residential customer sees the number of the caller when his phone rings. If he recognizes the number, he picks up; if he doesn't, he might ignore the call or maybe let an answering machine get it.

For \$48 a year New Jersey Bell will accept a list of up to six calling numbers that will be blocked from your phone altogether; the callers get a central-office recording telling them to buzz off. Depending on how many stockbrokers, bill collectors and ex-spouses you are trying to avoid, six may fall far short of your needs. But New Jersey Bell's services are just the opening wedge of call-blocking technology. If a \$60 device can capture phone-number data from the phone line for display, another device could sit between a telephone and a personal computer, trapping and storing incoming phone numbers. There it could be compared against an unlimited list of *numeri non grati*. Perhaps, as Caller ID spreads to other Bell companies (Nynex plans to offer the service as well), some entrepreneur will market software that can identify the sleazier phone solicitors—penny stock touts, for example—and cut them off.

Businesses are already figuring ways to turn Caller ID

into an offensive weapon, says a telephone consultant who is advising them. In New Jersey, commercial accounts can identify calling phone numbers for \$102 a year. Obvious scheme: Advertise, say, a free book on municipal bonds with a phone number to call, then capture the callers' numbers and feed them to ravening cold-call brokers.

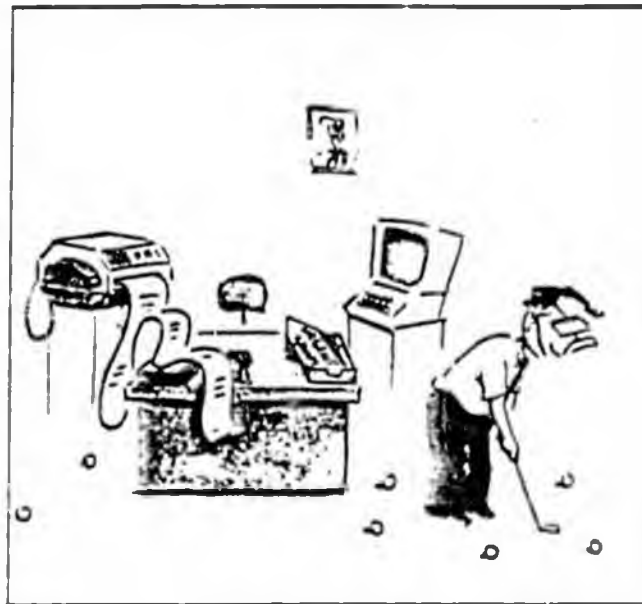
Don't forget that the strongest weapon in the arsenal of people making calls is phone numbers. Getting those numbers along with your name, address, zip code and any other personal information (the more personal the better) is big business. List brokers thrive by leasing computer tapes containing magazine circulation lists, product warranty registration lists and other information to direct marketers.

Technology makes this process a bigger problem. Nynex is selling, for \$10,000, a compact disc containing 10 million white page listings for its New York and New England service area. The discs are updated monthly and include a little more information than the paper white pages: names, addresses, zip codes and, of course, phone numbers. Chief customers for Nynex' disc: bill collectors, banks and law enforcement agencies.

Once the marketer has a million numbers, what does he do with them? Feeds them into a power dialer, also known as a junk-call machine. About \$38 million worth of the power dialing equipment was sold in 1983, according to William Reed at Link Resources, a New York market research firm. This notwithstanding about 30 state laws supposedly restricting them. (Massachusetts has a law requiring phone companies to make available to operators of power dialers a list of phone customers who have asked to be spared such solicitations. But the law does not require the junk call operators to get the list, much less to honor it. In Florida a 1987 law bans phone machines from calling people with pitches for "tangible" goods like aluminum siding. "Tangible," however, does not cover the activities of stockbrokers and insurance salesmen.

Boston-area-based Davox Corp. says one purchaser of its CAS-1000 system, which supports 64 phone lines and 32 customer service representatives, was able to dial 20,000 numbers and make 4,000 contacts in one day. Those dialers aren't cheap. A midlevel Davox system—one that supports 16 lines and 8 to 10 agents—is priced at \$125,000.

As telemarketers spend more for offense, their audience will have to step up defensive outlays. One manager of a bed-and-breakfast in San Francisco uses a device called



Comp/Comm

PriveCode to stop his phone from ringing. "I was tired of being offered free dancing lessons," he says. "With a phone in every room, every time they rang the house sounded like it was taking off to the sky."

PriveCode asks callers for their access number, which they punch in with a touch-tone phone. The inn's guests have a code that makes the phone rings come in bursts of four. The booking agent uses a code that rings three times. The manager's friends have yet another code that sets off two rings. The single-ring code is for "special occasions," he says. Dance lesson pitchmen can't make the phone ring at all.

PriveCode was invented by IMM Corp. in Philadelphia, which, alas, doesn't sell it anymore. It was a marketing failure, partly because of its high price (about \$300 for a single extension) and partly because it doesn't also have a message-taking option for people who don't know the code. But experts say it would be easy to build a ring-blocking device into the current generation of \$100 answering machines, which already use codes to read back messages to the owner calling in from another phone.

Another defensive technology has been around for a long while but is much more feasible with modern software-controlled paxes, or switchboards. Keep two phone extensions. One rings when a stranger dials your company and asks to be connected to you. That extension is shunted to a secretary. The other extension is known to people you want to hear from. You pick up that extension yourself, saving the inconvenience of a screening by your secretary. Software-driven switchboards facilitate this dodge immensely. For one thing, they can easily change your private extension number if it leaks out to outsiders. For another, they can shunt the cold-callers to a low-cost dump such as a voice mailbox. If corporate executives of the future can win this little electronic battle, they can probably make do with fewer secretaries.

But marketing people, desperate for new leads, are fighting back: Offensive software is moving ahead. A Norcross, Ga. company, Digital Publications, is selling a program and 5,000-name database that allows publicists to mass-distribute faxed press releases automatically at night, at a



cost of 10 cents each, much cheaper than the average 80 cents paid per mailed press release. Mr. Fax, a fax supply company in Irvine, Calif., has accumulated a large database of fax numbers by offering cameras and Sony Walkmans for lists of fax numbers. Such lists are one reason fax users are inundated with mail—and paying for the insult, since suppliers are on them.

Defense against junk fax assaults: Don't let out your fax numbers. Soon, however, fax marketers will have a powerful retaliatory weapon, inspired by the "demon dialer" of the movie *War Games*. Zoom Telephonics in Boston plans to release in March a \$595 modem that can be programmed to randomly dial thousands of numbers, hunting for responses that betray the characteristic signals of a fax machine beginning to receive. The fax numbers are stored for later retrieval.

Now what do you do? So far only a few fax manufacturers have added a feature that demands an access code before permitting a transmission to begin. But such features may soon become standard on all machines rather than options.

Electronic mail—messages sent from computer to computer—presents a more complicated battlefield. It's more

powerful than letter mail and potentially more invasive. Why so? With a fax message, you don't know whether or not the intended recipient got the message or read it, but some electronic mail systems, for instance, permit the sender to attach a "receipt" to a message so he'll know when you've read it and can follow up with a phone call. Defense: Forward the message to yourself and then read it. The receipt won't be triggered.

E-mail still has a way to go before it replaces the post office—or snailmail, as its detractors call it. However, it is already formidable. The number of messages over public systems (such as CompuServe and MCI Mail) reached about 500 million in 1987. Coopers & Lybrand predicts that number will reach 2 billion in 1992. On private, corporate electronic mail systems, there were about 1 billion messages in 1988, and there could be over 10 billion by 1992.

When the first corporate electronic mail systems were installed in the 1970s, users noticed a disquieting phenomenon: unwanted messages. "Someone in a branch office hires a new salesman and sends a message to everyone in the company, including the chairman," says Walter Ul-

rich, a partner at Coopers & Lybrand in Houston. "That clutters everyone's mailbox. It is so simple to simply address the message to 'everyone' that there is abuse. Without electronic mail that branch manager would never think of making the same announcement, running off 10,000 Xerox copies and then mailing it out." As chairman of the privacy and security subcommittee of the Electronic Mail Association, Ulrich is monitoring ways to cope with this problem of overuse.

Help is on the way. Professor Thomas Malone at MIT's Sloan School of Management is leading a project called the Information Lens, a system of filters, defined by the user, that scans incoming mail and sorts it into "folders" according to user-defined criteria. Mail from the boss will be flagged as urgent if the user has so programmed the system. The Lens can also identify messages from electronic pests by the way the user handles them, and can route them into an electronic trash can or low-priority folder.

General broadcasts, like junk mail, can be regarded as useless by many recipients, who would prefer not to receive impersonal communications. The Lens, rather than posting a copy of a broadcast message in everyone's in-box, puts it into an electronic pool of other broadcast messages. Members of the system can tell the Lens to search the pool for items of interest, retrieve them, and save them in a personal file. In this system the receiver has more control over the communication channel than the sender.

"Imagine various kinds of pricing schemes," says Malone. "On a simple level a sender is charged for sending messages and charged more for sending a message to many people. You can imagine some more elaborate schemes: One would be a toll for getting information into your mailbox. You won't be willing to look at messages from random strangers unless they are willing to pay to get that information into your mailbox."

"That way I have a certain kind of filter that says it has to be worthwhile to the sender to get it to me. Such a system increases the incentive for the sender to target his communications more directly."

Professor Nicholas Negroponte, director of MIT's Media Lab, envisions a world of "reverse advertising." "I tell my computer to tell the world that I want to buy a windsurfer for under \$600, and the windsurfer world responds with bids." Don't call us, we'll call you. Now we're talking. ■



Item 6



DIRECT
ADVERTISING

L U I S
M A R Q U E Z

907-345-4490
FAX-345-2363

BOX 93057
ANCHORAGE
9 9 5 0 9

ARR 5 1989

April 2, 1989

Mr. Lyman Hoffman,

I am directly opposed to your introduction of House Bill 232, "An Act relating to the use of facsimile devices for commercial solicitation."

I am opposed to this type of legislation for the very fact that I am in this type of "Business Advertising."

I believe that I am the only person in Anchorage, for that matter, the state of Alaska, that does fax advertising. As you can read from my letterhead, it is called Fax Direct Advertising. I do the very thing that you are trying to legislate by sponsoring House Bill 232.

Since I'm the opposition, and I've read your side of the story (HB 232), let me tell what my concerns are.

It is true fax user does pay for the paper cost. But the cost to the user is only \$.03 to \$.05 per page depending on the length of the message. As to fax machines being occupied with unsolicited messages, the nature of most unsolicited messages is that they are sent by computer. These computers are usually programmed to take advantage of low night phone rates. Most fax users have little or no fax traffic during the night hours. Hence, the concern for tying up a fax machine with an unsolicited message may be overblown.

The Federal Communications Commission received a total of 8,000 complaints about various telecommunications problems during 1988. Only 20 of these complaints were directed at junk fax. (Reported in NOMDA "Hotline" Feb. 1989, page 2.) A spokeswoman for the American Facsimile Association, an association of fax users, says, "When fax users mention junk fax, I ask them how many pieces of junk fax they receive. They usually tell me one or two per week." In short, the problem of unsolicited fax messages is perhaps overblown.

If fax messages are illegal, it will mean that each fax user must obtain permission from the intended recipient prior to making a transmission. There are various problems with this;

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ADVERTISING**

**BOX 93057
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9 9 8 0 9**

**907-345-4490
FAX-345-2363**

1. More than 8 billion fax messages are sent in the U.S. each year. The labor cost to obtain permission to send (including costs for both the sender and the intended recipient) could easily exceed \$1 per message. Hence the cost to American businesses could exceed 8 billion.
2. With so many billions of fax messages flying around, there could be potentially millions of disputes about whether verbal permission was given to transmit a message. Governments would need significant staffs and budgets in the tens or hundreds of millions of dollars in order to resolve these disputes.
3. Fax users have invested over \$4 billion in their fax equipment. Many of these are small business firms. When they purchased their fax equipment, many were motivated by the low labor cost of fax equipment, which features unattended operation. If fax users must obtain permission to send messages, many will need "Fax Machine Operators" to obtain permission to send messages to intended recipients and to give permission to other senders to transmit messages. To all firms this will represent a significant cost. To small firms, the cost may be prohibitive. It will result in many firms not getting the value out of the equipment that they have already purchased.
4. With such restrictions on fax usage and threats of large fines or law violations, fax will no longer be such a popular medium to the average business. As such, sales of new fax machines will drop. And in virtually every state of the U.S. there are sales offices for fax machine makers and a number of manufacturing plants. These will undoubtedly lay off thousands of workers.
5. While laws limiting telephone solicitations to residences have been upheld by the courts, the courts have never permitted any complete prohibition of the unsolicited mail or telephone sales pitches. And the standard of privacy is much higher for residential solicitation than it would be for businesses with fax machines. So it is highly likely that any complete prohibition of unsolicited fax messages would be ruled unconstitutional.

I would like to discuss this further with yourself or for that matter, your committee.

Luis Marquez

§ 45.50.460

§ 45.50.470

TRADE AND COMMERCE

§ 45.50.471

Sec. 45.50.470. [Repealed, § 1 ch 246 SLA 1970.]

Sec. 45.50.471. Unlawful acts and practices. (a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce are declared to be unlawful.

(b) The terms "unfair methods of competition" and "unfair or deceptive acts or practices" include, but are not limited to, the following acts:

(1) fraudulently conveying or transferring goods or services by representing them to be those of another;

(2) falsely representing or designating the geographic origin of goods or services;

(3) causing a likelihood of confusion or misunderstanding as to the source, sponsorship, or approval, or another person's affiliation, connection, or association with or certification of goods or services;

(4) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;

(5) representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, secondhand, or seconds;

(6) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(7) disparaging the goods, services, or business of another by false or misleading representation of fact;

(8) advertising goods or services with intent not to sell them as advertised;

(9) advertising goods or services with intent not to supply reasonable expectable public demand, unless the advertisement prominently discloses a limitation of quantity;

(10) making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

(11) engaging in any other conduct creating a likelihood of confusion or of misunderstanding and which misleads, deceives or damages a buyer or a competitor in connection with the sale or advertisement of goods or services;

(12) using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived or damaged;

(13) failing to deliver to the customer at the time of an installment sale of goods or services, a written order, contract, or receipt setting

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out the name and address of the seller and the name and address of the organization that the seller represents, and all of the terms and conditions of the sale, including a description of the goods or services, which shall be stated in readable, clear, and unambiguous language;

(14) representing that an agreement confers or involves rights, remedies or obligations which it does not confer or involve, or which are prohibited by law;

(15) knowingly making false or misleading statements concerning the need for parts, replacement, or repair service;

(16) misrepresenting the authority of a salesman, representative or agent to negotiate the final terms of a consumer transaction;

(17) basing a charge for repair in whole or in part on a guaranty or warranty rather than on the actual value of the actual repairs made or work to be performed on the item without stating separately the charges for the work and the charge for the guaranty or warranty, if any;

(18) disconnecting, turning back or resetting the odometer of a vehicle to reduce the number of miles indicated;

(19) using a chain referral sales plan by inducing or attempting to induce a consumer to enter into a contract by offering a rebate, discount, commission, or other consideration, contingent upon the happening of a future event, on the condition that the consumer either sells, or gives information or assistance for: the purpose of leading to a sale by the seller of the same or related goods;

(20) selling or offering to sell a right of participation in a chain distributor scheme;

(21) selling, falsely representing or advertising meat, fish or poultry which has been frozen as fresh food;

(22) failing to comply with AS 45.02.350;

(23) failing to comply with AS 45.45.130 — 45.45.240;

(24) counseling, consulting or arranging for future services relating to the disposition of a body upon death whereby certain personal property, not including cemetery lots and markers, will be furnished or the professional services of a funeral director or embalmer will be furnished, unless the person receiving money or property deposits the money or property, and money or property is received, within five days of its receipt, in a trust in a financial institution whose deposits are insured by an instrumentality of the federal government designating the institution as the trustee as a separate trust in the name only of the person on whose behalf the arrangements are made with a provision that the money or property may only be applied to the purchase of designated merchandise or services and should the money or property deposited and any accrued interest not be used for the purposes intended on the death of the person on whose behalf the arrangements are made, all money or property in the trust shall become part of that person's estate; upon demand by the person on whose

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behalf the arrangements are made, all money or property in the trust including accrued interest, shall be paid to that person: this paragraph does not prohibit the charging of a separate fee for consultation, counseling or arrangement services if the fee is disclosed to the person making the arrangement; any arrangement under this paragraph which would constitute a contract of insurance under AS 21 is subject to the provisions of AS 21;

(25) failing to comply with the terms of the Alaska Gasoline Products Leasing Act (AS 45.50.800 — 45.50.850);

(26) failing to comply with AS 45.30 relating to mobile home warranties and mobile home parks;

(27) failing to comply with AS 14.48.060(b)(13);

(28) dealing in hearing aids and failing to comply with AS 08.55.

(c) The unlawful acts and practices listed in (b) of this section are in addition to and do not limit the types of unlawful acts and practices actionable at common law or under other state statutes.

(d) [Repealed, § 21 ch 166 SLA 1978.] (§ 2 ch 246 SLA 1970; am § 1 ch 53 SLA 1974; am § 1 ch 138 SLA 1974; am § 1 ch 183 SLA 1975; am § 2 ch 146 SLA 1976; am § 3 ch 197 SLA 1976; am § 3 ch 234 SLA 1976; am § 21 ch 166 SLA 1978; am § 5 ch 15 SLA 1986; am § 5 ch 64 SLA 1986; am § 12 ch 131 SLA 1986)

Revisor's notes. — Paragraph (b)(24) was enacted as (b)(23) and paragraph (b)(25) was enacted as (b)(22). Renumbered in 1976.

Paragraph (b)(28) was enacted as (b)(27). Renumbered in 1986.

Effect of amendments. — The first 1986 amendment added paragraph (26) of subsection (b).

The second 1986 amendment added paragraph (27) of subsection (b).

The third 1986 amendment added paragraph (28) of subsection (b).

Legislative history reports. — For report on ch. 246, SLA 1970 (FCCS 2d HCS CSSB 252), see 1970 House Journal Supplement 10, following p. 743 of the 1970 House Journal; for report of the conference committee, see either 1970 House Journal, p. 1546, or 1970 Senate Journal, p. 1296.

NOTES TO DECISIONS

This statute did not chill constitutionally protected speech, where the speech in question involved communications regarding alleged debts and thus fell within the rubric of commercial speech, which enjoys a lesser first amendment protection than noncommercial speech. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Subsection (a) not vague. — The words of subsection (a) of this section have a "well-defined" meaning in the area of trade regulation and are therefore not vague. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Two elements must be proved to establish a prima facie case of unfair or deceptive acts or practices under the act: (1) that the defendant is engaged in trade or commerce; and (2) that in the conduct of trade or commerce, an unfair act or practice has occurred. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

When act or practice is deceptive or unfair. — An act or practice is deceptive or unfair if it has the capacity or tendency to deceive. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Actual injury as a result of the deception is not required. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Intent to deceive need not be proved. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Testimony of consumers that they were misled is sufficient to sustain a prima facie case of unfair and deceptive practices. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Prima facie case. — In a consumer protection action, a prima facie case is presented when the plaintiff establishes that the defendant engaged in trade or commerce and in the course of that business committed an unfair act or practice. *State v. Grogan*, Sup. Ct. Op. No. 2356 (File No. 5199), 628 P.2d 570 (1981).

An act or practice need not be deceptive to be unfair. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Unfairness will be determined by a variety of factors, including: (1) whether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise — whether, in other words, it is within at least the penumbra of some common law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers or competitors or other businessmen. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Similarity to federal law. — The prohibition in this section against "unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce" is substantially similar to that contained in section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1). *Matanuska Maid, Inc. v. State*, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 152 (1980).

Vandalizing a customer's property is an unfair trade act within the meaning of this section. *State v. Grogan*, Sup. Ct. Op. No. 2356 (File No. 5199), 628 P.2d 570 (1981).

Deceptive and unfair acts by collec-

tion agencies. — Threats by debt collection agencies of imminent legal action when no such action is actually contemplated is a deceptive act or practice. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Harassment of debtors by telephone calls to them, their relatives or their employers constitutes an unfair act or practice. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

A misrepresentation by a debt collection agency that failure to pay an alleged debt will result in impairment of one's credit rating has been held to be an unfair and deceptive act or practice. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

The use by collection agencies of simulated legal documents or collection forms labelled "Final Demand Before Legal Action" when no legal action is in fact taken constitutes a deceptive act. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Article not applicable to sale of real property.

See note under this catchline following the article analysis. *State v. First Nat'l Bank*, Sup. Ct. Op. No. 2591 (File Nos. 5006, 5107), 660 P.2d 406 (1982).

Investigation of acts violating both this article and article 4 of chapter. — Although it does not necessarily follow that an act which violates the Unfair Trade Practices and Consumer Protection Act, AS 45.50.471 — 45.50.561 would also violate the Restraint of Trade Act, AS 45.50.562 — 45.50.596, if an act does violate both statutes, an investigation pursuant to AS 45.50.495 would be appropriate. *Matanuska Maid, Inc. v. State*, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 152 (1980).

Since the bidding and pricing activities under investigation could have conceivably lacked some essential element of an AS 45.50.562 violation, which is Alaska's equivalent of the Sherman Act, 15 U.S.C. § 1 et seq., it was appropriate for the state to investigate as well the possible violation of this section which is Alaska's equivalent of the Federal Trade Commission Act, 15 U.S.C. § 41 et seq. *Matanuska Maid, Inc. v. State*, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 152 (1980).

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Quoted in Swenson Trucking & Exca-
vating, Inc. v. Truckweld Equip. Co., Sup.
Ct. Op. No. 2008 (File No. 4288), 604 P.2d
1113 (1980).

Collateral references. — 32 Am. Jur.
2d, False Pretenses, § 1 et seq.; 37 Am.
Jur. 2d, Fraud and Deceit, § 41 et seq. 35
C.J.S. False Pretenses § 14; 37 C.J.S.
Fraud § 154; 37 C.J.S. Fraudulent Con-
veyances § 469.

Validity, construction, and effect of
state legislation regulating or controlling
"bait-and-switch" or "disparagement" ad-

Sec. 45.50.472. Junk telephone calls. (a) Making a junk tele-
phone call without the prior written consent of the person called is
unlawful.

(b) In this section "junk telephone call" means a telephone call
made for the purpose of advertising through the use of a recorded
advertisement.

(c) The provisions of AS 45.50.481 — 45.50.561 apply to this sec-
tion. (§ 1 ch 17 SLA 1978)

Sec. 45.50.480. [Repealed, § 1 ch 246 SLA 1970.]

Sec. 45.50.481. Exemptions. Nothing in AS 45.50.471 —
45.50.561 applies to

(1) an act or transaction regulated under laws administered by the
state, by a regulatory board or commission except as provided by AS
45.50.471(b)(27), or officer acting under statutory authority of the
state or of the United States, unless the law regulating the act or
transaction does not prohibit the practices declared unlawful in AS
45.50.471;

(2) an act done by the publisher, owner, agent, or employee of a
newspaper, periodical or radio or television station in the publication
or dissemination of an advertisement, when the owner, agent or em-
ployee did not have knowledge of the false, misleading or deceptive
character of the advertisement or did not have a direct financial inter-
est in the sale or distribution of the advertised product or service;

(3) an act or transaction regulated under AS 21.36 or AS 06.05 or a
regulation adopted under the authority of those chapters. (§ 2 ch 246
SLA 1970; am §§ 2, 3 ch 53 SLA 1974; am § 6 ch 64 SLA 1986)

Effect of amendments. — The 1980
amendment in paragraph (1) substituted
"a" for "any" preceding "regulatory board"
and inserted "except as provided by AS
45.50.471(b)(27)" and in paragraph (2)
substituted "a regulation adopted" for
"any regulations promulgated" and in-
serted "the" preceding "authority."

Cited in O'Neill Investigations, Inc. v.
Illinois Employers Ins., Sup. Ct. Op. No.
2444 (File No. 4429), 636 P.2d 1170
(1981).

vertising or sales practices. 50 ALR3d
1008.

Scope and exemptions of state deceptive
trade practice and consumer protection
acts. 89 ALR3d 399.

Practices forbidden by state deceptive
trade practice and consumer protection
acts. 89 ALR3d 449.

NOTES TO DECISIONS

Applicability of paragraph (1) exemption. — Paragraph (1) of this section exempts only those acts or transactions which are the subject of ongoing, careful regulation. *Matanuska Maid, Inc. v. State, Sup. Ct. Op. No. 2223* (File Nos. 4640, 4641), 620 P.2d 182 (1980).

Unfair acts or practices are exempt under paragraph (1) of this section only where the business is both regulated and unfair acts and practices are prohibited. *Matanuska Maid, Inc. v. State, Sup. Ct. Op. No. 2223* (File Nos. 4640, 4641), 620 P.2d 182 (1980).

The exemption contained in paragraph (1) of this section was not intended to apply to acts proscribed by the Alaska Restraint of Trade Act, AS 45.50.562 — 45.50.596. *Matanuska Maid, Inc. v. State, Sup. Ct. Op. No. 2223* (File Nos. 4640, 4641), 620 P.2d 182 (1980).

Since the Restraint of Trade Act, AS 45.50.562 — 45.50.596, does not regulate the dairy industry within the meaning of paragraph (1) of this section, the exemp-

tion does not apply. *Matanuska Maid, Inc. v. State, Sup. Ct. Op. No. 2223* (File Nos. 4640, 4641), 620 P.2d 182 (1980).

Mere regulation under a separate and distinct statutory scheme satisfies only one prong of paragraph (1) of this section: unfair acts and practices are exempt from the purview of the act only where the business is both regulated elsewhere and the unfair acts and practices are therein prohibited. *State v. O'Neill Investigations, Inc., Sup. Ct. Op. No. 2053* (File Nos. 4109, 4165), 609 P.2d 520 (1980).

This article embraces independent debt collection practices. — See note under this catchline following the article analysis.

Article not applicable to sale of real property.

See note under this catchline following the article analysis. *State v. First Nat'l Bank, Sup. Ct. Op. No. 2591* (File Nos. 5006, 5107), 660 P.2d 406 (1982).

Collateral references. — Scope and exemptions of state deceptive trade prac-

tice and consumer protection acts. 89 ALR3d 399.

Sec. 45.50.490. [Repealed, § 1 ch 246 SLA 1970.]

Sec. 45.50.491. Regulations. The attorney general, in accordance with the Administrative Procedure Act (AS 44.62), may adopt regulations interpreting and forms necessary for administering the provisions of AS 45.50.471 — 45.50.561. (§ 2 ch 246 SLA 1970; am § 4 ch 53 SLA 1974)

Sec. 45.50.495. Investigative power of attorney general. (a) If the attorney general has cause to believe that a person has engaged in, is engaging in or is about to engage in, a deceptive trade practice under AS 45.50.471, the attorney general may

(1) request the person to file a statement or report in writing, under oath, on forms prescribed by the attorney general, setting out all facts and circumstances concerning the sale or advertisement of property by the person, and other information considered necessary;

(2) examine under oath any person in connection with the sale or advertisement of property;

(3) examine property or sample of the property, record, book, document, account or paper that the attorney general considers necessary;

real or personal, which may have been acquired by means of an act or practice declared to be unlawful by AS 45.50.471. (§ 2 ch 246 SLA 1970)

NOTES TO DECISIONS

Article not applicable to sales of real property. — The scope of the consumer protection act does not enlarge to include sales of real property when suit is instituted by the state even though this section contains no limitation to "goods or services" comparable to that in such sections as AS 45.50.561(G) or AS 45.50.-

531(a). State v. First Nat'l Bank, Sup. Ct. Op. No. 2591 (File Nos. 5006, 5107), 660 P.2d 406 (1982). See note from this case following article analysis.

Cited in State v. Grogan, Sup. Ct. Op. No. 2356 (File No. 5199), 628 P.2d 570 (1981).

Collateral references. — Validity of express statutory grant of power to state

to seek, or to court to grant, restitution of fruits of consumer fraud. 59 ALR3d 1222.

Sec. 45.50.510. [Repealed, § 1 ch 246 SLA 1970.]

Sec. 45.50.511. Assurances of voluntary compliance. In the administration of AS 45.50.471 — 45.50.561, the attorney general may accept an assurance of voluntary compliance with respect to any act or practice considered to be violative of AS 45.50.471 — 45.50.561 from a person who has engaged or was about to engage in such an act or practice. The assurance shall be in writing and shall be filed with and is subject to the approval of the superior court in the judicial district in which the alleged violator resides or is doing business or has the principal place of business in Alaska. The assurance of voluntary compliance is not considered an admission of violation for any purpose. Matters closed in this way may at any time be reopened by the attorney general for further proceedings in the public interest, under AS 45.50.501. (§ 2 ch 246 SLA 1970)

Sec. 45.50.521. When information and evidence confidential and nonadmissible. (a) *[Repealed, § 6 ch 53 SLA 1974.]*

(b) Subject to the provisions of AS 45.50.501(a), the attorney general may not make public the name of a person alleged to have committed an act or practice declared unlawful in AS 45.50.471 during an investigation conducted by the attorney general under AS 45.50.471 — 45.50.561, nor are the records of investigation or intelligence information of the attorney general obtained under AS 45.50.471 — 45.50.561 considered public records available for inspection by the general public. However, the attorney general is not prevented from issuing public statements describing or warning of a course of conduct or a conspiracy which constitutes or will constitute an unlawful act or practice, whether on a local, state, regional, or national basis. (§ 2 ch 246 SLA 1970; am § 6 ch 53 SLA 1974)

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Sec. 45.50.531. Private and class actions. (a) A person who purchases or leases goods or services and thereby suffers an ascertainable loss of money or property, real or personal, as a result of another person's act or practice declared unlawful by AS 45.50.471, may bring a civil action in the judicial district in which the seller or lessor resides or has the principal place of business or is doing business, to recover actual damages or \$200, whichever is greater. The jury or, if the action is tried without a jury, the judge may, in cases of wilful violation, award up to three times the actual damages sustained, and in all cases the court may provide equitable relief it considers necessary or proper.

(b) A person entitled to bring an action under this section may, after investigation by and approval of the attorney general, if the unlawful act or practice has caused similar injury to numerous other persons similarly situated and if the person adequately represents the similarly situated persons, bring an action on behalf of the person and other similarly injured and situated persons to recover actual damages. A person planning to bring an action under this subsection shall first submit to the attorney general a copy of the proposed complaint, and the person may not file the complaint in court without the attorney general's approval. In an action brought under this subsection, the court may in its discretion order, in addition to damages, injunctive or other equitable relief.

(c) Upon commencement of an action brought under this section the clerk of the court shall mail a copy of the complaint or other initial pleading to the attorney general and, upon entry of an order or judgment in the action, shall mail a copy of the order or judgment to the attorney general.

(d) In an action brought by a person under this section, the court may award, in addition to the relief provided in this section, reasonable attorney fees and costs.

(e) A permanent injunction or final judgment against a person against whom an action was initiated under AS 45.50.501 is prima facie evidence in an action brought under this section that the person used or employed an act or practice declared unlawful by AS 45.50.471.

(f) A person may not commence an action under this section more than two years after the person discovers or reasonably should have discovered that the loss resulted from an act or practice declared unlawful by AS 45.50.471.

(g) If the court finds for the defendant in an action brought under this section, it may award the defendant an amount equal to the actual costs and attorney fees the defendant incurred in the defense.

(h) Manufacturers or suppliers of merchandise, the fault of which is the basis for the action under this chapter, are liable for the damages assessed to or suffered by retailers charged under this chapter. (§ 2 ch 246 SLA 1970; am § 1 ch 225 SLA 1976)

NOTES TO DECISIONS

Opportunity to cure technical pleading deficiency. — Although defendant is a New Jersey corporation with its principal place of business in Ohio and plaintiffs failed to set forth in their amended complaint the essential allegation that defendant was "doing business" in Alaska within the meaning of subsection (a) of this section, dismissing the claim on the basis of this technicality was inappropriate; leave to amend the complaint should have been granted in order to afford the

plaintiffs the opportunity to cure their technical pleading deficiency. *Shooshanian v. Dennis E. Wagner, Borden, Inc.*, Sup. Ct. Op. No. 2747 (File Nos. 6841, 6874), 672 P.2d 455 (1983).

Applied in *Swenson Trucking & Excavating, Inc. v. Truckweld Equip. Co.*, Sup. Ct. Op. No. 2009 (File No. 4288), 604 P.2d 1113 (1980); *State v. First Nat'l Bank*, Sup. Ct. Op. No. 2591 (File Nos. 5006, 5107), 660 P.2d 406 (1982).

Collateral references. — Consumer class action based on fraud or misrepresentations. 57 ALR3d 534.

Right to private action under state consumer protection act. 62 ALR3d 169.

Reasonableness of offer of settlement under state deceptive trade practice and consumer protection acts. 90 ALR3d 1350.

Sec. 45.50.541. Nonnegotiability of consumer paper. (a) If a contract for sale or lease of consumer goods or services on credit entered into between a retail seller and a retail buyer requires or involves the execution of a promissory note or instrument or other evidence of indebtedness of the buyer, the note, instrument or evidence of indebtedness shall have printed on its face the words "consumer paper," and the note, instrument or evidence of indebtedness with the words "consumer paper" printed on it is not a negotiable instrument within the meaning of the Uniform Commercial Code (AS 45.01 — AS 45.09).

(b) Notwithstanding the absence of such a notice on a note, instrument or evidence of indebtedness arising out of a consumer credit sale or consumer lease as described in this section, an assignee of the rights of the seller or lessor is subject to all claims and defenses of the buyer or lessee against the seller or lessor arising out of the sale or lease. An agreement to the contrary has no effect in limiting the rights of a consumer.

(c) The assignee's liability under this section may not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee. (§ 2 ch 246 SLA 1970)

NOTES TO DECISIONS

Stated in *Bendix Home Systems v. Jessop*, Sup. Ct. Op. No. 2503 (File Nos. 6087, 6110), 614 P.2d 843 (1982).

unity to cure their efficiency. Shooshan-gner, Borden, Inc., 47 File Nos. 6841, 1953.
 n Trucking & Exca-velo Equip. Co., Sup. No. 4288, 604 P.2d First Nat'l Bank, 31 File Nos. 5006, 1952).

offer of settlement trade practice and sts. 90 ALR3d 1350.

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Sec. 45.50.542. Waiver. A waiver by a consumer of the provisions of AS 45.50.471 — 45.50.561 is contrary to public policy and is unen-forceable and void. (§ 7 ch 53 SLA 1974)

Sec. 45.50.545. Interpretation. In interpreting AS 45.50.471 due consideration and great weight should be given the interpretations of 15 U.S.C. 45(a)(1) (§ 5(a)(1) of the Federal Trade Commission Act). (§ 8 ch 53 SLA 1974)

NOTES TO DECISIONS

The Federal Fair Debt Practices Act, 15 U.S.C. § 1692 (Supp. 1977), expands already existing Federal Trade Commission jurisdiction over unfair or deceptive acts and practices of collection agencies; it is not written on a clean slate. The Federal Trade Commission's prior exercise of jurisdiction in this area is enti-

tled to great weight, and leads to the conclusion that the new act merely supple-ments the old. State v. O'Neill Investiga-tions, Inc., Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Quoted in Matanuska Maid, Inc. v. State, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).

Sec. 45.50.551. Penalties. (a) A person who violates the terms of an injunction or restraining order issued under AS 45.50.501 shall forfeit and pay to the state a civil penalty of not more than \$25,000 per violation. For the purposes of this section, the superior court in a judicial district issuing an injunction retains jurisdiction, and the cause shall be continued, and in these cases the attorney general acting in the name of the state may petition for recovery of the penal-ties.

(b) In an action brought under AS 45.50.501, if the court finds that a person is using or has used an act or practice declared unlawful by AS 45.50.471, the attorney general, upon petition to the court, may recover, on behalf of the state, a civil penalty of not more than \$5,000 per violation.

(c) *Repealed, § 21 ch 166 SLA 1978.* (§ 2 ch 246 SLA 1970; am § 9 ch 53 SLA 1974; am § 21 ch 166 SLA 1978)

Sec. 45.50.561. Definitions. In AS 45.50.471 — 45.50.561

(1) "advertising" includes the attempt directly or indirectly by pub-lication, dissemination, solicitation, endorsement or circulation, dis-play in any manner, including solicitation or dissemination by mail, telephone or door-to-door contacts, or in any other way, to induce directly or indirectly a person to enter or not enter into an obligation or acquire title or interest in any merchandise or to increase the con-sumption of it or to make a loan;

(2) "cemetery lot" means a lot, plot, space, grave, niche, mauso-leum, crypt, vault or columbarium, used or intended to be used for the interment of human remains.

(3) "chain distributor scheme" means a sales device whereby a person, upon condition that the person make an investment, is granted a license or right to solicit or recruit for profit one or more additional persons who are also granted a license or right upon condition of making an investment and may further perpetuate the chain of persons who are granted a license or right upon the condition of investment; a limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility for the license or right to solicit or recruit or the receipt of profit from these does not change the identity of the scheme as a chain distributor scheme; as used in this paragraph, "investment" means acquisition, for a consideration other than personal services, of tangible or intangible property, and includes but is not limited to franchises, business opportunities and services; "investment" does not include sales demonstration equipment and materials furnished at cost for use in making sales and not for resale;

(4) "consumer" means a person who seeks or acquires goods or services by lease or purchase;

(5) "dealing in hearing aids" has the meaning given in AS 08.55.200;

(6) "documentary material" means the original or a copy of a book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate;

(7) "examination" of documentary material includes the inspection, study, or copying of the material, and the taking of testimony under oath or acknowledgment in respect of documentary material or copy of it;

(8) "fresh" means a condition of food which has never been frozen;

(9) "hearing aid" has the meaning given in AS 08.55.200;

(10) "knowingly" means actual awareness of the falsity or deception, but actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness;

(11) "seconds" means manufactured items having flaws or consisting of a standard quantity or quality less than the manufacturer's quality standard. (S 2 ch 246 SLA 1970; am § 10 ch 53 SLA 1974; am § 2 ch 138 SLA 1974; am § 13 ch 107 SLA 1984; am § 13 ch 131 SLA 1986)

Revisor's notes. — Reorganized in 1984 and 1986 to alphabetize the defined terms. amendment added the definition of "remedial lot."

Effect of amendments. — The 1984 (5) and (9)

Item 8

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 21, 1989

Office of Honorable H.A. "Red" Bucher
 House of Representatives
 Attn: Chad and Dennis
 Pouch V
 Juneau, AK 99811

REPLY TO:

1031 W 4th AVENUE SUITE 200
 ANCHORAGE, ALASKA 99501-1994
 PHONE: (907) 276-3550
 FAX: (907) 276-3087

151 NATIONAL CENTER
 100 CUSHMAN ST. SUITE 400
 FAIRBANKS, ALASKA 99701-4879
 PHONE: (907) 452-1568
 FAX: (907) 458-1317

P.O. BOX K—STATE CAPITOL
 JUNEAU, ALASKA 99811-0300
 PHONE: (907) 485-3600
 FAX: (907) 483-5295

Re: Telephone and fax solicitations

Dear Chad and Dennis:

As you requested, I am providing further information on the Consumer Protection Section's experience with "junk telephone calls," "junk fax" solicitations, and telephone solicitations in general.

Statistics in these areas are somewhat hard to come by, for two reasons. First, the industry categories that we assign to complaints and investigative tips do not correspond directly to these forms of solicitations, so we have to do some manual sorting and estimating to locate the relevant data. Second, our investigative tip data base suffered a serious computer glitch, which caused about half the data to be destroyed, and we are still in the process of recovering the hard copy information to be re-entered into the data base.

Given those limitations, I can report the following. Out of the 613 written investigative tips currently in the data base -- representing approximately half of the tips received at the Anchorage office during the current and previous fiscal years -- about 75 involved telemarketing. Out of 320 written consumer complaints filed at the Fairbanks office so far this fiscal year, a minimum of 12 (and I suspect significantly more) involved telemarketing. The Fairbanks office reports receiving "masses" of phone calls in addition to the formal written complaints; the Anchorage office also receives many more phone calls than written tips.

One reason why the percentage of telemarketing "tips" is so much higher than the percentage of telemarketing "complaints" is that most of the tips we get on telemarketing are not from victims but from consumers who are suspicious of the solicitations and want to report them to us. When we interview consumers who have actually been "taken," we find that they have rarely taken any steps to recover their losses, either because they are

not aware of the existence of effective remedies or because they are embarrassed about their situation.

The vast majority of telemarketing problems that we have become aware of during the last couple of years involve outright scams, usually what I refer to as "prize scams." In this type of operation the initial contact does not appear to be a solicitation to buy something, but instead purports to be an announcement of a valuable award. (We have sued two such operations in the past year; see the enclosed press releases.) A second major category involves deceptive hard-sell tactics for overpriced merchandise, such as magazines, or bogus travel "clubs". Frankly we have seen very few instances of legitimate businesses doing telemarketing.

I should point out that the "prize scams" are generally switching from telephone to mail for the initial contact. Now the recipients are often asked to phone the telemarketer, rather than the other way around. This may be done in an effort to avoid telemarketing laws that a number of states have recently enacted.

Turning to the issue of "junk phone calls," or solicitations by recorded message, we have received only a handful of tips or complaints. With one exception, what we do hear about from time to time are local businesses using this technique for promotion. When we learn their identity and contact them, they report being unaware that junk phone calls are illegal and agree to stop once they learn of that fact. The exception was a nation-wide scam about a year ago that used computer-generated phone calls to make the initial contact. This operation ended when a number of law enforcement authorities, including our office, conducted investigations.


Recipients of junk phone calls generally seem very annoyed, irrespective of whether the business behind the calls is legitimate or not.

Finally, with respect to junk fax solicitations, we have as yet received no written complaints or tips and only one or two informal inquiries or complaints. The custodian of the fax machine in the Anchorage office of the Civil Division of the Department of Law does, however, report receiving such solicitations on the average of once a week.

I hope this information is helpful. Please feel free to contact me if we can provide any further assistance.

Sincerely,

DOUGLAS B. BAILY
ATTORNEY GENERAL


By: Robert E. Mintz
Assistant Attorney General

BY FAX

Items

STEVE COWPER, GOVERNOR

XX REPLY TO

1031 W 4TH SUITE 110
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-35501ST NATIONAL CENTER
100 CUSHMAN SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 456-8388S.S. FULLER BLDG.
4TH & HARRIS SUITE 214
P.O. BOX K
JUNEAU, ALASKA 99811
PHONE: (907) 463-3482STATE COURTHOUSE, ROOM 28
P.O. BOX 871
VALDEZ, ALASKA 99686
PHONE: (907) 835-2482

**DEPARTMENT OF LAW
OFFICE OF ATTORNEY GENERAL
CONSUMER PROTECTION SECTION**

Consumer Protection Suit
Filed Against Las Vegas
Telemarketer
June 2, 1988

For further information
contact Scotty Dawkins
276-3550

FOR IMMEDIATE RELEASE

JUNEAU - A Las Vegas telemarketing firm has been misleading Alaska consumers to get them to buy grossly overpriced vitamins, according to a lawsuit filed Tuesday by the Attorney General's Consumer Protection Section. The State is asking the superior court to bar Continental Sales, Inc., a Nevada corporation, and its principals from violating Alaska's consumer protection act, Attorney General Grace Berg Schaible announced today. The lawsuit also seeks civil penalties of \$5,000 per violation from each defendant and an order requiring the defendants to refund money to purchasers.

The defendants, using the name "Vita-Life," allegedly phoned consumers to say they had been "selected" to participate in a "super bonus bonanza" and were "guaranteed to receive" one of five "fabulous awards." The awards supposedly included a 1988 Ford pickup, an RCA 48" big screen TV, \$3,000 in cash, a 7-day trip to Hawaii for two, and an AM-FM home stereo system. The State's complaint alleges that this "award" offer was part of a solicitation in which Vita-Life charged consumers' credit cards at least \$399 for the sale of vitamins, and that the only "awards" actually provided to consumers were low quality, low value items or items with substantial and costly conditions on their use.

The complaint gives as examples of actual awards a dyed rabbit-fur jacket with a wholesale price of about \$30, and a ticket for a 7-day Caribbean cruise requiring consumers to pay for travel from Alaska to dockside and back. The complaint also alleges that in some cases consumers got no "award" at all.

Among the violations of law claimed in the lawsuit are Vita-Life's failure to notify consumers of their five-day right to cancel under Alaska's door-to-door solicitation act. The complaint also claims that the "super bonus bonanza" program constitutes a lottery, which is prohibited by Alaska law.

In addition to Continental Sales, Inc., the lawsuit names as defendants two corporate officers, Eugene L. Bowen and David Wetherill, and general manager John Wood.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW
OFFICE OF ATTORNEY GENERAL
CONSUMER PROTECTION SECTION

REPLY TO
XX
 1001 W. 4TH SUITE 110
 ANCHORAGE, ALASKA 99501
 276-3550
 INTERNATIONAL CENTER
 100 CUSHMAN, SUITE 400
 FAIRBANKS, ALASKA 99701
 PHONE (907) 454-0668

Consumer Protection Lawsuit Filed
Against Florida Telemarketer
 April 20, 1989

For more information
 call Robert E. Mintz
 276-3550

FOR IMMEDIATE RELEASE

Anchorage. A Florida-based company that sends postcards to Alaskans promising them "valuable awards" has violated Alaska's consumer protection laws, according to a lawsuit filed in Anchorage by the Attorney General's Consumer Protection Section. The lawsuit names as defendants Copy Supply Corp. of America, which does business as "Bonus Awards," and the company's president, Marcia Josowitz.

Consumers who called the defendants' Florida phone number to claim their awards were allegedly told that they had to purchase a water filter for \$389 but that they were guaranteed to receive a 1989 Ford Mustang convertible, a \$5,000 U.S. savings bond, a 40" RCA television, a vacation in places like the Bahamas or Mexico, or a \$1,000 cashiers check. However, the lawsuit claims, consumers were not told that the water filter was worth at most \$50 and that the only "awards" actually given were vacation certificates that had little or no practical value.

For instance, the so-called "Bahamas Cruise" award allegedly did not include airfare between Alaska and Florida, meals, transfers, hotel taxes, or shipboard accommodations, and it required advance payment of a non-refundable \$25 processing fee as well as a supposedly refundable \$100 reservation deposit.

According to papers filed in court, the defendants got at least 107 Alaska consumers to give them their credit card numbers, collecting a total of \$35,027. In some instances, when consumers balked at paying the \$389 price, the defendants allegedly agreed to sell the water filter for \$195.

In addition to charging that "Bonus Awards" misled consumers into buying grossly overpriced merchandise, the Consumer Protection Section alleges that the company's "award" offer, contingent on consumers' making a purchase, amounts to a lottery, which also violates the consumer protection statute. Another violation alleged in the lawsuit is the company's failure to notify consumers of their right to cancel the purchase under Alaska's door-to-door solicitation law. This law gives consumers a "cooling-off period" of five business days to cancel purchases made either in ordinary door-to-door sales or in telephone sales.

In bringing the suit, which was filed on Wednesday in Superior Court, the state is asking for an injunction prohibiting the defendants from continuing their illegal practices and for an order requiring them to make refunds to injured consumers. The court is also being asked to assess civil penalties of \$5,000 for each violation.

Assistant Attorney General Robert E. Mintz, who heads the Consumer Protection Section, urged consumers who believe they have been "taken" in telephone solicitations to exercise their rights under Alaska's cooling-off law and the federal Fair Credit Billing Act. The section can provide forms and information to persons needing assistance. "The one consolation in most of these cases is that since the consumers used their credit cards, they have a good chance of getting their money back from the card issuer -- if they act promptly," he said.

- 30 -

Department of Law
OFFICE OF THE ATTORNEY GENERAL
Consumer Protection Section
1021 West 5th Ave., Suite 110
Anchorage, Alaska 99501
Phone 279-0428

STATE OF ALASKA
THE LEGISLATURE



LEGISLATIVE AFFAIRS AGENCY
DIVISION OF PUBLIC SERVICES

F.O. Box Y
Juneau, AK 99811

September 26, 1989

MEMORANDUM

TO: Dennis Burns
Rep. Boucher's Office

FROM: Peggy Simons
Manager, Division of Public Services

RE: Fax procedures in the LIO's

In response to your inquiry regarding our fax policies and procedures, I would first like to point out that fax usage is increasing every year. In 1985, all LIO's sent and received 25,422 pages of materials as compared to 1988, when the total was 86,227. During the 1989 legislative session, the total sent and received was 42,591. I will have a year-end figure available in January of 1990.

We have only one written, in-house policy specifically addressing fax usage and that is regarding non-legislative usage: "LIO's may accept non-legislative telecopy for transmission on a time-available basis, if we have a charge-back number. The telecopy must conform to the policy on use of LAA equipment, space and staff." It has been our practice to send and receive fax for legislators and staff in order to facilitate their work and this comes out of our Division budget. We do not always know what materials a legislator has requested so we will generally forward any fax received to the appropriate recipient. We do sometimes receive lengthy documents with instructions to duplicate to all 60 legislators. We try to verify this type of transaction before duplicating and distributing, since this is costly in both time and materials.

Very little of the "unsolicited" fax that we receive is of a commercial nature. It is more likely to be letters or other types of messages to legislators, from business establishments and individuals. As you probably know, all the fax numbers for the LIO's are published in the Directory of State Officials and are given out readily upon request.

I would be happy to provide further information on our fax procedures. You can reach me at the Juneau LIO, ph. 465-4648. Thank you.

cc: Warren Endicott
Executive Director

MEMORANDUM

November 3, 1988

TO:

FROM: Legislative Council Staff

SUBJECT: Junk Fax

The number for fax machines installed since 1984 has increased almost tenfold -- from 89,000 in 1984 to an estimated 864,000 in 1988. 1/ The total number of machines in use could reach 2.5 million by the end of 1990. 2/ As the number of facsimile machines has grown, fax use as a method of transmitting advertisements, or junk fax, has also expanded. According to The Economist, junk fax is problematic because, "unlike mail, it ties up machines, blocks more important messages, and costs the recipient electricity and paper -- chemically coated thermal paper that costs almost 10 cents a sheet."

In response to your request, staff contacted the American Facsimile Association, the National Conference of State Legislatures, and the Colorado Public Utilities Commission to determine whether other states have taken any steps to regulate junk fax. None of these organizations was aware of any state initiatives in this area. However, it was suggested that similarities exist between junk fax and unwanted telephone solicitations, and states have acted to regulate certain types of telephone solicitations. For example, Arizona, Maryland, and Washington have banned the use of automatic dialing and announcing devices (ADADs). Laws in Michigan prohibit the use of prerecorded messages in telephone solicitations. Other states, such as Colorado and Wisconsin, require that the person called consent to listen to a prerecorded message. Colorado law also requires an existing business relationship be present. These statutes may provide some precedent and ideas for the regulation of certain fax transmissions. Although the Federal Communications Commission (FCC) decided in 1980 that it lacked jurisdiction to regulate telephone solicitations, it has been suggested that the FCC may eventually be forced to regulate fax machine usage. 2/

According to a spokesperson for a Denver fax dealership, fax owners can reduce the receipt of junk fax by being circumspect about distributing their numbers. For example, placing a fax number on stationery increases the circulation of the number. Some technological advances may also reduce junk fax. Fax manufacturers

1/ "Not just the fax -- its junk mail, too," USA Today, Wednesday, October 26, Section B, p. 1.

2/ "Cold-fax and fouler," The Economist, October 8, 1988, p. 70.

are experimenting with methods of screening or blocking unwanted fax messages through unique fax compression algorithms and closed fax networks. 3/ A machine that blocks fax transmissions that do not have an access code is currently available. With these machines, senders must call to receive approval for a transmission. 4/

For further information, please contact
Deborah Godshall, 866-4782.

3/ USA Today, Ibid.

4/ Fax Focus, American Facsimile Association, Vol. 1, Issue 9, October 17, 1988.

danger of serious physical injury or in which property is or is reasonably believed by the person transmitting the communication to be in imminent danger of damage or destruction.

D. A person who violates this section is guilty of a class 1 misdemeanor.

Added by Laws 1986, Ch. 25, § 1.

1986 Reviser's Note:

Laws 1986, Ch. 359, § 1 added another new § 13-2918 which was renumbered as § 13-2919, pursuant to authority of § 41-1304.02.

* § 13-2919. Automated telephone solicitation: violation: classification

A. A person shall not use an automated system for the selection and dialing of telephone numbers and the playing of a recorded message for the purpose of soliciting persons to purchase goods or services or requesting survey information if the results are to be used directly for the purpose of soliciting persons to purchase goods or services.

B. A person who violates this section is guilty of a class 2 misdemeanor.

Added as § 13-2918 by Laws 1986, Ch. 359, § 1. Renumbered as § 13-2919.

1986 Reviser's Note:

Pursuant to authority of § 41-1304.02, this section, added by Laws 1986, Ch. 359, § 1 as § 13-2918, was renumbered as § 13-2919.

Library References

Telecommunications § 361 et seq.
C.J.S. Telegraphs, Telephones, Radio, and Television § 104 et seq.

CHAPTER 30.—EAVESDROPPING AND COMMUNICATIONS

§ 13-3001. Sending threatening or anonymous letter: classification

Library References

Extortion and Threats § 26.

C.J.S. Threats and Unlawful Communications § 12 et seq.

§ 13-3005. Wiretapping and eavesdropping: classification: exception

Notes of Decisions

1. In general

Because defendant had no reasonable expectation of privacy with respect to his conversation with girl friend in police interview room, tape

recording of the conversation by police officers using a listening device did not violate this section prohibiting the recording of conversations. State v. Hauss (App.1984) 142 Ariz. 159, 688 P.2d 1051.

§ 13-3007. Obtaining information by trick, false representation or impersonation from telegraph or telephone company, officer or employee: obtaining access to premises by trick, false representation or impersonation: classification

A person is guilty of a class 2 misdemeanor who:

1. By trick or false representation or impersonation, knowingly obtains from any telegraph or telephone company, or any officer or employee thereof, information concerning identification or location of any wires, cable lines, terminals or other apparatus used in furnishing telegraph or telephone service, or any information concerning any communication passing over telegraph or telephone lines of any such company, or the existence, content or meaning of any record thereof; or

2. By trick or false representation or impersonation, knowingly obtains access to any premises or to installations of any telegraph or telephone company upon such premises.

Added as § 13-1054 by Laws 1968, Ch. 126, § 1. Renumbered as § 13-3007 by Laws 1977, Ch. 142, § 93, eff. Oct. 1, 1978. Amended by Laws 1978, Ch. 201, § 186, eff. Oct. 1, 1978.

§ 13-3010. Ex parte order for wiretapping and eavesdropping

A. An ex parte order for wiretapping or eavesdropping may be issued by any justice of the supreme court, judge of the court of appeals or judge of the superior court upon

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Maryland

SENATE BILL No. 29
(81r0035)

Introduced by Senator Viser 25

Read and Examined by Proofreader: 28

Proofreader. 30
31

Proofreader. 33
34

Sealed with the Great Seal and presented to the Acting 36

Governor, for his approval this _____ day of _____ 38

at _____ o'clock; _____ 40

42
43

CHAPTER ~~22~~ 422

APPROVED
BY THE GOVERNOR 46

AN ACT concerning 50

MAY 16 '78

Automated Dialing Systems 53

FOR the purpose of prohibiting the utilization of an 57
automated dialing or push-button or tone-activated 58
address signaling system for the purpose of soliciting 59
customers or sales.

BY adding to 61

Article 78 - Public Service Commission Law 64

Section 55C to be under the new subheading "Telephone 66
Companies"

Annotated Code of Maryland 68

(1975 Replacement Volume and 1977 Supplement) 69

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF 73
MARYLAND, That section(s) of the Annotated Code of Maryland 74
be repealed, amended, or enacted to read as follows:

Article 78 - Public Service Commission Law 77

TELEPHONE COMPANIES 79

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Underlining indicates amendments to bill.
~~Strike out~~ indicates matter stricken by amendment.

55C.

82

A PERSON MAY NOT UTILIZE AN AUTOMATED DEALING OR
PUSH-BUTTON OR TONE-ACTIVATED ADDRESS SIGNALING SYSTEM WITH
A PRERECORDED MESSAGE FOR THE SOLE PURPOSE OF SOLICITING
PERSONS TO PURCHASE GOODS OR SERVICES.

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SECTION 2. AND BE IT FURTHER ENACTED, That this Act
shall take effect July 1, 1978.

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Approved:

_____ Acting Governor.

_____ President of the Senate.

_____ Speaker of the House of Delegates.

80.36.380 Reports. Subject to RCW 40.07.040, the commission shall provide the legislature with a biennial report through 1991 on the status of the Washington telecommunications industry. The report shall describe the competitiveness of all markets as defined by the commission; the availability of diverse and affordable telecommunications services to all people of Washington, particularly to customers in rural or sparsely populated areas; and the level of rates for local exchange and interexchange telecommunications service. The report also shall address the quality and extent of the state's telecommunications infrastructure. The report also shall address the question of whether competition in certain markets has developed to such an extent that the commission recommends additional regulatory flexibility such as detariffing or total deregulation and the evidence therefor; and the need for further legislation to achieve the purposes of RCW 80.36.300 through 80.36.370 and 80.04.010. The commission shall also monitor cost of service methodologies and shall recommend to the legislature whether cost of service ratemaking shall become a standard for telecommunications services. [1987 c 505 § 78; 1987 c 293 § 6; 1985 c 450 § 41.]

Reviser's note: This section was amended by 1987 c 293 § 6 and by 1987 c 505 § 78, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

80.36.390 Telephone solicitation. (1) As used in this section, "telephone solicitation" means the unsolicited initiation of a telephone call by a commercial or non-profit company or organization to a residential telephone customer and conversation for the purpose of encouraging a person to purchase property, goods, or services or soliciting donations of money, property, goods, or services. "Telephone solicitation" does not include:

(a) Calls made in response to a request or inquiry by the called party. This includes calls regarding an item that has been purchased by the called party from the company or organization during a period not longer than twelve months prior to the telephone contact;

(b) Calls made by a not-for-profit organization to its own list of bona fide or active members of the organization;

(c) Calls limited to polling or soliciting the expression of ideas, opinions, or votes; or

(d) Business-to-business contacts.

For purposes of this section, each individual real estate agent or insurance agent who maintains a separate list from other individual real estate or insurance agents shall be treated as a company or organization. For purposes of this section, an organization as defined in RCW 29.01.090 or 29.01.100 and organized pursuant to RCW 29.42.010 shall not be considered a commercial or non-profit company or organization.

(2) A person making a telephone solicitation must identify him or herself and the company or organization on whose behalf the solicitation is being made and the purpose of the call within the first thirty seconds of the telephone call.

(3) If, at any time during the telephone contact, the called party states or indicates that he or she does not wish to be called again by the company or organization or wants to have his or her name and individual telephone number removed from the telephone lists used by the company or organization making the telephone solicitation, then:

(a) The company or organization shall not make any additional telephone solicitation of the called party at that telephone number within a period of at least one year; and

(b) The company or organization shall not sell or give the called party's name and telephone number to another company or organization; *Provided*, That the company or organization may return the list, including the called party's name and telephone number, to the company or organization from which it received the list.

(4) A violation of subsection (2) or (3) of this section is punishable by a fine of up to one thousand dollars for each violation.

(5) The attorney general may bring actions to enforce compliance with this section. For the first violation by any company or organization of this section, the attorney general shall notify the company with a letter of warning that the section has been violated.

(6) A person aggrieved by repeated violations of this section may bring a civil action in superior court to enforce future violations, to recover damages, or both. The court shall award damages of at least one hundred dollars for each individual violation of this section. If the aggrieved person prevails in a civil action under this subsection, the court shall award the aggrieved person reasonable attorneys' fees and cost of the suit.

(7) The utilities and transportation commission shall by rule ensure that telecommunications companies inform their residential customers of the provisions of this section. The notification may be made by (a) annual inserts in the billing statements mailed to residential customers, or (b) conspicuous publication of the notice in the consumer information pages of local telephone directories. [1987 c 229 § 13; 1986 c 277 § 2.]

Legislative finding—1986 c 277: "The legislature finds that certain kinds of telephone solicitation are increasing and that these solicitations interfere with the legitimate privacy rights of the citizens of the state. A study conducted by the utilities and transportation commission, as directed by the forty-ninth legislature, has found that the level of telephone solicitation in this state is significant to warrant regulatory action to protect the privacy rights of the citizens of the state. It is the intent of the legislature to clarify and establish the rights of individuals to reject unwanted telephone solicitations." [1986 c 277 § 1.]

Charitable solicitations: Chapter 19.09 RCW

80.36.400 Automatic dialing and announcing devices—Commercial solicitation by. (1) As used in this section:

(a) An automatic dialing and announcing device is a device which automatically dials telephone numbers and plays a recorded message once a connection is made.

(b) Commercial solicitation means the unsolicited initiation of a telephone conversation for the purpose of encouraging a person to purchase property, goods, or services.

(2) No person may use an automatic dialing and announcing device for purposes of commercial solicitation. This section applies to all commercial solicitation intended to be received by telephone customers within the state.

(3) A violation of this section is a violation of chapter 19.86 RCW. It shall be presumed that damages to the recipient of commercial solicitations made using an automatic dialing and announcing device are five hundred dollars.

(4) Nothing in this section shall be construed to prevent the Washington utilities and transportation commission from adopting additional rules regulating automatic dialing and announcing devices. [1986 c 281 § 2.]

Legislative finding—1986 c 281: "The legislature finds that the use of automatic dialing and announcing devices for purposes of commercial solicitation: (1) Deprives consumers of the opportunity to immediately question a seller about the veracity of their claims; (2) subjects consumers to unwarranted invasions of their privacy; and (3) encourages inefficient and potentially harmful use of the telephone network. The legislature further finds that it is in the public interest to prohibit the use of automatic dialing and announcing devices for purposes of commercial solicitation." [1986 c 281 § 1]

80.36.410 Lifeline service—Legislative finding. (Effective until June 30, 1990.) The legislature finds that universal telephone service is an important policy goal of the state. The legislature further finds that recent changes in the telecommunications industry, such as federal access charges, raise concerns about the ability of low-income persons to continue to afford access to local exchange telephone service. Therefore, the legislature finds that it is in the public interest to take steps to mitigate the effects of these changes on low-income persons. [1987 c 229 § 3.]

Expiration date—1987 c 229 §§ 3-10: "RCW 80.36.410 through 80.36.480 shall expire June 30, 1990, unless extended by the legislature." [1987 c 229 § 12.]

80.36.420 Lifeline service—Availability, components. (Effective until June 30, 1990.) Lifeline assistance shall be available to participants of department programs set forth in RCW 80.36.470. Lifeline assistance shall consist of the following components:

(1) A discount on service connection fees of fifty percent as set forth in RCW 80.36.460.

(2) A waiver of deposit requirements on local exchange service, as set forth in RCW 80.36.460.

(3) A discounted flat rate lifeline service rate for local exchange service, which shall be subject to the following conditions:

(a) The commission shall establish a single lifeline service rate for all local exchange companies operating in the state of Washington. The lifeline service rate shall include any federal end user access charges and any other charges necessary to obtain local exchange service.

(b) The commission shall, in establishing the lifeline service rate, consider all charges for local exchange service, including federal end user access charges, mileage charges, extended area service, and any other charges necessary to obtain local exchange service.

(c) The lifeline service rate shall only be available to eligible customers subscribing to the lowest available local exchange flat rate service, where the lowest local exchange flat rate, including any federal end user access charges and any other charges necessary to obtain local exchange service, is greater than the lifeline service rate.

(d) The cost of providing the lifeline service shall be paid, to the maximum extent possible, by a waiver of all or part of the federal end user access charge and, to the extent necessary, from the lifeline fund created by RCW 80.36.430. [1987 c 229 § 4.]

Expiration date—1987 c 229 §§ 3-10: See note following RCW 80.36.410.

80.36.430 Lifeline service—Surcharge. (Effective until June 30, 1990.) Costs associated with lifeline telephone service shall be recovered through a lifeline surcharge on all other switched access lines. The lifeline surcharge shall be applied equally to all residential and business access lines not to exceed sixteen cents per month. The surcharge collected by the telecommunications companies shall not be construed as gross income or gross receipts for purposes of state, county or municipal public utility taxes. All money collected from the lifeline surcharge shall be transferred to a lifeline fund administered by the department. Local exchange companies shall bill the fund for their expenses incurred in offering lifeline telecommunications services, including administrative and program expenses. The department shall disburse the money to the local exchange companies. The department shall recover its administrative costs from the fund. [1987 c 229 § 5.]

Expiration date—1987 c 229 §§ 3-10: See note following RCW 80.36.410.

80.36.440 Lifeline service—Rules. (Effective until June 30, 1990.) The commission and the department may adopt any rules necessary to implement RCW 80.36.410 through 80.36.480. [1987 c 229 § 6.]

Expiration date—1987 c 229 §§ 3-10: See note following RCW 80.36.410.

80.36.450 Lifeline service—Limitation. (Effective until June 30, 1990.) Lifeline service shall be limited to one residential access line per eligible household. [1987 c 229 § 7.]

Expiration date—1987 c 229 §§ 3-10: See note following RCW 80.36.410.

80.36.460 Lifeline service—Deposit waivers, connection fee discounts. (Effective until June 30, 1990.) Local exchange companies shall file tariffs with the commission which waive deposits on local exchange service for eligible subscribers and which establish a fifty percent discount on service connection fees for eligible subscribers. The remaining portion of the connection fee to be paid by the subscriber shall be expressly payable by installment fees spread over a period of months. A subscriber may, however, choose to pay the connection fee in a lump sum. Costs associated with the waiver and discount shall be accounted for separately and recovered

REGULATION OF TRADE

1989

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REGULATION OF TRADE

134.75
Repealed

urchase or exchange, any secondhand firearm, whether smooth bore, shotgun, rifle or
and gun or any secondhand article made in whole or in part, of gold, silver, precious
stones, copper, lead or brass, shall, within 24 hours after receiving the article, report to
the chief of police or the sheriff of the county the fact that it has been received, with the
name, address and description of the person from whom the article was received, together
with a description of the article and . . . shall not destroy or alter the form of the article
until . . . 24 hours after it was received . . .

(2) The dealer or manufacturer shall enter, in ink, in a book to be kept for that purpose
a correct description, in the English language, of all secondhand articles composed, in
whole or in part, of gold, silver, precious stones, copper, lead or brass so received . . .
and the name and residence and description of, the person from whom the articles were
received, and no entry made in the book shall be erased, obliterated or defaced.

(3) The book and entries as well as every such secondhand article received by the dealer
or manufacturer, shall, at all reasonable times, be open to the inspection of the sheriff or
the chief of police or any police officer designated by the chief for this purpose.

(4) The sheriff or chief of police may cause any article referred to in sub. (1) which he
or she has reason to believe was sold or exchanged by some person other than the owner,
to be held for the purpose of identification by its owner, for such reasonable length of
time as deemed necessary.

(5) Any person violating this section may be fined not more than \$100 nor less than \$10,
or imprisoned not to exceed 6 months, or both.

Source:

L.1901, c. 372.
L.1909, c. 210.
L.1911, c. 663, § 265.
St.1911, § 1584c.
L.1923, c. 291, § 3.
St.1923, § 129.18.
L.1925, c. 370, § 267.
L.1959, c. 145

St.1967, § 129.18.
L.1969, c. 336, § 30, eff. Jan. 29, 1970.
St.1975, § 440.95.
L.1977, c. 29, § 1503, eff. July 1, 1977.
1985 Act 135, §§ 46 to 49, eff. March 20, 1986.

Library References

Consumer Credit 16.
C.J.S. Interest and Usury: Consumer Credit
§ 302.

* 134.72. Prohibition on the use of prerecorded messages in telephone solicitation

(1) Definition. As used in this section "telephone solicitation" means the unsolicited
initiation of a telephone conversation for the purpose of encouraging a person to purchase
property, goods or services.

(2) Prohibition. No person may use an electronically prerecorded message in tele-
phone solicitation without the consent of the person called.

(3) Territorial application. (a) *Intrastate*. This section applies to any intrastate
telephone solicitation.

(b) *Interstate*. This section applies to any interstate telephone solicitation received by
a customer in this state.

(4) Penalty. A person who violates this section may forfeit up to \$500.

Source:

L.1977, c. 301, § 1, eff. May 12, 1978

C.J.S. Trade-Marks, Trade-Names, and Unfair
Competition 9 237.

Library References

Trade Regulation 421.

WESTLAW Electronic Research
See WESTLAW Electronic Research Guide fol-
lowing the Preface.

134.75. Repealed by 1985 Act 120, § 199em, eff. July 1, 1986

The repealed section, relating to renewable
energy resource system dealers, was derived
from 1985 Act 29, § 1888g, eff. July 20, 1985.

Addresses in text are indicated by underline, deletions by ~~strikethrough~~ . . .

18-9-311. Automated dialing systems prohibited. (1) No person shall utilize an automated dialing system with a prerecorded message for the purpose of soliciting another person to purchase goods or services unless there is an existing business relationship between such persons, and the person being called then consents to hear the prerecorded message.

(2) Any person who violates this section commits a class 1 petty offense.

Source: L. 79, p. 745, § 1.

18-9-312. Hostages in geographical area - cutting, rerouting, or diversion of telephone lines. (1) Notwithstanding the provisions of sections 18-9-302 to 18-9-311, any supervising representative of a law enforcement agency who has probable cause to believe that one or more hostages are being held in the geographical area in which he has jurisdiction shall have the authority to order a previously designated telephone company security employee to arrange to cut, reroute, or divert telephone lines for the purpose of preventing telephone communication by the holder of such hostages with any person other than a peace officer or a person authorized by the peace officer.

(2) The serving telephone company within the geographical area of a law enforcement agency shall designate a telephone company security official and an alternate to provide all required assistance to law enforcement officials to carry out the purposes of this section.

(3) Good faith reliance on an order by any supervising representative of a law enforcement agency shall constitute a complete defense to any action brought against a telephone company or any of its employees or agents in connection with actions taken under this section.

Source: L. 81, p. 976, § 17.

ARTICLE 10

Gambling

Cross references: For the power of municipalities to regulate gambling, see § 31-15-401 (1)(o).

18-10-101.	Legislative declaration - construction.	18-10-105.	Possession of a gambling device or record.
18-10-102.	Definitions.	18-10-106.	Gambling information.
18-10-103.	Gambling - professional gambling - offenses.	18-10-107.	Gambling premises.
18-10-104.	Gambling devices - gambling records - gambling proceeds.	18-10-108.	Exceptions.

18-10-101. Legislative declaration - construction. (1) It is declared to be the policy of the general assembly, recognizing the close relationship between professional gambling and other organized crime, to restrain all persons from seeking profit from gambling activities in this state; to restrain all persons from patronizing such activities when conducted for the profit of any person; to safeguard the public against the evils induced by common gamblers and common gambling houses; and at the same time to preserve the freedom

Item 11



Alaska State Legislature

House

Official Business

P.O. BOX V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: House State Affairs Committee Members

FROM: Representative H.A. "Red" Boucher, Chair
House State Affairs

DATE: January 23, 1990

RE: HB 232

You will recall the House State Affairs Committee held two hearings on HB 232 last session. The following summarizes the testimony and comments from those hearings:

Testimony

1. Rick Lauber, Pacific Seafood Processors Association

Stated he received unsolicited Fax advertising which he opposes. His concern, however, related to situations where fish processors sell to brokers by Fax. Would they be violating the provisions in HB 232?

Commercial solicitation under HB 232 means unsolicited electronic or telephone transmission. The process used by Mr. Lauber was unsolicited, however, it seemed appropriate and legitimate.

Companies which have a business relationship with a customer could easily receive the customer's permission to, and in the future, use the customer's Fax for unsolicited advertisements. The real problem was unsolicited, unwanted transmissions and this included automatic dialing machines.

2. Julie Barney, staff New York Assembly

Similar legislation was pending before the New York Assembly. Ms Barney indicated that the costs and losses incurred to the recipient of "junk" Fax transmission was the impetus behind the legislation.

Ms Barney testified that she believed companies which had a business relationship with a customer could easily receive the customer's permission to use the customer's machine for unsolicited advertisements from the company.

3. Anne Darr, Direct Marketing Association (DMA)

Supported HB 232. She testified that DMA deleted any person from the national mailing lists who wished to be removed.

Ms Darr said the DMA had established a special task force look into unsolicited Fax transmissions. She testified that DMA was urging and supporting a regulatory approach to unsolicited Fax transmissions.

4. Luis Marquez, Direct Advertising

Testified against HB 232. Mr. Marquez indicated that his business sent Fax advertising to 2,000 Fax machines throughout Alaska.

Mr. Marquez discussed his policy for Fax transmissions. He stated he did not sell his database list and that he had only received complaints from 1 to 2 percent of his customers. Mr. Marquez indicated he did not believe Fax advertising had become a problem in Alaska.

Mr. Marquez testified he believed the industry should be self-policing.

5. Robert Mintz, Assistant Attorney General

Testified that national studies showed that people generally did not voice their objections to unsolicited transmissions. Those studies showed that only 1 out of 26 dissatisfied customers on average would actually take the time to communicate a complaint to a company.

Mr. Mintz testified that he believed it was better public policy to stop a problem before it became a widespread.

H B

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HOUSE COMMITTEE REPORT

(5)

Date Referred: March 21, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 5/2/89

The TRANSPORTATION Committee considered:

HB 234

HOUSE BILL NO. 234

[ALASKA RAILROAD CROSSING AGREEMENTS]

"An Act relating to standardized railroad crossing permit agreements of the Alaska Railroad Corporation; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with _____ the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:
(Check approp. column)

Do Not Pass No Rec Amend

Bette Cate
Ben Sommers
Richard Jones

	Do Not Pass	No Rec	Amend

Bette Cate
Chairman's Signature



Representative Bette Cato, Chair House Transportation Committee

DATE: 5/2/89

PLACE: House Transportation #17

SUBJECT OF MEETING:
CS/SB 92
HB 234
HJR 41

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Bill Brown	DMV	P.O. Box 11 Juneau	99811		4335	<input checked="" type="radio"/> Y <input type="radio"/> N	SB 92
Mike Miller	Dist. 18	P.O. Box Juneau	99804		4375	<input checked="" type="radio"/> Y <input type="radio"/> N	HB 234
Barnaby	Rep Davis				4330 4330	<input checked="" type="radio"/> Y <input type="radio"/> N	HJR 41
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FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Administration
 Title: An Act relating to Veteran's preference in State employment BRU: Personnel
 Sponsor: Cato, Grussendorf, et al. Components: Personnel
 Requestor: House Judiciary

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
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	0	0	0	0	0	0
OTHER 1034	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

This bill would not have a fiscal impact on the Division of Personnel either in Fiscal Year 90 or in subsequent years.

Prepared by: David K. F. Otto *DKFO* Phone: 465-4430
 Division: Personnel Date: 1/22/90
 Approved by Commissioner: Frank S. Baxter *Frank S. Baxter* Date: 1/23/90
 Agency: Department of Administration

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

HOUSE COMMITTEE REPORT

(5)

Date Referred: March 21, 1989

FURTHER REFERRALS: JUDICIARY

5/2/89

Date of Committee Action: 5/2/89

The TRANSPORTATION Committee considered:

HB 234

HOUSE BILL NO. 234 [ALASKA RAILROAD CROSSING AGREEMENTS]
"An Act relating to standardized railroad crossing permit agreements of the Alaska Railroad Corporation; and providing for an effective date."

- RECOMMENDATIONS:
- be replaced with _____ the same title
 - have attached amendment(s) a new title
 - do pass
 - do not pass
 - no recommendation
 - individual recommendations
 - additional referral to the _____ Committee

ADOPTS: _____ letter of intent

- ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Date/Dept)
- fiscal impact CEO fiscal note(s) _____
 - zero fiscal note _____ zero fiscal note(s) _____
 - zero with analysis _____ zero fn/analysis _____

SIGNING DO PASS:

SIGNING: (Check approp. column)

Do Not Pass No Rec Amend

<u>Bette Cato</u> CATO			
<u>Bar ...</u> GRUSSENDORF			
<u>Richard ...</u> FOSTER			

Bette Cato
Chairman's Signature

Alaska State Legislature

REPRESENTATIVE
MIKE W MILLER
PO Box 55094
North Pole, Alaska 99705
(907) 488-2687

District 18
North Pole
Badger Road
Eielson
Moose Creek
Salcha



While in Juneau
PO Box V
Juneau, Alaska 99811
(907) 465-4976

House of Representatives

MEMORANDUM

TO: Representative Bette Cato
Chair, House Transportation Committee

FROM: Representative Mike Miller *M.W. Miller*

RE: House Bill 234, An Act relating to standardized
railroad crossing permit agreements of the Alaska
Railroad Corporation

DATE: 4/10/89

Thank you for making arrangements to hold a Joint House and Senate Transportation Committee meeting to discuss HB 234 and SB 233; identical bills dealing with railroad crossing permit agreements of the Alaska Railroad Corporation.

Many railbelt municipalities, and individual property owners, have grown increasingly frustrated with the Alaska Railroad Corporation's (ARRC) attitude stemming from its railroad crossing permit policy. This policy allows ARRC to make decisions involving maintenance, upgrading, and closing of railroad crossings with minimal or no input from the individuals or municipalities that hold specific crossing permits. This power has left many municipal leaders and private land owners feeling as if they are continually given "take it or leave it" proposals from ARRC.

Under the existing standardized permit system, permit holders are required to bear 100% of the cost of maintaining permitted crossings while ARRC makes 100% of the decisions on what maintenance work needs to be done on them, when it will be done, and who will do it.

HB 234 and SB 233 were introduced in an attempt to bring a sense of balance back to the issue of safe access across the Alaska Railroad right-of-way. The bills establish a system by which all future standardized crossing agreements must be brought before the Legislature for review before they can be implemented by ARRC. In addition, the bills direct ARRC to renegotiate all the existing crossing permits once the first standardized permit is approved in 1990.

I have placed in each members packet copies of letters, agreements, resolutions and newspaper articles I have collected in the one and a half years I have been following this issue.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 234
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Alaska Railroad Corporation
Title: Relating to Standardized
Crossing Permit Agreements BRU: _____
Sponsor: Rep. Miller Components: _____
Requester: DCED

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	\$10.0	\$115.0				
TRAVEL						
CONTRACTUAL						
SUPPLIES		1				
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	\$10.0	\$111.0				

*ARRC operates on a calendar fiscal year.

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER ARRC	\$10.0	\$111.0				
TOTAL						

POSITIONS:

FULLTIME		1				
PARTTIME		1				
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This fiscal note is for informational purposes only, as the Alaska Railroad is not subject to the Executive Budget Act.

(CONTINUED - NEXT PAGE)

Prepared by: Larry D. Wood
Division: Alaska Railroad Corporation

Phone: 265-2461
Date: 4-10-89

Approved by Commissioner: Larry Mercurieff *S.M.*
Agency: Department of Commerce & Economic Development

Phone: 465-2500
Date: _____

Distribution (by preparer):

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

3809D-3/041189a

STATE OF ALASKA LEGISLATIVE SESSION

FISCAL NOTE

ANALYSIS:

The legislation requires the Alaska Railroad Corporation (ARRC) to develop a new railroad crossing permit form by January 20, 1990. Development of a new form will cost approximately \$8,000 to \$10,000. The existing form will be revised by real estate staff and reviewed by attorneys. Revision costs will vary sharply if public comments are to be solicited as a result of an extensive hearing process. Once the form is authorized by legislative action or inaction, the bill next requires renegotiation of all railroad crossing permit agreements. There are approximately 273 crossings under permit to federal, state, university and private entities which would be affected by this requirement. Existing agreements have been negotiated over the course of many years and involve many different permittees. Consequently, a real estate leasing specialist position would be added to commit full-time personnel resources to the enormous task of renegotiating all of these agreements within a 12-month period. The engineering department will commit the equivalent of one-half man year of time to various levels of internal review, comment, and analysis. The estimate includes the expenses associated to an additional leasing specialist position and associated benefits, legal and engineering review, and printing, word processing, and supply costs.

The estimate does not include any other expenses which may be assessed against the ARRC after a new form is prepared. For example, if, as a result of legislative review, ARRC is required to pay for signal maintenance costs under revised permit terms, such costs will accrue at the rate of approximately \$3,700 per signalized crossing. Sight triangle, sign, and road surface maintenance costs are additional expenses associated with grade crossing which also have previously been the financial responsibility of requesting agencies. Finally, the shifting of grade crossing liabilities to ARRC will add less ascertainable, but certainly significant, costs to the other burdens imposed by this legislation.

By: The Railbelt
Coalition
Introduced: April 8, 1989
Approved: April 8, 1989

A JOINT RESOLUTION OF THE FOUR BOROUGHs OF THE RAILBELT AREA
RELATING TO THE ALASKA RAILROAD CORPORATION

WHEREAS, AS 42.40.910 provides that the Alaska Railroad Corporation "exists for the benefit of the people of the state, for their well-being and prosperity, and for the improvement of their social and economic conditions."; and

WHEREAS, according to AS 42.40.010, the Alaska Railroad Corporation has a legal existence independent and separate from the state; and

WHEREAS, the Alaska Railroad Corporation has complete and absolute control over its property; and

WHEREAS, while the Alaska Railroad would not hesitate to request funds from the State, if needed, but does not deposit any of its profits into the General Fund; and

WHEREAS, the State Legislature is considering reducing funds for municipal assistance, revenue sharing and education; and

WHEREAS, the Alaska Railroad Corporation has previously maintained its crossings and is now taking an antagonistic attitude with municipalities and property owners along its route in relation to railroad crossings and adjacent property; and

WHEREAS, the Alaska Railroad Corporation provides subsidies to certain shippers and not others and competes unfairly with private transportation modes because it does not have to pay taxes; and

WHEREAS, the Alaska Railroad corporation has increased easement and permit costs, maintenance costs, in some cases, blocked railroad crossings in communities, threatened to close roads unless crossing maintenance fees are paid, and generally is assessing unfair charges to communities and local citizens.

RESOLUTION FROM THE
RAILBELT COALITION

Page 2

NOW, THEREFORE, BE IT RESOLVED that if the legislature does not wish to allow municipalities to tax the Alaska Railroad Corporation, the Governor or the Alaska Railroad Corporation Board of Directors are requested to:

- (1) reduce or eliminate the costs of maintaining railroad crossing to municipalities and private land owners;
- (2) use Alaska Railroad Corporation profits to maintain railroad crossings.

BE IT FURTHER RESOLVED that copies of this resolution shall be sent to Steve Cowper, Governor, State of Alaska, David G. Hoffman, Commission of the Department of Community and Regional Affairs and all legislators representing the Railbelt Coalition.

PASSED AND APPROVED THIS 8TH DAY OF APRIL, 1989

MUNICIPALITY OF ANCHORAGE

By Heather Meyer

FAIRBANKS NORTH STAR BOROUGH

By Juanita Sheno

KENAI PENINSULA BOROUGH

By Jan U. Skogstad

MATANUSKA-SUSITNA BOROUGH

By Dorothy A. Jones

ALASKA RAILROAD CORPORATION

P.O. Box 7-2111 • Anchorage, Alaska 99510-7069



Contract No. 5881
Permit For: Private Road Crossing
ARRC Milepost: 193.56
DOT ID No.: 910 226Y

PERMIT

THIS PERMIT, dated _____, 1987, is made by and between the ALASKA RAILROAD CORPORATION, a public corporation of the State of Alaska formed pursuant to AS 42.40 ("ARRC"), and PACCO, INC., (check one) a sole proprietorship or an individual a general partnership a limited partnership a(n) Washington corporation (insert state of incorporation) a governmental unit ("Permittee").

1. GRANT OF PERMIT. ARRC hereby grants to the Permittee a permit to construct, reconstruct, operate and/or maintain a private road crossing at Milepost 193.56 (the "Facility") upon ARRC's track right-of-way, communications pole line right-of-way, or other property of ARRC, as set forth on the drawing attached as Exhibit A (the "Site"). The permission herein granted is subject to the terms and conditions set forth in this permit.

2. TERM. This permit shall be for a term of five (5) years, commencing September 1, 1987 and ending August 31, 1992. ARRC may terminate this permit at any time on ninety (90) days' written notice.

3. PERMIT FEE. As partial consideration for this permit, Permittee shall pay an annual fee of four hundred dollars (\$400) which is due upon the execution of this permit and on every September 1 thereafter.

4. PLANS AND SPECIFICATIONS.

4.1 Permittee's predecessor in interest has constructed the Facility in the location outlined in red on Exhibit A.

4.2 Permittee shall construct, reconstruct, operate and/or maintain the Facility in the location shown outlined in "red" on Exhibit A.

4.2 Prior to advertising for bids, issuing amendments and/or issuing a change order(s) to its contractor for work on any part of the Facility covered by this permit, or prior to commencing any such work itself, the Permittee shall submit to ARRC for approval all plans and specifications and all amendments, additions or corrections thereto, for the original construction and all future modifications of the Facility. Permittee agrees not to commence any associated work until the aforesaid approval has been received.

PRIVATE ROAD CROSSING PERMIT

4.3 Permittee agrees that any Facility construction shall be substantially in accordance with Permittee's plans and specifications as first approved by ARRC.

4.4 Permittee agrees that if, at any time during the term of this permit, ARRC deems it necessary to have additional safety equipment installed for the protection of its passengers, personnel, or equipment, the Permittee will, upon request from ARRC, install such equipment or safety devices as are prescribed by ARRC. Permittee agrees to comply with all ARRC standards for side and overhead clearances, which may be obtained from ARRC.

4.5 The Standard Specifications for Work on Railroad Property (the "Standard Specifications") attached as Exhibit B are incorporated herein by reference. Permittee hereby agrees that all construction, reconstruction, operation and maintenance upon ARRC property shall be performed in accordance with the Standard Specifications and any supplemental conditions required by paragraph 4.6 of this document or by any supplements hereto. Permittee agrees to make the Standard Specifications and any supplemental conditions part of all contractual bid specifications which the Permittee may publish for work associated with its Facility covered under this permit. In the event the Standard Specifications are revised by ARRC prior to termination of this permit, Permittee agrees that any changes in or additions to the Facility shall be performed in accordance with such revised Standard Specifications, provided that ARRC has given notice of the change to Permittee.

4.6 Permittee hereby agrees to the supplemental conditions, if any, to this permit attached as Exhibit C.

4.7 If automatic crossing signal devices (including improved crossing protection devices required by revised industry standards) are required by applicable law or regulation, by railroad industry standards, or by either party, such signals shall be furnished, installed and maintained by ARRC at the expense of the Permittee.

5. MAINTENANCE OF FACILITY: INSTALLATION OF GATE.

5.1 During the term of this permit, the Permittee shall maintain the Facility to industry standards, or to those standards or levels of maintenance prescribed by federal, state or municipal laws and regulations. If no industry standards, laws or regulations exist, then the Permittee shall maintain its Facility to the satisfaction of ARRC. Sight triangles shall be maintained by Permittee free of vegetation and other obstructions to vision in accordance with the table entitled "Sight Triangle Distance" attached as Exhibit D and as otherwise established and revised from time to time by ARRC.

5.2 Permittee shall, within two (2) months of the date of execution of this permit, construct a gate and erect signage at the Facility in accordance with pages 2.76 and 2.77 of the ARRC's Standard Plan attached to this permit as Exhibits E and F.

6. PAYMENT FOR WORK.

6.1 Permittee shall pay for all Facility construction, reconstruction, operation and/or maintenance, including the cost of ARRC inspectors and flagmen whose duties will be to protect the interests of ARRC and to insure the completion of the work to the satisfaction of ARRC.

6.2 Permittee shall reimburse ARRC for all costs in connection with the granting and operation of this permit, including but not limited to, labor, materials, and equipment furnished by ARRC. Such reimbursement shall be at rates established by ARRC, and shall be due and payable within thirty (30) days following the date invoices are submitted by ARRC to the Permittee.

6.3 Permittee acknowledges that ARRC has previously performed work in connection with the construction of the Facility at the request of Permittee's predecessor in interest. In further consideration for this permit, Permittee shall pay ARRC the sum of one thousand five hundred one dollars (\$1,501.00) representing the labor expended by ARRC in connection with such construction. Receipt of such amount is acknowledged by execution of this permit by ARRC.

7. INTEREST IN RAILROAD PROPERTY.

7.1 It is understood that the Permittee acquires no interest in or title to ARRC property by means of this permit. Permittee shall have, at the discretion of ARRC, access to ARRC property for the purpose of construction, reconstruction, operation and/or maintenance of the Facility. This shall be done at times which will not in any way interfere with the operation of ARRC.

7.2 ARRC reserves the right of ingress to and egress from the Site and the right to enter any part of the Site, including buildings thereon, for the purpose of inspection at any reasonable time, and in time of emergency. All inspections will be coordinated with the Permittee in order to minimize interference with the Permittee's activities on the Site.

7.3 Prior to the expiration or termination of this Permit, the Permittee will remove the Facility and other property of Permittee and restore the Site to its original condition unless otherwise directed by ARRC. Failure of the Permittee to do so by the expiration or termination date will result in ARRC removing the Facility and other property of Permittee and restoring the Site at the Permittee's expense, which expense Permittee agrees to pay ARRC upon demand.

8. NON-EXCLUSIVE USE/RAILROAD CONSTRUCTION.

8.1 ARRC reserves the right to grant permission to others to use and occupy the Site, provided that said use and occupancy will not, in the opinion of ARRC, unreasonably interfere with the Permittee's use of the Facility.

8.2 In the event ARRC finds it is necessary to alter or add to its construction within the Site, the Permittee shall make all alterations to the Facility necessary to accommodate ARRC's construction without cost to ARRC.

9. INSURANCE AND INDEMNIFICATION.

9.1 Workers' Compensation. Permittee shall ensure that, with respect to all personnel performing work on the Facility, Permittee maintains in effect at all times during the term of this permit, coverage or insurance in accordance with the applicable laws relating to workers' compensation and employer's liability insurance, regardless of whether such coverage or insurance is mandatory or merely elective under the law.

9.2 Liability Insurance. Prior to construction, reconstruction, operation and/or maintenance of the Facility, Permittee shall secure such liability insurance as will protect Permittee and ARRC from and against any and all claims and liabilities arising out of bodily harm (including death) or property damage that may result from such construction, reconstruction, operation and/or maintenance. All such insurance shall be placed with such insurers and under such forms of policies as may be acceptable to ARRC. Without limiting the generality of the foregoing, such insurance shall include the following; provided however, that the provisions of this paragraph shall control over any inconsistent provisions contained in the Standard Specifications attached hereto:

(a) Comprehensive general liability insurance (including, but not limited to, premises-operations, products, contractual, broad-form property and independent contractors) with a combined single limit per occurrence of not less than one million dollars (\$1,000,000) for bodily harm (including death) and property damage.

(b) comprehensive automobile liability insurance (including owned, hired, and non-owned) with a combined single limit per occurrence of not less than five hundred thousand dollars (\$500,000) for bodily harm (including death) and property damage.

(c) explosion, collapse and underground damage insurance with a combined single limit per occurrence of not less than N/A Dollars (\$_____).

(d) excess umbrella liability insurance of not less than N/A dollars (\$_____).

(e) Railroad protective liability insurance, naming the Alaska Railroad Corporation as insured, of not less than one million dollars (\$1,000,000) per occurrence for bodily injury and one million dollars (\$1,000,000) per occurrence for property damage; provided that such insurance shall be required only during the period(s) of time during the term of this permit that Permittee is performing work on ARRC right-of-way property.

The amounts and types of insurance set forth in this paragraph 9.2 are subject to review and reasonable change annually by ARRC. ARRC shall provide Permittee written notice of a change sixty (60) days' prior to the effective date.

9.3 Evidence of Insurance. Permittee shall deliver to ARRC certificates of insurance prior to the construction reconstruction, operation and/or maintenance of the Facility (or within such further time as ARRC may allow in writing), and such additional assurance certified by an authorized representative of the insurer as ARRC may from time to time request.

9.4 Additional Insured. Permittee shall ensure that any policies of insurance that Permittee carries against loss of or damage to property or against liability for property damage or bodily harm that may occur in connection with the Facility or this permit shall name ARRC as an additional insured.

9.5 No Limitation. The requirements of this permit as to insurance and acceptability to ARRC of insurers and insurance to be

maintained by Permittee is not intended to and shall not in any manner limit or qualify the liabilities and obligations of Permittee under this permit.

9.6 Indemnity. Permittee shall assume complete liability for any and all claims resulting from the construction, reconstruction, maintenance, operation, use and existence of the Facility located on, under, or over the Site. Permittee releases and shall defend, indemnify and hold harmless ARRC from and against all royalties, claims, losses, harm, costs, liabilities, damages, and expenses (including, but not limited to, attorneys' fees), whether suffered by ARRC or any other person or entity, in any manner directly or indirectly arising out of or due to:

(a) any act, omission, fault, negligence, or strict liability of Permittee in connection with or incident to the Facility or performance of this permit;

(b) any bodily harm (including death) to any person or damage to any property or to the environment in connection with or incident to the Facility or performance of this permit by Permittee;

(c) any lien or asserted liens upon the property of ARRC arising out of or in connection with the Facility or the performance of this permit by Permittee;

(d) any failure of Permittee to comply with all applicable laws, ordinances, rules, regulations, orders, licenses, permits, and other requirements, now or hereafter in effect, or any governmental authority;

(e) any failure of Permittee to secure and maintain insurance as required by this permit; or

(f) any failure of Permittee to comply with the requirements of this permit.

To the fullest extent permitted by applicable law, the provisions of this paragraph 9.6 shall apply regardless of any acts, omissions, fault, negligence, or strict liability of any employees or agents of ARRC; provided, however, that Permittee shall not be required by this permit to indemnify any person against liability for damages arising out of bodily injury or property damage caused by or resulting from the sole negligence of such person or such person's agents or employees.

10. DEFAULT AND REMEDIES.

10.1 Default. The occurrence of any one or more of the following events shall constitute a material default by Permittee.

(a) The failure by Permittee to make any payments required to be made by Permittee hereunder, as and when due, where such failure shall continue for a period of five (5) days after written notice thereof from ARRC to Permittee;

(b) Except as otherwise provided in this permit, the failure by Permittee to observe or perform any of the covenants, conditions or provisions of this permit to be observed or performed by Permittee, other than described in paragraph (a) above, where such failure shall continue

for a period of ten (10) days after written notice thereof from ARRC to Permittee;

(i) the making by Permittee of any general arrangement or general assignment for the benefit of creditors;

(ii) Permittee becomes a debtor in bankruptcy;

(iii) the appointment of a trustee or receiver to take possession of substantially all of Permittee's assets;

(iv) the attachment, execution or other judicial seizure of substantially all of Permittee's assets.

(c) The discovery by ARRC that any financial statement given to ARRC by Permittee, any assignee of Permittee, any successor in interest of Permittee or any guarantor of Permittee's obligation hereunder, was materially false at the time given.

(d) Vacation or abandonment of the Facility by Permittee.

10.2 Remedies. In the event of any material default by Permittee, ARRC may at any time thereafter, without notice or demand and without limiting ARRC in the exercise of any right or remedy which ARRC may have by reason of such default:

(a) Terminate Permittee's rights under this permit and ARRC may pursue other remedies.

(b) Maintain Permittee's rights under this permit in which case this permit shall continue in effect. In such event ARRC shall be entitled to enforce all of ARRC's rights and remedies under this permit, including the right to recover the payments due hereunder.

(c) Pursue any other remedy now or hereafter available to ARRC under the laws or judicial decisions of the State of Alaska.

10.3 Late Charges; Interest. If any payment due from Permittee shall not be received by ARRC when such amount shall be due, then, without any requirement for notice to Permittee, Permittee shall pay to ARRC all charges and interest as set forth in ARRC's credit policy. This late charge does not waive, excuse or cure any default.

11. LAWS AND TAXES.

11.1 This permit is issued subject to all requirements of the laws of the State of Alaska and regulations of ARRC relating to the granting of privileges on ARRC lands and facilities.

11.2 Permittee shall comply with all applicable laws, ordinances, rules, regulations, orders, licenses, permits and other requirements, now or hereafter in effect, of any governmental authority including, but not limited to, matters of health, safety, sanitation and the environment. Permittee shall execute and deliver to ARRC copies of all documents as may be required to effect or to evidence such compliance. All laws, ordinances, rules, regulations, orders, licenses, and permits required to be incorporated in agreements of this character are incorporated herein by this reference.

11.3 Unless otherwise specified in this permit, the attachments hereto or as directed by ARRC, Permittee shall obtain and pay for all permits, inspections, licenses and fees and shall furnish all bonds, security or deposits required to construct, reconstruct, operate and/or maintain the Facility in accordance with this permit. Permittee shall advise ARRC in writing and consult with ARRC prior to applying for any permit or other authorization from, or entering into any agreement with, any governmental authority with regard to the construction, reconstruction, operation and/or maintenance of the Facility.

11.4 Permittee agrees to notify ARRC of any claim, demand or lawsuit arising out of the Permittee's occupation or use of the Site. Upon ARRC's request, the Permittee will cooperate and assist in the investigation and litigation of any such claim, demand or lawsuit.

11.5 ARRC makes no specific warranties, expressed or implied, concerning the title or condition of the Site, including survey, access or suitability for any use, including those uses authorized by this permit. Permittee's use of the Site is subject to any and all of the covenants, terms and conditions affecting ARRC's title to the Site.

12. LIENS. Permittee shall keep the Site free of all liens, pay all costs for labor and materials arising out of any construction or improvements by the Permittee on the Site, and hold ARRC harmless from liability for any liens, including costs and attorneys' fees. This provision shall not be interpreted to mean that ARRC in any way recognizes a liability on its part for any such liens.

13. IMPOSSIBILITY OF PERFORMANCE; FORCE MAJEURE

13.1 Defined. The term "Force Majeure" as used herein shall mean any cause beyond the control of the party affected which could not be overcome with reasonable diligence and effort, including: Acts of God, acts of public enemy, insurrection, war, blockades, strikes, lockouts, other labor stoppage, riots, other public disorders, storms, landslides, avalanches, floods, washouts, earthquake, lightning, civil or military disturbances, restraint by court or public authority, boycotts, embargoes, or acts of military authorities.

13.2 Procedure for Claim of Force Majeure.

13.2.1 The party asserting a claim of Force Majeure shall, as soon as reasonably practical after knowledge of the start of such Force Majeure, provide notice to the other party hereto in writing, certifying all available facts and circumstances surrounding the occurrence of the Force Majeure, including, but not limited to: its causes; expected duration; efforts to overcome; and the claimed effect on the party's obligations to perform under this permit.

13.2.2 When the Force Majeure condition has terminated, the party claiming the Force Majeure shall, within thirty (30) days of termination, certify in writing all available facts and circumstances surrounding the occurrence of the event, including, but not limited to: its causes; time of start and end, and duration of condition; efforts taken to overcome; and the effect on the parties' obligations to perform under this permit. The party shall, upon request, promptly provide additional documentation of supporting facts and calculations relating to the claim of Force Majeure.

13.3 Effect Hereunder. If because of Force Majeure, any party is unable to carry out any of its obligations under this permit, and if such party shall, as soon as reasonably practical after knowledge of the start of Force Majeure, give to the other party notice of such Force Majeure, then the obligations of all parties shall be suspended to the extent made necessary by the Force Majeure and during its continuance; provided, however, the party experiencing Force Majeure shall take prompt and reasonable action to overcome such causes of Force Majeure and its operation shall be resumed immediately after such causes have been removed. Nothing contained in this paragraph shall cause the party affected by the Force Majeure to submit to what it considers to be an unreasonable labor agreement.

14. ASSIGNMENT. This permit shall not be assigned or in any manner transferred without the prior written consent of ARRC. This shall not be construed to impair or prevent the carrying out by public agencies of responsibilities not inconsistent with the operation and policies of ARRC relative to reconstruction, maintenance or control of the Facility.

15. NOTICES. Any notice permitted or required to be given hereunder shall be in writing and either delivered by hand, sent by certified or registered mail, return receipt requested, or sent by telegram with confirmed delivery;

(a) If to ARRC, at

ALASKA RAILROAD CORPORATION
P.O. Box 107500
Anchorage, AK 99510-7500
ATTN: Director, Real Estate

(b) If to Permittee, at

PACCO, INC.
P.O. Box 759
Tenino, WA 98589
ATTN: Brian Martin

Notice shall be deemed to have been given on the date delivered to the recipient, regardless of any other date indicated thereon.

16. NO WAIVER. The failure of ARRC to insist in any one or more instances upon the strict performance by the Permittee of any provision or covenant in this permit shall not be considered as a waiver or relinquishment for the future, and any such provision or covenant will continue in full force, unless ARRC issues an authorized written waiver therefrom.

17. VALIDITY OF PARTS. If any provision or covenant of this permit is declared to be invalid by a court of competent jurisdiction, the remaining covenants and provisions will continue in full force.

18. INTERRELATIONSHIP OF PROVISIONS. The basic provisions, general covenants, special covenants, supplements, addendums and drawings contained herein are essential parts of this permit and are intended to be co-operative in designating and describing the respective rights and obligations of the parties to this permit. Should discrepancies appear, special covenants govern over basic provisions, both of which govern over general covenants, and figured dimensions govern over scaled dimensions unless obviously incorrect.

19. HEADINGS AND CAPTIONS. The heading and captions used in this permit have been inserted solely for convenience of reference and shall

not affect, or be deemed to affect, the meaning of any provision of this permit.

20. BINDING. Subject to the provisions of paragraph 14 above, this permit shall be binding on the successors and assigns of Permittee and ARRC.

21. INTEGRATION AND MERGER. This permit sets forth all the terms, conditions, and agreements of the parties and supersedes any previous understandings or agreements regarding the Facility and the Site, whether oral or written. No modification of this permit is effective unless made in writing and signed by both parties.

22. GOVERNING LAW. This permit and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the applicable laws of the State of Alaska and of the United States of America. Permittee shall not commence or prosecute and sue, proceeding or claim to enforce the provisions of this permit, to recover damages for breach or default under this permit, or otherwise arising under or by reason of this permit, other than in the courts of the State of Alaska or the District Court of the United States for the District of Alaska. Permittee hereby irrevocably consents to the jurisdiction of the courts of the State of Alaska with venue laid in the Third Judicial District or the District Court of the United States for the District of Alaska.

Dated: _____

ALASKA RAILROAD CORPORATION

By: _____

Larry J. Houle
Director, Real Estate

Dated: _____

PACCO, INC.

By: _____

Its: _____

Attachments [check as attached]:

- Exhibit A - Map/legal description
- Exhibit B - Standard Specifications
- Exhibit C - Supplemental Conditions
- Exhibit D - Sight Triangle Distance
- Exhibits E and F - Pages 2.76, 2.77, ARRC Standard Plan

2411R

ALASKA RAILROAD CORPORATION



P.O. Box 7-2111 • Anchorage, Alaska 99510-7069

Contract No. 5719

Permit For: Two Public Road Crossings,
Public Roadway and Bicycle
Path

ARRC Milepost: G-15.77 (Cross Way St.)
G-16.39 (8th Ave.) and
G-16.37 to G-16.76 (8th
Ave. to Grange)

JAN 28 1988

PERMIT AND CONSTRUCTION AGREEMENT

THIS PERMIT (herein called "this Permit") is made this 14th day of February, 1987, by and between the ALASKA RAILROAD CORPORATION (herein called "Permitter"), whose principal place of business is P.O. Box 107500, Anchorage, Alaska, 99510-7500, and CITY OF NORTH POLE, (herein called "Permittee"), whose principal place of business is P.O. Box 55109, North Pole, Alaska, 99705.

WITNESSETH:

Railroad hereby grants to the Permittee a permit to construct, reconstruct, operate and maintain two at-grade public road crossings at Milepost G-15.77 (Cross Way Street) and G-16.39 (8th Ave.); bicycle path crossing the Railroad's tracks at Milepost G-16.39 (8th Ave.) and a public roadway within the Railroad's right-of-way from Milepost G-16.37 to G-16.76 (8th Ave. to Grange). (herein called the "facility"), upon Railroad's track right-of-way, communications pole line right-of-way, or other property of Railroad, as designed on the print attached hereto, which by this reference is made a part hereof. The permission herein granted is subject to the following terms and conditions:

1. TERM

This permit shall be for a term of TWENTY (20) YEARS, commencing JUNE 1, 1985. Provided, however, that this permit may be terminated at any time by Permittee or by Railroad should Permittee fail to comply with the terms and conditions of this permit.

2. PLANS AND SPECIFICATIONS

a. Permittee shall construct the facility in the location shown outlined in "red" on the print attached hereto.

MUNICIPAL XING PERMIT
(THIS HAS BEEN VOIDED BY NORTH POLE)

b. Permittee agrees that the facility construction at Milepost G-16.39 shall be performed in accordance with State of Alaska's plans and specifications dated March 5, 1985, ARRC Contract No. 5718 with the State of Alaska, and that the facility construction at Milepost G-15.77 (Cross Way Street) and the public roadway from Milepost G-16.37 to G-16.76 (8th Ave. to Grange) be performed in accordance with the Permittee's plans and specifications dated July, 1986.

c. Prior to advertising for bids, issuing amendments and/or issuing a change order(s) to its contractor for work on any part of the facility covered by this permit, the Permittee shall submit to Railroad's Chief Engineer for approval all plans and specifications and all amendments, additions or corrections thereto, for the original construction and all future modifications. Permittee agrees not to commence any associated work until the aforesaid approval has been received.

3. PERMIT FEE

As consideration for this Permit, Permittee agrees to pay a TWO HUNDRED DOLLAR (\$200.00) administrative fee per annum payable ANNUALLY in advance on JANUARY 1 of each year to the ARRC.

4. WORK BY THE PERMITTEE

Permittee shall perform, at its own expense and in accordance with the prior-approved plans and specifications, all work associated with this permit, excepting such work as may be performed by Railroad at the expense of the Permittee, as hereinafter set forth.

5. MAINTENANCE OF FACILITY

During the term of this permit, the Permittee shall maintain the facility to industry standards, or to those standards or levels of maintenance prescribed by federal, state or municipal laws and regulations. If no industry standards, laws or regulations exist, then the Permittee shall maintain its facilities to the satisfaction of Railroad.

6. PAYMENT FOR WORK

a. Permittee shall pay for all facility construction, reconstruction, operation and maintenance, including the cost of Railroad inspectors and flagmen whose duties will be to protect the interests of Railroad and to insure the completion of the work to the satisfaction of Railroad.

b. Permittee shall reimburse Railroad for all costs in connection with the granting of this permit, including but not limited to, labor, materials, and equipment furnished by Railroad. Such reimbursement shall be at rates established by Railroad, and shall be due and payable within thirty (30) days following the receipt of invoices submitted by Railroad to the Permittee.

7. INDEMNITY

Permittee shall indemnify and save harmless Railroad from and against all losses and all claims, demands, payments, suits, actions, recoveries, legal expenses and judgments of every nature and description made, brought or recovered against

Railroad by reason of any act or omission of the Permittee, its bidders, contractors, subcontractors, agents or employees, in the execution of work or in guarding the same. Permittee shall assume complete liability for any and all claims resulting from the construction, reconstruction, maintenance, use and existence of the facility located on or over the permit area. This provision shall not be interpreted to mean that the Permittee shall assume liability for the negligence of railroad employees while acting within the scope of their employment.

8. ASSIGNMENT

This permit shall not be assigned or in any manner transferred without the prior written consent of Railroad. This shall not be construed to impair or prevent the carrying out by public agencies of responsibilities not inconsistent with the operation and policies of Railroad relative to reconstruction, maintenance or control of the facility.

9. INTEREST IN RAILROAD PROPERTY

It is understood that the Permittee acquires no interest in or title to Railroad property by means of this permit. Permittee shall have, at the discretion of Railroad, access to Railroad property for the purpose of construction, reconstruction, operation and maintenance of the facility. This shall be done at times which will not in any way interfere with the operation of Railroad.

10. FUTURE PERMITS/EASEMENTS

Railroad reserves the right to grant permission to others to use and occupy the permit area, provided that said use and occupancy will not, in the opinion of Railroad, unreasonably interfere with the Permittee's use of the permit area.

11. FUTURE RAILROAD CONSTRUCTION

In the event Railroad finds it is necessary to alter or add to its construction within the permit area, the Permittee shall make all alterations to the facility necessary to accommodate Railroad's construction without cost to Railroad.

12. AUTOMATIC CROSSING PROTECTION (Applies only to Highway and Public Road Crossing Permits)

If automatic crossing signal devices are required by either party, such signals shall be furnished, installed and maintained by Railroad at the expense of the Permittee.

13. SAFETY EQUIPMENT

Permittee agrees that if, at any time during the term of this permit, Railroad deems it necessary to have additional safety equipment installed for the protection of its passengers, personnel, or equipment, the Permittee will, upon request from Railroad, install such equipment or safety devices as are prescribed by Railroad. Permittee agrees to comply with all Railroad standards for side and overhead clearances, which may be secured from Railroad's Chief Engineer.

14. REMOVAL OF FACILITIES

Prior to the expiration or termination of this Permit, the Permittee will remove its facilities and restore the permit area to its original condition. Failure of the Permittee to do so by the expiration or termination date will result in Railroad removing said facilities and restoring the permit area at the Permittee's expense, which expense Permittee agrees to pay Railroad upon demand.

15. INTEGRATION AND MERGER

This permit sets forth all the terms, conditions, and agreements of the parties and supersedes any previous understandings or agreements regarding the premises, whether oral or written. No modification of this permit is effective unless made in writing and signed by both parties.

16. INGRESS/EGRESS

Railroad reserves the right of ingress to and egress from the premises and the right to enter any part of the premises, including buildings thereon, for the purpose of inspection at any reasonable time, and in time of emergency. All inspections will be coordinated with the Permittee in order to minimize interference with the Permittee's activities on the premises.

17. SECURITY OF AGREEMENT

a. Railroad warrants that no person or selling agency has been employed or retained to solicit or secure this permit upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bonafide employees or bonafide established commercial or selling agencies maintained by Railroad for the purpose of securing business. For breach or violation of this warranty, the Permittee shall have the right to annul this permit without liability for the annulment or, in its discretion, to deduct from the permit fees or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee. (Licensed real estate agents or brokers having listings on property for rent, in accordance with general business practice, and who have not obtained such licenses for the sole purpose of effecting this permit, may be considered as bonafide agencies within the exception contained in this clause).

b. No member of or delegate to congress, or resident commissioner shall be entitled to any share or part of this permit, or to any benefit that may arise therefrom.

18. EXECUTION BY RAILROAD

This permit is of no effect until it has been signed by an authorized representative of Railroad.

19. DISCRIMINATION

Permittee covenants and agrees that discrimination on the grounds of race, color, religion, national origin, ancestry, age or sex will not be permitted against any patron, employee, applicant for employment, or other person or group of

persons in any manner prohibited by federal or state law. Permittee recognizes the right of Railroad to take any action necessary to enforce this covenant, including actions required pursuant to any federal or state law.

20. LAWS AND TAXES

a. This permit is issued subject to all requirements of the laws of the State of Alaska and regulations of Railroad relating to the granting of privileges on Railroad lands, and facilities.

b. At no expense to Railroad, the Permittee will conduct all activities or business authorized by this permit in compliance with all applicable federal, state and local laws, ordinances, rules and regulations now or hereafter in force, including but not limited to matters of health, safety, sanitation and the environment. Permittee must obtain all necessary licenses and permits, pay all fees and charges assessed under applicable public statutes or ordinances.

c. Permittee agrees to notify Railroad of any claim, demand or lawsuit arising out of the Permittee's occupation or use of the premises. Upon Railroad's request, the Permittee will cooperate and assist in the investigation and litigation of any such claim, demand or lawsuit.

d. Railroad makes no specific warranties, expressed or implied, concerning the title or condition of the property, including survey, access or suitability for any use, including those uses authorized by this permit. Permittee takes the premises subject to any and all of the covenants, terms and conditions affecting Railroad's title to the premises.

21. LIENS

Permittee shall keep the premises free of all liens, pay all costs for labor and materials arising out of any construction or improvements by the Permittee on the premises, and hold Railroad harmless from liability for any liens, including costs and attorney fees. This provision shall not be interpreted to mean that Railroad in any way recognizes a liability on its part for any such liens.

22. NO WAIVER

The failure of Railroad to insist in any one or more instances upon the strict performance by the Permittee of any provision or covenant in this permit shall not be considered as a waiver or relinquishment for the future, and any such provision or covenant will continue in full force, unless Railroad issues an authorized written waiver therefrom.

23. MODIFICATION

Railroad may modify this permit to meet the revised requirements of federal or state grants or to conform to the requirements of any revenue bond covenant to which the State of Alaska is a party. Provided, that a modification may not act to reduce the rights or privileges granted the Permittee by this permit nor act to cause the Permittee financial loss.

24. VALIDITY OF PARTS

If any provision or covenant of this permit is declared to be invalid by a court of competent jurisdiction, the remaining covenants and provisions will continue in full force.

25. INTERRELATIONSHIP OF PROVISIONS

The basic provisions, general covenants, special covenants, supplements, addendums and drawings contained herein are essential parts of this permit and are intended to be co-operative, in designating and describing the respective rights and obligations of the parties to this agreement. Should discrepancies appear, special covenants govern over basic provisions, both of which govern over general covenants, and figured dimensions govern over scaled dimensions unless obviously incorrect.

26. IMPOSSIBILITY OF PERFORMANCE

In the event any cause not due to the fault or negligence of either the Permittee or Railroad renders the premises unusable or makes the performance of this permit impossible, this permit may be terminated by either party upon written notice to the other party.

27. NOTICES

Any notice required by this permit must be hand delivered or sent by registered or certified mail to the appropriate party at the address set forth on page one of this permit or to any other address which the parties subsequently designate in writing.

28. STANDARD SPECIFICATIONS ON RAILROAD PROPERTY

a. The attached Standard Specifications for Work on Railroad Property are incorporated herein by reference.

b. Permittee hereby agrees that all construction, reconstruction, operation and maintenance upon Railroad property shall be performed in accordance with the Standard Specifications for Work on Railroad Property and any supplemental conditions required by paragraph 3 of this document or by any supplements hereto.

c. Permittee agrees to make said Standard Specifications for Work on Railroad Property and supplemental conditions part of all contractual bid specifications which the Permittee may publish for work associated with its facility covered under this permit.

d. Any changes in the insurance provision in Section 3 of the Standard Specifications for Work on Railroad Property must be complied with on the next anniversary date of the Permittee's insurance policy following date of notification of change in Section 3.

29. SUPPLEMENTAL CONDITIONS TO THE STANDARD SPECIFICATIONS FOR WORK ON RAILROAD PROPERTY

Permittee hereby agrees to the following supplemental conditions to the Standard Specifications for Work on Railroad Property included herein:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

ALASKA RAILROAD CORPORATION

Dated: 10 February

By: [Signature]
Larry J. Houle,
Director, Real Estate

CITY OF NORTH POLE

Dated: 2-4-89

By: [Signature]
Its: Mayor

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this 10th day of February 1989, by Larry J. Houle, Director of Real Estate, of the Alaska Railroad Corporation, a public corporation created by Alaska Statute 42.40, on behalf of the corporation.

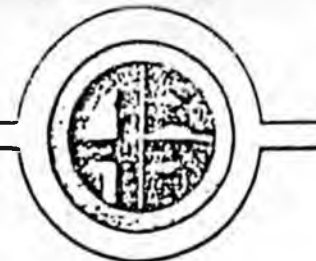
Kathleen A. Novasad
Notary Public in and for Alaska
My Commission expires: 1-21-89

STATE OF Alaska)
)ss.
Fourth JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this 4th day of February, 1987, by Carbita Jensen of Mayor of City of North Pole, a Municipality corporation, on behalf of the corporation.

Deirda J. Hayward
Notary Public in and for North Pole
My Commission expires: 9/11/90

ALASKA RAILROAD CORPORATION



P.O. Box 7-2111 • Anchorage, Alaska 99510-7069

January 4, 1987

Mr. David T. Bloom
Project Manager
State of Alaska, DOT/PF
Northern Region
2301 Peger Road
Fairbanks, Alaska 99709-6394

Re: Eighth Avenue Grade Crossing Signalization
DOT/PF Project No. RRP-2(31)/64017, ARRC MP G16.39
ARRC Contract No. 23-87-018, ARRC Permit No. 5719

Dear Mr. Bloom:

Enclosed are two copies of the Automatic Crossing Signal Construction Agreement.

Please execute both originals and return the originals to me at:

Alaska Railroad Corporation
Engineering Department
P.O. Box 107500
Anchorage, Alaska 99510-7500

An original Agreement will be returned for your files when the Agreement is fully executed. Thank you for your prompt attention and cooperation in this matter.

Sincerely,

Francis C. Weeks, P.E.
Chief Engineer

Enclosures: 2 copies of Automatic Crossing Signal Construction Agreement

cc: City of North Pole
Contract No. 23-87-010
Permit No. 5719
Work Order #25599
Work Order #21899

0011E

NORTH POLE 8TH AVE. CROSSING
UPGRADE AGREEMENT (PLACED
ON HOLD UNTIL THE CROSSING
ISSUE IS SETTLED)

ALASKA RAILROAD CORPORATION



P.O. Box 7-2111 • Anchorage, Alaska 99510-7069

ARRC Contract No. 23-87-018
DOT/PF Project #RRP-2(31)/64017
Project: 8th Avenue Grade Crossing
Signalization
ARRC Milepost G16.39

AUTOMATIC CROSSING SIGNAL CONSTRUCTION AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____ 1988, by and between ALASKA RAILROAD CORPORATION, herein referred to as "ARRC" and the STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, 2301 Peger Road, Fairbanks, Alaska 99709-6394, hereinafter referred to as "DOT/PF".

WITNESSETH:

WHEREAS, the following contract has been signed for the right to construct and maintain road crossings.

PERMITTEE	PERMIT NO.	ROAD NAME	ARRC MP.	AAR-DOT INV. #
City of North Pole	5719	8th Avenue, North Pole	G16.39	868-463-X

WHEREAS, DOT/PF has requested ARRC, to construct automatic crossing signals, and provide flag protection for DOT/PF contractor in accordance with plans submitted by the DOT/PF.

WHEREAS, improvements made under this agreement will be maintained in accordance with the permit listed above.

NOW THEREFORE, of and in consideration of the mutual covenants herein recited, the ARRC and DOT/PF hereby agree as follows:

1. Plans and specifications for this project are being developed. A condition precedent to any rights or obligations accruing under this agreement is the ARRC Chief Engineer's final approval in writing of DOT/PF final plans and specifications (which may be withheld at the Chief Engineer's sole discretion).

2. Under the terms of this agreement, DOT/PF or DOT/PF through its contractor(s) will:
 - a. Perform all clearing required for sight triangles.
 - b. Provide and install the load center and all conduit (except conduit from controller base to J-Box No. 1) and junction boxes for the railroad warning system and provide power to the signal controller panel. Electrical work for the signal system shall be coordinated with the ARRC Manager, Telecommunications & Signaling to assure power is available for operation of the crossing signals and gates per ARRC schedule.
 - c. Construct embankment widenings for signal/gate bases and construct an approach for access to the controller and load center.
 - d. Be responsible for all traffic control and construction signing except for railroad flag protection and railroad signals which are the responsibility of ARRC.
3. Under the terms of this agreement, the ARRC will:
 - a. Furnish and install signals, gates, controller and controller base, and wire the railroad warning system from controller to J-boxes to signals and gates.
 - b. Provide all railroad flag protection for the project.
4. Standard Specifications for Work on Railroad Property.
 - a. ARRC Standard Specifications for Work on Railroad Property as modified in the advertised specifications for the subject project, Section 107-1.08, Railroad Highway Provisions, are hereby incorporated herein and by this reference made a part of this Agreement.
5. Reimbursement:
 - a. DOT/PF will reimburse the ARRC for costs of all services, labor and materials furnished by the ARRC for the aforesaid project. Reimbursement for overhead, material handling and equipment rates will be based upon the audited rates in effect at the time the work is accomplished.
 - b. Billing procedures will be as established by ARRC and approved by the DOT/PF.
 - c. Volume 1, Chapter 4, Section 3 and Volume 6, Chapter 6, Section 2, Subsection 1 of the Federal-Aid Highway Program manual will also apply where applicable.
 - d. ARRC estimated completion date is dependent upon DOT/PF Contractor. Billing will be made during the project with final billing to be made within 90 days after project completion.

5. Reimbursement:
Continued...

- e. ARRC estimate for this work is \$87,316 based upon 1988 construction costs and 1987 overhead rate.
- f. City of North Pole will pay for signal maintenance costs directly to the ARRC as provided for in Permit #5719.

ARRC WORK ORDER

PROJECT CODE		EXHIBIT	AMOUNT
25599	MP G16.39 Crossing Signal (8th Avenue)	1A	84,404
21899	Railroad Flag Protection	2	<u>1,120</u>
	TOTAL		<u>\$87,316</u>

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

APPROVED:

FEDERAL HIGHWAY ADMINISTRATION

THE ALASKA RAILROAD CORP.

BY: _____

BY: _____

VICE PRESIDENT, OPERATIONS

TITLE: _____

DATE: _____

DATE: _____

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION &
PUBLIC FACILITIES

BY: _____

TITLE: _____

DATE: _____

CITY OF NORTH POLE

BY: _____

TITLE: _____

DATE: _____

EXHIBITS: 1A, Project Estimate, Install Gates/Signals
1B, Materials List
2, Project Estimate, Railroad Flag Protection

0011E

cc: Work Order #25599
Work Order #21899
Permit No. 5719

EXHIBIT 1A

ALASKA RAILROAD CORPORATION
ENGINEERING DEPARTMENT
Project Estimate Sheet
December 10, 1987

Project #25599 Project Title Install Signal Gates 8th Avenue, North Pole, Alaska

Description of Work: Install post mounted gates and motion predictor controller at 8th Avenue, North Pole, ARRC MP G16.39

Average base hourly rate \$22.00 x Est Hrs 450 = 9,900.00

Total base hourly pay	\$ 9,900.00
Agreed Overhead FY 88 - 160.00% of total base hourly rate	15,840.00
Per Diem and Travel	1,800.00
Vehicle Rental	1,600.00
Contractual Services - Boom truck and backhoe	600.00
Materials - Post mounted gates with flashing lights, motion predictor controller, bonds, chargers, wire, and miscellaneous material	48,450.00
12% Material Handling	5,814.00
ARRC Equipment - Trencher	<u>400.00</u>
Total Estimated Cost	<u>84,404.00</u>

EXHIBIT 2

ALASKA RAILROAD CORPORATION
ENGINEERING DEPARTMENT
Project Estimate Sheet
December 10, 1987

Project #21899 Project Title Install Signal Gates 8th Avenue, North Pole, Alaska

Description of Work: Provide Railroad flag protection for installation of post mounted gates and motion predictor controller at 8th Avenue, North Pole, ARRC MP G16.39

Railroad flagging rate	$\$14.00 \times \text{Est Hrs } 80 = \$1,120.00$	
Total base hourly pay		\$1,120.00
Agreed Overhead FY 88 - 160.00% of total base hourly rate		1,792.00
Total Estimated Cost		<u>2,912.00</u>

ALASKA RAILROAD CORPORATION



D. Box 107500 • Anchorage, Alaska 99510-7500

April 4, 1989

The Honorable Carleta Lewis
Mayor
City of North Pole
P.O. Box 55109
North Pole, Alaska 99705

Dear Carleta,

Over the past few months the Alaska Railroad and the City of North Pole have been unable to agree on the specifics of our railroad/highway crossings permits, especially regarding 8th Avenue. We would like to resolve this issue, and I'm sure you would, too.

Therefore, we have asked that a representative from the State Ombudsman's Office review the matter and act as an impartial third party to evaluate both our positions. We have asked specifically that your concerns about crossing liability and maintenance fees be reviewed. I hope the City of North Pole will accept this idea as a starting point for resolving our differences regarding railroad/highway crossings and that you will participate in the process. I'm sure you will receive an inquiry from the Ombudsman's Office soon.

Attached is a copy of a news release we are issuing today to announce the pending review by the State Ombudsman. If you have any questions or comments, I would welcome an opportunity to discuss them with you.

Sincerely,

F. G. Turpin
President and Chief Executive Officer

cc: Sen. Jack B. Coghill
Rep. Mike Miller