

Complaint

88 F.T.C.

IN THE MATTER OF
MEDICAL SERVICE CORPORATION OF SPOKANE
COUNTY, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-2853. Complaint, Dec. 3, 1976 — Decision, Dec. 3, 1976

Consent order requiring a Spokane, Wash., operator of a "Blue Shield" health care payment plan and an association of participating physicians, among other things, to cease boycotting health maintenance organizations (HMO's), HMO physicians or other physicians who practice on other than a fee-for-service basis.

Appearances

For the Commission: *Jonathan E. Gaines* and *Selig S. Merber*.

For the respondents: *Arthur W. Harrigan, Jr., Lane, Powell, Moss & Miller*, Seattle, Wash.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents have violated and are violating the provisions of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45), and that a proceeding by it in respect thereof would be in the interest of the public, hereby issues this complaint, stating its charges as follows:

RESPONDENTS

PARAGRAPH 1. Medical Service Corporation of Spokane County (hereinafter "MSC") is a corporation organized and existing under the laws of the State of Washington, with its principal offices in Spokane, Washington.

PAR. 2. Medical Service Bureau of Spokane County (hereinafter "MSB") is an unincorporated association of physicians. Except as hereinafter alleged, membership in MSB is open to all members of the medical societies of Adams, Benton, Douglas, Ferry, Franklin, Grant, Lincoln, Okanogan, Pend Oreille, Spokane, and Stevens Counties of the State of Washington (hereinafter "Eastern Washington"). Over 300 physicians, constituting over 90 percent of all physicians in Eastern Washington, are members of MSB.

TRADE AND COMMERCE

PAR. 3. In Eastern Washington, physicians are compensated for

services on either a fee-for-service basis or a prepayment basis. Health care plans which compensate physicians by the prepayment method are known as health maintenance organizations (hereinafter "HMO's"). In 1975, approximately \$15 million of paid physician services were rendered in Eastern Washington. Over 95 percent of such services were supplied on a fee-for-service basis.

PAR 4. Except to the extent that competition has been restrained as herein alleged, physicians providing services on a fee-for-service basis are in competition with each other and with HMO's in the provision of physician services.

PAR. 5. MSC is engaged in the business of establishing and administering plans pursuant to which it contracts with physicians rendering services on a fee-for-service basis to provide such services to consumers who subscribe to the plan. Physicians who enter into such contracts are known as participating physicians. MSC's contracts with subscribers and participating physicians usually provide that MSC will reimburse participating physicians for covered services rendered to subscribers and that such reimbursement will constitute payment in full of the participating physicians' fees for such services. Most MSC contracts with subscribers apply, with minor exceptions, only to services rendered by participating physicians.

PAR. 6. At least 25 percent of the population of Eastern Washington subscribes to an MSC plan. Over 90 percent of all practicing physicians in Eastern Washington are participating physicians in MSC. MSC is the only entity in Eastern Washington which is affiliated with National Association of Blue Shield Plans and offers consumers health benefit plans utilizing participating physicians. Physicians value the status of participating physicians and are disadvantaged by deprivation of such status.

JURISDICTION

PAR 7. Substantial Federal government funds flow across State lines into Eastern Washington to pay physicians' fees and encourage the development of HMO's. In the conduct of their business, MSB and MSC, collectively and severally, engage, *inter alia*, in the following activities which could also be engaged in by HMO's:

(a) receiving, treating, and contracting for the treatment of patients from other States and countries;

(b) receiving and administering substantial sums of money from the Federal government and from private insurers engaged in interstate commerce to pay physician fees;

(c) paying out substantial sums of money across State lines to health

care providers or plans which have rendered or paid for services to MSC subscribers, which services MSC is obligated to pay for;

- (d) investing claim reserves in the interstate money market;
- (e) participating in reciprocal arrangements for the provision of medical care to subscribers of medical care plans throughout the country which belong to the National Association of Blue Shield Plans, in the course of which MSC sends and receives substantial sums of money across State lines;
- (f) prescribing medicines which are shipped in interstate commerce.

ACTS AND PRACTICES

PAR. 8. MSC and MSB have individually, collectively and collusively engaged in the following acts, practices, and methods of competition for the purpose, and with the effect, of boycotting HMO's and physicians providing services to or for HMO's.

(a) Since its formation in 1933, MSC has followed the practice of:

- (i) entering into provider contracts only with physicians who are or could be members of MSB;
- (ii) refusing to enter into provider contracts with physicians who enter into similar contracts with other persons or organizations.

(b) From its formation in 1933 until in or about October 1974, MSB has followed the practice of:

- (i) refusing membership to any physician who agrees to provide services to or for an HMO; and
- (ii) permitting its members to become participating physicians only in MSC.

(c) Since in or about October 1974, MSB has provided in its By-Laws that:

- (i) membership would be granted to physicians who have contracted to provide services to an HMO only if the HMO is approved by MSB; and
- (ii) members are permitted to become participating physicians for organizations other than MSC only if such organizations are approved by MSB.

PAR. 9. In Eastern Washington, as a result of the acts, practices, and methods of competition alleged in paragraphs one through eight hereinabove,

- (a) the prices of physician services have been stabilized and otherwise interfered with;
- (b) competition among physicians has been restrained;
- (c) entry of HMO's into the physician services market and the growth of HMO's have been restrained;

(d) the development of organizations offering health benefit plans utilizing participating physician contracts has been restrained; and

(e) consumers have been deprived of the benefits of competition among physicians, fee-for-service medical care plans, and physician prepayment medical care plans.

VIOLATION

Par. 10. The acts, practices, and methods of competition alleged herein individually and in conjunction with each other, constitute unfair methods of competition or unfair acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act by the respondents herein, individually and collectively.

DECISION AND ORDER

The Federal Trade Commission having issued a complaint charging that the respondents named in the caption hereof have violated the provisions of Section 5 of the Federal Trade Commission Act, 15 U.S.C. §45; and

Respondents and complaint counsel having executed an agreement containing a consent order, an admission by the respondents of the Commission's jurisdiction and the jurisdictional facts set forth in the aforesaid complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission that the law has been violated, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.32 of the Commission's Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Medical Service Corporation of Spokane County is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal place of business located at Spokane, Washington.

2. Medical Service Bureau of Spokane County is an unincorporated association with its principal place of business located at Spokane, Washington.

3. The Federal Trade Commission has jurisdiction of this proceeding and of the Respondents, and this proceeding is in the public interest.

ORDER

I

It is ordered, That the following definitions shall apply in this order.

A. "MSB" means respondent Medical Service Bureau of Spokane County, its successors and assigns, its officers and directors, and all the members thereof as of January 1, 1976, individually and collectively.

B. "MSC" means respondent Medical Service Corporation of Spokane County, its successors and assigns, and its officers, directors, and members.

C. "Participating physician" means a physician who is paid or reimbursed by MSC for service rendered to an MSC subscriber or policyholder (including covered dependents), pursuant to a participating physician agreement with MSC.

D. "Health maintenance organization" means a health care payment plan which compensates physicians by a prepayment method, as opposed to the fee-for-service method.

II

It is further ordered, That neither MSC nor MSB shall directly or indirectly enter into, adhere to, promote or follow any course of conduct, practice or policy, or any agreement or understanding which (a) discriminates against any health maintenance organization, or (b) discriminates against any lawfully practicing physician, or excludes any lawfully practicing physician from being a participating physician in MSC, by reason of the fact that such physician practices medicine, in whole or in part, on other than a fee-for-service basis, or by reason of the fact such physician is associated in any way with a health maintenance organization.

III

It is further ordered, That within sixty (60) days following the date of issuance of this order MSC shall revise its Charter and By-Laws and MSB shall revise its By-Laws, to conform with the requirements of this order.

IV

It is further ordered, That MSC shall mail a copy of this order and of the complaint in this proceeding to each trustee, member, and officer of MSC and to each person who was a member of MSB as of January 1, 1976.

V

It is further ordered, That nothing in this order shall be construed to exempt MSC or MSB from compliance with the antitrust laws or the Federal Trade Commission Act, and that the fact that any activity is not prohibited by this order shall not bar a challenge to it under such laws and statute.

VI

It is further ordered, That MSB and MSC shall, within sixty (60) days after service upon it of this order, and that MSC annually for each of the five (5) years thereafter, shall file or cause to be filed with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

VII

It is further ordered, That MSC notify the Commission at least thirty (30) days prior to any proposed change in MSC such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or any other change in the corporation which may affect compliance obligations arising out of this order.

Order

88 F.T.C.

IN THE MATTER OF
KRAFTCO CORPORATION, ET AL.

Docket 9035. Interlocutory Order, Dec. 8, 1976

Commission directs parties to submit memoranda responding to relative merits of ALJ's proposed order and the consent order in IBM case, File 761 0063.

Appearances

For the Commission: *Ronald A. Bloch, Clinton R. Batterton, and Joseph Tasker, Jr.*

For the respondents: *David C. Bogan and C. Lee Cook, Jr., Chadwell, Keyser, Ruggles, McGee & Hastings, Chicago, Ill.; Howard Hoosin and William G. Taffe, Glenview, Ill.; William E. Willis, Sullivan & Cromwell, New York City; and Frederic L. Ballard, Ballard, Spahr, Andrews & Ingersoll, Philadelphia, Pa.*

ORDER REQUIRING ADDITIONAL BRIEFING

The Commission recently accepted and placed upon the public record for comment a consent order against International Business Machines Corporation, File No. 761 0063, pertaining to an allegedly unlawful interlocking directorate. At oral argument in Dkt. 9035 counsel were invited to comment upon the IBM order, but the necessity and purpose of such comment were left subject to question. The Commission desires the views of the parties in this matter concerning the following:

Assuming *arguendo* that the Commission finds that SCM has violated the law and that a remedial order is deemed appropriate, is the remedial approach taken in the IBM consent order preferable (and in what respects and why) to the order recommended in this case by the administrative law judge?

Receipt of the views of respondent SCM will, of course, be without prejudice to the position expressed in its brief that the consent order signed by respondent Kraftco is the appropriate one, but the Commission seeks the views of respondent as to the relative merits of the ALJ's proposed order and the IBM order. Therefore,

It is ordered, That within fifteen days from receipt of this order, the parties shall submit memoranda in response to the above-mentioned question.

IN THE MATTER OF
COMMERCIAL PROGRAMMING UNLIMITED, INC., ET AL.
CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS

Docket 9029. Complaint, Apr. 23, 1975 — Decision, Dec. 9, 1976

Consent order requiring a New York City training school for data processing and computer programming, among other things to cease misrepresenting employment opportunities and demands for graduates of their training courses; misrepresenting the effectiveness of their job placement service; and misrepresenting the advantages of taking additional courses. Respondents must advise prospective students of their right to cancellation and refund and provide certain written disclosures relating to job placement and dropout rates of former students. Additionally, respondent is required to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such disclosures as are required by Regulation Z of the said Act.

Appearances

For the Commission: *Alice T. Petizon* and *Joseph C. Galardi*.

For the respondents: *David Edelman* and *Walter S. Jennings*, New York City.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Commercial Programming Unlimited, Inc., a corporation, and Walter Small, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulation, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PAR. 1. Respondent Commercial Programming Unlimited, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 853 Broadway, New York, New York.

Respondent Walter Small is an individual and an officer of the corporate respondent. He formulates, directs and controls the policy, acts and practices of the corporation, including the acts and practices

hereinafter set forth. His business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale and sale of courses of instruction in electronic data processing, including courses in computer programming, console operation and keypunch to the public.

COUNT 1

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference herein as if fully set forth verbatim.

PAR. 3. In the course and conduct of their business, and for the purpose of inducing prospective students to enroll in their courses of instruction, respondents engage in the advertising of said courses of instruction in newspapers of interstate circulation, and the sale of said courses to consumers located in various States of the United States. In the further course and conduct of their business, respondents also cause pamphlets, brochures, checks and other documents and communications pertaining to said courses to be transmitted by the United States mail and other means in or affecting commerce. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business and for the purpose of inducing prospective students to enroll in said courses of instruction, respondents have made statements orally and in writing, both specific and implied, in newspaper advertisements and other advertising and promotional material, and directly to said prospective students in the sales presentations made by their sales persons and other representatives. The following are typical and illustrative of the aforesaid statements and representations, but not all inclusive thereof:

- (a) Jobs waiting – thousands of new trainees needed in Data Processing field.
- (b) Interviews now being conducted to select candidates for intensive program * * * to satisfy acute need for IBM trained data processing employees in business and government.
- (c) * * * Leaders in the field predict that in the next 20 years it will be practically impossible for well-trained people to be out of work.
- (d) * * * The growth of the data processing industry has been so phenomenal that an acute shortage of well-trained qualified personnel exists.
- (e) There is a demand for well-trained people in this field and it will not be satisfied for many years.
- (f) Business firms using IBM equipment are making very attractive offers to urgently needed graduate trainees. Pay is high. Raises are frequent. Opportunity for advancement is unlimited.

(g) Trainees need give up their present jobs only when they accept better jobs in the data processing field.

(h) CPU (Commerical Programming Unlimited) offers on-the-job assistance and counseling, and also maintains a FREE PLACEMENT SERVICE.

(i) To become a computer programmer, there are no rigid requirements. One does not have to understand the electronics of a computer and mathematical training is not a necessity. Of primary importance is that one have good reasoning ability and a logical orderly mind.

(j) * * * Ask whether an aptitude test is required before acceptance for a programming course as this is a requirement for most legitimate schools. The authentic IBM Programmers Aptitude Test is given at CPU to applicants at no charge.

(k) Many authorities consider them (respondents' texts and instructional manuals) to be among the finest in the entire field of data processing.

(l) No other school can compare with the quality of the course.

PAR. 5. By and through the use of the above quoted statements and representations, and others of similar import and meaning but not expressly set out herein, respondents represent and have represented, directly or by implication, that:

1. All that is necessary for the placement of respondents' graduates as programmers, console operators, or as trainees in these areas is the completion of the applicable courses offered by respondents.

2. Requirements such as a college education or job experience are not necessary or advantageous for the placement of graduates of said courses in positions in the electronic data processing field.

3. There is a significant or substantial need or demand for all or most of respondents' graduates in positions for which respondents train such persons.

4. Respondents had a reasonable basis from which to conclude that:

(a) there was at the time such representations were made, or

(b) there would be at the time that persons then enrolling graduated from respondents' courses,

a significant or substantial need or demand for all or most of respondents' graduates in positions for which respondents train such persons.

5. Respondents maintain a free placement service to assist their graduates in obtaining employment, and this placement service has been successful in obtaining jobs for graduates who have sought its assistance.

6. All or substantially all of respondents' graduates are able, on graduation, to secure the positions for which respondents have trained them, and can expect virtually continuous employment in such positions for the next twenty years.

7. Respondents had a reasonable basis from which to conclude that:

- (a) At the time such representations were made a substantial number of respondents' graduates were being hired, or
- (b) A substantial number of persons then enrolling in respondents' courses would upon graduation, be hired

in positions for which respondents train such persons, and that they can expect virtually continuous employment in such positions for the next twenty years.

8. Students who wish to enroll in said courses of instruction are given an aptitude test endorsed by IBM which determines their suitability for computer programming and their chances for success in the computer programming field.

9. Acceptance in or admission to said courses of instruction is determined to a substantial degree by a prospective student's aptitude for computer programming as determined by the IBM aptitude test given to such students prior to enrollment.

10. There is a reasonable basis from which to conclude that a substantial number or percentage of the graduates of said courses of instruction earn high pay and receive frequent raises.

PAR. 6. In truth and in fact:

1. The completion of respondents' courses is not sufficient in many instances to enable graduates of said courses to secure placement as programmers, console operators, or as trainees in these areas.

2. In most instances college education or job experience is advantageous for the placement of respondents' graduates in positions in the electronic data processing field and in many instances college education or job experience is necessary for such placement.

3. At the time it was so represented there was not a significant or substantial need or demand for all or most of respondents' graduates, in positions for which respondents train such persons.

4. Respondents had no reasonable basis from which to conclude that:

- (a) there was at the time such representations were made, or
- (b) there would be at the time that persons then enrolling graduated from respondents' courses,

a significant or substantial need or demand for all or most of respondents' graduates in positions for which respondents train such persons.

5. While respondents ostensibly maintain a placement office, this office provides graduates with little or no advice or assistance in securing employment, but tries instead through a variety of means to discourage them from using its service. The placement assistance

furnished by respondents is not free, but rather is included in the tuition cost of respondents' courses.

6. All or substantially all of respondents' graduates are not able, on graduation, to secure the positions for which respondents have trained them, and they cannot expect virtually continuous employment in such positions for the next twenty years.

7. Respondents had no reasonable basis from which to conclude that:

- (a) at the time such representations were made a substantial number of respondents' graduates were being hired, or
- (b) a substantial number of persons then enrolling in respondents' courses would upon graduation, be hired

in positions for which they have been trained or that they can expect virtually continuous employment in such positions for the next twenty years.

8. The IBM aptitude test given by respondents is not a reliable indicator of the individual's suitability for computer programming or his chances for success in the computer programming field.

9. Acceptance in or admission to said courses of instruction is not determined by programming aptitude as measured by the IBM aptitude test, since persons who did not qualify for the course based on such tests were accepted in said program.

10. Respondents had no reasonable basis from which to conclude that a substantial number or percentage of the graduates of said courses of instruction earn high pay and receive frequent raises.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof were, and are, false, misleading, deceptive and unfair acts and practices.

PAR. 7. Through the use of the aforesaid advertisements and otherwise, respondents have represented directly or by implication that there was at the time of the representations or would be at the time of graduation from respondents' courses a significant or substantial need or demand for all or most of respondents' graduates in positions for which respondents train such persons; that graduates of said courses would be virtually assured of securing employment in positions for which they have been trained, and that they could expect virtually continuous employment in such positions for the next twenty years; and that a substantial percentage or number of graduates of such courses of instruction earn high pay and receive frequent raises. At the time of the said representations respondents had no reasonable basis adequate to support such representations. Therefore the aforesaid acts and practices were, and are, unfair acts or practices.

PAR. 8. In the further course and conduct of their aforesaid business, and for the purpose of inducing prospective students to enroll in their courses of instruction, respondents have made representations, both specific and implied, directly to said prospective students in the oral sales presentations made by their sales persons and other representatives, that it is advantageous to take more than one of said courses of instruction to gain proficiency in a particular area of data processing and to enhance their employment prospects, and that respondents own a computer located on the premises of their place of business which is readily accessible and will enable students to gain sufficient practical experience to aid in securing employment.

PAR. 9. In truth and in fact, computer programming, console operation and keypunch are distinct occupational categories, and knowledge of one category is not of substantial benefit for employment in any other. Furthermore, since employment prospects for graduates of said courses are not promising, additional courses of instruction do not serve to enhance a student's employment prospects. Furthermore, respondents do not own a computer, but instead rent on a part-time basis a machine at a location distant from their place of business, which does not provide students ready access to a computer to gain adequate practical experience to obtain employment. Therefore, the statements and representations as set forth in Paragraph Eight hereof were, and are, false, misleading, deceptive and unfair.

PAR. 10. Respondents offered for sale courses of instruction intended to prepare graduates thereof for entry-level employment as computer operators, computer programmers or computer technicians without disclosing in advertising or through their sales representatives: (1) the percentage of recent graduates of each school for each course offered, that were able to obtain employment in the positions for which they were trained; (2) the employers that hired any such recent graduates for each course offered; (3) the initial salary any such recent graduates received for each course offered; and (4) the percentage of recent enrollees of each school for each course offered that have failed to complete their course of instruction. Knowledge of such facts would be an indication of the probability of graduating from respondents' courses and would indicate the possibility of securing future employment upon graduating and the nature of such employment. Thus, respondents have failed to disclose material facts, which if known to a consumer would be likely to affect his or her consideration of whether or not to purchase such course of instruction. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive or unfair acts or practices.

PAR. 11. Through the aforesaid acts and practices, respondents have

induced persons to pay or to contract to pay to respondents substantial sums of money for courses of instruction which were of little use or value to said persons in obtaining employment in the jobs for which they were purportedly trained. Respondents have received the said sums of money and have failed to offer refunds or to refund said sums of money or to rescind the contractual obligations of said persons.

Therefore, the aforesaid acts and practices, the receipt of and failure to offer to refund or to refund said sums of money, and the failure to rescind said contractual obligations were, and are, unfair or deceptive acts or practices.

PAR. 12. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of courses covering the same or similar subjects.

PAR. 13. The use by respondents of the aforesaid false, misleading, unfair or deceptive statements, representations, acts and practices, and their failure to disclose material facts, as aforesaid, have had, and now have, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and complete, and to induce a substantial number thereof to purchase respondents' courses by reason of said erroneous and mistaken belief.

PAR. 14. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

Alleging violations of the Truth in Lending Act, and the implementing regulation promulgated thereunder, and of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference herein as if fully set forth verbatim.

PAR. 15. In the ordinary course of their business as aforesaid, respondents regularly extended consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 16. Subsequent to July 1, 1969, in the ordinary course of their business as aforesaid, and in connection with their credit sales, as "credit sales" are defined in Regulation Z, respondents have caused and

are causing their customers to enter into contracts for the sale of respondents' services.

PAR. 17. By and through the use of these contracts, respondents have not provided their customers with all credit cost information, as required by Regulation Z, the implementing regulation of the Truth in Lending Act, in that they have:

1. Failed to use the term "total downpayment" to describe the sum of all fees included in the downpayment, as required by Section 226.8(c)(2) of Regulation Z.

2. Failed to use the term "amount financed" to describe the amount of credit of which the customer has the actual use, as required by Section 226.8(c)(7) of Regulation Z.

3. Failed to disclose the sum of the payments scheduled to repay the indebtedness, and to describe that sum as the "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

4. Failed to disclose the "annual percentage rate" accurately to the nearest quarter of one percent, in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

PAR. 18. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failure to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the Truth in Lending Act and Regulation Z, and the respondents having been served with a copy of that complaint; and

The Commission having withdrawn the matter from adjudication for the purpose of considering settlement by the entry of a consent order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of

sixty (60) days, now in further conformity with the procedures prescribed in Section 3.25(d) of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order.

1. Respondent Commercial Programming Unlimited, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 853 Broadway, New York, New York.

Respondent Walter Small is an officer of the corporate respondent. He formulates, directs, and controls the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I

It is ordered, That respondents Commercial Programming Unlimited, Inc., a corporation, its successors and assigns, and its officers, and Walter Small, individually and as an officer of the corporate respondent, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, franchise or other device in connection with the creating, advertising, promoting, offering for sale, sale or distribution of courses of study, training or instruction in the field of electronic data processing or any other course in any field, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, orally, in writing or in any other manner, directly or by implication, that:

(a) College education is not necessary in all cases or advantageous for the placement of persons as computer programmers or computer programmer trainees; job experience is not necessary in all cases or advantageous for the placement of persons in the field of electronic data processing; or otherwise representing that persons with a high school education or its equivalent will achieve employment in the electronic data processing field, unless in every such instance it is disclosed, in immediate and conspicuous conjunction therewith, that college education or job experience is advantageous for placement; or misrepresenting in any manner the qualifications necessary to achieve employment in any field.

(b) There is a substantial demand, or demand of any size or proportion, for persons completing any of the courses offered by the

respondents in the area of electronic data processing or any other field, or otherwise representing that opportunities for employment, or opportunities of any type or number are available to such persons or that persons completing said courses will or may earn any specified amount of money, or otherwise representing by any means the prospective earnings of such persons except as hereafter provided in Paragraph 7 of the order.

(c) Graduates of respondents' courses of instruction are virtually assured of placement in positions for which they have been trained; or misrepresenting in any manner the employment prospects of any persons completing respondents' courses of instruction.

(d) The IBM aptitude test or any such test or entrance examination by itself can reliably determine a person's suitability for employment in the field of electronic data processing; or misrepresenting in any manner the meaning, purpose, benefit, significance or use of any examination or test or its results.

(e) Acceptance in or admission to any courses of instruction offered by respondents or others is determined solely by the applicant's suitability for such work as determined by the IBM aptitude test given to prospective students prior to enrollment.

2. Representing, orally, in writing or in any other manner, directly or by implication, that respondents own a computer or computers which enable students to gain sufficient practical experience in the operation of a computer, thereby aiding them in securing employment; or misrepresenting in any manner the facilities or equipment available to enrollees in courses of instruction offered by respondents or others.

3. Using any false inducements or representations to obtain enrollees for any of said courses of instruction or to obtain the signature of any such enrollee on documents which obligate any such enrollee to expend or pay any money.

4. Misrepresenting, orally, in writing, or in any other manner, directly or by implication, that:

(a) The training offered to students enrolled in any courses of instruction offered by the respondents or others is by itself, sufficient to qualify graduates thereof for positions as computer programmers, console operators, or as trainees in these areas, or for any other positions in the electronic data processing field; or the significance or importance of any course of instruction in qualifying any person for employment in a particular field of endeavor.

(b) The assistance provided by respondents in obtaining employment for graduates, or the effectiveness of respondents' placement service in obtaining employment for graduates of any course of instruction.

(c) The benefits to be derived by completing more than one course of instruction offered by respondents.

5. Selling more than one course of instruction or a course of instruction which combines computer programming, console operation and/or key punch to any student without obtaining a separate signed and dated document stating the following information and none other, printed in capital and lower case letters of not less than 12 point bold-faced type, in English and in Spanish, a copy of which is to be given to the customer prior to his enrolling in the course.

IMPORTANT NOTICE

Taking more than one course of instruction does not significantly improve, but may help, a student's employment chances because:

1. To be a computer programmer a student does not need to know console operation or key punch;
2. To be a console operator, a student does not need to know computer programming or key punch;
3. To be a key punch operator, a student does not need to know computer programming or console operation.

6. Selling more than one course of instruction or a course of instruction which combines computer programming, console operation and/or key punch without advising prospective enrollees to read the notice set forth in paragraph five (5) above in the language in which the initial sales presentation took place.

7. Failing to provide to each enrollee of any course of instruction, prior to the signing of any contract, the following information which shall be disclosed in writing, clearly and conspicuously, and in the form and manner prescribed in Appendices A, B or C, as applicable, and for a base period designated as described in Appendix D:

(1) The number and percentage of enrollees who have failed to complete their course of instruction, such percentage to be computed separately for each course of instruction offered by respondents at each school, location or facility;

(2) The placement rate, ratio or percentage for enrollees and graduates, and also the numbers upon which such rates, ratios or percentages are based; such rate or percentage to be computed separately for each course of instruction offered by respondents at each school, location or facility;

(3) The salary range of respondents' students as to the same students used to compute the placement percentage in (2) above;

(4) A list of firms or employers which have hired graduates of said courses in substantial numbers and in the positions for which such graduates have been trained, and the number of such graduates hired,

as to the same graduates used to compute the placement percentage in (2) above.

Provided, however, that the above information shall be disclosed only for enrollees who are U.S. citizens and others who, by law, are eligible to work in the United States.

Provided, however, that the following two notes may be included in Appendices A, B, or C as applicable:

Note: In compiling this data, information was sought from all graduates from the period of (the base period) and responses were received from (number) graduates.

Note: This data shows the dropout and placement records only for U.S. citizens and others who, by law, are eligible to work in the United States. Information on foreign students is not included.

Provided, however, that the above information need not be provided for courses of instruction concerning (a) Concepts of S/360 For Computer Operations; (b) Concepts of S/360 For Computer Programming; (c) Business English and Report Preparation; however, this provision shall not in any way affect respondents' obligation to disclose the information for courses of instruction in computer programming, computer operation and key punch.

Provided, however, respondents shall disclose in the form and manner prescribed in Appendices A, B or C to each enrollee of a course of instruction concerning (a) Concepts of S/360 For Computer Operations; (b) Concepts of S/360 For Computer Programming; and (c) Business English and Report Preparation, a notice stating: Concepts of S/360 Computer Programming, Concepts of S/360 Computer Operations and Business English and Report Preparation (or other title as the case may be) may be taken in conjunction with another course of instruction. There is no separate placement information for any of these courses.

Provided, however, this paragraph shall be inapplicable to any school newly established by respondents in a metropolitan area or county, whichever is larger, where they previously did not operate a school, or to any course newly introduced by respondents until such time as the new school or course has been in operation for the base period established pursuant to Appendix D as prescribed in the paragraph. However, during such period the following statement, and no other, shall be made in lieu of the disclosure form required by this paragraph:

DISCLOSURE NOTICE

This school (or course, as the case may be) has not been in operation long enough to indicate what, if any, actual employment or salary may result upon graduation from this school (course).

8. (a) Contracting for the sale of any course of instruction in the form of a sales contract or any other agreement which does not contain in immediate proximity to the space reserved in the contract for the

signature of the prospective enrollee in boldface type of a minimum size of ten (10) points, a statement in the following form:

You, the prospective enrollee, may cancel this transaction at any time prior to midnight of the tenth business day after the date of this transaction. See attached notice of cancellation form for an explanation of this right.

(b) Failing to furnish each prospective enrollee, at the time he signs the sales contract or otherwise agrees to enroll in a course of instruction offered by respondents, a complete form in duplicate, which shall be attached to the contract or agreement, and easily detachable, and which shall contain in ten (10) point boldface type the following information and statements:

NOTICE OF CANCELLATION

(enter date of transaction)

(Date)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN TEN (10) BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY EVIDENCE OF INDEBTEDNESS SIGNED BY YOU WILL BE RETURNED WITHIN FIFTEEN (15) BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND

ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL THIS TRANSACTION YOU MUST RETURN, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY BOOKS OR OTHER MATERIALS PROVIDED TO YOU UNDER THIS CONTRACT OR SALE. THESE MATERIALS MUST BE MAILED OR DELIVERED BY YOU TO (Address of Seller's place of business) WITHIN TEN (10) DAYS OF THE DATE YOU CANCEL THIS TRANSACTION. IF YOU FAIL TO RETURN THESE MATERIALS, THEN SELLER MAY DEDUCT THE COST OF BOOKS AND MATERIALS AS LISTED IN THE ENROLLMENT AGREEMENT.

TO CANCEL THIS TRANSACTION, DELIVER (and obtain a signed statement from SELLER indicating the date of delivery) OR MAIL A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM TO (Name of Seller), AT (Address of Seller's place of business) NOT LATER THAN MIDNIGHT OF (Enter date of 10th business day following date of transaction).

I HEREBY CANCEL THIS TRANSACTION.

(Date)

(Buyer's Signature)

(c) Failing to orally inform each prospective enrollee of his right to cancel at the time he signs a contract or agreement for the sale of any course of instruction.

(d) Failing to provide a signed statement indicating the date of delivery to a prospective enrollee who delivers a notice of cancellation to respondents.

(e) Misrepresenting in any manner the prospective enrollee's right to cancel.

(f) Failing or refusing to honor any valid notice of cancellation by a prospective enrollee and within fifteen (15) business days after the receipt of such notice, to: (i) refund all payments made under the contract or sale; *provided, however*, that respondents may deduct from said refund the cost of any books or materials as listed in the enrollment agreement that are not returned by the student within ten (10) days of the date after the transaction has been cancelled as stated above; (ii) return any goods or property traded in, in substantially as good condition as when received by respondents; (iii) cancel and return any evidence of indebtedness signed by the prospective enrollee in connection with the contract or sale.

(g) During the cancellation period described herein, respondents shall not initiate contacts with such contracting persons other than contacts permitted by this paragraph, except for the sole purpose of reminding students of the day classes will commence and the amount of tuition due.

9. Making any representations of any kind whatsoever, which are not already proscribed by other provisions of this order, in connection with the advertising, promoting, offering for sale, sale or distribution of courses of study, training or instruction in the field of electronic data processing or any other course offered to the public in any field in or affecting commerce, for which respondents have no reasonable basis prior to the making or dissemination thereof.

II

It is further ordered, That respondents, Commercial Programming Unlimited, Inc., a corporation, its successors and assigns, and its officers and Walter Small, individually and as an officer of the corporate respondent, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, franchise or other device, in connection with any consumer credit sale, as "consumer credit" and "credit sale" are defined in Regulation Z (12 C.F.R. §226) and the Truth in Lending Act (Pub. Law 90-321, 15 U.S.C. §1601, *et seq.*), do forthwith cease and desist from:

1. Failing to disclose the sum of all fees and other charges included

in the downpayment, and to describe that sum as the "total downpayment," as required by Section 226.8(c)(2) of Regulation Z.

2. Failing to disclose the amount of money of which the customer has the actual use, and to describe that amount as the "amount financed," as required by Section 226.8(c)(7) of Regulation Z.

3. Failing to disclose the sum of the payments scheduled to repay the indebtedness, and to describe that sum as the "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

4. Failing to disclose the annual percentage rates accurately to the nearest quarter of one percent, in accordance with Section 226.8(b)(2) of Regulation Z.

5. Failing in any consumer credit transaction or advertisement to make all disclosures, determined in accordance with Sections 226.4 and 226.5 of Regulation Z, in the manner, form and amount required by Sections 226.6, 226.8 and 226.10 of Regulation Z.

It is further ordered, That respondents maintain adequate records, to be furnished upon request of the Federal Trade Commission, which evidence compliance with the provisions of this order, including, but not limited to, the names, addresses and scores of all enrollees who take an aptitude test of any kind, copies of all contracts entered into between respondents and customers, copies of all correspondence between respondents and their customers, records showing the name and address of each student, the dates of his attendance, the date of his graduation or other termination of his studies, the names and addresses of any employers he was referred to, if any, and his current position.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment which relates in any way to the sale or offering for sale of any courses of study, training or instruction. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That a copy of this order to cease and desist be delivered to all present and future personnel of respondents.

It is further ordered, That respondents:

(a) deliver, or cause to be delivered, a copy of this order to all persons who now or in the future become franchisees of respondents for the operation of a vocational school program.

(b) inform all franchisees that respondents are obligated to terminate those franchisees who continue the acts or practices prohibited by this order.

(c) institute a program of continuing surveillance to reveal whether

the business operations of each of said franchisees conform to the requirements of this order.

(d) upon receiving actual knowledge from any source (including but not limited to respondents' program of surveillance, and representatives of the Federal Trade Commission) of facts indicating a violation of any provision of this order by any of respondents' present or future franchisees, respondents shall within 24 hours notify such franchisee by certified mail, return receipt requested, that such violation of this order has occurred ("Notice"), and that respondents will discontinue dealing with said franchisee upon receipt by respondents of actual knowledge of any further violations of this order by such franchisee. Respondents shall obtain from such franchisee written acknowledgement of receipt of such Notice with acknowledgement and shall indicate the date of receipt of such Notice.

Upon receiving actual knowledge from any source (including but not limited to respondents' program of surveillance, and representatives of the Federal Trade Commission) of facts indicating any violations of any provision of this order, following a franchisee's receipt of the aforesaid "Notice," and said violations are not corrected within 30 days, respondents shall permanently terminate such franchisee.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution of subsidiaries, or any other changes in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist contained herein.

It is further ordered, That in the event the Federal Trade Commission should promulgate a trade regulation rule concerning proprietary vocational and home study schools, any pertinent provisions of such rule shall supersede any comparable provisions of this order.

APPENDIX A (FOR KEYPUNCH OPERATOR COURSE)

(NAME OF SCHOOL)

IMPORTANT INFORMATION FOR PROSPECTIVE STUDENTS

Below is the dropout rate, job placement rate and starting salaries for students in the (name of course) between (date) and (date). Please

read this page carefully before you decide whether or not to enroll in this school.

1. Total number of students: (number)
2. Students who failed to complete the course: (number) – (percent)
3. Students (whether graduating or not) who obtained employment as keypunch operators or keypunch operator trainees: (number) – (percent)
4. Graduates who obtained employment as keypunch operators or keypunch operator trainees: (number) – (percent)
5. Starting salaries of students who obtained employment as keypunch operators or keypunch operator trainees:
 - Less than \$75.00 per week: (number) – (percent)
 - \$75 — \$100 per week: (number) – (percent)
 - \$101 — \$125 per week: (number) – (percent)
 - \$126 — \$150 per week: (number) – (percent)
 - Over \$150 per week: (number) – (percent)

6. Employers who hired graduates from the (name of course):

Names of Employers	Number of Graduates Hired
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Note: In compiling this data, information was sought from all graduates from the period of (the base period) and responses were received from (number) graduates.

Note: This data shows the dropout and placement records only for U.S. citizens and others who, by law, are eligible to work in the United States. Information on foreign students is not included.

Concepts of S/360 for Computer Programming, Concepts of S/360 for Computer Operations and Business English and Report Preparation may be taken in conjunction with another course of instruction. There is no separate placement information for any of these courses.

APPENDIX B (FOR COMPUTER OPERATOR COURSE)

(NAME OF SCHOOL)

IMPORTANT INFORMATION FOR PROSPECTIVE STUDENTS

Below is the dropout rate, job placement rate and starting salaries for students in the (name of course) between (date) and (date). Please read this page carefully before you decide whether or not to enroll in this school.

1. Total number of students: (number)
2. Students who failed to complete the course: (number) – (percent)
3. Students (whether graduating or not) who obtained employment as computer operators or computer operator trainees: (number) – (percent)
4. Graduates who obtained employment as computer operators or computer operator trainees: (number) – (percent)
5. Starting salaries of students who obtained employment as computer operators or computer operator trainees:
 - Less than \$90.00 per week: (number) – (percent)
 - \$90.00 – \$120.00 per week: (number) – (percent)
 - \$121.00 – \$160.00 per week: (number) – (percent)
 - \$161.00 – \$200.00 per week: (number) – (percent)
 - Over \$200.00 per week: (number) – (percent)

6. Employers hired graduates from the (name of course):

Names of Employers	Number of Graduates Hired
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Note: In compiling this data, information was sought from all graduates from the period of (the base period) and responses were received from (number) graduates.

Note: This data shows the dropout and placement records only for U.S. citizens and others who, by law, are eligible to work in the United States. Information on foreign students is not included.

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Concepts of S/360 for Computer Programming, Concepts of S/360 for Computer Operations and Business English and Report Preparation may be taken in conjunction with another course of instruction. There is no separate placement information for any of these courses.

APPENDIX C (FOR COMPUTER PROGRAMMER COURSE)

(NAME OF SCHOOL)

IMPORTANT INFORMATION FOR PROSPECTIVE STUDENTS

Below is the dropout rate, job placement rate and starting salaries for students in the (name of course) between (date) and (date). Please read this page carefully before you decide whether or not to enroll in this school.

1. Total number of students: (number)
2. Students who failed to complete the course: (number) - (percent)
3. Students (whether graduating or not) who obtained employment as computer programmers or computer programmer trainees: (number) - (percent)
4. Graduates who obtained employment as computer programmers or computer programmer trainees: (number) - (percent)
5. Starting salaries of students who obtained employment as computer programmers or computer computer programmer trainees:
 - Less than \$120.00 per week: (number) - (percent)
 - \$120.00 - \$160.00 per week: (number) - (percent)
 - \$161.00 - \$200.00 per week: (number) - (percent)
 - \$201.00 - \$250.00 per week: (number) - (percent)
 - \$251.00 - \$300.00 per week: (number) - (percent)
 - Over \$300.00 per week: (number) - (percent)
6. Employers hired graduates from the (name of course):

Names of Employers	Number of Graduates Hired
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Note: In compiling this data, information was sought from all graduates from the period of (the base period) and responses were received from (number) graduates.

Note: This data shows the dropout and placement records only for U.S. citizens and others who, by law, are eligible to work in the United States. Information on foreign students is not included.

Concepts of S/360 for Computer Programming, Concepts of S/360 for Computer Operations and Business English and Report Preparation may be taken in conjunction with another course of instruction. There is no separate placement information for any of these courses.

APPENDIX D

1. "Base period" shall mean the calendar period of time:
 - a. From October 1 to March 31, inclusive; or
 - b. From April 1 to September 30, inclusive.
 - c. The first base period shall be the period from the first day of the second month following the effective date of the order to March 31, 1977 inclusive.
2. The three (3) month period immediately following the close of the base period shall be used by respondents to monitor and record the employment experience of all enrollees whose enrollment terminated during the base period. Respondents may not include in the computation of statistics for the base period persons whose enrollment terminated during the three (3) month recordation period. Such persons will be included in the statistics for the subsequent base period.
3. On July 1 of each year respondents shall begin to disseminate statistics for the base period which ended on March 31 of that year. Respondents shall continue to distribute said statistics until December 31.
4. On January 1 of each year respondents shall begin to disseminate statistics for the base period which ended on September 30 of the previous year, and shall distribute said statistics until June 30.

Complaint

IN THE MATTER OF
INTERNATIONAL TELEPHONE AND TELEGRAPH
CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-2854. Complaint, Dec. 10, 1976 — Decision, Dec. 10, 1976

Consent order requiring a New York City conglomerate and its Miami, Fla., subsidiaries, ITT Community Development Corporation and Palm Coast, Inc., among other things, to cease misrepresenting or failing to make pertinent oral and/or written disclosures regarding the risks, value, and soundness of land development; misrepresenting the degree of development of the land they offer; failing to disclose additional costs to be incurred and misrepresenting the property's proximity to waterways, major roads, shopping and recreational facilities; and failing to disclose purchasers' rights to cancellation and refunds. Further, the order requires construction of particular facilities intended to improve the value of land already sold, and limits the sale of registered lots for a period of fifteen (15) years.

Appearances

For the Commission: *Edward J. Carnot, W. Roland Campbell, and Barbara S. Schanker.*

For the respondents: *Charles Lister, Covington & Burling, Washington, D.C.*

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, as amended, the Federal Trade Commission having reason to believe that International Telephone and Telegraph Corporation, a corporation, ITT Community Development Corporation, a corporation, and Palm Coast, Inc., a corporation, hereinafter referred to as respondents, by themselves and through their wholly-owned subsidiaries, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent International Telephone and Telegraph Corporation ("ITT") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 320 Park Ave., New York, New York. ITT is a conglomerate engaged directly and/or through its subsidiaries in numerous and diverse businesses including, among others: developing, manufactur-

ing, distributing, servicing and operating electronic and telecommunication equipment and other industrial and consumer products; processing wood pulp; manufacturing and distributing food products and automotive parts; and providing business and consumer services. In 1974, ITT had sales of approximately \$10 billion and assets of \$10 billion, making it one of the ten largest domestic corporations in terms of sales and assets.

PAR. 2. Respondent ITT Community Development Corporation ("ICDC") is a corporation organized, existing, and doing business under the laws of the State of Delaware, with its principal place of business located at 5225 Northwest 87th Ave., Miami, Florida. ICDC is a wholly-owned subsidiary of ITT. ICDC's predecessor was ITT Levitt Development Corporation, a wholly-owned subsidiary of ITT Levitt and Sons, Inc.

PAR. 3. Respondent Palm Coast, Inc. is a corporation organized, existing and doing business under the laws of the State of Florida, with its principal place of business located at 5225 Northwest 87th Ave., Miami, Florida. Palm Coast, Inc. is a wholly-owned subsidiary of ICDC.

PAR. 4. Respondents are now and for some time last past have been engaged, directly or through their subsidiaries, in the business of acquiring undeveloped land, subdividing said land into homesite lots, advertising, developing, offering for sale, and selling said homesite lots to the public. The subdivision in which lots have been and are being offered for sale by respondents is known as Palm Coast, and is located in Flagler County, Florida. The acreage of this subdivision is over 90,000 acres and, as of March 31, 1975, there were less than 700 shelter units at Palm Coast. Land sales are generally effected through sales offices operated by wholly-owned subsidiaries or independent real estate brokers.

PAR. 5. Respondents, directly or through their subsidiaries, sell the lots at Palm Coast to purchasers by use of standard form contracts, entitled "Homesite Purchase Agreement" (hereinafter sometimes referred to in this complaint as a "contract") whereby the purchaser pays monthly installments over terms ranging from one to ten years. According to the provisions of the contract, title to the lot remains in ICDC's name until final payment is made, or the lot completion date stated in the contract is reached, whichever is later; at the later date, title to the lot is to pass to the purchaser. Purchasers pay interest to the respondents during the contract term on the unpaid balance owing on the contract.

PAR. 6. In the course and conduct of the aforesaid business, respondents, directly or through their subsidiaries, now cause and, for some time last past, have caused promotional materials, contracts and

various business papers to be transmitted through the U.S. mail and other interstate instrumentalities from their places of business in Florida and New York to their agents, representatives, employees, customers and prospective customers in various other States and territories of the United States and the District of Columbia. Respondents now maintain and operate and, for some time last past, have maintained and operated places of business and have made substantial sales to purchasers in the various other States of the United States and the District of Columbia. Respondents maintain and, at all times mentioned herein, have maintained a substantial course of trade in said land in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 7. In the course and conduct of the aforesaid business and at all times mentioned herein, respondents have been and now are in substantial competition, in or affecting commerce, with corporations, firms and individuals in the sale of land.

PAR. 8. In the course and conduct of the aforesaid business, respondents, directly or through their subsidiaries, disseminate advertisements through television and radio broadcasts and in various publications of general circulation, distribute promotional material through the mail and in person to members of the public, and make sales presentations by means of oral and written statements, slides and movies. By and through such means, respondents have made various statements and representations, directly or by implication, concerning the size, good reputation, financial security, and integrity of International Telephone and Telegraph Corporation.

PAR. 9. By and through the use of such statements and representations, respondent International Telephone and Telegraph Corporation permitted and participated in the use of its name for the purpose of selling land and deriving pecuniary benefits therefrom.

PAR. 10. By and through the statements and representations alleged in Paragraph Eight, respondents have represented, directly or by implication, that respondent International Telephone and Telegraph Corporation is legally responsible for the debts and commitments of its subsidiary ICDC and the development of Palm Coast.

PAR. 11. In truth and in fact, ITT is not legally responsible for debts and commitments of its subsidiary ICDC or for the development of Palm Coast. Therefore, the acts or practices alleged in Paragraph Eight herein are unfair or deceptive.

PAR. 12. In the further course and conduct of the aforesaid business, respondents, directly or through their subsidiaries, have disseminated advertisements through television and radio broadcasts and in various publications of general circulation, distributed promotional materials

through the mail and in person to members of the public, and have made sales presentations by means of oral and written statements, movies and slides. By and through such means, respondents have made various statements and representations concerning the supply of and demand for land; the liquidity or marketability of land; land prices and values; land as an investment principles of buying land; personal financial security; inflation; the stock market, banks and annuities; population growth and movement; the location of industrial, commercial and recreational facilities; the past, present and future suitability of lots in respondents' property for investments or homesites; the financial terms for real estate investment; the various options or financial protections afforded purchasers of respondents' land; and the repurchase or resale by respondents of lots acquired by purchasers from respondents.

PAR. 13. By and through the statements and representations alleged in Paragraph Twelve herein, respondents, directly or through their subsidiaries, have represented, directly or by implication, that the lots which respondents are offering for sale are, at the prices at which respondents are offering them for sale, excellent investments, and that there is little or no financial risk involved in the purchase of said lots at said prices.

PAR. 14. In truth and in fact, in a significant number of instances, the lots which respondents are offering for sale, at the prices at which respondents are offering them for sale, are not excellent investments involving little or no financial risk to purchasers. Therefore, the acts or practices alleged in Paragraph Twelve herein are unfair or deceptive.

PAR. 15. In the further course and conduct of the aforesaid business, respondents, directly or through their subsidiaries, have offered and are offering for sale lots in their land development without disclosing to prospective purchasers that the lots being offered are, at the prices at which respondents are offering them, uncertain investments in that, *inter alia*, the future value of the lots being offered is uncertain and the purchaser probably will be unable to sell his lot, or his interest in it under the contract, at or above the purchase price without significant community development and population growth. Therefore, respondents have failed to disclose material characteristics of their lots which, if known to certain prospective purchasers, would be likely to affect their consideration whether to purchase a lot from respondents. Such failure to disclose is an unfair or deceptive act or practice.

PAR. 16. In the further course and conduct of the aforesaid business, respondents, directly or through their subsidiaries, have made various statements and representations to members of the public, by means of advertisements in various publications of general circulation, promo-

tional materials, TV and radio broadcasts, telephone calls and sales presentations involving oral statements, written statements, movies, and slides, concerning the past, present, and future development of respondents' property. The aforesaid statements and representations use words or terms such as "planned community," and "master plan," and other words or terms of similar import.

PAR. 17. By and through the statements and representations alleged in Paragraph Sixteen herein, respondents have represented, by implication, that substantially all lots are now, or by approximately the end of the purchaser's scheduled payments will be, located within a self-contained and fully developed community.

PAR. 18. In making the statements and representations alleged in Paragraph Sixteen herein containing express or implied references to the past, present and future development of respondents' property, respondents have failed to disclose clearly and conspicuously, and in reasonable conjunction with such statements and representations, the following information:

(a) Lots in respondents' property are not now and will not be, by approximately the end of the purchaser's scheduled payments, located within a self-contained and fully developed community.

(b) Respondents' property consists primarily of vacant acreage with limited industrial, commercial, shopping and recreational facilities; limited amenities, and limited public services. The amount of building that has occurred is modest in relation to the total acreage of the property.

Each element of information set forth above is a material fact, knowledge of which would be likely to affect the decision of certain prospective purchasers whether to sign a contract for the purchase of respondents' land. The acts or practices alleged in Paragraphs Sixteen and Seventeen and/or the failure to clearly and conspicuously disclose the aforesaid information are unfair or deceptive.

PAR. 19. In the further course and conduct of the aforesaid business, respondents, directly or through their subsidiaries, through statements or promotional materials, have represented, by implication, that the resale of a lot purchased from respondents is not difficult.

PAR. 20. In truth and in fact, there is virtually no resale market for lots, other than waterfront or core area lots, purchased at respondents' subdivision. Therefore, the representations, acts or practices alleged in Paragraph Nineteen herein are unfair or deceptive.

PAR. 21. In the further course and conduct of the aforesaid business, respondents, directly or through their subsidiaries, have made and are making statements orally in sales presentations concerning the prices and locations of the lots being offered for sale and to be offered for sale.

