

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
Commissioner of Banking

West Virginia Code 31A-8-12b
Series VII
(1982)

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 6/11/82

Subject: Legislative rule pertaining to the installation, operation and sharing of customer bank communication terminals and the utilization of non-exclusive access interchange systems.

STATEMENT OF EMERGENCY

Pursuant to West Virginia Code §29A-3-15(a), the Commissioner of Banking has determined that an emergency exists, as defined in West Virginia Code §29A-3-15(e), requiring the promulgation of this emergency legislative rule. With the enactment of West Virginia Code §31A-8-12b (in Committee Substitute for Senate Bill 331) on March 13, 1982, and its becoming effective on this date, June 11, 1982, an emergency has arisen that necessitates the promulgation of a legislative rule to prevent substantial harm to the public interest. The Legislature, in enacting West Virginia Code §31A-8-12b, clearly indicated that the Commissioner of Banking shall promulgate regulations to further define mandatory sharing with regard to customer bank communication terminals. Thus, a legislative rule, defining mandatory sharing, needs to be effective before banking institutions can adequately utilize the powers granted by West Virginia Code §31A-8-12b.

*obsolete emergency rule
v4/l/c June 11, 1982
for 90 days*

EMERGENCY

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Subject: Legislative rule pertaining to the installation, operation and sharing of customer bank communication terminals and the utilization of non-exclusive access interchange systems.

Section 1. General

1.01. Scope - These regulations establish general rules implementing West Virginia Code §31A-8-12b, which permits the installation, operation and sharing of customer bank communication terminals and the utilization of non-exclusive access interchange systems.

1.02. Authority - These regulations are issued under authority of West Virginia Code §31A-8-12b(f).

1.03. Filing Date - June 11, 1982.

1.04. Effective Date - June 11, 1982.

Section 2. Sharing customer bank communication terminals

2.01. Mandatory Sharing - Pursuant to West Virginia Code §31A-8-12b(a)(1), any banking institution, which individually or jointly with one or more other banking institutions or other federally insured financial institutions, installs, operates and engages in banking business from a customer bank communication terminal in a location other than on the premises of its principal office, branch bank, or authorized off-premise facility, shall make such customer bank communication terminal available for use by other banking

institutions on a nondiscriminatory basis. The fees and charges required to be paid by any banking institution which utilizes the customer bank communication terminal shall not exceed a pro rata share of the costs, determined in accordance with generally accepted accounting principles, of purchasing or leasing, installing, operating and maintaining the customer bank communication terminal, plus a reasonable rate of return on these costs to the owner or lessee of the customer bank communication terminal.

2.02. Permissive/nondiscriminatory sharing - Pursuant to West Virginia Code §31A-8-12b(a)(2), any banking institution, which individually or jointly with one or more other banking institutions or other federally insured financial institutions, installs, operates and engages in banking business from a customer bank communication terminal may make such customer bank communication terminal available for use by other federally insured financial institutions. A banking institution which makes such a customer bank communication terminal available for use by one other federally insured financial institution shall make that customer bank communication terminal available for use by all other federally insured financial institutions on a nondiscriminatory basis. The charges to be paid by other federally insured financial institutions which utilizes the customer bank communication terminal shall not exceed a pro rata share of the costs, determined in accordance with generally accepted accounting principles, of purchasing or leasing, operating and maintaining the customer bank communication terminal, plus a reasonable return on these costs to the owner of the customer bank communication terminal.

2.03. Written agreement or contract required to be filed with the Commissioner of Banking - The terms and conditions of a banking institution's or other federally insured financial institution's use of a customer bank communication terminal under 2.01 or 2.02 above shall be governed by a written agreement or contract between the banking institution which installs, operates and engages in banking business from that customer bank communication terminal and the banking institution or other federally insured financial institution whose customers shall use that customer bank communication terminal. The written agreement or contract shall specify all terms and conditions, and shall include the fees and charges for the use of the customer bank communication terminal. A copy of the written agreement or contract shall be filed with the Commissioner of Banking by the banking institution that installs and operates the customer bank communication terminal.

2.04. Hearing before the Commissioner of Banking - Upon the written complaint by a banking institution or federally insured financial institution that it is unreasonably being denied the use of a customer bank communication terminal which has been installed and operated by a banking institution pursuant to 2.01 or 2.02 above, the Commissioner of Banking shall hold a hearing in the manner prescribed in West Virginia Code §31A-8-1. After any such hearing and consideration of all the testimony and evidence on the record, the Commissioner of Banking shall determine whether or not the banking institution or federally insured financial institution has been denied the right to utilize the customer bank communication terminal pursuant to 2.01 or 2.02 above. The Commissioner of Banking may issue an order directing the banking institution that installs and operates the customer bank communication

terminal to comply with the provisions of this regulation and of West Virginia Code §31A-8-12b(a) and prescribe the manner and means of so complying.

Section 3. Non-exclusive access interchange system

3.01. Access interchange system - Any banking institution, which individually or jointly with one or more other banking institutions or other federally insured financial institutions, installs, operates and engages in banking business from a customer bank communication terminal, whether that customer bank communication terminal is located on the premises of its principal office, branch bank, or authorized off-premise facility or in a location other than on the premises of its principal office, branch bank, or authorized off-premise facility, and makes that customer bank communication terminal available for use by another banking institution or other federally insured financial institution, has established an access interchange system for purposes of West Virginia Code §31A-8-12b(a).

3.02. Access interchange systems must be non-exclusive - Any access interchange system established according to 3.01 above shall be non-exclusive. Any customer bank communication terminal that communicates with and permits financial transactions to be carried out through an exclusive access interchange system shall be considered to be an illegal branch bank of the banking institution that installs and operates that customer bank communication terminal.

3.03. Written agreement or contract required to be filed with the Commissioner of Banking - The terms and conditions for establishing any access

interchange system shall be governed by a written agreement or contract. The written agreement or contract shall specify all terms and conditions, and shall include the interchange fees or charges and the transaction fees or charges. A copy of the written agreement or contract shall be filed with the Commissioner of Banking by the access interchange system.

3.04. Hearing before the Commissioner of Banking - Upon the written complaint by a banking institution that it is unreasonably being denied utilization of an access interchange system, the Commissioner of Banking shall hold a hearing in the manner prescribed in West Virginia Code §31A-8-1. After any such hearing and consideration of all the testimony and evidence on the record, the Commissioner of Banking shall determine whether or not the banking institution has been denied the right to utilize an access interchange system pursuant to 3.02 above. The Commissioner of Banking may issue an order directing the access interchange system to comply with the provisions of this regulation and West Virginia Code §31A-8-12b(a) and prescribe the manner and means of so complying.

Section 4. Night depository box attached to a customer bank communication terminal

4.01. Night depository box attached to a customer bank communication terminal - For purposes of West Virginia Code 31A-8-12b(c), any night depository box that is attached to a customer bank communication terminal in such a way that a customer electronically communicates with a banking institution is considered to be associated equipment of that customer bank communication terminal, and as such, subject to Section 2 and Section 3 of this regulation and West Virginia Code §31A-8-12b(a).