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ORIGINAL

OFFICIAL TRANSCRIPT OF PROCEEDINGS
BEFORE THE
Federal Trade Commission

DOCKET NO. Trade Practice Conference

In the Matter of: 215-28

PUBLIC HEARING ON A PROPOSED TRADE
REGULATION RULE CONCERNING A COOLING-
OFF PERIOD FOR DOOR-TO-DOOR SALES

Place Washington D. C.

Date March 10, 1971

Pages 252 thru 367

Alderson Reporting Company, Inc.

Official Reporters

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DOCKET NO. - ~~##~~ T.P.C.

CASE TITLE -- Public Hearing on a Proposed Trade Regulation Rule Concerning a Cooling-Off Period for Door-To-Door Sales

PLACE - Washington, D. C.

DATE - March 10, 1971

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BEFORE THE

FEDERAL TRADE COMMISSION

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PUBLIC HEARING ON A PROPOSED TRADE :
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REGULATION RULE CONCERNING A :
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COOLING-OFF PERIOD FOR DOOR-TO- :
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DOOR SALES :
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Trade Practice Conference

Room 532, Federal Trade Commission Building,
Pennsylvania Avenue and Seventh Street, N.W.,
Washington, D. C.
Wednesday, March 10, 1971

The above-entitled conference was called to order, pursuant to recess, at 10:00 a.m.

BEFORE:

WILLIAM D. DIXON, Assistant Director for Industry Guidance, Bureau of Consumer Protection, Federal Trade Commission.

HENRY CABELL, Attorney, Division of Industry Guidance, Federal Trade Commission.

APPEARANCES:

RALPH E. HEAL, Executive Secretary, National Pest Control Association

ROBERT W. FRASE, Vice President, Association of American Publishers, Inc.

IRA M. MILLSTEIN, Esq., Weil, Gotshal & Manges, Association of American Publishers, Inc.

SARAH McPHERSON

CHRISTIAN S. WHITE, Esq., Public Interest Research Group

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1 APPEARANCES (continued):

2 MARTHA PETTUS, Chairman, Neighborhood Development Cen-
3 ter, Shaw Area Welfare Committee and Consumer Unit

4 M. PAUL SMITH, President, D. C. City Wide Consumer
5 Council

6 THERESSA H. CLARK, Consumer Action Coordinator, United
7 Planning Organization

8 GEORGIA DICKERSON, Consumer Advisor, Southeast Neigh-
9 borhood Development House

10 MILDRED CLAYPOOL
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P R O C E E D I N G S

2 1
3 HEARING EXAMINER DIXON: May we come to order,
4 please. This is the third day of public hearings on the
5 Commission's proposed Trade Regulation Rule concerning a
6 cooling-off period for door-to-door sales.

7 For the benefit of those who have not been here
8 before, my name is William Dixon. I am the Assistant Direc-
9 tor for Industry Guidance in the Bureau of Consumer Protec-
10 tion.

11 To my left is Mr. Henry Cabell, the attorney in
12 charge of this Rule and developing these proceedings.

13 My apologies for the late start. We had one or two
14 witness problems which, hopefully, are straightened out.

15 As the first witness for this morning, I call for
16 Mr. Ralph Heal, Executive Secretary of the National Pest Con-
17 trol Association. Mr. Heal?

18 MR. HEAL: My name is Ralph E. Heal and I appear
19 before you as Executive Secretary of the National Pest Control
20 Association, Incorporated, a non-profit trade association
21 representing 1200 member companies, providing structural
22 pest-control service for hire to the public in the United
23 States.

24 Our office is located at 250 West Jersey Street,
25 Elizabeth, New Jersey 07207.

Our association is the only national trade

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1 association representing the structural pest-control or ex-
2 terminating industry.

3 Our industry provides service for the general pub-
4 lic, including home owners, in the control of a wide range of
5 insect and animal pests which may be destructive to man's
6 property or harmful to his health, comfort or general well-
7 being.

8 Major pest species controlled through services ren-
9 dered through our industry are termites, rats, mice, cock-
10 roaches, fleas, ticks, ants, wasps, pantry pests, and pest
11 birds, and a variety of other vertebrate pests which invade
12 homes, such as skunks, snakes and bats.

13 The nature of our business is such that a major
14 portion of it comes from calls from the public for assistance.
15 The normal procedure on receipt of such a call is to schedule
16 an inspection of the situation, at which time a quotation for
17 the work is made.

18 If it is an emergency situation, the job may be
19 done on the same visit, which is often desired by the custo-
20 mer both for his own comfort and peace of mind and for econo-
21 my.

22 The latter point, economy, is particularly impor-
23 tant in rural areas or in the smaller population centers, as
24 a major cost of the job may be the time and transportation
25 required to get the service man to the job.

4 1 The predominant majority of contracts with home-
2 owners are consummated on the property of the customer and
3 are initiated by a request of the customer for a quotation
4 and inspection or for service.

5 Our major request is that the definition of door-
6 to-door sales should be worded so as to exempt clearly and
7 specifically the sales of products, services or inspections
8 which originate through a request or an inquiry from the
9 buyer.

10 Such a provision would clearly permit our industry
11 to answer calls for pest control services which would involve
12 inspection of the premise with a quotation for the service,
13 and consummation of the contract taking place on the custom-
14 er's property.

15 Additionally, we would like to suggest certain o-
16 ther modifications of the proposal that we feel would make it
17 more valuable to the public and more constructive for the
18 business practices of our industry.

19 We do feel that the proposed requirement to fur-
20 nish a "notice of cancellation" in the terms proposed is an
21 unnecessarily negative requirement that is not a normal re-
22 quisite of other business and that taints the sales represen-
23 tatives of our industry.

24 We recommend that this requirement be revised to
provide positive business information on the seller and his

5 1 responsibilities, to include, number one, the name, address,
2 telephone number of the seller, servicing address and tele-
3 phone number of the seller, home office address and telephone
4 number of the seller.

5 Two, a statement that the buyer, if he chooses to
6 cancel, has the right to do so within the three-day cooling-
7 off period--and we have suggested wording for this.

8 And, three, a statement that the buyer, if he
9 chooses to do so, may waive the three-day cooling-off period,
10 thus to receive the goods or service at once.

11 The waiver of this period should be based on a need
12 of the buyer, so that the cooling-off period itself might
13 constitute a penalty to the buyer.

14 This waiver, we have suggested wording for this
15 waiver in the statement that has been submitted previously.

16 Our Association would recommend that the require-
17 ment of paragraph (b), page 4, for cancellation right notice
18 in the contract, be deleted.

19 Our bases for this are, one, that it is a duplica-
20 tion of the notice or statement of right that will be inclu-
21 ded in the document required under paragraph (a).

22 And, two, that its value as a duplicate notice to
23 the buyer will not justify the cost of the duplication of
24 contract forms for our industry.

True door-to-door sales by our industry are a

6 1 minor portion of our business.

2 This requirement would necessitate printing of a
3 total new set of forms, a cost that must be passed on to the
4 consumer, as to which there should be an objective evaluation
5 of benefits.

6 Our Association strongly recommends the deletion
7 of the requirement that the seller agree to an arbitration
8 compelled by the buyer's will. The mechanism for the appli-
9 cation of this to our industry is not apparent. It could
10 impose costs and procedures on the sellers at the will of the
11 buyer and no provision is apparent for allocation of the cost.

12 It is not a requirement of normal business. Our
13 Association would recommend a revision of this statement to
14 permit a waiver based on need, as suggested above.

15 We are quite in agreement that the contract should
16 not mislead the buyer or include any term of forfeiture of a
17 right that he should have.

18 We do feel, however, that it is in the buyer's to
19 waive a right when such a right penalizes him or deprives him
20 of a needed service.

21 We recommend that the statement of paragraph (d),
22 page 4, be modified to permit the waiver because of need
23 suggested above.

24 Our Association feels that the requirement of para-
25 graph (g), page 4, is an unnecessary penalty to place on

7 1 door-to-door sales and discriminates against such sales ef-
2 fort unfairly in comparison with other forms of sales effort.

3 We recommend that this requirement be deleted.

4 The requirements of paragraph (h), page 5, are ba-
5 sically acceptable to our Association with one exception. We
6 recommend that the period for return of payment or goods be
7 extended from the proposed ten business days to 30 days or,
8 at least, 20 business days.

9 There are many centrally owned firms in our indus-
10 try where a refund will have to be processed by mail out of
11 a central office.

12 Mail service, under today's conditions, will not
13 permit us to meet a ten-day limit under many circumstances.

14 We believe that the above-suggested revisions to
15 the proposed Rule will make it a more effective document for
16 the protection of the public, but which, at the same time,
17 will avoid depriving them of legitimate goods and services.

18 I have submitted a somewhat more detailed statement
19 already to the Director of Industry Guidance. I thank you
20 for this opportunity to place our opinions on record.

21 HEARING EXAMINER DIXON: Thank you, Mr. Heal. Mr.
22 Cabell, any questions?

23 MR. CABELL: Yes, Mr. Heal. Aren't some of the
24 members of your association subject to existing state cooling-
off laws?

8 1 MR. HEAL: Oh, yes. There are probably twenty-
2 some-odd states that have rules like this, and I know of at
3 least one city.

4 MR. CABELL: Well, these laws--I know they vary in
5 many respects, but the burdens that are imposed are somewhat
6 similar to the requirements of the Trade Regulation Rule we
7 are talking about.

8 Now, if your members have been able to operate un-
9 der these state laws, why won't they be able to operate under
10 this Trade Regulation Rule?

11 MR. HEAL: Well, I am sure--I wouldn't want to leave
12 the impression that we couldn't operate. I am sure that we
13 could find a way to meet this.

14 My statement is towards clarification of the thing
15 and trying to strike a balance that, as far as our industry
16 is concerned, would be constructively helpful.

17 We have no objection to the three-day cooling-off
18 period. We think that it is a very fair thing, as long as it
19 doesn't impose a penalty on the buyer.

20 MR. CABELL: Well, are most of your member companies
21 operating in more than one state?

22 MR. HEAL: I wouldn't say most, but a great many do.

23 MR. CABELL: Well, they already have to have a mul-
24 tiplicity of forms to use in the states which have a different
cooling-off law, don't they?

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MR. HEAL: Well, this, apparently, as far as I can detect, is a series of laws that has made no impact whatsoever upon our industry yet. I don't know of anyone in our industry that has had to modify his operation, change his forms, print new forms, or anyone that has been brought to task under it yet.

So there may be many, many people in violation of local requirements.

MR. CABELL: Well, you, then, would expect that the Trade Regulation Rule would have this effect, whereas the existing state laws do not.

MR. HEAL: Well, we would like to be prepared to conform to it.

MR. CABELL: Now, you suggest--probably your principal suggestion is that the consumer be able to waive the benefits of a cooling-off period.

MR. HEAL: In emergencies.

MR. CABELL: Or that it not apply if the consumer makes the request.

MR. HEAL: That is correct.

MR. CABELL: Now, one of the big problems of the direct seller is to attract the attention of a consumer, of the consumer, and get into the home. Some of these methods include advertising, various forms of--give the consumer various opportunities to request information and so forth.

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Now, don't the members of your Association advertise, for example, free termite inspection?

MR. HEAL: That is correct.

MR. CABELL: Well, how do you differentiate this situation from the one where the encyclopedia company advertises and agrees to provide the consumer with information about his product?

MR. HEAL: Well, there would only be one difference and that is the apparent need that the people had for a termite inspection as against their recognition of the need to have a better education through having an encyclopedia in their house.

MR. CABELL: This is sort of a dubious distinction, isn't it, if the seller has in effect instigated a consumer invitation?

MR. HEAL: Well, I would think that if someone invited the people to come and sell them, certainly, this is what our industry is there for, is to serve the public in time of need.

When Mrs. Jones has a swarm of termites in her front room, she is not quite in the same frame of mind as Mrs. Jones who might be considering buying an encyclopedia for her children. She is considerably more upset and more concerned, and she wants some help. She wants it now.

And actually, on termite work, this three-day

11 1 cooling-off period would not bother our industry a great deal,
2 because, invariably, the work is not started that day. The
3 people go there, they examine the property, they write up a
4 quotation, and it is quite the custom--as a matter of fact,
5 it is the advice of our Association--that people not be hur-
6 ried into this, that they take time.

7 If they feel they want to get a second bid, they
8 should, because this is a competitive business.

9 It is to protect the person who has an emergency
10 that she would want to take care of right now.

11 This would be typified by Mrs. Jones coming home
12 from her vacation. She has taken the dog with her. But she
13 didn't take all of the flea eggs that were in the rug. When
14 she comes home, in the meantime those flea eggs have hatched
15 into larvae and the larvae have grown into pupae and the
16 pupae are waiting poised for the presence of someone to bite.

17 And Mrs. Jones comes in. She finds her home flood-
18 ed with fleas. She picks up a telephone and she calls the
19 pest-control operator.

20 Now, if this three-day cooling-off period were ap-
21 plicable, the pest-control operator will be faced with the
22 choice of, is it going to trust Mrs. Jones to appreciate this
23 job enough that she is not going to say, two days later,
24 that she didn't want the job?

25 Or telling Mrs. Jones, fine, three days later I

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1 will give you the service, because we cannot retrieve our
2 service. It is not like a radio set that you can take back
3 and retrieve.

4 Once we do our job, it is done.

5 MR. CABELL: Well, in the light of the situation
6 that you describe--Mrs. Jones with the termites swarming in
7 the living room, the fleas jumping around the rug in the
8 other room--what is the real objection of your Association
9 to this provision (g).

10 I can see the salesman or the agent, or whatever
11 you want to call him, coming to the door--Mrs. Jones, I am
12 from the Ace Exterminating Company and I am here to sell you
13 exterminating services in response to your call.

14 I can't possibly see how that provision would work
15 to your prejudice in the situation you describe. That is the
16 one that requires the salesman to disclose his identity and
17 the purpose of the call--the purpose of the call is to make
18 a sale.

19 MR. HEAL: I would say that our objection there is
20 as much on general principle, because we don't require--in
21 other business practice, we don't require the announcer on
22 the television to come on and say, dear folks, I want to sell
23 you a cigarette, I am here to sell you a cigarette.

24 This is putting our particular activity under a
25 cloud that is not required of other people.

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MR. CABELL: And that is your only objection?

MR. HEAL: That is our major objection. It is an objection on principle, of discrimination against a type of sale.

MR. CABELL: And you think it really would prejudice the opportunity to make a sale in the situation you describe?

MR. HEAL: I would think that our people are inventive enough that they could find a way to comply with this and word this in such a constructive way that it would remove most of the stain.

MR. CABELL: Now, do you companies sell products as distinguished from services as a general rule?

MR. HEAL: We do not represent them. Many of our companies do sell products, but this is not a phase of the consideration of our Association staff. We don't service them in this area at all.

MR. CABELL: Now, wouldn't you agree that there is some difference in the situation you so graphically described --termites and fleas--with the situation in which the company simply advertises let us come to your home for a free termite inspection? In this instance, the consumer decides to take advantage of this offer.

Now, here the agent or salesman comes to the door and this, it seems to me, would be where provision (g) would

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1 affect your operation. Instead of saying I am here to make
2 your free termite inspection, he commences the conversation
3 with I am here to sell you termite services, or some other ex-
4 termination service.

5 MR. HEAL: Well, I don't think that it would make
6 any difference because the people know what he is there for.
7 They called him there to try to sell him a termite job.

8 MR. CABELL: No, they called him there to get the
9 free termite inspection in response to the advertisement.

10 MR. HEAL: Well, I think anybody would be naive to
11 think that the man would not try to sell him a termite job,
12 if he found termites there.

13 MR. CABELL: Wouldn't you agree in this instance,
14 though, that your Association members are in virtually the
15 same position as the encyclopedia companies or the pot-and-
16 pan companies?

17 MR. HEAL: I don't think that we are in the same
18 position at all.

19 MR. CABELL: Now, at that time you are advertising
20 a free termite inspection and the other companies are adver-
21 tising let us explain to you, give you more information about
22 our encyclopedias.

23 Now, what is the difference?

24 MR. HEAL: A difference in the needs that the
25 people have.

15

1 MR. CABELL: They don't know whether they need it
2 or not at that time. That is why they are having an inspec-
3 tion.

4 MR. HEAL: That is correct. They want some assur-
5 ance. They want it from an industry that has built a pretty
6 good reputation of giving them that comfort. They want to
7 know whether they have to have this or not.

8 MR. CABELL: A prospective encyclopedia buyer is
9 in much the same position in the situation we are talking
10 about now.

11 MR. HEAL: Well, I hope you understand that I just
12 have been working with insect problems so long that I can't
13 correlate them to encyclopedias, because they are real things
14 that are bothering people. They are problems that these
15 people are faced with and in competition, in our industry, it
16 is customary in many areas to offer that we will come and in-
17 spect your property and will not charge you for it.

18 This has been offered by many companies. That means
19 that if you don't have termites, you have no charge. You have
20 termites, they will try to sell a job.

21 MR. CABELL: Well, they vary in quality of jobs,
22 too, don't they?

23 MR. HEAL: Well, there are varying types of guaran-
24 tees given on jobs.

25 MR. CABELL: Would the longer and more expensive

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1 guarantees be more expensive, of course.

2 MR. HEAL: Yes, usually.

3 HEARING EXAMINER DIXON: Just a couple of addition-
4 al questions, Mr. Heal. You recommended, I believe, that the
5 buyer be permitted to waive the cooling-off period.

6 Again I think you are talking in the context of your
7 own industry.

8 MR. HEAL: That is right.

9 HEARING EXAMINER DIXON: But I wonder if any such
10 provision were incorporated in a Rule such as this, if it
11 wouldn't really defeat the purpose of the Rule, because if
12 you assume that the Rule has the facility in applying to the
13 situation in which the salesman is successful in persuading
14 the buyer to enter a contract that, in the cold light of the
15 dawn, he wishes he hadn't entered--wouldn't he also at that
16 time be usually successful in persuading the buyer to give him
17 a waiver?

18 MR. HEAL: I think that is a risk you run. And
19 this is something you people will have to weigh. I make my
20 representation as to what will best meet the needs of the
21 public as it is related to our industry.

22 And I wouldn't attempt to evaluate the thing for all
23 industries.

24 We have many instances that I could cite to you
25 where we would probably have to comply with the door-to-door

17 1 ruling, even if we did get the first clear exemption that I
2 requested. This concerns the practice of our firms to run
3 routes through rural areas and small communities.

4 And very often you will encounter the situation
5 where a man has a scheduled call, shall we say--a house that
6 he may have under service, a restaurant that he may have un-
7 der regular service.

8 And it is the custom of the people in that communi-
9 ty that if they have a problem they sort of ask the people to
10 have the exterminator drop by their house. They often do
11 this.

12 So the man goes to the house and he finds, shall we
13 say, an infestation of wasps or fleas or cockroaches or rats
14 or any other undesirable vermin there, that he can handle on
15 that call.

16 And probably, if he were to wait three days to do
17 this work, it would be excessively expensive to these people.
18 It would mean that they might have to wait as much as a
19 month to get the work done.

20 And it is for the protection of this service to the
21 public that I am making this recommendation.

22 HEARING EXAMINER DIXON: Now, would you again, in
23 the context of your own industry, draw any distinction be-
24 tween the emergency situation and the simply routine accept-
25 ance of an offer for a free inspection--in other words, the

18 1 situation where the home owner has a swarm of termites and
2 calls on a more or less emergency basis, and where he simply
3 asks for the free inspection that one of your people has of-
4 fered?

5 MR. HEAL: I see no objection--well, I would not
6 rate that as an emergency.

7 HEARING EXAMINER DIXON: Well, that was the distinc-
8 tion I was drawing, that perhaps your request on exemption or
9 your request for a waiver might more properly be addressed to
10 one of these emergency situations rather than a request for
11 an across-the-board waiver or exemption in all cases.

12 MR. HEAL: The feeling of our industry is to place
13 our salesmen--and we are an established industry that has
14 been serving the public of this country for many years, I
15 have been with this organization for 21 myself--and this is
16 a service that many people request daily.

17 For you to ask our people to all of a sudden go
18 through a special ritual that is not required of any other
19 normal standard business, I think is an imposition on our
20 industry.

21 We have been rendering a public service for all of
22 these years and it has--some people have interpreted it to be
23 that these calls that we get should be rated as door-to-door
24 sales.

25 I have talked to several consumer groups, and they

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1 don't believe--well, I have not had any of the consumer
2 groups indicate that they felt that these qualified as door-
3 to-door sales at all.

4 They were services that the public was asking for
5 and wanted. And I just think that our industry would feel
6 very strongly that we should not be penalized in the continu-
7 ation of a business that has been established, accepted with-
8 out serious fault.

9 Checks with the Better Business Bureaus around the
10 country will indicate that our industry is quite relatively
11 free of complaint. And we just think that we should be per-
12 mitted to continue to operate in what we consider to be a
13 legitimate way, in which the public is requesting our ser-
14 vices, without additional penalties.

15 HEARING EXAMINER DIXON: One final question. You
16 stated that the state laws have had little, if any, impact on
17 your industry. Is that because it is not being enforced?

18 MR. HEAL: Well, I really don't know. I announced
19 this thing to our industry through a general mailing to every
20 member--and I have members in, I think, every state except
21 two, and these two states are served from outside of their
22 state, so I have people who are operating in every state.

23 I found no reaction on the basis of the state laws
24 and the city law that exists. The president of our Associa-
25 tion operates in Columbus, Ohio, which has one of these laws.

20

1 It has never been brought to their attention other
2 than in the public press. Nobody has asked them to comply
3 with anything, apparently.

4 HEARING EXAMINER DIXON: Thank you, Mr. Heal. The
5 next witness is Mr. Robert Frase, Vice President, Association
6 of American Publishers.

7 MR. FRASE: My name is Robert W. Frase. I am the
8 vice-president and economist with the Association of American
9 Publishers, Incorporated, a national association whose member-
10 ship of approximately 250 accounts for a great majority of
11 the book publishing output of the United States.

12 I have occupied a similar position for almost 20
13 years in predecessor organizations--The American Book Publi-
14 shers Council, The American Educational Publishers Institute.

15 Before that I served for some 12 years as an econo-
16 mist and administrator in several Federal departments and
17 agencies.

18 I am accompanied by Ira M. Millstein, our legal
19 counsel, who will address himself in more detail to the prob-
20 lem of establishing an overriding national standard rather
21 than adding a Federal requirement on top of state and local
22 regulations.

23 My testimony will cover three topics. One, some
24 important background facts about the book and reference-book
25 publishing industries. Two, our endorsement of a three-day

21 1 cooling-off period and our concern that any standard set be
2 a uniform national standard. And, three, comments on an al-
3 ternate rule which we believe is an improvement on the Commis-
4 sion's initial draft.

5 The members of the Association of American Publi-
6 shers publish all types of books--fiction and nonfiction,
7 textbooks at all levels, encyclopedias, dictionaries, and
8 scientific, technical and medical and scholarly books.

9 Some are large firms, as the industry goes, but,
10 essentially, book publishing consists of small and medium-
11 size businesses.

12 Our total annual sales of the industry are some
13 2.8 billion, are far less than the sales of many individual
14 corporations in other fields.

15 Most of our members are profit-making corporations,
16 a significant minority is not--some forty university presses
17 and a number of publishing departments of religious denomina-
18 tions are also active members.

19 Books are sold in a great variety of ways, by general
20 bookstores and college bookstores, by direct mail, through
21 book clubs, by home and office sales, and directly to institu-
22 tions, such as schools and libraries, to mention some of the
23 most important channels of distribution.

24 Firms publishing encyclopedias and other reference
25 books will be most affected by an FTC Trade Regulation Rule

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1 or a Federal statute providing a cooling-off period on sales
2 made in the home.

3 Since a number of our member firms are testifying
4 on their own behalf and will describe their own publishing
5 activities, I do not propose to go into great detail about
6 the reference book business in this country.

7 I should, however, like to make two general points.
8 First, the quality of encyclopedias and other reference books
9 produced by the firms in our Association is not surpassed
10 anywhere in the world, and our companies are far ahead of
11 their counterparts in other countries in keeping their refer-
12 ence sets up to date, both by means of supplementary year-
13 books and by annual revisions of the sets or substantial parts
14 thereof.

15 As a result, our reference books enjoy a very sub-
16 stantial and rapidly growing foreign market, even in coun-
17 tries where English is not the predominant local language.

18 Secondly, encyclopedias, and other reference works,
19 have been sold throughout the world for a century or more by
20 sales in the home.

21 Other methods have been tried many times, but the
22 universal experience has been that it is not economically
23 feasible to produce and distribute a quality product by other
24 means.

25 Book publishers, no matter how small, publish

23 1 primarily for a national market. There are a few partial ex-
2 ceptions to this rule, but none of them is a reference book
3 company, publishing generally encyclopedias.

4 As a result, we are very much concerned to assure
5 that any national regulation on cooling-off and related con-
6 trols on sales in the home establish a national standard
7 which would pre-empt the field and prevent variations result-
8 ing from different state laws and local ordinances.

9 Such national uniformity is in the interest of
10 both the publisher, who thus need only one form of contract,
11 and instruction to his sales staff--also to the consumers,
12 many of whom are quite mobile and would benefit by having a
13 single national standard relating to sales in the home, no
14 matter what they were purchasing or where they might subse-
15 quently move to.

16 This is not a theoretical question, because a number
17 of states already have statutes providing a cooling-off peri-
18 od and otherwise regulating sales in the home.

19 Now, these state laws vary considerably in their
20 details. We are frankly concerned as to whether the Federal
21 Trade Commission, through a Trade Regulation Rule, can pre-
22 empt the field and eliminate entirely state laws and local
23 ordinances.

24 It is not enough, in our opinion, for an FTC Rule,
25 that it overrides directly conflicting provisions in state

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1 laws and local ordinances, because this would still leave
2 room for variations.

3 We are all--businessmen, consumers, and Government
4 officials alike--buried in a sea of paper. And a manufactur-
5 er reading the filing of this paper--it consumes the time of
6 all of us and raises the cost of producing and distributing
7 economic goods of all types.

8 We hope, therefore, that the Commission will do its
9 utmost to pre-empt the field in any Trade Regulation Rule
10 which it issues.

11 And we believe that the provision on this point in
12 the industry's proposed alternate rule goes much farther than
13 the Commission's proposed rule.

14 If it should turn out, however, that the Commission
15 cannot pre-empt the field through a Trade Regulation Rule, we
16 naturally must reserve the right to seek a Federal statute,
17 which we believe can be drawn so as to pre-empt the field.

18 As I indicated earlier, Mr. Millstein will go into
19 this whole problem in greater detail. And on the legal ques-
20 tions involved, I have asked that any inquiries be directed
21 to Mr. Millstein rather than to me.

22 I now proceed to the alternate rule drawn up by a
23 group of associations and firms, including the Association of
24 American Publishers, which was attached to Mr. Frederic
25 Sherwood's letter of March 4 to the Secretary of the Commission,

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1 Mr. Tobin and which is explained orally in Mr. Sherwood's
2 testimony in these hearings on March 8.

3 Since the explanatory material attached to Mr.
4 Sherwood's letter of March 4 set forth in great detail the
5 ways in which the alternate rule differs from the Commission's
6 proposed Rule, and there has already been an opportunity for
7 questions, I shall not attempt here to analyze the alternate
8 rule point by point.

9 I should, of course, be glad to answer questions
10 concerning it. We believe that the alternate rule is super-
11 ior in a number of respects to the Commission's draft.

12 And I was interested to note that when Senator
13 Moss of Utah testified in these hearings on March 8, he made
14 some suggestions concerning provisions in the Commission's
15 proposed Rule which were not too dissimilar from the points
16 made in the alternate rule.

17 We believe that the alternate rule is better in a
18 number of respects both from the point of view of the produ-
19 cer and of the consumer. And not only because it has a
20 strong pre-emption provision.

21 Some of the provisions of the alternate rule, such
22 as the \$25 minimum and the emergency clause, do not, of
23 course, affect the members of the Association of American
24 Publishers, but we believe that the document as a whole is
25 a sound and practical one in a regulation which must

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1 necessarily deal with a very broad range of products sold in
2 the home.

3 We urge that the alternate be studied carefully not
4 only by the Commission and its staff, but by the consumer
5 groups participating in this hearing and otherwise concerned
6 with these problems.

7 HEARING EXAMINER DIXON: Thank you, Mr. Frase. Mr.
8 Cabell?

9 MR. CABELL: Mr. Frase, what effect have the state
10 cooling-off laws on the operations of your members?

11 MR. FRASE: My impression is they have been complied
12 with, but it has not had a serious effect on our business.

13 MR. CABELL: It has not had a serious effect?

14 MR. FRASE: It has not had a serious effect on our
15 business.

16 MR. CABELL: I suppose that is the reason you sup-
17 port the cooling-off?

18 MR. FRASE: That is one reason. And another reason
19 is that there seems to be a tendency each year for more and
20 more states and localities to get into this thing with differ-
21 ent provisions, so that the burden of complying is different.

22 MR. CABELL: Well, what is the objection to this
23 provision (g) that we talked about so much during the course
24 of these hearings from the standpoint of your members?

25 MR. FRASE: Well, let me approach it in this way.

27 1 I am not quite clear as to what the Commission staff, or
2 whoever drew up the proposed Rule, had in mind. Unlike a
3 legislative situation, with which I am more familiar, where
4 you have a bill and a sponsor of the bill comes in and ex-
5 plains orally, subject to cross-examination, what the prob-
6 lem is and how he thinks it should be dealt with--here we
7 just have a bill without the background.

8 So I assume--it seems to me that there are quite a
9 number of problems that might be presented there and I am not
10 sure which one the Rule is intended to deal with.

11 It might be the problem of misrepresentation in
12 which somebody says I am working my way through college, or
13 I am taking a poll, or I am doing a survey, and various other
14 things of that sort, which seem to me, or seem to us, much
15 more serious question than one which we propose to deal with
16 in the alternate rule, rather than the more limited approach
17 to that problem by saying I am from XYZ Company, I am here to
18 sell you something.

19 MR. CABELL: Well, one of the main sources of com-
20 plaint that we get concerning door-to-door sales is the use
21 of the deceptive door-opener. In other words, the salesman
22 employs some strategem to get into the home.

23 Now, this provision was designed to counteract that
24 by requiring the salesman to disclose the purpose of his visit,
25 who he is, and to state clearly that he is there to make a

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1 sale of something, whatever it might be.

2 Now, the alternate provision that you have submit-
3 ted simply says that the salesman may not misrepresent the
4 purpose of the call.

5 So it seems to me that the alternate provision, as
6 some other witness testified, really doesn't add anything to
7 the existing laws and regulations.

8 We all know he shouldn't use misrepresentations and
9 deceptions in an affirmative way, but the Trade Regulation
10 Rule goes further.

11 MR. FRASE: Are you saying that the question of de-
12 ception is covered in some other FTC Rule or law or provision?

13 MR. CABELL: Well, I think we all know that under
14 Section 5 of the Federal Trade Commission Act, the use of
15 unfair and deceptive acts and practices to make sales is pro-
16 hibited. We all know that.

17 Now, this Rule goes further and in an effort to pre-
18 vent, in an effective way, the use of such practices, to re-
19 quire the man to disclose why he is there.

20 Now, what is the objection of the companies to this
21 provision?

22 MR. FRASE: I don't think that there is objection to
23 the provision. I think there is objection that it is not real-
24 ly dealing with what we regard as the substantive issues here,
25 which are deception--even though somewhere else, you have to

29 1 put it in here, too. I could come up and sort of whisper
2 that I am so-and-so and trying to sell you something, but I
3 am also here to make a survey and you have been selected, you
4 have won a prize, or various other things.

5 MR. CABELL: Well, what I can't understand--every
6 industry representative, I believe, who has testified at these
7 hearings has opposed this provision. And no one says why.

8 Now, there must be some reason. The first one, of
9 course, said that it doesn't meet the problems.

10 MR. FRASE: Well, that is essentially what I am
11 saying, that deception is the problem.

12 MR. CABELL: Well, I think that you will admit that
13 deceptive door-openers are sometimes used in the door-to-
14 door sale.

15 MR. FRASE: Yes. If there is a deceptive door-
16 opener--well---

17 MR. CABELL (Interposing): If we are going to out-
18 law ruses, I think that one of the best defenses--they are
19 already outlawed, supposedly--but one of the defenses against
20 this practice is for the man to disclose I am here to make a
21 sale. And that really clears the air.

22 MR. FRASE: There is also, I think, the practical
23 problem of enforcement, both for the Government and the com-
24 panies with large sales forces.

25 Suppose a case comes up and a consumer says he

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1 didn't say these magic words, I am here from XYZ to sell you
2 something, and the salesman says I did say it--now, in that
3 situation, how do you tell--you have these conflicting state-
4 ments, two individuals.

5 How is the company going to know if the salesman
6 said it or not, if the salesman says he did? How are you
7 going to know?

8 HEARING EXAMINER DIXON: Suppose we have fifteen
9 consumers that say he didn't?

10 MR. FRASE: Yes, I think that might do it. But in
11 the individual case, maybe as a matter of practical enforce-
12 ment, you would wait until you got fifteen cases involving
13 the same salesman or 200 cases involving the same company.

14 MR. CABELL: Well, I have one other question now.
15 The alternative that you have submitted incorporates this
16 emergency exception. In other words, if the goods and servi-
17 ces are needed in order to meet a bona fide emergency, would
18 you expect this provision to apply to sales of encyclopedias?

19 MR. FRASE: No. As I said in my testimony, there
20 are some factors, some provisions, in the alternate rule that
21 don't affect us, and this is one of them, although it seems
22 to me that this is perfectly legitimate thing.

23 And there are such circumstances, and the alternate
24 rule does provide a way of getting around them by saying that
25 the customer has to sign right out, sign a separate piece of

31 1 paper saying why or what the emergency is, and why he wants
2 the waiver.

3 If I call the plumber, he comes there, and the
4 water is spurting out in my basement--he is not my regular
5 plumber, he doesn't trust me, I have to sign something there.
6 I am going to sign it. I want to get the job done right then.

7 I think that with this defense or, rather, with
8 this provision, that the customer himself has got the right
9 to say I want this now and this is why I want you.

10 You can be perfectly safe in not having a loophole
11 which you can drive a truck through.

12 MR. CABELL: Don't you think it would be rather
13 difficult to distinguish a situation you described--a plumb-
14 ing emergency--from other emergencies? It seems to me that
15 this would really open the door for all sorts of means of
16 circumvention of the Rule.

17 MR. FRASE: It seems to me we drew it pretty tight,
18 but, if it is not, and I can only give it a sort of general
19 defense, because it is not a matter of concern to us--but I
20 think the Commission and its staff has a duty to deal with
21 these emergency situations in some way which will not open
22 the door to abuse.

23 HEARING EXAMINER DIXON: Thank you, Mr. Frase. I
24 would endorse your hope that this alternate rule would come
25 in for some careful study and, hopefully, additional comment,

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1 by not only other members of the industry but the consumer
2 groups as well, because obviously a great deal of effort has
3 gone into its preparation by very substantial segments of the
4 industry.

5 And it is deserving of further study. Of course,
6 in view of the Chicago hearings, and our normal practice of
7 keeping the record open, there will be, I think, adequate
8 time in which that could be done.

9 MR. FRASE: I appreciate those remarks, Mr. Examiner,
10 because we did feel that it was going to be helpful and we did
11 spend a lot of time on it, people who had practical experience
12 in the industry.

13 And we will cooperate to the extent of keeping co-
14 pies of it available on the desk in these hearings and in
15 Chicago. Thank you.

16 HEARING EXAMINER DIXON: Thank you, Mr. Frase.
17 The next speaker is Mr. Ira Millstein of Weil, Gotshal and
18 Manges.

19 MR. MILLSTEIN: Thank you for the opportunity of
20 coming today and giving the AAP two cracks at the apple. As
21 Bob Frase said, my burden will be to discuss with you this
22 morning the whole question of pre-emption.

23 We are very concerned that the proliferation of
24 regulations involving door-to-door selling may result in less
25 consumer protection, and we are therefore here to try to work

33 1 with you in developing a mechanism for achieving uniformity.

2 Incidentally, I have submitted a written statement
3 which I hope will be put on the record. I would like to go
4 through it now--not cover all of it, but simply highlight
5 what we think the approach ought to be.

6 Obviously, something will result from these proceed-
7 ings in the way of a Rule. We urge that, in evolving that
8 Rule, you also consider how to go about making that Rule a
9 uniform national rule applicable to interstate sellers.

10 By that I mean a rule that interstate sellers can
11 follow without fear of being prosecuted under differing state
12 laws.

13 If the Commission simply adopts a Rule and ignores
14 the question of enforcement and ignores the question of state
15 laws, we submit it will be doing a disservice to the industry
16 rather than a service.

17 And I would like to elaborate on the reasons why.

18 At the present time there are more than twenty state
19 laws, many of which contain substantially different or even
20 conflicting provisions regulating door-to-door selling.

21 In addition to the existing twenty on the books,
22 there are bills pending in Texas, Colorado, South Dakota,
23 Oregon, all of which would further regulate this area.

24 Moreover, even some local governments, such as muni-
25 cipalities--New York, for example--have proposed considering

34 1 adopting regulations covering door-to-door selling.

2 Unless harmonization of regulation is achieved,
3 and we submit harmonization is one of the principal responsi-
4 bilities of the Federal Trade Commission, door-to-door sellers,
5 especially the smaller ones which don't have great administra-
6 tive capabilities, will find, as many do now, extreme difficul-
7 ties in complying with the varying types of regulations under
8 state, local, and Federal.

9 Now, the kind of problem which derives from the
10 multitude of regulations can be seen from a very cursory ex-
11 amination of what is on the books at the moment.

12 Let's take some examples, At least fourteen states
13 require that the contract, or other forms involved in door-
14 to-door selling, contain specific language set forth in the
15 respective state statute. Although the substance of these
16 notices is generally similar, different specific language is
17 required in each of those states.

18 Thus, not only do the laws of each state conflict
19 with the proposed and alternate rule, they conflict with each
20 other.

21 There are other differences in state laws in connec-
22 tion with the notice which also present serious problems.

23 Hawaii, for example, requires that any notice be
24 set forth after the buyer's signature. This differs from the
25 requirement of all the other states which specifies the loca-

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1 tion of the notice of cancellation to be before the buyer's
2 signature.

3 Some states permit several methods of cancellation.
4 Other states provide only one. At least nine states require
5 the cancellation to be by registered mail. Neither the pro-
6 posed nor the alternate rule requires this.

7 In these situations compliance with the Federal
8 regulation would not constitute compliance with the state
9 regulation.

10 On the other hand, the alternate rule requires the
11 cancellation be by mail. Thus, a consumer in complying with
12 the laws of Illinois, Maryland, New York, Virginia and Penn-
13 sylvania, which don't specify mail, but specify only written
14 cancellation, would not be complying with the Federal regu-
15 lation.

16 Now, without detailing other specific differences,
17 we note that there are a number of areas of additional poten-
18 tial conflict.

19 The period of time during which a consumer may can-
20 cel differs from state to state and the Federal proposal,
21 ranges from one to four days. Some states state it in terms
22 of hours, some refer to 5 o'clock at night, some refer to 12
23 midnight.

24 So even the time provision changes from state to
25 state.

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1 Some states permit a seller to charge a reasonable
2 cancellation fee, others don't.

3 The number of days within which a seller has to
4 pick up the merchandise varies in those states which specify
5 a procedure for pick-up.

6 None of the state provisions are consistent in this
7 regard with either the proposed or the alternate rule.

8 Several states have exceptions to the making of
9 sales or the rendering of services in an emergency. The
10 rest don't.

11 The use of those states' permission to waive the
12 cooling-off provision would contravene the proposed Rule.
13 On the other hand, the alternate-rule language differs from
14 the requirements of all of the states in connection with em-
15 ergencies.

16 Consequently, a seller who is in compliance with
17 the regulation in one state may find that the very same pro-
18 cedure violates another state or what ultimately turns out
19 to be the Commission's Trade Reg Rule.

20 Thus, a seller finds himself in the position of
21 having to establish separate administrative directives and
22 controls for each state in which he is going to operate.

23 Moreover, if a seller wishes to change his proce-
24 dures or revise his written material, he must search the law
25 of nearly half the states in order to determine whether he is

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1 going to be in compliance in the first place. The administra-
2 tive and legal time involved in all of this can be prohibitive.

3 But passing that, there is the problem of training
4 salesmen. After all, that is where compliance is going to
5 come, at the level of the salesman.

6 With all the good intent in the world, you have got
7 to be sure that your salesmen know what they are supposed to
8 do when they go out and sell.

9 Of necessity salesmen very often operate in more
10 than one state and thus may have to carry at least two dif-
11 ferent sets of contracts and forms, and follow two or more
12 specific procedures.

13 This will be triply complicated if the municipali-
14 ties get into this act. The mundane problem of assuring that
15 salesmen have the correct contract form for each state and
16 an adequate supply thereof in itself demonstrates the types
17 of burdens which a multiplicity of regulations places on the
18 ordinary seller.

19 Now, we could go on at some length and discuss the
20 specifics, and I understand that in due course we are prob-
21 ably going to submit an outline of the various state regula-
22 tions and how they differ one from the other and how they
23 differ from the alternate and proposed rules.

24 But that those differences exist is perfectly clear
25 And, of course, the key difference is disclosure.

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1 We have at least fifteen or sixteen different types
2 of disclosure, same intent, but requiring different words.

3 We don't believe it is necessary to belabor the
4 desirability of the uniform-law approach. The entire history
5 of the accelerating desire for uniform state laws on a vari-
6 ety of subjects is in itself eloquent testimony to the con-
7 cept and that uniformity brings lower costs of compliance,
8 greater consumer understanding, and more consumer protection
9 than does proliferation.

10 The advantages of a uniform Federal regulation in
11 this area are, to us, clear.

12 Let me outline them. First, the consumer can be
13 made aware of his rights on a national basis. His rights
14 don't vary if he moves from Chicago to New York.

15 Second, door-to-door sellers can establish contract
16 and receipt forms on a uniform basis across the country,
17 thereby avoiding unnecessary cost and the possibility of us-
18 ing the wrong form in a particular state.

19 Third, sellers can train their salesmen on how to
20 comply with the law without being required to study a host of
21 different local requirements.

22 Fourth, sellers can establish a single internal ad-
23 ministrative control procedure to ensure that their opera-
24 tions are in compliance with the law.

25 Fifth, the decrease in cost of compliance can rea-

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1 sonably be expected to improve the likelihood of compliance
2 and prevent the cost of goods and services from going higher
3 than they are now.

4 It seems, therefore, to us, that the key question
5 in this proceeding, assuming that a general consensus can be
6 reached on the question of what Trade Reg Rule should be
7 promulgated, is whether the FTC can provide the uniform na-
8 tional regulation which almost everybody concedes is neces-
9 sary to avoid problems which arise from a multitude of state
10 regulations.

11 Let us consider the legal problems involved. As
12 the Commission knows, merely to state that a Federal regula-
13 tion pre-empts state law doesn't begin to answer the question
14 of the extent of the pre-emption--that is, the question re-
15 mains as to whether or not the pre-emptive effect applies to
16 conflicting state regulations or differing state regulations.

17 A state regulation may not conflict but be dif-
18 ferent. For example, the disclosure provision where the
19 state may want to accomplish the same thing that the Federal
20 does and have the requirement of disclosure, and have the
21 same sense of disclosure, but require different language.

22 In that case, someone may argue that there was no
23 conflict, simply a difference.

24 Now, the issue is, will the Federal regulation pre-
25 empt the conflict-only situation or pre-empt in addition any

40 1 language that differed, any forms that differed, and so on?

2 Now, it seems clear to me that a duly promulgated
3 Federal administrative regulation may pre-empt state regula-
4 tion to the extent that the state regulation conflicts with
5 or is directly inconsistent with the provision of the Federal
6 regulation, or to the extent that it can't be reconciled with
7 the intent of the Federal law.

8 Now, the simplest example is, if in a Federal regu-
9 lation it were to say black and the state regulation were to
10 say white, there would be a sheer conflict and I think black
11 would control.

12 It is the gray that is the problem. Now, it ap-
13 pears to me that you do pre-empt conflicting--and this is
14 true whether or not the promulgator of the regulation states
15 that he intends to pre-empt or not. In other words, that
16 just happens as a matter of law.

17 But the issue remains as to whether the state re-
18 gulation which differs is also pre-empted. Now, in the in-
19 stant case, if the FTC is either silent on the subject of
20 pre-emption or states no more than that a pre-emptive effect
21 is intended, the use of the term pre-emptive won't do very
22 much to lessen the problem of compliance, because it won't
23 have dealt with the question of difference.

24 Instead, the door-to-door seller may be in a worse
25 position than he is in at the moment. The courts may

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1 ultimately determine that the FTC, having said nothing, the
2 regulation does no more than supersede conflicting state laws;
3 rather than eliminating overlapping inconsistencies in state
4 law, the seller would then be faced with a layered, a new
5 layer of regulation with which he must comply, the Federal
6 regulation.

7 And he already has to comply with twenty states and
8 some municipalities.

9 More importantly, the seller will be confronted with
10 a new set of complex of factual and legal problems which he
11 would have to unravel.

12 He would now have to take the Federal and lay it
13 against each of the states and decide where the state conflicts.
14 Where it conflicts he follows the Federal. If it doesn't con-
15 flict, then he has got a problem. Does it conflict with Fed-
16 eral intent?

17 For example, if a state regulation says the notice
18 to cancel must be in 12-point type and Federal regulation
19 doesn't require as large a type or doesn't deal with type
20 size at all, is there any conflict?

21 What if the state regulation provides an entirely
22 different method of attempting to ensure adequate notice which,
23 on its face, seems stronger than the Federal regulation, but
24 which differs from the Federal regulation?

25 Is that a conflict? Is that an inconsistency? Or

42 1 is that just a difference?

2 To avoid these dilemmas, the national door-to-door
3 seller needs this Commission's assistance in providing guid-
4 ance and direction for the seller as to the types of state
5 regulation which this Commission believes to be inconsistent
6 with, and therefore superseded by, the Trade Reg Rule.

7 Such a statement by this Commission should clearly
8 indicate that it intends to supersede different state legis-
9 lation and thus achieve uniformity for interstate sellers.

10 A clear statement by this Commission as to the ex-
11 tent of the pre-emption intended--that is, it intends to
12 occupy the field and supersede differing state legislation--
13 may well provide guidance to state legislatures considering
14 action in this area, and certainly will provide guidance to
15 courts called upon to construe just what pre-emptive effect
16 the Trade Reg Rule is supposed to have.

17 Now, traditionally, I think, my suggestion can fit
18 accepted precedent. National uniformity of regulation has
19 been achieved in the past through Congressional legislation
20 having one of three alternative characteristics.

21 First, it will be pre-emptive and considered to be
22 occupying the field totally, if the legislation relates to a
23 matter of overriding Federal concern.

24 I don't think that we can contend that that is true
25 here. I don't think that the courts would ultimately hold

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1 that door-to-door selling is a matter of overriding Federal
2 concern. So I don't think that we can fit within that general
3 approach to occupying the whole field.

4 Second, the scheme of legislation must be so perva-
5 sive in form as to make reasonable the inference that Congress
6 left no room for the states to supplement.

7 Now, here we have a possibility. Your regulation
8 may be so pervasive that the courts would say that you meant
9 to occupy the field and leave no room for the states.

10 But I think that is iffy.

11 Finally, and this is the one I would rely on, where
12 the legislation itself expressly or by clear implication indi-
13 cates that Congress intended to pre-empt state regulation in
14 the area, the legislation would generally be held to leave no
15 room for the states.

16 And it is the third approach, under Pennsylvania
17 vs. Nelson, where the Supreme Court laid out these three al-
18 ternatives, that I would urge the Commission to take--namely,
19 to state with certainty that it intends to pre-empt, and pre-
20 empt to the extent of occupying the whole field, including
21 any differing state legislation.

22 Now, let me then state this, that I think this syllo-
23 gism has to follow. If the Commission is correct in its be-
24 lief that it can and does have the power to issue Trade Regu-
25 lation Rules in the first place which have the effect of

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1 setting forth substantive requirements in the statutes that
2 it administers--if you think you have that power. And if,
3 as already noted, Federal law will control when state regu-
4 lation is inconsistent with it, then the promulgation of
5 your Trade Reg Rules may pre-empt at least that much that is
6 in conflict with it in state law.

7 Now, at least this much, I think, should be said by
8 the Commission. And, of course, I am urging that you go fur-
9 ther.

10 Now, my view, just stated, as to what the effect,
11 the minimum effect of the Trade Reg Rule might be, is sup-
12 ported by Larry Meyer who made the speech on January 21 of
13 this year and stated just this. He said that although the
14 FTC Act contains no clear statement of Congressional intent
15 to pre-empt the area of unfair and deceptive practices, in
16 my opinion--and he is the Director of Policy Planning and
17 Evaluation of the FTC--in my opinion, a Trade Reg Rule pro-
18 mulgated by the Commission under Section 5 would be the con-
19 trolling standard.

20 While the issues are difficult--I agree with that--
21 I am inclined to believe that state enactments in this area
22 would be valid only to the extent they did not conflict with
23 the Rule, unquote.

24 Now, I submit that Mr. Meyer did not think of the
25 next step, that is, beyond conflict. He concedes, or at least

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1 his view is, the same as mine, that probably a Trade Reg Rule
2 eliminates conflicting. But I think we then have to take
3 that next step discussed by Pennsylvania-Nelson, that is,
4 eliminating differences.

5 And we think we can do that by saying so, that you
6 intend to occupy the field.

7 We believe that in the light of Pennsylvania vs.
8 Nelson, we may have two legs to stand on, therefore, in
9 court in arguing that the Trade Reg Rule pre-empts--one, that
10 you really have occupied the field by legislating into every
11 nook and cranny of the problem door-to-door, the argument can
12 be made that you meant to occupy the field.

13 But, as I say, I think that is a difficult argument.
14 If it is really your intent, and we submit that it should be,
15 to occupy the field and give the uniformity which we hope we
16 persuaded you we need, then, we say, give us a clear expres-
17 sion of your intent, and that will be of tremendous assistance
18 in accomplishing the result of getting rid of differing state
19 legislation and letting us have one form, one style, one
20 method of doing business.

21 Now, there is authority, interesting authority, for
22 taking this administrative approach, namely, defining the si-
23 tuation in which state regulation will be inconsistent with
24 the Federal regulation.

25 The Federal Reserve Board, which isn't the United

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1 States Congress, took exactly this approach in promulgating
2 Regulation Z under the Truth-in-Lending Act--that is, they
3 specifically defined the situation in which state law would
4 be considered to be inconsistent with Federal regulation.

5 Interestingly, the Federal Reserve Board regulation
6 deals with some of the very problems of inconsistent state
7 disclosure requirements present in this proceeding.

8 And let me elaborate on this a minute. In truth-
9 in-lending, sellers have many of the same problems as I dis-
10 cussed this morning. That is, Truth-in-Lending came out and
11 said, when you are making disclosures about credit, you will
12 use the following form. You must say this, you must say that
13 you must disclose many, many items.

14 Prior to Federal truth-in-lending, there were many
15 state retail installment acts which covered the same subject
16 --the types of disclosure that had to be made. In general,
17 the thrust and intent of the state and Federal was the same.

18 But exactly the same problem we have today was con-
19 fronted when Federal Truth-in-Lending passed, because the pre-
20 cise disclosure terms, the precise language, the precise form,
21 the precise content, differed between the states and the Fed-
22 eral.

23 The idea was the same, but the plumbing was differ-
24 ent, the mechanics were different. Sometimes you had to say
25 this first under New York law, whereas under Federal law you

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1 had to say it second, and so on.

2 The thrust was the same, the consumer got the same
3 protection. It was just the mechanics.

4 And immediately national sellers were confronted
5 with the same problem--well, what do they do now? Did they
6 use the Federal approach and the Federal content, or did they
7 have to take the state differences and supersede them or in-
8 ject them into the Federal language, or could they ignore the
9 Federal and use the state, ignore the state and use the Fed-
10 eral, or just how did you match this up?

11 Now, for a company doing business in fifty states
12 it was an incredibly difficult problem. Many of them went
13 to the Federal Reserve Board and laid this problem on the
14 desk at the Board, which was given the right to issue rules
15 and regulations under Truth-in-Lending.

16 The Federal Reserve Board acknowledged the problem
17 and in Section 226.6B of Regulation Z, stated that, among
18 other things, state law would be inconsistent to the extent
19 that state law required disclosure "different from" the
20 requirements of Regulation Z with respect to form, with res-
21 pect to content, with respect to terminology, and with res-
22 pect to the time of delivery.

23 In other words, the Federal Reserve Board, recog-
24 nizing the need for uniformity, recognizing the difference
25 between state and Federal regulation in this area of disclo-

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1 sure of credit terms, said that in this case it would con-
2 strue conflict and inconsistency to mean difference. That
3 meant that the Federal Reserve Board took the position that,
4 where state requirements differed from Federal requirements
5 on form, content, terminology, time of delivery--the state
6 requirement fell and the Federal requirement controlled.

7 So that national sellers could look to the Federal,
8 use it, and have the Federal Reserve Board statement in this
9 regard as pretty good protection for them in ignoring the dif-
10 fering state legislation.

11 Now, there has been no litigation. Many people sin-
12 cerely believe that the Federal Reserve Board's position can
13 be sustained. And I submit that the Federal Trade Commission,
14 in this instance, which is very, very similar, can follow this
15 precedent and state in any Trade Regulation Rule which it
16 adopts here, that a state or a local requirement as to cooling-
17 off is superseded by the FTC Rule to the extent that state
18 law requires disclosures different in form, different in con-
19 tent, different in terminology, or even to the extent that
20 state law sets forth procedures for the exercise of buyers'
21 rights which are different than those set forth by the FTC.

22 We submit, thus, that the Commission should go be-
23 yond Section 4 of the alternate rule and make the more expli-
24 cit statement I have just described.

25 The effect of such a statement, in accordance with

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1 the Commission's position regarding the nature and effect of
2 Trade Reg Rules, could be to permit door-to-door sellers to
3 establish a national system of compliance that would be a
4 clear expression of intent upon which sellers could rely in
5 any judicial proceeding to test the boundary between the FTC
6 Rule and state legislation.

7 Now, I most respectfully submit that, if the Commis-
8 sion does anything less than this, it will be leaving inter-
9 state sellers in a potential legal quagmire. All that I have
10 described above--it is really impossible to start developing
11 forms under the circumstances.

12 Now, I suggest this. If the Commission concludes
13 that it lacks authority under the Federal Trade Commission
14 Act to issue Trade Regulation Rules which truly pre-empt in
15 the sense of excluding differing state regulations, we
16 strongly urge the Commission to forego acting on the Rule
17 altogether.

18 Instead, it should adopt another technique. It is
19 one that hasn't been done before, but I see no reason, with
20 all the changes that are occurring here, that we not suggest
21 some dramatically new things.

22 I think it ought to go to Congress, and say we be-
23 lieve national uniformity is necessary, we don't think we
24 have the power to create that national uniformity--if this
25 is the Commission's view--and therefore we urge you, Congress,

50 1 to enact legislation along the lines of the alternate rule.

2 This would give Congress the opportunity to put in
3 the strongest possible statement of Congressional intent to
4 pre-empt state law which differs from the Federal standards.
5 And truly Congress has that power under the commerce clause
6 and the supremacy clause.

7 It should be noted that the cooling-off legislation
8 proposed by Senator Magnuson in the 90th Congress contained
9 just that type of strong statement of expression of intent
10 to pre-empt state and local law which differed from the re-
11 quirements of that proposed legislation.

12 Therefore, in summation, what I am suggesting is
13 that either the Commission follow the Pennsylvania vs. Nelson
14 approach as to how to achieve pre-emption--to wit, say you
15 mean to achieve pre-emption; use the Federal Reserve Board
16 Regulation Z approach and state that where state law differs
17 as to form, content, terminology, etc., it falls, and you
18 meant to pre-empt the field.

19 Or, if you feel and believe, after considerable re-
20 search and study, that you don't have that power, then fair-
21 ness and equity demand that you go to Congress and say we
22 don't have the power, but we think there ought to be national
23 uniformity here--we had a hearing, here is the rule we think
24 should be used and enacted into law, and state, in enacting
25 it into law, that you mean to occupy the whole field, including

51 1 differing state regulations. Thank you.

2 HEARING EXAMINER DIXON: Thank you, Mr. Millstein.
3 Mr. Cabell?

4 MR. CABELL: Mr. Millstein, I appreciate your very
5 informative talk this morning. Is it your view that the Com-
6 mission has authority to issue Trade Regulation Rules general-
7 ly?

8 MR. MILLSTEIN: I demur. I very carefully stated
9 that, if the Commission thinks it has the authority to issue
10 these rules--and I think that that is all I need for the pur-
11 poses of this presentation.

12 I see no reason to take that issue on my heavily
13 weighted shoulders this morning.

14 MR. CABELL: Well, I won't ask you my next question
15 either.

16 MR. MILLSTEIN: Well, go ahead.

17 MR. CABELL: Well, I was going to say, if you be-
18 lieve we do have that authority, do you believe we have the
19 authority to issue the type regulation you recommend?

20 MR. MILLSTEIN: Yes, that is exactly what I mean,
21 Mr. Cabell. I mean if you do have the authority, I think you
22 should be able to pre-empt differing state regulations. I
23 think one would follow from the other.

24 And I really don't want to debate the first if, be-
25 cause we have been through this sixteen times in other

52 1 proceedings, there is no need for it. But if you do have the
2 authority, it seems to me that, to complete the package, you
3 certainly can assert that you have the authority to pre-empt.

4 It follows from the commerce clause, which gives
5 you the right to act in the first place presumably, and the
6 supremacy clause, which says that, once you have acted, you
7 can't pre-empt.

8 And in Pennsylvania vs. Nelson, which says if you
9 want to pre-empt, say so, and we will consider it pre-emptive.
10 Now, we will have to litigate that out some day, if some
11 state disagrees with the FTC.

12 But you are in the process of testing out your
13 powers. Test out this one, too.

14 MR. CABELL: Well, I think, whichever path we chose,
15 we would end up in litigation. Either one hand or the other,
16 so there would be no opportunity to avoid that.

17 MR. MILLSTEIN: No. I am fearful about using the
18 approach where you don't attempt to pre-empt. Supposing you
19 enact a Rule and say nothing. That may not wind up in liti-
20 gation. It may be that the industries involved will be con-
21 tent to take that as a Trade Reg Rule--but, not having said
22 that you pre-empted, you would really be creating quite a
23 problem for the people who live under it.

24 They would then have to come in on the weakest of
25 the Pennsylvania vs. Nelson grounds and argue, well, it is

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1 pre-emption because you have occupied the field. And I said
2 that would put the national sellers on the weakest ground to
3 argue pre-emption.

4 Whereas, if you come out and say in the Rule, we
5 mean to pre-empt, you are giving us the strongest grounds to
6 argue your case for you, that you have pre-empted.

7 MR. CABELL: Well, I think we would be more likely
8 to have industry challenge if we simply put out the Trade
9 Regulation Rule without the pre-emption provision, if it would
10 have the catastrophic effect on your companies which you des-
11 cribe.

12 MR. MILLSTEIN: I think that is right. I think you
13 are adding another string to the bow of discontent by not gi-
14 ving it a pre-emptive effect.

15 MR. CABELL: Now, if my recollection serves, most
16 of the direct selling industry opposed the legislation which
17 was introduced into Congress a couple of years ago.

18 MR. MILLSTEIN: I don't believe that is so. I know
19 there are others here who are much more familiar with it. I
20 am not at all familiar with what happened in Congress, but I
21 am told that there was considerable industry support for the
22 Magnuson bill as it finally wound up.

23 MR. CABELL: You would expect that same support to
24 be forthcoming if new legislation ---

25 MR. MILLSTEIN (Interposing): I would hardly believe

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1 that the AAP who is the only client for whom I speak this
2 morning would come before you and urge support for the Rule
3 here, and do something different at the Congressional level.

4 I am convinced that if we urge support of the al-
5 ternate rule here, we would urge its enactment in substantial-
6 ly similar form by Congress.

7 I don't think that we would come here to say go
8 to Congress and then go to Congress and say don't enact it.

9 HEARING EXAMINER DIXON: Mr. Millstein, on the ques-
10 tion of our power to pre-empt where state laws merely differ,
11 which would, I think, easily be the most controversial aspect,
12 I am troubled by our own case, our own Rule, that got involved
13 in this Texas litigation in Double Eagle--and there, even
14 starting from the recognition of the fact that we had a very
15 simple situation compared to what we have got here, the court
16 went to great pains to reconcile the two.

17 Now, there you were dealing only with one statute,
18 the solution to the problem in front of the court was fairly
19 simple. This court said once you have complied with the
20 Texas statute you automatically complied with the Federal
21 Trade Commission Rule. No problem. Go ahead and comply with
22 both.

23 Do you have any comment to make on that?

24 MR. MILLSTEIN: Yes. I distinguish that on three
25 different grounds. One, it is a district court. Second, it

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1 is a Texas district court. And third, seriously, I think
2 you could solve the problem thusly. I don't say that the
3 FTC must pre-empt differing --- acts in the Trade Reg area.
4 I don't say that at all.

5 What I am saying is that where you make findings
6 demonstrating the need for uniformity in a particular area,
7 then you have the right to go on and state we are pre-empting
8 differing. In other words, let's not talk in terms of uni-
9 versals. Let's talk in terms of the case such as this one
10 where you become convinced, for a variety of reasons that I
11 have given or other people have given or that you come up
12 with yourself, that uniformity is desirable, and you make
13 findings of fact to the extent of saying we find that unifor-
14 mity, national uniformity, is desirable for the following
15 reasons.

16 This being so, under the commerce clause and the
17 supremacy clause, we hereby state that we pre-empt differing
18 state regulations on the question of whatever it is you are
19 to pre-empt.

20 I think that will distinguish the Double Eagle case
21 completely, because you were totally silent in the Double
22 Eagle case, said nothing, and left it to the court to decide
23 whether it was reconcilable or not.

24 And that court decided it was reconcilable, state
25 and Federal.

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I am saying that you now state, so the court will know when this issue comes up, that it is not reconcilable because of the burden it would place on the interstate seller.

And I suspect that the court might defer to your expertise and your powers under the Constitution in that instance.

So, in a nutshell, I distinguish Double Eagle, because they didn't do anything along the lines I have suggested, namely, make findings and have a clear FTC statement as to what it was trying to accomplish.

In Double Eagle, the court was met with total silence and therefore could be left to work it out for itself, which it did. It reconciled it.

HEARING EXAMINER DIXON: And also because of the fact that there the Commission was confronted with a relatively simple factual situation with an easily reconcilable state statute.

MR. MILLSTEIN: Exactly. You could reconcile it in that case. You find here that you can't reconcile it, because you don't want 21 different forms. That can only lead to less consumer protection.

The Federal Reserve Board started out resisting this notion terribly, truth-in-lending, but after they saw the kind of complexity they were going to force the national

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1 sellers into in their attempt to comply with both Federal and
2 state disclosure at the same time, the Federal Reserve Board
3 became convinced that it would be doing the consumers of the
4 United States a total disservice if the type of disclosure
5 you received varied, depending on whether you were in Vermont
6 New York, or New Hampshire.

7 The Federal Reserve Board decided, look, people
8 move around, when it comes to credit it is much more desirable
9 that everybody get the same kind of disclosure, no matter
10 where they are--Texas, California, Florida, it doesn't make
11 any difference.

12 I suspect the same thing is true here. You can
13 only lead to consumer confusion when the words change and
14 somebody says, well, why have they changed the words if it
15 means the same things.

16 I think you could become convinced, as the FRB be-
17 came convinced, that uniformity is desirable. If you do be-
18 come so convinced, take a whack at exercising the powers
19 which you probably have.

20 And, after all, you will be leaving it to the indus-
21 try, for a change, to defend the FTC's position. That might
22 be interesting.

23 HEARING EXAMINER DIXON: Did I understand you to
24 state that your group was going to conduct a study of the
25 state laws?

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1 MR. MILLSTEIN: I understood that Mr. Sherwood of
2 the --- will put together at least enough to convince you
3 that the differences are significant and burdensome and oner-
4 ous.

5 HEARING EXAMINER DIXON: I am not wanting to buck
6 our job off on to you, but I will take help from any place we
7 can get it.

8 MR. MILLSTEIN: If our industry believes that this
9 is something that is as serious as they say, I think we should
10 put it together for you. I don't think it is all that diffi-
11 cult.

12 HEARING EXAMINER DIXON: I think it would be ex-
13 tremely helpful.

14 MR. MILLSTEIN: I don't think it is extremely dif-
15 ficult to put together. It is difficult to comply with.

16 HEARING EXAMINER DIXON: Thank you very much, Mr.
17 Millstein. Did Mrs. Hughes get here yet? Not having done
18 so, then, that completes the list of those who have to be
19 heard this morning, so the hearing will adjourn to reconvene
20 here at 2 p.m. this afternoon.

21 (Whereupon, at 11:45 a.m., a recess was taken until
22 2:00 p.m., this day.)
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AFTERNOON SESSION

2 p.m.

HEARING EXAMINER DIXON: Come to order, please.

This is a continuation of a public hearing on the Commission's proposed Trade Regulation Rule concerning a cooling-off period for door-to-door sales.

My name is William Dixon. I am the Assistant Director for Industry Guidance in the Commission's Bureau of Consumer Protection.

To my left is Mr. Henry Cabell, the attorney in charge of this Rule and developing these proceedings.

My first speaker for this afternoon is Mrs. Sarah McPherson. Mrs. McPherson?

MRS. MCPHERSON: Good evening, Mr. Dixon. I am a consumer of these bad services that we get from the door-to-door salesman. I have bought things from door-to-door salesmen, and I go down town and find them priced less.

For instance, bedspreads they come out with. The bedspreads down town are 8.95 or 10.95, theirs starting at 29.95 and up.

I have a neighbor who bought a set of aluminum ware from a door-to-door salesman. This aluminum ware at the stores down town was 29.95, including the tax it came to about \$35. She paid \$60 for this, not including the tax.

Also, I have had a bad experience with one of the

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1 stores. I bought a bicycle for my son for Christmas. I had
2 to take the bicycle back three times because they did not want
3 to fix the bicycle, because it was broken.

4 I asked them to assemble the bicycle before it was
5 delivered. It was paid for when they delivered it, but it
6 still was not in working order. I had to take it back to
7 them. This was with the Hecht Company.

8 I have known quite a few people who have bought
9 television from the door-to-door salesman. The same televi-
10 sion down town in some of the stores running from \$149,
11 they are selling for \$300 and more.

12 Of course, they are charging the finance, which is
13 too much for the poor people to be paying.

14 I also had the experience with picture frames, the
15 late Martin Luther King and John Kennedy. We can buy those
16 downtown at a reasonable price, and the street door-to-door
17 salesmen are going outrageous prices, some as high as 29.95
18 and up.

19 I think it is time that somebody do something for
20 the poor. They prey on the poor, the low-income areas espe-
21 cially.

22 I just moved into a new development which is called
23 Sursom Quarter. The door-to-door salesmen, they live in
24 Sursom Quarter. They will soon be opening up a new develop-
25 ment and they will be going into that area as soon as the

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1 first or second tenants move in. This is how they prey on
2 the poor, the low-income, that cannot afford to go down town
3 to buy these things.

4 And I hope that some law, this cooling-off period
5 --I hope and pray that you all will some way get us a law
6 that will abolish the door-to-door salesman.

7 Thank you.

8 HEARING EXAMINER DIXON: Thank you, Mrs. McPherson.
9 Do you have any questions, Mr. Cabell?

10 MR. CABELL: Yes, Mrs. McPherson. Why do you and
11 your friends buy from these door-to-door salesmen?

12 MRS. MCPHERSON: We cannot afford the credit. Some
13 of the stores do not allow welfare recipients unless we have
14 a regular steady job that we can afford to pay. We can't get
15 the credit at these stores.

16 Some people don't know now that there is a credit
17 that they can get through certain stores. It has just been
18 opened up with the help of UPO and places, UPO and places that
19 they live around.

20 There is a lot of people that they don't know they
21 can go with them and have the training and orientation to get
22 the credit of these stores now.

23 MR. CABELL: Well, do you think that most of the
24 people who buy from the door-to-door salesman know that they
25 are paying too much for what they buy?

62 1 MRS. MCPHERSON: Yes, they know this, but this is
2 the best they can do.

3 MR. CABELL: Well, you understand, of course, that
4 this Trade Regulation Rule that we are working on will just
5 give the consumer the right to cancel the sale within three
6 days.

7 Do you think this Rule will be effective in cor-
8 recting the situation about which you are talking?

9 MRS. MCPHERSON: If there is some way we can get
10 this information out to the people in the community, in all
11 areas--and I think it will help. It may not do some of them
12 because there are a lot of people who don't listen to the ra-
13 dio and television.

14 But there are some, myself, I do quite a bit of
15 reading, try to keep up with what is going on, and I am in-
16 volved in a lot of things going on in the community and a-
17 round me, so I know what is going on. And we can get some
18 kind of session that will teach these people what they can--
19 they buy something, they can cancel within two or three days.

20 I think it will be better.

21 MR. CABELL: Are most of the salesmen who are oper-
22 ating door-to-door, do they work for a particular company or
23 manufacturer, or do they work more for a merchant who sells a
24 whole range of merchandise?

25 MRS. MCPHERSON: They work for a company that has a

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1 whole range. The one with the pots and pans, he has furni-
2 ture, washing machines, etc.

3 MR. CABELL: Does he make recurring calls around
4 the neighborhood or does he just show up once and that is the
5 end of it?

6 MRS. MCPHERSON: No, he is around. He goes knock-
7 ing on the doors, everybody's house. If you are not aware of
8 this, he can bamboozle his way in, fast talking, and get any-
9 body to buy anything. There are some fast-talking men that
10 come along and say, you know, you need this for your house,
11 and these kind of things.

12 People who don't have money, he says I will let you
13 have it, five dollars down, and come back next week. You got
14 to pay a certain amount more.

15 And the people who signed that piece of paper, they
16 don't know. Maybe they could counsel him, but he has got
17 them hooked then.

18 And this is why I think we need this ruling, so that
19 it won't be done this way.

20 MR. CABELL: Now, will this same man, then, maybe
21 come around next month to the house where he sold the pot-and-
22 pan set this month, and try to sell them a television set?

23 MRS. MCPHERSON: Yes, no sooner do you get your
24 bill down, say, ten or fifteen dollars, then he will start
25 talking about, you know, you need such-and-such a thing for

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1 your front room here, or your kitchen needs a table set and
2 all, these kind of things, you see.

3 MR. CABELL: Well, do these people ever attempt to
4 deceive you as to the purpose of their visit? In other words,
5 do they tell you when they come to your door that I am a sales-
6 man, I am trying to sell you something? Or what do they gen-
7 erally say?

8 MRS. MCPHERSON: They don't tell you they are a
9 salesman. They will say, miss, I got some nice things--let's
10 say, nice bedspreads. You can't go down town and buy this.
11 That is the way they start off.

12 They start selling you the idea that you can buy
13 from him cheaper, get it from him at the credit rate, but you
14 can't get it down town at the credit rate.

15 MR. CABELL: Do you think that most of the people
16 this man approaches know that he is a salesman?

17 MRS. MCPHERSON: They know he is a salesman.

18 HEARING EXAMINER DIXON: Thank you, Mrs. McPherson.

19 MRS. MCPHERSON: You are quite welcome.

20 HEARING EXAMINER DIXON: Next we will hear from
21 Christian S. White.

22 MR. WHITE: My name is Christian S. White and I am
23 an associate with the Public Interest Research Group which is
24 a public-interest law firm established here in Washington by
25 Ralph Nader.

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1 I would like to thank you for the opportunity to
2 come today and to give my personal views on the proposed Trade
3 Regulation Rule.

4 In my view, the need for regulation along the lines
5 proposed by the Commission is painfully obvious. It is not
6 due to an inherent impropriety of door-to-door sales per se--
7 most individuals in the business of direct sales are funda-
8 mentally honest and seek a satisfied customer and a continu-
9 ing relationship with their customers.

10 This, really, what is an obvious fact does not con-
11 tradict the abundant evidence that serious abuses have affec-
12 ted some aspects of selling door-to-door.

13 The record of this proceeding is already replete
14 with specific examples of the imbalance which exists between
15 the average household and the direct-sales representatives,
16 schooled in techniques of pressure and persuasion.

17 Something is seriously wrong with this situation
18 out of which arises such a large number of dissatisfied cus-
19 tomers.

20 The fact that I have been stung by door-to-door
21 sellers may color my personal views in this area, but I have
22 really no sympathy for those who believe that there is some
23 sanctity of the right of the individual to be duped by a
24 fast talker.

25 I don't believe that any form of sporting theory

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1 applies to the relationship between the consumer and the sel-
2 ler.

3 Several years ago I answered a knock on my front
4 door in Philadelphia, and was greeted by a magazine salesman.
5 The pitch, which is now familiar, was then new to me. Each
6 subscription constituted points towards a college scholarship
7 for the individual selling.

8 As I had been schooled in the need to be polite, I
9 didn't slam the door in the man's face. I was pretty soon
10 listening to the entire spiel in my living room. All I had
11 to do was place the order and the salesman would get his cre-
12 dit towards a college scholarship.

13 This individual was rather well-trained in the ap-
14 pearance of sincerity and I took him at his word, when he
15 stated that the contract could be cancelled at any time if I
16 was not satisfied.

17 Really it was the only way to get him out of the
18 house to consent. My first two rejections of the offer being
19 made simply triggered a repeat of the well-learned pitch from
20 the beginning.

21 Rather than withstand another gush of sincerity from
22 the individual, who really showed no inclination to leave, I
23 agreed.

24 After he had left, I finally had a chance to look
25 at the contract without constant distraction. It was, to put

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1 it mildly, somewhat different from my budding scholar's des-
2 cription, complete with confession and judgement.

3 My immediate attempts to cancel were rebuffed. I
4 really met with no response. My threat to stop payment with
5 the check were met by threats to my credit rating which, at
6 that time, was none too secure.

7 Since this was in pre-law school days I really took
8 the threats at their word and attempted to settle the matter
9 with the company courteously.

10 Attempts to visit the office led to the discovery
11 that the office did not exist. The address given was a phony.
12 The girl answering the phone number, even, was not about to
13 let on where she, or anyone in authority, could be visited in
14 person.

15 The end result was a long expensive subscription to
16 some unwanted magazines which tended generally to arrive ra-
17 ther late.

18 I run through a somewhat embarrassing story because,
19 from the people I have spoken to, the letters that come into
20 our office, it appears that this type of problem is found all
21 too frequently in door-to-door sales.

22 Types of selling techniques used are limited only
23 by the imagination of some of the direct sellers. Well-known
24 stories of encyclopedia sales, I think, are illustrative.

25 From a friend who admitted that, in his youth, he

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1 had sold encyclopedias, I learned that his company gave in-
2 struction in technique, simply was to be polite at all times,
3 more polite than the householder, and simply don't leave un-
4 til the sale is effected, or threats are made or it becomes
5 rather obvious that continued remaining in the house just
6 won't help.

7 Ignoring a door-to-door salesman will simply not
8 make him go away. I think I have learned this. It is a
9 losing proposition to let a salesman in the door ---.

10 This defensive posture, which was created, I think,
11 by some fast-buck artists, penalizes those sellers who may be
12 interested in giving only quality. I think this attitude is
13 apparent in the growing segment of householders, and it is
14 certainly clear from my discussions with my friends, and from
15 some travelling around the country intalking to people about
16 consumer issues.

17 This is simply an issue which arises time and time
18 again.

19 I really think it is in the interests of the honest
20 seller, as well as of the consumer, to correct any injustices
21 in the transactions of door-to-door sales.

22 The orderly and efficient operation of the free
23 enterprise system is really not well served by a relationship
24 which brings distress and enmity between the consumer and the
25 seller.

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1 For this reason I support heartily the requirement
2 of a cooling-off period. It seems only fair and just to al-
3 low the consumer a moment to reflect in private for a reason-
4 able period of time on the merits of the deal offered.

5 I think instinctive recitations of legal theories
6 on the finality of contractual obligations simply fail to
7 deal with the realities of the modern sales techniques which,
8 I think, are adequately chronicled in the records of this
9 rule-making.

10 I think the term cooling-off period is a very ap-
11 propriate label for what is needed--an adequate period of
12 reflection.

13 The direct seller is generally an experienced ad-
14 vocate for the product or service he sells. Most concerns
15 train their sales personnel to present their wares to the
16 best possible advantage. This is, in essence, the art of
17 selling, high-pressure tactics or subtle psychological per-
18 suasion, just simple failure to leave the house.

19 The fact is that an increasing number of people, as
20 indicated by the letters to the Commission, are being per-
21 suaded to buy products they don't really want. This sort of
22 thing can be destructive in the long run of the true roles of
23 the free enterprise system.

24 The consumer should have time for the pitch to wear
25 off before being bound to sign the contract. It should not be

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1 the skill of the salesman so much as the merits of what is
2 offered that determines whether a sale is effectuated.

3 I don't deny the vital role of the salesman in the
4 economy. I simply feel that price and quality, and not so
5 much the salesmanship, are to be paramount.

6 Let me just make some specific comments on the sub-
7 stance of the proposed Rule. While I am in general agree-
8 ment with the language it has chosen, I would like to suggest
9 a couple of changes which I think will better effectuate the
10 goals sought.

11 The definition of consumer goods and services is,
12 I think, very properly broader in scope than the definition
13 of consumer commodity which is given in the Fair Packaging
14 Labelling Act.

15 As the letters to the Commission disclose, com-
16 plaints concerning door-to-door sales frequently concern du-
17 rable goods which are not used up or expended in the ordina-
18 ry course of conduct, such as books or encyclopedias or home
19 improvements.

20 In order that there be no misunderstanding as to
21 what is covered by the definition, it might well be modified
22 to delete the emphasis on use, to such language as "goods or
23 services purchased primarily for the personal, family or
24 household use or benefit" and continue on in the same vein.

25 The reason I raise that is that I think it ought to

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1 be utterly clear that this definition is, in fact, more ex-
2 pensive than the Fair Packaging Labelling definition.

3 As to the definition of seller, I think a useful
4 modification would be to add after the words "any person"
5 the words "or business concern"--or words of similar impact--
6 "engaged in door-to-door sale, consumer services."

7 I think it makes it clear that the consumer reading
8 the Rule--it makes it clear that the consumer need not con-
9 tact the actual person who made the sale, but may cancel by
10 informing other representatives or employees or agents of the
11 selling company, if it is in fact a company.

12 As to the text of the Rule, since the Rule does not
13 require the seller to include any notice of cancellation, a
14 definition of business day, I think the potential for dis-
15 putes concerning the timeliness of notices would be minimized
16 by requiring the seller to fill in a blank in the form, gi-
17 ving the date and day of the week of the third business day
18 following the day of sale.

19 This second paragraph of "Notice to Buyer," "If
20 you choose to cancel this contract or sale, you may do so by
21 notifying the seller of your intent to cancel at the seller's
22 business address or telephone number shown on this form at
23 any time before blank be filled in by the person effectuating
24 the sale at the time, simply a small change to make it abso-
25 lutely clear what the day is.

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1 I think the form, it adds no extra burden on the
2 seller, since the seller has to fill in the date of the sale
3 in any case, and I think this would be a bit clearer, to give
4 the actual day by which time by the end of business day the
5 notice has to be given.

6 I think it is interesting to note that the Rule re-
7 quires the buyer to return any merchandise "in its original
8 condition," while the seller is required to return trade-ins
9 "in substantially as good condition as when received."

10 I really see no justification for different stand-
11 ards of care for seller and buyer. I think both should be
12 charged with the same duty to exercise reasonable care of any
13 items which must be returned.

14 The word "substantially" in Section (a)(2) only
15 forms the basis for needless disputes and ought to be deleted.

16 I strongly endorse Section (c) of the proposed Rule.
17 I believe that both parts of that section are important,
18 which will place the consumer and the door-to-door seller on
19 a more equal footing when, as I think inevitably must happen
20 from time to time, disputes arise.

21 It is only fair that a seller doing business in a
22 given locality state that he will submit without question to
23 the jurisdiction of that locality. Legally he has, in fact,
24 submitted. This clause will simply take any question of that
25 matter out of legal form for resolution, since many of the

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1 disputes that might be foreseen concerning door-to-door sales
2 can best be settled without costly and time-consuming liti-
3 gation.

4 I think arbitration is a logical procedure for re-
5 solving disputes in this area. Creation of a right to arbi-
6 trate disputes will enable the consumer to settle on his own.

7 Such rights, I think, are really critical, because
8 of the limited resources available at all levels of Govern-
9 ment for consumer protection.

10 To create a right of this type simply enables the
11 consumer, in a form in which he can participate, more ade-
12 quately, in which in most cases he would not need legal rep-
13 resentation, in a form in which he can effectuate his own
14 protection, which is, I think, what the goal of this type of
15 a Rule ought to be.

16 I think that Government simply can't intervene in
17 all consumer disputes. The Trade Commission recognizes this.
18 Its resources are extremely limited.

19 And I think this makes the creation of private
20 rights of this type extremely critical for adequate consumer
21 protection.

22 I also feel that Section (d) is an important step
23 in restoring to the consumer some semblance of an equitable
24 position vis-a-vis the seller.

25 Only the most exceptional consumer will understand

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1 the importance of the legal rights he is giving up, even if
2 he were directed to read the fine print which contained the
3 waiver.

4 The time has gone past when the society should
5 tolerate unconscionable clauses of this type. This seems es-
6 pecially true when the seller's only real presence in the
7 community may be to people he sells door-to-door. It seems
8 self-evident that the seller ought to orally inform the con-
9 sumer of his cancellation right and that he must not delude
10 the consumer as to the nature of the right.

11 This simply prevents the sharp operator from finding
12 some way to avoid his responsibility under the Rule.

13 The deceptive door-opener clause will prevent the
14 seller from gaining admission to one's house without false or
15 misleading statements about the contests, surveys, give-aways,
16 and similar come-ons.

17 The time has come for the seller to be frank with
18 the consumer and to cease such deception.

19 If the contact is made with the intent to sell a
20 product or service, the thing should be made clear from the
21 beginning.

22 This disclosure will not be an undue burden for any
23 legitimate seller. I really can't imagine the effrontery of
24 one who would claim the right to invade the sanctity of a
25 private household without fully and frankly disclosing his

1 intention.

2 I think that one of the fundamental problems raised
3 with the Rule is whether, and to what extent, it is intended
4 to pre-empt state and local legislation.

5 Some of the dozen-plus states which have enacted
6 legislation in the area of contract rescission and cancella-
7 tion give more extensive protection to the purchaser than
8 the Rule does.

9 The Vermont cooling-off period legislation, for
10 example, is not limited to the door-to-door situation. It
11 applies to all consumer sales.

12 In some states the cooling-off period may be more
13 or less than the three days provided in the proposed Rule.

14 I hope that the Federal Trade Commission will take
15 the position that its occupation of this area supersedes
16 those laws which afford less protection to the consumer, but
17 does not abrogate additional rights or remedies afforded by
18 state laws.

19 Also, in Vermont, for example, the contract with a
20 clause in there in derogation of a statutory right, such as
21 the cooling-off period, the clause saying this contract may
22 not be cancelled--this turns up from time to time--would
23 simply void the contract in toto.

24 The Consumer Protection Bureau of the Vermont At-
25 torney-General's Office wrote to me last year expressing

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1 strong support for the FTC proposal. Assistant Attorney-
2 General Gilbert felt that the required disclosures and bar
3 on waivers would complement Vermont's legislation.

4 I hope that the partial steps taken by a small num-
5 ber of states in this area will not prevent the Commission
6 from taking decisive action to curb abuses in the area of
7 door-to-door sales, and creating much-needed rights for the
8 consumer.

9 I think the proposal of this Rule is a significant
10 step for the Trade Commission in fulfilling its mandate to
11 go beyond falsehood and beyond deception to attack practices
12 which today's social and economic perspective, are simply
13 unfair to the consumer.

14 I think the power has been there all along. I
15 think this is an excellent step fulfilling that mandate. I
16 look forward to the issuance of the Rule at the earliest
17 possible date.

18 HEARING EXAMINER DIXON: Thank you, Mr. White.

19 MR. CABELL: Mr. White, an ad hoc committee of the
20 various proponents of the direct-selling industry has presen-
21 ted us with an alternative proposal, which I don't suppose
22 you have seen.

23 MR. WHITE: I have not, sir.

24 MR. CABELL: But I hope you will find it possible
25 to get one, and we welcome your comments on this.

77 1 Now, I would like to address a couple of the alter-
2 native proposals which they presented to us.

3 One would provide that the cooling-off period would
4 not apply when the consumer indicates, by signing a statement
5 to this effect, that the goods or services are needed in or-
6 der to meet a bona fide immediate personal emergency and when
7 the buyer has determined that a delay of three days in pro-
8 viding the goods or services would jeopardize the health,
9 welfare or safety of persons or property.

10 I wonder if you could comment on that?

11 MR. WHITE: I think I see and understand the prob-
12 lem that they are trying to get at. The issues arises, then,
13 whether this will be another waiver clause which is simply
14 inserted into the boiler-plate section and, of course, signed
15 along with the rest of the stack of papers, which may have to
16 be signed at the same time.

17 If that is the case, then the remedy that is sought
18 to be created will effectively be destroyed, so I think that
19 extreme care will have to be used in order to prevent that
20 from happening.

21 Now, it is possible that this could be set off and
22 separated from the rest of the contract in such a way as to
23 (1) bring it with complete clarity to the consumer what is
24 happening and (2) given the existence of a right to arbitrate,
25 the right to bring this before a forum in which the consumer

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1 may be able to do on his own--then I think these disputes
2 will tend to be minimized, this kind of deception will, given
3 that right, be very difficult to effectuate.

4 I would just like to study the proposal in a little
5 bit of detail and possibly make comments in the near future.

6 MR. CABELL: Well, in all fairness, I will say that
7 their proposal contemplated a separate and distinct statement
8 from the buyer, that would be separate and apart from the
9 contract.

10 Now, the problem, as I see it--the consumer, as the
11 man from the National Pest Control Association said this mor-
12 ning--the housewife perceives a cloud of termites arising from
13 the floor. She doesn't want to wait three days to have these
14 dealt with.

15 MR. WHITE: Right, clearly, or the heating plant is
16 out. It is easy to foresee situations in which the three-day
17 delay would work a burden on the consumer.

18 I would say that I would like to study the proposal
19 a bit and make a comment as soon as I can.

20 MR. CABELL: In short, though, you believe, if we
21 could adequately safeguard such an exception, it might be
22 well to put it in the Rule?

23 MR. WHITE: Yes, if we can set it up in such a way
24 that we have some assurance that this will not be treated in
25 the way of other waivers. It is a problem that has to be met

79 1 in this Rule.

2 MR. CABELL: I believe a number of the state laws
3 provide that if the consumer exercises the right to cancel
4 a sale, he will forfeit his deposit or a certain proportion
5 of any money he might have put down.

6 Now, in your statement, you indicated that we
7 might be imposing too high a standard if we required the con-
8 sumer to return the goods in their original condition.

9 Now, do you think we are being entirely fair to
10 the seller in these situations?

11 MR. WHITE: I think this. We have to be equally
12 fair to both buyer and seller and treat them in an even-
13 handed manner, that neither ought to be able to deal unreason-
14 ably with the goods which, in effect, are the goods of the
15 other party which he is holding.

16 I really don't think that the standard need be a
17 different one.

18 Substantially sounds to me like one of those law-
19 yer words which is almost inserted to create a problem, to
20 create a point of argument.

21 And I think the Rule will be simpler and less sub-
22 ject to dispute if it were deleted.

23 MR. CABELL: All right.

24 HEARING EXAMINER DIXON: Mr. White, on the pre-
25 emption question, if I understand you correctly, you are

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1 recommending that the Commission so devise its Rule as to
2 pre-empt only those state laws that are less strict than the
3 Commission's Rule, but leave intact those that are more so.

4 MR. WHITE: I think the tack ought to be taken along
5 the lines of the tack taken by the Congress in the Fair
6 Packaging Labelling Act, which basically was that the area
7 existed, it was occupied to a certain extent. And to the ex-
8 tent that states had gone beyond that, then those inconsistent
9 but more strict requirements would be upheld.

10 I think there is a sliding scale. There are alter-
11 natives on handling this, but I would say that the state laws
12 in and of themselves ought not to be a reason for the Trade
13 Commission to abstain from occupying the area.

14 HEARING EXAMINER DIXON: It was recommended to us
15 this morning at some length that we promulgate a rule that
16 expressly pre-empted the field, so that not only would the
17 consumer have what was argued to be a benefit of one uniform
18 nation-wide regulation, but so also would the industry, which
19 now has to comply with some twenty different state statutes,
20 and is now faced with one additional Federal Rule.

21 Unless the Commission does something like that,
22 they are going to be confronted with complying with all these
23 and perhaps more.

24 MR. WHITE: I would say when you can give the consu-
25 mer the right on his own to either void or rescind, due to,

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1 for example, the failure to live up to one of the provisions
2 in the Rule, then I think it would be all right. But I would
3 say that right now there are state statutes which give, for
4 example, remedies such as rescission, which I think--there is
5 a lively debate as to whether the FTC has the power to grant.

6 I would not like to see, if at all possible, the
7 FTC's efforts in this area abrogated, abrogating consumer
8 rights already in existence.

9 HEARING EXAMINER DIXON: What about the question of
10 consistency where state statutes may be in substance the same
11 as the Commission's proposed Rule for giving a three-day
12 cooling-off period--but they have different mechanics for
13 giving it effect, different required language to be used in
14 contracts to convey this to the buyer, so that it puts the
15 seller in the position of having to devise numerous different
16 contract forms to be used in different jurisdictions?

17 MR. WHITE: Well, in that case, then, this rule
18 making may be an opportunity for the Commission to make this
19 area a lot simpler for the seller. We have no opposition to
20 that whatever.

21 HEARING EXAMINER DIXON: It is a matter now of form
22 instead of substance.

23 MR. WHITE: Yes, it is a matter of accomplishing the
24 goal that is set out in the Rule without, at the same time,
25 taking away existing consumer rights.

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1 MR. CABELL: I have one further question. In the
2 light of your comment on the arbitration, I don't know how
3 much your group has looked into arbitration, so I am not
4 trying to trap you. But, at the present, there is a minimum
5 charge, I believe, of \$50 for most arbitration arrangements.

6 Now, aside from this, which I understand the Ameri-
7 can Arbitration Association expects to modify in certain
8 cases--do you think that the present arbitration facilities
9 are really adequate to provide assistance on such a large
10 scale as might be contemplated by this provision in the Rule?

11 MR. WHITE: Well, I think that, just as in the courts,
12 we have tremendous problems of having adequate facilities.
13 From my point of view, I would think that, as part of national
14 concerns doing business, it would be very well for that busi-
15 ness, and cost-effective in the business's own terms, to set
16 up a procedure like this on its own following the Arbitration
17 Association guidelines and procedures that presently exist,
18 but to provide this adjunct service to the consumer to settle
19 disputes in a way which is expeditious both--for both parties,
20 and at minimal cost for both parties.

21 It allows an independent form of decision-making
22 for disputes in a situation where the consumer will normally
23 not be able to get one. It is simply too expensive to go to
24 court. The cost of court may be well in excess of the amount
25 in dispute.

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1 I think the arbitration simply provides a less
2 onerous and better procedure that the consumer can participate
3 in himself.

4 MR. CABELL: Well, would you believe that the ar-
5 bitration provision in the Rule should extend not only to
6 whether the cooling-off option was properly exercised or the
7 consumer informed of it, or whether it would extend to all of
8 the contract provisions?

9 MR. WHITE: I would hope that it would extend to
10 the other contract provisions.

11 MR. CABELL: Thank you.

12 HEARING EXAMINER DIXON: Thank you, Mr. White.
13 Next I call on Mr. Lawrence Levy. Mr. Levy has been detained
14 so I will pass then to Mrs. Martha Pettus, the Shaw Area
15 Welfare Committee and Consumer Unit.

16 Mrs. Pettus?

17 MRS. PETTUS: My name is Martha Pettus and I live
18 at 922 O Street, N. W. I have lived in lower Shaw area for a
19 number of years and we who live in this area have been plag-
20 ued by unfair salesmen.

21 In almost every case you pay \$1 down and then so
22 much each week.

23 One thing they do now--one salesman will sell you
24 the goods and another salesman will come by two days later
25 with a contract that is so complicated that the ordinary

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1 person can hardly understand it. Then he fast-talks you and
2 before you know it you have bought material so bad that you
3 are hardly able to use it. Items range from pots and pans,
4 outdated reference books, yard goods, and so on.

5 These salesmen should not be allowed to sell the
6 merchandise, or a strict law should be passed and enforced
7 governing all kinds of retail salesmanship.

8 All of us like bargains, but we don't like to be
9 cheated. In fact, we can't afford to be cheated.

10 So many of us are in trouble now because we do not
11 know about the balloon payments. In other words, the balloon
12 payments meaning you just about pay for what you have bought,
13 then they will send you a letter stating that this is your
14 second to the last payment and that will have to be a great
15 amount, or else they can come and take your merchandise from
16 you.

17 HEARING EXAMINER DIXON: Thank you, Mrs. Pettus.

18 MRS. PETTUS: May I say another word?

19 HEARING EXAMINER DIXON: Excuse me.

20 MRS. PETTUS: So many of them bamboozle people by
21 coming in to their homes where we have our names on our mail
22 boxes. They will select a person's name and knock on your
23 door, call you by the first name--you think it is a friend or
24 something that you haven't seen for a long time. And they
25 approach you that way.

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1 So I don't know if you people can do anything about
2 those things that they do that way, but I think something
3 should be tried to be worked out, if you don't have any con-
4 trol over that action.

5 MR. CABELL: Mrs. Pettus?

6 HEARING EXAMINER DIXON: Mrs. Pettus, do you have
7 a moment?

8 MR. CABELL: I would like to ask you a couple of
9 questions if I might.

10 MRS. PETTUS: Yes, sir.

11 MR. CABELL: Then I take it you would be in favor
12 of the provision in our Rule which requires a salesman to
13 disclose his identity and the fact that he is there to make
14 a sale?

15 MRS. PETTUS: Yes, sir.

16 MR. CABELL: Now, the salesmen of which you spoke,
17 are they salesmen for individual manufacturers or ---

18 MRS. PETTUS (Interposing): Well, they do say that
19 they are from a store that you know of. Now, it has happen-
20 ed to me personally.

21 About a couple of years now, a gentleman came and
22 called my husband by name, wants to see Mr. James Pettus,
23 got up there in our apartment, and he had several items that
24 he could sell.

25 Well, he would like to have a television set, since

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1 ours was on the blink. Okay--and went on and gave him \$5
2 down and \$1 a week and one thing and another like that, and
3 he has got to go to his car--I have got my car parked around
4 the alley.

5 So I see him going that way and I haven't seen him
6 since and he has my \$5. I haven't seen anything of him.

7 MR. CABELL: Do you think this cooling-off provi-
8 sion would help you in dealing with these people?

9 MRS. PETTUS: Yes, sir, I think so.

10 HEARING EXAMINER DIXON: Mrs. Pettus, this Rule
11 would require that any contracts that are signed would con-
12 tain a clause set out conspicuously to advise the buyer that
13 he has this right to cancel within three business days.

14 Do you think that clause would be read and under-
15 stood?

16 MRS. PETTUS: People who can read. And there are
17 so many people, you know, in our area that don't read or can-
18 not write even.

19 HEARING EXAMINER DIXON: But you think that many of
20 them would read it and take advantage of it?

21 MRS. PETTUS: Reading it would help them. They
22 could get hold of something that is inferior, something they
23 can't use. They could let those people know I cannot keep
24 this stuff because it is not of any use to me and I want the
25 contract, you know, obliterated.

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HEARING EXAMINER DIXON: Thank you, Mrs. Pettus.

Next I call for Mr. Paul Smith, president of the D. C. City Wide Consumer Council.

MR. SMITH: Mr. Chairman, members of the Federal Trade Commission, and friends, my name is M. Paul Smith and I am the president of the D. C. City Wide Consumer Council.

The D. C. City Wide Consumer Council is overjoyed to know that you proposed a Trade Regulation Rule concerning a cooling-off period for door-to-door sales.

Gentlemen, I commend you for your efforts because such a Trade Regulation Rule is very much needed in the District of Columbia.

I want you to know that the D. C. City Wide Consumer Council stands behind your proposal one hundred per cent.

You see, many, many times consumers are persuaded to make purchases in their homes by fast-talking door-to-door salesmen, purchases which they have not planned, purchases which they do not need, purchases they cannot afford, and, many times, purchases they do not want.

Sometimes the salesman can make the consumer feel so guilty, if the consumer says no, that in the end the consumer makes a purchase knowing full well that he doesn't want it, doesn't need it, and can't afford it.

Consumers may benefit from your proposal in more

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1 ways than one. In situations like I have just mentioned,
2 this would give the consumer a chance to cancel because he
3 has been pressured into buying or made to feel guilty.

4 Many times the consumer doesn't really realize
5 what he is getting himself into until after the salesman
6 leaves his house. Your proposal will give him a chance,
7 too.

8 There are also consumers who need assistance from
9 someone other than a salesman to help him to understand the
10 terms of the contract.

11 Now, I am talking about a consumer who knows that
12 he wants and needs a particular product. He proceeds to sign
13 a contract to purchase the product thinking one thing about
14 the price, who he is going to pay, etc., and discovers later
15 that he has made a gross mistake.

16 He learns for the first time that he owes a loan
17 company instead of who he thought he would be paying, and he
18 learns for the first time about other charges that he didn't
19 understand.

20 Your proposal would allow this consumer to consult
21 with someone who could explain to him the details of the con-
22 tract.

23 Then, he could decide whether or not he would like
24 to proceed with the purchase.

25 The proposed Trade Regulation Rule is a worthwhile

89 1 one and I am happy to say that the D. C. City Wide Consumer
2 Council goes on record as one who favors a cooling-off peri-
3 od for door-to-door sales.

4 Thank you.

5 HEARING EXAMINER DIXON: Thank you, Mr. Smith. Mr.
6 Cabell?

7 MR. CABELL: Mr. Smith, do you think that the
8 people in the neighborhoods who seem to be so much in favor
9 of this Rule would actually know about it and actually be
10 able to use the protection it might afford?

11 MR. SMITH: I would like to answer that by saying
12 this. I am sure that the people in the neighborhood want the
13 Rule and I am sure that, through the aid of the D. C. City
14 Wide Consumer Council, and other consumer components, some
15 of whom you will hear from later, there is an effort and there
16 is a training session to bring the people, to make the people
17 knowledgeable of what is being done and the opportunities
18 that they have and what they can do to help themselves in not
19 being gypped by door-to-door salesmen.

20 We need all of this. We need this also to be
21 taught in any consumer classes. It should be actually a part
22 of the curriculum in consumer education classes, seminars, or
23 what have you.

24 The fact that your proposal is being made, how they
25 can use it, how they can take advantage of it.

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1 And I am sure that the people would be very grate-
2 ful for it. Most people would gladly welcome such a propo-
3 sal.

4 In other words, it is up to us who are knowledge-
5 able of these things to make it knowledgeable to our people
6 and to the consumer.

7 MR. CABELL: Now, I believe you were here when I
8 asked Mr. White this question. A number of industry repre-
9 sentatives have stated that we needed an exception to this
10 Rule to cover situations in which the consumer needs a product
11 or service right away.

12 By that I mean, say, repairs to the furnace or per-
13 haps furniture.

14 And they would like us to put an exception in this
15 Rule whereby the consumer in those situations could waive
16 the three-day cooling-off period.

17 MR. SMITH: My answer to that would be that that is
18 a red herring. Anybody with any knowledge whatsoever, for
19 the type of services--and I name the one that you named a
20 while ago, speaking of Mr. White, about extermination--you
21 also said to me a furnace.

22 But God knows that the average person would not, if
23 they had a furnace to be repaired, would not try to do this--
24 for one thing, a door-to-door salesman is not coming to re-
25 pair your furnace. And I am sure that most everybody would

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1 know that they would not call other than a reputable furnace
2 man or reputable exterminator to do the extermination.

3 So what they are proposing--it is just a red her-
4 ring, so they can get this proposal to be modified. And I am
5 sure this would be taken advantage of--at least the consumer
6 would be taken advantage of. There is a danger in that.

7 Now, they would have to come with something differ-
8 ent than that to me as far as furnace repair, furniture, or
9 extermination. These are services that people call people in
10 to do and they usually call people in to do them who have ex-
11 perience in it.

12 Even the people whom we are considering and who our
13 society considers indigent, they live in housing--well, they
14 have people who do this and they would come in and fix the
15 furnace. You don't need no three-day cooling-off period for
16 a man to fix the furnace, you don't need none for an extermi-
17 nator.

18 So this to me is just a red herring that these
19 people are trying to get you all to pull across something so
20 they can take this.

21 MR. CABELL: You see, we have made this Rule a lit-
22 tle broader than perhaps a lot of people think. Now, you see,
23 it applies--it defines the door-to-door salesman as a sale of
24 consumer goods or services in which the seller, or his repre-
25 sentative, personally solicits the sale, and the buyer's

1 agreement or offer to purchase is made at a place other than
2 the place of business of the seller.

3 Now, the reason we did that, the company puts an
4 advertisement, we will say, in the newspaper--have your home
5 inspected for termites, or something.

6 So the consumer responds to this advertisement,
7 the salesman gets the response and goes out to the home.

8 Now, we have got to cover that situation.

9 Now, also we have covered the situation in which
10 the consumer sees an ad in the newspaper for draperies or
11 rugs and calls the store and says I would like for you to
12 have the salesman bring some samples out to me. So the
13 salesman comes out and the sale is actually made in the home.

14 So you see we have complaints. So this sort of
15 transaction--so they are covered, you see. And when we did
16 that we, of necessity, covered the situation where the con-
17 sumer needs some plumbing repairs in a hurry and calls the
18 plumber.

19 So that is what this exception is about.

20 MR. SMITH: Speaking to that, in a case of that
21 sort, I think this Rule--you have covered it. But I was
22 merely speaking of the fact that--I realize that a lot of
23 the consumers have been victimized by those type of adver-
24 tisements, but I wasn't speaking from that standpoint.

25 And I think I may be misunderstood. But I would

1 say that it needs to stay in there for that type of purchase,
2 any purchase that is not made at the business establishment
3 --yes, I would say so.

4 A person should call a plumber, or any of the other
5 services, and they come--why, then, yes, this same Rule
6 should apply to them.

7 But I was just merely speaking of something which
8 happens ordinarily. You know what happens. You wouldn't be
9 seeking a bargain and you would know who to call and how to
10 call an individual.

11 That was in my mind when I said to you that this
12 was a red herring drawn across.

13 Here it seems to me as though here are people who
14 are afraid of this type of regulation because of the fact
15 that they claim it would handicap them. But I can't see
16 where it would handicap them if they were bona fide sales,
17 if they were people who intended to do the right thing by
18 the consumer. I don't think they need to have any fear. I
19 can't see where it would have any good salesmen with a repu-
20 table company for service, or whatever you have--should have
21 no fear of your regulation.

22 I don't see why they should have a fear of it. The
23 main thing about it--I actually and truly think that three
24 days is not enough. Actually three days is really not enough.

25 I think because for the simple reason that we are

1 dealing with people who, first, have to make a contact and
2 find out who to go to. And then when they go to an individ-
3 ual, they may take a person--for instance, somebody who wants
4 to come to the Council, it may take me 24 hours to really go
5 through it, to digest it, to really be able to give them the
6 right information.

7 You see, people would have to take time off from
8 work and--I think a week should be the minimum.

9 HEARING EXAMINER DIXON: Thank you, Mr. Smith.
10 Next I call for Mrs. Theresa Clark, United Planning Organi-
11 zation.

12 MRS. CLARK: Mr. Chairman, members of the Federal
13 Trade Commission, and fellow consumers, I am Theresa H.
14 Clark, Chief of the Program Coordination to United Planning
15 Organization, the local-community action agency.

16 I am grateful for the opportunity to be heard here
17 today.

18 In each of the United Planning Organization's ten
19 neighborhood development centers, which are located in the
20 low-income areas of Washington, there is a consumer action
21 component.

22 The broad purpose of this consumer action component
23 is to assist residents in getting the most in goods and ser-
24 vices for every dollar which they spend from their limited
25 incomes.

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1 Our work causes us to spend a great deal of time
2 in the communities and homes of low-income consumers.

3 Experience has taught us that communities where the
4 poor live are green pastures for door-to-door salesmen with
5 their arms stuffed full of blankets, clocks, pictures, and
6 magazines, books, and bedspreads.

7 There is no end to what they sell. Not only that,
8 but if, by chance, the residents should mention something
9 that a given salesman does not have ready, give him three mi-
10 nutes on the telephone and he can get it, get whatever she
11 wishes with no trouble at all.

12 I do not wish to imply that all door-to-door sales-
13 men use unfair tactics and pressure, because some don't.

14 Yet, on the other hand, some do.

15 On March 5, 1968, I, along with a number of resi-
16 dents from the communities, some of whom are here today, had
17 reasons, we thought, to believe that some relief was forth-
18 coming for weary consumers who were victims of door-to-door
19 sales tactics.

20 On that day we presented testimony on door-to-door
21 sales regulations before a consumer subcommittee of the Senate
22 Committee on Commerce.

23 We believe that Congress was finally becoming aware
24 and willing to provide some protection for the low-income
25 consumer.

1 Almost three years have passed and we are still
2 waiting for that protection.

3 When we received the announcement concerning today's
4 hearing on the proposed Trade Regulation Rule for a cooling-
5 off period for door-to-door salesmen, we again became hopeful.

6 It is our fervent hope that these hearings will re-
7 sult in more positive action.

8 The fact that a person does not request the door-
9 to-door salesman to visit his home and has not voluntarily
10 entered a place of business, but instead has had his home
11 intruded by fast-talking high-pressure salesmen, is in it-
12 self reason enough to give the resident some legal recourse,

13 Allowing the consumer three days to change his
14 mind is a good start. A five-day cooling-off period would
15 be more desirable.

16 UPO Consumer Action generally supports the provi-
17 sions of the proposed Trade Regulation Rule on a cooling-off
18 period for door-to-door sales.

19 We are pleased to see that the sale of services as
20 well as goods is covered.

21 The fact that a cancellation notice must contain
22 specific wording is welcomed by the educationally handicapped
23 consumer. Where specific wording is left to each individual
24 business, the legal writers seem to put forth every effort
25 to make understanding by the average consumer impossible.

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The methods of cancellation are simple, inexpensive and non-time-consuming, the most desirable being that of signing and mailing the notice of cancellation form by certified mail, return receipt requested.

This is much less complicated than writing a letter of cancellation.

By far the poorest and least dependable suggested method of cancellation is by telephone. Most salesmen who frequent the poor neighborhoods would completely disregard a telephone call.

UPO Consumer Action questions the difference in the descriptive terms used for the merchandise bought and the trade-in merchandise. We call your attention to page 3, number 3, of the FTC Notice, which states "If you choose to cancel this contract or sale, you must make available to the seller at the place of delivery any merchandise, in its original condition..."

In the next paragraph, number (2) it states "if he chooses to cancel, he has a right, within 10 business days" to the return of any goods traded in "in substantially as good condition as when received by the seller."

Why original condition for the merchandise to be returned to the seller and substantially as good condition for merchandise to be returned to the buyer?

Consumer Action suggests that, as stated, these

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1 provisions are heavily in favor of the seller and provide a
2 big loophole through which the unscrupulous salesman could
3 escape.

4 A strong provision of the Trade Regulation Rule is
5 the one which requires--is one which requires a specific
6 statement in larger print and conspicuous and different co-
7 lor to be placed on the contract just above the space reser-
8 ved for the buyer's signature.

9 This statement, of course, informs the buyer of
10 his right to cancel.

11 D. C. residents will be grateful for the protection
12 offered by the section which provides that in case of arbi-
13 tration the seller must submit to the jurisdiction of the
14 buyer's place of residence.

15 We in the District certainly do not enjoy that kind
16 of protection in all of our business transactions.

17 Being required by law to orally inform the buyer
18 of his right to cancel is protection for consumers who will
19 not or cannot read.

20 The UPO Consumer Action and its hundreds of program
21 participants loudly applaud the provision which requires a
22 seller, at the time of initial contact with the prospective
23 buyer, and before making any other statement or asking any
24 questions, to clearly reveal that the purpose of the contact
25 is to effect a sale, stating the goods or services which the

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1 seller has to offer.

2 Thousands of D. C. residents are in serious finan-
3 cial trouble today because of a cheering hello, I have a
4 beautiful free gift for you, if you can just answer some of
5 these questions. Or hi, there, you are a lucky winner of
6 this beautiful clock.

7 If the consumer is told initially that the purpose
8 of the visit is to sell him a television, this better pre-
9 pares the consumer to deal with the person as a salesman.

10 In our city where notes or contracts are sold or
11 transferred the same day they are signed, we welcome the
12 protection which will provide--which will be provided by the
13 part of the Rule which states that it constitutes a deceptive
14 and unfair practice to negotiate, transfer, sell or sign any
15 note to a finance company or other third party prior to mid-
16 night of the fifth business day following the day the con-
17 tract was signed or the goods or services purchased.

18 UPO Consumer Action suggests that the time be ex-
19 tended to the eighth business day. We have in mind the slow-
20 ness with which the mail sometimes moves.

21 One last suggestion. Reduce the time after can-
22 cellation which the seller has to remove the unwanted mer-
23 chandise from the consumer's home to ten days instead of
24 20 days.

25 Twenty business days means one month. Salesmen

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1 now purposely leave unwanted merchandise in the consumer's
2 home for long periods of time, hoping that it will become
3 scratched or used.

4 Then the consumer is informed that the merchandise
5 cannot be returned because it has been used.

6 For the thousands of low-income consumers who are
7 used as prey by door-to-door salesmen, the kind of protection
8 offered by this Trade Regulation Rule is long overdue.

9 UPO Consumer Action recommends that the cooling-
10 off period for door-to-door salesmen become an established
11 Trade Regulation Rule as quickly as possible.

12 Those of us in the inner city will be watching the
13 Federal Trade Commission for some meaningful results of to-
14 day's hearings. Dont let us down.

15 HEARING EXAMINER DIXON: Thank you, Mrs. Clark. Mr
16 Cabell?

17 MR. CABELL: Mrs. Clark, can you tell us why there
18 seem to be so many salesmen operating in these areas?

19 MRS. CLARK: There are probably a number of reasons
20 One would be that some of the areas are a long distance from
21 the down town areas. Low-income consumers have a number of
22 problems when they get ready to go out and buy--they have got
23 to find someone to babysit with their children, usually
24 transportation in their areas is very bad, very often they
25 don't have the money to spend to take the bus down town or to

101 1 a shopping area.

2 Very often they don't even have the decent clothes
3 that they would wear outside.

4 And as one of the other persons has already said,
5 the fact that credit is not available everywhere.

6 These would make low-income areas very good places
7 for door-to-door salesmen. And this is also why the people
8 in the area would use them.

9 MR. CABELL: Well, then, a number of the people in
10 these areas rely to a very great extent on these salesmen to
11 supply them with the goods and other things they want or
12 need.

13 MRS. CLARK: I don't particularly like the word
14 rely, because they would do it otherwise if they had to. And
15 they would be a lot better off if the salesmen did not come
16 around.

17 MR. CABELL: Well, I just wonder. At any rate,
18 they do utilize these salesmen to a considerable extent?

19 MRS. CLARK: Because they are available and there.

20 MR. CABELL: Well, I just wonder if they want to
21 use them, will the cooling-off proposal really help out?

22 MRS. CLARK: Definitely so. Many of the salesmen
23 come as a result of high-pressure tactics used by salesmen.
24 And we have had calls in our office here--in fact, there are
25 one or two people here who have said to me, Mrs. Clark, if I

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1 had just been thinking--five minutes after the man left, I
2 knew that I could not afford this, and if I could just change
3 my mind now.

4 The cooling-off period--as I say, five days would
5 be much better than three. But definitely so, because you
6 have an opportunity to talk with someone and come down out
7 of the clouds and you can realize at that point whether or
8 not you really want this.

9 MR. CABELL: Thank you.

10 HEARING EXAMINER DIXON: Thank you, Mrs. Clark.

11 MRS. CLARK: I would like to, if I could, respond
12 to the question that you asked Mr. White and Mr. Smith. My
13 answer is very much like Mr. Smith's.

14 As far as the emergency handling, as Mr. Smith
15 said, people don't sit at home and wait to have a salesman to
16 come there and sell them something for an emergency.

17 I would certainly hope that this is not allowed in
18 these regulations, because the salesman who frequents the
19 low-income neighborhoods would use this as a loophole to tie
20 the consumer in to the contract.

21 And it would make all of this that you are trying
22 to get done completely ineffective. And I would certainly
23 hope that the other things that you mentioned are dealt
24 with in another way.

25 But please, by all means, don't provide that kind

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1 of a loophole, because then we have all wasted our time.

2 HEARING EXAMINER DIXON: How could they use that as
3 a loophole if you draft it so as to say that the Rule speci-
4 fically does not apply to an emergency situation in which the
5 buyer had contacted the seller and asked the seller to come?

6 MRS. CLARK: If you could so word it that it could
7 be enforced that way, but many of the people who are going to
8 sign these contracts are going to be people who are going to
9 be signing them as a result of what the salesman is saying,
10 not as a result of what they are going to read on the state-
11 ments.

12 And if that loophole, if that waiver is there, it
13 will be used by unfair salesmen to lock them in. It will not
14 be used correctly.

15 And it is going to be very, very hard for someone
16 to actually determine in court, some time later on, whether
17 or not this was actually an emergency. It would be the con-
18 sumer's word against the salesman's word.

19 HEARING EXAMINER DIXON: Thank you, Mrs. Clark.
20 Oh, just a minute.

21 MR. CABELL: Yes, Mrs. Clark, I have another ques-
22 tion. I wanted to ask you, and I forgot it--what action, if
23 any, do these sellers or merchandisers take when the people
24 say I don't want this, I am not going to pay you for it?

25 What do they do then?

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1 MRS. CLARK: Well, very often the material is left
2 there. They finally talk them into leaving the material or
3 they will leave the material there on trial, on a trial ba-
4 sis. Then, of course, they never come back and get it.

5 Very often signatures are forged. We had a lady
6 call us the other day, material had been left at her house
7 to try out, and next day the salesman said would you like me
8 to sign your name on this statement for the material, for
9 the merchandise that we left there?

10 Signatures are often forged.

11 Also, one of the other things that they do, they
12 will say I have to have something to show that this was left
13 here, would you please sign this? And very often that in
14 itself locks them into some kind of contract or an agreement
15 to buy.

16 MR. CABELL: Well, let's take it a step further
17 now, and let's suppose that the consumer decided to buy the
18 merchandise and it is delivered.

19 And then, for one reason or another, perhaps after
20 talking to some members of your organization, they decide
21 they don't want it and can't afford it, so they attempt to
22 cancel the sale, and the seller says no, this is final, you
23 agreed to buy this and you are going to pay for it.

24 My question is how do the sellers actually go
25 about collecting this money?

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1 MRS. CLARK: Well, first of all, for many, many
2 people, the fact that he tells them no, I will not take it
3 back, you can't return it, is enough for some consumers to
4 say, well, I signed for it so I feel that it is my obliga-
5 tion.

6 And they will attempt to actually pay for it. This
7 has been done many times.

8 Then, of course, there are other ways. Sometimes,
9 of course, they can go with garnishments on the job. They
10 will have phone calls in which very ugly language is used,
11 in which the consumer is threatened. The person will very
12 often talk to the consumer's child.

13 And the consumer very often pays for it simply
14 through--well, simply to avoid that kind of thing.

15 MR. CABELL: So harrassment is perhaps the most
16 prevalent thing they use, then followed by some sort of court
17 action?

18 MRS. CLARK: Yes.

19 HEARING EXAMINER DIXON: Next I call for Mrs.
20 Georgia Dickerson, Consumer Advisor of the Southeast Neigh-
21 borhood Development House.

22 MRS. DICKERSON: My name is Mrs. Georgia Dickerson.
23 I am the Consumer Advisor for the Southeast Neighborhood De-
24 velopment House located in the Anacostia section of the city
25 of Washington.

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1 Through our varied activities within the community
2 we have become well aware of the frauds and subterfuges
3 which the consumer must often face.

4 We wish to speak in favor of the Federal Trade
5 Commission's decision regarding the conduct of door-to-door
6 salesmen.

7 As in any low-income area, Anacostia is often the
8 target for salesmen, pitchmen from legitimate and fly-by-
9 night outfits. Here in such an area are citizens who are
10 ill-equipped to comprehend the many innuendoes of items with-
11 in the contracts and the consequent obligations.

12 In such low-income areas are citizens economically
13 naive, eager for their out-of-this-world bargain, whether
14 fictitious or real.

15 In such areas particularly there must exist strong
16 safeguards for the consumer. We seek these guidelines from
17 the Federal Trade Commission.

18 This is not to imply that residents with low in-
19 comes are free to make or break contracts. Legal contracts
20 are totally binding, but legal contracts must be those under-
21 stood by both parties. That is, the salesman and the consu-
22 mer in clear and sensible language, and accepted as self-
23 evident only after this clear presentation of the rights and
24 obligations of both parties.

25 Such clear statements of the items of the contract

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1 are especially needed in regard to those agreements entered
2 upon by local residents within the so-called door-to-door
3 salesman.

4 The cases associated with the poor transaction
5 of salemen and consumers are well-documented, yet it is safe
6 to assume that many fraudulent dealings go unreported be-
7 cause the consumer fears legal reprisal if he does not ful-
8 fill the terms of the signed agreement through payments, even
9 though the seller may not have fulfilled the obligation on
10 his part.

11 Often salesmen hurry into their sales pitch with-
12 out stating their names as they fascinate the unaware consu-
13 mer through promises of a free gift, or a chance to make mo-
14 ney. If such gimmicks often cause tragic consequences to the
15 consumer, these types of come-ons dull the listener into for-
16 getting important details, such as who is this man, what
17 company does he represent, address, and other like questions.

18 At other times, the salesman guarantees delivery
19 of the merchandise as soon as possible, but the goods never
20 arrive.

21 The consumer must be protected and the unscrupu-
22 lous salesman must be called to task.

23 The measures offered by the Federal Trade Commis-
24 sion are good and do provide practical options for the con-
25 sumer who wishes to cancel a contract.

1 With these provisions the burden of proof is on the
2 salesman. He must, at the very beginning, alert the resident
3 that the purpose of this visit is an attempt to make a sale
4 for a particular item.

5 This immediately allows the consumer the option of
6 dismissing the salesman before the sales pitch.

7 The salesman must clearly explain the terms of the
8 contract to the individual and must emphasize the content of
9 the contract which states that the buyer may cancel this sale
10 or contract for any reason at any time up until three business
11 days after the contract is signed.

12 This written provision will allow the consumer an
13 opportunity to reconsider the transaction and to cancel the
14 contract without loss to himself in any way.

15 All he must do is notify the seller of the cancel-
16 lation.

17 We would seek to lengthen this grace period to a
18 full week, seven calendar days, which would allow the consu-
19 mer a better schedule to seek information or advice from
20 any agency, such as ours, or legal aid service, concerning
21 the scope of the contract terms.

22 It is admitted that the three-day period is meant
23 for that purpose, but many reasons may hinder the person from
24 seeking this advice and counsel or for adequately notifying
25 a seller of cancellation.

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1 Today's mail being the way they are, we thus would
2 wish to offer this recommendation for your consideration--
3 the extension of the grace period before the contract becomes
4 binding to a week. The three-day period is good, seven days
5 is better.

6 It would be unfair to accuse all salesmen of un-
7 becoming behavior. We, in our activities, are well aware of
8 many sales personnel who are extremely interested in the wel-
9 fare of poor people within the city.

10 These FTC provisions are needed to protect these
11 people as well, and to war against the unscrupulous salesman
12 who preys upon the unknowing consumer.

13 A final word must be said concerning these FTC mea-
14 sures. Again, these guidelines are good in themselves, yet
15 it is not enough to have such practical regulations on the
16 books while the consumer remains unaware of them.

17 A community-alert drive must be launched through
18 the efforts of the Federal Trade Commission and neighborhood
19 agencies which will ensure, as far as this is possible, the
20 education of all within the community concerning these and
21 other consumer regulations and safeguards.

22 Through such community-education efforts, these
23 FTC measures will become more practical in the daily life-
24 style of the city of Washington, will be somewhat better.

25 Thank you.

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HEARING EXAMINER DIXON: Thank you, Mrs. Dickerson.

Mr. Cabell?

MR. CABELL: Mrs. Dickerson, you and a number of the other witnesses throughout these hearings, not just today, since they began Monday, have referred to the fly-by-night and the obviously disreputable company which engages in direct selling.

Now, a number of people have referred--and I believe you did, too--to the legitimate companies and their salesmen.

Now, let's consider the case of the legitimate company which engages in door-to-door selling and sells one product, be it an encyclopedia, pots and pans, or what have you.

What sort of complaint do you get against the salesmen of these companies?

MRS. DICKERSON: I would like to answer by saying this. The fly-by-night companies are companies who come in and sell an item, and they will come back and collect their payments.

I have a lady right now who gets Social Security. She is in my credit classes. And she bought a \$400 television set and a \$400 ringer-washer from the C and M Furniture Company, I have never heard of.

And she is on Social Security. The man comes around, cashes her Social Security grant, and takes his

111 1 payment and gives her the balance. And later on, after he
2 has really used her, taken as much money as he can from her,
3 they might go out of business or they might move to another
4 state.

5 But the legitimate companies, if I might cite one,
6 maybe Avon, are people who stay around. They are not fly-
7 by-night.

8 You might find in some instances where you might
9 find a person who comes and says he represents Avon and is
10 selling Avon and get a deposit from you and you may not ever
11 see him again.

12 MR. CABELL: Well, this man you spoke of who sold
13 this lady these two large appliances, would he stay there
14 till he collected all his money?

15 MRS. DICKERSON: Yes, he will. And he comes every
16 month, the day that her Social Security check comes in the
17 mail. He is there. He cashes her check and gives her the
18 remainder from what she owes him.

19 MR. CABELL: Well, do you think this cooling-off
20 proposal will help people that want to buy products this
21 way?

22 MRS. DICKERSON: Definitely.

23 MR. CABELL: Do you think you will have a chance to
24 get to him within the cooling-off period and tell him that
25 this isn't a good deal?

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1 MRS. DICKERSON: I may not get to all of them,
2 but as many as possible, with the classes that we hold in
3 the neighborhood. And along with you we probably could
4 get the word around.

5 MR. CABELL: Now, we have had some testimony here
6 this afternoon about this exception in regard to the needed
7 services. I just wonder if the consumers want to wait seven
8 days for services they think they need or for products they
9 think they need?

10 MRS. DICKERSON: Well, I would like to answer by
11 saying this. I am sure that they have waited for years for
12 this and if they would just check around and keep their
13 eyes and ears open.

14 We have programs now for persons with bad credit
15 or no credit who would like to rebuild or re-establish, and
16 also there is a credit union--so I see no need for that
17 provision.

18 I wouldn't like to tie myself up in trying to
19 explain that particular one, but I am not for it.

20 HEARING EXAMINER DIXON: Thank you, Mrs. Dickerson.
21 Next will be Mrs. Ethelene White. Mrs. White is not here.

22 Would you give the reporter your name?

23 MISS CLAYPOOL: My name is Mildred Claypool. I
24 work for the Neighborhood Development Center, Number 2, at
25 1368 Euclid Street. And I am connected with the Consumer

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1 Division of that section.

2 I would like to ask this question, this one ques-
3 tion. You see, there is another kind of door-to-door sales-
4 man that you don't see, but he writes letters and sends out
5 brochures and things for you to look at.

6 Now, we can't have any cooling period there, be-
7 cause we don't see the salesman. But you do have his bro-
8 chures.

9 What I want you to do is have laws that will cover
10 them, too. These salesmen who write the letter and you don't
11 see them, I want some laws to cover them, too.

12 And what I want done is this. You see, this door-
13 to-door salesman, I want you to stop them sending brochures
14 where you sign your name, because when you sign your name,
15 you are in reality signing a contract to get their material.

16 HEARING EXAMINER DIXON: Is this literature they
17 send to you contain an order form or a coupon or something
18 for you to sign?

19 MRS. CLAYPOOL: Yes, they say if you are interested,
20 sign this and send it back. And when you sign that and send
21 it back, that is it. You have signed a contract.

22 And you are flooded with whatever they have to sell.
23 And you can't send it back or do anything. You just have to
24 keep on getting it.

25 And there is nobody to turn to. Now, that is what

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1 I want you all to make some laws to fit that statement, that
2 door-to-door salesman, because he really is a door-to-door
3 salesman. Because they get your name--I don't know where
4 they get your name.

5 Everybody has my name, I think. I get something of
6 everything that comes out. Everything that comes out, I get
7 one of them.

8 But I don't sign my name or nothing. I have learned
9 that from--I went to dance school one time. As well as I can
10 dance, I don't need no lessons. I went to MacArthur. I
11 went to school there with another girl.

12 And when you go in through the door you sign your
13 name. So I signed my name with hers. And come to find out
14 that I signed to take so many lessons at a certain amount of
15 money every month.

16 And I don't need no lessons in dancing. But, honey
17 I talked to him so bad that we settled that argument before I
18 left. Because once you sign your name, that is it. And they
19 have got you because you signed your name.

20 And they can garnishee your salary and everything
21 else.

22 HEARING EXAMINER DIXON: He was sorry he entered
23 that contract.

24 MRS. CLAYPOOL: Because I didn't need nobody to
25 teach me how to dance. That is what I say. When these

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1 people send these brochures and things, make them stop send-
2 ing things where you sign your name.

3 If you are interested in what they have to buy,
4 you will write yourself and ask for it, won't you? You will
5 write yourself and ask for anything you want, that you are
6 interested in.

7 So make some rules where they won't have your name
8 where you can sign something. Make something to cover that,
9 because you can't see them, you can't tell them you don't
10 want it, or nothing like that.

11 So make a rule to cover that statement.

12 HEARING EXAMINER DIXON: We will keep that in mind,
13 Mrs. Claypool. Thank you for coming.

14 MRS. CLAYPOOL: Thank you.

15 HEARING EXAMINER DIXON: Did Mr. Levy ever get
16 here?

17 Apparently he did not, and that concludes the list
18 of those witnesses who were scheduled to appear this after-
19 noon.

20 Just one moment, Mrs. White may be outside. No,
21 that does conclude the list of those scheduled to appear this
22 afternoon. Consequently, these hearings will adjourn until
23 we reconvene here tomorrow morning at 10 o'clock.

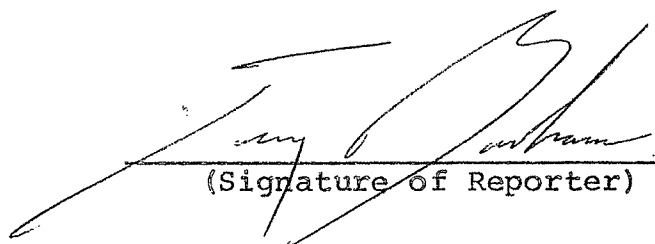
24 (Whereupon, at 3:45 p.m., the hearing adjourned to
25 reconvene Thursday, March 11, 1971, at 10:00 a.m.)

DOCKET NO: T.P.C.

CASE TITLE: Public Hearing on a Proposed Trade Regulation Rule
Concerning a Cooling-Off-Period for Door-to-Door
HEARING DATE: March 10, 1971 sales

I HEREBY CERTIFY that the proceedings and evidence herein are contained fully and accurately in the notes taken by me at the hearing in the above cause before the Federal Trade Commission and that this is a true and correct transcript of the same.

DATED: April 5, 1971



(Signature of Reporter)

Terry Barham

(Name of Reporter - Typed)

300 7th Street, S. W.

(Address - Typed)

Washington, D. C. 20024

