

ORIGINAL

OFFICIAL TRANSCRIPT OF PROCEEDINGS
BEFORE THE
Federal Trade Commission

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215-28
DOCKET NO. Trade Practice Conference

In the Matter of:

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

Place Washington, D. C.

Date March 11, 1971

Pages 368 thru 485

Alderson Reporting Company, Inc.

Official Reporters

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C E R T I F I C A T E

This is to certify that the following pages and related exhibits are a transcript of hearings before the FEDERAL TRADE COMMISSION in the matter of:

DOCKET NO. - Trade Practice Conference

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 11, 1971

PAGES NUMBERED 368 to 485 INCLUSIVE,

which were had as therein appears, and that this is the original transcript thereof for the files of the Commission.

Alderson Reporting Company, Inc.,
Official Reporter

By: 
(Title of Official)

Manager, Duplicating Department

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BEFORE THE
 FEDERAL TRADE COMMISSION
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 PUBLIC HEARING ON A PROPOSED TRADE :
 REGULATION RULE CONCERNING A :
 COOLING-OFF PERIOD FOR DOOR-TO- : Trade Practice Con-
 DOOR SALES : ference
 ----- -X

Room 532, Federal Trade Commission Building
 Pennsylvania Avenue and Seventh Street, N.W.
 Washington, D. C.
 Thursday, March 11, 1971

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

BEFORE:

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

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

APPEARANCES:

DAVID R. CASHDAN, Esq., Berlin, Rosiman and Kessler,
 Consumer Federation of America

J. ROBERT BROUSE, President, Direct Selling Association

GERALD GILBERT, Esq., Hogan & Hartson, Washington, D. C.

PETER C. WARD, Esq., Morgan, Lewis & Bockius, Grolier,
 Inc.

35

1 APPEARANCES (continued):

2 JOHN L. O'BRIEN, Executive Vice-President, Council of
3 Better Business Bureaus 413

4 FREDERIC SHERWOOD, Chairman, Ad Hoc Inter-Industry
5 Committee 426

6 BETTE CLEMENS, Director, Bureau of Consumer Protection,
7 Office of the Attorney General, Commonwealth of
8 Pennsylvania

9 EGON GUTTMAN, Washington College of Law, The American
10 University 450

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P R O C E E D I N G S

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2 HEARING EXAMINER DIXON: May we come to order,
3 please. This is the fourth day of public hearings dealing
4 with the Commission's proposed Trade Regulation Rule con-
5 cerning a cooling-off period for door-to-door sales.

6 My name is William Dixon. I am the Assistant Di-
7 rector for Industry Guidance in the Commission's Bureau of
8 Consumer Protection.

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

11 Our first speaker for this morning is Mr. David
12 R. Cashdan. Mr. Cashdan?

13 MR. CASHDAN: Mr. Dixon and Mr. Cabell, my name
14 is David Cashdan and I represent the Consumer Federation of
15 America.

16 CFA is the nation's largest consumer organization
17 and it includes within its membership organizations at the
18 national, state and local level.

19 Probably of more importance is that we represent
20 consumer organizations that are geared not only to the inner
21 city consumer problems but also organizations which represent
22 the consumer interest of people who have retired, living on
23 pensions--and some of them virtually living on no income at
24 all.

25 The importance of our representation of these

1 groups is that these groups have frequently been victimized
2 or been subject to some of the deceptive practices which we
3 know to accompany door-to-door sales.

4 At the outset, let me say the CFA supports whole-
5 heartedly a regulation which encompasses a cooling-off or
6 time-to-rescind remedy.

7 We think that that type of remedy will stem some
8 of the practices and will provide an inexpensive and effec-
9 tive protection to the consumer.

10 We do not, however, plan to review for the Commis-
11 sion a listing of the various kinds of deceptive practices
12 which are associated with door-to-door sales, or at least
13 some aspects of the door-to-door sales industry.

14 These we think are well-known to the Commission.
15 We think they have been publicly aired in such hearings as
16 before Senator Magnuson's committee two years ago, and they
17 have been the subject of many learned articles.

18 Furthermore, they have been the subject of much
19 testimony in the foregoing three days of these hearings.

20 Thus, my testimony will focus primarily on our re-
21 commended changes, which we hope will make your regulations
22 more effective.

23 First, we are troubled by Section 1(a) of the regu-
24 lation which leaves to the consumer the burden of computing
25 "any time before 5 p.m. of the third business day following

1 the day you signed the contract or purchased the goods and
2 services."

3 We are fearful that this will create too much con-
4 fusion for the consumer and we would like the remedy which
5 would minimize this confusion.

6 Our suggestion is that the designations for when
7 the period lapses, the time and the date, should be filled in
8 by the salesman. This would be true of the notice of cancel-
9 lation and be true of the provision in the contract appearing
10 just above the buyer's signature.

11 This is not to say, however, that the buyer or con-
12 sumer could in any way be deprived of less than the three-day
13 cooling-off period allowed for by the regulations.

14 Second, although the cooling-off period regulations
15 specify that the notice of cancellation and the provision
16 concerning cooling-off to be "of a conspicuous color other
17 than that used by the rest of the contract," the regulations
18 do not make clear that the rest of the contract should only
19 be in one other color.

20 Obviously we are fearful of multi-colored contracts
21 which would make the highlighting effect, the purpose for
22 which you have chosen another color--it would render that in-
23 effective.

24 Therefore, we would ask for that clarification.

25 Section 3 of the cancellation notice also bothers

1 us, for it indicates that the consumer, if he wishes to can-
2 cel, must make the merchandise available "in its original con-
3 dition."

4 Here we are fearful that the wording "original con-
5 dition," if rigidly applied, will serve to defeat the basic
6 right of rescission or cancellation. For example, when the
7 consumer does not materially alter the condition of the goods
8 --like when he should open the package but not damage the
9 goods--this could be said to be other than its "original con-
10 dition."

11 Interestingly enough, the Commission has not im-
12 posed such a rigid standard upon the seller. For when the
13 seller returns any goods that are traded in, they only have
14 to be in "substantially as good a condition as when received."

15 Our immediate objection, therefore--our immediate
16 suggestion is that the same type of standard be applied to
17 the consumer, that he should only have to return the goods
18 in substantially as good a condition as when received.

19 Or, as an alternative, tender the reasonable value
20 of the good or services.

21 While this more flexible standard will provide pro-
22 tection for the consumer, we are troubled by another problem,
23 and that is that the regulations automatically allow for the
24 delivery of goods during the rescission or cancellation peri-
25 od.

1 The problem here is that goods are apt to be dam-
2 aged or used. And, under the present regulations, when this
3 happens, the right of cancellation seems to be defeated.

4 Now, in the case of an expensive purchase, we are
5 fearful that the problems which will be confronted by the
6 consumer will far outweigh any convenience that is provided
7 to him by immediate delivery.

8 Thus, our suggestion is that a monetary ceiling
9 might be imposed, one which would not allow for immediate
10 delivery of goods which were over a set monetary level.

11 We have suggested \$50.

12 The regulations do not require the seller to pick
13 up the goods until twenty business days after the cancella-
14 tion. This period, we believe, is too long, particularly if
15 the buyer is required to return the goods in their original
16 condition.

17 Therefore, we have suggested a shortening of the
18 period to 14 days.

19 The regulations, we do not feel, include adequate
20 protection for consumers who speak in foreign languages.

21 We would agree with the observations of the Ad Hoc
22 Inter-Industry Committee, represented by Mr. Frederic R.
23 Sherwood, and its observation that additional protections are
24 needed.

25 We, however, would adopt a slightly different

1 remedy. We would suggest that bi-lingual contracts be used
2 with notices of cancellation printed in English and in the
3 foreign language that is regularly spoken by consumers in the
4 area or region in which the sales are being made.

5 What we are trying to make sure is that all con-
6 tracts, even though they might be in a foreign language,
7 would also be in English, because this would help the consu-
8 mer if, during that three-day period, in making his analysis.
9 It may be that the people he seeks consultation with during
10 that moment of reflection would understand the contract if
11 stated in English better.

12 We have another point of clarification. It is not
13 clear in Section (a) of the regulations whether the seller
14 indeed must make a copy of the contract available to the con-
15 sumer.

16 It appears that he only has to make a copy avail-
17 able of the notice of cancellation. We would obviously ask
18 for a clarification which would require making both avail-
19 able.

20 In addition, however, we would suggest that the
21 notice of cancellation, which is to be detached, include two
22 notices, one designed to be sent to the company and one to
23 be retained by the consumer. Otherwise, under the present
24 regulations, the consumer has no verification of the type of
25 cancellation notice that he received.

1 As has been noted by one of CFA's member organiza-
2 tions already, in a written statement submitted to the Com-
3 mission, the Louisiana Consumers' League--any rule implemen-
4 ted for the protection of consumers will have a rather limi-
5 ted effect unless there are adequate means for enforcement.

6 The resources of the FTC are limited and we cannot
7 expect the FTC to provide relief every time these regulations
8 might be violated.

9 Therefore, we favor some additional private means
10 for enforcement.

11 Thus, as Louisiana Consumers' League has recommen-
12 ded, CFA recommends that the regulations should require all
13 sales contracts to include a provision to the effect that the
14 seller will pay the purchaser for all reasonable attorney's
15 fees and costs if it becomes necessary for the purchaser to
16 employ an attorney to enforce his rights under the cooling-
17 off period Rule.

18 This provision is quite similar to the provision
19 which favors the recovery and--of fees and costs to the sel-
20 ler which is boilerplate in many door-to-door contracts.

21 CFA, however, is not trying to suggest that it be-
22 lieves that sellers should be entitled to recover attorney's
23 fees and costs. Our position consistently has been that
24 they should not, as a matter of practice, be allowed to do
25 so.

1 Even so, we would argue that the consumer, when
2 he seeks to enforce the regulations, has a right to recover
3 these attorney's fees and costs, because then--as in other
4 anti-trust matters--he would be acting as a private attorney-
5 general and he would be vindicating, or helping to vindicate,
6 the public interest.

7 We also think that the definition of door-to-door
8 sales should be expanded to include rental agreements or
9 leases. Such devices are used with regularity in door-to-
10 door sales, solicitations, rather.

11 And the lawyer's distinction between sales and ren-
12 tal should not be allowed to provide quick and easy means for
13 evading the force of the proposed regulations.

14 As for Section (d) of the regulations, which pro-
15 hibits the inclusion of any provision allowing for the wai-
16 ver or confession of judgements, we understand the purpose
17 behind this regulation. We think it is a good provision.
18 It provides the consumer maximum protection.

19 On the other hand, we are sensitive to the problem
20 noted by industry that it needs some mechanism for having
21 some accessibility and some protection when, in an emergency
22 situation.

23 The problem obviously is that you, as well as I,
24 know that the claim or ruse of emergency has been one of the
25 main ways that some deception, some really invidious deception

1 has been practiced in door-to-door sales.

2 Therefore, CFA cannot support any modification of
3 the waiver provision, absent some sort of imposition of pen-
4 alty, a penalty which would be imposed where the waiver was
5 obtained fraudulently or where, in fact, the emergency did
6 not exist.

7 We have in mind such penalties as forfeiture of
8 property, restoration of the premises to their original con-
9 dition. These type of remedies, I think, are found within
10 the Regulation Z of the Truth-in-Lending Act.

11 These recommendations, in our opinion, make or
12 will make for stronger regulations.

13 As presently drafted, the regulations already in-
14 clude many sound provisions. We strongly support Section (e)
15 which requires an oral declaration that the purpose of the
16 contact or solicitation is a sale.

17 We strongly support the provision which says that
18 no paper will be transferred within five days after the ma-
19 king of the contract, because this, obviously, will limit to
20 some extent the problems that are inherent in the holder-in-
21 due-course doctrine.

22 Fortunately, this subject will be explored in de-
23 tail by the Commission in a hearing set for later this
24 spring. For we feel that further changes in the holder-in-
25 due-course doctrine are needed if we are to have effective

11 1 regulation in the area of door-to-door sales.

2 In closing, CFA would like to lay to rest any sug-
3 gession that the proposed regulations are discriminatory or
4 arbitrary. Many department stores have operated for years
5 with an open period for return of goods and cancellation.

6 So we fail to perceive any serious burden imposed
7 by requiring the door-to-door sales industry to adopt, as
8 part of its sales practice, a cooling-off period.

9 While it may be that all sales, whether made in a
10 retail store or by direct solicitation at home, in homes,
11 should be conditioned upon a consumer cooling-off period,
12 there are special circumstances presented in the case of
13 door-to-door solicitation, which are more conducive to fraud
14 and necessitate a cooling-off period remedy.

15 Unlike the individual who consciously decides to
16 enter a store, the home owner is unexpectedly intruded upon.
17 Unlike the customer in the store, the home owner cannot walk
18 out on the salesman.

19 In short, he is captive to the salesman's pressures,
20 he has no opportunity to compare values, and his purchases,
21 of necessity, are nothing else but the product of impulse
22 buying.

23 Unlike the customer in the store, who knows to whom
24 to return, if he is dissatisfied with his purchase, the buyer
25 of a door-to-door sales is not so fortunate.

1 His salesman may have left town and the sales com-
2 pany may be operating out of town or, as is often the case,
3 out of state or may have gone out of business.

4 All of these factors suggest a special need to
5 move immediately to provide the type of remedy contained in
6 the Commission's regulations.

7 This is not to say, however, that the Commission
8 should not give serious consideration to expanding the scope
9 of its cooling-off period remedy.

10 For CFA sees little reason to keep from the con-
11 sumer similar protections in the area of solicitations by
12 telephone and mail.

13 Thank you.

14 HEARING EXAMINER DIXON: Thank you, Mr. Cashdan.
15 Mr. Cabell?

16 MR. CABELL: Mr. Cashdan, I have a question with
17 regard to a portion of your statement respecting the obliga-
18 tion of the consumer to return the goods when he elects to
19 exercise his option to cancel.

20 Now, I believe you stated that, as an alternative,
21 he should be permitted to tender the reasonable value of the
22 goods or services.

23 Now, could you expand on that a little bit for us,
24 please?

25 MR. CASHDAN: Well, what I had in mind was that the

1 present regulation speaks in terms of original condition.

2 If we are dealing with some sort of installation
3 or home improvement, it would be nearly impossible, it seems
4 to me, to satisfy that standard.

5 Therefore, a lot of states, as I understand it,
6 have adopted statutes or ordinances which would allow, in
7 those cases, for there to be some sort of Quantum-Merruit
8 type of remedy, either for the seller or for the buyer.

9 Or, if we are dealing with a situation where the
10 thing could not be taken out, you might be able to tender the
11 reasonable value of the service.

12 In other words, the fact that we represent the con-
13 sumer does not necessarily mean that we think that the con-
14 sumer can get off scot-free.

15 But the original condition language would obvious-
16 ly not satisfy anybody, but it does create problems for the
17 consumer in a lot of instances.

18 MR. CABELL: But your restriction on the perfor-
19 mance, or your recommended restriction on the performance
20 of the contract within three days, if the value is over \$50,
21 would pretty well, it seems to me, negate the requirement for
22 this type of provision.

23 MR. CASHDAN: It is true that the two suggestions
24 are inconsistent in the sense that we have suggested that
25 there should be no delivery within the three-day period if

14 1 there is an expensive purchase.

2 But we also recognize that, if someone's furnace
3 has to be replaced, that you can't expect him to wait three
4 days, so there would have to be, in that situation, some sort
5 of tight remedy.

6 Now, the Truth-in-Lending Act has, as I recall,
7 drafted carefully defined statements as to what constitutes
8 an emergency. And it also suggests that there will be some
9 types of penalties.

10 It doesnt seem to us that that type of analysis is
11 not appropriate in door-to-door sales.

12 More than anything, what we are trying to suggest
13 is that this area has to be given further consideration by
14 the Commission, because the regulation, in our mind, doesn't
15 seem to address that problem adequately.

16 Our suggestions are, as I indicated in my state-
17 ment ---

18 MR. CABELL: Well, what do you think the Commission
19 should do about the existing state laws that regulate these
20 practices? Our regulation will be consistent with some of
21 them. With others it would be inconsistent.

22 MR. CASHDAN: It is my understanding that whether
23 you seek to articulate something in your regulation which
24 would be in the form of a pre-emption doctrine or not, the
25 regulation, if adopted, would be challenged.

1 And it appears to me that the only person that is
2 going to be able to resolve that problem as to whether you
3 can do that is going to be the courts.

4 We have noted that several organizations have, dur-
5 ing the course of their testimony, submitted briefs as to
6 whether you have the authority to do this, or the need for
7 pre-emption.

8 We have not discussed those issues. But we would
9 be more than happy to submit to the Commission a lengthy
10 brief dealing with the legal problems.

11 MR. CABELL: We would certainly be glad to have it.
12 But I didn't mean to restrict my question to that aspect of
13 the matter.

14 What I am asking you is should the Commission, as
15 it has done in certain other regulations, attempt to defer
16 to state laws which, for example, might be more stringent
17 than our regulation?

18 MR. CASHDAN: Obviously, from the consumer's point
19 of view, we want the consumer to get maximum protection. But
20 it may be that where there has been some maximum protection,
21 the Commission itself will draw the conclusion that that is
22 not fair, if deference is the only answer. The consumer
23 would like that type of protection.

24 But I don't think that the Commission automatically
25 wants to make deference without examining carefully whether

1 the stronger regulation is in fact appropriate.

2 HEARING EXAMINER DIXON: Mr. Cashdan, do you think
3 that the Commission actually has the power to determine, in
4 any case of private litigation, that one party or the other
5 should bear the costs of attorney's fees?

6 MR. CASHDAN: This issue also is the subject of
7 litigation. For example, I know that presently pending be-
8 fore the Federal Communications Commission, and a couple of
9 other commissions, is the same problem--whether citizens'
10 groups and private citizens, who seek to enforce regulations,
11 should be entitled to some sort of remuneration.

12 If you view what they are doing as being remedial,
13 it is really not a penalty.

14 And, therefore, yes, I really think they do. And
15 this is something the CFA feels very strongly about.

16 I specifically made a reference to the private
17 attorney-general concept, because I don't think that it makes
18 significant difference whether you are seeking to pursue the
19 enforcement of a statute or seeking to pursue the enforcement
20 of a regulation.

21 One may be at an administrative level, and one may
22 be in the courts.

23 But the service that is provided to the public is
24 obvious. And this has been true in civil-rights cases parti-
25 cularly.

1 HEARING EXAMINER DIXON: One other question, sir.
2 You mentioned, or recommended, that the Rule be expanded to
3 include rental arrangements which is a subject that is, that
4 has surfaced in these hearings.

5 Can you tell us anything more about how these ren-
6 tal arrangements work and what sort of products are involved?

7 MR. CASHDAN: No, I can't give you an identification
8 of the specific products, but our suggestions have been dis-
9 cussed in detail with CFA and it was their recommendation that
10 this be brought to your attention.

11 And I am sure, if you would like some documentation,
12 I would be happy to find some for you.

13 HEARING EXAMINER DIXON: If you could, because we
14 know very little about it actually.

15 Thank you, Mr. Cashdan.

16 Our next witness is Mr. J. Robert Brouse, president
17 of the Direct Selling Association.

18 MR. BROUSE: My name is Robert Brouse, Mr. Dixon.
19 I am president of the Direct Selling Association, an associa-
20 tion of companies whose products are sold person-to-person
21 in the home, and I have enclosed with the statement which I
22 have submitted earlier a copy of our membership directory
23 which lists the names of some of America's oldest and best-
24 known highly regarded direct-selling companies.

25 I appear in opposition to the Trade Regulation Rule

1 which calls for the imposition of a cooling-off period on
2 door-to-door sales.

3 With me is Mr. Gerald Gilbert, a partner in the
4 Washington law firm of Hogan and Hartson, general counsel
5 for the Direct Selling Association.

6 I don't intend to read the statement verbatim. I
7 will read a couple of paragraphs and add a few amendments,
8 and ask Mr. Gilbert to add something. I would be happy to
9 discuss the statement which you have and answer and ques-
10 tions.

11 I would like to preface my comments by declaring
12 that the Direct Selling Association is not opposed to the
13 concept of cooling off.

14 It has publicly stated that a reasonable cooling-
15 off law would be acceptable and indeed desirable if it pre-
16 empted the multitude of state and local cooling-off laws.

17 I hope that the Commission and the public will take
18 note of this, for I would like the record to show that our
19 members are prepared to support any effective measure which
20 would curb abuses in the marketplace.

21 Furthermore, our comments on the specific provi-
22 sions of the proposal should not be construed as an accept-
23 ance of the notion that the FTC has the authority to issue
24 such a binding Trade Regulation Rule.

25 Nowhere in the Federal Trade Commission Act is there

1 granted substantive rule-making authority of this kind upon
2 the Commission.

3 Indeed, members of the Commission have, in recent
4 years, admitted in testimony before the Congress that the
5 FTC lacks the authority to issue Trade Regulation Rules with
6 the force and effect of law.

7 Now, while I do not intend to take the time of the
8 Examiner to develop this important argument here, I do invite
9 you to examine the attached brief which challenges the autho-
10 rity of the Federal Trade Commission.

11 But suffice it to say that should this proposed
12 regulation, Rule, be promulgated, we would expect to contest
13 its validity in court.

14 Now, the direct-selling industry wants, and badly
15 needs, a Federal cooling-off law with Federal pre-emption.
16 Unfortunately, the proposed FTC Trade Regulation Rule does
17 not pre-empt state and local cooling-off laws.

18 It would thus impose upon DSA-member companies
19 many costly and impracticable conditions at the Federal level
20 without corresponding relief from the multitude of conflicting
21 laws at the state and local level.

22 It is this threat of added regulation without the
23 promise of legal pre-emption that makes a Federal law passed
24 by the Congress more attractive, both to the industry and to
25 the consumers they serve.

1 For an act of Congress promises relief to the in-
2 dustry in the form of pre-emption and benefits to the con-
3 sumers in the form of a unilateral remedy.

4 That is why we are actively seeking and working
5 for the introduction and passage of a Federal law in the 92nd
6 Congress.

7 As evidenced by my January 12 letter to the chair-
8 man of the Senate Commerce Committee, a copy of which you
9 have.

10 With regard to the specific provisions of this TRR
11 I would recommend that the Commission give serious consider-
12 ation to the alternative proposal submitted by Mr. Fred
13 Sherwood, an alternative which represents a consensus of
14 industry views on how to make the Rule more practical and
15 more beneficial to consumers.

16 I might add parenthetically that I think that Mr.
17 Sherwood is probably the expert-in-residence on the evolution
18 of cooling off in this country. He could provide the Commis-
19 sion with a lot of insights.

20 He has done, I think, a very commendable job in
21 working with various segments of industry, bringing them to-
22 gether to back this very constructive alternative proposal.

23 With regard to my own statement, I would only like
24 to underscore three things in it, because I think it does
25 need emphasis.

1 First, with regard to providing a separate notice
2 of cancellation, the very length of the proposed notice nul-
3 lifies whatever good would come from separating it from the
4 receipt or the contract.

5 It is so lengthy that it would confuse the buyer,
6 frustrate the seller, negate the efficacy of the cancellation
7 clause.

8 A more effective remedy would be the language found
9 in Senator Magnuson's 1968 bill.

10 Second, in order to truly protect the consumer and
11 eliminate confusion in the marketplace, any form of cancella-
12 tion should be in writing.

13 Under no circumstances should consumers be expect-
14 ed or permitted to cancel orally.

15 Third, the Direct Selling Association is aware that
16 when a sales person practices deception at the door, or any-
17 where else, he creates ill-will which starts a chain reaction,
18 which often results in restrictive laws and regulation.

19 The Association, therefore, endorses any reasonable
20 effort to prevent the use of any plan or ruse to gain admis-
21 sion to a prospective buyer's home or to disguise the purpose
22 of his call.

23 Such deception is clearly a violation of the DSA
24 Code of Ethics and the Federal Trade Commission Act.

25 I would like to suggest that you might want to

1 tighten up the definition you propose, as Mr. Givens of the
2 regional office of FTC has suggested, by adding the words in
3 the definition after "personally solicits the sale," the
4 words "whether or not the solicitation is by prior arrange-
5 ment or invitation by the buyer or another"--those are his
6 words.

7 And I think it might help clarify what seems to be
8 an ambiguous definition.

9 I also asked my staff to give me an up-to-date, as
10 of today, list of cooling-off bills which have been introduced
11 in the 49 states that are in session.

12 You will recall that I did give you earlier a compi-
13 lation of those state laws. There are 42 different cooling-
14 off bills now pending, either amendments to existing laws or
15 new ones.

16 And if you couple that with the 22 states and three
17 cities, you can appreciate the need the industry has for some
18 kind of order out of this chaos in the marketplace.

19 I would like Mr. Gilbert to join me at the podium
20 and discuss with you for a few minutes the nature of the need,
21 the nature of pre-emption, as has been discussed by other wit-
22 nesses and as is presented in our brief.

23 MR. GILBERT: Good morning, gentlemen. During
24 these hearings you have asked some questions concerning the
25 effect of a Federal regulation pre-empting state law in those

1 areas where there is actual conflict.

2 We wish to make the Direct Selling Association's
3 position clear on that point.

4 At the present there are 22 states and three cities
5 that now have cooling-off laws. Most of these laws require
6 some kind of specific contractual language.

7 Now, the purposes and goals of these various laws
8 may be the same or similar, but the specifics differ in many
9 cases.

10 Now, in some cases these differences will be actual
11 conflicts, not only among the states, but also conflicts with
12 the proposed regulation.

13 We will not go into detail on a state-by-state ana-
14 lysis at this time. We do suggest that the compilation of
15 laws which we have already submitted to you--even a cursory
16 review of this compilation will sustain this point.

17 Our concern is greater than merely the areas of con-
18 flict. Even assuming that a Federal regulation would pre-empt
19 state laws, those areas where there is a direct conflict with
20 Federal regulation, there are many requirements--in some cases,
21 requirements that are less stringent, in some case more strin-
22 gent--that would still remain in effect. Even though they
23 would be different, they might not be in direct conflict with
24 the Federal regulation, and they would remain in effect.

25 An additional Federal regulation, along with these

1 many state requirements that would remain in effect, would
2 add substantially, not only to the expense and educational
3 burdens of the seller but particularly to the confusion of the
4 consumer.

5 It would be impossible to write one contract to
6 comply with the Federal regulation and all state laws, that
7 would still be understandable and meaningful to the consumer.

8 Now, the potential confusion that would result from
9 more than one contract, assuming that will be necessary and
10 possible, speaks for itself.

11 As many consumer groups have testified in these
12 hearings, it is extremely important that the requirements of
13 the law or regulation of the kind being considered here are
14 easy to understand by all consumers.

15 We submit that without total pre-emption, total
16 Federal pre-emption in this area, that goal is literally im-
17 possible.

18 Now, these problems appear to be in the position
19 where they are going to be further increased. There are bills
20 now being introduced almost daily in the states and municipal-
21 ities throughout the country on cooling-off, and many of
22 these bills differ.

23 MR. BROUSE: Any questions?

24 HEARING EXAMINER DIXON: Mr. Cabell?

25 MR. CABELL: I would like to get your views on the

1 emergency waiver provision which we have had so much discus-
2 sion of throughout this hearing.

3 How could this be done so as to provide the consu-
4 mer with protection against the unfair use of such a provi-
5 sion?

6 MR. BROUSE: Mr. Cabell, I think it has been pre-
7 viously expressed by Mr. Frase and others that the emergency
8 provision in our alternate rule, our alternate proposal, was
9 suggested to accommodate people, both consumers, obviously,
10 and those who must provide those emergency services.

11 Really, as far as our members are concerned, whether
12 you admit it or not, it is not material. I know your concern
13 is whether it might be abused.

14 And I would suggest, sir, that what you do is check
15 with Oklahoma, Utah--those are the two states with uniform
16 codes which I think has the emergency provision in them--and
17 take a look at our compilation and see what other jurisdic-
18 tions have that language, and find out whether it has been
19 abused whether by direct sellers or whoever--I don't know,
20 frankly, anyway, but a language draft which is not susceptible
21 to some highbinder finding a way to misuse it.

22 MR. CABELL: Now, do you believe that if we took
23 the limit or floor established in the alternative provision
24 submitted by Mr. Sherwood's group, that this would alleviate
25 the problem of the Avon ladies and the Fuller brush men or

1 ladies--the small type sales that you refer to in your state-
2 ment?

3 MR. BROUSE: Well, it would alleviate the problem
4 --well, what do you mean?

5 MR. CABELL: That \$25, is that sufficiently high to
6 minimize the impact of the regulation on the Avon-Fuller
7 brush type sellers?

8 MR. BROUSE: Well, frankly, I think that if you look
9 at the, if you would take the last five or ten years and cata-
10 logue the abuses occurring and compare them against the na-
11 ture of the sales and the amount, you would find darn few
12 affecting the sales under that.

13 So that if you wanted to marshall the resources of
14 the agency and the enforcement agencies to effectively enforce
15 the Rule, you should aim it at the largest segments of the
16 abuse to do so effectively.

17 Therefore, I would say that Betty Furness is probab-
18 ly right when she talks about credit and installment buying,
19 and Mr. Givens is probably right when he says that \$100 is
20 realistic, and that Senator Magnuson has a good feel when he
21 says \$60.

22 If the Commission in its wisdom says \$25, you know,
23 an accommodating figure, yes, the industry can live with it.

24 But my personal opinion is that \$100 or \$75 would
25 be more realistic.

1 MR. CABELL: Now, assuming, for the moment, that
2 the Commission has the authority to issue this particular
3 Trade Regulation Rule, could we expect the members of your
4 industry to comply willingly with the alternative rule pro-
5 posed by Mr. Sherwood's group?

6 MR. BROUSE: Mr. Cabell, if you do have the autho-
7 rity, and if you do put in a very strong pre-emption, one that
8 not only goes to the conflicts but goes to the differences
9 that exist between states and between the state and the Fed-
10 eral Rule, I would see no reason why we would not--we would
11 be happy to.

12 This is what we want, as a matter of fact. That is
13 the reason we are going to the Congress, because we feel that
14 it is precisely what we will get there which we aren't now
15 getting here.

16 HEARING EXAMINER DIXON: Along that same line, Mr.
17 Brouse, did I understand you at the beginning to say that you
18 intended to challenge a Rule that the Commission releases?

19 MR. BROUSE: I said that if the, under the present
20 circumstances, since the Congress has not delegated its rule-
21 making authority to the FTC, we feel that we would expect to
22 challenge the validity of the TRR in court.

23 If, between now and the time the Rule is promulgated,
24 the Congress decides to grant you that, that would be an aca-
25 demic question.

1 MR. GILBERT: Also, if the Commission sees fit to
2 provide a pre-emption provision, the previous association
3 would reserve its option on that point.

4 MR. BROUSE: That is a good point. We want unifor-
5 mity. We think the consumers deserve to know where they stand.
6 Certainly the independent sellers who are out in Boise, Idaho,
7 or whatever, who have to comply with 20 jurisdictional require-
8 ments, need some kind of relief.

9 And if the Consumer Federation of America, as they
10 have indicated, are concerned about protection of the consu-
11 mers, the best protection, of course, is compliance.

12 And the best way to get compliance is to have uni-
13 form easy-to-understand rules.

14 HEARING EXAMINER DIXON: I didn't want to indicate
15 any kind of apprehension of a challenge of our rule-making
16 authority, but I did see some puzzlement--I appreciate the
17 clarification.

18 One other question on the dollar limitation. You
19 referred to the fact of a considerably higher amount would
20 really take care of the situation where abuses exist.

21 And yet we had the testimony Monday from Congress-
22 man Rooney that even raising it to \$25 would exempt 80% of
23 magazine sales.

24 Do you have any comment on that?

25 MR. BROUSE: No, I don't have any comment on that.

1 HEARING EXAMINER DIXON: Thank you. The next wit-
2 ness is Mr. Peter C. Ward for Grolier, Inc.

3 MR. WARD: Good morning, gentlemen, my name is
4 Peter Ward. I am suffering from a springtime cold which is
5 trying to divert my attention from the subjectmatter, so if
6 you will please bear with me.

7 Again, my name is Peter Ward, and I am counsel for
8 Grolier, Incorporated, in trade regulation matters.

9 My purpose here today is to give to you Grolier's
10 response to the proposed Rule, and, in doing so, I would like
11 to concentrate on the two main aspects that we see are in the
12 Rule.

13 The first and most obvious is the aspect devoted to
14 the cooling-off period. The second aspect is the introduction
15 at the door, the provision in subsection (g) of the Rule.

16 If I may start out first with the so-called cooling-
17 off provision, I hasten to point out that Grolier has had a
18 cooling-off provision in its contracts for some years now.

19 That provision provides for a 24-hour cooling-off
20 provision unless the laws of the particular states require a
21 longer term.

22 Also, I should point out that notwithstanding this
23 24-hour provision in the Grolier contracts, we do have a
24 department store policy that if, before the parties change
25 their positions, the buyer wishes to rescind, we grant him his

1 request. And that only makes sense really. If you have a
2 dissatisfied customer, you are going to have an awful lot of
3 difficulty making collections and payments from them.

4 So it not only recognizes that business does have
5 an obligation to the American consumer, it realizes that it
6 is just bad business to have unhappy customers.

7 In view of this fact, Grolier has no difficulty
8 in stating to you gentlemen that it supports the principle
9 of the three-day cooling-off period as suggested by the
10 Commission's proposed Rule.

11 I would like to add, however, that we have studied
12 and read and discussed the alternative rule presented by the
13 Ad Hoc Committee. And Grolier finds that, the alternative,
14 to contain many fine suggestions, and perhaps improvements,
15 on the present Rule, and we would adopt the alternative
16 Rule presented by that committee.

17 That rule has been discussed at length during the
18 past several days. And, unless you have some questions that
19 you would like to direct to me, I will not go into the ABCs
20 of the alternate rule.

21 After accepting the principle of the three-day
22 cooling-off period, I feel myself somewhat constrained to
23 say--to call to your attention, I think, the approach of this
24 rule.

25 The rule is essentially, I think, a negative one.

1 On the other hand, Grolier, in the best tradition of industry
2 self-regulation, has looked at the problems here--and I am
3 not trying to kid you, there have been problems--has looked
4 at the problems and approached it, I think, from a far more
5 positive hue, so that he is not branded in the marketplace
6 somewhat like Hester with her scarlet A.

7 Rather it is a positive approach to preventing de-
8 ception, on the one hand, and protecting the consumer, on the
9 other.

10 If I may just briefly tick off a few of the innova-
11 tions that Grolier has made under young, new leadership, I
12 think you will see the thrust of my point here.

13 Some years ago Grolier inserted in all of its con-
14 tracts the prices of the products involved and the fact that
15 it was a universal contract.

16 As you are well aware, some of the problems in the
17 past have centered around misrepresentation as to the price
18 of the product, whether the customer was someone special,
19 specially chosen to receive the product.

20 Thus, contractual provisions stated on their face
21 just exactly what the contract was.

22 As I mentioned previously, Grolier led the industry
23 in inserting a cooling-off provision in all of its contract
24 forms.

25 Most interesting, and, I think, most creative and

1 exciting from the standpoint of consumer reform, is Grolier's
2 institution of a telephone verification system under which
3 every single contract for reference material entered into
4 by any of the Grolier subsidiaries is verified by a telephone
5 conversation.

6 The telephone conversation is not made by someone
7 in the sales department but by someone in the fiscal depart-
8 ment who is not concerned with the commission.

9 The verification consists, first, in making sure
10 that the customer understands all of the provisions of the
11 contract, and then, through a series of searching questions,
12 tries to attempt to find out if the contract was obtained by
13 any means of deception.

14 It is stated Grolier policy that if there are any
15 misunderstandings that cannot be resolved, the contract is
16 cancelled.

17 Now, this, I think, is a far more positive approach
18 to some of these problems than a negative Rule.

19 In this instance, you find there is a great incen-
20 tive for the salesman not to misrepresent, because he reali-
21 zes that if he does, number one, it will be caught by the
22 verification system--number two, he will lose his commission.

23 So therefore the salesman is given a reason not to
24 be deceptive rather than just a rule that must be enforced
25 on the doorstep of every family or every consumer in

1 America.

2 I think that you will agree with me that that is a
3 very difficult rule to enforce.

4 In addition to our verification procedure, we have
5 set up a system of regional control. As you may know,
6 Grolier, Incorporated, is the parent of a number of subsidi-
7 ary companies who are engaged in the manufacture, sale and
8 distribution of reference materials.

9 We realized, a little while ago, that by placing
10 too much autonomy in the various separate Grolier subsidiar-
11 ies, the parent Grolier was losing control over the adherence
12 of its subsidiaries to its conviction that the consumer move-
13 ment must be heeded and must be helped.

14 As a result, we set up eight regional districts in
15 the United States presided over by a regional vice president
16 of Grolier responsible for all the sale activities in the
17 various regions.

18 When I say this, this is not just an overlay on the
19 organizational make-up. Grolier has made clear, quite clear,
20 that it means business and, as an example of that, I learned
21 not too long ago that two highly paid over-\$50,000-a-year
22 executives on the west coast were dismissed by the regional
23 vice president because they were dragging their heels in
24 coming up with and enthusiastically adopting the consumer-
25 oriented policies of the company.

1 One last consumer innovation made by Grolier is
2 the so-called cool line. We are now entering into our con-
3 tracts a telephone number which any customer can call direct
4 into the New York headquarters of Grolier and speak to the
5 vice president and director of customer relations, if he has
6 any question whatsoever about the contract.

7 This is a toll-free call which he can make to New
8 York. He is not dealt with by a computer punchcard. He is
9 dealt with by people. It is a direct contact, and, again,
10 if the problems cannot be ironed out, the contract is can-
11 celled.

12 And, again, that only makes good sense, because if
13 you have a dissatisfied customer, you are obviously going to
14 have a very difficult time getting the product paid for.

15 Having said this, I think that you can see our
16 problem when we see a rule such as this proposed Rule, which
17 is essentially a negative one and admittedly, perhaps, war-
18 ranted in view of some of the problems in the past.

19 On the other hand, I think that I want to convey
20 to you our difficulty we have in taking such strong affirma-
21 tive measures, to then come under a rule which is negative
22 rather than positive.

23 Switching over to the second aspect of the proposed
24 Rule, one in which I know you have shown considerable inter-
25 est, is the provision in subsection (g) which provides that

1 the salesman, before making any further statement to a po-
2 tential customer, must state his name and his purpose in
3 being there to sell product X.

4 I understand that you are also interested why there
5 has been a problem with this by members of the industry. I
6 can speak only from the standpoint of Grolier and the sale of
7 reference materials.

8 But I have thought about this, and I think it boils
9 down to two basic aspects.

10 The first aspect is the nature of selling itself.
11 We need only watch television to see that selling does not
12 consist of coming on strong, I am here to sell you Ajax, and
13 then going on into the little jingle that may have been
14 thought up by an advertising agency.

15 Let's face it, selling is an art, selling is a
16 science, and it is an old, traditional profession in this
17 country.

18 I think, in some respects, this Rule treats it as
19 almost an evil.

20 Most important, from the nature of selling encyclo-
21 pedias, however, is that you must consider the fact that en-
22 cyclopedias, I am afraid to say, are somewhat like glamor.
23 They are not useful from the standpoint of being able to
24 cook your hamburgers on them; they do not make you more
25 beautiful; they don't give you greater status.

1 They are, in sum, an educational tool which some-
2 one who is properly educated into the use of it may benefit
3 from.

4 In view of that fact, I am sure you can see why an
5 encyclopedia salesman would have difficulty if he must first
6 approach the consumer with the fact that he is selling a pro-
7 duct before he is able to talk to the consumer about why he
8 needs the product.

9 It is really an educational process which the sales-
10 man must go through to convince the consumer that this is a
11 valuable product.

12 It is somewhat like not taking a vitamin pill in
13 the morning--if you don't take it, nothing catastrophic hap-
14 pens, but it may catch up with you later.

15 It is the same way with the salesman. He must con-
16 vince the buyer that this is something that the American
17 family needs, a program that will aid him and his children,
18 and then and only then can he say I have a marvelous product
19 that I would like you to see.

20 If you are not permitted to educate the person
21 first, obviously you are going to be turned down at the door.

22 Now, that is the straight facts of it.

23 In view of this position, Grolier would accept the
24 alternate rule subsection (g) also, which does prohibit af-
25 firmative misrepresentations at the door, but would not

1 prevent, in my view, an encyclopedia or reference-materials
2 salesman approaching the problem with the consumer from the
3 standpoint of (a) education as to the use of the product,
4 and (b) sale of the product.

5 The thrust of my remarks has really been, Grolier--
6 and, I can assure you, I have been to New York a number of
7 times on these problems, and I have been tremendously impres-
8 sed by the dedication of the management of Grolier, Incorpor-
9 ated, to the idea that old methods of home solicitation simply
10 will not work today. They are committed to that concept,
11 they are committed to changing these problems.

12 We feel we have taken an active, affirmative ap-
13 proach. We think the best approach to these problems is one
14 of self-regulation accompanied by FTC constructive criticism
15 and guidance.

16 In summary, I would say that if, in the view of the
17 Commission, this is an appropriate time for the imposition of
18 a Trade Regulation Rule, Grolier would support the alternate
19 of the Ad Hoc Committee.

20 But we do agree with the principle, and have proven
21 our agreement with the principle, of the three-day cooling-
22 off period.

23 That ends my formal remarks. I will be glad to
24 answer any questions.

25 HEARING EXAMINER DIXON: Thank you, Mr. Ward. Mr.

1 Cabell?

2 MR. CABELL: Do I understand you correctly when you
3 state that Grolier permits oral cancellation of the contracts?

4 MR. WARD: Yes indeed.

5 MR. CABELL: And they haven't encountered any par-
6 ticular problem in doing this?

7 MR. WARD: Not that I am aware of, because it has
8 not fought them. In other words, oral cancellation is some-
9 thing that Grolier recognizes if--I imagine if there was some
10 dispute over the problem of whether it was or it was not can-
11 celled, that would be a problem, and I dare say in the ordi-
12 nary course of business you do get people who misunderstand
13 each other on the phone.

14 But, in general, we have permitted a phone call
15 which says I would like to cancel. I am sure there is some
16 additional paper work that goes on after that, but the ac-
17 ceptance is taken over the phone.

18 MR. CABELL: Are cancellations permitted after the
19 goods have been delivered?

20 MR. WARD: You are asking me something, sir, that
21 I am not too terribly familiar with, although I would say to
22 you this. I certainly believe it is. If the goods have been
23 simply dropped on the floor, say, they have not been abused
24 or mutilated--obviously, if a person is sitting with a set of
25 encyclopedias in his house and calls up and says get these

1 things out of here, I don't want them--again, good business
2 sense says you are not going to get paid for them, so, for
3 heavens sake, you might as well cancel.

4 MR. CABELL: Well, if you could get it for me, I
5 would certainly like to know what the policies of your com-
6 pany are with regard to cancellations after delivery, number
7 one, and two, what arrangements are made, who bears the cost,
8 of getting these back to the point of origin or shipment?

9 MR. WARD: The customer is told, as I understand
10 it, to send them back to--collect.

11 MR. CABELL: Now, you have directed a good many of
12 your remarks to this provision (g) of the Trade Regulation
13 Rule which requires the salesman to identify himself and
14 state the purpose of the visit.

15 Now, what methods or means does Grolier use to get
16 the salesman in the home at the present time?

17 MR. WARD: My problem is one that there are a num-
18 ber of Grolier subsidiaries all of whom are selling different
19 products, all of whom are probably under different instruc-
20 tions from their various companies.

21 So I don't think there is one method of getting to
22 talk to a customer.

23 Number two, I think you have to realize that there
24 are some 4,000 salesmen knocking on the doors of the American
25 consumer. I don't think that you are going to find that each

1 man parrots the other man. Selling is a personal kind of a
2 contact with the consumer, so while we may give a general
3 guideline, such as Good evening, madam, I would like to talk
4 to you about your son's education and the educational program
5 that we have--something to that effect--each presentation, I
6 think, will vary with the individual seller making the pre-
7 sentation.

8 But may I say two things. First of all, we do give
9 them guidelines. We do forbid them from using certain acknow-
10 ledged deceptive gimmicks to get in the door, number one.

11 And number two, and I think this is particularly
12 important after hearing some of the consumer witnesses in
13 the previous hearings, and that is Grolier subsidiary sales-
14 men talk only to the husband and the wife.

15 We do not have an instance here where the salesman
16 will grab the wife in the afternoon, give her a hard sell,
17 make her sign up for hundreds of dollars of merchandise, and
18 then wait for the husband to come home and say My god, what
19 did you do to me?

20 This is something that is a family decision, it
21 is approached as a family decision, and both the husband and
22 the wife are approached together by the salesman.

23 MR. CABELL: Well, in the light of your remarks
24 about the various methods used or processes you have adopted
25 to protect the consumer, it would seem to me that the

1 company would have issued relatively specific instructions
2 to the salesman on how they get into the home.

3 Now, there must be some sort of program to train
4 salesmen for this problem.

5 MR. WARD: Oh, yes, indeed.

6 MR. CABELL: You must have some sort of advertising
7 policy that you follow to get your leads.

8 MR. WARD: Advertising? Well, there are a number of
9 ways you get leads. Number one, a cold canvas. Number two
10 is going through the telephone book. And number three is
11 sending printed cards, in the magazines which the seller
12 can send in. And number four is to get names from the people
13 to whom you sell the encyclopedias, and their friends.

14 MR. CABELL: To your knowledge, does your company
15 use all of these methods?

16 MR. WARD: To my knowledge, yes, sir.

17 HEARING EXAMINER DIXON: Mr. Ward, I have been sit-
18 ting here for about four days in my best judicial manner lis-
19 tening to Mr. Cabell's exchanges with different witnesses on
20 this same question.

21 And it is beginning to bother me. We get a situa-
22 tion where the salesman is knocking on the door, the home
23 owner opens the door, and you have two people eyeball to
24 eyeball, so to speak.

25 Someone has got to say something. We are not getting

1 a very clear picture of what that salesman who has got the
2 ball in his hands, what he is going to say, although you did
3 indicate that he might open the conversation by saying he
4 is here to discuss the education of your children.

5 Isn't that a rather patently obvious way of con-
6 cealing the fact that you are there to sell merchandise?

7 MR. WARD: I don't know why I have trouble calling
8 that concealing the fact. I think it is a system of selling
9 and that is, if you tell the person that you are there to
10 sell them a product that they have no reason to think at that
11 time they want, the obvious result is going to be a door
12 close.

13 That is just the plain facts of it. I don't call
14 that concealing. That is the first stage of a salesman's ap-
15 proach, he must convince the person that this is something he
16 can use, something that is legitimately valuable in his
17 home.

18 Then he can say--and let's make it clear, I think
19 within a very short time it is obvious why he is there after
20 he gets into the home--but at least it is a method by which
21 the customer can be educated into the use of the product be-
22 fore he says hello, I am here to sell you the Encyclopedia
23 Americana.

24 That is sort of forcing the salesman--somehow, I
25 guess, like having a prima ballerina do five Charleston steps

1 before doing Swan Lake. It is a difficult thing for the
2 salesman's approach to have to hit the customer between the
3 eye with a product the customer really hasn't any idea that
4 he wants, and probably firmly thinks he doesn't want.

5 It is somewhat, I guess, like life insurance.

6 HEARING EXAMINER DIXON: Maybe if you told him why
7 you were really there, he would shut the door.

8 MR. WARD: That may well be, yes. But he doesn't
9 shut the door after you tell him why he can use the encyclo-
10 pedias, why they are beneficial--and then he says, well, my
11 gosh, maybe you have got a point there.

12 HEARING EXAMINER DIXON: Well, you are in the house
13 now. The big hurdle is getting in. Once you get in, then
14 you can bring all the arts of salesmanship to bear.

15 But I submit that really, even with such a seeming-
16 ly innocuous approach such as I am here to talk with you about
17 the education of your children, is not really why you are
18 there.

19 You don't care about the education of my children.

20 MR. WARD: Surely you do.

21 HEARING EXAMINER DIXON: Primarily you care about
22 encyclopedias, selling encyclopedias.

23 MR. WARD: You are selling an encyclopedia, but an
24 encyclopedia is part of an educational program. I think if
25 you had salesmen who were not convinced of the value of their

1 product, you would sell very few encyclopedias. This is
2 something that they must be totally committed to.

3 They are selling a program, they are selling an
4 educational system, and they are selling a product, yes,
5 indeed.

6 There are some 4,000 men who support children and
7 families and so forth on just this very occupation of selling
8 encyclopedias.

9 But I think to call them deceptive because they do
10 not announce coldly at the door, I am here to sell you a
11 product you don't know whether you want or not, is imposing
12 a little bit too much of a restriction on them when there is
13 no indication that they have abused it.

14 Surely if they are using deception, ruses, some
15 tricky little gimmick, that is one thing, and that should be
16 dealt with under the Federal Trade Commission Act.

17 But to impose a rule on each of these salesmen that
18 they have to go through a litany before they can say anything
19 else is, number one, I think, a little unfair, and, number
20 two, it is a little unrealistic to enforce.

21 To put the enforcement of any problems on the door-
22 step of the consumer is a terribly difficult thing. There
23 are always misinterpretations of who said what and when and
24 whether they said it.

25 HEARING EXAMINER DIXON: Well, we have that same

1 problem, and always have, in enforcing the employment of
2 ruses to get into the house.

3 Again, you have the oral confrontation at the door.

4 MR. WARD: Well, it is an oral confrontation, but
5 I dare say the consumer will remember far better if you said
6 hello, madam, you have just won a fantastic prize, let me
7 come in and award it to you.

8 She will probably remember that. I suggest she
9 may have some difficulty remembering whether he identified
10 himself, whether he identified his product, when he identi-
11 fied it, how he identified it.

12 That is something simply that the home owner, when
13 he opens the door, isn't going to remember, because it is not
14 that striking.

15 HEARING EXAMINER DIXON: Thank you, Mr. Ward. The
16 next witness this morning is Mr. John L. O'Brien, Council of
17 Better Business Bureaus. Mr. O'Brien?

18 MR. O'BRIEN: Thank you, gentlemen, My name is
19 John L. O'Brien. I am Executive Vice President of the newly
20 formed Council of Better Business Bureaus, to be headquartered
21 here in Washington.

22 Inasmuch as I assumed that position just on January
23 1, I would like to offer as or by way of credential the fact
24 that I have spent the last 32 years continuously in Better
25 Business Bureau work in Cleveland and Akron, Ohio, and in

1 St. Louis, Missouri.

2 The Council of Better Business Bureaus is a result
3 of a long-sought merger between two former national organiza-
4 tions, the National Better Business Bureau and National
5 Case Work Agency and the Association of Better Business Bu-
6 reaus International, which was a service organization for the
7 139 Better Business Bureaus and the 11 in Canada.

8 The merger of the two organizations represents a
9 major step. We now represent not only the 150 Better Business
10 Bureaus, but several overseas. We represent in membership
11 some 1200 national business firms and about 800 Chambers of
12 Commerce in smaller communities that cannot support Better
13 Business Bureaus.

14 It has been our privilege over the years--we were
15 formed in 1912 as a vigilance committee of the advertising
16 clubs of the world. And the name Better Business Bureau
17 emerged about 1915.

18 It became a formal group organization in 1921. In-
19 terestingly to me, it has been our privilege to run a paral-
20 lel course in the private sector, very often paralleling that
21 of the Federal Trade Commission in the public sector.

22 Many of the matters to which we address ourselves
23 are in the common cause of the public interest. We have had
24 the privilege of serving with the Commission and its field
25 representatives in several of its committees in the formulation

1 of such things as guides against deceptive pricing, guides
2 against deceptive guarantees, deceptive advertising of storm
3 windows, Products Labelling Act, and things of that sort.

4 Very often the Better Business Bureau has been sort
5 of a field laboratory which has been of assistance to the
6 Commission. Likewise on a number of individual cases on
7 which we have shared our findings with the Commission.

8 So we have a statement prepared here. I am encap-
9 sulating pages 1 and 2 in our dual role on the new position
10 in which we find ourselves. We look forward to continuing
11 a strong cooperative relationship with the Commission and
12 other regulatory agencies on behalf of the public and the
13 private sector and in the leadership of the integral part of
14 the business community.

15 The subject of door-to-door selling--and I am re-
16 lating this to the bottom of page 3 now--is of concern to
17 the Better Business Bureau network due to the large number of
18 consumer contacts made by this form of merchandising on an
19 annual basis.

20 Ethical direct selling exists as a powerful force
21 in our economy in that manufacturers have found that, for
22 producer and consumer alike, it is a quick and effective
23 means of selling and can be especially useful in the intro-
24 duction of new products.

25 It is one of the principal forms of merchandising,

1 standing alongside retail stores and mail order establish-
2 ments. Reputable direct sellers are a creative force in our
3 system, building markets and introducing a wide variety of
4 products in a most convenient way for the average person.

5 Organizations and governmental bodies that are
6 concerned with the thrust of consumer protection know that
7 responsible direct sellers have pledged themselves to a res-
8 ponsible course of fair dealing with customers.

9 Yet certain fraudulent and deceptive practices have
10 been engaged in by a relatively few practitioners, causing
11 a number of local ordinances and state laws to be enacted
12 governing the door-to-door sales transaction.

13 My own experience--some of the heartbreaking situ-
14 ations in the fields of the sale of the freezer-food plans,
15 where it is almost a brainwashing process that goes on for
16 hours until, apparently, the householder signs a contract
17 merely to get rid of the salesman at midnight.

18 In the cold gray light of the dawn--in the absence
19 of a cooling-off period--he may well have purchased something
20 not needful to him, perhaps an undue burden.

21 I share the concern with the gentleman from the
22 Consumer Federation and his illustration of the installation
23 of a furnace which may often be on an emergency basis in the
24 cold of the winter, and the manner of returning that particu-
25 lar quality of merchandise in its original condition is a

1 major problem as is the re-installation of the old furnace.
2 It is an area of specifics which the Rule may not have con-
3 templated. It startled me when I heard it brought up. I
4 would like to share it with you.

5 The same thing is true of home improvement, to a
6 lesser intensity, except in the case of a leaky roof. But
7 in the process known as nailing down the job, where a semi-
8 itinerant journeyman salesman may have had his workmen nail
9 a few shingles on a house, and the consumer may well have
10 signed a completion certificate which then discounted to a
11 lending institution under the doctrine of holder-in-due-
12 course creates some additional complexities that may not be
13 a part of this hearing.

14 But this should not be entirely without considera-
15 tion.

16 Most of the laws that we referred to a moment ago
17 give the consumer the right to rescind the purchase within
18 a given period of time from the signing of the contract,
19 whether it is a cash sale or one on installments.

20 The need for uniformity in this area led to the
21 introduction of Senate bill 1599, authored by Senator
22 Magnuson in 1968.

23 Our predecessor, the National Better Business Bu-
24 reau, participated in that hearing, not enthusiastically a
25 proponent, I might add.

1 After careful consideration of the proposal, we
2 support the concept and objective of the Rule--to eliminate
3 fraud and deception in connection with door-to-door sales.

4 And we will comment on some aspects of the Rule and
5 offer some suggestions for the Commission's consideration.

6 The Rule that we stated here for the record in
7 salient requirements, I believe--I will just comment. A
8 three-day period for the consumer to rescind a door-to-door
9 sale; disclosures, both written and oral, that must be made
10 by the salesman at the time of the transaction; the \$10 mini-
11 mum sale for the rule to take effect; the manner in which
12 notice of cancellation may be given to the seller; and pro-
13 cedure for return of a down payment and the retrieval of
14 delivered merchandise.

15 To comment just briefly here without the authority
16 of law, Trade Regulation Rules and pre-emption, unfair me-
17 thods of competition and unfair or deceptive practices in
18 interstate commerce are prohibited by Section 5 of the FTC
19 Act.

20 With Section 5 as authority, the Commission has
21 proceeded on a case-by-case basis in the area of deceptive
22 and fraudulent practices in national advertising, promotion-
23 al devices and other similar areas.

24 In recent years, the Commission has also promulga-
25 ted rules and regulations applicable to unlawful trade

1 practices. These trade regulation rules may cover all ap-
2 plications of a particular statutory provision, or may limit
3 themselves to a particular industry, area or product.

4 As to the door-to-door sale, the promulgation of
5 a Rule could cause potential problems. At this time, over
6 twenty states--as has been frequently stated in these hear-
7 ings--have passed laws governing this type of transaction.

8 Many cities have enacted local ordinances on the
9 same subject.

10 And I may point out that the Rule and these state
11 and local regulations are not consistent with each other.
12 An example of this can be found in comparing the New York law
13 with the Rule in hand.

14 Both the Rule and the New York statute require a
15 written statement to the buyer with specified wording. The
16 wording, however, differs one from the other.

17 New York requires a written notice of cancellation
18 via the mail, whereas the Rule under consideration provides
19 for an oral and written methods of cancellation.

20 The problems of the consuming public would be mag-
21 nified by such inconsistency of regulation among the several
22 states and the Federal Government.

23 It would be most difficult for a local Better Busi-
24 ness Bureau to correctly advise a consumer of his remedies in
25 case of complaint or dissatisfaction.

1 The lack of uniformity would also impede the Bureau
2 in the formulation of consumer education programs in the res-
3 pective community.

4 In addition to consumer difficulty, there would be
5 an undue burden on the seller whenever the procedure to
6 handle requirements of different jurisdictions is not clear.

7 I suggest that, as in the case of multiplicity of
8 installment contracts in the several states, firms operating
9 in several states would be required, under this Rule, to have
10 a complexity of contracts.

11 There is additional cost and confusion not only on
12 the part of the seller but obviously it would be passed along
13 to the buyer as this may proliferate.

14 We bring the problem to the attention of the Commis-
15 sion in the hope that some consideration will be given to the
16 development of a uniform regulation in direct selling.

17 Now, as to specifics. In dollar limitations, we
18 recommend that the Commission consider the fact that in many
19 instances sellers do not employ contracts on low-cost consu-
20 mer items, so that contracts will be required on transactions
21 previously covered by informal sales memos.

22 If this is the case, it might be practicable for
23 the dollar limitation of 10 to be raised to 25 for sales to
24 be governed by the Rule.

25 If the \$10 limitation goes into effect, many firms

1 who now process orders without formal instruments, may have
2 to do so.

3 When Senate bill 1599 was proposed, the bill con-
4 tained an exemption for sales under 60. That figure may well
5 exclude many transactions from the protection of a cooling-
6 off requirement and may therefore be too high.

7 In the interests of equity for the consumer and
8 the seller, we suggest that the sale under 25 be exempted
9 from the Rule. The modification would serve to correct abu-
10 ses and relive sellers engaged in the promotion of primarily
11 low-ticket items from legitimate hardship.

12 Redelivery of merchandise--in many state jurisdic-
13 tions, the failure of a seller to pick up merchandise that is
14 the object of a rescinded contract results in an automatic
15 gift to the buyer.

16 Since this is the case, H2 of the proposal is un-
17 clear, since failure to pick up merchandise would not really
18 be a deceptive practice.

19 We suggest the Commission look into the possible
20 ambiguity and modify the language of this section.

21 Possible exemptions--certain transactions, which
22 could conceivably be included under the present proposal,
23 might be examined with the possibility of exempting them
24 from regulation, as follows.

25 The invitee. When a buyer invites a person into

1 the home, after visiting his home office or showroom, and
2 then consummates the sale at the buyer's residence, this
3 type of sale should not be construed as door-to-door.

4 Such an invitee, often from a responsible, estab-
5 lished local business, is not engaged in door-to-door sales
6 and is merely following up on a customer-invited inquiry.

7 As an aside here, I have to suggest that certain
8 types of telephone canvas have been used as an instrument of
9 deception and entree, and I suggest that there might be some
10 consideration given to this particular form--I have in mind
11 the telephone call which congratulates you on identifying the
12 Star Spangled Banner, and therefore, as a resident of the
13 western hemisphere, you have been selected for this, that or
14 the other thing.

15 I suggest that this is an instrument of abuse.

16 The route salesman, in our possible exemptions, to
17 go on--the procedures outlined for the making of the contract
18 and the rights of the parties as to rescission, etc., are too
19 detailed for the route salesman who can conceivably come
20 within the Rule as to the dollar amounts of each transaction.

21 Examples of this type of sale are dry cleaner, milk
22 man, newsman, and such vendors. Their business is not within
23 the concept of the Rule and should be excluded, as these
24 people visit customers on a rotation basis--weekly, biweekly,
25 monthly--and repeatedly deal with the same customer during

1 the year.

2 When such a customer deals with an established
3 merchant, the requirements of the Rule would not serve a use-
4 ful and productive purpose nor would it assist the Commission
5 in curbing the practices of the disreputable seller.

6 The repeat sale--as in the case of the route sales-
7 man, there are instances where certain salesmen and firms
8 merely solicit a firm customer by telephone or refill an or-
9 der on a standing basis.

10 Contracts are infrequently used in this established
11 course of dealing and thought should be given as to exclusion
12 of this type of sale from a finally promulgated Rule.

13 In conclusion, while these comments on the Rule are
14 not exact or exhaustive, we hope that the Commission will
15 take some of these factors into consideration before promul-
16 gation of a final Rule.

17 The Council of Better Business Bureaus, with the
18 primary goal of self-regulation in mind, hopes that it can
19 work with the Commission in the area under discussion today,
20 and in other endeavors that will result in effective consu-
21 mer education.

22 May we thank you.

23 HEARING EXAMINER DIXON: Thank you, Mr. O'Brien.

24 Mr. Cabell?

25 MR. CABELL: Mr. O'Brien, in regard to your

1 comments on the retrieval of merchandise which the seller
2 has left in the home or delivered to the home, do you sug-
3 gest that he not be required to pick it up?

4 Now, the reason that was put in there was because
5 some of this merchandise, some of these articles, may be ra-
6 ther difficult to get in and out of the home.

7 And if we adopted such a provision, it seems to
8 me that you might impose a rather substantial burden on the
9 consumer to have ---

10 MR. O'BRIEN (Interposing): Ecological waste, as
11 it were.

12 MR. CABELL: That is right. Now, with regard to
13 your comments on the invitees, do you have any suggestions
14 as to how we can separate the sheep from the goats?

15 MR. O'BRIEN: That was the part that gave me the
16 greatest puzzlement, sir, in the development of this presen-
17 tation.

18 There are practices and practitioners, of whom I
19 am sure you are familiar, who simply engage a motel room
20 for a short period of time, run some advertisements, res-
21 ponsible-appearing advertisements, often with the character-
22 istic of bait--but they are in effect, under our exemption
23 here, an established business.

24 So whether or not they are likewise reasonably
25 established local practitioners who carry on all the abuses

1 that the Rule addresses itself to--on the other hand, the
2 interior decorator, for instance, who is invited to come to
3 the home. He is not a canvasser, he is not soliciting the
4 business except through advertising as part of an established
5 retail business.

6 His counsel and guidance is a little artistic and
7 it may not come out quite the way the housewife thought, but
8 that is a matter of her own taste, it is a very uncertain
9 area.

10 I am just trying to think aloud here on how to de-
11 fine--I would not think that the Commission would want to
12 exempt an established local business per se, just put the
13 burden on only itinerants and interstate commerce.

14 I don't have an answer. I suggest that it needs
15 further consideration for this very cloudy question.

16 MR. CABELL: Now, also, the exception--you recom-
17 mend the exception of route salesmen as well as the repeat
18 sales.

19 Yesterday we had a considerable bit of testimony
20 describing the operation of the peddler who operates in the
21 ghetto or poor areas of the city.

22 This man, we were told, sells all sorts of things
23 --refrigerators, bedspreads, pots and pans--on a recurring
24 basis.

25 Now, it seems to me that if we adopted the provision

1 you recommend here, that we would be certainly permitting the
2 peddler to operate just about the way he has in the past.

3 MR. O'BRIEN: My thought there was the convenience
4 of the repeat salesman who calls from the store, from per-
5 haps a grocery store, perhaps from an established retailer.
6 Even in some of the responsible areas of magazine selling,
7 there is a direct customer relationship that has been estab-
8 lished over a period of years, and there is no thought on
9 either party that they have had an oral notification, that
10 they may cancel--there is no contract in existence.

11 I can share with you the kind of experience in the
12 underprivileged areas. I was one time invited by an elderly
13 colored man to make the last payment on his diamond ring,
14 because if he had made it, they would sell him something
15 else.

16 HEARING EXAMINER DIXON: Thank you, Mr. O'Brien.
17 Thank you for coming. A propos of the prior discussions,
18 particularly in mind with Mr. Ward over this question of
19 the door opener, Mr. Sherwood has indicated that he might
20 have some additional light to shed on the questions we have
21 been asked.

22 Since we do have a few minutes here, I wonder if
23 you would like to do that now?

24 MR. SHERWOOD: Thank you very much, Mr. Dixon.
25 These are completely ad-lib, unrehearsed remarks.

1 But I think because the questions have been quite
2 pointed at this particular area, many of the witnesses have
3 had difficulty in dealing with this question.

4 I think that it behoves me, as chairman of the Ad
5 Hoc Committee, Inter-Industry Committee, to try to explain
6 my view on where this fits into the picture, and perhaps try
7 to answer some of the questions that have been posed in the
8 last few days.

9 This requires me to explain a little bit my earlier
10 experience.

11 I did sell, earn my entire living from selling, in
12 the home for a period of ten years before I moved into a
13 little higher range in the scale. Therefore, I have had per-
14 sonal experience of calling on actually thousands of homes
15 and making presentations and sales to thousands of American
16 families.

17 Now, in my opinion, with that background as a sales-
18 man, the Commission in its proposed Rule is really requiring
19 that a person in my capacity must state a definite untruth.
20 And this, I do not think, is within the scope of the power and
21 authority of the Federal Trade Commission.

22 As I look back upon my experience, my purpose at
23 the door, very, very sincerely, was not to sell whoever was
24 behind that door, or whoever answered the door, the product
25 I was selling.

1 My purpose at that point was, first, simply to find
2 out whether these were people who might possibly be interes-
3 ted in any way in having this particular product.

4 Now, first, you have to go through a great many
5 steps, quite a number of definite steps, before you find whe-
6 ther the person that you are talking to or are going to talk
7 to in their home is in any way a prospect for the product
8 that you wish to present.

9 There is no point in taking the time and presenting
10 the product to someone who has either bought the same product
11 within the last couple of years--in many instances, this is
12 the case, an educational product, many homes have one--the
13 main question is, how old is it? how long has it been there?
14 is it a comprehensive work compared with perhaps a very
15 skimpy type of a work? is it two volumes or 24 volumes or
16 what?

17 You need to know many, many things. You need to
18 know whether there is any one in the home who will use the
19 product that you are there to present and demonstrate.

20 Now, in my experience, the decision as to whether
21 there would be even an attempt to sell the product was not
22 made by me as a salesman until probably 5 or 10 minutes had
23 passed.

24 And this was a definite, shall we say, pattern of
25 determining whether there is any point in spending the time

1 with that family or with that individual--usually a family--
2 to go into a presentation that might conceivably lead to a
3 sale.

4 I can say in complete honesty that I called at many
5 thousands of homes where I could not say honestly at the door
6 that I was there to sell the product that I was selling.

7 I will give some examples. For instance, the com-
8 pany that I represented prepared certain types of cards and
9 mailing pieces, one, for instance, which offered a free map
10 in connection with a preview or a brief demonstration of the
11 product that I was representing.

12 I bought these cards from the company, I addressed
13 them and mailed them myself to people within the area in
14 which I was going to call.

15 Now, when these cards came back to me, I felt under
16 an absolute responsibility to deliver that item, that free
17 map, to every single person that requested it, regardless of
18 whether that person was what we called a prospect for the
19 product that I was prepared to sell if we came to the point
20 of determining that there was a possible sale in that picture.

21 Now, I have delivered the free map to rural migrant
22 workers down muddy farm roads. I have also delivered a free
23 booklet concerning the product I was selling.

24 In those circumstances where there was not the
25 slightest possibility, unless by the very remote chance that

1 that person had won a sweepstakes the day before and was
2 about to move out in some other area and might want to pay
3 cash for the product--obviously this is so remote as to be
4 almost incomprehensible.

5 Yet in many, many situations such as this, my pur-
6 pose was simply fulfilling the request that had been made to
7 me without the slightest intention at the door, or even if
8 I were invited into that home, of going through with a sales
9 presentation or a sales transaction.

10 Therefore, to compel me in every single instance
11 where I came to a home to say I am here to sell you a certain
12 product, would be definitely untruthful as well as unfair to
13 my method of approaching these people as a salesman.

14 Now, in our regular course of approaching the
15 sale or the presentation of this type of product, it was very
16 standard--and when I later got into management and trained
17 sales people, I trained very carefully on this procedure,
18 that there should be no decision made as to whether there
19 was even going to be an attempt made to sell this family the
20 product until the first 5 minutes had passed, of giving brief
21 information, of finding out by asking a direct question of
22 whether, if you could afford this particular product that I
23 have given you brief preliminary information on, you could
24 afford this, would you like to own it?

25 Only at that point, which is not at the door--it

1 is after a very brief period of preliminary information
2 given, that the decision of the salesman is made as to whether
3 he is there then a salesman or not.

4 And from my long experience over these ten years,
5 I feel very sincerely that the Commission would be compelling
6 the American citizen who is in the sales profession or in a
7 profession representative of a company, a direct-selling com-
8 pany, to state a specific untruth.

9 And I think this cannot be. Now, that is one rea-
10 son why, in our Ad Hoc Committee deliberations, we went the
11 route of providing the prohibition against misrepresentation,
12 ruses, fraud, false pretenses, to gain entry.

13 But, in my opinion, and I haven't really discussed
14 this with the others on the Ad Hoc Committee--in my opinion,
15 the Rule would be much cleaner, clearer, simpler, and more
16 effective as a piece of Federal uniform regulation, if it ad-
17 dressed itself only and entirely--well, I won't say only, but
18 addressed itself primarily to the cooling-off period, the
19 notice on the contract, the mechanics for restoring the buyer
20 and seller to their initial positions if certain things had
21 happened after the contract was signed, and goods had been
22 shipped and couldn't be stopped, and that sort of thing--
23 with the other prohibitions, the prohibitions against waivers
24 the prohibitions against misrepresentation of the right to
25 change one's mind, the right of cancellation, with the prohi-

1 bitions in regard to transfer of paper, with the safeguards
2 that our Ad Hoc Committee has recommended--I think, with the
3 emergency clause included, the pre-emptive clause, as Mr.
4 Millstein so ably presented the case for the pre-emptive
5 clause yesterday.

6 But I do not see that the door-opener problem is
7 really an essential to the promulgation of a satisfactory
8 and constructive Rule, which we certainly would favor.

9 Because, after all, you are dealing with two dif-
10 ferent types of things. In the cooling-off provision, actua-
11 lly, there is nothing inherently deceptive in American law,
12 basic common law, with not doing what you are proposing to
13 do--in other words, it is almost, you might say, a legal fic-
14 tion that everyone agrees that from this point on it will
15 become an unfair and deceptive practice not to give the buyer
16 three days in which to change his mind.

17 But this is not something which is in and of itself
18 a right which you would call failure to do it, deceptive.

19 Now, you have used it as a punitive remedy, of
20 course, in certain cases, where you have alleged definite
21 deception, you have used this as a cure in those specific
22 cases.

23 But now you are proposing to spread this to every-
24 one, and we accept this, we endorse it. We now feel that
25 this is the low-cost method of providing consumer protection,

1 that it is a good method.

2 We have reports submitted already to your Commis-
3 sion, for instance, by the Maryland Consumers' Association,
4 that since the adoption of the Maryland cooling-off law last
5 year, there have been no complaints received by their asso-
6 ciation on door-to-door sales.

7 This was submitted for your record. The other
8 submission, the legal department of the military--I think it
9 is Fort Holabird--that is also in your docket, where they say
10 signed by four of the officers, that the problems in the
11 direct selling area have practically disappeared since the
12 adoption by Maryland of a cooling-off law.

13 Now, this treats only the areas treated by the
14 Uniform Consumer Code which is the cooling-off area, with the
15 emergency clause, how you get the merchandise back, how you
16 get the payments back, the notice, and so forth.

17 It seems to me that you would have a much clearer
18 and much stronger Rule if you were to confine yourself to
19 those aspects of it.

20 We felt in discussing this in our Ad Hoc Committee
21 that it probably would be too glaring an omission to say,
22 well, we don't believe there should be some treatment of the
23 door opener in there.

24 Also, we understood that, while you already have
25 the power to deal with deception at the door, you have in

1 many orders and proceedings, that somehow, by promulgating
2 a Trade Regulation Rule with this specifically spelled out,
3 there would be some additional power or tool given the Com-
4 mission to police this.

5 Therefore, we did sincerely feel we were going a
6 step beyond the previous situation by spelling out this pro-
7 hibition against misrepresentation in our proposed rule.

8 But I think it would be a better Rule without treat-
9 ing the door opener, because it is such a cloudy area to try
10 to treat.

11 And I do sincerely feel, as I said initially, that
12 to compel a person at the door to state the things that the
13 proposed Rule would require would be requiring an American
14 citizen, in many cases, to state a definite and specific un-
15 truth.

16 HEARING EXAMINER DIXON: Thank you, Mr. Sherwood.
17 Mr. Cabell, do you have any questions?

18 MR. CABELL: Yes, sir, just a couple, if I might.
19 It seems to me that this provision on which you have spoken
20 would have its greatest impact upon the cold canvasser, is
21 that true?

22 MR. SHERWOOD: Yes, I think that is true, because
23 anyone that comes in connection with some prior contact, whe-
24 ther it is a lead or an inquiry of any kind--he is approach-
25 ing at least with some element of prior signification of

1 desire, at least to discuss the basic idea or receive some
2 information, or something of the kind, yes.

3 I think the cold canvas probably would be most af-
4 fected.

5 But if I may make a comment on cold canvass, which
6 I think is germane, the statement has been made by a number
7 of witnesses in this proceeding that a person who comes by
8 cold canvas is coming upon a person who had no prior thought
9 of entering into this transaction or even had no idea that
10 he or she might want this particular product until that per-
11 son comes to the door, unawares.

12 Now, in my experience, I would say that this is not
13 correct, and, for the record, this should be, this statement
14 should be modified.

15 I have found in my long experience that many people
16 have a basic desire for a particular product, probably for
17 many products, different types of thing for their home, which
18 they will not take the initiative to go to the telephone and
19 say I would like to have a demonstration of this product.

20 I think partly because then they are under quite an
21 obligation, if they have initiated the inquiry. They are in a
22 much more favorable position, if the contact has been cold,
23 because they are really under no obligation as compared with
24 a situation where they had phoned for someone to come.

25 Now, in cold canvas, if it is done correctly, it

1 is simply to find those people who have a basic and inherent
2 desire for this type of product, but who have not taken the
3 trouble up to that point to initiate the inquiry or the re-
4 quest.

5 So it is definitely surfacing a need. But speci-
6 fically saying a certain thing at the door, yes, I would
7 agree that those would probably affect the cold canvasser
8 more than the person whom comes by way of inquiry. Yes.

9 MR. CABELL: So we would expect that it would have
10 the least effect on those companies which have a relatively
11 elaborate and refined lead-gathering procedure?

12 MR. SHERWOOD: Well, no. I think those companies
13 are taking it very seriously indeed, because of how this is
14 to be interpreted.

15 And I think those companies can presume that it will
16 be interpreted in a most strict way and can be applied.

17 And the question is where this particular disclo-
18 sure must be made. Must it be made initially if it is a tele-
19 phone contact? Does that take care of the disclosure? Does
20 it need to be made again at the door? And that sort of thing.

21 I think companies which are nationally established
22 companies will be bending over backwards to try to comply
23 strictly, regardless of the cost and possible losses of pre-
24 sentations and sales.

25 And it is again the fringe element that is so

1 difficult to get at who will find ways of evading this.

2 Therefore I prefer to see a Rule which is sound
3 and which can be adhered to easily and simply rather than
4 have something that will make the responsible companies make
5 every effort to conform and leave irresponsible ones, or in-
6 dividuals, trying to find ways around it.

7 MR. CABELL: But there can be little doubt that the
8 inclusion of this provision in the Rule would impose a sub-
9 stantial burden or handicap upon industry members?

10 MR. SHERWOOD: In my experience as a sales repre-
11 sentative, I would say that this would have imposed an impos-
12 sible handicap on me in going to those homes. I could not
13 have gone to those doors and said I am here to sell you some-
14 thing when I had not the slightest idea whether this was a
15 family of two elderly people, a family with no children, a
16 family that had just bought my product the day before or had
17 bought a competitor's product of perhaps similar quality and
18 size.

19 They are not prospects. It would be a tremendous
20 handicap. I would say an impossible one for me to have to go
21 to every door and say I am here to sell you the product.

22 HEARING EXAMINER DIXON: Thank you, Mr. Sherwood.
23 That concludes the schedule for this morning. Hearing will
24 now adjourn to reconvene here this afternoon at 2 o'clock.

25 (Whereupon at 12:15 p.m., a recess was taken until
2:00 p.m., this day.)

AFTERNOON SESSION

2 p.m.

1
2
3 HEARING EXAMINER DIXON: May we come to order,
4 please?

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

8 For the benefit of those who have not been here
9 before, I am William Dixon. I am the Assistant Director for
10 Industry Guidance in the Commission's Bureau of Consumer
11 Protection.

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

14 My first witness for this afternoon is Mrs. Bette
15 Clemens of the Bureau of Consumer Protection, Office of the
16 Attorney General, Commonwealth of Pennsylvania.

17 Mrs. Clemens?

18 MRS. CLEMENS: Thank you, gentlemen. The Bureau
19 of Consumer Protection, Commonwealth of Pennsylvania, strongly
20 advises the proposed regulation of the Federal Trade Commis-
21 sion which would create a three-day cooling-off period with
22 respect to contracts made at the consumer's home.

23 This would uniformly cover the door-to-door selling
24 industry.

25 Pennsylvania already has a two-day cooling-off

1 period under its Unfair Trade Practices and Consumer Protec-
2 tion Law.

3 The right to cancel covers all contracts made at
4 the home of the consumer which are in excess of \$25.

5 The cooling-off period is considered by the Common-
6 wealth of Pennsylvania to be important in all door-to-door
7 sales transactions for the following reasons.

8 In many instances, sales people initiate a call on
9 the consumer in an attempt to sell items which the consumer
10 may not necessarily want. Since the consumer has not initia-
11 ted the transaction by affirmatively taking steps to go to the
12 place of business of the salesman, frequently he has not
13 seriously contemplated the purchase of the item.

14 The experience of the Bureau of Consumer Protection,
15 which coincides with the experience of other bureaus of con-
16 sumer protection, is that the door-to-door selling industry
17 frequently, and I would say mostly, utilizes the sales prac-
18 tices of a highly motivated nature which many consumers are
19 unable to withstand.

20 Frequently the persistence of the sales person in
21 the home of the consumer makes it difficult for the consumer
22 to withstand the highly motivated sales promotion.

23 The practice of going to the home of the consumer
24 tends to eliminate the options open to the consumer who shops
25 in the business establishment of the business person. It is

1 the practice of most consumers to shop for comparative
2 prices when purchasing from business establishments. It
3 apparently is not the practice when the consumer is a captive
4 audience of a door-to-door salesman.

5 If the product or service sold by the door-to-door
6 salesman is meritorious, economical and needed, the sale will
7 stand up even after a period of three days.

8 The experience of the Bureau of Consumer Protection
9 in the Commonwealth of Pennsylvania is that the two-day
10 cooling-off period has been a most important and useful tool
11 in the protection of the consumer. The legitimate business
12 person has not suffered from the Pennsylvania law which is
13 now two years old.

14 Many transactions by the door-to-door selling in-
15 dustry are in interstate commerce and, consequently, a nation-
16 al policy concerning the right to cancel contracts is impor-
17 tant.

18 We in Pennsylvania would suggest that the right to
19 cancel within a three-day period should be brought to the
20 attention of the consumer through the use of cancellation
21 notice forms given to the consumer at the time of the trans-
22 action very similar to the requirements under Regulation Z
23 promulgated under the Federal Truth-in-Lending Act.

24 And, as an afterthought, I would like to say that
25 our law has been a godsend to Pennsylvania consumers.

1 Thank you very much.

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

4 MR. CABELL: Mrs. Clemens, does your office have
5 a record of complaints which would provide any specific de-
6 monstration of the degree to which the cooling-off provision
7 is used?

8 MRS. CLEMENS: Well, we don't have it broken out
9 as such. We could do it very easily. It would take maybe
10 three or four days. We don't have a staff to maintain this
11 type of--well, I could tell you that, in the area of magazine
12 sales, the pots and pan type thing, and this sort of thing,
13 the complaints are enormous.

14 I know that every day we have five offices in Penn-
15 sylvania, when we have received a great deal of them, a great
16 deal of them.

17 MR. CABELL: Now, are these from people who didn't
18 use the cooling-off provision or didn't know about it or for
19 what?

20 MRS. CLEMENS: Sometimes they don't know about it.
21 And, I might add--and this is rather a funny little story,
22 but it is also a sad one. A woman called our office one day
23 and wanted to know how she got out of a contract that she had
24 signed from a door-to-door salesman or if it were possible.

25 My secretary asked her what she had bought and why

1 she was dissatisfied and when she had bought it.

2 The woman said twenty minutes ago and she said I
3 bought \$300 worth of baby furniture, I am 60 years old and
4 don't have a grandchild.

5 So you can see that some women, and men too, just
6 simply do not have any sales resistance.

7 And this law has been a godsend to this type of
8 person. They should never open a door to a salesman because
9 they have no sales resistance.

10 Now, that woman, if she had gone into a department
11 store, would never have gone to the baby furniture department
12 because she had no use to go.

13 But since the man came to her home, she actually
14 bought \$300 worth of baby furniture.

15 We also find that many times people do not know
16 about the law until it is too late. And, of course, we have
17 stressed this in brochures and in speeches and in everything
18 that we have done.

19 There has not been enough emphasis placed on it,
20 and also we have found that many of the unscrupulous ones
21 have on their contract, this contract cannot be cancelled.
22 We have found many of these.

23 MR. CABELL: Well, isn't such a provision in contra-
24 vention of the Pennsylvania law?

25 MRS. CLEMENS: It is in violation and we can take

1 action, but there are many times--we don't know how long it
2 has been going on before it has come to our attention, be-
3 cause we only have eleven investigators in the state of Penn-
4 sylvania.

5 And, unless it is brought to our attention, it is
6 almost impossible for us to find it. I don't think it is
7 required that they register the contract at the time they re-
8 gister to do business in Pennsylvania. This, of course, would
9 help us a great deal.

10 But I do think it is important that it show on
11 there that the contract can be cancelled.

12 Now, we require in writing--and I am not sure that
13 a telephone call--well, I think maybe this is going to cause
14 problems as far as the state bureaus are concerned in that
15 what is the burden of proof then lie as to whether or not the
16 telephone call was made.

17 We require it in writing.

18 MR. CABELL: Well, do you think this provision in
19 your law has been of any benefit to the people in the ghettos,
20 extremely poor people?

21 MRS. CLEMENS: Yes, particularly in the case of
22 magazines. It has been very helpful there, very helpful.

23 MR. CABELL: Now, you established a \$25 limit. Our
24 proposed Rule has a \$10 limit. Now, has your experience been
25 that the \$25 limit is low enough to include most of the type

1 transactions that are concerned?

2 MRS. CLEMENS: Yes. Our experience with the \$25
3 limit has been very satisfactory. Now, of course, it has
4 never been brought to our attention anything lower than that,
5 so I really have no way of basing whether or not the \$10
6 would be better, because, of course, the ones we receive are
7 over the \$25.

8 HEARING EXAMINER DIXON: Does that include most of
9 the magazine sales as well?

10 MRS. CLEMENS: \$25?

11 HEARING EXAMINER DIXON: I mean would that cover
12 most magazine sales? The reason I ask the question is that
13 Monday, Congressman Rooney testified that if we raised it to
14 \$25 we would exclude from coverage 80% of magazine subscrip-
15 tion sales.

16 MRS. CLEMENS: No. It has been our experience in
17 Pennsylvania that the contracts that are entered into for
18 magazine sales are \$150. Anyway, they are over \$100, be-
19 cause they are for a four or five-year period.

20 And, of course, the down payment is \$6. This is
21 the initial payment.

22 But all of the contracts are over \$100 in the maga-
23 zine industry. And, of course, the pots and pans are some-
24 times \$300.

25 So this is well over. I think that a \$10 would,

1 of course, be helpful, but I think the \$25--I think it is
2 fine.

3 MR. CABELL: Well, it has been suggested that we
4 would be well-advised to limit the application of our Rule
5 to installment sales, or sales involving some kind of credit,
6 and I wonder if you could comment on that?

7 MRS. CLEMENS: No, I think that the overall contract
8 signed in a home when somebody comes to your home, whether or
9 not there is installment buying concerned or not, it should be
10 that anything over a certain amount can be cancelled within
11 three days.

12 I can see what would happen. This would be a
13 Pandora's box type thing. No, I would not go along with that.

14 I think it should cover anything that is sold to
15 you in your home where a man comes to your door.

16 MR. CABELL: Now, does your law apply to such situ-
17 ations as this. A lady wants to buy some carpeting, so she
18 calls a lady in a retail establishment in town, and the sales-
19 man comes out with samples and sells her a carpet.

20 MRS. CLEMENS: No, because she has solicited him to
21 come into her home. It is just simply where the consumer has
22 not solicited the salesman to come into the home. So it
23 would not be covered in this particular instance.

24 MR. CABELL: Well, now, can you give me a little
25 more information on how much solicitation a customer has to

1 do on his own. For example, suppose he responds to a mailer
2 or to an advertisement in the newspaper, send us your name
3 and we will provide you with additional information concern-
4 ing such-and-such.

5 Would that make your law inapplicable?

6 MRS. CLEMENS: Well, now, I am not really quite
7 sure as to the way the law is written, but I think that in
8 that instance, where there is a mailer sent in to the home,
9 this would be the same as the door-to-door sales type--in
10 other words, they have come and knocked at your door through
11 the mail.

12 So they have contacted you first. I am talking
13 about the retail establishment where I call up and say would
14 you come out and make me slip covers.

15 It would not cover that. But where the initial
16 approach has been to contact you by the seller, it would ap-
17 ply.

18 MR. CABELL: Well, do you think that the provisions
19 of your law are adequate in the sense that they don't include
20 this great mass of transactions in which the consumer might,
21 in some fashion, solicit the call?

22 MRS. CLEMENS: Yes. As a matter of fact, it would
23 be very helpful, because we have found--you mentioned carpet-
24 ing. Now, this particular area, where there is advertising
25 a great deal on carpets, and you call such-and-such a number,

1 and you request a salesman to come out and he comes out to
2 your home, and, of course, it is the high-pressure type
3 salesmanship. And you sign a contract for something like
4 \$800 or \$900 worth of carpeting.

5 And in this type thing, yes, I do think that it
6 should be covered, that anybody who goes into your home and
7 asks you to sign a contract in your home, that he should be
8 covered, yes, I do, because any time that you hire the type
9 of salesman that can close a deal, the fast close, or the
10 type of salesman who won't leave your home until you have
11 signed the contract--we have had cases where consumers have
12 been up until three o'clock in the morning because he won't
13 leave.

14 I think yes, they should be covered, definitely.

15 MR. CABELL: Thank you.

16 HEARING EXAMINER DIXON: Mrs. Clemens, we have had
17 some very erudite discussions during the past four days on
18 the question of Federal pre-emption. I don't know whether
19 you care to get involved in such a debate or not, but it is
20 a very real part of this proceeding.

21 Many members of the industry that actually are sup-
22 porting the rule have made the point that they are presently
23 confronted with some twenty-odd state laws, with more to
24 come. And now the Commission intends to superimpose still
25 another law and that the burden of trying to comply with all

1 of these at once is getting quite onerous.

2 So they are arguing that the Commission should
3 promulgate a Rule and that they should make it quite clear
4 that it intends to pre-empt this field insofar as interstate
5 businesses are concerned.

6 Do you have any comment on that?

7 MRS. CLEMENS: Well, of course, I think they have
8 a very valid argument, I really do. I think, in all proba-
9 bility, in the case of Pennsylvania, that we could probably
10 amend our law to coincide with the Federal law for three
11 days.

12 And I think that a great deal of the consumer laws
13 should be uniform throughout the United States.

14 And in the cases where the states do not have this
15 type of law, of course it is going to be a godsend to the
16 consumer in that state.

17 I think in this area we do need Federal interven-
18 tion, I really and truly do.

19 I believe that you are going to be helping all of
20 the people.

21 HEARING EXAMINER DIXON: You think that the state
22 of Pennsylvania would be at all upset if the Commission did
23 announce that it was promulgating a Rule and that it did in-
24 tend to pre-empt the field?

25 MRS. CLEMENS: Well, of course, I can't speak for

1 the Commonwealth, but I don't know why they would.

2 HEARING EXAMINER DIXON: I can't speak here either
3 for the Commission and you and I can't resolve all the legal
4 problems that might be involved.

5 But I was just wondering the reaction there, be-
6 cause it would have the effect of virtually wiping out all
7 these various state laws where interstate businesses are con-
8 cerned, certainly not where local businesses are concerned.

9 MRS. CLEMENS: In other words, are you telling me
10 that if this law goes into effect that we will no longer be
11 able to enforce your law and our law will be wiped off the
12 books, is that what you are telling me, that I would not be
13 able to enforce the current law that I have now?

14 HEARING EXAMINER DIXON: As to interstate business-
15 es.

16 MRS. CLEMENS: Well, that would present a problem,
17 of course, because we do like to control our own bureau and,
18 of course, this law has been marvelous for us.

19 But I think if it is good for the entire country,
20 I am sure that Pennsylvania would go along with it. I am
21 positive of that. And it would be in the best interests of
22 the United States, there is no doubt about that.

23 HEARING EXAMINER DIXON: Thank you, Mrs. Clemens.
24 Next we will hear from Mr. Edgar Hall, Executive Director
25 of the National Home Improvement Council.

1 I am not sure we will hear from Mr. Hall or not.
2 Is Professor Guttman here--Washington College of Law, The
3 American University? Professor?

4 MR. GUTTMAN: I don't know whether you want me to
5 go through a formal presentation or whether you prefer to
6 read this quickly through, whatever suits you.

7 HEARING EXAMINER DIXON: Go right ahead, sir.

8 MR. GUTTMAN: All right. My name is Egon Guttman.
9 I am a professor of law at the Washington College of Law,
10 American University, and a visiting professor at the Howard
11 University School of Law.

12 I have appeared before the Commission before, re-
13 presenting the Ad Hoc Committee on Consumer Protection of the
14 District of Columbia, and similar matters, such as warrantees
15 and other investigations that you have had.

16 And mainly we are concerned with the desire to se-
17 cure a fair deal for the consumer without derogating from the
18 fair expectations of honest businessmen.

19 Unfortunately, we are still forced to have laws
20 and regulations, not for the honest entrepreneur, who is
21 rarely involved with this problem, but to prevent the harm
22 caused by bad business practices condemned by all honest and
23 efficient businessmen.

24 As Oliver Wendell Holmes pointed out, we have to
25 have laws and regulations to set the parameters within which

1 the bad man acts, which enable him to decide that the return
2 is not worth the illegal act.

3 Last week the court of the District of Columbia
4 took a hoped for step forward in protecting the former custo-
5 mers of what called itself a home improvement corporation
6 which charged and collected money for work it did not perform
7 or performed in an unsatisfactory manner, and for excessive
8 charges.

9 As a result, the Monarch Construction Corporation
10 and its financial affiliates find themselves unable to bene-
11 fit from their nefarious schemes.

12 Yet such a remedy is both too late and too expen-
13 sive to obtain. We seek prevention rather than cure. It is
14 not the dog law, as Bentham called the common law--to punish
15 the dog after he has done something--but the pure coin of the
16 realm, ready for instant use, such as statute law, that we
17 need to alleviate an existing problem.

18 Unfortunately, the Magnuson Bill, S1599, was not
19 enacted into law and the Uniform triple C with all its weak-
20 nesses has only been enacted in Oklahoma, Utah and Wyoming,
21 and it has passed the Indiana legislature--it has not been
22 signed.

23 Whether the approach adopted by you, use of rule-
24 making powers to regulate door-to-door sales, is the most
25 effective method, is subject to question, especially in the

1 light of the weakness of enforcement provisions existing in
2 this area.

3 As you know, your procedure is rather lengthy and
4 unlikely to have any real clout, and by admitting that we
5 won't do something which we don't admit that we ever did
6 before, we might stop doing something that has proven to
7 be wrong, we don't really have any effectiveness.

8 Unfortunately, I don't think the Commission is very
9 good in that area.

10 However, if this approach of yours is as effective
11 in making Congress act as the Commission's regulations cov-
12 ering the unsolicited distribution of credit cards has been,
13 then, these efforts will not have been a waste.

14 It is clear to most of us who have experience with
15 the abuses of the unscrupulous door-to-door salesman that
16 regulations governing this method of doing business are neces-
17 sary. The files of the Commission are replete with cases
18 ranging from home-improvement sales to sales of magazines or
19 magazine subscriptions.

20 Here in the Washington area, where we have so many
21 single lonely persons who are fair game for these salesmen,
22 this is a serious problem.

23 Let me recite just one case that has come to my
24 knowledge recently. It refers to a young attractive secre-
25 tary who found herself without a date one Saturday night.

1 Sitting in her efficiency apartment, she heard a
2 knock on her door and found a handsome young man who asked
3 to talk to her and who offered to sell her some photographic
4 services.

5 She admitted him and found herself signing a con-
6 tract for some portrait photographs, plus some photographs
7 to be taken at her engagement party, her wedding photographs,
8 and even some to be taken at the christening of her first
9 child.

10 All for twelve monthly payments of \$25 each, com-
11 mencing immediately.

12 This may sound reasonable were it not for the fact
13 that the young lady was only nineteen years of age and had
14 not even anyone who could be called her steady boyfriend.

15 And only by pointing out that the young lady was
16 still legally an infant, was it possible for us to help her
17 recover her original down payment and obtain the return of
18 the various papers, including a promissory note which she
19 had signed.

20 What made the contract so objectionable was not
21 only the obvious overreaching of this door-to-door salesman,
22 but also the fact that the contract purported to bind this
23 lady immediately while the selling organization purported to
24 reserve to itself the right to resile from its obligations
25 if its credit check should fail to support the buyer's credit

1 application.

2 Similarly, many sales organizations seek to obtain
3 irrevocable offers from the customers while their own accep-
4 tances are being processed at head offices in other cities.

5 The provision of a cooling-off period is thus
6 merely an evening out of the scales of justice in these
7 cases.

8 I have deliberately taken the example of a middle-
9 class girl, seeking her future and fortune, in this area to
10 emphasize the fact that this is not a problem for the poor
11 alone, that this is not just a plea for protection of the
12 economically deprived, but that there is a need to protect
13 most people in the United States from such predators, be
14 they the wife of a commissioner in one of the United States
15 Government agencies buying magazines for her husband--I have
16 it from the Commissioner that his wife was caught--or the
17 working man buying his clothes or other necessities from a
18 door-to-door salesman.

19 All are in need of some help in this area.

20 The creation of an instant holder-in-due-course
21 status in a finance institution, which is often actively
22 engaged in in the creation of such commercial paper, should
23 be noted here.

24 I believe that this question will occupy the Com-
25 mission later this year and I hope to have an opportunity to

1 comment on that matter at that time.

2 Suffice it to say here that the present provision
3 in paragraph (i) will not help the buyer where the paper is
4 nonetheless negotiated on to a purported holder-in-due-course
5 and thus will not, in my opinion, obviate the problem of
6 Russell vs. United Acceptance Corporation.

7 Nor will it prevent the creation of a holder-in-
8 due-course where, due to the problems confronting our postal
9 services--you don't have to draw analogies with England--the
10 letter of cancellation takes more than two days to be re-
11 ceived by the seller.

12 I would suggest that the restrictive period in
13 paragraph (i) should be extended to ten business days fol-
14 lowing the day the contract was signed or the goods or ser-
15 vices purchased.

16 Such extension may prevent problems for the seller
17 as well, for he may find himself unable to comply with the
18 requirements of paragraph (h) (1) (iii). He has to hand the
19 paper back. He doesn't have it anymore.

20 The fact that we will have to come back to recon-
21 sider this problem, the holder-in-due-course problem, il-
22 lustrates my objection to the piecemeal approach to the
23 issue of what I call consumer protection as good business
24 method.

25 I think we nibble at the cheese from all angles.

1 We do a little here and do a little there and, while we try
2 to plug up one hole, the other one opens too wide, and I
3 think the time has come when we have to look at it overall
4 and not just try little areas.

5 But in a few weeks time you will be hearing the
6 debate on the holder in due course. I think this whole thing
7 should have been at one and the same time, including the
8 problem of insurance.

9 You know that the creditor insists that you take
10 credit insurance. I believe you will soon be promulgating
11 another Rule on that one.

12 And I think that we may save time if one of these
13 days we had a whole package to look at. That was the only
14 good thing about the U triple C, not that I support it whole-
15 heartedly, it is the best that is available. With some
16 amendments it might be practicable.

17 But at least it gives us one thing to look at, not
18 come back every five minutes with another little item.

19 Now, further, let me comment on the requirement
20 that a cancelled item must be picked up within 20 days.
21 There is no problem where the salesman merely collects orders
22 because delivery can be delayed beyond the three-day period.

23 The problem arises where the salesman carried in-
24 ventory with him on his route.

25 The conflict here is between the peanut-butter-and-

1 jelly syndrome affecting such items, especially magazines--
2 if you ever receive them--and that a failure to pick up
3 such items (1) gives the buyer "the right to keep any goods
4 or merchandise delivered by the seller," which is in para-
5 graph (a)(1), and makes (2) such failure to pick up the item
6 delivered an "unfair and deceptive act or practice"--para-
7 graph (h)(2).

8 It seems to me that this, this second part, is
9 going a little too far, and I would submit that there are
10 many small items on which it would hardly be worthwhile to
11 require collection.

12 Yet to hang over a seller this threat of unfair
13 and deceptive act or practice, despite what I consider to be
14 the ineffective remedies that the Commission can supply, I
15 think it could have a very adverse effect on his credit stand-
16 ing and his ability to obtain goods from a wholesaler.

17 Thus, I would suggest that an alternative be made
18 available to the seller here in this area by adding to it
19 "or fails to inform the buyer in writing within such period
20 of time that the buyer may"--the ten-day period, or 20-day
21 period, that I mentioned here--"that the buyer may dispose
22 of the item as he sees fit."

23 Until the receipt of such notice the obligation of
24 the buyer to "make available to the seller at the place of
25 delivery any merchandise, in its original condition" will

1 continue.

2 I would also suggest here an obligation on the
3 buyer to indicate, in the notice of cancellation, a time cer-
4 tain when the item can be picked up by the seller, so as to
5 obviate clear difficulties which could arise here, such as
6 the seller coming and trying to force entry, the seller com-
7 ing and finding nobody there, coming back again, and being
8 forced, maybe, into writing what I suggest in a letter of
9 consolation, because the cost is no longer worthy of it.

10 Finally, I welcome the provisions for arbitration.
11 The recent efforts of the American Arbitration Association
12 to set up a number of consumer arbitration panels under the
13 auspices of the National Center for Dispute Settlement, in-
14 dicates the interest arbitration in this area has aroused,
15 and will assure the availability of a panel of people who
16 will give of their time to allow arbitration to be effective.

17 I think that these regulations that you are at-
18 tempting to promulgate are a step in the right direction.
19 They have their weaknesses. I would like to see a provision
20 that no blanks be left in any item that has to be signed,
21 which has been a problem.

22 I don't think it should be confined to the credit
23 sales, but because we are dealing with bits and pieces here
24 and there, this question has to be posed by you, whether it
25 should be confined to credit sales.

1 Now, if we had this in one whole group, we could
2 interact this with other parts of a body of regulations. And
3 I think that is really my main criticism that it is coming
4 up again and again to deal with one particular area.

5 When I think that the time has come and the prob-
6 lems have crystallized sufficiently for an overall approach
7 to be taken by the Commission and, hopefully, by legislation.
8 Maybe on the same basis as the Consumer Protection Act, the
9 Consumer Credit Protection Act--that this is the basic mini-
10 mum morality of the marketplace with which the rest of the
11 states will have to comply, either come up to it or go one
12 better, which might also be an answer to what would the va-
13 rious states say if they were direct interference.

14 I think you have a right to pre-empt the area.

15 Thank you.

16 HEARING EXAMINER DIXON: Thank you, professor. Mr.
17 Cabell?

18 MR. CABELL: Professor, could you tell us a little
19 more about the recent efforts of the American Arbitration
20 Association to set up these consumer arbitration panels?

21 MR. GUTTMAN: Well, I can tell you what happened in
22 my own personal experience. I got a letter from the American
23 Arbitration Association whether I would be prepared to give
24 up my time if and when these things start off and become
25 practicable, to be sitting and assist in these disputes.

1 This is what I understand as usual unpaid efforts
2 by people who are interested in helping to arbitrate and to
3 see that a fair shake is given to both sides.

4 MR. CABELL: Well, we were concerned, of course, in
5 connection with our arbitration provision at finding the
6 people to administer such a system on a voluntary basis, be-
7 cause of the present costs of arbitration to the participants.

8 MR. GUTTMAN: I understand this, but, as I say, I
9 had a letter last week from the Director of the National Cen-
10 ter for Dispute Settlement informing me that this is being
11 set up.

12 I am not in the planning group. I do not know what
13 they are intending to do ultimately. I can only quote from
14 the fact that I have been approached, that I said I would be
15 available, and that I received a letter that they will call
16 upon me when needed.

17 So it looks to me that the question should be di-
18 rected to the National Center. And I am sure they would make
19 available to you all the information they have.

20 All I know is that many of my colleagues have vo-
21 lunteered their services free.

22 MR. CABELL: Now, a number of people have said,
23 and I think a number of the marketing experts have written
24 articles in which it is stated that this cooling-off provi-
25 sion won't be of very much benefit to the people in the

1 ghetto or the poor or the illiterate, because they won't be
2 aware of it. Or, if they are aware of it, they won't know
3 how to use it.

4 I wonder if you could comment on that?

5 MR. GUTTMAN: The problem, of course, is how to
6 make it known to them and the obligation, as set out in your
7 regulation, of indicating to them the provisions legibly and
8 noticeably.

9 Of course, we can never supervise what goes on in
10 a home, whether it is actually done or not.

11 I think basically it is going to become what is
12 actively going on in the city at the moment, the process of
13 educating people to understand these.

14 My only criticism with the statement is it will not
15 become aware to the ghetto. I want to make one thing very
16 clear, and I have said this many a time here and in other
17 places, that these problems are not ghetto problems. These
18 are problems that confront the housewife in suburbia, these
19 are problems that apply to the more affluent as much as they
20 apply to the ghetto people.

21 You have a different standard of education in the
22 ghetto, yes--the people there may need more explanation. But
23 the person coming in to your home--and this is why I took
24 this example of a 19-year-old secretary who clearly can read
25 and write and participate intelligently in certain conversation-

1 I know the lady. When the salesman starts talking, they are
2 not aware of what right they have of telling him to go. You
3 heard earlier, until 3 o'clock in the morning, you can't get
4 rid of him. Once they get their foot in the door, it is dif-
5 ficult to get rid of them.

6 So I think it is an overall problem and I feel that
7 if it is realized in the proper places that this is a problem
8 that confronts the middle class as much as it confronts the
9 ghetto and economically deprived, maybe we will get some re-
10 actions. We may get some kind of legislation or some regula-
11 tions that will stop this practice.

12 Now, I do have to say we cannot really say what goes
13 on in a room. The Ora Lee Walker case, the Williams in the
14 Walker Thomas case in the District of Columbia, is an obvious
15 example of what can go on in a home.

16 When we had Walker Thomas's salesman coming to the
17 home, knowing at the back of his sales card that the lady he
18 was dealing with was on public assistance, \$250 a month, five
19 children, and persuades herein the interests of the education
20 of her children to have a stereophonic hi-fi console for \$516,
21 a clear overreaching.

22 You will have heard about Encyclopedia Britannica
23 people. I have been exposed to them. Who come to newlyweds
24 and say to them your children will need the Encyclopedia
25 Britannica in high school. Well, they haven't even thought

1 of having their first child.

2 And this kind of persuasiveness we can't really do
3 anything about except consumer education.

4 But once they have been alerted to these possibili-
5 ties of being overreached, a regulation which says that you
6 have these rights will become meaningful.

7 But don't just say that this is a ghetto problem.
8 This is something that affects people all across, all econo-
9 mic strata. The only difference is that those in the upper
10 economic strata may not quite get in contact with them, but
11 if they do they keep their mouths shut that it happened to
12 them. They can afford to lose this money, while those in
13 the lower economic strata find themselves subsequently with
14 deficiency judgements, default judgements, all sorts of
15 things thrown at them.

16 We know what goes on here. You just think back
17 two years ago, the report of the number of cases in the Dis-
18 trict of Columbia that were sent into the little room to be
19 decided, where people didn't know that they had now confes-
20 sed to judgement. It hits home harder in the ghetto, but
21 it is a problem that everybody has.

22 MR. CABELL: Well, I am glad you made that point,
23 because it hasn't been made so forcefully before.

24 MR. GUTTMAN: I want just to say that the reason I
25 made that point is because too many people shut their eyes

1 to the ghetto, but if they realize that this sort of thing
2 is going on with their next-door neighbor, they might start
3 doing something.

4 MR. CABELL: One of the provisions of the Rule
5 which has caused us the most industry opposition is provision
6 (g) which in effect requires the salesman to identify himself
7 and state that the purpose of the call is to make a sale at
8 the time he initially contacts the consumer.

9 This is on the bottom of page 4.

10 MR. GUTTMAN: Why should that cause problems?

11 MR. CABELL: Well, the direct sellers tell us that
12 this provision would make it virtually impossible for the
13 salesman to proceed with his presentation.

14 And they have instead recommended an alternative
15 which would in effect prohibit the salesman from using any
16 misrepresentations of the affirmative kind to gain entrance
17 into the home.

18 And I wonder if you would like to comment on that?

19 MR. GUTTMAN: Well, I can't agree with that. What
20 they seem to be asking for is a free license to deceive. We
21 have come here to make a survey of how many people are living
22 in this house or attended high school. Once you are in, you
23 sell an Encyclopedia Britannica.

24 MR. CABELL: They would preclude--I believe that Mr.
25 Sherwood has just shown you the text of that proposal, the

1 alternative.

2 MR. GUTTMAN: Well, what is your objection? It
3 prohibits it--and here you say it makes it unfair and decep-
4 tive practice.

5 MR. CABELL: Well, the difference is this, that in
6 --I don't have the page number, let me find it. The alterna-
7 tive would prohibit the use of any plan, scheme, or ruse
8 which misrepresents the purpose of the contact.

9 Now, in our proposal--it differs in that it would
10 require the salesman to say that I am so-and-so and I am here
11 to sell you something.

12 MR. GUTTMAN: Right.

13 MR. CABELL: My request was which of these do you
14 think would be preferable?

15 MR. GUTTMAN: I certainly prefer the man who comes
16 to my door and honestly says I am Joe Doe and I represent the
17 ABC Encyclopedia Corporation and I would like to sell you an
18 Encyclopedia Britannia, or whatever it is. And I turn around
19 to him and say no, thank you, I don't want it. Goodbye.

20 Because I think that is my right and, since we have
21 had all these discussions about no-knocks and other invasions
22 of privacy, I think I am entitled to choose the people whom I
23 will invite into my house, and not having somebody come in
24 with a subterfuge for some other reason.

25 I think your statement is straightforward and

1 understandable, that he is to identify himself when he comes
2 to my door.

3 MR. CABELL: This is on the bottom of page 4.

4 MR. GUTTMAN: Initially contacts the buyer. That
5 is what I am looking for. I want to be able to say to some-
6 body, no, thank you, and shut the door on his face, because
7 maybe my experience has been a little bit more wider on this
8 than some people who are sitting, as I said, like this young
9 lady--she is hoping that somebody will talk to her, and she
10 doesn't dare call some of her friends and let them know she
11 doesn't have a date on Saturday night. I haven't got these
12 fears.

13 But why shouldn't I shut the door? Why should he
14 come in here telling me that he is a census-taker, why should
15 he come in here saying that he would like to discuss something
16 completely different?

17 Well, it so happens, if I may ask one of my stu-
18 dents to comment on this, since he has been a door-to-door
19 salesman--he knows about some of these activities. Once
20 they are in the room, it is going to be a devil of a job
21 trying to get rid of them.

22 And he can tell you some hair-raising stories about
23 how he was trained.

24 So I certainly would support something that says
25 that you must tell the minute you knock on the door who you

1 are, who you represent and what your purposes are.

2 MR. CABELL: Thank you.

3 HEARING EXAMINER DIXON: Professor, why do you
4 doubt the ability of the Commission to enforce this Rule?

5 MR. GUTTMAN: I don't doubt the ability of the
6 Commission to try to enforce the Rule. I doubt the ability
7 of the Commission's enforcement procedures being effective
8 in bringing about an end to some of these activities.

9 The reason for that is that, partly, it is finan-
10 cial. You are aware of the amount of money that the Commis-
11 sion receives in connection with consumer protection.

12 When, I believe about two years ago, I stood here,
13 and I had some figures at that time--at that time it was ap-
14 proximately 50¢ per credit institution that you could spend
15 on trying to see how things were going in those areas, super-
16 vising and questioning and following up inquiries that were
17 placed before you.

18 On that basis I find that it is going to be very
19 difficult for you to police this Rule, and if you do police
20 it, it is going to take three years before your cease-and-
21 desist orders become effective, during which time, of course,
22 things go on happily ever after.

23 I hate to use the term. It is a term I have used
24 with the Better Business Bureau. You are becoming more and
25 more like a grandmother without teeth, unfortunately.

1 I would like you to have some power.

2 HEARING EXAMINER DIXON: Isn't it part of the uti-
3 lity of a proposal such as this that it is to some extent
4 anyway self-enforcing, in that it gives to the consumers the
5 right to do something themselves?

6 MR. GUTTMAN: That is the first step. But it will
7 only be effective if linked to a very strong consumer educa-
8 tion program which, unfortunately, we do not have yet.

9 We have sporadic outbursts of consumer education.
10 And to start the consumer to do something--as I said, we have
11 among the economically better off the fear of speaking out to
12 be shown to be a fool.

13 Among the middle class, the worst class to belong
14 to, you can't afford to take these steps. It is expensive,
15 litigation is expensive. Starting something is difficult,
16 because one always looks over one's shoulder where one's
17 credit rating is.

18 You may need the mortgage on a new house and you
19 get known as a person who did not honor his obligations.

20 And it is true. Your regulations say that--now
21 you must disclose, let's go and see what it is, and you can
22 attack that. But that takes time and effort and by that time
23 the house is gone, the mortgage is down the drain too.

24 So these things bring me to this conclusion that
25 something has to be done by having some agency that not only

1 will see that there are regulations but also that these re-
2 gulations are properly enforced.

3 And, unfortunately, I have not much confidence in
4 how the Commission is at the moment composed with its powers
5 that it can enforce these regulations.

6 How many people read your news releases? That the
7 ABC Corporation has been cited for selling inflammable mate-
8 rials? It is the strongest part of your activity, anti-trust.

9 HEARING EXAMINER DIXON: Do you think that the fact
10 that this particular right is supposed to be spelled out in
11 some detail in the contract itself will help to enforce it?

12 MR. GUTTMAN: I think it will, because, assuming
13 that there is time given to read--and you and I know that that
14 is something that is a fiction--assuming that time will be
15 given to read, it is going to start some bell ringing at the
16 back of the person's mind.

17 What I am reading and what I have been told isn't
18 quite the same.

19 I am saying at the moment the same reason that you
20 may hear me supporting the U triple C. When a man is hungry,
21 he will take a slice of bread rather than go without.

22 This is a step in the right direction. I am glad
23 it is being taken. I think it can be a little bit tightened
24 up , as I tried to do for both sides.

25 I am not asking that you should take the step,

1 everything business is doing is wrong. That is not what you
2 are set up to do. We don't ask that.

3 But that there should be an evening out of the
4 scales of justice and a realization that we do deal with dis-
5 parate individuals. We are dealing with a consumer and a
6 salesman. And a consumer does not have the experience, the
7 knowledge, nor the know-how of dealing with this kind of
8 salesman.

9 Now, as I said, I wish you would listen to my stu-
10 dent on this point. He could tell you some stories about how
11 he was trained to sell these things.

12 And once the attention is gathered, there is no
13 way of getting away from it. They will end up with a sale, if
14 not by persuading you, then by shaming you into buying some-
15 thing.

16 You come across a student working his way through
17 college--all of a sudden, if you were to count all the sales-
18 men, students working their way through college, they are
19 bulging at the seams now, but we would be sitting in the
20 Potomac River by now.

21 HEARING EXAMINER DIXON: Thank you, professor.
22 Did Mr. Hall ever arrive? Apparently not, and since Mrs.
23 Newman cancelled her appearance, and will submit her state-
24 ment in writing, we are confronted with another abbreviated
25 session.

1 Consequently, I will declare these hearings ad-
2 journd to reconvene again in Chicago, Illinois, at 10 o'
3 clock on March 22, pursuant to a previous notice.

4 (Whereupon, at 3:15 p.m. the hearing in the above-
5 entitled matter was adjourned to reconvene in Chicago,
6 Illinois, March 22, at 10:00 a.m.)

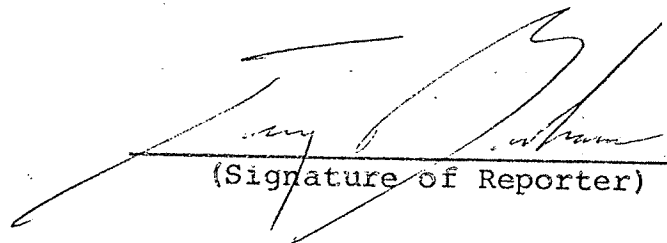
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DOCKET NO: Trade Practice Conferencē

CASE TITLE: Public Hearing on a Proposed Trade Regulation
Rule Concerning Cooling-Off Perior for Door-to-Do:
HEARING DATE: March 11, 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 13, 1971



(Signature of Reporter)

Terry Barham

(Name of Reporter - Typed)

300 7th Street, S. W.

(Address - Typed)

Washington, D. C. 20024
