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FEDERAL TRADE COMMISSION

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C O R R E C T E D C O P Y

Meeting Before the Commission

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FEDERAL TRADE COMMISSION

I N D E X

WITNESS:

EXAMINATION

None.

E X H I B I T S

FOR IDENTIFICATION

Commission's:

None.

FEDERAL TRADE COMMISSION

In the Matter of:)
))
) Docket No.: P951201
HEARINGS ON GLOBAL AND)
INNOVATION-BASED COMPETITION)

Tuesday,
November 21, 1995

Federal Trade Commission
Sixth and Pennsylvania Avenues
Room 432
Washington, D.C. 20580

The above-entitled matter came on for hearing,
pursuant to notice, at 9:00 a.m.

SPEAKERS:

ROBERT PITOFISKY
Chairman, Federal Trade Commission

ROSCOE B. STAREK, III
Commissioner, Federal Trade Commission

JANET D. STEIGER
Commissioner, Federal Trade Commission

CHRISTINE A. VARNEY
Commissioner, Federal Trade Commission

JODIE BERNSTEIN
Director, Bureau of Consumer Protection

ELAINE KOLISH
Acting Associate Director, Division of Economics

DEAN GRAYBILL
Associate Director, Services Industry Practices

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SPEAKERS (Continued):

EILEEN HARRINGTON
Federal Trade Commission

JONATHAN BAKER
Federal Trade Commission

GERALD LEVIN
Chairman and Chief Executive Officer, Time Warner

DICK DUNCAN
Editor, Time Inc. News Media

ERIC TVETER
Vice President, General Manager
Time Warner Communications, Manhattan

STEVE PEARSE
Senior Vice President, Engineering, Denver

TAMMY LINDSAY
Vice President for Communications,
Full Service Network, Orlando

SCOTT BLAKE HARRIS
Chief, International Bureau,
Federal Communications Commission

RICHARD D. HELD
Senior Vice President, Risk Management and Security,
Visa International

RACHEL LARABIE-LESIEUR
Director, Marketing Practices, Industry Canada

GORDON ZUBROD
Assistant United States Attorney,
Middle District of Pennsylvania

SPEAKERS (Continued):

RICHARD G. MEIER

Deputy Associate Trade Representative,
Office of United States Trade Representative

ROBERT P. HALL III

Vice President, Government Affairs Counsel,
National Retail Federation

WILLIAM MacLEOD

Collier, Shannon & Scott

MARI ANN BLATCH

Vice President, Government Affairs, Readers Digest

STEVEN SPIVAK

Professor, University of Maryland
Chairman, Consumer Policy Committee,
International Organization for Standardization

SUSAN LORD

Vice President, Government Relations,
Springs Industries, Inc.,
Chairman, Export Subcommittee, American Textile
Manufacturers Institute

BRUCE SILVERGLADE

Director, Legal Affairs, Center
for Science in the Public Interest

ZANE BROWN

Director General, Consumer Products Directorate,
Industry Canada

JOSEPH HOFFMAN

Director of Policy, Ontario Ministry
of Consumer & Commercial Relations

E. TONI GUARINO

Buc, Levitt & Beardsley,
International Bar Association Council

CARL PRIESTLAND

Chief Economist,
American Apparel Manufacturers Association

MICHAEL THOMPSON

Director, Government Relations,
Whirlpool Corporation

1 P R O C E E D I N G S

2 CHAIRMAN PITOFSKY: Good morning, everyone.

3 I might mention that for those of you who are
4 standing three deep, there is an overflow room in 532, where
5 this entire demonstration is available. And there's another
6 one on the third floor below us. And so if you want, you
7 can watch this demonstration down there.

8 This is a continuation of a set of hearings that
9 we initiated almost two months ago. Our aim then was to
10 examine whether changes that are taking place in the
11 commercial world -- and with particular emphasis on the
12 globalization of competition on the importance and pace of
13 technological change -- suggest that a regulatory agency
14 like this should review the way in which we interpret, of
15 course, the antitrust laws and consumer protection laws.

16 We have, throughout these hearings, placed some
17 emphasis on high-tech industries and the way in which
18 competition and marketing is changing as a result of changes
19 in the marketplace.

20 We begin this final day of consumer protection
21 hearings with a special presentation and a demonstration of
22 what the future may hold for consumers involving the
23 convergence of interactive technologies, televisions,
24 telephones and the computer.

25 We are delighted to have with us Mr. Gerald Levin,

1 Chairman and CEO of Time Warner, the world's largest media
2 and entertainment company with interests in publishing,
3 music, films, and television.

4 A leader in the telecommunication's revolution,
5 Mr. Levin, present his vision of the marketplace in the year
6 2000. We will then actually see an interact with some of
7 the technologies of the future.

8 Before he begins, let me say that these hearings
9 are devoted to consumer protection issues primarily, and
10 they involve questions of policy. Any case that might be
11 pending, or will be pending in the future, is not relevant
12 to the discussion that we are going to have today.

13 Mr. Levin, I want to thank you for coming down
14 here, and I want to thank your colleagues and your people
15 for devoting such time and energy and resources to what
16 looks like what will be a fascinating presentation.

17 MR. LEVIN: Thank you very much, Mr. Chairman.
18 And we welcome the opportunity to appear before you this
19 morning. I'm going to give some remarks, and my full
20 remarks will be available for the record. We'll have
21 demonstrations; and then, obviously, we'd love to take
22 questions.

23 I think it's pretty clear that the history of
24 media and communications in this country has been shaped by
25 a series of landmark breakthroughs that has profoundly

1 influenced every aspect of American life.

2 I think that, taken together, the interactive
3 technologies that we're going to demonstrate this morning,
4 represent another milestone. And, although, no one can say
5 with certainty what the final uses of broadband digital
6 systems will be, we already know that the impact on the
7 traditional media structure will be profound.

8 Digital interactivity turns the old system of
9 electronic distribution on its head.

10 Instead of a closed and tightly controlled kingdom
11 divided among a handful of powerful networks, a vast
12 democracy comes into existence in which the key to success
13 is not size but creativity and quality.

14 I'd like to identify at least three benefits for
15 the consumer.

16 First, the digital nature of the networks that
17 you're going to see means a new universe of choice, because
18 along with expanded programming choices, consumers can enjoy
19 high-speed access to the Internet and an efficient,
20 reliable, competitive alternative to local phone service.

21 And when it comes to programming, consumers will
22 have the best of both worlds. The analog side of
23 television, which now includes, in many cases, 75 channels
24 of broadcast and cable; and then the digital side where
25 there are no channels. The very concept of channels

1 disappears.

2 Whether it's what we call video-on-demand or
3 transactional services or access to libraries or print or
4 video, the consumer will have a range of options that really
5 was unavailable and probably unimaginable in the home.

6 Secondly, at consumers gain, what we believe is,
7 unprecedented control, control over the information and
8 entertainment that they wish to bring in or, indeed, look
9 out of their home.

10 When you have digital interactivity, consumers
11 become, in effect, their own programmers, able to call up
12 content when they want it and exactly what they want. In
13 effect, they are programming their PC's or their televisions
14 to keep out specific materials or entire categories.

15 In our view, this offers the ultimate in
16 self-regulation, and that is total consumer discretion.
17 And, indeed, we believe it enhances the applicable
18 regulatory regimes, whether it's under the Cable Act or
19 under the regulations administered by your Commission or the
20 FCC, as it relates to telephone marketing.

21 And, third, whether it's been the telephone or the
22 television or the personal computer, the whole thrust of
23 this communications technology has been to make life more
24 convenient, taking what was previously hard to find or
25 obtain and putting it at consumers' fingertips.

1 The deployment of broadband cable dramatically
2 enhances that convenience. It opens an electronic path that
3 is indifferent to the nature of the screen that it's plugged
4 into. What matters solely are the wishes of those who are
5 using either keyboard or a remote -- which we will show you
6 shortly.

7 The purpose of our demonstration is to demonstrate
8 some of the concrete ways in which we are bringing this
9 technology today to consumers.

10 I want to underscore the fact that these are not
11 theoretical prototypes. Each application that you will see
12 is currently in use in consumers' homes.

13 Before we look at the specific demonstrations, I'd
14 like to just talk about the applications and implications of
15 the architecture that makes this possible.

16 It's really rather simple but quite elegant,
17 because what we've done is combine the traditional coaxial
18 cable together with trunk lines of fiber optic where each of
19 these little strands of fiber represents enormous broadband
20 capacity.

21 Art, maybe if you could pass these along to the
22 Commission.

23 So, essentially, the architecture we're talking
24 about combines this older coaxial cable with very modern
25 fiber optics which was developed by our engineers. And

1 we're already building all of our systems to conform to
2 what's called this hybrid and fiber-rich coax architecture.

3 What happens when you install this technology, the
4 systems are then easier to maintain and subject to far fewer
5 repairs; you get a clearer, sharper picture and a
6 significant expansion of channel capacity that gives the
7 consumers new choice.

8 And once you upgrade the system with this
9 architecture, with only incremental additions, we can begin
10 to offer an array of new services that we're going to
11 describe this morning.

12 As you'll see in some of the demonstrations, this
13 kind of cable, fiber architecture is already revolutionizing
14 the delivery of the Internet and on-line services. By
15 plugging a personal computer into what's call a cable modem,
16 consumers can gain access to the Internet 50 times faster
17 than what's available over a conventional telephone line.
18 As we move into the next year, we will be 100 times and,
19 ultimately, 1,000 times faster than a normal telephone line.

20 We recognize the special uses and responsibilities
21 that this brings to on-line services, particularly in
22 education. We already provide free cable access to 85
23 percent of the elementary and secondary schools in our
24 franchise areas; and we intend to wire the rest in the very
25 near future.

1 We soon be equipping all of these schools with
2 these cable modems, at no charge, and providing this
3 expanded service, that you'll see today, directly into the
4 classroom.

5 At our cable company, we are also wiring
6 commercial sites for transmitting television signals into a
7 personal computer.

8 What this innovation enables viewers to do is to
9 -- assuming you're hooked into the same networks, is to
10 follow fast-breaking news are, indeed, a presentation that's
11 related to their work that's video but it's coming through
12 their personal computer.

13 The power of the interactive networks that we're
14 building means that, with the installation of huge, but
15 cost-efficient digital switches and what are called home
16 interface units that attach to the side of a house,
17 consumers will now have a fast, highly reliable, completely
18 digital, and competitively priced alternative to traditional
19 local phone service.

20 At the moment in Rochester, New York, the nation's
21 first deregulated telecommunications market, our cable
22 company is providing phone service to a certain number of
23 consumers. And this makes this the first cable operation
24 that is actively engaged in offering consumers real dialing
25 choices.

1 Elmira and Rochester are two steps in the
2 evolution of cable into what we call the Full Service
3 Network that, in my view, truly unlocks this digital realm.

4 Our network, the Full Service Network, is in
5 Orlando; and here we have the world's first fully
6 operational, digital, interactive television system.

7 We are currently offering this system to over
8 2,000 customers in what we call "video-on-demand." By the
9 end of 1995 we expect to reach 4,000 customers, a goal that
10 we set at the beginning of this year.

11 And although we're still in the learning stages
12 about what consumers will demand, it's not too early to draw
13 some conclusions. The fact that we've seen the
14 participation of firms such Silicon Graphics, Scientific
15 Atlanta, and AT&T in the development of this technology,
16 clearly indicates that the leadership that our high-tech
17 sector lost to foreign competitors in the 1970s and '80s is
18 being regained.

19 Today, the American cable industry is at the
20 forefront of a high-tech success story that is not only
21 creating new manufacturing jobs in the United States but
22 will clearly lead to the worldwide export of networks that
23 are largely American conceived, designed, and built.

24 In terms of programming, though the world that we
25 used to know of a fixed number of pre-determined offerings,

1 according to a very rigid schedule, will not disappear.

2 There are today very exciting alternatives.

3 The Internet has already made clear that digital
4 interactivity is radically altering consumers' expectations.
5 More and more consumers are choosing to travel in the
6 digital domain because they can tailor their information,
7 their news, their sports, and their entertainment to their
8 own tastes and their own time tables.

9 Interactive television will benefit from this
10 trend but will also accelerate it. I think the effects that
11 we will see will be profound for suppliers of content as
12 well as consumers.

13 As long as there was a relatively narrow
14 distribution channel through which consumers could receive
15 programs, there was an artificial ceiling on supply.

16 Now that this channel is being thrown open and the
17 demand of consumers, freed from the narrow confines of
18 broadcasting as we have known it, the ceiling on supply is
19 lifted.

20 I would have to say that the former limits on
21 distribution made life much easier for studios and
22 producers. This new instant access on-demand world is
23 infinitely more complex, more competitive, and certainly
24 more creatively challenging.

25 In the digital world, the open-ended nature of the

1 demand creates a vast number of programming opportunities
2 that no single company could ever hope to meet.

3 The end result will be a dynamic increase in the
4 number of suppliers and producers and new creative
5 relationships among companies of every size aimed at
6 satisfying what is essentially now a global demand.

7 Now, the demonstrations that you're about to see
8 can only hint at the dimensions of the changes we are
9 already in the process of introducing to America's
10 consumers.

11 It's my personal view that if we do it right, if
12 we have the wisdom to do what is necessary to spur
13 investment in these technologies, if we have the foresight
14 to let the market operate to the benefit of consumers, I
15 believe that the biggest winner of all will, in fact, be our
16 American ingenuity, because this is a case where we lead the
17 world in conceptualizing and programming these networks.

18 Now, we're going go to our demonstrations. We'll
19 make this as informal as possible; and when we're through,
20 obviously, we'd love to have the opportunity for questions.

21 We're going to start by going to Elmira, New York.
22 We have a direct line to our computer servers there.

23 My colleague, Dick Duncan, who was an editor from
24 Time Inc. News Media, is going to be your tour guide.

25 Dick.

1 MR. DUNCAN: Thanks, Jerry.

2 Good morning.

3 MR. LEVIN: I'll just come over here, and I can
4 help out.

5 MR. DUNCAN: What you're looking at is the welcome
6 screen of the cable modem community service in Elmira, New
7 York.

8 Let me introduce Frank Kyst, who's our
9 communications chief.

10 What you're seeing here is coming down this
11 morning from Elmira, from our server in Elmira. It's a
12 little slower than it is -- just a bit slower than it is in
13 Elmira, where it's 50 to 100 times faster than the
14 conventional telephone dial-up service that most people use
15 to get on-line.

16 The distinguishing characteristics of this service
17 are its speed and its community content. It really
18 emphasizes all sorts of information about the community,
19 unlike other on-line services.

20 And as we go from screen to screen, it will be
21 Frank who is clicking, who's clicking on our Elmira server
22 and bringing information down to you.

23 MR. LEVIN: So the first point is to just
24 acknowledge the speed. I think what's frustrating about
25 current computer downloading is what we call the "tap time"

1 it takes just for a screen to fill up with a picture or with
2 any kind of digital material.

3 The key -- which is a winner, I can assure you --
4 is the speed with which these frames appear upon the touch
5 of the clicker. That will be the persistent theme here,
6 instant access, speed.

7 Sorry to interrupt.

8 MR. DUNCAN: That's fine.

9 Let's go to news first, and we'll show you what's
10 there.

11 You see the speed.

12 This is oriented around five news summaries: The
13 Times, Daily News Summary, the People magazine news summary,
14 Money magazine news summary, Tech Daily down there, and a
15 summary put up by the Elmira Star Gazette, a newspaper in
16 Elmira which is our partners on here.

17 And this is last night's news.

18 MR. LEVIN: See, just looking at that picture, how
19 long it takes the computer to fill up, with the telephone
20 speed, to lay out a picture for you, I think that's what
21 really most remarkable. The consumers see that almost
22 instantly.

23 MR. DUNCAN: And let's go to the Times Daily. We
24 have got some pictures there, too.

25 "Washington goes back to work."

1 And, in addition, on the screen, on this news, we
2 have other features. We have Reuters News Service 24 hours
3 a day, constantly updated; we have outside services which
4 supply us with stock quotations and sports and scores 24
5 hours a day. That's the news on here.

6 But the largest amount of content is in this
7 "About the Town" area, where we have -- this is a community
8 connection. We go to the institutions, which really provide
9 the infrastructure within the community: the hospitals, the
10 churches, the city government, the chamber of commerce, the
11 institutions of higher education. In fact, we help them
12 come up on here and tell what they're about, where people
13 can get information from them and communicate with them.

14 MR. LEVIN: That's because access is really very
15 easy and very cost efficient. In a sense, almost any member
16 of the community can go on-line and to be received in homes.
17 That's what's remarkable, you know, we call it kind of voice
18 of democracy.

19 MR. DUNCAN: Absolutely.

20 We also have another very important service on
21 here which has to do with the schools. Time Warner Cable
22 and Hewlett Packard are donating computers and modems to the
23 public schools in this area. We are connecting the schools
24 to the homes, the parents to the teachers, the kids to
25 everybody, as well, through filtered Internet, where we can

1 turn the kids and the schools loose on the Internet and make
2 sure they don't get into trouble.

3 We also, parenthetically, have another kind of
4 Internet control on this entire service where the person who
5 is the subscriber to the service can select one of three
6 levels of Internet access for anyone in the household to
7 have. So that can be controlled by the subscriber.

8 MR. LEVIN: Again, a key point: Once everything
9 is digital, the ability to program through software to deny
10 access or to only receive certain categories can be put not
11 only in software that usually you see in a box called a
12 "computer" but on the system itself.

13 That's an emerging technological capability so
14 that in schools, the educational programming is what's
15 available in high-speed Internet access, not other material.
16 The same thing at home where the consumer has the ability to
17 provide "digital denial," essentially.

18 MR. DUNCAN: The area we call the library is an
19 area, first of all, devoted to the local library where we
20 have put the Steele Memorial Library from Elmira on-line.
21 They have their own programs here, including the card
22 catalog so that this library and its branches can be
23 accessed instantly by computer from any home.

24 We also have our own area which is a reference
25 where we put up the CIA World Fact Book for Geography,

1 Compton's Encyclopedia, some historical documents for kids
2 who might be doing a paper from home, or for anyone who
3 works from home, these things are easily accessible there.

4 Of course, no community is totally about work. We
5 have another area, this one called "Delights and Diversions"
6 devoted to whatever is going on in Elmira that's for fun.

7 We have the movie schedules for all of the cinemas
8 around town. We have the television schedules. We have a
9 local journalists who writes about things that are just
10 pleasant going on in town.

11 Let's go back to this. Yeah.

12 Note, by the way, that this with kind of broadband
13 speed the amount of information that can be transferred
14 rapidly over fiber optics. We can get nice big color
15 reproductions of still photos. And, of course, we can have
16 some video.

17 We like autumn leaves. They do very well.

18 MR. LEVIN: So it would have taken -- to scroll
19 down on a computer with a telephone modem, you would have
20 just sat there as the picture unfolded in very slow time.
21 That is a real distraction and an inconvenience. So the
22 ability to receive full color photos, kind of instantly, on
23 the click of your mouse, is the kind of source of consumer
24 control that's a wonderment.

25 Whenever we demonstrate this and people sort of

1 realize that that's what it can do, there is instant
2 recognition of its value. Most people don't have a lot of
3 excess time. So this is not for demonstration purposes
4 only. This is connected to the computers in Elmira. This
5 is exactly -- it's actually not quite as fast. We couldn't
6 get full cable into the FTC building here, so it's not quite
7 as fast. But it gives you some sense of the timetable.

8 MR. DUNCAN: The business that's transacted on
9 this service is largely transacted in the shopping area.
10 Shopping has Dream Shop, National Catalog. It has other
11 features. It also has local ads. We're encouraging people
12 to put up advertising locally and to transact commerce this
13 way.

14 We, as well, have the Chamber of Commerce area
15 where businessmen can tell what they do; people can look
16 for jobs, that that sort of thing. We figure it can't get
17 much more micro in this area than "Wax-On Wax-Off" services.

18 But here's one, and that's how people can do
19 business on this service.

20 Another business aspect we have to foster the
21 business is what we call "Work At Home" our line-on service
22 where people can work from their home at the same speeds as
23 they could in their offices. We connect their homes to
24 their offices at these speeds so that have all of the
25 facilities and all of the computer capabilities that they

1 have in their offices.

2 This pretty rounds out the service.

3 MR. LEVIN: Okay, Dick. Thanks a lot.

4 Let me just kind of underscore again what I think
5 the messages have been.

6 Live demonstration that was done with computers
7 Elmira.

8 Speed. Instant gratification. Instant access.

9 A filtration system.

10 The ability to use software, digital software to
11 prevent or control material that's coming in or being
12 accessed.

13 And finally -- well, it's sort of a sterile word:
14 Content. But local content. It so important to have
15 community material that's constantly available.

16 And you can see, whether it's the local newspaper
17 or the local library or the local school system, it's a form
18 of digital community that is as powerful as any of the
19 national or international material that's being brought into
20 Elmira.

21 And we have approximately 400 homes and 100
22 schools, libraries, and public institutions that have this
23 system and these cable modems.

24 So that's demonstration number one in Elmira.

25 We're going to turn now to our second

1 demonstration, which we're going to call "PC Television."
2 And I'm going to ask Eric Tveter to join me, who is Vice
3 President and General Manager of Time Warner Communications,
4 our system in Manhattan.

5 And he's going to show you how you can run a
6 television signal through a personal computer.

7 MR. TVETER: Thank you, Jerry.

8 PC-TV is an exciting product because for the first
9 time, Time Warner can deliver, approaching 100 channels
10 direct to the desktop in a local area network environment
11 and in a cost-effective manner.

12 It's a product designed for the business
13 marketplace. For 25 years, we have provided service to
14 businesses who have an insatiable thirst for information and
15 knowledged-based services. It's a product that has been
16 developed over the past year. It's a video distribution,
17 hardware and software system. You can see the equipment
18 here.

19 There's an equipment hub that would reside in a
20 central computer room. And from that computer room, video
21 is distributed to the desktop.

22 Chief information officers like the product
23 because it works on Windows, DOS, OS/2 operating systems.
24 It can work on a 286 as well as a Pentium.

25 MR. LEVIN: Excuse me, Eric.

1 What we were just doing is showing you how, with
2 the computer control, you can fill up the screen with the
3 video, go to another channel, go to CNBC or CNN or C-SPAN,
4 to take the whole screen or just a part of the screen while
5 you're working on your spreadsheet. That's the kind of
6 versatility you have here.

7 MR. TVETER: That, in fact, is the most important
8 quality. Most users leave the screen in the upper
9 right-hand corner, and they can work on Excel. In this
10 case, my colleague Mark Stark, who is assisting, is
11 adjusting an Excel spreadsheet. A journalist can be working
12 on the wordprocessing package and be watching Court TV.

13 It's a very powerful tool. Chief financial
14 officers like it because they no longer have to deploy monitors
15 around the workplace. In New York City, there are 60,000 of
16 them; and today they can be integrated into the workstation
17 environment.

18 Chief executive officers, head of schools,
19 government agencies, they're able to use it, primarily by
20 customizing the programming. They can select, say, 10 out
21 of the 79 channels that we offer out of the Manhattan system
22 and have CNN, CNBC, Reuters Television, Dow Jones Investor
23 Network, Bloomberg, C-SPAN, the Weather Channel, and others.

24 Most importantly, customers like the feature. A
25 trader will want to -- may be working on a spreadsheet, and

1 Alan Greenspan is testifying before Congress. So he can
2 click on the screen, bring it up to a full screen picture --
3 Mark, if you could do that -- and listen to Mr. Greenspan,
4 hear the tone of his voice, watch his body language.

5 Wall Street bets billions of dollars on the
6 direction of interest rates.

7 Again, a very powerful tool.

8 Journalists can be working at midnight and
9 watching Court TV and can adjust an article that they're
10 working on.

11 Schools, government can use it for training
12 purposes.

13 Advertising agencies like to monitor the
14 commercials that are being broadcast.

15 Hospitals are looking at it because they do not
16 want to distribute video in a radio frequency mode. They
17 want a narrow band because they're concerned about radio
18 interference in the hospital environment with CAT Scans
19 being done and the like.

20 We expect to roll out thousands of units in the
21 next year with our business partner CCC. We spent the last
22 year developing this product and just rolled it out last
23 month and are receiving a lot of interest.

24 MR. LEVIN: Eric, thanks. I really appreciate it.

25 Let me just give you what I think this means.

1 We used to think that you get television and video
2 material through a television set, and through a PC would
3 come the material that you could scroll over, spreadsheets
4 or wordprocessing.

5 What this tells you is this buzzword of
6 "convergence" is real, psychologically that, in fact, it is
7 material assistance to have the television feed coming
8 through your PC.

9 I know in my office, I have the television screens
10 going on. I would like this service because, in a sense, a
11 news wire is insufficient these days. You need to see, to
12 look at the nuance of presentation, so that I can continue
13 to do my work on my PC, but this screen is already on and it
14 can catch my eye when there's something quite relevant.

15 So I think, again, all of our preconceptions about
16 display screens for PC or television are going to get pushed
17 aside by these very practical uses.

18 MR. TVETER: One other point, people can broadcast
19 messages. You can have a daily message and distribute that
20 among the workplace.

21 So, again, it's a very powerful tool.

22 MR. LEVIN: Thanks very much, Eric.

23 That's, again, the ability to use video for
24 communications purposes.

25 Let's turn now to what we call "Cable Telephony"

1 so that we use the cable in its digital format to deliver
2 telephone service that you're familiar with.

3 I'm going to call up Steve Pearse, who is our
4 Senior Vice President of Engineering at our network
5 operations center in Denver.

6 Steve.

7 MR. PEARSE: Thank you, Jerry.

8 The message I'd like to leave with you today is
9 that Time Warner is in cable telephony services right now,
10 today, in Rochester, New York. We are providing service to
11 apartment buildings as well as single family residents. And
12 I think this is a very important event in the history of
13 telecommunications. And the reason why is because, for the
14 first time, our customers in Rochester have a choice.
15 Previously, you had to call your local telephone to provide
16 the only telephone service you could receive.

17 Now you can call Time Warner to receive your local
18 telephone service. And we're going to compete with the
19 local telephone company on price, features, and quality.
20 And we'll talk a little bit more about those attributes in a
21 few minutes.

22 But first you might be thinking: How is a cable
23 company going to provide you telephone service?

24 It gets a little complicated, but I'll try to show
25 you, on a schematic here, exactly what I'm talking about.

1 Let's start in the home. This is a typical home.
2 You have a cable TV, telephone, and a PC. All these things
3 can be connected to your cable coming into your home.

4 The new element here is, outside the house,
5 there's a little gray box -- and I'm going to show you that
6 in a minute -- that's called a "network interface unit."
7 Time Warner will puts its network interface unit on the
8 cable, and it will extract the telephone signals coming over
9 the at cable and provide it throughout the home on the very
10 same telephone system and wiring you have today; but it
11 comes over your cable.

12 This is connected to the normal cable system
13 running throughout your neighborhood. But there's a
14 difference now. The cable is terminated on a little device
15 called a "fiber node" in your neighborhood. It takes the
16 cable signals and converts into a fiber optic signal. And
17 that increased the quality. It allows much greater
18 bandwidth for more services. And we're upgrading our entire
19 nationwide network with this fiber optic system.

20 From the neighborhood, the fiber optics run all
21 the way into a building in your community; and it's called a
22 cable head end. The head end is the location where you have
23 your satellite dishes receive broadcast television signals
24 and off-the-air television signals and feeds that into your
25 neighborhoods and into your home.

1 But in the cable head end, we have now installed a
2 telephone switch. We buy ours from AT&T, for example. This
3 telephone switch talks to the outside world. It connects to
4 long-distance companies and the other local telephone
5 company. And that's at the heart of the matter. We have to
6 negotiate an interconnect agreement with the other local
7 telephone company so we can terminate calls where they are.

8 And that's why we are very interested in what's
9 happening with Congress right now with the telephone bill,
10 because we want to make sure the barriers to entry for us
11 are dealt with fairly.

12 Once we have that agreement, we can provide all of
13 these telephone services.

14 Down here, we have the same thing that happens in
15 the home, but it's in an apartment building. And we have
16 special equipment in the basement to handle telephone
17 signals there.

18 MR. LEVIN: All right. Steve, maybe we could make
19 a telephone call?

20 But as we are doing it, if I could just emphasize
21 that there are no telephone wires here, no twisted pair.

22 This is all digital bandwidth. And the way we
23 manage it in our cable system, some of this bandwidth that's
24 being switched in the home, is sending a movie. There are
25 movies in these digits. Others are telephone conversations

1 or a picture or music. It could be a book. But they are
2 all 1's and 0's that this switch sublimely indifferent to
3 what's passing through. But, in fact, you really have a
4 totally new concept -- and, you know, in your home, the
5 telephone handset is exactly the same, and you have your
6 telephone wiring. It's what happens outside the home in
7 this digital box.

8 So why don't we make a call to Denver and make
9 sure it works.

10 MR. PEARSE: This equipment we have here is
11 exactly what we're using in Rochester, New York. This
12 equipment is located in that building, the cable head end.

13 And behind there is the fiber optics and the cable
14 system that ends up at your home. In fact, this is the
15 little gray box. In fact, if you walk outside your home
16 today, you'll see a little gray box just like this. It's
17 from your local telephone company. This is our little gray
18 box, in place of the local telephone company's.

19 It's better than theirs because it is a digital
20 box. Today you have about a mile of 100-year technology,
21 it's all twisted pair, it winds its way through your
22 neighborhood into your house for your telephone. It's
23 analogue, and it can pick up noise and interference.

24 This is digital, so it's superior in quality. But
25 this cable comes in, and this box picks off and listens to

1 the telephone signals and let's all the other signals go
2 through here that go to the home, like the cable modem, a
3 basic cable, the Full Service Network functions. It just
4 picks up what it wants to listen to, the telephone piece.

5 This is working right now, so I have to handle it
6 carefully. This is what's going to be on the home. And
7 it's connected to this telephone. We will call Denver, to
8 our national operations center, which monitors our
9 nationwide network on a 24 hour, 7-day basis.

10 (Dialing.)

11 MR. LEVIN: You pre-programmed the number?

12 MR. PEARSE: Yeah, I had this on speed dial.

13 MR. LEVIN: This is a our operating center.

14 Someone better pick up.

15 (The following is a transcription of the telephone
16 call placed to Denver.)

17 MR. FRENCH: Central Communication, national
18 operations center. This is French.

19 MR. PEARSE: Hi, French. This is Steve Pearse at
20 the FTC hearing.

21 MR. FRENCH: Yes, sir.

22 MR. PEARSE: How are things going?

23 Could you tell the folks listening in how many
24 sites we currently monitor today.

25 MR. FRENCH: We have 15 sites.

1 MR. PEARSE: How are things going in Rochester,
2 where our first telephone network is operating?

3 MR. FRENCH: Our switch is doing -- at the moment,
4 is running clean and it's green.

5 MR. PEARSE: He's looking at the monitor.

6 Thanks a lot, French.

7 MR. FRENCH: Yes.

8 (End of telephone call.)

9 MR. LEVIN: We tried this earlier and got David
10 Letterman on the phone.

11 Essentially, we have an operations center -- I'm
12 going to ask Steve kind of the last question here as to why
13 -- I believe we have the most sophisticated telephone
14 operating center in the country -- how can a cable company
15 have that?

16 What you have just heard is that all of this is
17 centrally monitored. And when we mentioned all those
18 cities, we have what's called business competitive access
19 where we are providing telephone service for business
20 customers to bypass their local phone company to
21 interconnect with their long distance company. And we're
22 doing that in 15 cities. The first residential full dial
23 tone telephony is in Rochester.

24 So what's the answer to the question: How could
25 we have the most advanced telephone center when we just

1 started?

2 MR. PEARSE: Okay. I'll answer that and then make
3 one point.

4 MR. LEVIN: Okay. Good.

5 MR. PEARSE: We, basically, started from a clean
6 slate. Current telephone companies have a rich 100-year-old
7 tradition; but they also have software that's 30, 40 years
8 old in assembly language. They have a lot of legacy kind of
9 that's in the nature of their business.

10 We hired some of the best talent in the industry
11 to come in and say: If you were to do a telephone company
12 right, what would you do? And they are having a field day
13 doing that. We're using the latest and greatest technology
14 for software, hardware, transmission systems, everything.

15 So that's why you see some of the abilities we
16 have here, done on a very efficient basis and a very rapid
17 iteration basis.

18 One more key point I'd like to make, Jerry, is
19 because of the architect we have, where you have a cable
20 coming into your home and you're listening to and responding
21 to any information you want to hear, it let's you do new
22 features.

23 We just made what's called a "POTS," That's in
24 telephone jargon. "Plain old telephone service." POTS.

25 But the "PANS," the Positively Amazing New Stuff,

1 we're going to do -- "POTS" and "PANS" -- is going to be
2 introduced -- let's say you're sitting down at dinner and
3 the phone starts ringing, do you answer the phone or not?

4 One feature we can do is, through the new
5 generations of set-top boxes, you can look at the TV set and
6 see the name and the number of the person calling you at
7 that moment; and you can decide: I don't want to answer the
8 phone call right now. You can even decide: I never want to
9 receive a phone call from that number again.

10 These are some of the things that you can do with
11 this kind of architect over the cable system. Over the next
12 several years, we're finishing the upgrade of our cable
13 networks with this hybrid fiber-coax architecture; so you
14 will be able to see these services rolled out nationwide as
15 we finish up our upgrades.

16 Thank you very much.

17 MR. LEVIN: Thank you, Steve.

18 So that was cable telephony.

19 We're now going to conclude with what I think is a
20 new experience for consumers; and that is a digital
21 interactive television.

22 I'm going to asked Tammy Lindsay to do this
23 presentation. Tammy is our Vice President for
24 Communications in Orlando in what we call the Full Service
25 Network. She is going to use a remote control. And what we

1 will try and do is pass one of those around to you so you
2 can see what it looks like.

3 Tammy.

4 MS. LINDSAY: Thank you, Jerry.

5 It's my pleasure to show you the world's first
6 digital interactive television network. It is fully
7 operational, working in paying customer homes and has been
8 since December of last year.

9 The Full Service Network programming is all
10 digital, as Jerry has been describing. And it's loaded on
11 computer servers that hold vast amount of storage capacities
12 and programs like movies, shopping, and games and the things
13 that I'm going to show you today.

14 Because it's digital, you can access it as a
15 consumer at your convenience. So the premise behind the
16 Full Service Network is to provide consumers greater choice,
17 more control over the programming that comes into their
18 homes, greater convenience so they can access it when they
19 want to rather than when it's programmed to air, and also
20 the ability to customize the Full Service Network for every
21 individual in the household.

22 When we sign on customers to the Full Service
23 Network, we give them this remote control. This accesses
24 not only the digital services of the Full Service Network
25 but also the regular broadcasting cable TV signals that come

1 into the home. So this is the only remote that you'll need
2 to access all those services.

3 We also provide them with home communications
4 terminals. This is the black box here. It's essentially a
5 Scientific Atlanta cable converter box, an 8600 X, in the
6 upper left-hand corner. And it has been integrated with a
7 Silicon Graphics computer workstation platform. There's a
8 lot of computer processing power in this box. We put
9 essentially the computer processing power behind television
10 to make it interactive.

11 Also we provide the Hewlett Packard color Desk Jet
12 550C printer. In some of the shopping applications and
13 others, like games, it actually gives the consumers the
14 ability to download full color graphics for things like game
15 instructions, recipes, maps, and the like. And this is an
16 example of the color graphics that come out into your home.

17 MR. LEVIN: So what you're saying is that's what
18 you would associate with the computer printer, but it also
19 associated with a television set. There is an extremely
20 powerful computer in that box. And, in essence, what we've
21 got here are 200 million old fashioned television sets out
22 there. We really put all this computing power behind that
23 and say: Now, for those people who don't want to use a
24 keyboard or a mouse, who are computer intimidated, all you
25 need to use -- the assignment here was to be able to control

1 video coming through a television set with something that
2 looks like a remote control.

3 And so you essentially have an electronic VCR.
4 That's all this is, but it took more computational
5 programming than it took to put a person on the moon to pull
6 this off.

7 MS. LINDSAY: That's correct.

8 But the point for the consumer is that it's very
9 easy to use. It's transparent to the consumer, all this
10 computer processing power behind it.

11 We have made specific use of color coding on the
12 remote, for the buttons that you use most often, to
13 manipulate your way around the network. In the center you
14 see this arrow key that allows you to go in eight
15 directions, left, right, up, down, and diagonally; and then
16 the green select button you press any time you want to enter
17 or complete a transaction.

18 With that background, I'm going to show you how
19 consumers actually interface. We have downloaded some of
20 the video assets, just a portion of them, from Orlando and
21 brought them into a small computer server here to D.C. to
22 show it to you.

23 But the consumers access the network through the
24 carousal. And what I'm doing is depressing the arrow key to
25 the right, and it will actually turn the wheel. And I can

1 turn it to the left, because I'm the consumer, I'm in total
2 control of that.

3 As you see, as a venue is highlighted, I can press
4 the green select button, stop, and enter that venue; or I
5 could punch in the channel number that we've assigned to
6 each venue.

7 And we only did that -- it's really unlimited
8 channel capacity, but we have done that to help bridge the
9 gap for consumers because they are very comfortable with
10 channels and channel surfing.

11 MR. LEVIN: One point to note, there are no
12 channels here. We are on the digital side. There is a
13 switch bringing a television program from a big computer
14 that is going right into your home.

15 But most people think in terms of channels. So to
16 provide easy access, we are saying movies are on channel --

17 MS. LINDSAY: 98.

18 MR. LEVIN: --98. There is no channel 90. So
19 when we say "digital domain," it's real. It is kind of
20 cyberspace. But if you said that to consumer, it would be
21 disorienting. So, in effect, like an old fashion channel,
22 you can go in and get those movies; but there are no
23 channels.

24 MS. LINDSAY: Okay.

25 With that, we talked about control.

1 I'm going to show you in the controls venue, this
2 is where you would enter the Full Service Network, the
3 administrative area. It's where you can customize the
4 network for every member of the house hold, save your
5 personal favorites to personal lists, favorite movies, and
6 things like that.

7 And you can get how-to video tutorials. We don't
8 give a written manual on the Full Service Network. We show
9 you on television because it's fun and entertaining and a
10 lot easier to use.

11 In a TV setting, this is where a parent is
12 important to enter because this is where you can actually
13 program in purchase locks. Through the use of a pin number,
14 you can make sure that little Johnny doesn't buy things when
15 you're not at home.

16 You can actually block out movies based on their
17 rating at your discretion. And you can block out channels,
18 regular broadcast, cable, or digital Full Service Network
19 channels in the TV settings mode.

20 Now, back to the carousel. I want to show you one
21 of the popular applications, of course, is the home video
22 theater.

23 And as Jerry mentioned, we have that on pseudo
24 channel 98. The home video theater puts you into a list of
25 all the movies we have available on the network. This is

1 just a sampling; but in Orlando, we have about 97 movie
2 titles available today.

3 We have categorized these movies. So if you just
4 like action films, you can scroll up to action and just get
5 those.

6 Now in A-to-Z, you can see on the right we have
7 listed all the movies available on the network in
8 alphabetical order.

9 Now, Ace Ventura Pet Detective is highlighted, and
10 you get the video promo -- to give you an idea of what the
11 movie is about playing -- behind it.

12 And as I scroll through movie to movie, my video
13 promo is going to change.

14 Now what's happening there is that I'm traveling
15 from the box through coaxial cable, down to a node in the
16 neighborhood, which transforms it into an audio signal, back
17 12 miles to our network operations center, that houses
18 equipment like the AT&T ATM switch and the computer servers
19 that store all the program.

20 And then it's actually sent in ATM packets quickly
21 through the home communications terminal that streams the
22 data and decompresses it and displays it on the television
23 screen in less than half a second.

24 You can see how fast the video programming is.

25 Now let's say I want to order a movie, Outbreak,

1 for instance. If I press the green select button, I'm taken
2 to an order screen. We have made the movies free for you to
3 today. But in Orlando we are charging for --

4 MR. LEVIN: We're running a special for the
5 Commission today. It's \$3.95.

6 MS. LINDSAY: The movies vary in price. They
7 range from \$1.95 to \$4.95.

8 And to order the movie, all I would do -- now, I
9 also should point out that we give you a brief description
10 of the film, tell you how long the movie lasts and give you
11 a running length time we are giving you access to the film.

12 We are varying that from one and a half times the
13 length of the movie to three times the length of the movie.
14 And we'll be playing around with that with consumers to
15 determine what they want.

16 Now, to finish my order, I just press the A
17 button, and then I'm asked to confirm my order, in case the
18 dog stepped on the remote, which happens in homes. So we
19 have to hit the B button. And I'm reminded that I have full
20 VCR-type functionality.

21 MR. LEVIN: These are the VCR symbols.

22 Now the movie is started.

23 Instant access.

24 On demand.

25 Now the credits -- can we --

1 MS. LINDSAY: Now I can fast forward through the
2 credits.

3 MR. LEVIN: Yeah, let's fast forward through the
4 credits.

5 MS. LINDSAY: Now, there's no crazy lines like you
6 would see on a VCR, you might note.

7 MR. LEVIN: Can you --

8 MS. LINDSAY: I can also resume play of the movie.
9 I can skip forward by hitting the skip forward button, and
10 it then jumps in 10 minutes increments through the film. So
11 I can look for my favorite seen. I can skip back the same
12 way.

13 And, of course, if the phone rings, Jerry, I can
14 press pause. And it's going to remember the scene, right
15 there and let me go answer the phone, answer the door, do
16 whatever I want to do.

17 MR. LEVIN: Excuse me, Tammy.

18 Great ideas can be conceived in a very simple
19 phenomenon.

20 All we want to be able to do is provide a movie on
21 demand that you can be able to handle the problem if you're
22 watching television, the phone rings and you can't stop it.
23 We know you can do that with a VCR. Why can't we do that
24 digitally? Once you can do that, then there are so many
25 other capabilities.

1 Go ahead.

2 MS. LINDSAY: I'm just going to send it to improv.
3 And I put the bookmark right there at that sign for a moment
4 on the screen.

5 And then I can go out and do something else on the
6 Full Service Network.

7 See, it reminds me that I have a movie in
8 progress.

9 MR. LEVIN: And the time remaining.

10 MS. LINDSAY: Now, I'm going to jump quickly to
11 the shopping venue just to show you some of the stores
12 available in our Dream Shop. And we provide consumer access
13 and delivery 3 to 10 working days from any of these stores.
14 And many of these are available on the Full Service Network,
15 and some will be added by the end of the year.

16 But I would like to point out, of course, the post
17 office is a popular application because you can actually
18 order stamps and have them delivered to your door through
19 the postman the next morning. So it's very, very popular
20 with our customers.

21 I'm going to quickly jump back into the games
22 venue.

23 MR. LEVIN: Okay.

24 MS. LINDSAY: Here we go. We call it the "Play
25 Way. And you see "Skate Kid" is going to help the kids get

1 down this roller coaster ride to get to all the games. We
2 have four network games that you play using the remote
3 control, and then we have 16 Atari Jaguar games that you
4 play using the Atari Jaguar game unit.

5 The TV box that's shown on the screen allows 16
6 households to play this game simultaneously. So you can
7 even join a game in progress. You can have a game with your
8 neighborhood.

9 It's a lot of fun.

10 I'm going to quickly go back out to the carousel,
11 in the interest of time, and I'm going -- should I jump back
12 to the movie, Jerry, and see what happened with that?

13 MR. LEVIN: Sure.

14 MS. LINDSAY: It shows me that I have a movie in
15 progress, that it's called Outbreak. And I just press the
16 select button. And, boom, there I am right at the scene,
17 just as I left it. So I never miss a beat. And I can have
18 full VCR functionality.

19 MR. LEVIN: You want to fast forward and see that
20 again?

21 Now stop.

22 And rewind.

23 All right. So it looks simple, but that
24 capability isn't very different from what we were doing with
25 the PC where you were scrolling up and down, except here

1 it's full motion video.

2 The concept was basically to say that a
3 compactible form of communication is what we call full
4 motion video. If I can control that and manipulate that, we
5 call it video-on-demand. What else can I do?

6 So I would like Tammy to show you what we're about
7 to do. It may not be commercially viable, but it's
8 something that we have been working on for a year and a
9 half, and that is news on demand.

10 If I can pull up a movie, why can't I pull out the
11 video news?

12 MS. LINDSAY: We call it the "News Exchange." And
13 it allows you to pull up the news at your convenience. If
14 you miss the 6 p.m. or 11 o'clock news, when are you going
15 to be able to watch it?

16 You can watch it here on the News Exchange.

17 What we have done is digest the day's news. You
18 can get it from a local news anchor like you normally would,
19 or you can go to the category of news and --

20 MR. LEVIN: You can stop this news anchor.

21 MS. LINDSAY: Right. You can move from local to
22 world and national news. I can enter that category and see
23 where we have categorized all the news.

24 Now, this is being developed by Time Inc. working
25 with CNN, and ABC, NBC; the Tribune Company; the Weather

1 Channel; and, of course, the Tribune Company owns the
2 Orlando Sentinel, so we get local news and information.

3 Now, if I wanted to see the latest World News
4 Tonight, a 20/20 program, or any of these, I can actually
5 pull it up on demand and then have full VCR functionality.

6 MR. LEVIN: Why don't we try "Cross Fire"?

7 Again, controlling this news program the same way
8 we control the movie.

9 MS. LINDSAY: All right. Here's the fast forward.

10 MR. LEVIN: Okay.

11 MS. LINDSAY: We have many other services under
12 development today, and I invite you to come to Orlando to
13 try the real thing out for yourself.

14 Thank you.

15 MR. LEVIN: Basically, we don't know -- I guess we
16 can put the logo back up.

17 I don't know how consumers will react to this
18 concept of news on demand, but essentially what we're trying
19 to do by creating the technology is, now you turn it over to
20 people who are much brighter and more creative than we are
21 to figure out how to use it.

22 I'm very anxious to see whether this, what we call
23 command and control, can apply to all forms of programming.

24 So let me try and give a kind of impromptu
25 summary, and then we'll go to questions.

1 Basically when you have digital capability, you
2 have on-demand speed, instant access. It's a very
3 significant consumer characteristic.

4 Secondly, because it's digital, you can program
5 the software; you can have denial devices, filtering systems
6 that are very interesting in terms of consumer protection.

7 The third is that -- and this is hard to explain
8 -- everything becomes a telephone call. When I pick up the
9 telephone handled set, when I use my mouse with a PC, or
10 when I use this remote control for the TV, it's all going
11 back to a server; the server can be in the community, it can
12 be somewhere in our country, it can be somewhere around the
13 world. And there is a switch, a very intelligent switch
14 that's satisfying my command with a personal direct program
15 -- it could be a telephone conversation, video, local news
16 -- that is basically coming to me.

17 So my own view is that this is a marvelous form --
18 and I don't mean to get too philosophic about it --
19 self-actualization, that instead of having just a relatively
20 limited set of materials that are thrown at me by companies
21 who in the media and entertainment business, I am
22 assembling, digitally what I want and what really reflects
23 my personality. It's just as if I come into your home, I
24 can see what magazines are on the coffee table and see your
25 furniture. It says a lot about individual personality.

1 So I think it's highly significant.

2 The last thing I'd say, not to confuse you,
3 everything that was seen today is electronic digital
4 distribution. There's a whole other side of what we call
5 hard copy digital capability, something called a digital
6 video disk, which we have been much pushing.

7 And we now have a worldwide standard for movies,
8 for music, for multi-media information, for computer storage
9 that can do on a five inch disk a lot of what you have seen
10 today, except this is real-time.

11 So this is the digital revolution. I'm sorry we
12 took so long. But I think that gives you some idea, some
13 experience of what it is.

14 That concludes our demonstration.

15 CHAIRMAN PITOFSKY: Well, thank you, very much. I
16 think we are all in Future Shock, but we'll pull ourselves
17 together to try and ask a few questions here; and I think
18 maybe we'll run over a little bit here. This is worth our
19 time.

20 I wonder if you'd say a little bit more about
21 access. I mean, I see that you can purchase a movie, you
22 can buy a PC, I guess, you can buy a hearing aid and so
23 forth, you can buy a news service.

24 Down the road, how do you see the decisions made?
25 It's like a shelf space question. How do you see the

1 decisions made as to who gets on this screen?

2 Suppose there are five companies selling PC's and
3 a sixth wants to get on the screen, would they pay for that
4 opportunity?

5 MR. LEVIN: Well, the question, to get access onto
6 the network, is a fascinating questions.

7 We're already seeing, I think, on the Internet,
8 where the cost of getting on to a network is so relatively
9 small that there are no real barriers to entry any more.

10 I'll give you a very prosaic example on the
11 Internet that's of great interest to a lot of companies that
12 involves copyright protection and other issues.

13 We are almost at the point where you could have
14 what's called real-time audio on the Internet so that
15 anyone, anywhere in the world, in the garage or in a home,
16 with a PC and a fairly simple application modem can go on to
17 the Internet with real-time audio and can, in effect, start
18 what we used to call a radio station. That could be
19 received or accessed by anybody.

20 So I think we need to shift our whole concept of
21 limited, you know, gatekeeping limited access.

22 Now, let's fast forward to this rather robust
23 digital television. What about access there? And here we
24 try to make the point -- it's very hard to get your arms
25 around it because you're so used to thinking about channels

1 and just a couple of channels on a television set -- but
2 when we go into this digital domain, there are no channels.
3 So anybody with a server, with a digital server, who can put
4 material on that server can be accessed.

5 I mean, for example, in a community, in Elmira, if
6 we had the Full Service Network running there, people who
7 are inputting from the schools or from the libraries could
8 input video, because video cameras as we know -- and we
9 should have demonstrated one -- are small as a little pocket
10 light that can be digitize and put right on the system.

11 So think about television that can be inserted in
12 this system. And as long as I have now come to what's
13 important from a software point of view, you do need
14 navigation, you do need the ability -- that's why these web
15 browsers, navigation browsers -- you need some kind of
16 software that can open up your access to everything that's
17 on the system.

18 So, it's a long-winded answer to say that we have
19 to throw out our old ideas of -- that's why we even use the
20 phrase "broadband" versus "narrow," that, in fact, the
21 digital math is working in our favor.

22 I'll give another example. The big switch that we
23 use in Orlando to switch television into the home was a
24 multi-million dollar switch. It's now several hundred
25 thousand dollars, and that price is going down so that

1 individual digital applications, I think, will be highly
2 cost-efficient. There is something called Moore's Laws that
3 every 18 months the capacity doubles, triples, ten times;
4 and the cost gets reduced by almost 50 percent.

5 COMMISSIONER VARNEY: Mr. Levin, is that to say,
6 then, in the demonstration from Elmira and the demonstration
7 from Orlando, I think in both of those you had shopping
8 categories.

9 MR. LEVIN: Right.

10 COMMISSIONER VARNEY: So your network or your
11 corporate organization exercises no control over who gets
12 on?

13 MR. LEVIN: Yeah, that's a good question,
14 Commissioner Varney.

15 Our intention -- I mean, obviously in this early
16 stage, we've had to round up people because you have to kind
17 of digitize and you have to be, in a sense, somewhat of a
18 pioneer to want to do it.

19 But the intention, as Tammy mentioned, we're going
20 to put Best Buys on, like 250,000 items. We want to be, you
21 know, almost a near-infinite department store or retail
22 operation, where, essentially, we want to get as much into
23 this system as possible. And when you recognize,
24 physically, that we ultimately do not control the system.
25 We've have to start this up so that people can see it's

1 done. And there are servers, yes, that we have in Orlando.
2 But what we want is a communications system that will tap
3 into anybody's server, anywhere in the country, anywhere in
4 the world. That's why I think the Internet is a terrific
5 kind of analogue to what it means.

6 So what we want to do, as a system, is simply to
7 get consumers interested in this so they can eventually
8 communicate. That's why I came back to, it's all like a
9 telephone conversation; it's a form of communication; it's
10 not a form of -- it's kind of the packaging or delivery on
11 our part.

12 CHAIRMAN PITOFISKY: I have one other question on
13 behalf of many people in the room here.

14 Forgetting about the hardware, do you have any
15 estimate of what this is going to cost once you really have
16 this thing rolled out?

17 MR. LEVIN: You mean for the consumer?

18 CHAIRMAN PITOFISKY: Yes.

19 MR. LEVIN: We are looking at what I'll call the
20 cable model, and the cable model is a very interesting one,
21 not just because it's an industry that I came from.

22 And that is, when we put all of this equipment --
23 instead of you're going to a store and purchasing consumer
24 electronics and computer, which changes fairly rapidly and
25 it has to be replaced -- because of cost-efficiencies of

1 using kind of a system that will replace this box, will
2 replace the switch and move it to another system,
3 essentially what I believe we will provide for the consumer
4 is that you will have the basic charge that you'll need to
5 subscribe to the cable system. And most of what we've
6 shown, to order a movie or something, will be on a -- kind
7 of a per choice or per view basis.

8 The interesting question for us -- and things that
9 we are working with the FCC on -- are the kind of material
10 that we want to provide as a base charge. For example, we
11 are going to wire up schools and provide these cable modems.

12 But for the consumer, we're not talking about a
13 huge bill. I think the way to look at is, like Tammy said,
14 going to the post office electronically. Well, I will be
15 billed for my stamps; but it's something that I would have
16 paid to the post office anyhow.

17 It's the same thing with the movie: I might have
18 gone to the video store and paid a couple of dollars to rent
19 a video.

20 So these are really -- you're purchasing
21 something. It's essentially substitution economics. The
22 same thing with the digital telephony.

23 So we are not looking at what we think are high
24 charges.

25 One thing we do worry about in addition to a whole

1 other subject, privacy and data collection, is what I'll
2 call a fear of "We don't want to create information
3 aristocracies." We definitely want this kind of technology
4 to be available to everyone.

5 And one thing I would say to you that, by working
6 so hard in Orlando, instead of an average consumer having to
7 purchase very significant computing power, we are trying to
8 bring that cost down so that it's available to the consumer.

9 COMMISSIONER STAREK: I had one question. From
10 what I've heard this morning, it sounds like you made a
11 giant leap over the technology that is available and
12 currently in use by the regional telephone companies.

13 I was wondering if it's necessary for this system
14 to have some sort of a strategic alliance with the regional
15 companies for the system to operate?

16 And if it is, do you foresee a variety of those
17 kinds of alliances and relationships with regional telephone
18 companies?

19 MR. LEVIN: Well, Commissioner, it's a very
20 question. Because, you know, obviously public policy
21 intersects with the financing mechanisms in the marketplace.

22 I strongly believe that we are in a period where
23 we have an opportunity to build the infrastructure to create
24 this kind of digital interactivity. And it is heavy capital
25 requirement, and I do believe we are in the forefront,

1 worldwide of this kind of networking. And, in fact, it is a
2 model for export around the world.

3 So if I were designing public policy -- which I'm,
4 obviously, am not -- I would encourage relationships between
5 telephone companies, cable companies, computer companies, in
6 some form of joint venture, common use of certain facilities
7 so there isn't capital duplication for the sake of
8 constructing the infrastructure because I think it's a
9 central characteristic, is to provide such abundant,
10 interactive, on-demand opportunity that everyone will be
11 competing. But the challenge for America is to build this
12 digital highway. And I just think the public policy ought
13 to encourage this.

14 I think there are a lot of theories that are in
15 our law that are really 19th century theories. They don't
16 take into account this digital reality. So we, in fact,
17 have relationships with the telephone companies. But you
18 have to kind of work your way through regulations in order
19 to make it happen.

20 And the last thing I would say is that every
21 company has been operating in a slightly zone. Cable
22 companies have been, in the past, delivering one-way video;
23 telephone companies have been used to second-by-second
24 monitoring of switched signals. We're really talking about
25 the convergence of that. And then I add one other thing,

1 and that is computer software.

2 So somehow if we could have an relationships so
3 that the financial markets -- because I do believe this
4 needs to be private sector financed -- can feel comfortable
5 that the infrastructure will be built and then there's
6 robust competition on the system.

7 COMMISSIONER STEIGER: On the question of that
8 infrastructure, it sounded to me as though area you're
9 working with now for the optic fiber interconnects is
10 possibly somewhat small. There is a gray box on my house.
11 A block ago there's the black box to interface the signals
12 from my box.

13 If this is the case, do you expect that that area,
14 before you need a middle server, another black box, is going
15 to increase?

16 And, if not, what does that say about the
17 difficulty of optic fibering a neighborhood?

18 MR. LEVIN: Well, I think what we're seeing -- and
19 I've probably understated the development that's already
20 taken place, Commissioner Steiger. Because, in fact, the
21 cable industry, in what we call this fiber upgrade, is
22 laying, each day, miles -- and now thousands of miles of
23 fiber and connecting the head end to what we call the
24 neighborhood.

25 And then I think the economic elegance of this was

1 to retain the last mile of coaxial cable, which is the most
2 expensive part of the system. You don't need to replace
3 that.

4 So that if you change out this trunk line and to
5 fiber optics and go to neighborhoods of about 400 or 500
6 people and then retain the coaxial cable, you have a highly
7 cost-efficient system.

8 So when we talk about upgrading cable, remember
9 cable passes today about 90 percent of the homes in America.
10 So there is coaxial cable running past almost 90 percent of
11 the homes, 65 percent actually subscribe. So this process
12 of changing out, putting all this fiber in, is underway
13 today.

14 I think the architecture of that we need to have.
15 And I believe over the next several years, you will see that
16 put in place. But it takes advantage of the fact that this
17 last mile of coaxial cable is not taken out. It's the most
18 expensive part and it gets retained.

19 Then we, by, really, electrifying the system with
20 all of this switching power, you have converted what was
21 formally a rather prosaic tree and branch plumbing system to
22 a very magnificent switch-star digital system.

23 COMMISSIONER VARNEY: I just have one question,
24 and I'm not very technologically sophisticated, so I'm a
25 little apprehensive.

1 MR. LEVIN: Nor am I. I'm able to deal with the
2 literature.

3 COMMISSIONER VARNEY: It shows in your profit,
4 right?

5 If the coaxial cable and the fiber optic upgrade
6 is combined into this one system that can deliver this
7 tremendous capacity like we have seen in Orlando, do we end
8 up in 20 years with one system, like we had with AT&T, that
9 basically delivered phone services throughout the country?
10 Are we seeing the future where there's only one game in
11 town?

12 MR. LEVIN: Well, you have asked the question of
13 the ages.

14 If I back up and say that I think we should
15 encourage the construction of this capacity, what's the best
16 -- from a public policy point of view and for the financial
17 markets and for our global situation, what's the best
18 structure to kind of let this go?

19 Then, somewhere down the road -- and you know, I
20 know regulation of vertical integration kind of runs in
21 cycles -- you know, where are we at that point?

22 My own view is that it's important to construct
23 the infrastructure and that, through some collaboration,
24 that's probably helpful, rather than having duplicative
25 facilities.

1 And I think you can throw old ideas like common
2 carrier and other regulatory forms, because I think then
3 what you'll have is, everybody is kind of converging on
4 providing lots of software, lots of navigation systems, lots
5 of access so that there will be a highly, robust form of
6 competition in this infrastructure if we just kind of let it
7 get built.

8 So, you know, I will go out on a limb and say,
9 even if 20 years there is, essentially, basically one piece
10 of infrastructure here, there will be so many switches, so
11 many components used by so many different players that it
12 almost doesn't matter.

13 CHAIRMAN PITOFSKY: Well, let me thank you, again.

14 We are extremely grateful for this extraordinary
15 presentation. It brings to a climax the issues that we have
16 been addressing and illustrates the point that, as
17 regulators, we've got to understand the way the world is
18 changing and make sure that our thinking is not devoted to
19 an earlier era but is adjusted to these new realities.

20 And I want to thank you, again, form coming down.

21 Incidentally, we will resume these hearings in
22 room 332 so that the Time Warner can retrieve their
23 equipment.

24 (Whereupon, a short recess was taken.)

25

1 COMMISSIONER STAREK: Good morning, again.

2 We are continuing our series of hearings on global
3 competition and consumer protection enforcement in the
4 future.

5 We had a fascinating presentation this morning
6 about what we can expect with the convergence of the three
7 technologies that we have been discussing: the television,
8 the telephone, and the computer. I thought it was
9 fascinating. For those of you who had an opportunity to
10 see, I suspect you agree.

11 We're going to move now to what I consider the
12 guts of the program, which is how enforcement agencies are
13 going to react to fraud and deception in international
14 markets. With the new technologies that we've learned about
15 in the previous three days, how is it, then, that
16 enforcement agencies are going to respond when the
17 inevitable occurs? And that is that scam artists, and
18 others with fraudulent intent, will use advanced
19 technologies to provide even more sophisticated scams in the
20 future.

21 I think we have assembled a very interesting panel
22 this morning. And what I thought we would do is to hear
23 from our panelists initially and then have some questions
24 and open it up to discussion.

25 And I think we'll start with the feds here. Our

1 first witness is representing the U.S. Department of
2 Justice. His name is Gordon Zubrod. He's an Assistant
3 United States Attorney for the Middle District of
4 Pennsylvania. He is a Senior Litigator for the U.S.
5 Attorney's office there and has extensive criminal
6 prosecution experience, including many cases that involved
7 economic fraud.

8 When I first came to the Commission, we were
9 bringing a lot of cases involving all sorts of fraud, but we
10 were having a difficult time pursuing criminal charges
11 against our most egregious defendants. Our friends in the
12 Justice Department were very bogged down with drug cases and
13 other major criminal conspiracies. But in the time that
14 I've been here, which has been about five years, we've seen
15 this enormous response from our colleagues at the Justice
16 Department, the Federal criminal prosecutors who work with
17 this Agency, the FCC, and other agencies that are
18 prosecuting in fraud and trying to put together cases where
19 one of the remedies is the most severe: Criminal penalties.

20 So, Gordon, thank you for coming; and we look
21 forward to your remarks.

22 MR. ZUBROD: Well, thank you, Commissioner, for
23 inviting us to this. It's been a fascinating presentation
24 so far; and I definitely feel like I'm in the vanilla league
25 after watching the presentation that just preceded.

1 COMMISSIONER STAREK: I can't even get my remote
2 to work. So I'll be really lost when I've got to do all
3 these things with a remote.

4 MR. ZUBROD: This whole field of high technology
5 and communication is one that we have a real concern about;
6 because you look out on the Internet, and I just know that
7 the frauders, scam artists see the fields ripe for harvest.

8 And the dual concern we have is that they will be
9 able to create some virtual reality mechanism whereby they
10 give themselves legitimacy, technologically, that they don't
11 have in reality.

12 The second one is the ability to cover their moves
13 by being able to leap from place to place technologically
14 and really be around the corner; and it would take forever
15 to locate them, and by the time you do, they have moved on
16 and set up in another place.

17 My point today is that the fraud -- however,
18 having said that, fraud is not intrinsically technological,
19 that the sophistication is psychological and not
20 technological; and the technology is the not the driving
21 force behind it.

22 The thing that, having been in this particularly
23 economic crime now for about 15 years, is that the same
24 techniques reappear over and over again, very simple
25 techniques.

1 I once asked an international defrauder what is --
2 what's the earmark that you go for? What is the thing that
3 sets in motion a scheme to defraud? Expecting all sorts of
4 answers, both technological and otherwise, he said:
5 Recession. He said, because when there's a recession,
6 people's judgment diminishes and their fear level rises.

7 He made an interesting comment, he said that
8 Americans are noted as some of the hardest working people
9 anywhere; but the reason for that is not because they like
10 work. It's because they fear the future.

11 And it is that which they play upon.

12 They did a study once on successful businessmen
13 and women and to see what it was that drove them and
14 motivated them. In most of cases, the highest motivator was
15 fear of failure.

16 And we find that we're not just having elderly or
17 undereducated victims. We're having doctors, lawyers,
18 accountants, corporate presidents, as victims of these
19 scams, who have paid millions in order to protect their
20 future.

21 As I said, many, if not most, of the big scams are
22 low-tech. The nature of fraud hasn't changed. Sucker lists
23 ads, post cards, telephone pitches, glib telemarketers.

24 With these really dedicated, career individuals,
25 cease and desist orders don't particularly work.

1 So where does the FTC's greatest contribution lie
2 in addressing telemarketing fraud and particularly global
3 telemarketing fraud?

4 And I would suggest that it is in the forging of
5 relationships, productive partnerships, that we need your
6 help in maximizing our effectiveness in law enforcement.
7 The critical need of the hour is groups focusing on fraud to
8 form cooperative relationships.

9 We need you to make us more effective both in the
10 private sector, administrators, law enforcement,
11 internationally, we need to have some clearing house, some
12 continual way of exchanging information.

13 We need the FTC to make us more efficient and
14 maximize our effectiveness. If you were to ask me: How? I
15 would say: Help us in several ways.

16 Number one, by identifying what fraud is currently
17 the fraud du jour. It could be indium scams. It could be
18 gem scams, sweepstakes. They tend to come in waves. And
19 this rush pours through the criminal element, and they see
20 some things working, and everybody leaps on board. And by
21 the time we get around to it, with out grand jury subpoenas
22 and our court-ordered immunity and so on, they've moved on.

23 We need a business organization that is responsive
24 to what's going on and can alert us as it's happening.

25 Secondly, we need to know who the victims are,

1 what regions are being defrauded.

2 We worked with Bob Friedman in your gem scam case
3 because it's a bottomless victim pool. And what he was able
4 to help us do was to identify victims that were really going
5 to be dynamite for us. He found people who had had mental
6 breakdowns, having giving their life savings; people who had
7 borrowed money from family; and so on, all of the ones where
8 the jury is throwing the rope over the tree half way through
9 the testimony.

10 That was very, very effective for us in our
11 Canadian gem scam case. We need to know things such as:
12 Who are the most prevalent miscreants because they tend to
13 ride the wave, like a surfer from one scam to another. And
14 sometimes it is productive to focus on individuals rather
15 than on scams themselves.

16 We need to form an international telemarketing
17 database. I would really love to see the FTC take the lead
18 in cross-border information sharing in the forging of
19 productive partnerships.

20 For instance, Industry Canada, I think would be a
21 very valuable source of interplay between our country and
22 Canada because you are more responsive in the sense that you
23 react more quickly than we do to a lot of what's going on.

24 This would include operational collaboration,
25 Postal, FBI is now becoming involved, the Royal Canadian

1 Mounted Police, the York Regional Police, the Ontario
2 Regional Police, Metropolitan Toronto Police have become
3 very heavily involved in the process.

4 I think the time has come and we're seeing now,
5 for cross-designation of FTC attorneys in criminal
6 investigations. Now, we should begin by acknowledging that
7 there's some institutional resistance to that, which Jon
8 Rush and the telemarketing working group are slowly
9 overcoming; and there's a hesitation about the sharing of
10 grand jury information, about, you know, violating any
11 disclosure or discovery rules, et cetera.

12 But that's gradually being overcome, and I think
13 we will be seeing -- there are certain cases I'm not allowed
14 to comment on, but we're going to be seeing more and more
15 Federal Trade Commission attorneys involved working as
16 Special Assistant U.S. Attorneys in these prosecutions.

17 I could go on, but I think I'm going to save for
18 the roundtable discussion a more particularized discussion,
19 particularly after Ms. Larabie-LeSieur speaks on the
20 interplay that's necessary between countries in dealing with
21 corporate fraud.

22 But primarily, our point is, we really need the
23 FTC to make us more effective and efficient in addressing,
24 in a timely fashion, the rapidly moving area of
25 telemarketing fraud.

1 COMMISSIONER STAREK: Well, thank you, Gordon.
2 What I can say is that I agree with just about everything
3 you've said. It's music to my ears. The problems are only
4 going to become more acute on an international basis; and
5 the way to respond to the increased sophistication is
6 through joint efforts, not only internationally with our
7 enforcement colleagues around the world, but also in our own
8 agencies working cooperatively providing assistance that we
9 can offer through our various statutes and the various
10 powers that we have designated to us.

11 So I think I'm looking forward to the roundtable.
12 Let's hear from our next witness, who is Richard Held.

13 Mr. Held has headed efforts to develop risk
14 management, fraud control, and employee safety program at
15 Visa International. And I think he is extraordinarily well
16 qualified for this job because he spent over 25 years with
17 the FBI. He headed FBI operations in Puerto Rico, the
18 Caribbean, and Northern California.

19 I think today we have asked him to discuss the
20 growing problems of cross-border fraud from the perspective
21 of the private sector and what they are doing to address
22 this rapidly growing problem.

23 Mr. Held.

24 MR. HELD: Mr. Chairman, Commissioner Starek, my
25 name is Richard Held. I am the Senior Vice President of

Heritage Reporting Corporation
(202) 628-4888

1 Risk Management and Security of the Visa International
2 Service Association. And on behalf of Visa, I appreciate
3 the opportunity to come before you to today to talk about
4 cross-border fraud.

5 Visa is a membership association of over 19,000
6 financial institutions worldwide licensed to use Visa marks
7 in connection with payment services, including credit and
8 debit cards and emerging technologies, such as stored value
9 cards and electronic commerce.

10 Detecting and preventing fraud that's associated
11 both with fraudulent cards and fraudulent merchants are of
12 great concern to Visa and its members, given our commitment
13 to protecting the integrity of our brand and maintaining the
14 confidence of cardholders and merchants who use our products
15 and services.

16 While fraud is a problem for Visa members, it's
17 important to put it in perspective. For the year ended
18 September 1995, Visa's ratio of fraud-to-sales volume is
19 something less than one-tenth of 1 percent on an estimated
20 sales volume of some \$780 billion.

21 Despite the relatively low ratio, Visa is still
22 working to further reduce fraud and to continue our
23 worldwide leadership in this area.

24 Visa's found that by using a variety of fraud
25 detection and prevention methods, we can effectively isolate

1 fraudulent activity and prevent systemic problems.

2 Of particular relevance to today's hearings,
3 cross-border activity is responsible for a growing
4 percentage of the fraud we experience. The worldwide Visa
5 organization operates with six regional groups of countries,
6 and in 1994, 13 percent of all fraud and one-third of all
7 counterfeit was transactions between regions.

8 I'd like to now review with you some of our
9 worldwide fraud prevention tools. Since fraud is a global
10 problem, our solutions must also be global.

11 It's programs like those to which I'll refer that
12 have enabled us to reduce fraud to the level we're
13 experiencing today; and it's programs like these that will
14 set the precedent for our response to future problems. At
15 the outset, issuers -- those institutions that issue Visa
16 cards -- carefully review all applications in order to
17 detect the potential for fraud.

18 Similarly, acquirers, those institutions that
19 acquire merchants to accept the Visa card, they carefully
20 evaluate each merchant's relationship in order to keep
21 fraudulent merchants outside the system.

22 At Visa, we're constantly taking advantage of new
23 technology in our efforts to reduce fraud.

24 For example, to combat counterfeiting, we
25 implemented what we call the Card Verification Value

1 Program, or CVV, which incorporates a secret code in each
2 card's magnetic stripe. When a merchant swipes the card at
3 an authorization terminal, the information on the stripe is
4 read -- is transmitted to the issuer and read at the issuer
5 location.

6 This CVV enables the issuer to detect if there has
7 been any alteration to the magnetic stripe and, if so, to
8 deny authorization for that particular transaction.

9 Another new technology is our neural network
10 system, called the Cardholder Risk Identification System, or
11 the acronym we use is CRIS, which allows card issuers to
12 detect fraudulent cardholder and merchant transaction
13 patterns and relationships by using hundreds of variables to
14 analyze massive quantities of data.

15 This highly specialized software "trains" itself
16 and develops enhanced predictive models as each new piece of
17 data is received. Responding to ever-changing criminal
18 patterns, our neural network system is updated continuously
19 to quickly uncover new fraud patterns.

20 Card issuers can base their authorization
21 decisions on a risk value that's assigned to each
22 transaction processed through our global payment system,
23 VisaNet.

24 This system also electronically alerts card
25 issuers to potentially fraudulent activity up to eight times

1 a day via a CompuServe mailbox, thus, providing them with an
2 early warning system that prompts them to follow up with
3 their cardholders by telephone to ensure the accounts are
4 not being compromised.

5 Our Global Fraud Information System is a PC-based
6 service that allows us to alert members as we see a
7 fraudulent scheme developing any place in the world. It
8 also gives members worldwide the ability to communicate with
9 each on problems, fraud schemes that are being experienced.

10 Another method that we use to determine where
11 fraud has clustered, in order that we may be cost effective
12 and surgical in applying solutions, is our Fraud
13 Concentration Analysis program wherein Visa analyzes
14 extensive transaction data to determine what kind of fraud
15 is occurring, is it counterfeit, is it on lost cards, is it
16 on stolen cards, where it's occurring, by country, by
17 merchant category, by a particular merchant, which issuers'
18 cards are being compromised so we can determine why a
19 particular institution is being exploited, and, finally,
20 individual acquirers whose merchants are being compromised
21 above the norm.

22 Visa then develops potential solutions with the
23 issuers and acquirers and asks for feedback in order that we
24 not reinvent the world for these ever-migrating fraud
25 schemes that move from one place to another.

1 Similarly, our Risk Identification Service
2 monitors fraud processed at merchant locations. Again,
3 looking for clusters of fraudulent activity and patterns.
4 When fraud is centered at certain merchant categories or
5 merchant locations, we notify those merchants, acquirers so
6 that Visa, the acquirers, and again the merchants can work
7 together to determine the causes of the fraud and prevent it
8 in the future.

9 Visa's Acquiring Monitoring Program identifies
10 acquirers whose merchants introduced excessive amounts of
11 fraud into the system. Thereafter, our risk control
12 specialists visit the site of their operation and reviews
13 all aspects of their operation.

14 If certain shortcomings are detected, we work with
15 the institution to correct them and strengthen their
16 process.

17 We also use floor limits as a risk control tool.
18 A floor limit is a value above which the transaction must be
19 authorized at the point of sale. The value varies by
20 country and by merchant category. By authorizing a
21 transaction, the card issuer tells the merchant: This card
22 is valid and the transaction is within the cardholder's
23 credit limit. When a transaction does not involve the
24 authorization process, it invites increasing potential for
25 fraud.

1 The United States telecommunications system is
2 highly developed and relatively inexpensive compared to
3 systems in other parts of the world.

4 This enables U.S. merchants and financial
5 institutions to authorize most all Visa transactions,
6 regardless of the amount, by merely swiping the card through
7 an authorization terminal at a point of sale.

8 In other countries where telecommunications costs
9 are higher, in systems less developed, Visa sets floor
10 limits, taking into consideration the cost of the
11 authorization as well as the fraud experienced, in order to
12 minimize our exposure in those countries.

13 Through our Central Deposit Monitoring Program,
14 Visa tracks the number of transactions a merchant deposits
15 into the system over period of time. Where unusual
16 increases in volume are detected, this is a sign of
17 laundering drafts. And, again, we would go to the acquirer
18 to seek corrections.

19 Laundering occurs when an authorized Visa merchant
20 submits Visa transactions on behalf of another merchant who
21 is not authorized to do business with Visa.

22 Our International Points of Compromise Program
23 allows us to trade counterfeit cards to determine whether a
24 particular card or a series of cards was comprised at a
25 specific merchant location.

1 We also regularly review the facilities and
2 operations of vendors worldwide that manufacture cards,
3 holograms, or otherwise participate and impact on the
4 integrity of our system.

5 Finally, we at Visa believe that awareness and
6 education programs also play a vital role in reducing fraud.
7 As a result of active participation by Visa members,
8 merchants, and law enforcement agencies, the human
9 intervention efforts, we think also have been quite
10 successful.

11 The focus of these hearings is on three
12 technologies: television, telephone, and cyberspace.

13 Advances in these technologies will clearly give
14 consumers new opportunities -- as we saw this morning -- to
15 communicate with merchants globally without being physically
16 present to effect a transaction and use, in the process,
17 Visa's products to make purchases.

18 All of the fraud combating tools I have discussed
19 today are in use by members worldwide and virtually all will
20 -- or already are-- being used to combat both domestic and
21 cross-border fraud in television, telephone, and cyberspace
22 payment environments.

23 Visa fully intends to continue its leadership role
24 in fraud detection and prevention. Our programs are
25 continually evolving to meet new challenges in emerging

1 technologies. We have no intention of varying from that
2 precedent.

3 As Visa develops new products and services, our
4 Risk Management staff is an integral part of that product
5 development process. Our role is to evaluate the products
6 and services as they evolve in order to pinpoint any
7 potential exposure there might be for fraud and put that on
8 the table as a business decision is made.

9 While others may see technological advantages
10 creating new opportunities for fraud, we see new
11 technologies as opportunities to offer new services that
12 will substantially benefit consumers not only by adding
13 convenience and access to information but also making
14 transactions more secure.

15 For example, as we migrate from magnetic stripe
16 cards to integrated circuits, or chip cards, transactions
17 will be authorized in an off-line environment without using
18 telecommunications lines. Although a main reason for chip
19 technology is to take advantage of its increased memory, to
20 offer new product capabilities, a significant additional
21 benefit, will be that all transactions will be authorized,
22 making it easier to detect lost and stolen cards, and
23 schemes that target payment environments with high fraud
24 floor limits. Also chips are much more difficult to copy
25 than magnetic stripes, thus cutting into the danger of

1 counterfeiting.

2 Obviously, cards used at the point of sale are
3 only one vehicle for emerging technologies. Home banking
4 and electronic commerce are other technological advances
5 that are in nascent stages today but will become the norm.

6 We'll bank from home using a phone, a personal
7 computer, interactive television, or a virtual bank. We
8 also will shop in virtual malls from anywhere we have a
9 personal computer connected to the Internet.

10 Visa's already working on encryption methods that
11 will secure credit card account information on computer
12 networks, such as the Internet, and be able to authenticate
13 parties to a transaction.

14 As these and other technologies evolve, our Risk
15 Management programs will evolve with them, offering those
16 who participate in our systems better security systems.

17 Thank you for giving Visa the opportunity to
18 address you this morning.

19 COMMISSIONER STAREK: Well, thank you very much
20 for coming and offering that fascinating testimony.

21 Now that we know that major companies that deal
22 internationally are using technologies for risk management
23 to combat fraud, I wonder what the government's response is
24 going to be. How are we going to use these new technologies
25 to increase our enforcement efforts?

1 And maybe for an answer to that question or at
2 least some enlightenment on the issue, we turn now to Scott
3 Blake Harris, who is the Chief of the International Bureau
4 of the Federal Communications Commission in Washington.

5 His international work at the FCC includes
6 telecommunications, radio, satellite, and other
7 developmental matters. He has an extensive background in
8 this having worked both in the law firm of Williams and
9 Connolly here in Washington and at the Commerce Department.

10 I think he's going to discuss with us today
11 cross-border telemarketing fraud and how those new
12 technologies will support the globalization of the
13 marketplace and could enable the scam artist to evade law
14 enforcement and how law enforcement can, then, use the new
15 technologies to curtail scam operators.

16 Thank you for coming, Mr. Harris.

17 MR. BLAKE HARRIS: Commissioner, thank you.

18 We all talk glibly today about the communications
19 revolution, but it isn't a communications revolution. It is
20 a series of multiple revolutions.

21 The first and the most obvious is the
22 technological revolution. Communications are becoming
23 digital and being driven by computer technology.

24 The second, though, is the philosophical
25 revolution. Just yesterday we thought communications were

1 best delivered by monopolies, one country, one phone
2 company. Today we know that's nonsense.

3 The third is the commercial revolution. Commerce
4 is increasingly global. No longer does one need to be
5 visionary to think about doing business internationally.
6 Everybody does.

7 Each of these changes is to be encouraged.
8 Together they mean new services, more consumer choice, and
9 lower prices. They also mean greater communication and more
10 economic growth.

11 But I suspect that all revolutions have a dark
12 side, and these are no exception.

13 More sophisticated technology, more competition,
14 and global thinking have all made it easier for con men to
15 defraud consumers -- and this is important -- to avoid
16 national regulatory authorities.

17 Today it is literally nothing to route a call from
18 Kansas to Sao Tome to New York in the blink of an eye and to
19 do so in a way that leaves the consumer thinking he has made
20 a call around the corner at 15 cents a minute when, in fact,
21 he is paying \$15 a minute.

22 Sao Tome, for those of you who don't know -- as I
23 did not until this problem arose -- is a small country off
24 the West Coast of Africa. It's an island which has become a
25 hub of international dial-a-porn activity.

1 I don't know why Sao Tome.

2 Just this past spring, we discovered a dramatic
3 increase -- and I do mean dramatic -- in the use of
4 international information services, or audio-tech services,
5 as they call themselves, to defraud consumers. And I use
6 the term "information" rather loosely in these purposes.
7 What I'm talking about is international dial-a-porn,
8 international chat lines, international astrology lines,
9 international job information services.

10 We discovered this problem only through a surge in
11 complaints, both to the FTC and to the major long distance
12 telephone companies in the United States, AT&T, MCI and
13 Sprint.

14 These international information services have
15 become big business. A conservative estimate -- and I
16 emphasize this is a conservative estimate -- is that the
17 information providers, the guys at the end of the line
18 providing the dial-a-porn, providing the astrology,
19 providing the chat lines, took in about \$250 million last
20 year, profit. That's not total revenue. That's not all the
21 money in the stream. That's just the profit for the bad
22 guys at the end of the line.

23 Every month there are four to six million minutes
24 of telephone calls to information services based overseas
25 from the United States. And that, by the way, is just in

1 the top five countries alone, just in the top five.

2 Now, where did this problem come from? Why did it
3 spring up over night?

4 Actually, it is the result of a success story.
5 Over the last four years, the FTC and the Congress
6 successfully cracked down on the abuses of the domestic
7 pay-per-call industry.

8 So to avoid the domestic restrictions, the
9 pay-per-call providers moved off shore where our
10 jurisdictional reach is attenuated.

11 Now, what are the abuses? Why do we care?

12 As used to be the case for domestic services, the
13 abuses arise from these services being accessible through a
14 direct dial phone call. You don't need to use the Visa card
15 off shore. And the charge appears on the local phone bill.

16 That means that anyone with access to a telephone,
17 authorized or not, has easy access to the service, the kid
18 in the house, the employee in the business who have no
19 business making phone calls to a dial-a-porn service or a
20 chat line have easy access. No one stops them on the other
21 end and asks for a credit card. All they need for access is
22 the phone.

23 Number 2, adults are misled about the cost of
24 these services. So even when an authorized user has the
25 intention of using these services, they are routinely misled

1 about what they're getting and what they're paying for.

2 Thus, consumers, unexpectedly, get enormous phone
3 bills. And I'm talking in the thousands of dollars here.
4 Suddenly you open your phone bill and rather than \$30 a
5 month or \$40 a month there's a \$6,000 phone bill because
6 someone has had access to a dial-a-porn service in the
7 Caribbean.

8 And here's the worse part, if you don't pay the
9 bill, you can lose your phone service.

10 Now, how do these international schemes work?
11 Every time an international call is made from the United
12 States, the United States-based international carrier makes
13 a payment to the telephone company on the other end of the
14 line in the foreign country. This is called a settlement
15 payment. They are part of the -- what they receive for
16 completing the call at the other end of the line.

17 The amount of this payment varies by country.
18 Because the rest of the world has not yet moved to
19 competition, essentially you have monopoly carriers in
20 almost all of these other markets, there's no push on this
21 price to make it bear any relation to cost, right? If
22 there's competition, prices should move to cost.

23 But they own all the phone lines in the other
24 country; and they can negotiate rates significantly above
25 cost; and, without exception, these rates are above cost

1 around the world, significantly above cost.

2 Where the foreign settlement rate is high enough,
3 the foreign phone company can make a kickback to the
4 information provider, who set up service, of 60 percent and
5 still make a lot of money on the phone call, on the
6 settlement payment.

7 So this is the way it works: local phone company
8 in Sao Tome goes into business, in essence, with the
9 information provider; he says, you come here, set up shop,
10 you advertise in the U.S., you create a tremendous influx of
11 calls from the U.S. to Sao Tome.

12 You get a dramatic increase in revenues for the
13 Sao Tome telephone company and kicks off a percentage to the
14 information provider who is now based in Sao Tome.

15 That phone call then gets billed back from Sao
16 Tome to the U.S. international carrier on to your local
17 phone bill; and if you don't pay, you lose your phone
18 service.

19 The final piece of the puzzle is that if you look
20 at the advertisements which appear in even major newspapers,
21 they are always misleading. Free phone calls.
22 Long-distance rates apply. They break up even the
23 international phone numbers in a way that is impossible for
24 me to tell where you're calling, and I understand the
25 numbering system. And if it's in a Latin American country,

1 part of the North American numbering scheme, their numbers
2 look like ours. 809 is a foreign number area code. Not
3 many people know that.

4 And so people literally think they are calling
5 around the corner, and their phone call goes to Sao Tome,
6 off the West Coast of the Africa.

7 By the way, the girls who do the dial-a-porn are
8 often back in New York and the phone call just visits Sao
9 Tome for the blink of an eye to make the whole scheme work.
10 And, in fact, it's all going on in New York City or Seattle
11 or some place like that.

12 Let me just give you this brief idea how these
13 schemes can boost phone traffic. In 1992, there were 40,000
14 minutes of telephone traffic from the United States to Sao
15 Tome. In 1994, two years later, 13,202,000. 40,000 to over
16 13 million.

17 Moldova, in 1993 had 81,000 minutes of phone
18 traffic from the United States. In 1994, it went to 6
19 million minutes of traffic from the United States.

20 Since the spring we have been trying to grapple
21 with this problem at the FCC. And let me be candid with
22 you, I had hoped I'd find a single bullet, one thing we
23 could do which would make it go away. I'm coming to the
24 conclusion that there's no one thing to do. There's no
25 silver bullet that solves a problem that crosses

1 jurisdictional lines with technology the way this one does.

2 We think we have a multi-faceted problem which is
3 going to require a multi-faceted solution. Among other
4 things, it requires far greater cooperation among regulatory
5 and law enforcement authorities in the United States than we
6 have today. It requires additional concentration of time,
7 money, and effort from regulatory and law enforcement
8 authorities. It also requires more cooperation among
9 regulatory authorities internationally.

10 This is not a problem, I think, ultimately that we
11 can solve in this country alone. We need to work with our
12 colleagues overseas.

13 Let me tell you what we've done so far and what
14 more needs to be done, in my view.

15 First, we've already developed, through our own
16 investigation, information that suggests that folks who
17 engage in these endeavors routinely violate all manner of
18 criminal laws.

19 These or not people who are real concerned about
20 what the law says. This is an area ripe for Justice
21 Department prosecution. And I think, frankly, all the good
22 that regulatory agencies can do, putting a couple of these
23 bastards in jail is really the way to get at the problem in
24 a way sets the record straight and lets folks know where
25 we're going. We've given a bunch of information to the

1 Justice Department, and we're hoping they're going to do
2 that.

3 The second is that the essence of all of these
4 schemes is misleading consumers in the United States,
5 something that is squarely within the jurisdiction of U.S.
6 regulatory authorities; and, to be more precise, is squarely
7 within the regulatory jurisdiction of the Federal Trade
8 Commission. Without the vital connection to the consumer in
9 the United States, none of the schemes work. All the
10 technology, all the rest of it, unless you have that hook
11 into the consumer, that misleading hook, it all falls apart.
12 That's where the FTC can bring its enforcement authority to
13 bear. It can sever that crucial relationship with the
14 consumer.

15 Third, we have already worked with industry to
16 craft a voluntary agreement among all of the major telephone
17 carriers in the United States to protect consumers. We've
18 met with all of the major long-distance carriers. We've met
19 with all of the major local telephone carriers. And we now
20 have a nationwide understanding designed to protect
21 consumers. None of the major carriers now will collect
22 payment from consumers whose phones have been used for these
23 services without authorization or who have been deceived.

24 The local telephone companies have also agreed not
25 to terminate telephone service for non-payment of

1 legitimately disputed charges.

2 The U.S. telephone industry basically came
3 together and said: We refuse to be used by these people to
4 defraud our customers.

5 Fourth, we've already begun to work, both with
6 foreign telephone companies and regulators, to cut off the
7 fraud at the other end of the line. And we've actually made
8 some progress already. We have a couple of carriers
9 overseas who have signed up, essentially, to the kinds of
10 protections we have by regulation in the United States.

11 And we have embarrassed a couple of regulators
12 overseas. And some, frankly, we didn't have to embarrass;
13 they share our view of the world and are already beginning
14 to crack down on these practices. But as with any
15 international endeavor, that takes time.

16 So there's still much to do. There's much more we
17 need to do together. I think we're making progress on the
18 problem, but we are not there yet.

19 Thank you.

20 COMMISSIONER STAREK: Thank you, Mr. Harris.

21 Mr. Chairman.

22 CHAIRMAN PITOFSKY: Just a clarifying question.

23 We were doing well against suppressing fraud when
24 the call was Minneapolis to New York. What difference does
25 it make that the call goes by way of Moldova?

1 MR. HARRIS: Basically, what we were able to
2 require -- because of our jurisdictional authority -- is
3 that if you make the call in the United States, you can
4 require the fellow at the other end of the line to demand a
5 Visa card, some form of the payment which protects the
6 person whose phone is being used because someone needs an
7 independent way of calling. We required information
8 providers at the other end of the line to provide
9 information before people could be charged over the
10 telephone system.

11 When the folks in Moldova -- you can't make them
12 require a Visa card.

13 CHAIRMAN PITOFISKY: But can't you make the -- when
14 it lands in New York, on the second leg, can't you require
15 that --

16 MR. HARRIS: Basically, because of international
17 agreements, no, you can't.

18 CHAIRMAN PITOFISKY: Ah, that's the problem.

19 MR. HARRIS: No. The answer is there is an
20 international treaty regulating how international phone
21 calls are made and how they work.

22 CHAIRMAN PITOFISKY: Okay. We have a technical
23 assistance grant from AID to aid the good folks in Moldova.
24 They may be way ahead of us.

25 COMMISSIONER STAREK: Well, our final presenter

1 this morning is an old friend Rachel Larabie-LeSieur.

2 Rachel is the Director of Marketing Practices with
3 Industry Canada, a good friend of this agency, known to many
4 of us.

5 She and I participated in the establishment of an
6 international group of law enforcement agencies. It's known
7 as the International Marketing Supervision Network. It's an
8 informal network of law enforcers in various OECD countries
9 who get together and exchange information on the problems we
10 have in enforcement in our own countries as well as
11 cross-border enforcement.

12 Rachel, thank you for coming. Thank you for
13 making the trip. We look forward to hearing your experience
14 with cross-border fraud, and maybe you can share with us
15 some of the Canadian-U.S. experience and some of our
16 international cooperation that we've been trying to
17 accomplish.

18 MS. LARABIE-LESIEUR: Well, let me thank you for
19 inviting us. And coming to Washington is a true enjoyment
20 since we left 30 centimeters of snow back in Ottawa; so I
21 mean, it's like a trip down south. It really feels good.
22 I'm telling you.

23 So thanks for inviting us. These hearings, I
24 think, are very important; and they are very timely, in
25 light of the changes that are occurring both within the

1 marketplace and within government.

2 Within government, I think I would like to start
3 by saying that fiscal constraints in Canada has forced us to
4 review the structure of the Marketing Practices Branch,
5 which is part of the Bureau of Competition Policy.

6 And we have, just recently, closed all of our
7 regional offices. We had seven regional offices, very small
8 offices; and it was felt that it was better to consolidate
9 all activities in the headquarters in the national capital
10 region.

11 We've created a complaint's unit with a toll-free
12 line, which I think is going to compensate, to a certain
13 extent, for the closure of the regional offices.

14 Over the past 10 years, I would say, we have
15 witnessed an increase in cross-border practices that
16 contravene our legislation and American legislation.

17 And in our estimate, this is due to closer trade
18 relations and more sophisticated and cost-effective
19 communication and computer technology.

20 We are now operating in an environment that is
21 characterized by an increasingly unified, global market for
22 business and fragmented law enforcement jurisdictions,
23 coupled with restrictions on cooperation and information
24 sharing among agencies, all operating with substantially
25 reduced budgets.

1 I think that sums up the situation from our
2 perspective.

3 So there is an obvious need, in our view, to fill
4 the gap, through cross-border enforcement and education
5 initiatives if law enforcement agencies intend to continue
6 playing an efficient and a relevant role in the marketplace.

7 On top of this, there is an obvious shift towards
8 an increased criminalization of deceptive marketing
9 practices.

10 The number of cases which now include elements of
11 fraud is on the upsurge. And one of the most egregious
12 example is the typical telemarketing scam.

13 In Canada, the majority involving U.S.-based
14 practices relate to deceptive mail solicitation which target
15 consumers offering prizes or premium promotions, travel
16 certificates, or businesses through look-alike invoices.

17 And there is also evidence that some elicit
18 American-based, multi-level and pyramid sales companies that
19 contravene Canadian legislation are also being promoted in
20 Canada.

21 On the other hand, it's also well known that some
22 Canadian telemarketers and direct mail operators target U.S.
23 consumers to offer dubious investments, gem stones,
24 strategic metals, lottery tickets, deceptive prize
25 promotions and solicitations that look like invoices are

1 also sent to U.S. businesses by Canadian operators.

2 So that, I think, sets the scene. And I would
3 like now to give you an overview -- or a Canadian
4 perspective, if you want, on the enforcement of the criminal
5 provisions that are contained in the competition act that
6 deal with misleading advertising and deceptive marketing
7 practices.

8 These provisions deal with misleading advertising,
9 unsubstantiated performance claims, misleading testimonials,
10 double ticketing, bait and switch, pyramid sales, whatever.
11 And all of these are strict liability offenses, meaning that
12 we do not have to prove the criminal intent. And this is
13 being referred to as being a criminal regulatory regime,
14 which distinguishes it from the criminal code offenses.

15 Some of these provisions contain specific defenses
16 that can be used. And one of the provisions provides for a
17 due diligence defense when we are talking about misleading
18 representations.

19 The act also contains formal powers, so we can
20 obtain search warrants from the courts, we can obtain orders
21 to examine witnesses, to compel production of documents, or
22 to require written returns of information. And failure to
23 comply with such orders is usually punishable by either a
24 fine and/or a jail term.

25 What is happening, though, is that search warrants

1 have been very useful in investigating typical marketing
2 practices offenses. But this, too, has limitations when the
3 target of the investigation is more fraudulent or mobile.

4 So I mean, to a large extent, that becomes
5 meaningless. So we think that we have to turn to quicker
6 and more flexible means to gather evidence in such cases,
7 like search of banking records, surveillance, use of
8 informants, as well as increased cooperation and information
9 sharing with police forces and other law enforcement
10 agencies.

11 And I know that sounds repetitious, but I think
12 it's going to be the message of the day.

13 The director, which has the responsibility for the
14 enforcement of the competition act, is only an investigator.
15 We have no adjudicative role to play. So once an
16 investigation is completed, a summary of evidence is
17 referred to the attorney general of Canada which then has
18 discretion as to what action is appropriate or should be
19 taken.

20 So when we refer a summary of evidence, we usually
21 make a recommendation towards laying of charges as well as a
22 prohibition order.

23 Penalties. Most of the misleading advertising
24 and deceptive marketing offenses can result in fines at the
25 discretion of the court, and jail terms can reach five

1 years.

2 However, we've seen very few jail terms. In fact,
3 I know of one that goes back to the 1970's, and it was a
4 one-year jail term.

5 What we've seen in the past few years, however,
6 are community service terms that are imposed by the courts.

7 And in addition to those type of penalties, there
8 are also what we call prohibition orders, which goes to the
9 continuation or repetition of the offense or to the doing of
10 any act that would be directed towards the continuation or
11 the repetition of such offense.

12 And those prohibition orders -- and this is a tool
13 that we use a lot. Those prohibition orders can be obtained
14 on contempt. So it makes the process more rapid and
15 streamlined.

16 And, again, failure to obey such order is
17 punishable by a fine or a jail term.

18 Our experience with the criminal courts -- and
19 this is something you may find interesting -- is that we
20 find, because of the sparsity of court time, that the
21 process is very, very lengthy.

22 Moreover, criminal courts often lack the expertise
23 to deal with the reality of some misleading advertising
24 subtleties, such as the fine print disclaimers. And our
25 experience is that often courts look at those as being

1 contracts. So we've not been very successful in those
2 areas.

3 There is a need for increase deterrence. And to
4 achieve this end, we give priority to high impact cases; and
5 we attempt to provide the courts with evidence of the
6 economic impact of the impugned practice on the market.

7 The average fine level has increased significantly
8 over the past years with some significant peaks and always,
9 from a Canadian perspective, reach half a million dollars.

10 It is our experience in some cases that charging
11 the corporation can be virtually useless since they can be
12 without assets, they can easily become bankrupt or cease
13 operations temporarily only to resurface later under a
14 different identity.

15 In such cases, charging key individuals appears to
16 be more effective; but this approach, of course, requires
17 more time at the investigation stage since we have to gather
18 more evidence to link the individual with the practice that
19 is going on.

20 Substantial fines, on the other hand, can become
21 meaningless should the accused demonstrate incapacity to
22 pay.

23 So we think that taking action to seize proceeds
24 of crime should be considered as a possible avenue to
25 achieve the deterrence enforcement against those criminal

1 marketing practices.

2 Presently, the competition act offenses do not
3 qualify for proceeds of crime, that are contained in the
4 criminal code. But we are working on that, and we hope that
5 this can be changed.

6 In the context of cross-border practices,
7 consideration will have to be given to the transfer of
8 assets to foreign jurisdictions as a means to avoid seizure.

9 The opportunity of improving existing
10 international agreements in this area to better deal with
11 cross-border marketing practices, I think, should be closely
12 examined.

13 I would like to say a few words about the reform.

14 We have a reform of legislation going on. The
15 minister and the director published a discussion paper back
16 in June of this year which proposes the addition of a
17 non-criminal option to pursue misleading advertising and
18 specific deceptive marketing practices, criminal prosecution
19 as the sole legal instrument of enforcement has a number of
20 shortcomings, such as lack of speedy decision making,
21 specialization and consistency in decision.

22 Criminal offense sometimes can be too severe a
23 response for some instances of unintentional misleading
24 advertising and invoking the criminal process can be
25 unjustifiably expensive of time and resources for both

1 businesses involved and the bureau.

2 Under the proposed hybrid regime, criminal
3 prosecutions would only be used in the most egregious
4 transgression while the availability of a non-criminal
5 alternative would provide more flexible remedies.

6 Cease and desist orders, both interim and final,
7 complimented by remedial orders, such as orders directing
8 the payment toward consumer education or publication of
9 information notices, would be available to the director.

10 And we are now at the stage where we are reviewing
11 the submissions that were made during the consultation
12 period.

13 Just a few words on the use of international
14 agreements. And that's one of the advantages of criminal
15 enforcement, is that there is a growing framework of
16 international agreements which foster cooperation between
17 jurisdictions. And, although we have never taken any direct
18 enforcement action against a U.S.-based operation, unless it
19 had a business presence in Canada, some interested avenues
20 have been explored to deal with exploratory territoriality
21 issues.

22 I can think of two examples that I would like to
23 share with you.

24 Last year we initiated proceedings pursuant to the
25 Canada-U.S. expedition treaty in order to compel a U.S.

1 citizen, accused of misleading advertising in Canada, to
2 appear before a Canadian court. Because the accused
3 subsequently agreed to appear voluntarily, it was
4 unnecessary to obtain the expedition order. And this
5 initiative was undertaken in conjunction with the USDOJ and
6 the FBI.

7 In another matter, which is still ongoing, we have
8 initiated an Em-Let request to recover the fine imposed on
9 the Canadian subsidiary of an American business that was
10 convicted of misleading advertising in Canada.

11 Evidence demonstrated that the Canadian entity, in
12 fact, was a corporate shell with no assets. And shortly
13 after the end of the practice -- of the offending practice,
14 the Canadian subsequently became dormant.

15 So if this fine is recovered through Em-Let, this
16 is going to be a precedent. So we're crossing our fingers,
17 and we hope that everything works out fine.

18 I guess one word on confidentiality. And I think
19 that we could say that the current, the existing
20 confidentiality provisions contained in our respective
21 statutes as well as restrictive related policies and
22 interpretations limit our ability to exchange confidential
23 information regarding cross-border issues.

24 And, accordingly, the director has proposed in
25 this amendment package that is now being reviewed -- he has

1 proposed amendments to the act that would expand the
2 statutory protection and that would make explicit the extent
3 of his authority to communicate confidential information in
4 his possession with the appropriate safeguards.

5 I mean, of course, there is this balance to be
6 achieved. In other words, safeguards have to be found.

7 And I think I would like to conclude by stressing
8 the following points:

9 We believe that misleading advertising and
10 deceptive marketing practices can be addressed more
11 effectively in a hybrid, criminal, non-criminal enforcement
12 regime. And we hope we are going to be successful in
13 putting these amendments through parliament.

14 Cross-border, misleading advertising, and
15 deceptive marketing practices are here to stay. They will
16 not go away. The number of such transactions is likely to
17 increase steadily in the future. And law enforcement in
18 this area has to become international in order to remain
19 effective.

20 It is very important to further develop
21 cooperation approaches between Canadian and American
22 agencies to combat such practices both through enforcement
23 actions and sustained education initiatives.

24 It's important that the gathering of information
25 in a foreign jurisdiction to deal with cross-border

1 practices starts with the establishment of a network among
2 law enforcement agencies to facilitate assistance in
3 obtaining public information. I mean as it is now, we do
4 not even have access, or we cannot even share public
5 information because we don't know one another. We don't
6 know what we're all about.

7 Although a lot can be done by sharing public
8 information, necessary adjustments to our legislation may be
9 essential to develop the facts of cooperation modes.

10 And the new BCP-FTC-DOJ agreement that was signed
11 in August I think provides an appropriate foundation to
12 build a cooperative relationship between our respective
13 agencies. And we think that we should examine the necessity
14 and the usefulness of establishing mutual legal assistance
15 provisions to assist each other in the enforcement of
16 non-criminal, marketing practices.

17 And, finally, I think that in order to meet these
18 great challenges -- and God knows they were huge -- if we
19 want to meet them collectively, I think we have to remember
20 that mutual trust and sharing of a common vision are key
21 elements to our success.

22 Thank you.

23 COMMISSIONER STAREK: Well thank you, Rachel, for
24 some very outstanding suggestions. You have laid out the
25 problems that we face, I think, in our countries, both in

1 Canada and the United States, and made some very interesting
2 and helpful suggestions as to how we can address those
3 problems and maybe make some progress on enforcement.

4 It seems to me that we all agree here that the
5 first step in effective enforcement against telemarketing
6 and other kinds of scams is for law enforcement agencies
7 within our countries to work together.

8 And I can say that in the United States and from,
9 Rachel, what you said about Canada, that's happening; and
10 that's been happening now for the last several years. We are
11 working together, using the tools that we have in our
12 respective agencies in the United States and also in Canada
13 to combine efforts to take on these scam operators.

14 The next step, however, is what Rachel suggests,
15 which is that these agencies within our countries begin to
16 work cooperatively and closely with other law enforcement
17 agencies in other countries.

18 You point out clearly that the obstacle to that is
19 our confidentiality statutes in our respective countries.
20 And we run into this in our International Marketing
21 Supervision Network where we make inquiries of each other and
22 we have to spend a considerable amount of time trying to
23 determine whether or not the laws of -- in our case -- the
24 United States, will allow us to provide that information to
25 a foreign law enforcement agency.

1 So how it is, then, that we can overcome these
2 problems and begin to work more closely together with our
3 counterparts in other countries?

4 And, then, secondly, how is it that we can
5 incorporate the kinds of technological response that
6 Mr. Held outlined about how Visa is addressing fraud and how
7 they're responding to this technologically?

8 How can the law enforcement agencies respond to
9 this increased use of technology with a response that makes
10 our enforcement by fraudulent operation much more effective.

11 Any takers to those two, sort of, general
12 questions?

13 MR. HELD: I would, I suppose, bring both
14 perspectives coming from a career in law enforcement and
15 looking at the changes that are taking place today.

16 I mean, I think we all agree: The world is
17 becoming an increasingly small place, and technology is
18 changing how everything is being done.

19 Speaking only for myself, I would say I think that
20 agencies are going to have to work to stay relevant to these
21 problems. The need for cross-border communication is
22 absolutely imperative between governments. But it's
23 something that is going to require an awful lot of work.

24 In organizations like Visa, of necessity, we must
25 seek our own solutions because we cannot wait.

1 When I was in law enforcement, if someone from a
2 payment scheme came to us for help, in truth, I would have
3 to say -- as Mr. Zubrod said -- this is going to take a
4 while. In a complicated case, there's going to be a
5 question of willingness to take it; and with all of the
6 things already on the government's plate, that's difficult.
7 It must be prioritized. There's going to be a question of
8 capability. Do they understand what has happened? And does
9 the law, as conceived a long time ago to deal with a problem
10 that was more readily -- you could readily get your arms
11 around -- does the law apply?

12 If I go to Sao Tome and I need local currency, I
13 take my card, I don't travel with currency any more because
14 there's a new global currency today. I put my card into the
15 machine and in a fashion that I can barely yet understand,
16 in a matter of four seconds, a signal is transmitted through
17 a computer, off a satellite, relayed around, comes to my
18 bank in the Midwest, and goes back and says: He has an
19 account, and this cash withdrawal is authorized, in five
20 seconds. I don't think the law in the United States ever
21 conceived of having to deal with a problem like that.

22 There is a question of adequacy of law.

23 By the time that we have a fraud taking place in
24 that environment, it will be, in fact, years before there
25 will be a solution. And we can't wait for that. The

1 integrity of our payment system, a global payment system,
2 which is important to the financial community in this
3 country and every other -- it's as important as checks and
4 cash are -- our industry, our payment system can't wait, and
5 we must go forward.

6 The answer to the question is: All of these
7 things that you talk about must be done. But things are
8 going so fast and the question of challenge for government
9 is: Will you be able to go fast enough?

10 We need your partnership, but will you be able to
11 go fast enough to overcome the reality that there is no
12 precedent for solving these problems.

13 MR. HARRIS: I would like to add just a mild
14 dissent to all of the above.

15 I think it's a mistake to expect that there's
16 going to be an easy technology solution to all of these
17 problems, in part because technology costs money.

18 One could, in theory, require all the phone
19 companies in the United States to reprogram or buy new
20 software or new hardware for all their computer switches
21 and, therefore, provide an easier blocking solution for
22 these kinds of international calls.

23 The costs imposed upon the companies and, thus, on
24 the consumers would have so many damn zeros, it would scare
25 you all and say, better that we just pay the dial-a-porn

1 people ourselves.

2 So you can't, necessarily, on those solutions.

3 Technology costs money.

4 Number 2, it's not clear to me that we don't have
5 the basic legal regime that we need.

6 I mean there may be nicks that need to be fixed,
7 tweaks to the law. But in truth cross-border fraud is
8 nothing new.

9 What we need, in my view, is more enforcement in
10 the United States. What seems to be difficult is how we get
11 from here to there.

12 I would love to have 10 people, since we have
13 discovered this problem, that I could just put on this
14 problem; and you could shake this whole problem up a lot
15 with 10 people in the course of 6, 8, or 12 months.

16 The likelihood of me having 10 people for any
17 purpose in today's environment is real small. And one of
18 the reasons we're desperate for help from Justice or from
19 the FTC or wherever else we can get it, from state
20 regulatory authorities, is that, Jesus, we don't have the
21 people, we don't have the funding, we don't have the budget
22 to do what we would like to do for enforcement purposes; and
23 the likelihood of our getting it, it seems to me, is 0. If
24 we're lucky, they don't cut our budget. Right? If we're a
25 little unlucky, they cut it 10 percent. And right now,

1 we're operating at 75 percent.

2 So, you know, you get what you pay for. And I
3 think the real issue is enforcing the damn laws, because we
4 have some pretty good laws in place, we have some pretty
5 good regulations in place. Enforcement does work. We've
6 seen it on the domestic side. The international side is a
7 little harder. But, you know, we're firing people.

8 So I think it's not going to be technology. I
9 think it's going to be enforcing the law. And I think we
10 have to figure out how to do that, though the way does not
11 seem entirely clear to me at the moment. We're doing what
12 we can with the limited resource, and we'd love to do more.

13 CHAIRMAN PITOFSKY: Scott, if some one magically
14 gave you the 10 people, what would you tell them their first
15 priority is?

16 MR. HARRIS: Well, at the Commission, we have all
17 sorts of consumer difficulties, as you're well aware. I
18 mean the kinds of thing that you can see on TV at night or
19 read in the paper.

20 I think this is a problem that's coming to the
21 fore, this international audiotext problem. And these
22 people, I believe, are violating existing regulations;
23 they're violating existing laws. And we are, with our
24 limited resource, attempting to find these people right now
25 and impose regulatory fines, turn it over to the Justice

1 Department.

2 But, you know, you find people who have a little
3 bit of time available and you throw them into the problem;
4 and then they get, you know, pulled away to work on
5 something else and then they get furloughed.

6 CHAIRMAN PITOFSKY: We've noticed.

7 MR. BLAKE HARRIS: Yeah.

8 CHAIRMAN PITOFSKY: But with this Moldova
9 business, you think with 10 people the treaties would not be
10 a block and that you could get at it?

11 MR. HARRIS: The treatise make enforcement more
12 difficult. The fact that there is attenuated jurisdiction
13 overseas. And you have to be careful with a purely
14 regulatory approach.

15 I'll give you another example. Suppose we simply
16 required all of the phone companies in the United States not
17 to process these charges through to customers. Required it.

18 The U.S. phone companies would still have to make
19 the payments by international law overseas. And so what you
20 would simply do is place this enormous burden on the phone
21 companies -- and some of these calls people fully intend to
22 make.

23 So that regulatory -- it makes regulation much
24 harder because you have one piece of the system that's
25 unregulated.

1 Having said that, the people who engage in
2 defrauding consumers are violating, nine times out of ten,
3 existing laws, existing regulations. You just got to catch
4 them, and you got to impose fines, penalties, whatever it
5 takes. And I think the -- you'll never make it go away.
6 Criminal penalties, regulatory penalties never end a
7 problem; but they can affect the problem, as we've seen.

8 We could use more enforcement ability, and we need
9 help from other agencies.

10 MR. ZUBROD: I would say that there are really
11 four issues that need to be considered. The first one is
12 what my brother here referred to as education. It's
13 important to get law enforcement to perceive that there is a
14 problem. Because the tendency is to say that: We're being
15 overwhelmed by X, you know, fell in the blank, drugs,
16 technology, smuggling, et cetera, and they will tend to
17 respond to it.

18 But when there's a top-down emphasis that this is
19 important, once prosecutors and investigators are educated,
20 then judges are slowly educated and start getting sentences.
21 And we are now seeing people getting sentences of three to
22 seven to eight years -- my last one was ten years -- for
23 fraud prosecutions; and that's beginning to have an impact.

24 I note in dealing with Canada, we discussed this
25 morning, how one of the real disappointments is prosecutors

1 are becoming sensitized. Investigators, particularly in
2 Toronto, are now very sensitized to the issue.

3 And prosecutors are beginning to become
4 sensitized. The courts are not sensitive to it at all; and
5 if you are a white collar criminal doing global
6 telemarketing fraud, you are going to get a probationary
7 sentence, regardless.

8 We have a gem scam case, a \$35 million fraud,
9 where my counterparts told me that, this is a probation
10 case. And so we have taken them down, and we can get about
11 a seven-year sentence on a guilty plea and probably 10 if
12 they try to go to trial.

13 The next area is in the -- my experience working
14 with the Swiss in implementing our mutual legal assistance
15 treaty was that the seizure of assets is a powerful
16 incentive for cooperation. That's something that people
17 respond to.

18 But to do that, you have to move out beyond the
19 common law of the particular nation and to explain money
20 laundering or expanding the definition of a straw party or
21 the idea of forfeiture of the proceeds of a crime after it
22 changes its character and moves into maybe a straw party's
23 asset or moves into the name of, for instance, under Canada
24 law, my understanding is, that if you put something in the
25 name of your wife, it is absolutely immune as an asset of

1 the individual.

2 Yet, under modern American theory, you could
3 pierce the corporate veil, you could pierce that
4 relationship, look behind it and seize the assets if it's
5 pure proceeds; and proceeds is never protected no matter how
6 many times it changes hands if there is some knowledge on
7 the part of the individual.

8 There needs to be some procedural statutes, too,
9 some procedural changes because the areas of confidentiality
10 and discovery -- we got the Canadian Royal Mounted Police to
11 do a search warrant for us. They are as tough on showing us
12 the results of the search as we are on grand jury material.
13 And so it was a very delicate process involving Washington,
14 D.C. -- our going through Washington, D.C., their going
15 through Ottawa; and it was months before we could look at
16 documents that we put together the probable cause for.

17 And finally our experience has been that, in terms
18 of speed of action, the most effective so far has not been
19 top down. It has been bottom up. One investigator getting
20 involved with another investigator, getting involved with a
21 specific individual at FTC putting their heads together and
22 saying: How are we going to attack this problem? What's
23 the best way? And from out of that comes victims, search
24 warrants, arrests in other countries, arrests in this
25 country, and a tandem approach that has been very, very

1 effective.

2 And I can't emphasize the need for one-on-one --
3 the formation of one-on-one, personal contacts, which are
4 the most effective.

5 MS. LARABIE-LESIEUR: Can I add that I believe
6 that there will be need to change the organizational
7 culture, if you want, in a way.

8 We have a tendency within our agency to prioritize
9 cases using location of victims, for instance, as a factor
10 that would influence its ranking.

11 And you were right, Scott, when you were saying
12 that cross-border practices have been there for a long time;
13 but we have just ignored them for a long period of time
14 because they were not making the priority list. There were
15 no victims in Canada; there was no victim in one province.

16 I mean, this is the type of cultural change that
17 has to take place within our own organization if we want to
18 enforce together.

19 COMMISSIONER STAREK: Many of the countries that
20 are in the process of trying to combat global fraud scams
21 also have a very effective competition enforcement agency.

22 And in the United States last year, we had enacted
23 into law, which was signed by the President, a statute which
24 permits our competition authorities to exchange confidential
25 information as long as the country with whom we are planning

1 to exchange the information has in place the safeguards that
2 we have in place to protect this confidential information we
3 we obtain from companies who are engaging in a merger or
4 some other transaction that would come under the review of
5 this Agency or the Department of Justice.

6 The Justice Department and the Federal Trade
7 Commission have been talking to competition authorities in
8 Europe and Canada and Australia, et cetera, about changing
9 their laws, similarly, to put in place the kind of
10 confidentiality requirements that are necessary to assure
11 our companies, as well as their companies, that the
12 information that's shared with the foreign enforcement
13 authorities is going to remain, just as they expect from
14 their own country's agency, confidential.

15 Is this an avenue that we might want to look at?
16 Is this kind of action that consumer protection authorities
17 might want to look at?

18 MS. LARABIE-LESIEUR: Well, the director, as I
19 indicated previously, has launched consultation on
20 amendments to legislation that would deal with
21 confidentiality issues and ensuring confidentiality of
22 information based on reciprocity and with appropriate
23 safeguard.

24 And these amendments would -- because they are
25 amendments to the Competition Act, they would find

1 application in regard to misleading advertising and
2 marketing practices.

3 And I think that what it amounts to is some kind
4 of mutual legal assistance treaty that is within the
5 mandates of the law enforcement agency.

6 So we are all in favor of that.

7 COMMISSIONER STAREK: Well, it sounds like you're
8 ahead of us. Because while we've done this for information
9 obtained in competition cases, including grand jury
10 information under certain circumstances, we have not looked
11 at it in this country for the kind of information that we,
12 consumer protection enforcement agencies, would need to
13 share.

14 But it sounds like Canada thinks it's a good idea.
15 That's great.

16 MS. LARABIE-LESIEUR: I think we're ahead of you,
17 perhaps, on the consumer protection side, as you referred to
18 it; but I think we are lagging on the antitrust side.

19 COMMISSIONER STAREK: I think there have been
20 discussions.

21 One of the suggestions that Gordon made was that
22 we establish an international telemarketing database. Now,
23 this might run into the same kinds of problems we were just
24 talking about.

25 We have a rather extensive telemarketing fraud

1 database here in the United States administered by this
2 Agency. And there are a number of law enforcement agencies,
3 both state and local, as well as federal, who use this and
4 develop cases based on the information contained in this
5 telemarketing database.

6 Are the constraints on sharing confidential
7 information too great to try to think of the appropriate way
8 to fund an international telemarketing data base?

9 MR. ZUBROD: I don't think so. I think there's
10 sort of an institutional reluctance. But when you sit down
11 and talk to people, they say really we could be creative and
12 we could form such a database.

13 I noticed that one of the things that the Swiss
14 did, was the Swiss said: Our law forbids us from sharing
15 information; however, our law does not forbid us from
16 opening a case of our own if we were alerted to it; and our
17 law does not forbid us from letting you open a case of your
18 own.

19 So in one sense, the Swiss concluded that it was a
20 way in which the question was asked. If you would say: We
21 want information on such and such, it would be far better if
22 the United States would ask the Swiss, saying: Is there
23 such a person as John Smith? And does this individual own a
24 corporation? We have information which indicates he may be
25 involved in criminal activity. And the Swiss would say:

1 Well, we're going to open our own investigation on John
2 Smith and this organization.

3 And information was passed back and forth, I won't
4 say promiscuously, but to a far greater degree than the
5 three to six months it takes to get an Em-Let going back and
6 forth, that the information that's passed between
7 investigators moves -- there's sort of an agreement, it
8 ought to move a little more quickly. When you get to
9 certain documents seized and viewing documents, it slows
10 down.

11 But that type of information, I think it's doable.

12 COMMISSIONER STAREK: Well, that's sort of the
13 opposite of the way our confidentiality laws work. I mean,
14 once we have an investigation open, is when we are
15 prohibited from sharing that kind of information.

16 But, you know, whether or not John Smith exists
17 and whether or not John Smith is a principal in a company is
18 relatively public information and information that we can
19 oftentimes share.

20 MR. ZUBROD: It flags the individual.

21 COMMISSIONER STAREK: But once we get into an
22 investigation that's been formally opened, that's when the
23 door comes down and the barriers to sharing that
24 information, even with foreign law enforcement authorities,
25 go into place.

1 MR. ZUBROD: That's true.

2 MS. LARABIE-LESIEUR: We think that central
3 sourcing of complaints is an interesting avenue and needs to
4 be explored. I think it's one way of getting speed in that
5 the central sourcing approach does give you an immediate
6 snapshot of what's going on instead of having complaints
7 going from jurisdiction to the other until it gets to the
8 right one. I mean, this is one clear benefit.

9 We have done that, to a certain extent, in Canada
10 through project "Foam Buster," which is a partnership with
11 police forces, provincial governments, Bureau of Competition
12 policy, Canadian Bankers Association, and other partners,
13 where we're doing central sourcing of complaints with the
14 OPP, the Ontario Provincial Police. And this allows the
15 individuals involved there to know, I mean, on a weekly
16 basis what type of new scams are being created, what is
17 going on, the number of complaints.

18 And this information is shared with the partners.
19 And so far, it has proven to be very useful.

20 COMMISSIONER STAREK: Any other questions--
21 Eileen?

22 MS. HARRINGTON: I have a question, I guess,
23 initially, for Mr. Held.

24 It seems to me that one of the real beauties of
25 the bank card payment system is that you've been able to

1 protect its integrity by controlling access. Only licensees
2 have access to that system.

3 And we just saw a presentation this morning of a
4 technology -- and I think the Chairman asked a question
5 about access there. And the answer is: Everyone will have
6 access to this new product of converged technologies.

7 It seems as though there's a real rub there
8 between -- if that's the case -- between our ability to
9 replicate the kind of integrity that you have created for
10 fraud prevention and other purposes in the credit card/bank
11 card payment system internationally and our ability to
12 protection against fraud on this new emerging global
13 information infrastructure.

14 What are you guys -- you must be thinking about
15 that at risk management and security. And what do you
16 think?

17 MR. HELD: Well, one, it was not clear to me how
18 payment would be effected in that environment. I presume it
19 would be just part of the billing process. But I'm not
20 sure.

21 I mean, we clearly are looking at: How do you
22 secure transactions in open networks? And from a risk
23 management perspective, absolutely. I mean, now there are
24 some business conducted on the Internet. It's not really
25 clear how much. For the most people who shop on the

1 Internet are prompted to -- having effected a transaction,
2 to now go to the phone and give us card information to
3 enable payment by card.

4 But in the future, as this expands, as certainly
5 it's going to, what we're look at is now: How are we going
6 secure that transaction? How are we going to confirm for
7 the cardholder, protect the consumer, to say this is a
8 legitimate merchant who is entitled to do business, and we
9 will certify their legitimacy in the process.

10 And, similarly, for the merchant, that is a
11 legitimate card, and there is not a problem with the card;
12 and you can be assured that we will make payment on this if
13 you conduct this transaction.

14 So we will credential the two parts; but then,
15 also we need to the secure the transaction so that it is not
16 -- it can't be intercepted, it can't be changed. It is just
17 between the sender and the receiver.

18 And we are now evaluating, with Technical
19 Laboratories, to see that what we see as the solution, in
20 fact, will minimize any risk of compromise.

21 MS. HARRINGTON: If I could just follow up, one of
22 the things that the bank card industry learned painfully
23 during the, you know, incredible explosion of fraudulent
24 telemarketing was that fraudulent merchants, pretty easily,
25 were able to, initially at least, be accredited in your

1 system.

2 Now you have a lot of checks and controls, on-site
3 inspections, all the things that you described.

4 How are you going to credential merchants that
5 might exist only in cyberspace? And how are you going to
6 protect consumers in the United States who may get onto
7 whatever the information highway is, do business with a
8 merchant that's based in some other country --

9 MR. HELD: Dubai.

10 MS. HARRINGTON: -- where that merchant really
11 only exists in cyberspace?

12 MR. HELD: Well, I mean, for us the beauty of our
13 system is, we have contractual arrangements with acquiring
14 institutions with institutions who go out and find merchants
15 to accept the card. And they have contractual arrangements
16 with merchants.

17 So what we would do is a continuation of the
18 process that we have now, that we --

19 MS. HARRINGTON: Have you thought about what those
20 criteria might be, though? How do you do it?

21 MR. HELD: Well, the criteria -- I can't say --
22 the answer is, yes, I can't see how they would be much
23 different than what they are. And that would be -- there's
24 a set of expectations that we have for an acquiring member.
25 And that is: They go see that there is, in fact, a

1 business, that it meets some material criteria to confirm
2 its existence, that it does have bank accounts, that it does
3 have a place of business, that it does have a product.

4 This will be different because, at the outset, the
5 information is apt to be research, pictures, movies, and
6 what have you.

7 But the process, in our minds, will be the same.
8 But clearly, it's complicated in the eyes of the law because
9 what will an agency like the FTC do with a merchant some
10 place else?

11 I mean, I think that that need for both
12 cooperation with the private sector, there needs to be
13 interaction, but also intergovernmental relations are going
14 to be increasingly critical; and it's going to be a huge
15 step because borders in commerce are virtually disappearing.

16 COMMISSIONER STAREK: Well, thank you. I found
17 this fascinating. We certainly agree that enforcement
18 agencies, in our own countries anyway, are doing better at
19 working together to enforce the laws, which we must because
20 of our diminishing resources and because of the different
21 tools that each agency has to address a part of the problem.

22 The question is how we are going to improve upon
23 working together internationally. Everybody seems to think
24 we need to, but how can we get rid of some of the barriers
25 to cooperation, seems to be the question that we need to

1 give more thought to and try to come up with some creative
2 solutions.

3 I want to thank all of the panelists for appearing
4 today. I found it very interesting. And I invite all of
5 you to return this afternoon for the grand finale of the
6 consumer protection phase of these hearings, which is
7 convening I think at 2 o'clock here.

8 We'll see you then. Thank you.

9 (Whereupon, a brief recess was taken.)

10 COMMISSIONER STAREK: All right. I guess we are
11 all assembled for the final session this afternoon of our
12 hearings focusing on consumer protection in global markets.

13 We have looked at various instruments of
14 communication: the telephone, television, computer. We had
15 a very interesting presentation this morning basically
16 describing how all of these technologies are, certainly very
17 soon, if not already, going to converge. And the benefits
18 of all three of the technologies will be obtainable all
19 together and utilized together.

20 Also, we have looked at fraud in the marketplace
21 and had a very interesting discussion earlier this morning
22 about how both industry and governments are going to respond
23 to fraud as it becomes more technologically advanced. We
24 agreed that the scams, really, will probably be the same;
25 but they will be harder to detect because of the

1 technologies that will be utilized.

2 And this afternoon, we are going to continue that.
3 This afternoon we are going to begin with an overview of
4 developments in international trade and how that affects
5 consumer protection.

6 Our first witness this afternoon is Richard G.
7 Meier, who is the Deputy Associate Trade Representative from
8 the U.S. Trade Representative's office.

9 Mr. Meier is responsible for policy development in
10 international negotiations regarding a wide variety of trade
11 issues and standards.

12 During the Uruguay Round of the multi-lateral
13 trade negotiations, he was the Chief U.S. delegate to the
14 negotiating group dealing with non-tariff agreements,
15 including the agreement on technical barriers to trade. We
16 look forward to hearing your remarks.

17 MR. MEIER: Thank you very much and good
18 afternoon.

19 I am challenged here this afternoon to present
20 quite a bit of information in a rather short period of time.
21 So forgive me in advance if I am somewhat summary in my
22 approach; and I certainly would be pleased to answer
23 questions later in the afternoon session.

24 I don't pretend to be a consumer expert; although,
25 I become increasingly sensitized to the issues relating to

1 consumer protection and the relationship to the things that
2 I do. Some of the people responsible for that sensitization
3 process are around the table. So I thank them for their
4 help over the recent years.

5 Let me just take a moment to be somewhat parochial
6 and just talk about international trade and its importance
7 to our economy in a very broad way; and then I'll go through
8 some specifics on technical barriers to trade and what the
9 U.S. Trade Representative's office is doing and how we
10 relate. I hope I will try to be able to say how we relate
11 to some of the issues that you're dealing with here.

12 Some of these facts and figures may be of interest
13 to you; but I think they're always somewhat startling when
14 you review them -- or when I review them. So let me just
15 run through them and I think it explains why we take such a
16 keen interest in trade and trade policy.

17 Back in 1970, international trade, both exports
18 and imports, accounted for 13 percent of our gross domestic
19 product. This doubled by 1993 to 26 percent. And it's now
20 about 30 percent. Obviously, a very important share of
21 economic performance is accounted for by trade activities,
22 again both exports and imports.

23 In 1994, we had exports valued at \$657 billion.
24 That's both goods and services. We also had imports valued
25 at \$760 billion. So it was a little bit more of those than

1 there were of the exports.

2 On the services side -- and my figures are a
3 little bit older there -- back in 1992, we had \$168 billion
4 of service exports and a \$60 billion surplus. The services
5 account does quite well.

6 This year our trade performance has shown some
7 signs of dramatic improvement. In August 1995, we had had
8 export growth, for the year to date, moving ahead for the
9 first time of our rate of import growth, 15.7 percent for
10 exports, 15.4 percent for imports. And we expect that trend
11 to continue.

12 I believe the new -- I could be proven wrong
13 tomorrow, because I think the new trade figures -- right,
14 the new trade figures should be out tomorrow. There might
15 be some delay due to the problems in recent days with
16 government funding.

17 Estimates are that U.S. jobs supported by export
18 activities accounted for 11 million jobs in 1992.

19 At the same time these figures are very
20 impressive, we are facing increasing global competition. In
21 the Post World War II period, the United States accounted
22 for 40 percent of global output. Now it's about 20 percent,
23 and that's understandable. But it just shows that we have
24 many more competitors and we have to compete in a very
25 different world than we did in that period.

1 Moving to the issue at hand, I would say there is
2 definitely a convergence of interest between consumer issues
3 and trade policies issues. Over recent years -- and I think
4 it's increasingly evident that we recognize there's a very
5 strong relationship between our trade policies and our
6 regulatory policies; and these affect consumer interests.

7 These issues are important both for exports -- in
8 other words, you are the requirements that our industries
9 have to comply with to enter foreign markets -- and for
10 imports -- the role of the government to ensure that our
11 standards are upheld and our consumers are protected.

12 I would like to briefly speak of a series of
13 international agreements that provide the framework, at
14 least in the trade policy sense, for our activities in these
15 areas.

16 I'd like to spend a moment on a couple of
17 definitional questions. First of all, these agreements deal
18 with both standards, which are defined as those that are
19 developed and maintained on a voluntary basis and
20 regulations which are standards that have the force of law
21 because they are made mandatory through regulations that are
22 in force by the government.

23 These agreements deal with both of these areas,
24 and they also deal very importantly with matters of testing
25 and inspection and product approval, which has become known

1 as "conformity assessment."

2 And I would say, in the trade policy field, we are
3 probably as concerned or deal more with conformity
4 assessment issues than we do with the standards themselves,
5 because this is where I think the trade policy intersection
6 occurs: How products are approved to enter markets and be
7 sold commercially.

8 The most fundamental agreement we have -- and the
9 one that is drawn upon in other agreements that I will
10 mention this afternoon -- is the agreement on Technical
11 Barriers to Trade, TBT, as it's commonly known, which was
12 originally negotiated during the Tokyo Round of trade
13 negotiations and which was renegotiated during the Uruguay
14 Round of multi-lateral trade negotiations and is now part of
15 the World Trade Organization.

16 One important aspect of this development is that
17 the agreement and its obligations previously were adhered to
18 by only 45 countries. As part of the institutional
19 construction of the World Trade Organization, all countries
20 who are members of that organization must comply with this
21 and every other agreement.

22 This means that right now we have over 100
23 countries who have ratified and are now obligated to this
24 agreement. And within, probably another 18 months, we
25 expect to have about 145 countries included in this

1 coverage.

2 So we are really talking about a very global
3 coverage of commitments here.

4 Let me just spend a minute on what that agreement
5 does, and then I'll briefly note some other agreements that
6 have similar objectives and principles.

7 The major objective of the agreement and its major
8 commitment is to not use standards or conformity assessment
9 procedures as barriers to trade.

10 The other basic commitment is non-discrimination,
11 that is not to discriminate in the application or
12 development of standards either vis-a-vis domestic producers
13 versus foreign producers or one group of foreign producers
14 versus another.

15 The final basic obligation, which is really more
16 of an encouragement, is to use international standards.
17 This is, obviously, a long-term goal.

18 But if more countries and industries use
19 international standards, then the process of harmonization
20 becomes automatic. The process of harmonization also is
21 encouraged in these agreements as a long-term goal.

22 The basic principles of the agreement have now
23 found their way into a number of other agreements, which
24 I'll touch upon very briefly.

25 Foremost of these, perhaps, is the NAFTA, North

1 American Free Trade Agreement and, before that, the Canadian
2 Free Trade Agreement, which builds upon the Tokyo Round
3 agreement and expands it and intensifies it in terms of a
4 smaller group of countries. Thus, we could tailor the
5 agreement to meet the special needs of those countries; and
6 it goes somewhat beyond the TBT agreement itself.

7 It's also -- certainly the NAFTA is in the process
8 of revolution. There is a committee that not only oversees
9 the agreement but looks to application of the agreement to
10 new areas and to basically refine and expand its coverage.
11 And I think some of the other people on the panel will
12 probably speak of that.

13 We are now talking about these same types of
14 issues in the APEC, the Asian and Pacific Economic
15 Cooperation forum, which just had its summit in Osaka,
16 Japan, last week and over the weekend.

17 There's been a great deal of work there to examine
18 and identify the standards requirements in the various
19 nations of that region. And there's a great improvement in
20 our degree of knowledge of the problems and requirements
21 that are our exporters face in that region.

22 We are also starting to negotiate a free trade
23 agreement of the Americas, stemming from the Miami summit
24 and more recently at Denver meetings.

25 Standards, here again, is an important issue. We

1 are at the very early stages of looking at the work program
2 there. And this would be a very opportune time for
3 interested parties to provide their views as to how work
4 should proceed in that very important region.

5 Standards and conformity assessments issues are
6 also addressed in a whole series of bilateral arrangements,
7 too numerous to mention here this afternoon.

8 Basically, these programs provide us with an
9 opportunity, I think, to use American leadership to
10 encourage these countries to use or adapt themselves to U.S.
11 standards and U.S. regulatory approaches. This is not an
12 easy process; but I think it's an opportunity to provide
13 American leadership.

14 It would also contribute to an easy form of
15 harmonization if we could present our regulatory system to
16 these countries and have them adopt or adapt their program
17 to be compatible with it. It certainly would improve our
18 trading relations and make it easier for our exporters to
19 sell their goods in these countries.

20 So I would note that as an important opportunity.

21 Since I think I'm already nearing the end of my
22 time, let me just make a few concluding remarks; and I'll be
23 glad to come back to any of these issues later.

24 First of all, effective competition in foreign
25 markets depends critically on the ability of American

1 manufacturers and exporters to conform to prevailing product
2 standards, regulations, and conformity assessment
3 requirements.

4 At the same time, we are very aware of the
5 legitimate role the governments have in protecting consumers
6 and ensuring the safety and quality of products that are
7 traded.

8 Both the WTO and the NAFTA provide disciplines in
9 a framework for resolving perceived barriers to trade; but
10 at the same time, they clearly preserve the sovereign rights
11 of governments in this area.

12 I am quite aware, as we seek market access and
13 negotiate our trade agreements, that we must seek the advice
14 and support not only of our industry and consumers but our
15 regulatory community within the government.

16 Working toward harmonization with our governments
17 on the basis of international standards, if that's possible
18 and appropriate, should contribute to safer products and
19 greater regulatory efficiencies.

20 I would like to commend the FTC for bringing
21 together this very important set of hearings. I believe
22 that it's a statement about the importance of this issue and
23 the need to work together in new and creative ways to
24 achieve multiple, but compatible, policy objectives.

25 Thank you very much.

1 COMMISSIONER STAREK: Thank you very much,
2 Mr. Meier. I'm no expert in this field, but I know that
3 there are a number of international organizations that are
4 looking at standards being utilized as non-tariff barriers
5 against trade; and, yet, no country really admits to that.
6 And so therein lies the dilemma.

7 Our next speaker this afternoon is Robert Hall
8 III, who is the Vice President and Government Affairs
9 Counsel at the National Retail Federation.

10 He will continue our overview of international
11 trade developments, obviously giving, not the government's
12 perspective, but the private sector's view.

13 Mr. Hall joined the National Retail Federation as
14 Vice President for Government Affairs in 1991. And he
15 serves as the retail industry's primary strategist on
16 international trade issues.

17 Prior to joining the National Retail Federation,
18 he served as a Legislative Counsel to the Honorable Senator
19 Sam Nunn, from 1987 to 1991.

20 And today he will share with us his ideas on the
21 growth of international trade and how businesses are
22 responding to the challenges of globalization.

23 Thank you for coming, Mr. Hall.

24 MR. HALL: Thank you, Commissioner.

25 I would like to start off with a few introductory

1 remarks on the retail industry itself and where we see it
2 going, not only globally but also here in the United States.
3 I think that is instructive as to why some companies are
4 trying to globalize and also why some of the foreign retail
5 companies are having difficulties as they attempt to stretch
6 into the United States markets as well.

7 I think it's safe to say that in the retail
8 industry, we're seeing very dynamic changes within the
9 industry. Right here in Washington is a good example.
10 You're seeing fewer and fewer department stores. And what
11 we're really moving to are bigger national retail department
12 store chains with May and Federated and others being the
13 prime examples there.

14 And we all know about the closure of the downtown
15 Woodies and also the merger of -- or rather the acquisition
16 of Woodies chain by May and Penney as a joint venture, and
17 also in California the example of Federated buying out
18 Broadway.

19 We're also seeing even slowing signs in the
20 discount mass merchant end of the business. And there's
21 some thoughts among some analysts that perhaps we're
22 becoming over-stored on that end of the spectrum as well.

23 The apparel business, particularly the fashion
24 business, has been off for most of this year; although,
25 we're hearing some signs here in the Washington area that

1 November might look good; but there's still some real
2 concerns about where it's going to go for the balance of the
3 year and really into next year as well.

4 And what you're really seeing is competition from
5 all sides. You've got military PX's attempting to sell more
6 and more goods that have usually been restricted to retail
7 companies. The government and the armed service folks are
8 getting into those discussions.

9 You are also seeing manufacturers that are getting
10 more and more into the retail business, some with FTC
11 approval. Levi Strauss is one example of that. Liz
12 Claiborne and others.

13 You are even seeing catalogues becoming stores
14 with J. Crew and other examples of that nature.

15 I had to clip with interest, we now have what
16 we're calling cross shoppers. Women's Wear Daily, which is
17 the primary newspaper in the retail and apparel and textile
18 industries, has given quite a bit of ink, about eight pages,
19 back in the Spring to the advent of what we're calling cross
20 shoppers. And that is -- particularly in this case, it was
21 a study of women's apparel that people are shopping, not
22 only in departments stores, but also in specialty stores and
23 in discount stores and in factory warehouses and in discount
24 chains and at outlets. I mean, really across the board,
25 doing a lot of at home, direct. I mean, a real growth of

1 all sorts of retail formats, if you will.

2 Many have said that globalization is the way to go
3 for retailers because of the fact that we've got some
4 perception of over-stores here in the United States.

5 But I think it's safe to say -- many have said --
6 that that may, in fact, be just a myth and may be not the
7 reality. With a very few notable exceptions, WalMart being
8 one of them, the big push to globalize has not materialized
9 at the levels anticipated by analysts just a handful of
10 years ago.

11 Several problems have added to industry's chances
12 of success as we move abroad; and one particular is market
13 access, which I'll address in a moment. But also, quite
14 frankly, retailers are having to look at using fundamentally
15 different formats as they attempt to globalize.

16 Going in with your same, conventional approach
17 doesn't work very well in many cases. And so as not to pick
18 on any particular domestic firm, I will use two foreign
19 examples in this case; and one of those would be the
20 Galleries Lafayette. McKenzie & Company did an extensive
21 study for the retail industry which was released at a
22 Goldman Sachs' conference a few months ago.

23 And they looked at the Galleries Lafayette in New
24 York. Here you have a French company coming in with high-
25 priced merchandize with their sizes and fitting and labeling

1 lined up in the French manner, of course, meeting the U.S.
2 standards in terms of some labels. But in terms of sizing
3 and perception and presentation, it was exclusively French.

4 You had also limited exclusivity. And, quite
5 frankly, the business was Paris driven. It was not driven
6 by a perception of what the retail market would bear in the
7 United States, a perception of what the retail consumer was
8 looking for in New York or in that area.

9 And, quite frankly, we saw the departure of
10 Galleries Lafayette

11 A similar example would be Marks and Spencer's
12 foray into Canada. That company expanded beyond it's normal
13 apparel base and went into food retailing. It chose not to
14 advertise because it had not been advertising in Britain;
15 but, quite frankly, the Canadian consumer depended on
16 advertising to form their decisions and to form their
17 choices about retailing. So you really didn't see the big
18 success that they may have anticipated there.

19 Let me turn now to international trade in what I
20 would call an important corner for retailing. And this is
21 on two fronts, both from the perspective of where we source
22 for our products that we sell to U.S. consumers and also for
23 our purposes of extending into other markets for market
24 access purposes.

25 As we see the growth of private label apparel in

1 the apparel sector, you're going to see more and more
2 international sourcing.

3 Now, some have argued that it's going to grow at a
4 much faster pace or faster clip than we believe in the U.S.
5 retail industry.

6 Right now, according to the American Apparel and
7 Manufactures Association, the U.S. and foreign mix of
8 apparel is right at 50/50. That's their 1994 numbers.

9 But we will not see a march to off shore, in my
10 sense -- in my judgment -- after the phase-out of the GATT
11 textile apparel program in 2005 to the level some feared.

12 Quite frankly, our sense is that the import
13 growths will level off and that we're going to see more U.S.
14 home grown goods, particularly what I would call in-stock
15 items, jeans, t-shirts, socks, underwear, and particularly
16 goods of that matter.

17 We're also going to see what I would say is an
18 increasing regionalism in the sense that, with the growth of
19 CBI and Mexico as a sourcing alternative, there should and
20 there can be with a CBI parity bill that could pass as soon
21 as early next year. You will see more of the sourcing
22 trends move from the Far East to this hemisphere and, quite
23 frankly, keep scarce U.S. dollars in the western hemisphere.

24 In terms of market access, as retailers dip their
25 toes into globalization, market access continues to be one

1 of our biggest issues in terms of the service sector
2 expanding. We have worked closely with USTR and others in
3 the past on this issue. But for retailers and people in the
4 service sector, it means financial issues, it means customs
5 issues, it means transportation issues, labeling, rules of
6 origin, and a whole history of other issues.

7 One example I would point to you in particular and
8 that is the example of Mexico.

9 With Mexico, we had what many called
10 hip-hip-hoorays for NAFTA. There was a lot of excitement
11 about moving into Mexico to serve the Mexican consumer and,
12 quite frankly, for the Mexican market to help serve the U.S.
13 consumer as well with goods.

14 But in an effort to block Chinese-made goods, the
15 Mexicans put in place some very restrictive certificate of
16 origin requirements that would make retailers and people who
17 import in the United States and then, in turn, re-export
18 into Mexico goods for the Mexican consumers -- it would make
19 them have to come up with original certificates of origin
20 for every single container of goods that goes into Mexico.

21 This is not only for retailers. This is for
22 apparel manufacturers in the United States and others,
23 textile companies and others, who want to import goods or
24 bring in goods that are non-NAFTA originating, maybe U.S.
25 made, but non-NAFTA originating for purposes of rules of

1 origin under the U.S.-Mexico NAFTA agreement.

2 Now we are seeing a block on our efforts to come
3 up with a self-certification proposal. This is hurting U.S.
4 manufacturers. It's hurting U.S. retailers who want to
5 re-export.

6 For example, let's say Company A wants to bring
7 100,000 pairs of shoes -- this applies to textiles, apparel,
8 and footwear -- 100,000 pairs of shoes from somewhere in the
9 Orient, let's say Malaysia or Indonesia. They want to sell
10 90,000 pairs of shoes to U.S. consumers but 10,000 pairs of
11 shoes into Mexico. When they bring that shipment into their
12 warehouse -- that central distribution warehouse in the
13 United States -- split it up, send 90,000 into their stores
14 into the United States -- that shipment they want to send of
15 10,000 pairs of shoes into Mexico will be blocked at the
16 border; it will not be allowed to cross because there's not
17 an original certificate of origin that says "10,000 pairs of
18 shoes, made in Malaysia," signed and documented by all the
19 appropriate authorities there.

20 And this is a major, major concern.

21 And, quite frankly, as a trade lawyer representing
22 the retailers, I also get calls from importers. I had a
23 woman calling me from Miami just last week, quite frankly,
24 in tears because she's got a shipment of apparel goods for
25 consumers in Mexico. She can't get it into Mexico, nor can

1 she really get it back into the United States to try to turn
2 around and sell it somewhere else, because she doesn't have
3 the quotas and the Visas to sell it here in the United
4 States. She had it ready to go to Mexico.

5 So it is a major problem.

6 Emerging trend issues, as I see for the future,
7 are: One -- and I know that Susan will address this more
8 completely because the retail industry also has similar
9 concerns as does the apparel industry, too -- and that is
10 labeling.

11 We are very concerned that labeling may emerge as
12 a form of market restriction. We urge the Commission to
13 look carefully at labeling issues, particularly "eco-
14 labeling" -- as we have now seen as it has emerged in the
15 European countries -- but also particularly the Care
16 labeling issue that's before you right now.

17 Retailers and the retail industry, we will oppose
18 and continue to oppose any use of proprietary labels, such
19 as those used by GINETEX and other companies.

20 One other final -- rather, another trend is
21 technology; and that's one you have asked us to address
22 here; and I'm not the technology expert at the National
23 Retail Federation. But I have had conversations with
24 several of those individuals, and I would like to point out
25 just a few of those for you this afternoon.

1 Technology clearly plays an increasing role in all
2 aspects of retailing, from quick response to inventory
3 systems, to point of sale machines, to our increasing use of
4 EBT, Electronic Benefits Transfers. This is an issue where
5 you're going to see all federal income payments or benefit
6 payments to any individuals who receive any sort of aid.

7 Right now it's restricted primarily to welfare and
8 other AFDC payments. It's being used in a pilot program in
9 Texas. But EBT-2, as they call it, the Electronic Benefits
10 Two Transfer, will also add social security and other
11 retirement benefits that come from the Federal Government.
12 People are going to be using a debit cart at their local
13 retailer and at their local food store.

14 Primarily, right now, in the pilot stage, this is
15 a food retail issue; but it will be moving into what I would
16 call general merchandise and other retailing. And this is
17 an issue of access. I think there's some fraud issues there
18 you've got to worry about. A lot of other issues.

19 And, quite frankly, the reason the government is
20 moving to EBT is to avoid the fraud problems of the checks
21 getting lost and people forging names on their benefit
22 checks.

23 But there is still the added problem of what to do
24 about fraud in that area, too. And also simply just getting
25 stores and other segments of the industry up to speed and

1 ready to be able to serve the customer when they walk in
2 with their EBT card and want to use their federal payments
3 to pay for needed clothing, needed household items, or food.

4 A parting comment, also, on interactive shopping.
5 And this, again, being an area of electronics. This has not
6 been the strong success many in the retail industry had
7 envisioned.

8 While a number of formats have been successful --
9 Home Shopping Network and others -- several high-end pilot
10 projects have really not gotten off the ground. And this
11 issue, quite frankly, went from being one of the hottest
12 topics at NRF's annual convention, national conference. In
13 January 1994, it was probably the hottest attended; there
14 were probably several -- 4, 5, 600 people in the room, one
15 of our big super sessions. It was one of the hottest issues
16 in January of '94. January '95, not a mention on the
17 program.

18 And I use the annual convention as a real good
19 barometer, if you will, of retail interests and where the
20 trends are going. So, quite frankly, we did not see
21 interactive shopping take off like many thought it would. I
22 think we need to watch it continually for consumer reasons
23 and for technology reasons; but for right now, it's not
24 going to be the issue many had thought.

25 Now, just one final thought on trade specifically.

1 And that is -- and here again, we've been working with
2 others in the industry, apparel and textile and others -- on
3 moving to what I would call paperless transactions in trade.

4 And there have been examples, and there are some
5 pilot cases now of using what the Customs Service and the
6 CITA folks -- that's the people, the Committee for the
7 Implementation of Textile Agreements, who regulate textile
8 and apparel trade in the United States -- are calling the
9 ELVIS system. And it is a paperless transfer.

10 There are four countries that are presently using
11 that for visa purposes. And that's Singapore, Korea,
12 Philippines, and China. These right now also require
13 parallel paper requirements. But we will be seeing in the
14 future a paperless visa system and a paperless import system
15 here in the United States, as all the kinks are worked out.
16 So that's another issue to bring to the Commission's
17 attention in terms of technology in the textile and apparel
18 trade.

19 COMMISSIONER STEIGER: Very interesting.

20 COMMISSIONER STAREK: Yes, indeed.

21 Well, thank you very much, Mr. Hall.

22 I have just a couple of comments. The first is,
23 with respect to the labeling issue that's before the
24 Commission, I'm not going to say any more on that because we
25 have certain rules about what Commissioner Steiger and I can

1 say.

2 However, that doesn't stop any of you from
3 commenting on that proposal because we are on the public
4 record. So we will be anxious to hear any comments that you
5 might have on --

6 MR. HALL: We plan to file formal comments, Mr.
7 Commissioner. So we'll be doing that.

8 COMMISSIONER STAREK: Terrific.

9 The second thing is, you would think that I had
10 much more to do with putting together this program than I
11 really did. And the reason for that is our first two
12 witnesses today have touched on the two principal issues
13 that we are addressing in the OECD Committee on Consumer
14 Policy right now.

15 The issue of non-tariff barriers against trade by
16 international standards is a major project of that
17 committee, looking basically at standards for the safety of
18 products.

19 And the dilemma that I raised earlier is exactly
20 what we're facing. Everybody seems to suspect that these
21 standards are being implemented either too rigorously high
22 to protect the domestic markets or the alternative is that
23 they actually are high because there's a strong consumer
24 movement in the countries and they don't want to lower their
25 standards to allow other products into their markets. Both

1 of them seem achieve the same thing, and it causes a huge
2 dilemma, I would imagine, for trade officials having to deal
3 with it.

4 But it also causes a huge dilemma for consumers
5 who are denied access to products which may, in fact, be
6 safe.

7 The other issue that we're addressing is the one
8 raised by Mr. Hall, market access. We had a conference in
9 June of 1994 which basically said: Look, markets are
10 becoming globalized; but, yet, there are impediments or
11 barriers for consumers to participate in these markets.

12 What are these barriers and impediments? And how
13 can we get rid of them so that consumers can enjoy the
14 benefits of international markets?

15 So I find it interesting, and I think some of our
16 other speakers will comment on that.

17 We move now to another phase of our program and
18 that is the differing national laws that we face. And one
19 of the implications for enforcement by the FTC and by other
20 consumer law enforcement agencies, is what are we facing
21 with these differing national laws?

22 Believe it or not, in several European countries,
23 it's still illegal to have comparative advertising, as one
24 example; and there are many more.

25 Our first speaker on harmonization and potential

1 harmonization of international laws and what are the
2 impediments to that is Bill MacLeod of Collier, Shannon,
3 Rill & Scott.

4 And I notice that you must have gotten an old name
5 tag there from the Bush administration because Mr. Rill is
6 left off.

7 Before joining Collier, Shannon, Bill was the
8 Director of the Bureau of Consumer Protection here at the
9 FTC and also served as Director of our Chicago Regional
10 Office from 1983 to 1986.

11 And today he's going to talk about the role of the
12 FTC as the marketplace becomes more global, and what should
13 be the FTC's approach to regulation compared to the
14 enforcement agencies in other countries.

15 Bill, thank you for coming.

16 MR. MacLEOD: Thank you very much, Commissioner
17 Starek. Commissioner Steiger, it's a pleasure to be here.
18 And I, once again, would like to commend the Commission for
19 holding these hearings, but particularly holding this phase
20 of the hearings.

21 When I first got wind of the plans that the
22 Federal Trade Commission was going to have global
23 competition hearings, my first thought was: Well, I
24 certainly hope they also have plans to consider that subject
25 of which competition is a part, and that is consumer

1 protection.

2 And I am delighted that they have expanded the
3 consideration of issues all the way to consumer protection.

4 My subject today is a little bit of a daunting
5 subject as it's laid out in the agenda. I was asked to make
6 some suggestions for how the FTC might be able to provide
7 some leadership in the area of inconsistent international
8 approaches, policies, philosophies when it comes to
9 advertising.

10 And I thought that possibly the best way for me to
11 give that advice -- not to be so presumptuous and tell the
12 Commission how to do it and what to do -- but, perhaps, to
13 pass on to the Commissioners a few of the mistakes that I
14 had made in the course of my efforts to try to exert some
15 leadership a few years ago.

16 And I think that, at least, in a couple of the
17 areas where I found some frustration, there might be some
18 keys for finding a way of exerting some significant
19 influence, not only internationally, but also influence that
20 can come back here to the United States.

21 One the things I discovered very quickly in my
22 tenure as director of the Bureau and in my experience as a
23 delegates to the OECD Consumer Committee is that consumer
24 policies are very contagious internationally.

25 As Commissioner Starek and Chairman Steiger -- I

1 hope you don't mind, Chairman Steiger, if I call you by that
2 -- once President, always President; once Chairman. As I
3 think we have experienced in the last several
4 administrations, probably most of the time of the Consumer
5 Committee is spent with consumer protection officials of
6 various agencies comparing their consumer protection
7 policies.

8 What I discovered early on in that process was
9 that, by and large, there is a very broad area of agreement
10 of philosophies of policies that the consumer protection
11 officials are empowered to uphold.

12 Most of the countries that meet at the OECD are
13 countries that have general consumer protection standards.
14 When you look through them, you will see in many statutes or
15 cases or codes, whatever the source may be, likely to
16 mislead quotes; you will see allowances of puffery
17 recognizing that the impressions upon consumers of puffing
18 claims versus subjective claims is something that should be
19 recognized in the law.

20 Yet, at the same time we see some very puzzling
21 anomalies and inconsistencies among the various countries.
22 Commissioner Starek, you mentioned one of them: comparative
23 advertising.

24 When you run through the roster of what can and
25 can't be done in the various countries, it is somewhat

1 surprising. In some countries, buy one get one free is
2 illegal. In other countries, it may be legal if the one you
3 get free is one that is different from the one that you are
4 buying. The reasons -- I think that Mari Ann will go into a
5 little bit further -- delve back not to consumer protection
6 ideas but to unfair competition ideas.

7 One of the problems that we see in a number of the
8 other countries around the world is that they are a little
9 bit like the Federal Trade Commission was before the Wheeler
10 Lee Act. They are enforcing consumer protection standards
11 as a result of unfair competition rules. And the
12 consequence of that enforcement is that, while consumers are
13 often a primary concern and consideration in the policies
14 that develop, competitors often get equal say and equal
15 consideration.

16 What are the implications of this?

17 I found fascinating a list that appeared in
18 Advertising Age just a few weeks ago in which Advertising
19 Age identified what they believed were going to be the next
20 25 global household words, the brand names that were about
21 to burst upon the global scene. And they were such brand
22 names as we have heard here: The GAP is an example; Acer
23 computers, something that any of us who are fiddling in
24 high-tech are admiring these days; also some names we
25 haven't heard here in the United States, like Daewoo, the

1 Korean maker, and Ericsson, the Swedish telephone
2 manufacturer. We're going to see more and more names like
3 these around the world.

4 What I found fascinating from this list was the
5 kinds of items that were not on it, the kinds of brand names
6 that were not there. We saw nothing from health care,
7 either health care products or health care services or any
8 other professional services for that matter. We saw nothing
9 in the nature of investments or consumer credit. We saw
10 nothing in the nature of nutrition-oriented food products
11 and so on.

12 There were a number of categories, categories that
13 were as important as apparel, as important as cellular
14 phones and computers, but for some reason, at least in the
15 judgment of the experts at Advertising Age, not ready to
16 break on to the world stage. Why is that?

17 I have a couple of suspicions, only suspicions but
18 something that I think is worth further looking into.

19 Why not investment and credit? I think one very
20 good example has to do with conversations I had early on in
21 my days at OECD. One of the areas in which the other
22 consumer officials were especially curious was about the
23 United States' experience in enforcing its credit
24 regulations. The FTC, as you know, has a major share of
25 that responsibility.

1 And the other countries where credit instruments
2 were probably ten years or so behind the development of the
3 United States were also suddenly very interested in the kind
4 of laws that we had established in the 1970's to govern our
5 credit transactions.

6 I tried to tell my fellow delegates that, at the
7 time the Federal Trade Commission was actually going through
8 a little bit of reconsideration. We had recently modified
9 some orders and we had done some other changes. We had
10 issued some commentaries. Because one of the things that we
11 had discovered was that, for example, in the area of truth
12 in lending, we were asking for advertising to carry more
13 disclosures than a lot of advertisements were able to
14 contain. As a consequence, we were discovering that instead
15 of disclosures, we were enforcing silence in consumer
16 advertising; and the Commission modified its policies.

17 Nonetheless, while they were interested in that,
18 they were far more interested in the volumes of regulations
19 and statutes that we could provide them, and I did provide
20 them.

21 But what I also provided, whenever I sent to
22 another country the regulations and the statutes that we had
23 governing credit or any other rule that the Commission
24 enforced or another agency enforced, I sent them the
25 Commission policy statements on unfairness, substantiation,

1 and deception and told them that when we consider
2 regulations here in the United States, we consider them
3 against the standards of deception, substantiation and
4 unfairness that are laid out in these relatively
5 straightforward, relatively terse, policy statements of the
6 Federal Trade Commission; and I urged my colleagues to
7 consider whatever regulations they wanted to adopt in the
8 context of those statements.

9 Was I successful in the credit area? I'm not so
10 sure.

11 Was I successful in comparative advertising?
12 Well, as a matter of fact, a directive has just come from
13 Brussels in which the countries in the European Union are
14 being instructed, being directed to accommodate their
15 policies to allow more comparative advertising. I'll be
16 glad to get into some of the details of that later on.

17 I found it fascinating that a French television
18 station that was running a story on this had to come over
19 here to the United States to find a consumer group that was
20 supportive of this change, because all the consumer groups
21 in Europe were on the side of the businesses who thought
22 that denigrating competitors was not particularly good for
23 consumers.

24 There remains a very serious unfair competition
25 hangover in Europe, and that infects a number of consumer

1 protection policies where consumers, unfortunately, are not
2 sovereign.

3 It is not just, of course, an example of policies
4 that prevent truthful claims from being made. Lest I sound
5 like I am Johnny One Note here, let me mention an area where
6 we're also seeing some concern and that is in the areas of
7 environmental claims, especially eco-seals, where we are
8 seeing a number of generalized environmental benefits being
9 claimed, which probably would not pass muster under the
10 FTC's environmental guidelines today; but are, nonetheless,
11 for some reason, passing muster in some of the European
12 countries. For example, if you reduce the oils in your
13 oil-based paints, you can earn yourself an eco-seal in some
14 countries; but you can't put that eco-seal on latex-based
15 paints that have very little oil and emit virtually no
16 VOC's, the goal of the seal itself.

17 How does that communicate to consumers? Which is
18 the best form of VOC-reducing paint to buy?

19 How do we influence these policies?

20 My thoughts, back in the times when I was debating
21 with my colleagues at the OECD, was that far and away the
22 most valuable tool that I had was a tool that the Federal
23 Trade Commission was almost in a unique, in the world,
24 position to provide; and that was the studies of a respected
25 agency of the Bureau that combined both competition and

1 consumer protection philosophy. And that is the Bureau of
2 Economics.

3 A very influential development that was occurring
4 in the 1980s was the development of the emerging health
5 claims for foods in food advertising that some would say
6 experienced a renaissance in the 1980's and generated a
7 great deal of excitement around the world.

8 A good deal of that excitement was substantiated
9 and confirmed by studies originating here at the Federal
10 Trade Commission demonstrating that the change that the
11 policies the FDA and the Commission pursued in food
12 advertising and labeling were policies that served consumers
13 well.

14 So my recommendations to the Commission from where
15 I failed and where I think I partly succeeded is to
16 remember, number one, that policies are contagious, policies
17 here in the United States; try to make those policies as
18 defensible as possible when we go overseas because our
19 policies themselves and not our criticisms of the policies
20 is what sells to our trading partners.

21 Secondly, arm yourselves with documents of the
22 victims and the beneficiaries of unsound policy on the one
23 hand and sound policy on the other hand.

24 With every Bureau of Economic study, with every
25 Commission comment weighing in on the benefits of

1 substantiation and deception-driven consumer protection
2 policy, we stand a better chance of finding harmonious
3 standards around the world.

4 Thanks very much, Mr. Chairman.

5 Thank you, Madam Chairman.

6 COMMISSIONER STAREK: Well, thank you, Bill. Very
7 thoughtful comments. Appreciate it.

8 We move now to Bruce Silverglade, who is the
9 Director of Legal Affairs at the Center for Science in the
10 Public Interest. Bruce is known to virtually everybody here
11 at the Commission. He coordinates CSPI's legislative and
12 regulatory activities in a wide variety of areas involving
13 consumer protection.

14 Bruce is a frequent critic of the Commission,
15 although I haven't heard any criticism lately. So maybe
16 we'll give you an opportunity here.

17 Today he will speak about the importance of having
18 strong consumer protection standards that can serve as the
19 basis for international standards and will warn us, I think,
20 about harmonization which could result in lower standards
21 for U.S. consumers.

22 Bruce?

23 MR. SILVERGLADE: I thank you, Commissioner
24 Starek, Commissioner Steiger.

25 Good afternoon. Today I would like to make two

1 points regarding consumer protection regulation in the new
2 era of global competition.

3 First point is that consumer protection regulation
4 is actually necessary to maintain U.S. economic leadership
5 and international competitiveness.

6 If you look at traditional consumer group
7 priorities whether it's ranging from honest labeling of food
8 products to safety standards, these are regulations that are
9 all necessary to help maintain U.S. economic leadership.

10 Oftentimes just the opposite is talked about;
11 consumer protection regulation is called a barrier to
12 competition.

13 But in reality, the consumer rules help maintain
14 the high standards that American products and services are
15 often known for. And when we haven't had high standards, we
16 paid the price in the loss off international competitive
17 position.

18 For example, if you look at American automobiles,
19 which have, until recently, had a reputation for poor
20 quality, we certainly suffered in the international
21 marketplace.

22 Much of my time is spent in the area of food
23 regulation; and if you look at food additive regulation,
24 consumers in Japan will not buy many of our processed foods
25 because they contain particular additives that are

1 considered not appropriate or safe in Japan.

2 There was a controversy over growth hormones used
3 in cattle. Consumer groups in the U.S. and in Europe did
4 not want to see these growth hormones used just as a matter
5 of consumer preference. The European Union, in fact,
6 prohibited the use of the growth hormones. We didn't. It
7 was difficult for us to sell our cattle in Europe.

8 So by maintaining high consumer protection
9 standards, it will actually help increase our international
10 competitive position.

11 The FTC, obviously, has a big role to play here.
12 Lots of FTC activities -- current activities as well as
13 prior activities -- could be reinvented to create the
14 appropriate economic incentives to increase product quality
15 and, again, maintain our leadership position and our
16 international competitive position.

17 My second point is how the FTC should go about
18 doing this. And I'm recommending that the Commission
19 develop a formal policy for strategic participation in
20 international forums to ensure the upward harmonization of
21 consumer protection requirements around the world.

22 U.S. regulations, ranging from nutrition labeling
23 of foods to fuel efficiency requirements for automobiles,
24 have been called the "technical barrier to trade." And in
25 order to defend the attacks on U.S. consumer protection

1 standards, the FTC must be very proactive. This is a
2 situation where the Commission is going to have to step in
3 and weigh in very actively.

4 The Commission should develop a strategic policy
5 for participation both in governmental and private sector
6 regulatory activities and standard-setting forums on the
7 international level.

8 And by encouraging the upward, as opposed to the
9 downward harmonization of consumer protection requirements,
10 the Commission can help ensure that U.S. standards remain
11 the leading standards in the world and set the trend and the
12 scope of the debate.

13 I have some specific suggestions for a elements of
14 a Commission policy in this are.

15 The first element of the Commission policy should
16 be to preserve and enhance the Commission's ability to
17 accomplish its statutory responsibilities to protect
18 consumers from unfair and deceptive practices. It obviously
19 has to be the guiding light, whether the Commission is
20 working on domestic issues or participating in international
21 forums.

22 The second element of the Commission's policy that
23 I would suggest would be to ensure that U.S. consumer
24 protection regulations and standards are maintained except
25 when a regulation or standard of another nation provides

1 consumers with a greater degree of protection from unfair
2 and deceptive trade practices.

3 And, of course, I suppose that's open to
4 interpretation: What is a greater degree of protection?

5 I was meeting with a delegation of Japanese health
6 food manufacturers who were really appalled to see the
7 Kellogg's "All Bran" label in the United States actually
8 mention the word "cancer." They thought that was bordering
9 on fraud. And they were health foods manufacturers in
10 Japan. So whether health claim rules here have been
11 beneficial or not, I think, is open to debate on an
12 international level.

13 The third element that I'd like to see in a
14 Commission policy is to provide for and encourage the use of
15 international consumer protection regulations or standards
16 only when such action will not result in the downward
17 harmonization of consumer protection requirements. That's
18 the converse of what I previously stated.

19 And, lastly, a procedural point, the FTC's input
20 into international regulatory and standard-setting
21 activities must be ... "transparent" is the word that's
22 being used in the context of this type of debate.

23 In other words, it should be open to public
24 scrutiny. And the Commission should provide all interested
25 parties with an opportunity to participate. And this is, of

1 course, logistically difficult, since we're talking about
2 international forums and international conferences,
3 meetings, and so forth.

4 If sum, the FTC has an important role to play in
5 international activities. And by defending U.S. consumer
6 protection standards when they are the highest, the FTC can
7 further its statutory mission as well as advance U.S.
8 economic interests and improve consumer welfare at home and
9 abroad.

10 COMMISSIONER STEIGER: Can I ask a question?

11 COMMISSIONER STAREK: You sure can. We should
12 have you send this statement to our trade press, since you
13 think it's important that we participate in international
14 forum.

15 COMMISSIONER STEIGER: Bruce, nobody knows our
16 budget constraints better than we do unless maybe it's those
17 who have watched us for as long and with as great an
18 interest as you do; so, obviously, we have a few barriers
19 here ourselves.

20 I know you have concentrated most recently on food
21 advertising and nutritional areas. But as you were
22 listening to your counterparts and to other government
23 officials in a global setting, could you rank the areas of
24 concern where it is felt we are, A, too strict or, B, where
25 we are too lax?

1 Is there any kind of consensus in the consumer
2 protection area?

3 MR. SILVERGLADE: Well, I think there are
4 differences. As a general matter, we have the strongest
5 rules, I'd say, if you had to generalize. But there are
6 important exceptions.

7 In tobacco marketing, our rules are weaker.

8 In alcoholic beverage marketing, our rules are
9 weaker.

10 Even in the area of food marketing, in Canada,
11 until, I don't know, about five years ago, every food
12 advertisement that was broadcast on Canadian television was
13 precleared by the government, by the Department of Health
14 and Welfare.

15 Now they have since delegated that to an entity
16 similar to the National Advertising Division of our Council
17 of Better Business Bureaus, a similar organization that
18 operates in Canada.

19 So they still look at every food ad before it's
20 broadcast, because they consider it so important to health
21 that this preclearance process be undertaken.

22 So in those areas, we certainly have less strict
23 regulation. And I would argue, that we do not protect
24 consumers as well. Bill MacLeod might argue with that.

25 COMMISSIONER STEIGER: Thank you.

1 Thank you, Roscoe.

2 COMMISSIONER STAREK: Thank you. That was very
3 interesting. I think there is a legitimate fear that by
4 engaging in international discussion on standards, you know,
5 somehow you reach a lowest common denominator for everybody
6 in order to reach an agreement. And that is something, it
7 seems to me, that is not in the best interest of consumers
8 in any country.

9 Our next speaker may have a different view on all
10 of that. She is Mari Ann Blatch, who is the Vice President
11 of Governmental Affairs at Readers Digest where she has
12 served in that capacity since 1974.

13 She has worked with Readers Digest companies in 33
14 countries to support and encourage the establishment of
15 local direct marketing associations.

16 And today she will speak about how legal standards
17 differ from country to country, the difficulties this poses
18 for businesses and companies trying to do business
19 internationally; and she will share with us her views on the
20 appropriate direction for harmonizing consumer protection
21 standards.

22 Mari Ann, thanks for coming.

23 MS. BLATCH: Thank you very much.

24 And I just wanted to say that, on behalf of
25 Readers Digest, which is a global company, some of my

1 comments I believe will be relevant to other marketers that
2 are fully invested in the countries in which they are doing
3 business.

4 We talked earlier in this session about exporters
5 or importers. My remarks are directed towards companies
6 that are actually operating in the local market, with local
7 staff, in our case local editors, in the local language.
8 Our books, our music, and all of our advertising campaigns
9 are created on site.

10 One of the ways that I, as Director of Consumer
11 and Government Affairs, have built my grid of regulations
12 from around the 40 countries where we do business has been
13 by working with the local trade associations. And we can do
14 that because we are present there.

15 But for those American companies that are not
16 present -- and we're the only magazine that is present in
17 each country and has unique products. Most others ship them
18 from the United States. For those companies, what they have
19 turned to in order to be able to build global campaigns is
20 basically to follow the rules set by the FTC.

21 So perhaps you won't be surprised to hear that I
22 absolutely agree with Mr. Silverglade that the FTC must
23 continue to participate in the international forums, both
24 the formal ones and your bilateral mentoring and coaching,
25 and the new developments of the U.S.-EU transatlantic

1 dialogue.

2 At the same time, I absolutely, 100 percent, agree
3 with what Bill MacLeod has said, which is that while we are
4 talking with our partners and particularly the continental
5 European partners and particularly those that are influenced
6 by the German system of unfair competition, we need to have
7 a better understanding about what we mean when we use the
8 word "competition."

9 In the U.S. we gave up fair trade laws years ago.
10 In Germany when we have discussions with our German
11 colleagues about consumer protection, they say, oh, yes, we
12 have consumer protection; we have our unfair competition
13 law.

14 I just came back from a visit to the European
15 Union's Commission Number 15. And the reason I was visiting
16 there last week is that they announced, in July of last
17 year, a specific project to look at the regulations which
18 should be harmonized in Europe on commercial communications.

19 Now they define commercial communications as all
20 forms of advertising, direct marketing, sponsorship, sales
21 promotion and PR.

22 In their first newsletter, which was just issued
23 this year in July, the lead article focuses on sales
24 promotion which they define as gifts, premium discounting,
25 and similar sales incentives.

1 In this article, they point out that there are
2 such vast differences in the national laws in Europe that
3 there is an acute problem for transporter -- advertising and
4 transporter marketing in Europe.

5 At one end of the spectrum, you find the UK and
6 Ireland whose rules are very similar to those in the United
7 States.

8 At the other end is the heavily regulated German
9 market where the law imposes complete prohibitions in the
10 name of unfair competition.

11 At our meeting, Readers Digest Europe, led by our
12 German lawyer, documented the differences and our experience
13 with the differences in those laws.

14 I will leave the document which I gave the
15 Commission for the Federal Trade Commission as part of these
16 hearings.

17 On Tuesday I was told that the current timetable
18 for the release of this green paper on commercial
19 communications is January or February of next year.

20 Directorate 15 and Commissioner Bangeman, who is,
21 you know, the father of the European information
22 superhighway, is very concerned that we should lift
23 restrictions in the name of unfair competition so that there
24 can be -- so that the advent of on-line, digital, broadband
25 communications would increase in Europe and would allow

1 further opportunities for the reception and use of
2 transporter commercial communications.

3 They have told me that they are willing to assess
4 in a completely objective manner, as Bruce would approve, in
5 the highest consumer protection standards and, as Bill and I
6 are arguing, not in the name of competition standards, all
7 regulatory barriers to commercial communications in Europe.

8 In our discussions with the Commission we at
9 Readers Digest listed the burdens that we currently face
10 operating in Europe as a direct result of these differing
11 legal restrictions.

12 Of course, first would be the extra cost of having
13 to plan and produce separate marketing material for each
14 market.

15 But more importantly the loss of business in one
16 market because, for example, in the UK, to introduce our
17 magazine to new subscribers, we can offer a half-price
18 introductory subscription and we can also offer a premium of
19 any sort that we would like to offer and of any quality we
20 would like to offer.

21 In recent discussions with our operations people
22 in Europe, they tell me, because of the restrictions on not
23 being able to discount a magazine offer and not being able
24 to offer premiums in German, our business, although it is
25 huge -- and it's certainly a good part of 50 percent of our

1 businesses out of Europe and 50 percent of our European
2 business is Germany -- nevertheless, it has not been able to
3 reach the potential it would have if we look at our
4 operations in Canada, in Australia, in the United States,
5 the UK, or Ireland.

6 I'm really encouraged and I'm really excited, and
7 I think we have some good news and some good fun in front of
8 us. Because the EU commission is determined to remove these
9 barriers. I was told last week, quote: "No where in the
10 Rome Treaty will you find any provision for protection of
11 competition." And continuing the quote: "A country must
12 justify its competition laws on the basis of consumer
13 protection. And in meeting that objective, the law should
14 not have a disproportionate affect on international trade."

15 It would be very important for the success of
16 American marketers, both in the traditional and in our
17 ventures into the new media, if the FTC would support the
18 European Commission and would work with them when their
19 green paper is released for comments.

20 I firmly believe that if the United States and the
21 European Union were to release studies from the FTC's Bureau
22 of Competition and from the EU Commission Directorate 15
23 stating that unfair competition laws in the field of
24 commercial communication are harmful to consumers and bad
25 for the information flows, that countries like Japan, which

1 have modeled their laws on Germany, and countries like
2 Taiwan and other emerging countries that are still trying to
3 decide which model they will follow, will definitely be
4 influenced; and we have a definite chance to make a
5 difference.

6 I was also asked, when I was invited here, what
7 specifics I could recommend for the Federal Trade
8 Commission's future actions.

9 And I think basically what I'm trying to say is
10 the same thing that's been said. I would just add one more
11 factor, and that is that global business has been working
12 for so many years in trying to develop self-regulation and a
13 sort of private sector harmonization. And particularly I
14 think you're aware, the International Chamber of Commerce
15 has issued codes on advertising practice, on sales
16 promotion, and direct marketing. We're in the process now
17 of updating the code on direct marketing to include
18 interactive advertising.

19 Carla Michelotti, who testified here the other
20 day, is the chairwoman of that subcommittee. And what is so
21 good about something like the International Chamber of
22 Commerce, it's a place where companies, not only U.S.-based
23 multi-nationals, but Japan and Australia and Germany and so
24 forth can get together and talk about what we think are
25 common agreements on certain principles of consumer

1 protection.

2 And I think you'll find that we'll be allies as
3 you move forward. And we certainly wish you the best.

4 Thank you.

5 COMMISSIONER STAREK: Well, thank you very much.

6 I had occasion about a year and a half ago, very
7 early on in this process, to meet with three of the European
8 Union staff who were assigned to this project. And at that
9 time, the debate was which directorate was this project
10 going to be in. And fortunately it ended up in DG-15. And
11 fortunately the people who are working on this effort are
12 economists, who, you know, have a bent against the
13 traditional European lawyerly regulation approach.

14 So I was somewhat assured, after an evening of
15 conversation with these folks, that maybe we will see a good
16 product. And the first draft of the green paper, of the
17 initial submission, I thought was very promising.

18 MS. BLATCH: I agree with you entirely. In fact,
19 in my conversations on Tuesday, I had come with all the
20 lawyers for Readers Digest in Europe to provide some hard
21 data on existing law. And instead I was given a lecture
22 that we should be really concerned about any obstacles like
23 unfair competition, restrictions which would not allow
24 Readers Digest to attract people onto our on-line site.

25 They know that we have been developing, with

1 Microsoft, a Readers Digest home site. And he said: How
2 are you going to get the customers to come and look at your
3 site? You're going to need sales promotion; you're going to
4 need half an hour free time offers; you're going to need to
5 use direct mail and say here's where my home site is and
6 here's a gift or here's a discount for time.

7 And I said, yes, yes, I believe you. I'm glad
8 your doing this.

9 So the only other thing was he did ask that all of
10 us who have any opportunity to have any contact with Europe,
11 please do keep in all our discussions with Europe saying,
12 where's the green paper? They're just worried that other
13 priorities might mean that it won't come out in January or
14 February. So it would be most welcome if the U.S.
15 Government continues to hope that it comes out and once it
16 comes out enters into dialogue.

17 Thank you.

18 COMMISSIONER STAREK: Thanks. Well, they have a
19 lot to overcome. I can recall once in an OECD meeting one
20 of the German delegates, we were talking about the
21 relationships between competition policy and consumer
22 policy, which is something that is difficult for some
23 Europeans to grasp; although, I must say, the international
24 consumer organizations have grasped it and understand it and
25 are trying to educate folks, both government officials and

1 consumers in Europe, about the direct relationship.

2 But anyway, this fellow said that competition
3 policy begins where consumer policy ends. And I still
4 haven't figured out what that means.

5 Our next witness is Steven Spivak, who is a
6 Professor at the University of Maryland here at College Park
7 and serves as the Chairman of the Consumer Policy Committee,
8 International Organization for Standardization.

9 Since I'm having trouble talking, I'm not going to
10 go through all of this. However, I think what he's going to
11 talk about today are International Standards Organization
12 standards; how they're developed, as well as the role that
13 they play in international trade.

14 Dr. Spivak, thank you for coming.

15 MR. SPIVAK: Thank you, Commissioner Starek, very
16 much. And I'll take over and give you the opportunity to
17 save your voice.

18 COMMISSIONER STAREK: Thanks.

19 MR. SPIVAK: Since I'm a university professor, if
20 you'll bear with me, I'm going to, as is customary, work
21 from the overhead projector.

22 I might say in opening that I'm not an economist
23 and I'm not a lawyer, but I am an engineer.

24 Thank you. I may be the only one in the room.

25 Commissioner Starek mentioned the OECD. I have

1 brought a copy -- if you have not seen it, I call to your
2 attention the OECD publication on Consumer Product Safety
3 Standards and International Trade.

4 Although it's 1991 -- which may sound a bit dated
5 in this time of fast-moving trade developments and mutual
6 recognition agreements -- it is available from the OECD
7 bookstore in Washington, D.C. It's still, I think, very
8 timely.

9 I have brought information on the ISO Consumer
10 Policy Committee proposal. And I've prepared -- and I
11 believe it's outside on the table -- a small annotated
12 citation list with reference to standardization,
13 globalization, consumers, and international trade. And
14 these are available outside.

15 What I'd like to do today in the short 15 minutes
16 is go through what I hope will be helpful. I will focus on
17 standards and standardization, but an overview and a
18 structure of company, state and local, national, regional,
19 and international standardization.

20 So I will build us up that structure, focusing
21 eventually on the ISO International Organization for
22 Standardization and its Consumer Policy Committee and then
23 work back down in summary to where I believe there can be
24 value to the Federal Trade Commission in its policy
25 development and future work in regard to learning from other

1 examples of national and international standardization.

2 This cartoon says: If things don't fit, you have
3 a standards problem.

4 I guess it's -- if any of you have fought with
5 either incompatibility or lack of the appropriate sizes in
6 computer diskettes or information storage units, that's a
7 classic example. It certainly happens in our office, and
8 I'm sure it's happened in yours.

9 It is, however, an example being dealt with by
10 international standardization.

11 I bring you a particular -- premier good example.
12 In fact, I believe this is from a Canadian publication,
13 Public Consensus. But it says: Standards to enhance the
14 international compatibility of credit cards. And it's a
15 reference to ISO-2894, for the standardization of
16 international credit cards.

17 It is one of many, many examples of international
18 standardization to allow you to move through almost any
19 country in the world, take the credit card, almost without
20 thinking, out of your pocket, put it into a machine and be
21 able to have it read at almost any bank machine around the
22 world, an example of international and national
23 standardization.

24 Since textile care labels were mentioned earlier
25 and I happen to be both a textile engineer and now Chair of

1 the Department of Fire Protection Engineering at Maryland,
2 with interests in textiles and furnishings, I give you some
3 examples.

4 Mr. Hall mentioned the exquisite French -- an
5 example of the exquisite French labels, examples that I've
6 dealt with. Care labels, whether they are in French or
7 German or English or Spanish or Japanese, in the United
8 States, an example, of course, that was mentioned and may
9 come up later with more expert colleagues than myself --
10 although I have been heavily involved as well -- of the
11 development of international standards. This happens to be
12 ISO-3758 for international care labeling symbols, one
13 example of the use of symbols in international
14 standardization.

15 What I'd like to focus on, however, for perhaps
16 the next five minutes is a hierarchy or a structure for
17 standardization. I believe it's very important to put into
18 perspective all these standards that we speak about.

19 Where do they come from? Where do they stand in
20 terms of their relationship, their interaction?

21 And when I say hierarchy, because I'll bring it
22 back, I don't necessarily mean to imply, as I go up this
23 important axis, that higher is necessarily better. I will
24 express some of those opinions later, but I want you to
25 realize that, certainly in the United States, all of these

1 standards coexist.

2 This is an adaptation from Lyle Verman
3 (Phonetically) from his excellent book on standardization,
4 in which, in three dimensions, standards are put in
5 perspective. And let me just summarize those for you.

6 One of the axes is the subject of standardization.
7 And we, of course, heard mention today standards for
8 textiles and clothing, standards for food, for medical
9 equipment, for communications, for consumer products.

10 So one of these axes talks about the products or
11 systems that are covered by standardization. Another axis
12 speaks about the aspect of standardization as mentioned by
13 Rich Meier and others, whether these are quality standards,
14 whether they are legislation, trade regulations, rules of
15 the Commission, safety standards, packaging and marketing.
16 We've heard about testing, inspection, environmental
17 standards, codes, whether they're fire or electrical codes;
18 purchase specifications, such as quality product lists.

19 All of these different uses, if you will, or
20 examples of standardization apply to all of these products.

21 But in addition -- and it's the focus of the
22 discussion today, one raises the fundamental question: What
23 is the level, if you will, or the scope of the development
24 of standardization?

25 And I think I have, I hope, an important message

1 to say that in the United States -- and forgive me if you're
2 well aware of this -- we have a very large body of company
3 standards, in-house corporate standardization, usually used
4 between buyers and sellers who work with those companies,
5 tens of thousands of them.

6 We have industry standards, standards of the trade
7 of a particular industry. An example, Association of Home
8 Appliance Manufacturers, AHAM, will have it's industry
9 standards on labeling of consumer products.

10 We have cities -- the City of Boston, the City of
11 New York -- who will have their own fire codes, electrical
12 codes, elevator codes and safety standards.

13 We, of course, have state regulations. Almost
14 every state will have its own purchase and procurement
15 regulations that are mandatory to do business with the
16 state.

17 But some key examples, California, that has its
18 own emissions standards. California has its own home
19 furnishings -- upholstered furniture flammability standards.

20 So there are unique state regulations in the
21 United States.

22 There are, of course, voluntary national
23 standards. And I mentioned but two examples. In the United
24 States you can count up to 400 different standard developers
25 in the United States, not necessarily exclusive, with no

1 offense to those not mentioned, but ASTM is one example,
2 Underwriters Laboratories, Society of Automotive Engineers.
3 Hundreds of these that developed national standards.

4 They are coordinated in the United States by ANSI,
5 the American National Standards Institute. And of the more
6 than 100 countries in the ISO, International Organization
7 for Standardization, there are two that have a private
8 sector national bodies. And that's ANSI, is the U.S. member
9 body, and Switzerland also has a private sector body.

10 So ANSI is our private sector coordinator in the
11 national voluntary arena.

12 In the national mandatory arena, of course, the
13 development of the Federal Trade Commission, trade reg.
14 rules, the Code of Federal Regulations, all of the -- GSA,
15 General Services Administration, and Defense Procurement
16 Standards, if you will, are national mandatory standards.

17 At the regional level, the key examples, already
18 well mentioned, are European Regional Standardization,
19 whether they're EN's, European Norms, maybe voluntary;
20 whether they're voluntary; whether they're European
21 directives, such as product safety directives that would be
22 mandatory.

23 At the international level, we have voluntary
24 standardization, such as the ISO, International Organization
25 for Standardization; the IEC, its counterpart, in the

1 electro-tech area; and now the ITU, in telecommunications.

2 So effectively we have, at the least, a
3 tripartite, three partners, in voluntary international
4 standardization.

5 International mandatory, there are a number of
6 these. One was mentioned, of course, the GATT standards
7 code on technical barriers to trade and what will be its
8 successor, the World Trade Organization also with a
9 standards code.

10 Signatories, the OIML is a legal methodology. So
11 there are international mandatory or treaty organizations.

12 And all of these play simultaneously.

13 In the United States we are unique in that we
14 probably have the most decentralized, many say the strongest
15 and most competitive national standards body because there
16 are so many players involved.

17 Canada, not quite as decentralized as ours with a
18 coordinator, the Standards Council of Canada, equivalent, in
19 our case, to ANSI. And then six accredited standards
20 developers. And we have Canadian experts who may address
21 that.

22 We are focusing on national standardization. Let
23 me simply remind you, our voluntary ISO member, private
24 sector coordinator, the American National Standards
25 Institute; it coordinates the voluntary standards activities

1 in the U.S. It approves standards from other developers, as
2 American National Standards. ANSI represents the United
3 States' interests in international standardization, and it
4 is a source of information and access on worldwide technical
5 standards.

6 Very quickly, examples. Who needs standards?
7 Well, both American National and ISO, International
8 Standards Organization for photographic film. Many of you
9 who simply put 35 millimeter film in your camera, your
10 automatic cameras, if you look closely enough, you'll see
11 that the film speed is an ISO standard, whether it's ISO
12 400, 200, 100. Okay? An international standard works so
13 transparently well that we don't hardly appreciate.

14 SAE, ANSI American national standards for oil, for
15 the viscosity of the oil in your automobile, again a premier
16 example, nationally and internationally.

17 And in this particular time of political
18 campaigns, I brought one -- this happens to refer to the
19 fact that the glasses that we're all wearing are made and
20 conform to safety standards, in compliance with American
21 National Standards. And this particular campaigner doesn't
22 to have his glasses fitted properly in that he's shaking
23 everyone's hand who comes by.

24 Back to the more important issue at hand. Let me
25 now move up the ladder through national, regional, to

1 international standardization. And I will refer to the
2 International Organization for Standardization and its
3 Consumer Policy Committee, affectionately known as COPOLCO.

4 The ISO is structured with approximately 200
5 technical committees; but there are four policy committees,
6 one of which is CASCO, Conformity Assessment; another of
7 which is the Consumer Policy Committee of which I have had
8 the great honor of being able to serve the past five years.

9 The Consumer Policy Committee reports to the full
10 ISO general assembly, but it holds formal liaisons with the
11 OECD, which has been mentioned. It has a close liaison with
12 what was the International Organization of Consumer Unions,
13 now Consumers International, their new name.

14 And what do we do? What we do is we study issues
15 of assisting consumers in national and international
16 standardization. We promote from the consumer's point of
17 protection, the information and training of consumers,
18 provide a national and international forum for the exchange
19 of ideas and, maintain liaison with other important
20 organizations.

21 Some of the key things that we will do that I will
22 focus in the last few minutes are -- the COPOLCO played a
23 key role in setting up the first clarion call on the
24 confusion over the lack of ecological labeling or
25 environmental labeling standards, which eventually led to

1 major efforts by the ISO and other partners in beginning to
2 develop the body of international standards for the
3 environment.

4 COPOLCO has taken the lead, I believe worldwide as
5 well as at the ISO, in the development of standards for
6 services and service quality. And I will give you some
7 specific examples of that.

8 COPOLCO has been working on using a summary of all
9 of its national standardization members, including the U.S.,
10 in developing criteria on priorities for selling services.

11 And the COPOLCO members recently prioritized a
12 list of 15 items that they believe, as consumer experts, are
13 key for national and international standardization. And I
14 bulleted just several of interest to the Federal Trade
15 Commission.

16 Air and water quality; medical and hospital
17 services were mentioned; smart cards, including banking
18 services; environmental management systems and environmental
19 labeling; energy labeling, which we'll hear about; public
20 information symbols, okay? whether they're road signs or
21 textile labeling.

22 The Consumer Policy Committee has -- this is not a
23 complete list. It now has 64 members, of which most recent
24 members have been Mexico, Lebanon, Mauritius, and others.
25 So we have a very broad base of the entire structure of

1 international standardizers.

2 On the references, there is lot of information
3 about how ISO serves the consumer, so I won't belabor you;
4 and I don't have the time to do so, but there are detailed
5 articles in the ISO bulletin.

6 Let me close just with a few examples that I
7 believe are of interest to the ISO.

8 One of the things that COPOLCO does is it
9 participate in and also contribute to the development and
10 publishing of ISO IEC guides. These are international
11 guides, not formal standards per se. And one of these has
12 just undergone a major revision. That's Guide 37:
13 Instructions For Use of Products of Consumer Interest. That
14 was approved by the ISO and the IEC in 1995. And I'm
15 awaiting the formal receipt of the final printed document.

16 Guide 50 and 51 in the safety area. Guide 51 for
17 safety aspects and standards and Guide 50 for child safety,
18 both undergoing major revisions now in 1995 and 1996.

19 We publish a consumer communique twice per year.
20 And, again, I brought you a specific example that I hope
21 piques the interest of the FTC. This is the first page of
22 the most recent example, an Australian national standard on
23 complaints handling. They believe it to be a world's first
24 in terms of a national standard for consumer complaints
25 handling and resolution.

1 COPOLCO has been focusing on the very important
2 issue of international standards for services, and we held a
3 major meeting in Beijing, China. And one of the references
4 is a recent issue of the ISO bulletin, a major feature
5 article, 20 pages on service standards.

6 And I believe that's important to the FTC.

7 Let me give you some examples that I think would
8 be of use in terms of national standardization, being worked
9 intellectually by COPOLCO in service standards.

10 I've mentioned the Australian standard on consumer
11 complaints handling.

12 I mentioned what is a final draft of the Canadian
13 CSA standard on data protection and privacy for personal
14 data and protection for consumers.

15 A New Zealand national standard, a new rating
16 scheme for the entire hospitality industry, hotels and
17 motels.

18 The United Kingdom, a new national code of banking
19 practice, in part, for the protection of consumer.

20 APNOR, in France, new national standards
21 established for the service industry. And the first
22 national service mark has gone to a furniture moving
23 company.

24 Again, issues of importance to the FTC.

25 The United States, the Toy Manufacturers of

1 America in concert with European toy manufacturers and the
2 Council of Better Business Bureaus are working on a draft
3 ISO-IEC guideline on guidelines for advertising to children,
4 a very important and interesting area.

5 In summary, I bring you a different picture of
6 this international organization. This is a different
7 perspective. It happens to be a pyramid with company and
8 national standards moving up through international. It's a
9 different focus than the previous chart that I gave you, but
10 it gives you a different way of thinking about what's really
11 important, who is at the top of the pyramid, or is there no
12 pyramid at all?

13 In the interest of time, Commissioner, I will stop
14 at this point. And if there are any substantive questions,
15 I would be pleased to address them.

16 COMMISSIONER STAREK: Well, thank you very much.
17 I found that to be very educational. I was aware,
18 generally, of how standards are set but not in such detail;
19 and I found it extraordinarily interesting and helpful.

20 Our next speaker today is Susan Lord, who is Vice
21 President of Government Relations for Springs Industries
22 Inc., where she serves as the industry advisor on textile
23 trade policy and negotiations.

24 And she also Chairs the Export Subcommittee of the
25 American Textile Manufacturers Institute.

1 I think today she is going to speak about the need
2 for harmonization of standards applying to textiles and how
3 the FTC can contribute in this area.

4 Ms. Lord, thank you for coming.

5 MS. LORD: Thank you, Commissioner Starek.

6 Just by way of introduction, Springs Industries is
7 one of America's largest textile and home furnishing
8 companies. We currently have sales of just under \$2.5
9 billion, and we employ approximately 24,000 people.

10 I'm a member of the International Trade Committee
11 of ATMI, or the American Textile Manufacturers Institute,
12 which is the national association for textile products. And
13 I'm Chairman of both the Export Subcommittee and the Home
14 Furnishings Subcommittee.

15 ATMI's members process 80 percent of all textile
16 fibers processed in the United States and are engaged in
17 every facet of textile manufacturing and marketing. ATMI
18 members collectively employ 670,000 people.

19 So it's from this perspective that I am speaking
20 this afternoon.

21 Two and half years ago when I left the world of
22 marketing apparel fabrics up in New York for Springs
23 Industries, I really had no idea how standards were set. I
24 had never heard of ANSI or ASTM. I had heard of ISO but had
25 no idea how it functioned. But I found, as I became an

1 advisor here in Washington, I quickly became aware of
2 standards and their importance within the international
3 trade community.

4 Beyond this, and most importantly, I found the
5 need for industry to be involved.

6 During the NAFTA negotiations, the textile,
7 apparel, yarn, and fiber industries fought hard to ensure
8 favorable rules of origin -- though I'm not sure Rob would
9 necessarily agree with me on that -- an acceptable schedule
10 for the phase out of tariffs, and the elimination of
11 non-tariff barriers.

12 One of the potential non-tariff barriers that were
13 raised during the negotiations was the issue of standards
14 and the need to work towards harmonization.

15 In 1991, at the request of the government's
16 negotiators, the national standard organizations of the
17 three countries met to discuss harmonization. The result of
18 this meeting was the formation of a series of
19 sector-specific industry groups.

20 For our industries, the specific need identified
21 was label requirements for apparel and home furnishings.
22 The Trilateral Labeling Committee was formed, and I became a
23 member in 1993.

24 Each country requiring different information
25 presented different levels of detail in different formats in

1 different languages. The task was large: How to conform,
2 how to come to a consensus.

3 The labeling issues identified included fiber
4 identification, country of origin, placement of labels,
5 manufacturing or importer identification, and Care labeling.

6 With representatives from three governments and
7 the private sector from each country, the committee has met
8 numerous times with the goal of identifying all the issues
9 and reaching consensus on solutions satisfactory to all
10 parties.

11 While progress has been made, consensus solutions
12 have not been achieved. And that's been four and a half
13 years.

14 One of the largest issues facing the committee was
15 Care labeling.

16 Let me just highlight -- give you a brief rundown
17 of what we're facing.

18 In Mexico, Care labeling is required for both
19 apparel and home furnishings. Care instructions may be
20 expressed using a care code symbol system as you saw on the
21 screen earlier or in Spanish.

22 Canada does not require care instructions for
23 either; however, if instructions are included, they may
24 either be expressed in the Canadian care code symbol system
25 or written in the appropriate language. And as you know,

1 English is appropriate for all provinces except Quebec. And
2 there it must be expressed in French.

3 The United States requires care instructions for
4 apparel but not for home furnishings. And the instructions
5 must be expressed in English. Care code symbols are
6 currently not acceptable, though we're moving rapidly
7 towards hopefully adopting some.

8 The result of the above is that companies selling
9 products in these countries or retailers importing their own
10 product directly must either maintain separate inventories
11 by country or develop a single, large label that meets all
12 requirements.

13 The label is often, as I said, large, confusing to
14 the consumer, and expensive to produce.

15 The consensus of the committee is that the
16 mutually acceptable care code system would greatly simplify
17 labels by eliminating tri-lingual instructions, thus
18 reducing manufacturers' cost and eliminating the need for
19 apparel and home furnishing manufacturers to carry
20 country-specific inventory.

21 Further, the committee feels that with some
22 education, a label with care code symbols will be more
23 consumer friendly.

24 In order for the United States to accept a care
25 code symbol system, current labeling laws must be amended.

1 This effort is, in fact, under way. And the Federal Trade
2 Commission, recognizing this need, requested comments last
3 fall on the use of the care code symbol system and published
4 just last week its proposed recommendations with requests
5 for comments on a condition exemption allowing for the use
6 of certain care code symbols.

7 The proposed system has been developed by ASTM
8 during 1991 in response to ISO adopting a care code symbol
9 system over the United State's vehement opposition.

10 The ISO system was developed by GINETEX an
11 international care labeling organization that licenses the
12 system to member countries and requires users, in most
13 cases, to pay a fee.

14 The U.S. industry opposed this system as it
15 required a licensing fee and does not meet the technical
16 requirements of the U.S. law or consumer needs.

17 The industry needs a voluntary system that is
18 simple and easy to understand and still conveys all the
19 necessary information to the consumer. Our goal is to seek
20 simplicity and flexibility. We need to ensure that the
21 system the U.S. adopts meets our needs domestically and
22 similarly can be used as the basis for harmonization
23 internationally.

24 I want to take this opportunity to express the
25 industry's appreciation for all the efforts put forth by the

1 FTC in developing its recommendation for a care code symbol
2 system.

3 It has taken industry comments and consumer needs
4 into account and proposed the basis for a very usable
5 system. With trade among the NAFTA partners in textile and
6 apparel increasing over 30 percent to \$5.4 billion in the
7 first full year of NAFTA and with the greater emphasis on
8 exporting within the industry, the need to harmonize our
9 standards increases daily.

10 Once the United States adopts care code symbols,
11 the basis for harmonization will be in place. Without
12 symbols the chance for harmonization within NAFTA and on a
13 global basis is non-existent within the care codes for
14 textiles and apparel.

15 I would only add that there's a great urgency to
16 move forward with care codes and to move onto other issues I
17 mentioned before. The FTC is in a unique position to be
18 able to help the industry domestically while considering the
19 international trade implications and still meeting consumer
20 needs.

21 While our immediate need is for harmonization
22 under NAFTA, we need to continue to think globally. What
23 happens when Chile joins NAFTA? Do we start over? What
24 about the free trade agreement of the Americas and the
25 possibility of free trade with the EU where GINETEX is the

1 accepted system?

2 I would urge the FTC to continue its work to
3 harmonize with the NAFTA countries but to continue to think
4 about the need for global harmonization in all decisions.

5 Concurrent to the work on harmonizing care
6 labeling within the NAFTA countries, several domestic sector
7 members of the Tri-lateral Labeling Committee and members of
8 the ASTM subcommittee on care labeling met with GINETEX last
9 fall to try and work towards a system that would be mutually
10 acceptable and hopefully could be proposed as the new
11 international standard when ISO meets to review the current
12 standard in 1996.

13 While GINETEX has expressed interest, much has yet
14 to be done. The system the FTC proposed is a step towards
15 meeting this goal.

16 The recommendation of the FTC to adopt a care code
17 symbol system would be a major first step in gathering the
18 support necessary to the work toward ISO adopting an
19 international standard acceptable by the U.S.

20 As we all look to expand our markets beyond our
21 borders, we're going to be faced with numerous challenges.
22 International standards are going to play an increasingly
23 important role in the world of international trade. We need
24 to work to ensure the development of international standards
25 support the needs of our industry and do not become

1 non-tariff barriers. We must continue to share information
2 and work together to achieve this goal.

3 Thank you.

4 COMMISSIONER STAREK: Well, thank you very much.
5 And thanks for your -- I'll take them as very complimentary
6 comments. I appreciate it.

7 Our final group of speakers today -- we have a
8 tandem to conclude this round before we get into our panel
9 discussion. We will hear, as we did this morning, from the
10 Canadians. And we will hear the Canadian experience and
11 receive a Canadian perspective on all of this.

12 Our witnesses today are Mr. Zane Brown, who's the
13 Director General of Consumer Products Directorate at
14 Industry Canada; and Mr. Joseph Hoffman, who is the Director
15 of Policy for the Ontario Ministry of Consumer & Commercial
16 Relations.

17 They will speak today about the Canadian
18 experience in harmonizing provincial and national laws and
19 the lessons to be learned from this experience as well as
20 the potential future for U.S.-Canada efforts at
21 harmonization.

22 Gentlemen, thank you coming. I appreciate it.
23 Thanks for patiently waiting all this time.

24 MR. BROWN: Thank you, Commissioner.

25 First of all, let me say on behalf of Joseph and

1 myself how pleased we are to be invited here to address the
2 Commission today, and hopefully some of the comments that we
3 have will certainly help the Commission in the hearings.

4 Joseph and I are here in our roles as co-chairs of
5 the Consumer Measures Committee, which is a committee
6 established under Chapter 8 of the Internal Trade Agreement
7 which has just been ratified in Canada.

8 We would like to share with you some of the
9 lessons we have learned as co-chairs of the process and,
10 hopefully, some of the those lessons can be applied on the
11 international level as well.

12 Much of our experience has been accrued through a
13 process of formal negotiation among 13 jurisdictions to
14 eliminate barriers to trade, investment and mobility within
15 Canada through the agreement. Our particular focus has been
16 on harmonizing national provincial consumer policies.

17 If you bear with us for a few slides, we will
18 provide you with a very brief context for Canada's
19 experiences in this area. Slide 1, which I won't go into
20 for the purpose of time, simply outlines the structure of
21 Canada's internal agreement. And you will notice that the
22 -- if you are familiar with NAFTA and the GATT -- that the
23 subject matters are very, very similar to those in those
24 particular agreements as well.

25 Under specific rules, you will notice that we do

1 have a chapter which is titled "Consumer-Related Measures
2 and Standards." And that's a chapter that Joseph and I
3 co-chaired through the negotiation process.

4 Now, the inclusion of consumer protection in the
5 agreement is especially noteworthy in two respects. The
6 protection of consumers was recognized as one of the few
7 legitimate objectives where the objective of protecting
8 consumers is acknowledged as sufficiently important that it
9 should prevail over trade rules under some circumstances.

10 The recognition that the effects of different
11 consumer standards can create barriers to trade, internally
12 intentionally or unintentionally, impose unnecessary costs
13 to business as well as consumers, as well as provide
14 consumers in a national marketplace for the confusing and
15 variable degree of rights.

16 You will notice a similarity or the parallels
17 between the national and international dimension.

18 The consumer chapter is noteworthy in one more
19 respect: Each sector chapter was negotiated by a separate
20 sectoral group. The sector negotiators for the consumer
21 chapter were all consumer protection officials, few of whom
22 had any previous exposure to trade negotiations. As a
23 result, we enjoyed one of, unfortunately, infrequent
24 occurrences in public policy, really being able to have it
25 both ways.

1 Because of the consumer rather than the trade
2 perspective shared by the group, we were able to reduce
3 differing laws and standards while trying to use each
4 opportunity to broadly improve the level of consumer
5 protection.

6 The second slide simply gives you an outline and
7 some of the areas and tasks that we have established under
8 the Consumer-Related Measures Standard chapter.

9 It gives you an overview of the objective and the
10 look undertaken in the consumer chapter. And I just want to
11 point out that this has all taken place within the last 12
12 months, so it's a fairly tight time frame.

13 Briefly, we have committed ourselves to action in
14 several specific areas: Harmonization of direct sale and
15 contract and consolation rights, the harmonization of
16 registration requirements, adoption of uniform standards.

17 So far the most ambitious area in the
18 harmonization of legislation is the governing of cost-of-
19 credit disclosure. This includes fixed consumer credit,
20 open credit, such as credit cards, mortgage of real
21 property, supplier credit such as conditional sales
22 agreements and long-term leases of consumer goods.

23 I'm happy to report that all of these tasks are
24 proceeding quickly and on target.

25 The list of the harmonization commitments is not a

1 closed one, however. New areas of harmonization may be
2 added. Nor are we confined to harmonizing what already
3 exists. Cooperative actions on new areas of consumer policy
4 can be pursued.

5 We have also committed ourselves to the
6 exploration of ways to improve cooperative enforcement of
7 consumer measures.

8 We will also use the opportunity to establish a
9 permanent Inter-government Consumers Measures Committee.
10 This group, of which we are the current co-chairs, has
11 several responsibilities.

12 We have to monitor the implementation of consumer
13 aspects of the trade agreement.

14 We are charged with facilitating the process of
15 reconciling consumer standards and identifying new areas for
16 possible future harmonization.

17 We will act as a forum for intergovernmental
18 discussions on any issues relating to consumer measures and
19 facilitating dispute resolution if and when needed.

20 I will pass the rest on to Joseph.

21 MR. HOFFMAN: Thank you, Zane.

22 Commissioner Starek, I will just briefly, before I
23 pick up where Zane left off, reemphasize what a pleasure it
24 is to be here today.

25 If we could put up the third slide and our last

1 slide.

2 What I think we would like to do with the
3 remaining time is talk a little bit about the lessons that
4 we learned through this experience. And I think I should
5 emphasize the lessons as perceived by Zane and I in our
6 capacity as co-chairs, trying to keep somewhat of a broad
7 look at things. And we've narrowed down a list to what we
8 saw as really the six essentials.

9 The first is recognizing the meaning of
10 harmonization. While a shared vision is, of course, very
11 desirable as a point of departure, however, parties at the
12 very least have to recognize the implications of committing
13 to harmonizing differing standards. It may mean
14 compromising. It may mean doing something differently.
15 And, in fact, in some cases, it may mean doing something
16 less.

17 The greatest fear we noted at the outset was that
18 harmonization would result in lower levels of consumer
19 protection, that pressure to harmonize would be pressure to
20 harmonize to the lowest common denominator. And we tried,
21 in negotiating the framework of the chapter, to address this
22 at the front end by several means.

23 The first was explicitly stating in the trade
24 agreement the legitimacy of consumer protection.

25 The second was recognizing each party's right to

1 establish consumer standards.

2 The third was agreeing that, to the greatest
3 extent possible, any reconciliation that occurred under the
4 agreement would be to a high and effective level of consumer
5 protection.

6 And the fourth -- and I think in our shared view,
7 the most important -- we agreed that no party would be
8 compelled to lower the level of consumer protection that it
9 had in place when the agreement was signed.

10 In effect, this last point means that we committed
11 ourselves to consensus, that we chose consensus as opposed
12 to a majority as the mode of operation. And I think the
13 results of all of that was a level of comfort established,
14 leveled out the group to focus on the merits of
15 harmonization proposals more objectively.

16 In the Canadian context, our experience is that
17 differing standards appear to be a far greater concern, both
18 to consumers as well as to industries, than the presence of
19 the high standard.

20 So far, our experience seems to be working out
21 well. Where some provinces, in the case of the specific
22 harmonization commitments that Zane listed, where some
23 provinces have come down to a particular standard, it's been
24 because the others have come up. And even in cases where
25 the result might be the appearance of a lower standard in a

1 specific jurisdiction -- and we have 13 jurisdictions
2 involved in this exercise -- even in cases where the results
3 appears to be lower, for Canadian consumers, generally, in
4 every case, the marketplace standard is now higher or will
5 be at the end of this all.

6 The second lesson is choosing the right things to
7 harmonize. We learned that there is not necessarily a link
8 between the simplicity of a standard and the ease of
9 harmonization.

10 Apparently simple and straightforward issues --
11 what information, for example, should go on a label and
12 where to put it, picking a dollar threshold for door-to-door
13 sales -- proved almost more challenging than agreeing to
14 very complicated credit calculation formulas that would
15 apply to virtually ever individual consumer and ever
16 financial institutional nationally.

17 Connected to this issue of choosing the right
18 issue is the challenge of finding a balance between fixing
19 yesterday's consumer standard and focusing on a harmonized
20 approach to the consumer issues of tomorrow.

21 We found that, somewhat unfortunately, it is
22 easier to focus on a standard that may apply to a very
23 narrow slice of consumer transactions, really because it's
24 the one that's been regulated for years and the perceived
25 need for that measure is highly entrenched.

1 Third lesson, the importance of definitions. And
2 this may seem very obvious to you as we talk about it, but
3 to us it was somewhat of a surprise.

4 Despite being a group of consumer officials, we
5 found very early on in the process that we really meant
6 different things when we used terms like "consumer
7 standards," "level of protection."

8 Initially, we discussed definitions almost because
9 we were compelled to legally. We were, after all,
10 negotiating a legal trade agreement. However, there came a
11 point when we discovered how important a shared
12 understanding of language was, not the least of which was
13 because our group encompassed two languages as well as two
14 distinct legal codes.

15 And we invite you to try it for yourself. Write
16 down your own definition of "economic interests of
17 consumers" and see how it compares with the definition of
18 the person beside you or, in fact, compare it to ours.

19 The next lesson learned has to do with
20 authoritative participation. Zane talked a little bit about
21 the interesting attributes of the composition of our group
22 in terms of their past experiences as consumer officials as
23 opposed to the few of us who had any trade experience.

24 On a more practical note, we learned about the
25 difficulties encountered when different members -- and we

1 tend to avoid the term "negotiators" -- came to the table
2 with varying authority to make decisions.

3 And I emphasize that this isn't a problem of
4 gaining political approval. This is a practical negotiating
5 issue right at the table, the challenges faced by some
6 members getting approval from their respective bureaucracies
7 to speak authoritatively.

8 On the other hand, as a group, we preferred to be
9 informal and not take a fixed view about the level of
10 representation sent by each government. We wanted the most
11 knowledgeable people at the table. We were, generally,
12 unconcerned if some were senior executives, if some were
13 staff lawyers, if some were middle managers or, indeed,
14 middle manager staff.

15 And I think our experience is that, well, this has
16 been somewhat problematic from time to time in the
17 negotiations, generally speaking, the quality of the
18 discussion, the ability of the group to really focus in on
19 the issues at hand from a consumer protection perspective
20 was -- benefitted from this diversity of members.

21 But it did cause us some problems.

22 The next lesson had to do with advanced
23 commitments to outcome. And our experience was that this
24 was conjecture in the beginning. To assure success, the
25 approach we needed was to deal with everything in,

1 essentially, three stages.

2 The first, to establish a firm and binding
3 commitment in advance to a specific outcome.

4 For example, that we would complete negotiations
5 on the element of harmonized cost-of-credit disclosure
6 nationally by a fixed date even before we started debating
7 the details.

8 The second stage, that we would achieve final
9 political approval and determine the most appropriate step
10 towards concurrent legislative change and other
11 implementation considerations because some things can be
12 done without legislation.

13 So far this sequencing appears to work; although,
14 we have recognized a possible problem in accommodating some
15 political realities.

16 Many of our governments are at different points in
17 the political cycle, and that makes legislative scheduling
18 somewhat uncertain. Cabinet ministers change, often very
19 unexpectedly. And this may necessitate revisiting the time
20 tables for briefings, for approvals, getting all of our
21 ministers to a common table to consider and sanction work is
22 seen as extremely important to this process.

23 Now, we also discovered that as political figures,
24 as political leaders, our department heads' portfolios were
25 really quite varied. All of them had consumer

1 responsibilities; but some came to the table as
2 representatives of ministers, responsible for trade or
3 industry. Others had housing in there; some were
4 responsible for recreation; quite a few were, I guess, the
5 equivalent of state attorneys general.

6 The last point that I'd like to talk about is
7 really the need for a strategic approach to consultation.

8 Among several lessons learned in this area, we
9 discovered the difficulties and opportunities presented by
10 work that was not seen as being owned by a single
11 government.

12 The difficulty is really that consultation efforts
13 need to respect the presence of stakeholders at both the
14 national and provincial levels. However, in 11 or 13, if
15 you include the territories, of the jurisdictions, each one
16 of those jurisdictions conducting their own consultation is
17 an awfully difficult and not necessarily source-efficient
18 way of approaching consultation in a harmonic fashion.

19 On the other hand, we're a committee. We're not a
20 secretariat. We don't have dedicated staff, so we have some
21 limitations on our capacity to consult stakeholders
22 directly. So we've tried, so far, to handle this important
23 issue by taking a number of steps.

24 First, as part of our negotiating exercise,
25 ensuring that we have developed a single consultation

1 document for common use in all jurisdictions.

2 Secondly, ensuring that all stakeholders at all
3 levels are identified at least on some kind of master list
4 so that there is awareness of who is being consulted and
5 where.

6 The third, and connected with the one I just
7 mentioned, is respecting the right of governments to conduct
8 their own consultation but developing, in effect, some
9 protocols for sharing the results of those findings.

10 And I'd like to maybe diverge here and point out
11 that the cost-of-credit harmonization negotiations, which
12 Zane mentioned, are extremely complicated.

13 I think there are really only two provinces that
14 opted to do any of their own provincial-level consultations.
15 Everyone else was very comfortable allowing the co-chairs of
16 the negotiating team, which is a subcommittee of the group
17 that Zane and I co-chair, to, in fact, conduct the
18 consultation and do the kind of dialogue where it was
19 necessary and to synthesize the results and share those
20 amongst all of the parties.

21 Connected with this, really, was the need for
22 developing common communications materials for use really
23 anywhere in the country and designating the working group
24 chairs as the primary external contacts.

25 And the last point in this area was providing our

1 political leaders with some distance from the direct issuers
2 until the final proposals were reached at a working group
3 level and developed for political approval so that we can
4 take forward to ministers, really, the recommendations for a
5 complete harmonization proposal, rather than delegate up, so
6 to speak, disagreements.

7 And so far, we have been fortunate in that regard.
8 Although, I should add a point that ties in with, perhaps,
9 again the political realities. Many of our ministers, or at
10 least some of our ministers, are conscious of the difficulty
11 that the harmonization exercise presents to legislators.

12 In effect, as far as the legislators think,
13 there's not much room to add value pushing through a piece
14 of legislation. It's all done for them, in most cases, by a
15 group of non-elected officials and dealing with that
16 dynamic. And I think what we might find as we go forth down
17 this road is the need for some thinking about how to blend a
18 role at the political level into the harmonization exercise
19 so that there is, in fact, some -- not only the appearance
20 but the substantive value added on the political side as
21 well as at the staff level.

22 And I'll turn it back to Zane at this point.

23 MR. BROWN: Thanks, Joseph.

24 One of the key elements in the negotiations that
25 proceeded along with the discussions was the fact that, as

1 we achieved success on each chunk of the -- whatever we were
2 tackling -- it seemed to strengthen the relationship in the
3 parties. It also increased the trust level amongst the
4 parties. Or it made things easier as we went along.

5 And it bodes well for the future of the work of
6 the committee. We will be tackling, probably, stuff like
7 electronic marketing, some of the issues that we were
8 talking about today. Certainly some of the fall out, like
9 the privacy issue, negative option marketing. And one of
10 the things that we were moving ahead very fast on is
11 cooperative enforcement amongst the various parties within
12 Canada.

13 However, as we also have recognized, these issues
14 are universal in nature and any resolution should reflect
15 the international dimensions of today's trading patterns.

16 I could mention that we have a number of such
17 initiatives, of course, already well underway. Under
18 chapter 9 of NAFTA we are involved with textile labeling.
19 We have certainly commented on the care labeling proposals
20 put fourth by the FTC. We are also involved with the ISO
21 subcommittees working on eco-labeling or environmental
22 labeling.

23 We are members or participants in the NIST work
24 being done in terms of methodologies, tolerances, price
25 verification under weights and measures and so on.

1 So there is -- there are long-standing working
2 arrangements that are in existence and will continue.

3 Now there are several specific interests for
4 further attention.

5 Number one is looking at the role of legislatively
6 recognized industry codes to provide greater flexibility in
7 adjusting consumer regulations as the marketplace evolves.

8 The second one is exploring opportunities for
9 cross-border cooperation and consumer education in
10 partnership with business and consumer agencies.

11 Taking advantage of existing opportunities under
12 chapter 9 of NAFTA to address other consumer protection and
13 future issues.

14 Similarly, to expand work on cooperative
15 enforcement to look at opportunities for greater north/south
16 action rather than action confined to state-to-state or
17 province-to-province.

18 More frequent, constant, collaboration in consumer
19 policy development to follow up on issues such as those
20 raised in these hearings.

21 Establishment of a regular North American forum
22 for consumer agency communication and project work.

23 Recently the Canadian Consumers Measures Committee
24 met in Toronto with the executive board of NACA; and this
25 was the first meeting of its kind that brought consumer

1 agency officials together to compare the respective
2 priorities and plans and to share information. It was a
3 very successful meeting, I can add.

4 We hope that you will be able to benefit from our
5 experiences. We certainly intend to build on our experience
6 as we move forward to address other consumer-related
7 measures and standards in a much more flexible, proactive
8 manner.

9 I want to thank, again, the Commission for giving
10 us this opportunity.

11 Thank you.

12 COMMISSIONER STAREK: Well, thank you both for
13 just a fascinating presentation. I'm absolutely amazed that
14 you had the strength left to get on the plane and come down
15 here. If we were ever to undertake such an exercise in the
16 United States, with our 50-plus jurisdictions, in addition
17 to the Federal Government, I only could say I hope my term
18 has expired.

19 Well, I think it's fascinating. I think you have
20 laid a foundation for our discussion. And that is: How can
21 we, or should we, even begin to talk about harmonization of
22 both our standard-setting procedures on an international
23 basis and our law enforcement policies?

24 Should we seek harmonization and standardization?
25 And, if so, how? And how do we avoid the pitfalls that both

1 you and Bruce Silverglade have pointed out in this process?

2 Is the model that you have demonstrated for us
3 something we should encourage our friends in Europe to use
4 when they have to work out their problems?

5 These are things that I hope we can address when
6 we reconvene, after about a 10-minute break, for a
7 discussion where we will joined by some other panelists as
8 well.

9 So let's take about 10 minutes and come back for
10 what I think will be a fascinating discussion.

11 (Whereupon, a brief recess was taken.)

12 COMMISSIONER STAREK: All right. I think maybe we
13 can gather around and try to continue with our discussion.

14 For this part of the program, we are adding three
15 discussants. The first is Toni Guarino, who is Counsel to
16 the law firm of Buc, Levitt & Beardsley, who specializes in
17 food and drug law, advertising law, and consumer product
18 safety law.

19 Secondly, another additional panelist is Carl
20 Priestland, who is the Chief Economist of the American
21 Apparel Manufacturers Association. Mr. Priestland has been
22 in this capacity for 20 years and has represented AAMA and
23 its members at international negotiations on trade for the
24 past 20 years.

25 And, finally, Michael Thompson, who is the

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1 Director of Governmental Relations for the Whirlpool
2 Corporation, has joined us. Whirlpool manufactures in 11
3 countries and markets products under 10 major names in more
4 than 120 countries.

5 I wonder if any of our new panelists would like to
6 make a brief statement or add something or make a comment on
7 what they heard, because I know you were all here for the
8 first half of this afternoon's session.

9 Mr. Thompson.

10 MR. THOMPSON: Thanks, Commissioner Starek. I
11 just wanted to make a few comments about the appliance
12 labeling rule.

13 When I was asked to come here and speak as a
14 discussant, Elaine asked me to identify areas where,
15 perhaps, the FTC could work more closely with our
16 counterparts in Canada and Mexico to help minimize the
17 burdens and, therefore, the costs of labeling under three
18 different national labels.

19 So I would like to give you a couple of minutes of
20 a Whirlpool perspective on the appliance energy labeling
21 program that the FTC has.

22 Whirlpool Corporation, as you indicated, is a
23 global manufacturer of major home appliances. And you gave
24 a pretty good overview of where we're -- you know, we're
25 located in over 120 countries around the world.

1 In the United States we have 10 plants in 7
2 states; but we also have manufacturing facilities in Canada
3 and in Mexico. And we manufacture all of the appliances
4 that are currently covered under the FTC's energy guide
5 labeling rules; and they include refrigerators, freezers,
6 clothes washers, dishwashers, and room air conditioners.

7 When the FTC rule was originally crafted back in
8 the late 70's, I was there at the very tail end of it. When
9 the FTC -- as a commenter on behalf of the Whirlpool
10 Corporation. When the FTC, in all subsequent invitations
11 for comment on amending the rule, asked participants from
12 the public, we also got involved. So we have been deeply
13 involved with the labeling rule ever since its inception.

14 The purpose of the labeling rule is to, first of
15 all, show what the cost right now is for operating that
16 product on an annual basis. And you're transition this
17 year to a new format that will show KWH per year, kilowatt
18 hours per years, which we heartily applaud.

19 But the primary reason for the labeling rule is to
20 give consumers choice. I brought a few labels. You're
21 pretty familiar with them, I'm sure. But they do show, you
22 know, the relative cost now. And that will change to show
23 annual energy consumptions with ranges of comparability of
24 the least efficient and most efficient at each end of the
25 bar there.

1 In the spirit of NAFTA, we strongly support the
2 harmonization of labeling. Right now there is a lot of
3 problems with that harmonization process.

4 And the problems are predominantly in the area of
5 formatting. The United States has one format on which the
6 energy descriptors are KWH per year, energy efficiency
7 ratio, and annual operating cost. You know, that's where it
8 is right now.

9 Mexico shows only KWH per year.

10 Canada has KWH per year and EER for room air
11 conditioners.

12 There are different ranges of comparability, in
13 other words, most and least efficient, in every nation.

14 Mexico does not have its own range of
15 comparability but has some kind of identifier that shows
16 different and more efficient products with A through D
17 ratings.

18 The language is obviously different, and the
19 format is considerably different.

20 The major obstacles to harmonization are basically
21 the format itself, which we believe can be overcome. But
22 some past interpretations by both the U.S. and the Canadian
23 Governments with respect to dual labeling -- which is
24 something we would like to do in the absence of a complete
25 harmonization process -- in the past, the FTC has

1 interpreted certain provisions in the existing law, where we
2 would like to maybe do back-to-back labeling, as being
3 unacceptable because one provision says -- and I'll just
4 kind of read it real quickly: "No marks or identification
5 other than that specified in this part shall appear on or
6 directly adjoining this label except for a part or
7 publication number for indication."

8 Strictly interpreted, what that means is: You
9 can't even dual label.

10 Now I know that you're leaning towards that right
11 now. I would encourage more direct contact -- and I'm
12 talking about face-to-face contact between the Federal Trade
13 Commission, Natural Resources Canada, and the folks that are
14 your counterparts in Mexico.

15 I would encourage a modification of sections that,
16 strictly interpreted, would prohibit us from dual and
17 tri-national labeling right now.

18 I would encourage, to the extent practical, that
19 everybody within the FTC work with their counterparts to
20 harmonize these labels.

21 To give you an idea of what some of the benefits
22 are, at a minimum it's hundreds of thousands of dollars to
23 us; but I'm not speaking just to Whirlpool Corporation,
24 because those dollars ultimately translate in dollars that
25 is saved by the consumer.

1 We reduce our administrative burdens considerably.
2 It's a 12- to something like 18-step process on just the
3 approval of one of these labels. And if you would multiply
4 that times three for each nation, it gets even more complex.

5 Our printing and labor costs go down considerably
6 if we can harmonize or dual label.

7 SKU, Stock Keeping Units, the label numbers go
8 down considerably. And even the model numbers, the number
9 of model numbers that we produce, go down.

10 The dollar savings, we believe, can be translated
11 into better, more worthwhile ventures if we had harmonized
12 labeling or at least the ability to do a label through
13 reinvestment and research and development, through improved
14 consumer features investment, investments in our processes
15 in our plants.

16 And that's one of the reasons why we have been so
17 competitive over the years, as an industry, because we
18 constantly improved our processes. And by doing so, we have
19 maintained our competitive posture with other manufacturers
20 and can bring those benefits to consumers.

21 So I would strongly encourage the harmonization
22 and, in the interim, that the FTC consider bi-national or
23 tri-national energy guide labeling.

24 There are a lot of obstacles over and above what I
25 have mentioned to you right now, differing test procedures

1 between Mexico and the U.S. that are largely harmonized
2 between the U.S. and Canada.

3 But, ultimately, I believe that we ought to be
4 able to come to a common energy descriptor that shows KWH
5 per year. That would help. And that can be common to all
6 three countries, with a common test procedure, hopefully,
7 that would be readily identifiable by any consumer in each
8 of those three countries.

9 COMMISSIONER STAREK: Another challenge raised by
10 NAFTA.

11 Did any of our other speakers -- yes. Toni.

12 MS. GUARINO: Thank you, Commissioner Starek and
13 Commissioner Steiger.

14 It's really good to be here. I appreciate the
15 invitation.

16 I would actually like to answer the two questions
17 that Commissioner Starek posed just before the break.

18 He asked: Should the FTC seek harmonization of
19 its policies and law enforcement approaches?

20 And, if so, how?

21 And I have, to begin with, just very specific
22 answers.

23 In answer to the first question, yes, I think
24 harmonization is a good idea.

25 And very specifically in an ongoing proceeding on

1 the leather guides, industry guides on leather products, I
2 would propose that the things that are in the proposed guide
3 out there, that was accepted, that was on the record for
4 comment up until earlier this month, that the approach the
5 Commission is taking to the use of the word "leather," in an
6 unqualified sense, be reconsidered.

7 And, in fact, that the Commission reconsider the
8 EU standard, which was pointed out in comments submitted by
9 two commenters earlier, dealing with Distributors and
10 Retailers of America and the Leather Industry Association.

11 The EU standard is a somewhat more expansive one
12 toward use of the word "leather." And it takes into
13 consideration changes that have taken place since the
14 Commission's earlier guides for shoes and footwear were put
15 in place almost -- or really more than 30 years ago.

16 And I think that it would be an opportunity for
17 the Commission to put its energies into a practical
18 application of what we're here talking about today, which is
19 a very good kind of world view of regulations.

20 It would also be consistent with the Commission's
21 approach in another ongoing proceeding, the "Made in the
22 USA" proceeding where, again, the new global economy, as the
23 Commission stated in its own proposal, is very important in
24 reconsidering how the Commission will approach the "Made in
25 the USA" terminology.

1 So the comment I just made is contained in the
2 formal comments that were filed on the 15th by the footwear
3 Distributors and Retailers of America.

4 I have a couple of other observations. I was
5 asked to comment briefly on an organization that I'm
6 associated with, the International Bar Association. I serve
7 as a Vice Chairman of one of the committees of the
8 International Bar Association. And I would just briefly
9 mention, I think the Commission is at least formally aware
10 of this organization because there have been Commission
11 representatives at some of its meetings.

12 I serve as a Vice Chairman of the Products
13 Liability Unfair Competition Advertising and Consumer
14 Affairs Committee of the International Bar Association.

15 COMMISSIONER STEIGER: In your spare time.

16 MS. GUARINO: In my spare time, yeah. And that's
17 a very long title. And it's noteworthy that "unfair
18 competition" is part of the title of that committee in the
19 context that Mari Ann and Bill were talking about earlier.

20 The idea is an interesting organization. It's
21 composed of individual lawyers and bar associations from
22 countries, really, around the world.

23 And while it does not have as one of its goals
24 "harmonization of legal standards," it is an excellent forum
25 for learning about how other countries are doing things and

1 potentially affecting some of the approaches.

2 A couple of years ago, there was a session that
3 was a session of the committee I'm serving on that dealt
4 with advertising of environmental claims and claims for food
5 products and claims for cosmetic products and there were
6 representatives from a number of European countries as well
7 as the EU and Australia. And it was just an excellent forum
8 for hearing about the different laws and standards in those
9 areas that I know are of importance to the Commission.

10 And I would just give you a little preview of
11 another meeting that is coming up in October of next year.
12 I know that cyberspace issues were part of this hearing
13 earlier in the week, and my committee is actually planning
14 to co-sponsor a session in Berlin -- I'll be in Berlin in
15 October of next year -- that will deal with what is called
16 "consumer transactions in cyberspace," including an analysis
17 of the position of consumers and their protection, including
18 data protection and distant selling regulations, as well as
19 credit issues.

20 So that session, I think, is pretty well
21 established; and I would be happy to keep you all informed
22 on that and other dealings with the International Bar
23 Association.

24 It's just one more forum of the many that have
25 been suggested for the Commission to spend its resources on,

1 but it is a good association and some opportunities for
2 getting views expressed, if no tangible results can be
3 really be measured.

4 Beyond that, if I could just take a minute to
5 respond to a couple of comments that were made earlier by
6 the other speakers.

7 First of all, these are just in the nature of
8 observations. I was very much involved in the development
9 of the regulations to put the Nutrition Labeling and
10 Education Act into practice at the FDA. And when the new
11 regulations finally came out in, I believe, early 1993, I
12 participated in some seminars for Canadians up in -- I think
13 we did a session in Toronto, as well as a session in
14 Brussels. And the purpose was to explain to the Canadians
15 and to Europeans what these new regulations would do and
16 what restrictions would be imposed on food manufacturers
17 sending product into the U.S.

18 And I can tell you that the initial reaction was
19 disbelief.

20 Now, could FDA have done more to consider
21 international implication of those regulations? Probably
22 not a whole lot because of the underlying legislation. But
23 it's good to know that the Commission is taking more of a
24 world view than perhaps the U.S. Congress did back then.

25 But it was a rather astounding reaction that we

1 got and that, you know, maybe nothing could have been done,
2 but it is good to hear that, at least going forward, there
3 is more of a global consideration that's being given to the
4 development of new regulations.

5 COMMISSIONER STAREK: Yes, that was the experience
6 that I had in the OECD, the same thing. I mean, people
7 would say: Aren't you the deregulatory nation? This is the
8 most regulatory thing -- this was much more regulatory than
9 European or other schemes.

10 MS. GUARINO: And no consideration really given to
11 the international implications or the harmonization aspects
12 of it.

13 Again, that was kind of -- you know, in a sense,
14 it was a function of the statute.

15 MR. SILVERGLADE: I'd add that other countries,
16 ranging from Singapore to Israel now, are moving in our
17 direction. And this reaffirms the point that I was trying
18 to make, which you may want to refer, that this is the way
19 for the U.S. to maintain leadership and maintain our
20 position and maintain our standard of living and share it
21 with the rest of the world.

22 MS. GUARINO: In this case without consultation in
23 advance, but, nonetheless -- I mean, that was really just in
24 the nature of an observation.

25 But beyond that, on symbology, again, just as an

1 example, when the USDA Safe Handling regulations were coming
2 out a couple of years ago, there was an interesting
3 experience. One of the initially proposed symbols was, I
4 believe, a cake of soap, which was -- there are symbols, as
5 you may know from looking at your meat packages, associated
6 with this Safe Handling regulations for meat and poultry.

7 And I think one of the initially proposed symbols
8 was a cake of soap which was supposed to tell people:
9 You're supposed to wash your hands before you -- or rather,
10 after you handle meat.

11 And somebody observed that that may communicate to
12 people that they were supposed to wash their meat with a
13 cake of soap. So the final symbol came out with, I think,
14 soapy hands or something like that.

15 But thank you for the opportunity to comment.

16 COMMISSIONER STAREK: Carl, did you want to offer
17 any initial comments?

18 MR. PRIESTLAND: I would like to make one comment.

19 In the area of labeling, the U.S. was the only
20 country of the three that did not have the ability to use
21 the care symbol system. So we are very pleased now that the
22 Commission has decided to, at least, look at this more
23 specifically.

24 And with that, the possibility of harmonizing a
25 care symbol system within NAFTA has increased considerably.

1 And also, because of the international structure,
2 we think that that would be quite useful to all of the
3 members of the U.S. and Canada and Mexico in terms of
4 international trade of apparel and textiles.

5 So we are quite pleased that the care symbol
6 system is getting a significant look at. And, hopefully,
7 the Commission, when it finishes, will take care of the --
8 make the care symbol system part of the requirements or at
9 least opportunity to use the care symbol system rather than
10 written material.

11 I think this is very important to the whole
12 community in terms of the retailers and the apparel
13 manufacturers. And it's something that I think we need.
14 And this is the best forum to start looking at things like
15 that.

16 Thank you.

17 COMMISSIONER STAREK: Thank you.

18 Let me suggest this, since we've talked so much
19 about the OECD, why don't we use one of their procedures,
20 which is, if you would like to say something, take that
21 little sign in front of you and stand it up like this; and
22 then we'll know who wants to talk, and we can try to keep
23 track and keep it in order.

24 Commissioner Steiger, I believe, has a question?

25 COMMISSIONER STEIGER: I would be interested in

1 whether any of you think that there are particular problems
2 that are posed by some industries.

3 One that comes to mind is the great variety it
4 seems to me of treatment of marketing of pharmaceuticals.

5 We are in an era here where you are seeing a lot
6 of transference from formerly prescription medications into
7 the over-the-counter market where consumers now have wider
8 range of purchase options.

9 But it seems to me that standards vary greatly as
10 to, number one, what is and is not a prescription medication
11 abroad? And as to what, if anything, can be said about a
12 pharmaceutical product.

13 Has this posed any particular interest for any of
14 you?

15 And are there similar industries where there might
16 be such a variety of the current practice in marketing that
17 it could create barriers?

18 Mari Ann.

19 MS. BLATCH: I agree with you about the differing
20 regulations on pharmaceuticals; and it's too bad there's not
21 someone here from Pfizer because I know they chair all the
22 international committees.

23 But I would say, from the point of view of Readers
24 Digest, when we are selling a page of advertising to a
25 pharmaceutical company, we can never sell a global page.

1 We're always selling magazine by magazine because each
2 country, they have to set the new page for the particular
3 requirements; and the product will be considered an
4 over-the-counter in one country and a pharmaceutical in
5 another. It wouldn't even be allowed to be advertised in
6 one if it's considered pharmaceutical.

7 And then the question of what other
8 recommendations -- you know, what contraindications -- you
9 know, in some places we sell an extra page, which we like;
10 but our readers don't really like to see that extra page of
11 print, to be honest.

12 And there's also -- my favorite topic, sales
13 promotion. In the EU analysis of sales promotion, they
14 point out that in many countries the pharmacist on the
15 corner, the little pharmacies, are afraid that there should
16 be no advertising and there should be no free gifts or free
17 samples or anything like that.

18 And so in a lot of places in Europe, the small
19 pharmacy, for unfair competition reasons, is extremely
20 limited to what can be done.

21 COMMISSIONER STEIGER: Would the same
22 single-page-per country apply to the example that we heard,
23 for example, of an appliance that might have energy
24 standards?

25 Do you run into that as well if Readers Digest has

1 someone wanting to advertise a washing machine, a dryer?

2 Do you find that there is this problem of how you
3 can label or format in an ad, globally, what the energy
4 requirements, for example, are?

5 MS. BLATCH: Well, in fact, what happens is that
6 the advertiser and the advertising agencies have huge legal
7 staffs that keep track of all that sort of thing; and then
8 they come to you us, and in our case, because we have
9 separate magazines, we can accommodate them and make sure
10 that they abide.

11 If they're trying to buy into say Economist or
12 Time Europe, there's greater difficulty because there's just
13 one magazine going into several markets.

14 COMMISSIONER STEIGER: Thank you, Mari Ann.

15 COMMISSIONER STAREK: I think Bill wanted to
16 comment on that, Commissioner.

17 MR. MacLEOD: Just a short comment on Commissioner
18 Steiger's question. And that is the advertising regulations
19 for prescription drugs are a perfect example where consumer
20 protection has been the enemy of consumers. The regulations
21 that the FDA imposes here are regulations that make it
22 virtually impossible to advertise because one must buy
23 almost an entire extra page of a publication like Readers
24 Digest.

25 What's unfortunate is that those are the most

1 enlightened regulations in the world right now because in
2 most places you can't advertise prescription drugs at all.

3 Fortunately, the FDA is currently reconsidering
4 its direct-to-consumer advertising policies. And the
5 indications are is that they are going to be substantially
6 revised. And there is a perfect example of where the United
7 States could exert some leadership, because we can find, I
8 am sure, many examples that are far more dramatic than those
9 that were demonstrated in the cereal industry of therapies
10 that can save lives that are disseminated far more rapidly
11 throughout the economy as a result of the information being
12 made available to the consumers.

13 COMMISSIONER STAREK: Thank you.

14 I think, Michael, you were next.

15 MR. THOMPSON: Thanks.

16 Commissioner Steiger, I'll just answer on the
17 front end. We have not experienced a lot of problems in the
18 appliance industry with respect to advertising energy.

19 That area is fairly strictly regulated in a sense
20 already by yourself as far as what we can say in the
21 consumer catalogs, the literature that goes out to our
22 retail dealers and our distributors.

23 I don't want to have a disparaging comment here
24 about the guide itself, because we do support it, but we
25 found in all of our surveys of consumers over a many-year

1 period, that energy isn't one of your primary sellers. They
2 don't come in as consumers and ask: Give me the most
3 efficient refrigerator you can find. It would be nice
4 sometimes because we have some of the more efficient
5 products out there. But it's usually fifth to eighth on the
6 list before it ever come up.

7 COMMISSIONER STEIGER: Interesting.

8 COMMISSIONER STAREK: Thank you.

9 Toni?

10 MS. GUARINO: Just picking up, again, Commissioner
11 Steiger's question, the International Bar Association
12 meeting from two years ago that really focused on
13 advertising for food products and environmental claims and
14 things like that, really demonstrated the disparity and the
15 need for not only changing the language in different public
16 -- you know, in different countries where an ad was to be
17 run but accommodating different legal requirements.

18 And there were representatives from individual
19 companies as well as ad agencies demonstrating how they
20 changed, for example, on television commercials some of the
21 approach while trying to preserve as much of the visuals as
22 possible.

23 Of course, you know, you always do have to deal
24 with the language. So presuming that you're going to be
25 putting your ad in the local language, you do have to make

1 that change. So I don't want to minimize the problem; but,
2 of course, there are expensive legal staffs in the companies
3 and agencies, which does add to the cost to consider not
4 only the translation but the differing legal requirements.

5 On the prescription drug advertising, Bill's point
6 was a very good one. And the FDA recently had public
7 hearings on the possibility of, you know, whether or not it
8 should change its currently very restrictive approach.

9 At that hearing, there was somebody from, I think
10 it was Health Canada who testified about the Canada
11 approach, which is just a total prohibition.

12 So even if we do change our current approach,
13 there are still a lot of barriers in that area, and I
14 imagine they will continue.

15 Although, there is some glimmer in terms of drug
16 approval, I know there is a little bit of an increased
17 willingness here in this country to accept studies that have
18 been really done in other countries as part of the drug
19 approval process here. So I think there's maybe a little
20 bit of an opening up of a recognition that there is value in
21 other systems as well as our own.

22 The CODEX value process, which was spoken about,
23 is an effort certainly at harmonization on a lot of issues
24 in the food area, but it is moving at a glacial pace and I
25 think has been going on for decades would be not on

1 exaggeration. So it's just going to be very tough and very
2 lengthy, I think, for all of these products.

3 MR. SILVERGLADE: Two points. On the role of
4 CODEX, CODEX was originally was conceived to be an
5 international standard setting organization that could
6 benefit less developed countries who could not develop their
7 own food safety standards, for example, so that they
8 couldn't engage in international trade because their
9 products weren't up to par. And it was there to set a
10 lowest common -- a minimal standard for countries across the
11 globe.

12 But more recently it's being looked to as a
13 harmonization effort. And those two goals are not the same.
14 And CODEX may have to take on a new form to really live up
15 to harmonization and not just reduce the whole world's
16 standards to the lowest common denominator.

17 We are not here to discuss prescription drug
18 advertising, but I just wanted --

19 COMMISSIONER STEIGER: Can I just interrupt before
20 you go onto your second point?

21 How is the CODEX interacting or reacting with the
22 efforts by the EU to set standards or norms?

23 Is there a constant interaction there? Or don't
24 you know?

25 MR. SILVERGLADE: Well, the EU has a

1 representative on CODEX and speaks, you know, for the
2 European Union. And it depends on each issue, whether we're
3 talking about health claims or defining the term "natural"
4 or should a radiation be labeled and the positions somewhat
5 differ, depending on each situation.

6 COMMISSIONER STEIGER: Excuse me. And I
7 interrupted your second point.

8 MR. SILVERGLADE: Oh, no. That's okay. I needed
9 a little break there.

10 No, I just wanted to make a comment on
11 prescription drug advertising. CS is not directly involved
12 with that. But I think this is, again, something that the
13 FDA is going to have to move very slowly on. And the
14 consumer marketplace experience -- the actually experience
15 of the consumer in the marketplace may not match the
16 economic theories.

17 We've heard about the potential benefits of
18 prescription drug advertising. And I would urge everyone
19 just to talk to any friends or relatives, neighbors who have
20 gone to see their doctor because they saw an advertisement
21 for prescription drug and just anecdotally monitor what the
22 response of their physician was.

23 Usually the doctor will tell you, you don't have
24 any idea related to what this drug can do; and it's not
25 appropriate for you.

1 COMMISSIONER STAREK: Thank you.

2 Professor?

3 MR. SPIVAK: Thank you, Commissioners.

4 May I change the subject to more general comments,
5 if we've discussed this sufficiently?

6 I'd like to summarize some of the discussion from
7 my own personal perspective, if I may, this afternoon in a
8 series of six or seven short thoughts.

9 One, simply a word of caution: I would like to
10 say that we should not, in these hearings and on the public
11 record, sound so jingoistic as to assume that the United
12 States always has the best, the strongest, the most
13 protective, the most innovative standards and regulations.

14 Although, I am equally proud of what it is we do
15 and what the Commission has done with the U.S. regulations
16 and the private sector standards, one can find numerous
17 examples that the Commission can learn from and, indeed,
18 does, from our partners in Canada and from other nations
19 around the world that are superbly well done.

20 COMMISSIONER STAREK: Like the Scandinavians, for
21 example.

22 MR. SPIVAK: Pardon me?

23 COMMISSIONER STAREK: Like the Scandinavians, for
24 example.

25 MR. SPIVAK: That's correct. And there are many

1 regulators around the world, as you well know, from OECD who
2 don't understand the development of voluntary or
3 alternatives to regulations. And don't think our
4 regulations are high enough by comparison with some of
5 theirs in Scandinavia.

6 An equivalent example, number two, where I ended
7 my formal remarks, service area standardization.

8 The Commission can learn, as I hope you will, and
9 can contribute to the work of not only in international but
10 peer work with other national standardizers where I gave
11 some examples of service industry standards -- some of which
12 are voluntary, some of which may be adopted into mandatory
13 regulation -- that can be superb examples of the Commission
14 regulating and protecting consumers in service industries,
15 as I know you have considerable interests.

16 And many of those premier examples of service
17 industry standardization, pioneering work is going on not
18 only in the U.S. but with our the partners in Canada and in
19 France and in German and in Australia and others.

20 Item Number 3, the Commissioner's comment, which I
21 understand, but again, allow me a word of caution about -- I
22 disagree with the general statement or the off-term warning
23 that international standards are, or may be, lowest common
24 denominator standards.

25 Let me give you one example of an ISO standard

1 that I am sure most of you are familiar with, the ISO 9,000
2 series of international quality management standards.

3 The most recent Mobil worldwide survey now shows
4 over 95,000 will probably -- the world will quickly be over
5 100,000 plant sites or corporate certifications of quality
6 management systems in compliance with third-party auditing
7 of corporate quality management systems. And that's in
8 compliance with the ISO 9,000 series.

9 Following on, it will be interesting to see what
10 the ISO 14,000 series of environmental management systems
11 that will be coming with an independent auditing system.
12 The system is already operating in the United Kingdom under
13 British standard 7750.

14 It is coming in the United States. And it will be
15 interesting to see whether we can develop internationally
16 harmonized labels for environmentally friendly or recycling
17 aspects as the Commission has had been active, and others,
18 and whether we can do that internationally.

19 Certainly the ISO is making every effort, and the
20 U.S. is playing a key role.

21 In summary, the larger message for the Federal
22 Trade Commission is that, no doubt -- and I commend you for
23 having these hearings. We are in a global world. These are
24 global markets not only for consumers but, as we have also
25 heard, global markets for business and industry.

1 The Federal Trade Commission needs to represent
2 the best of your regulations, our regulations, in the
3 regional and global markets. And in a time of restricted
4 budgets and very little travel money and downsizing of some
5 of the government, that's the real challenge; and that's the
6 challenge for the Commissioners to deal with with your
7 staffs.

8 The possibility of providing some of this
9 international exchange an the Internet, in cyberspace, as we
10 have heard, amongst peer regulators in the U.S. and its
11 counterpart countries can be very helpful if that can allow
12 the interchange.

13 What the Federal Trade Commission, in my opinion,
14 should do with some of this global discussion is, as I
15 believe you are doing, maintain a broad, wide vision, pick
16 and choose amongst the best of what we can do and you are
17 doing not only in the United States, but pick and choose,
18 steal, plagiarize, adopt, where appropriate, other nations'
19 national standards, international standards if appropriate,
20 and certainly international standards of the ISO and others
21 where they can help to provide a larger basis of appropriate
22 action and development by the Federal Trade Commission in
23 protection of U.S. consumers.

24 So my final comment is the thought that this is a
25 time of world markets. We all need to have that global

1 vision. I hope that I am reflecting that as a part of the
2 panel. And that the Federal Trade Commission, which I
3 commend, is looking in the larger vein to maximize your
4 efforts and protection nationally by also thinking globally
5 and internationally.

6 COMMISSIONER STAREK: Thank you, Professor.

7 I think we have Bruce and then Michael.

8 MR. SILVERGLADE: Yes. I just want to clarify my
9 remarks to say that I concur completely with Professor
10 Spivak that, at times, other countries do have stronger
11 consumer protection, environmental protection, occupational
12 safety and health rules.

13 In Japan, for example, in a room this size, there
14 would not only be an exit sign --a fire safety rule
15 requiring an exit sign at the door, there would be one in
16 the floor that would be lighted with an arrow pointing
17 towards the door so in case the room filled with smoke and
18 you couldn't see the exit sign at the top of the doorway,
19 you could look on the floor and it would point you to the
20 direction out.

21 The tone of my previous remarks I think is due to
22 the fact, however, that all controversy in the United States
23 seem to be pressing for lower standards.

24 You know, no one's ever clamoring -- I don't know
25 any American trade associations that's clamoring for a

1 higher standard.

2 And so the tone of my remarks comes from my
3 personal experience day to day in my office because the
4 controversies that come before me on my desk are, you know,
5 some association wants us to have as weak a pesticide
6 standard as they have as somewhere else in the world.

7 So that is, unfortunately, the cause for the tone
8 of my previous remarks.

9 Thank you.

10 COMMISSIONER STAREK: Michael.

11 MR. THOMPSON: Yes. With you your indulgence, I'd
12 just like to show, in 30 seconds, a reason why I also agree
13 with the professor regarding why we don't necessarily have a
14 market on the best standards -- or in this case, the best
15 label.

16 Our preference would be for simpler. That's the
17 Canadian guide. And it isn't just in deference to our good
18 friends here today.

19 Our experience has been that consumers can respond
20 to something that's very simple to understand. It's very
21 generic and it doesn't get real complicated.

22 We have cost grades currently in our labels.
23 Again, we're graduating to different types of energy
24 descriptors in the new label, which is an improvement over
25 what we have.

1 But ideally, with a common denominator and a
2 common energy descriptor, more along the lines of what the
3 Canadians have, I think we're better off than trying to
4 build complexity into the labels that we have. Because
5 confusion does result.

6 I'll give you one example of why we advocate this.
7 Over the years, we have experienced a lot of -- I won't say
8 it's a lot. But we have experienced consumer complaints
9 with the annual operating costs being depicted on the label
10 simply because we change those labels about every two years
11 or so in response to the changes from the DOE's changes in
12 annual unit energy cost for electricity and natural gas and
13 the other common energy sources that we use to plug into
14 equation.

15 We've had cases where consumers have brought our
16 dealers and our distributors to the Federal Trade Commission
17 for unfair advertising, buying one product, you'd save \$51 a
18 year; and then getting, in delivery, something that shows
19 \$65 or \$70 dollars a year. It's the same model, and the
20 only difference was the changes in the annual unit energy
21 costs that we use in the equation to calculate annual energy
22 costs.

23 So, in this case, I would take a hard look at it,
24 if you would, sir.

25 COMMISSIONER STEIGER: Michael, uses less energy

1 than, what? More energy than? I can't see from here.

2 What was -- can we presume a common comparison
3 base there?

4 MR. THOMPSON: Well, what I wanted to show you was
5 ideally, in this label, you would have, say, 600 kilowatt
6 hours per year in this box. And then there would be an
7 arrow pointing somewhere along this bar to where that
8 product fits in the same model and product classification
9 with all the other competing models out there.

10 So maybe the most efficient would be on this end,
11 uses least energy consumption; and the least efficient would
12 be --

13 COMMISSIONER STEIGER: But we would have some
14 numerical standard there as a reference?

15 MR. THOMPSON: Yes, we would. And it would
16 reflect it in terms of annual energy use.

17 COMMISSIONER STAREK: Thank you.

18 I think Bill was next.

19 MR. MacLEOD: I wanted to respond to a point that
20 Bruce made because I didn't want him to leave with the
21 missimpression that the only complaints are about standards
22 that are too high.

23 As a matter of fact, I mentioned one that I am
24 hearing a great deal of people complaining about right now
25 that are too low. And those are some of the eco seal

1 standards that are beginning to originate in Europe.

2 Right now, Canadian diaper manufactures have to
3 cut down more trees and deliver more wood to their plants in
4 order to add wood pulp to their diapers so they conform with
5 the Swedish eco seals for disposable diapers in Sweden.

6 That is not a deception-based standard.

7 One thing that we have to remember about standards
8 -- and this agency constantly reminds us of that fact -- is
9 that they cannot only be informative of consumers, but they
10 can also be anti-competitive, exercises by competitors
11 against one another.

12 That has happened a number of times. And it
13 wouldn't surprise me again, if you begin to depart from
14 deception-based standard, what you're more likely to find
15 behind it are a group of competitors and not folks who are
16 looking out for the interests of consumers.

17 COMMISSIONER STAREK: We have had that experience
18 here. And I suspect you did when you were directing the
19 Bureau of Consumer Protection.

20 I think Joseph was next.

21 MR. HOFFMAN: This is, to some extent, a reaction
22 to various comments that have been made so far.

23 It strikes me, listening to the discussion, and
24 just picking up on the comments that people who have heard
25 the discussion and the presentations over the last four days

1 that, at root here, is a question for the FTC of choice:
2 What really can you afford with limited resources to engage
3 in? And what can you afford to go buy?

4 And, as a regulator, I have some sympathy for
5 having to make that choice.

6 And I don't want to overstate this as an example;
7 but I thought the recent slide that was up there on the
8 energy rating, which was a Canadian label, is a good case
9 study. I think the evidence is pretty clear that it doesn't
10 rank very high in terms of what consumers' choices are based
11 on.

12 And, somehow, the challenge for the FTC is,
13 perhaps, to figure out: What is the methodology that you
14 use that helps you kind of measure the confluence of
15 consumer priority with industry needs? And use that to
16 guide you in making the decisions about where you invest, as
17 a regulator, your energy or where you step back and say that
18 there is, you know, sufficient evidence that industry itself
19 can handle development of some kind of standard in this
20 fashion, that our involvement needn't be more than the kind
21 of passive observation.

22 And I'm not trying to suggest that energy ratings
23 for appliance isn't an appropriate issue. But I think we've
24 learned in our experience that these are incredibly costly
25 exercises. Costly not so much in terms of the direct, you

1 know, bottom line budget costs but costly in terms of time,
2 costly in terms of the devotion of resources, and that it's
3 very easy to use up an awful lot of energy harmonizing
4 something that provides relatively little value-added to the
5 consumer and being distracted, essentially, from identify
6 what has the most value-added contribution that can be made
7 to consumers that could be arrived at through a process of
8 harmonization.

9 COMMISSIONER STEIGER: Can you give us any example
10 where you think that your thinking and that of other
11 Canadian consumer experts has evolved?

12 Is there an area where you had extensive
13 disclosures, say 10 to 15 years ago, or an area that had,
14 perhaps, substantial regulation where you would now say: We
15 have learned that we can do with less?

16 MR. HOFFMAN: I think it's a question not so much
17 of concluding doing with less. But partly doing with less,
18 partly doing very differently.

19 I think some examples have to do with direct
20 selling, which is a good example. Direct selling.
21 Door-to-sales is probably high on the kind of list --
22 everyone's list of regulations, at least at a state and
23 province level, I don't know, but nationally and in the
24 United States.

25 And I think if we look now at when those statutes

1 were developed and the investment that still is made in
2 terms of registering people who are involved in sales, et
3 cetera, et cetera, managing complaints, setting the
4 thresholds for rescission rights, that really direct selling,
5 in the traditional sense of the word, occupies such a narrow
6 slice of consumer transactions that it's questionable that
7 it's still a valid investment of consumer agency's time,
8 relative to some other priorities.

9 We talked earlier a little about bit about some of
10 the efforts in Canada around harmonizing upholstery and
11 stuffed article labeling and registration.

12 What's very interesting is we have a commitment to
13 harmonize in that area -- in fact, it's only 4 jurisdictions
14 out of 13 -- 3 jurisdictions. There were 4 jurisdictions
15 out of 13 that concluded that as a matter of public policy,
16 this was sufficiently important to deal with. And over the
17 course of the negotiations, it became 3 jurisdictions
18 because one of them concluded that their preferred to
19 approach to harmonization was to just simply not legislate
20 in this area any more because they had other priorities that
21 they wanted to pursue from consumer protection point of
22 view.

23 And although it's very easy to characterize this
24 as a movement towards, you know, low standards or of somehow
25 a gutting of concern for consumer policy, I think that if

1 you examine it carefully, it reflects a choice in terms of
2 where governments want to be responsive to consumer policy,
3 not necessarily an abandonment or an eschewing of the
4 validity of consumer protection.

5 COMMISSIONER STEIGER: Thank you, very much.

6 COMMISSIONER STAREK: Any other comments?

7 Yes?

8 MR. MEIER: I just have a brief observation.

9 First of all, I agree with -- I always hesitate to
10 say "all" -- but it might be all of Dr. Spivak's comments,
11 since I didn't write them "all" down. He made some very
12 good observations.

13 I just want to throw in one other point of view on
14 this question of whether U.S. interests are looking for
15 higher or lower standards aboard.

16 Certainly in my anecdotal experience, the thing
17 that they seem to want most is identical standards, that
18 frequently they are concerned when they see another country
19 is doing something that's different. And they say, somewhat
20 logically to them: Well, it's good enough for us and it
21 works perfectly fine and it meets all the U.S. regulations.
22 Why don't they accept it over there? And, particularly if
23 "over there" is a lesser developed country, they say: It's
24 got to be good enough for them.

25 And we have to explain, well, every country sets

1 its own regulations and standards.

2 So I would just make that observation.

3 So the corollary to that is change -- you know,
4 they say, well, last week we could get our product in
5 Country X against this set of standards; and this week or
6 this year, they have changed their standards; can't we do
7 something about that?

8 And, obviously, we can't on case-by-case basis.
9 And that's where the international cooperation development
10 of international standards comes into play.

11 I would also just observe that I note with some
12 interest that a great deal of the conversation and
13 discussion here today has been about labeling issues, and I
14 think they are very important. But they are, perhaps, the
15 most troublesome in our -- in the trade policy field.
16 Because our trade policy instruments don't really deal very
17 effectively with labeling. And I certainly take great pains
18 to move those labeling problems off my desk as fast as
19 possible, and they are very difficult.

20 And I certainly commend some of the efforts that
21 have been made by Mr. Priestland, for example, on trying to
22 address labeling issues, whereas, I noted in my remarks we
23 do have a little bit more of a mechanism to deal with some
24 of the more difficult issues.

25 Thank you.

1 COMMISSIONER STAREK: Elaine?

2 MS. KOLISH: I sort of have a follow-up question
3 for you.

4 There have been a lot of recommendations that we
5 should harmonize more. And my question goes to process and
6 that under the NAFTA model there was a tri-lateral committee
7 set up, initially, in industry and government one and then a
8 formal one set up under the agreement.

9 Should that be the process for all of our
10 harmonization efforts? Or are there other models that we
11 could use, such as the Canadian model where the, you know,
12 the actual consumer regulators at each level got involved
13 and hammered out the details?

14 What should our role be vis-a-vis your office?

15 MR. MEIER: Well, in fact, my office does not
16 necessarily promulgate harmonization efforts. We are
17 somewhat, you know, neutral on that except to the extent
18 where we see that it addresses problems that have been
19 brought to our attention.

20 I think NAFTA was somewhat the exception there
21 because, one, it is a smaller group of countries; and, two,
22 over the years, there have been a great deal of
23 harmonization efforts between the United States and Canada;
24 and I guess the third point is, there was a lot of industry
25 involvement in harmonization and they brought those

1 suggestions to bear during the negotiating process.

2 Nonetheless, as we have heard from a couple of
3 people on the panel, it's not a fast moving locomotive. So
4 it's very difficult.

5 So I think it has to be done on a case-by-case
6 basis, both in terms of countries involved and product
7 sectors. And we would, as a general rule, look to
8 international organizations as being the primary movers of
9 that process.

10 I think that's the most efficient -- it's not the
11 only way to go, but that's certainly, we think, the most
12 efficient way to go.

13 COMMISSIONER STAREK: Well, thank you very much.
14 This has been most fascinating and I think a fitting way to
15 conclude our four very extensive days on consumer protection
16 in the global marketplace.

17 I thank you all for coming and participating.
18 It's been quite helpful, to me anyway, and I'm sure to my
19 colleagues.

20 (Whereupon, at 5:30 p.m., the hearing was
21 recessed.)

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C E R T I F I C A T E

DOCKET/FILE NUMBER: P951201
CASE TITLE: GLOBAL AND INNOVATION-BASED COMPETITION
HEARING DATE: November 21, 1995

I HEREBY CERTIFY that the transcript contained herein is a full and accurate transcript of the notes taken by me at the hearing on the above cause before the FEDERAL TRADE COMMISSION to the best of my knowledge and belief.

DATED: November 21, 1995

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