FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

OFFICE OF THE COMMISSIONER

May 24, 1982

The Honorable Lowell P. Weicker
Chairman
Subcommittee on State, Justice,
Commerce, the Judiciary
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Re: FY 1983 FTC Appropriation and Proposed Regional Office Reorganization

Dear Chairman Weicker and Members of the Subcommittee:

On May 25, 1982, Chairman Miller of the Federal Trade Commission is testifying before the Subcommittee on the Administration's proposed budget for the Commission for the next fiscal year. As his prepared statement notes, I dissent from the Administration's proposed budget of $60.8 million and from the Commission's decision to support that extremely low level of funding. If adopted, it will prevent the Commission from adequately carrying out its statutory obligations.

The main purpose of this letter, however, is not to discuss the harsh impact of the FY 83 budget request on the Commission. Rather, it is to discuss the Commission's premature decision, taken without my support, to begin immediately to close four of the FTC's ten regional offices <u>in anticipation</u> of budget cuts in FY 83. The grounds for my opposition to the closing of these offices are fully laid out for the Subcommittee's consideration in the attached Congressional testimony that I gave last month on the question. Briefly, those grounds are that the regional office closings are required neither by budget nor management necessity, nor by Congressional expression on the subject. While I will not review all of these grounds in depth here, I do feel compelled to reply to Chairman Miller's continuing assertion, which appears again in his prepared statement, that the closings are consistent with the will of Congress.

In testimony before Congressman Rosenthal's Subcommittee, Chairman Miller stated that the Commission's decision last month to close four regional offices by July 15 of this year was "fully in accord with, and <u>arguably required by</u>, legislative direction" given by the Commission's appropriation committees. (emphasis added). Despite the urgent request made to the Commission by Chairmen Weicker and Smith on May 13 to stop the closings until the Congress acts upon the Commission's 1983 budget, Chairman Miller still maintains in his prepared statement that the closings "have been fully consistent with . . . guidance we [the

Commission] have received from the House and Senate Appropriations Committees and from our authorization committees and subcommittees."

I have a different view of the legislative history of this issue. The Commission's decision to close the four regional offices in anticipation of substantial budget cuts was the culmination of a Reagan Administration initiative in the Spring of 1981 to eliminate all ten regional offices. Indeed, the Office of Management and Budget formally recommended to Congress that all ten regional offices be eliminated as a budget austerity measure for fiscal year 1982. Prior to this initiative, no one -- not Congress, not the last administration, not the Commission -- was even thinking about, let alone calling for, the abolition of the regional offices. Then Acting FTC Chairman David Clanton, in congressional testimony a year ago, strongly opposed the OMB recommendation as neither fiscally necessary nor wise. The Congress, in its wisdom, agreed with Commissioner Clanton, rejecting both OMB's recommendation to eliminate all the offices as well as its reduced FY 82 budget request that was the ostentible justification for the proposed regional office closings.

In rejecting these Administration recommendations for the current fiscal year, the House and Senate Appropriations Committees both affirmed their strong support for a viable, effective, and adequately funded regional office structure. At the same time, in response to the Administration's forceful budget austerity program and the need for there to be <u>some</u> cuts in the size of the regional office workforce for FY 82, they directed the Commission to "reevaluate" the regional office structure, and to maintain "at least five offices" if major changes were eventually deemed necessary. It is language compelling such a <u>review</u> in the FY 82 Appropriation Committee Reports upon which Chairman Miller hinges his assertion that the present closing of four regional offices is consistent with, or "arguably required by," the preferences of the committees. */

---

*/ Chairman Miller also relies on the action taken by the Senate Commerce Committee on May 11 approving authorized funding of only $60.8 million for the Commission in FY 83. The Commerce Committee approved this level without <u>any</u> discussion of the reasons for it and has not yet published its report accompanying the reauthorization bill. Thus it is impossible to know at this point whether the Senate Commerce Committee's action should be taken as a signal that it favors the elimination of regional offices. In any event, the Commission's authorization subcommittee in the House took opposite action last week, authorizing an FY 82 funding level of over $72 million for the (Continued)

While this language in the Committee Reports clearly advised the Commission to reexamine its regional office structure in light of possible budget constraints, it by no means compelled the Commission to make drastic alterations in the structure. It did not say that regional office cuts or closings would be desirable, only that they should be considered because they may be necessary at some point. Further, a colloquy on the Senate floor between Senator Gorton and Chairman Weicker provides critical clarification of the meaning of the Senate Report, making clear that the Appropriations Committee intended the Commission to close down regional offices only if it did not receive enough money from the Congress to keep them open in FY 82. In pertinent part, the exchange went as follows:

> Mr. GORTON. It is my understanding that a majority of the Commission recommended that the number of regional offices be reduced from 10 to 6, strictly as a means of meeting a possible appropriations reduction to $61,123,000; and that this would require that the number of work years allocated to the regional offices be reduced from approximately 300 to 150 by the middle of fiscal year 1982, requiring a reduction-in-force of about 100 people. I further understand that in the case of an appropriation of $68.1 million, as Senator KASTEN's proposed amendment would establish, the Commission would look anew at the question of whether the number of regional offices should be reduced. Is the foregoing consistent with the Senator's understanding of the circumstances?
>
> Mr. WEICKER. Yes, it is.
>
> Mr. GORTON. Does the report language which I have quoted reflect an intention by the committee to enjoin or encourage the FTC to, in fact, reduce the number of regional offices, assuming the $68.1 million appropriation is approved by the Congress?
>
> Mr. WEICKER. No, it does not. The

Commission. At the markup Chairman Florio, whose bill authorizing this level was the one approved by the Subcommittee, said this level was necessary in order to give the appropriations committees and the Congress the flexibility to approve an appropriation that would be enough to keep all ten regional offices open in FY 1983, if that was its desire.

> language simply reflects the Committee's recognition that a reduction in the number of regional offices unfortunately might be necessary or prudent, even at the higher appropriation figure. Congr. Rec. S13274, Nov. 12, 1981.

Of course, the Commission finally did receive the $68 million appropriation that has been sufficient to keep all ten regional offices open this fiscal year.

Similarly, the Commission has said, in letters to the Congress signed by Chairman Miller, that its decision to cut regional office workyears in half and close down four regional offices was made "out of necessity," in direct response to the Administration's proposed reduction in the FTC's budget for FY 83. */ (Commission Letter to Chairmen Weicker and Smith, Oct. 23, 1981.) If the Congress appropriates sufficient funds to the Commission for next year, there will be, quite simply, no need to close regional offices.

Of course this subcommittee and the full Congress still have to act on the 1983 budget request of $60.8 million for the Commission and may yet, in its wisdom, find it necessary to appropriate that low amount. If so, the Commission will have to retrench enforcement efforts and carry forward its earlier decision to close its offices in Boston, Seattle, Los Angeles and Denver. But until and unless the Congress cuts the Commission's budget for FY 83 to that level, I am persuaded by the legislative history I have reviewed in this letter that it does <u>not</u> want the Commission to close <u>any</u> regional offices. It is precisely for that reason -- along with my confidence that the Congress will again reject OMB's funding request and pass an adequate budget for the Commission -- that I voted against the Commission's decision last month to begin immediately closing our offices in those cities even before our appropriations committees had considered our FY 83 budget.

Because I believe our regional offices have provided outstanding service to the American public and should not be closed unless absolutely necessary, I was enormously gratified by the action initiated by Chairman Weicker and unanimously approved by the Senate Appropriations Committee on May 18, that would

---

*/ Chairman Miller's contention that the closings are a necessary and desirable management initiative irrespective of budget requirements is refuted by the regional offices' record of law enforcement accomplishments, as documented in my attached House testimony and Congressman Rosenthal's findings following his subcommittee's inquiry into the closings.

prevent the Commission from going forward with its regional office closings in this fiscal year. I also welcomed Chairman Miller's announcement of the Commission's intention to suspend the closing operation pending further Congressional consideration of the matter. It would faithfully reflect Congressional sentiment on this subject for the Commission voluntarily to reverse its April decision to close the offices, or at a minimum to keep the suspension of the closings in effect, until the Congress has had an opportunity to act upon an FY 83 appropriation for the Commission. I have no doubt this is the right course, for I have full confidence the Congress, in its wisdom, will pass a budget adequate to maintain the Commission's present enforcement capability and regional office structure.

I request that this letter, with attachments, be made a part of the Subcommittee's hearing record on an FY 1983 appropriation for the Commission.

Sincerely,

Michael Pertschuk

Michael Pertschuk
Commissioner
Federal Trade Commission

Attachments

STATEMENT OF MICHAEL PERTSCHUK
TO THE COMMERCE, CONSUMER, AND MONETARY AFFAIRS SUBCOMMITTEE
OF THE HOUSE COMMITTEE ON GOVERNMENT OPERATIONS
April 22, 1982

Mr. Chairman and Members of the Subcommittee, I would like to begin my testimony on the Federal Trade Commission's regional offices with a statement from the chairman of the FTC:

> "We have greatly broadened the areas of authority and responsibility of our eleven field offices. The FTC was the most centralized agency, I think, of the federal government. We have now adopted a new procedure ... which ... I think, will broaden the ability of these field offices to serve the people, insure that the full focus of the government capability to help consumers will be brought to bear ... [and will mean that] we will not have to have individual consumers told that we ... as a Federal Trade Commission can do nothing for you and not take the next step and show them where they can have some assistance brought to their problem."

Mr. Chairman, these are the words of former FTC Chairman Caspar Weinberger, taken from a White House briefing in March 1970 on his consumer program for enlarging and strengthening the FTC's regional offices.

The process begun by Secretary Weinberger, of transforming the FTC's regional offices from investigative field stations into effective law enforcement entities, did not run smoothly. It required both an extensive effort to build and attract leaders and staff of first-quality, and the delicate nurturing of healthy working relationships between Washington and the regions.

Mr. Chairman, five years ago, just two days before I came to the Federal Trade Commission, I sat in the audience during two days of oversight hearings by your committee on the sorry state of the Commission's regional operations. I listened to complaints by the FTC's regional directors of excessive bureaucratic interference and delays caused by headquarters personnel in the effective carrying out of the FTC's mission at the regional offices. Your committee knows that improving the regional offices subsequently became one of the Commission's priority goals during the intervening years.

Like flexible and resourceful strike-forces, the FTC's regional offices have proved themselves efficient and productive. The reasons are simple. We learned what your committee knew: that smaller integrated offices, when well lead and suffused with team spirit, are freer of the rigidities of larger bureaucratic structures.

We struggled to build good working relationships with the regional offices, in order to strengthen the overall enforcement policy emanating from Washington without choaking off the energies, enthusiasm and commitment of the people in the field. We also worked very hard at maintaining our outreach and complaint-processing activities, particularly by building longer and stronger bridges to the consumer and small business communities in each of the regions. We tried to be especially sensitive to the antitrust concerns of small business. Overall, I believe that any fair analysis of the performance of these offices since these management initiatives were taken will reveal that we succeeded.

The facts of regional office accomplishments in providing direct service to the public and in enforcement speak for themselves. The regional offices respond to 120,000 complaints a year from consumers and competitors. Many of these complaints are local or regional in nature and would never be available to the FTC were it not for its presence in all the major population areas of this country. The great majority of valid complaints are easily resolved voluntarily by FTC lawyers on the scene. In other cases, complaints have uncovered serious violations requiring formal legal action, and have directly led to many of the Commission's most significant law enforcement cases in recent years.

The enforcement record of the rejuvenated FTC regional offices is an enviable one. In 1980 for example, with just 16% of the agency's total budget, the regional offices negotiated 61% of all the Commission's consent agreements; litigated 52% of all its complaints issued that year; and obtained almost 100% of the $51 million in consumer redress won by the Commission that year. Moreover, each regional office has contributed in major ways to this record.

Boston stopped the fraudulent marketing of a fast-selling and expensive quartz space heater, whose deceptive advertising campaign was exploiting the economic concerns of New Englanders over high fuel costs.

Chicago obtained 15 final orders in major consumer protection and antitrust cases in just three years.

Cleveland, in just one year, won consumer redress awards in auto defects cases exceeding the Commission's entire budget for that year. Overall, it obtained $100 million in redress between 1978 and 1981. This was enough to offset the total operating costs of all the regional offices for the next seven years.

Dallas obtained consent agreements from two major oil companies, Shell and Mobil, for, respectively, credit and advertising violations; successfully negotiated an end to unlawful credit discrimination against women by ATT; and is now involved in major land sales fraud litigation.

Denver obtained $6.4 million in redress for defrauded land purchasers in the landmark Bankers Life case.

Los Angeles began and was continuing a huge investigation of potentially anticompetitive practices in the $13 billion real estate brokerage industry.

New York curbed deceptive efficacy claims by the three national manufacturers of contraceptive suppositories for women, and also negotiated the recent consent agreement with American Motors Corporation prohibiting allegedly deceptive safety claims for the AMC Jeep.

Atlanta took forceful action against allegedly anticompetitive conduct in the food, construction, heating, and electrical trades.

San Francisco saved the blue jean wearers of America millions in lower prices through the Levi Strauss consent, the largest vertical price fixing case in the Commission's history.

And Seattle obtained $2.6 million in consumer redress in just the past two years and has been involved up till now in matters promising to deliver consumers millions more in benefits.

These are, of course, impressive examples, but they are still fairly representative of the progress the regional offices have made in enforcement capability. What we accomplished, to paraphrase our distinguished Chairman, was to extract from the regional office structure "the most bang for the buck" from the taxpayers' FTC dollars.

Mr. Chairman, the Commission last Friday made its decision to identify and close down four of its ten regional offices. They are, as you know, Boston, Seattle, Los Angeles, and Denver. This decision, unless reversed, sets in motion a process of dismantlement that will be painful, costly, and, in all likelihood, unnecessary. My position on this decision is known. I adamantly oppose it, unless the Congress does not give the Commission enough money next year to keep the present regional office structure alive. And it is premature at this stage to believe it will not.

From the day he arrived last October, Chairman Miller has been embarked on a zealous mission to eliminate all the regional offices, or as many of them as possible. It is important here to note that this pursuit by the Chairman has been a continuation of the Reagan Administration's initiative of last Spring to eliminate all ten regional offices. Prior to this initiative, no one -- not Congress, not the last administration, not the Commission -- was even thinking about, let alone calling for, the abolition of regional offices. In response to this pressure from the Administration, the Senate and House Appropriations Committees considered the possibility of a reduced regional enforcement structure for the Commission. The legislative history clearly indicates, however, that the Committees intended the Commission to close down regional offices only if necessary to comply with future budget restraints. Moreover, the Commission has consistently said, in letters to the Congress and OMB signed by Chairman Miller, that its decision last October to close down four regional offices was in direct response to the Administration's proposed reductions in the FTC's budget for FY 83. If the Congress appropriates sufficient funds to the Commission for next year, there will be, quite simply, no need to close regional offices.

Nevertheless, the Chairman himself has told the Congress that he personally favors the elimination of several regional offices whether or not there are fiscal pressures to do so. The Reagan Administration's FTC transition Report authored by the Chairman makes clear that, budgetary considerations aside, he and his top advisors have a perception of the regional offices as somehow functionally severed from the rest of the agency, out of control, and prone to trivial or misguided enforcement actions. I do not doubt the sincerity of this perception, but it seriously belies the present facts. To the extent it was ever true, I believe that the record of the last five years demonstrates that those offices have been carefully and prudently responsible to the policies set forth by the Commission, and innovative and resourceful in taking initiatives to carry them out.

The Chairman is one of the nation's leading proponents of cost-benefit analysis, yet with all due respect I do not believe his plan to eliminate regional offices would withstand even a primitive cost-benefit analysis. I make this last point because to the best of my knowledge there has not been a cost-benefit analysis of the Chairman's proposal to close down regional offices. From the very start they were the intended victims of the Administration's budget-slashing plans for the FTC.

The Chairman told Congress that the public will not lose the benefit of future accomplishments from the regional offices, because he promised that no enforcement program or matter will suffer as a result of any regional office closings. Despite his good intentions, that just can't happen. First, the Commission has been flatly told by its Executive Director that there will necessarily be a decline in regional office performance as a result of the planned closings. Second, it is inevitable that in the chaos of the closings several important enforcement matters will be dropped or seriously delayed (over and above the delays already caused by the post-election transition and the late arrival of Chairman Miller to the Commission). This happened in the 1975 closing of the Kansas City Regional Office -- admittedly not the Commission's strongest -- and it will happen this time. In short, the Chairman's admonition not to worry, his promise that there will be "business as usual" after the closings, does not reassure me and I doubt that it reassures this Committee.

The Chairman has said that he anticipates few problems with redistributing the workload among Headquarters staff and the six new "super" offices (really meaning larger geographical regions with fewer people than now in each region). I do not share his confidence. The harsh impact of the closing will fall not only on enforcement and the people in the offices targeted for extinction, but throughout the agency. The closing and reorganization of the regional offices will entail an exodus of able attorneys from the agency. What will happen to the enforcement matters they were working on? How easily can they be shifted to others? It will also require a large transfer of people and cases from region to region and region to Headquarters. All of this is bound to have a ripple effect that will be felt by almost everyone at the Commission. It undoubtedly will place extra strain on the workload of the staff in Headquarters and the surviving regional offices, who are already being squeezed by the Chairman's and the Administration's budget austerity program. And speaking of the people in Washington, will any of them, as well as staff outside of Washington, have to be uprooted and sent cross-country in order to achieve the right size and blend of skills for the remaining regional offices. If so, what will happen to the enforcement matters they were working on? Finally, we have heard much about what the closing of regional offices may save in these tight budgetary times, but how much will the actual process of abolition and reorganization cost the Commission and the American taxpayer in severance pay, relocation expenses, lost productivity, wasted resources in restaffing transferred cases, and other expenses?

I raise these difficult questions because I doubt that we have good answers to them. I doubt that we have gauged what the regional office closings really mean -- large scale disruption and dislocation of Commission work and peoples' lives. And for what? What are the benefits? They may be obvious to Chairman Miller, but they are not obvious to me.

I appreciate the need for good management and prudent spending in these times of budget uncertainty. And I have reluctantly acquiesced in the Commission's decision to close four regional offices in the event that the Commission truly does not have enough money next year to support the present ten. But I deplore the irrationality and the <u>unfairness</u> of presuming -- from the very beginning, without the benefit of full analysis of all the options -- that any cuts in our budget must come at the <u>sole</u> expense of the Commission's highly productive regional office program.

Mr. Chairman, in the summer of 1978 I spent the better part of a week in the Commision's Chicago regional office, sitting along side a wise and knowledgeable blind consumer protection specialist, and an earnest and deeply committed law school intern, answering the Commission's phones. I knew that the regional offices respond to well over 100,000 consumer and competitor complaints a year, but I wanted to get for myself a sense of the people and their problems which came to our offices. I saw the regional offices as the eyes and ears of the Commission, far closer than we in Washington are to the daily problems which concern American citizens. This, if I am not mistaken, is a theme of the "New Federalism" which is so dear to the heart of our President.

The calls came in, calls from real people, with real problems. We heard from the small businessman harassed by larger competitors, from a family cheated by a mail order ad for a business opportunity, a substantial sum paid -- the family's savings -- the packet of materials worthless. We heard from people seeking advice on their rights to credit, and from small businessmen wanting to know their rights against unfair competition.

I learned that even in those cases in which we were not quite the right agency, we could help with quick, sound advice to steer people to the right place. Often a quick informal call, a simple inquiry was often enough to cure an arrogant seller's refusal to deal with the consumer's complaint.

And, finally, I remember a call from a woman with a strong, clear voice, pained and indignant that she had not only been denied credit by a leading department store in a Chicago suburb but had been refused, as was her right, disclosure of the reasons for denying her credit. It turned out that we had received many complaints about the same firm and indeed the Chicago office was in the process of investigating it. Although in too many of the cases we were not able to help, in this case we were able to assure the woman that help was on the way. I don't think I'll ever forget her last words to me: "There are only two decent things in my life -- my son and my credit."

Mr. Chairman, the citizen problems in which our regional offices deal are not petty or trivial. They're essential, in many cases, to the belief of the ordinary citizen that he or she can have access to justice. If that woman had lived in Boston or Seattle with no regional office, do you think she would have called Washington or remained embittered?

Mr. Chairman, time is running out for thousands of consumers in Boston, Seattle, Los Angeles, and Denver with problems similar to this woman's. By mid-May FTC employees in these cities must decide whether to come to Washington or be RIFed. By July 15, the offices in these cities will disappear. These deadlines are unreasonably short, but they are real. If the Congress disagrees with the closing of these offices, it must act immediately to keep them open. Soon it will be too late.