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PROMISES TO KEEP -- AND MILES TO GO

REMARKS OF
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BEFORE
LEGISLATIVE COUNCIL OF THE AMERICAN
ASSOCIATION OF RETIRED PERSONS

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SHERATON-CARLTON HOTEL
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Last December 18, the new Federal Trade Commission Chairman, Jim Miller, sent to the chairmen and ranking members of the Senate and House Aging Committees a report on the Commission's efforts to defend the consumer rights of the elderly. As Chairman Miller told the Congress: "Many of the Commission's efforts to promote a free and fair marketplace are particularly significant for elderly consumers."

I have copies of that report here for you; but there is nothing in it you haven't heard before.

It remains an impressive list: ranging from our investigation of restrictions on the low cost direct sale of dentures to the final version of the funeral rule -- in which the Commission kept faith with you by standing firm, resisting the intense political pressure to cut back on the crucial requirement of price itemization of funeral services.

The promises were all there -- just as they had been nearly two years ago today, when I first spoke to you, promises:

-- to open up price competition for eyeglasses and dentures and generic drugs.

-- to complete action on the hearing aid rule, which now includes a 30-day cooling-off period for hearing aid sales.

-- to take antitrust action against doctors and dentists and professional organizations who would conspire to keep prices up and low-cost competition out.

-- to complete action on the mobile home rule, which would make certain that mobile home manufacturers honored their warranties promptly and faithfully.

-- to enforce vigorously the Equal Credit Opportunity Act's prohibitions against age discrimination in the granting of credit.

-- to assure the disclosure of critical information to prospective nursing homes residents.

-- to develop the means to combat Medicare supplement insurance rip-offs.

-- to free up low cost legal clinics from excessive red tape.

Although the process has been painstakingly slow, the Commission has made progress on each of these items.

But I had a sinking feeling as I read through that list again. I must tell you that I have serious doubts whether any of these bold promises will ever be carried out.

The first cloud on these promises arises from the political philosophy of the Commission's new leadership. As I have indicated, I have no doubt of the good faith and integrity of Chairman Miller and his new staff leadership. But their basic philosophy flies in the face of effective government action to protect the elderly. Again and again, they express faith in the self-correcting capacity of the marketplace, faith in the unaided power of the individual consumer to defend himself or herself. They have a chronic horror of government interference with the status quo in business.

They are sincere, they will review the pending rules and cases honestly. They will not abandon rules just because business lobbyists or trade associations are opposed to them. But they wear ideological blinders.

Your own legislative policy statements speak of the imperfections of the real world: "The elderly are vulnerable to and less able to afford the financial hardship resulting from fraud and deception in the marketplace."

But the new FTC leaders have "concerns," they have "doubts," they have "reservations." They doubt whether any such thing as an unfair contract exists. They don't believe that it has been scientifically demonstrated that any consumer or group of consumers lacks equality of bargaining power with sellers. The vulnerable elderly consumer is an alien concept to them.

So I fear that many of these FTC initiatives -- already delayed -- will fall by the wayside, victims of the economist's mythical world of perfect markets and robust, sovereign consumers.

Where the regulatory philosophy of the new FTC leadership does not sink these initiatives, their budget slashing zeal will. The Commission's already limited staff resources assigned to enforce the Equal Credit Opportunity Act and other credit practices laws have been substantially cut back. And David Stockman and Chairman Miller are eager to close the Commission's regional offices -- those offices which are most often the first and last resort for a phone call from a citizen denied his or her rights in the marketplace.

Of course there are important programs which all members of the Commission support -- unreconstructed consumer advocates, like me, and the neoclassical economists as well -- especially our efforts to free up competition from anti-competitive restraints.

Again, this is an area in which your policy statements take a strong stand. You say: "In those sectors where vigorous enforcement of the antitrust laws would promote price competition such action should be taken" and "The Congress should support and oversee such action and assure its effectiveness . . ."

Competition in health care and health-related goods like eyeglasses and dentures is crucial to the economic welfare of the elderly, and we at the Commission are in harmony on that objective.

But a grim cloud looms in Congress. Two years ago, with your help, the Senate refused to approve the McClure-Melcher Amendment -- an amendment designed, in effect, to grant immunity from Commission antitrust or consumer protection action to any group or trade organization whose members have graduate diplomas and licenses. That outrageous amendment was defeated by only two votes in the Senate. This year, buoyed by anti-government rhetoric and the fruits of the

largest campaign treasury chest of any group in the country, the American Medical Association is going to try again, this time in a Congress which has shown itself to be even more deferential to special interests than the last.

But I believe the key test of Congress will come with the efforts, already reaching fever pitch, to veto two critical Commission rules which have thus far survived the political and lobbying cross fire: the Commission's Used Car Rule and, of course, its Funeral Rule. In the last days of the first session of this Congress, thanks largely to the determination of Senator Packwood, the Used Car Rule was saved by a hair's breadth.

As the new Congress reconvenes, congressional supporters of the Used Car Rule believe that the strong, indignant editorial outcry throughout the country has begun to concern those Congressmen who gave an all-too-quick yes to the visiting delegations of automobile dealers. The dealers have consistently distorted and exaggerated the impact of the rule and demanded cosponsorship of the veto resolution -- a demand bolstered, again, by their history of generous campaign contributions in virtually every congressional district and the future promise, express or implied, of more.

The Funeral Rule, which must still survive the new hurdle of paperwork burden review by the Office of Management and Budget should arrive at Congress' door by the late spring. No doubt the Funeral Directors, taking full advantage of the Holiday spirit, have used this Christmas recess already in the attempt to line up votes to kill the rule.

I must say I'm humbled at the list of truly critical issues on your agenda this year. Many of them, like Social Security and Medicare, are central to the economic survival of your members.

And I know that no matter how supportive you are of the Commission's initiatives to alleviate the consumer harms and risks of the elderly, you will not be able to allocate your scarce resources to become involved in each and every one of these rules and cases.

I would not presume to tell you how to set your priorities; but I do believe that the Used Car and Funeral Rules veto battles will transcend in symbol and significance their limited reach.

Their outcome will send a signal: if this Congress is prepared to do the bidding of Used Car Dealers and Funeral Directors in striking down the most elemental, minimal, simple rules of fair conduct, whom will they not accommodate against the public interest?

In the closing days of the last Congress I visited with a senior Congressman, one with a good consumer voting record. He had invited me to discuss the merits of the Used Car Rule. As I began to analyze and criticize the dealers' arguments, he waved me aside: "This rule will not get 50 votes; and that has nothing to do with its merits," he said, "It won't get 50 votes because the dealers are well organized, well financed and they made it clear to every Congressman that they care deeply about the vote on this rule. And there is nobody on the other side they fear."

I asked him what he thought would happen to the Funeral Rule, and I reminded him of the strong letters of support for the rule which came from members of your organization and from the National Council of Senior Citizens in the last Congress. "Maybe," he said, "but if those citizens who want to be heard on this rule sit back and wait until Congress is about to vote, then they

will lose, because the Funeral Directors will not wait. What you will have again, as in so many other cases, is boiling public indignation after-the-fact, in a wake over a dead rule."

Yet I have said many times before, I have come to believe deeply that AARP and NRTA are in the forefront of a national test to determine whether true participatory democracy can work in this country.

I don't believe that's overblown rhetoric.

I remember in the spring of 1980, the House of Representatives first voted 2 to 1 to kill the Funeral Rule, then backed away in the face of an outraged citizenry -- your members individually, alerted, informed and aggressive in their role as citizen consumers.

In a time when narrow, economically privileged interests dominate the fabric of congressional decisionmaking, you represent broad citizen interests; you are determined to make certain that your government keeps its promises to its citizens. There are many miles to go before these promises are kept. But you will be heard!