



Federal Trade Commission

Setting Federal Consumer Protection Policy For the 21st Century

Prepared remarks of
Federal Trade Commissioner Christine A. Varney*

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* The views expressed are those of the Commissioner and do not necessarily reflect the views of the Federal Trade Commission or staff.

I want to thank Bill McLeod for inviting me to speak with you today. My topic is "Setting Federal Consumer Protection Policy for the 21st Century." These remarks are my own views and do not necessarily represent the views of the Commission. In setting the agenda for consumer protection policy in the future, three principles should serve as a guide:

- enact laws and regulations that put people first, which includes both business people and consumers;
- reinvent government regulation by forming grassroots partnerships, eliminating unnecessary regulation and red tape, and negotiating rather than dictating; and,
- continue forging partnerships with state and local governments to eliminate layers of regulatory review.

These are familiar themes, which have, in many respects, already shaped the Federal Trade Commission's consumer protection work over the past five years. Many consumer protection initiatives of the Steiger era place the FTC on the course that other regulatory agencies are still struggling to find.¹ Consumer protection policy in the Pitofsky era will, I believe, build on this strong foundation of cooperative working relationships with other federal, state and local

¹ In the area of consumer protection, the Commission has sought to maximize resources and to avoid redundant efforts by coordinating our efforts as closely as possible with our counterparts at the state level, and with our sister agencies at the federal level. Moreover, the Commission has rejected any "command and control" approach, opting instead for policies and actions designed to enhance the ability of consumers to make choices based on complete, truthful, and non-deceptive information. The theory underlying our consumer protection mission is that if consumers are provided with accurate information, they will make the free and informed purchasing decisions that are critical to our market economy.

consumer protection law enforcers and regulators; an ethic of cooperation, not confrontation, with consumer and business groups; and a regulatory philosophy that encourages the development of new technologies to benefit consumers.

In my opinion, "putting people first," within the policy framework of market regulation and law enforcement, requires me to consider the fundamental question, "Who benefits from this action?" As a Commissioner, I am statutorily-charged to determine whether, in the case of regulatory actions, there is a pattern of deception or unfairness that the proposed regulatory action will remedy or, in the case of proposed enforcement actions, there is reason to believe that a law enforced by the FTC has been violated. While the Commission's statutory responsibilities often do dictate particular outcomes, the Commission must also set policy by establishing priorities. In this regard, an analysis of who benefits from proposed Commission action can inform our choices.

For example, with respect to the Commission's proposed telemarketing rule, the written comments we have received provide very thoughtful suggestions for how the Commission might improve the Rule. Many comments contained specific examples of who would benefit from, or be harmed by, elements of the proposed rule. Such information is essential to enable decision makers to draft appropriate regulations.

While the exact parameters of the final Rule are still to be determined, I firmly believe that the Commission can craft an appropriately balanced Rule -- one that achieves maximum

consumer protection with the minimum of regulatory burden. Accordingly, the beneficiaries of this Rule will be consumers and the legitimate telemarketing industry, while fraudulent and abusive telemarketers will feel the restraints of the Rule.

Our telemarketing rulemaking incorporates innovative procedural steps enabling us to hear from those whose business, privacy and commercial interests are directly affected by the proposed rule. On April 18 - 20, our staff will conduct a public workshop conference in Chicago to listen to discussion among the various affected interests. At this three-day roundtable discussion, approximately 20 representatives of interests most directly affected by the proposed rule -- consumers, businesses, and law enforcement agencies -- will discuss with each other the issues that the proposed rule attempts to address, and will provide our staff with additional information about how to better address these issues. This forum, which is a modified version of a negotiated rulemaking session, is intended to produce a consensus among affected interests with respect to many of the issues involved in the rulemaking. In addition, there will be ample time for other interested individuals to voice their concerns in several audience participation sessions. By listening carefully to the comments raised during the three-day workshop, the Commission should have extremely valuable information about the costs and benefits of various provisions of the proposed rule and alternatives to it. The record of this innovative session will provide guidance drafting a final rule that protects consumers, punishes fraudulent telemarketers, and allows the legitimate telemarketing industry to flourish.

Putting people first applies to law enforcement policy as well. Consider the FTC's role in policing national advertising. An analysis of who benefits from enforcement actions can instruct the Commission's enforcement decisions. The Commission must be concerned, first and foremost, with public health and safety, and the protection of our environment. Moreover, these priorities -- health, safety and environmental protection -- should be the core principles for all federal consumer protection policy, not just at the FTC.

Application of this analysis to the FTC's advertising policy leads us to conclude that the Commission should continue to scrutinize:

- food advertisements that make claims about the dietary healthfulness or nutritional value of food products²;
- claims touting a product's environmental friendliness³;

² *E.g., Egglan's Best, Inc.*, FTC Docket No. C-3520 (consent order Aug. 24, 1994, settling allegations of deceptive claims that Egglan's eggs will not increase consumers' serum cholesterol and that they are superior to regular eggs in that respect); *Hagen-Dazs*, FTC File No. 942-3028 (consent agreement subject to final approval, Nov. 21, 1994, tentatively settling allegations of false and misleading low-fat claims); *Clorox Company*, FTC Docket No. C-3426 (consent order, May 17, 1993, settling allegations of deceptive claims about the fat content of salad dressing); *The Isaly Klondike Co.*, FTC Docket No. C-3412 (consent order, Jan. 28, 1993, settling allegations of deceptive claims about the fat content of frozen dessert bars); *Gracewood Fruit Company*, FTC Docket No. C-3470 (consent order, Oct. 26, 1993, settling allegations of unsubstantiated health benefit claims about consuming grapefruit).

³ *E.g., Mattel Corp.*, FTC File No. 932-3332 (consent agreement subject to final approval Mar. 30, 1995, tentatively settling allegations of false and misleading claims that children's bath foam product contained no chloroflouorocarbons); *Creative Aerosol Corp.*, FTC Docket No. C-3548 (consent order, Jan. 13, 1995, (continued...))

- claimed therapeutic benefits from over-the-counter treatments and remedies.⁴

³(...continued)

settling allegations of false and unsubstantiated environmental claims for children's bath soap); *America's Favorite Chicken Company*, FTC Docket No. C-3504 (consent order, July 5, 1994, settling allegations of false and misleading claims about the recyclability of its food containers). See also *BPI Environmental*, FTC Docket No. C-3535 (consent order Oct. 17, 1994, settling allegations of unsubstantiated claims about the biodegradability of plastic grocery bags); *North American Plastics*, FTC Docket No. C-3526 (consent order Sept. 7, 1994, settling allegations of unsubstantiated claims about the biodegradability of plastic trash bags); *Mr. Coffee*, FTC Docket No. C-3486 (consent order Mar. 29, 1994, settling allegations of false and unsubstantiated claims about a "chlorine free" process for making coffee filters, and about the composition and recyclability of such filters).

- ⁴ *E.g.*, *Home Shopping Network*, FTC Docket No. D-9272 (administrative complaint filed Mar. 3, 1995, alleging unsubstantiated claims about the benefits and efficacy of three vitamin sprays and a stop-smoking spray); *European Body Concepts, Inc.* FTC File No. 932-3321 (consent agreement subject to final approval, Mar. 29, 1995, tentatively settling allegations of false and deceptive efficacy and safety claims for weight loss program that does not involve diet or exercise but is based on wrapping the body with medical bandages soaked in a solution); *Choice Diet Products, Inc.*, FTC File No. 912-3232 (consent agreement subject to final approval, Mar. 29, 1995, tentatively settling allegations of false and unsubstantiated claims of substantial, rapid weight loss through use of pills, without diet or exercise, and false claims that respondents' patch enables smokers to stop smoking easily); *Ninzu, Inc.*, FTC File No. 932-3343 (consent agreement subject to final approval, Jan. 18, 1995, tentatively settling allegations of false and unsubstantiated claims about the ability of a device that is clipped to the ear to suppress appetite and reduce weight); See also, *FTC v. EarthBound*, No. 93-1232-JO (D.Or. consent judgment, Sept. 12, 1994) (phony AIDS cure); *Nature's Cleanser*, FTC Docket No. C-3450 (consent agreement, July 12, 1993) (weight control & menopause remedies); *FTC v. The Sporocidin Co.*, No. MJG 91-3453 (D. Md. consent judgment, Feb. 4, 1993) (sterilant); *Medical Marketing Services*, FTC Docket No. C-3409 (consent order, Jan. 12, 1993) (chemical face peel); *NME Hospitals*, FTC Docket No. C-3397 (consent order, Aug. 24, 1992) (success rate of a particular surgical procedure). *International White Cross*, No. 91-0377-THE (N.D. Cal. Feb. 7, 1991) (consent judgement) (alleged AIDS cure).

On the other hand, FTC enforcement against unsubstantiated food advertisement claims that one product tastes better than another has no apparent benefit to consumers or business. Such claims are easily susceptible to consumer evaluation. More important, enforcement actions targeted at subjective claims impose significant legal and other costs on advertisers and manufacturers without providing a corresponding benefit to consumers. An enforcement policy that places a priority on these kinds of advertisements puts Washington lawyers, not consumers or business people, first.

Privacy is another important area of concern to consumers and businesses. Consumers are extremely concerned about the proliferation of data bases collecting everything from the mundane to the most sensitive information about how they lead their lives. Yet the same technologies enabling the collection of vast amounts of personal data also permit, for example, instant consumer access to information, credit, banking services and consumer transactions. Businesses utilizing sophisticated data bases compete more efficiently for consumer dollars and loyalty by marketing directly to those consumers most likely to buy their goods and services. These efficiencies lead to cost savings for businesses and consumers alike.

We must achieve an appropriate balance between consumers' privacy interests against the interests of efficiency and convenience. The Commission achieved such a balance when it regulated the collection and use of consumer credit information through enforcement of the Fair Credit Reporting Act. Enacted in 1972, this important consumer credit statute was written to govern the then-nascent consumer credit reporting industry. Policy makers at the time could not

envision the types of marketing and technological advances that have brought such developments in the credit industry as "information brokers." These are companies that buy large volumes of credit and other data about individual consumers at discounted rates and then resell the data to low-volume buyers. Faster and cheaper accessibility to credit and other information may promise benefits to consumers, but may potentially erode consumers' privacy. These are the concerns that prompted the Commission to initiate law enforcement action against a number of these companies, and to obtain consent orders that ensure the FCRA policy of protecting consumers' privacy governs.⁵ These cases serve to illustrate that the credit reporting industry of 1972 was a dinosaur compared to the 1995 industry. I expect the industry of 2005 will fossilize today's industry.

Federal consumer protection policy makers must keep pace with developments in this dynamic industry. Our touchstone principles will be invaluable in this endeavor: put people first; protect individual privacy; and reward innovators.

To put people first, however, federal policy makers must know them. We must travel beyond the Washington Beltway to listen to the people who are supposed to be the beneficiaries of our work. We must form grassroots partnerships with consumers, businesses, and state and

⁵ *W.D.I.A.*, FTC Docket No. 9258 (consent order May 27, 1994, settling allegations of failure to ensure that purchasers of credit information have legally-permissible purposes under the FCRA); *I.R.S.C.*, FTC Docket No. 3422 (consent order April 14, 1993); *CDB Infotek*, FTC Docket No. 3423 (consent order April 14, 1993); *Inter-Fact Inc.* FTC Docket No. 3423 (consent order April 14, 1993).

local governments to develop and implement consumer protection policy. The Chicago Telemarketing Rulemaking Conference will be the first of many such gatherings the Federal Trade Commission will sponsor during the coming years. The Pitofsky Commission will be accessible, not just in our Washington offices, but wherever our grassroots partners are doing our mutual work of educating industry and consumers about responsibilities and rights under the law.

We also need to meet with people to learn about emerging technologies and issues. One important meeting of this sort will be held at the Commission next Monday and Tuesday, April 10 and 11. Representatives of online industries, including electronic communications, financial services, advertising and information providers, will join us, as well as consumer representatives, other federal and state regulators, and various public interest groups in a two-day discussion of advertising, marketing and competition, payment systems, privacy and governance issues in Cyberspace.

This workshop is a first step in developing, in partnership with industry and consumers, a pro-active approach to consumer protection that accommodates the continued private development of the global information infrastructure. The workshop will examine whether or not -- rather than how -- traditional concepts about consumer protection should be applied online. While I do not expect to solve any of the consumer protection and competition problems that arise on the net in the course of a two-day workshop, I do expect to identify core electronic commerce issues and establish a partnership with industry and consumers to examine them. I do expect to establish a forum for content and service providers, subscribers and regulators to work

together, ideally, using the emerging technology itself, to address new competition and consumer protection issues as they arise on the Net.

A secondary -- though in some ways more important -- role of federal consumer protection regulators is to eliminate unnecessary regulation.

The Federal Trade Commission has numerous Guides and Trade Regulation Rules that have outlived their intended purpose. I firmly believe we should rescind many such Rules. Our problem at the Commission, however, is that Section 18 Magnuson Moss rulemaking procedures govern both the promulgation and the amendment or repeal of trade regulation rules. Thus, to repeal unnecessary and anachronistic trade regulation rules requires hearing, rebuttal, cross-examination and so forth. While we understand the concerns that led to the Magnuson Moss constraints on Commission rulemaking, perhaps it is time for Congress to consider granting the Commission a one-time use of Administrative Procedures Act Section 553 rulemaking authority to repeal or trim back trade regulation rules that impose burdens without conveying corresponding consumer benefits.

In contrast, Guides can, and should, be reviewed quickly and, where the Commission finds that certain guides are no longer useful, repealed.

Finally, let me again salute Chairman Steiger and my colleagues on the Commission for all of the good work they have done to build strong working relationships with state and local

law enforcement agencies.⁶ Cooperative enforcement and coordinated regulation will be, I hope, the hallmarks of economic regulation into the next century. One effort I am following with particular interest, which will be announced any day now in the Federal Register, is the Commission's regulatory review of its Franchise Rule. As many of you know, the Franchise Rule, which requires written pre-sale disclosures to prospective investors in franchises and business opportunities, has a parallel regulation in fifteen states, the Uniform Franchise Offering Circular guidelines. The Commission is considering the possibility of consolidating the state and federal disclosure requirements -- which vary in detail, but not in purpose or substance -- into one standard requirement. By adopting identical requirements, rather than requiring businesses to keep track of similar but nonetheless different requirements, we may be able to streamline and simplify the regulatory burden on businesses, especially small businesses. Similarly, we will be reviewing carefully rule exemption petitions from states with requirements similar to those set forth in FTC regulations. The time for turf battles between federal and state regulators is long

⁶ For example, in *FTC v. TRW, Inc.*, Civ. No. 3-91-CV2661-H (N.D. Tex., amended settlement Jan. 14, 1993), a case involving alleged Fair Credit Reporting Act violations, the Commission closely coordinated with nineteen states and obtained a simultaneous settlement with one of the nation's largest credit reporting bureaus. The Commission also has coordinated efforts with the Multistate Taskforce on Environmental Marketing Claims in several law enforcement actions involving environmental advertising. *American Enviro Products*, FTC Docket No. C-3376 (consent order, Mar. 18, 1992); *Mobil Oil Corp.*, FTC Docket No. C-3415 (consent order, Feb. 1, 1993); *First Brands Corp.*, FTC Docket No. C-3358 (consent order, Jan. 2, 1992). Jointly with the National Association of Attorneys General, the Commission has also undertaken a number of projects, such as the NAAG/FTC Telemarketing Complaint Database, a series of ongoing regional conferences to share enforcement strategies for all concerned federal and state agencies on the subject of telemarketing fraud, and joint rule enforcement "sweeps" (e.g., the Used Car Rule, the Franchise Rule, and the Funeral Rule).

past. By continuing the excellent initiatives of the Steiger era, the FTC can and will do its best to streamline the regulatory process in the consumer protection field.

I am delighted to have the privilege of serving on the Federal Trade Commission, and pledge to use my office to work for the type of regulatory reform that benefits consumers and business alike. My door is always open, and I invite your comments -- good and bad -- as we embark upon this fundamental reinvention of economic regulation at the Federal Trade Commission.

Thank you again for inviting me to speak with you today. I would be happy to take your questions, as time permits.