



Federal Trade Commission

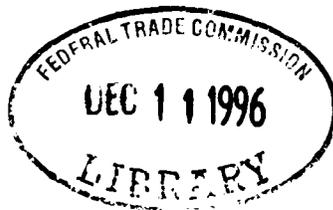
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"Setting Federal Consumer Protection Policy for the 21st Century"

Remarks of
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Direct Selling Association

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¹ Commissioner, Federal Trade Commission. The views expressed are those of the Commissioner and do not necessarily reflect the views of the Federal Trade Commission or any other Commissioner or staff.

I want to thank you for the opportunity to speak with you today. With our broad statutory mandate to act against "unfair or deceptive acts or practices in or affecting commerce," the FTC is the primary federal consumer protection agency. As such, the Commission has always fulfilled a leadership role in setting the agenda and the priorities for consumer protection in this country. With the 21st Century and the vast changes it promises just over the horizon, fulfillment of this traditional leadership role is even more important -- and more imperative to get it right. So I want to share with you my views on how the FTC should be setting federal consumer protection policy for the next Century.

- I believe we ought to enact laws and regulations that put people first, not only consumers but also business people, especially small business owners and entrepreneurs, who, after all, are the folks without whom there would be no goods and services for consumers in the first place;
- I believe we ought to reinvent government regulation by forming grassroots partnerships, eliminating unnecessary regulation and red tape, and negotiating rather than dictating; and,
- I believe we ought to continue forging partnerships with state and local governments to eliminate unnecessary layers of regulation.

These themes should sound familiar to you because President Clinton sounded them over and over during his 1992 campaign and they have been the guiding principles of the Reinventing Government initiative. The Republicans liked these ideas so much, some of them showed up in

their "contract." With respect to consumer protection, there is a striking similarity of views found on both ends of Pennsylvania Avenue about the need to change the role of economic regulators: fewer regulations, less red tape, less "inside the Beltway" perspective, and more willingness on the part of regulatory agencies to negotiate, not dictate.

This environment establishes parameters for the Federal Trade Commission to set consumer protection policy into the next century. In many respects, the Federal Trade Commission's consumer protection work over the past five years has been ahead of the current political curve. Many of the consumer protection initiatives of the past five years place the FTC on the course that other regulatory agencies are still struggling to find. We have continued to strengthen and build on this strong foundation of cooperative working relationships with other federal, state and local consumer protection law enforcers; 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.

Returning to the political mandates of the last two elections, allow me to describe how I see them informing federal consumer protection policy. First, how does the rather simple phrase, "Putting people first," translate into a sound policy of market regulation and law enforcement? When a regulatory or enforcement proposal crosses my desk, I ask, "Who benefits from this action?" As a Commissioner, I am statutorily-charged with the task of asking whether, in the case of regulation, 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

the law has been violated. I do not suggest that the Commission's statutory responsibilities should take a backseat to political considerations; rather, the role of the Commission is to set policy by establishing priorities, and in this regard, an analysis of who benefits from proposed Commission action can inform our choices.

How does this analysis play out? As you know, the Commission recently adopted a Telemarketing Sales Rule, and I think that if we walk together through that rulemaking, you will see how "putting people first" led us to a result that business groups, law enforcers and consumers have universally hailed as a model of regulatory balance.

The Telemarketing and Consumer Fraud and Abuse Prevention Act, enacted by Congress in 1994 directed the Commission to adopt a rule, within one year, that would define deceptive telemarketing practices and prohibit them and other abusive telemarketing practices.

From the beginning of the Rulemaking process, the Commission and its staff were guided by a desire to issue a final rule that would protect consumers from telemarketing abuses that cost them upwards of \$40 billion a year. But equally important, we were determined not to issue a rule that would burden legitimate telemarketers and other sellers who might use the phone with requirements and restrictions to hinder their ability to do business, when there is no problem with their business in the first place. There is no way that such an outcome could have produced a net benefit to consumers.

As I assume most of you know, the DSA played an active and key role in the rulemaking process, and we listened carefully to your contributions. We learned about your code of ethics and its meaningful requirements. We listened as to your suggestion that sales involving some telephone presentation, but concluding in a face-to-face transaction, did not require the protections of the Telemarketing Sales Rule, because consumers would have an opportunity to inspect goods or services in those face-to-face transactions. We agreed with you that the Cooling Off Rule already regulates most of the transactions that you engage in. Thus, in our final rule, we excluded from coverage sales that are concluded face-to-face.

In my consideration of what final action to take on this rulemaking, the only acceptable answer to the question, "Who benefits from this rule?" had to be "Consumers and the legitimate telemarketing industry." Equally important, the answer to the question "Who should bear the brunt of the rule?" had to be "Fraudulent and abusive telemarketers!"

Our telemarketing rulemaking incorporated innovative procedural steps that enabled us to hear from those whose business, privacy and commercial interests are directly affected by the proposed rule. Even as the Telemarketing legislation was being signed into law, the Commission's staff was meeting with dozens of industry groups, including yours, and representatives of federal and state enforcement agencies to solicit their input on what the Rule should be. We published the initial Rule proposal in February 1995.

The Initial Rule elicited more than 350 written comments. Many comments from industry were highly critical, but comments from law enforcement and consumer groups were generally positive.

In April, the Commission's staff conducted a 3-day public workshop in Chicago to listen to the various affected interests. This workshop was not a hearing or a forum for the rehash of written comments but was a modified version of a negotiated rulemaking session. It focused on questions that arose from the written comments we received on the initial proposal. Twenty representatives of interests most directly affected by the proposed rule -- including the Direct Selling Association -- discussed with each other the issues that the proposed rule attempted to address, and struggled to give our staff additional information about how to better address these issues. We spent three very full days listening. I attended one day of the workshop, and studied the record of the other two days carefully. We received extremely valuable information about the costs and benefits of various provisions of the proposed rule and alternatives to it. Much of the industry participation was critical of the proposal, but extremely helpful in identifying possible alternative approaches.

In June 1995, The Commission published a Revised version of the Rule that was more streamlined, simple, and tightly focused upon fraudulent and abusive practices than the initial version. We received comments until the end of June.

The Revised Rule elicited about 350 comments. In this second round, industry commenters were generally supportive of the streamlined and simplified rule; law enforcement and consumer groups were critical on several key points. In response to this criticism, the Commission again adjusted the Rule, and on August 16, 1995, adopted a Final Rule that reflected all of the views and concerns expressed throughout the rulemaking process by all the parties. Through this multi-step process, by maintaining an open, receptive posture to the priorities and concerns of all interested parties, the Commission, I believe, arrived at a final rule that protects consumers, punishes fraudmeisters, and allows the legitimate telemarketing industry to flourish.

Federal policymakers can't put people first if they don't know them. Knowing people requires being with them. You can't do that very well inside the Beltway, although when you are here, I and my colleagues are delighted to be with you. However, industry groups don't always come to Washington. Federal policymakers must get out of Washington 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 local governments. We need to keep going back to make sure that we are realizing the intended benefits and that unintended burdens and just plain stupid results haven't occurred.

This is how federal policymakers must do our work now and into the next century. The Chicago Telemarketing Rulemaking Conference that I just described was only the first of many such gatherings the FTC will sponsor during the coming years. Since then, the Commission held

extensive public hearings, in November, to learn about emerging technologies and the increasing globalization of the economy, and the issues these developments present both for antitrust and consumer protection policy. The rich lode of information yielded by those hearings will help us for some time into the future to shape and advance consumer protection policy along the lines I have described. I hope that when you see a need or an opportunity for us to participate in gatherings outside of Washington, you will let us know. This FTC 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.

Finally, a word about eliminating unnecessary regulation and red tape.

Since I arrived at the FTC, we have repealed 25 percent of the FTC industry guides and rescinded 25 percent of the FTC trade regulation rules. For many years the Commission has carried on its books rules and regulations that time has proven to be unneeded and without merit. We felt it was time to trim away what was unnecessary to advance free market competition. As exemplified by our action in the Telemarketing Rule, we are committed to keeping our enforcement tools up to date and sharply focused on conduct that injures consumers in today's markets. That means dumping regulatory efforts that were designed to address problems that are no longer pervasive. So, in one fell swoop we buried the Quick-Freeze Spray Rule, the Fiberglass Curtain Rule, the Wig Guides, the Guide for the Word "Free" in Film Sales, the Mail Order Insurance Industry Guides, the Beauty and Barber Equipment Guides, and a bunch of other outmoded regulatory clutter. The Commission has an ongoing procedure for routinely reviewing **all** its regulations on periodic basis. No outmoded, unnecessary, or inappropriate provision is

safe from this recurring review and revision effort. As my children say, "And that's not all!" On January 1, the Commission sunsetted all its outstanding administrative orders -- that's more than 10,000 orders -- that were more than twenty years old, so long as no violations of those orders had prompted additional action. I think these efforts show a remarkable commitment to reducing red tape and doing our part to eliminating unnecessary regulations.

Cooperative enforcement and coordinated regulation will be, I hope, the hallmarks of economic regulation into the next century. One effort where this comes strongly into play 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. We are very interested in exploring the possibility of consolidating the state and federal disclosure requirements -- which vary in detail but not objective 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, and especially small businesses. In a similar vein, 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 past -- in fact, it should never have happened.

We are witnessing, and playing a part in, revolutionary times. The elections of 1992 and 1994 demanded change, and on the federal economic regulatory front, we are carrying out that

mandate. We need everyone's best efforts -- consumers, businesses, law enforcers and regulators -- to effect the changes that are long overdue. For my part, I am delighted to have the privilege of serving on the Federal Trade Commission, and pledge to use my office to work for the kinds of regulatory reform that I have talked about with you today. My door is open to you, 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.