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Kimberly Hunter-Turner
Vice President
Federal Government Relations

HAND DELIVERED

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Before the
Federal Trade Commission

Fair and Accurate Credit Transactions Act (FACTA)

Free File Disclosures Proposed Rule

Project No. R411005

Comments of

Cendant Corporation

Cendant Corporation ("Cendant") appreciates the opportunity to submit these comments on the Federal Trade Commission's ("FTC" or "Commission") Notice of Proposed Rulemaking implementing the Fair and Accurate Credit Transaction Act of 2003 ("FACT Act" or "the Act") that was signed into law December 4, 2003 and imposes a series of new requirements on consumer reporting agencies.

CENDANT OVERVIEW

Cendant Corporation is a diversified global provider of business and consumer services within the hospitality, real estate, vehicle, financial and travel sectors.

Cendant's hospitality division is the world's leading franchisor of hotels through ownership of brand names that include Ramada®, Days Inn®, Howard Johnson®, Travelodge®, Knights Inn®, Super 8 Motel®, Wingate Inn®, Villager Lodge/Premier® and AmeriHost®, a leading operator of branded time share resorts (Fairfield®) and the world's leading time share exchange service (RCI®).

Cendant is also the leader in franchised residential real estate brokerage operations through its CENTURY 21®, Coldwell Banker®, Coldwell Banker Commercial®, Sotheby's International Realty® and ERA® brands, a leading residential mortgage company (Cendant Mortgage) and provider of employee relocation services (Cendant Mobility).

In vehicle services, Cendant owns and franchises the AVIS® and Budget® brands, some of the nation's largest car rental systems. Other Cendant subsidiaries provide vehicle fleet management services (PHH Arval and Wright Express).

The financial services division helps financial institutions enhance existing consumer products. Through Trilegiant Corporation Cendant is the premier membership-based provider of travel, shopping, health, entertainment, and consumer protection services. This division also includes JacksonHewitt, Inc., the second largest tax preparation franchisor.

Cendant provides services to the travel industry through its Galileo®, Wizcom reservations and global travel ticket distribution services as well as its on-line (Lodging.com and Cheaptickets.com) and off-line (Cendant and Cheap Tickets) travel agencies.

As a general matter, Cendant supports the recent effort of the FTC and Congress to investigate and pass legislation that helps eliminate the growing crime of identity theft, improve financial education and literacy by limiting the sharing of certain consumer information among businesses, and improving the accuracy of consumer reports resulting in greater access to and use of those reports for consumers.¹ We actively support the Fair Credit Reporting Act and the FACT Act in our business practices today. However, we have concerns regarding certain provisions proposed by the Commission in this proceeding. Cendant emphasizes that permitting National CRAs to advertise their products through the centralized source as offered in the Notice of Proposed Rulemaking (NPRM) would undermine the principal purpose of the Proposed Rule and would have a significant negative impact to businesses that offer a competing consumer product of the national credit reporting agencies. Cendant offers the following specific comments for consideration by the Commission.

The Proposed Rule Would Grant National CRAs An Unfair Competitive Advantage

The creation and utilization of a centralized source to enable consumers, with a single request to receive an annual free credit report from all three nationwide consumer reporting agencies (CRAs) would be a great benefit to the consuming public at large.² There is a general belief that the existence of a single source of access to consumer credit reports would allow consumers to quickly and efficiently review and check the accuracy

¹ The Fair Credit and Accurate Credit Transactions Act of 2003, Public Law 108-159, 117 Stat. 1952 (FACT Act was signed into law on December 4, 2003. In part the Act amends the Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681 et seq.

² Section 609 of the FCRA, 15 U.S.C. 1681g, requires every consumer reporting agency, upon request of the consumer, to disclose to the consumer, among other things, "all information in the consumer's file at the time of the request". The term "consumer reporting agency" is defined under the proposed rule in section 610.1(b)(5) as provided in section 603(f) of the FCRA, 15 U.S.C. 1681a(f).

of their credit reports and identify potential identity theft violations. If the centralized source (nationwide CRAs) operated solely as a source of information retrieval, Cendant would not have opposition to the proposal.

However, the proposal endorses granting the National CRAs with a single absolute opportunity to market their own credit related products and services to consumers who may be interested in such products³. This creates an enormous competitive advantage for the CRAs to advertise their own products and services at the expense of smaller competitors. As a result of this unfair competitive advantage, consumers may be less inclined to review other competing products and services, which may be less costly and higher quality than those offered by the National CRAs. CRAs are market savvy businesses that spend hundreds of millions of dollars each year in marketing/advertising, all in an effort to compete with others in the industry to sell their services. Trilegiant's PrivacyGuard, a credit monitoring and identity theft protection service, as well as numerous other competitor's similar services, compete head to head with each of the National CRAs credit monitoring services. It is inappropriate for the FTC to create a preferential business model for the three largest companies that will distort the marketplace and be detrimental to other companies in the industry.

**Contrary to Federal Law and the Purpose of this Act, the Federal Government
Would Have Effectively Endorsed to the Public a Competing Product or Service**

Through passage of this legislation into law the federal government has appropriately encouraged consumers to go to the centralized source for a free credit report. Under the FTC's proposal, consumers would tend to make the National CRAs centralized source the "go to" source not only for their free credit report but for other products and services as well. After extensive public hearings, debate, news releases, and press coverage millions of consumers are currently encouraged to go to the soon to be developed centralized source for their free credit report. These largely "captive" consumers would then be confronted with advertisements on the centralized source website or via the telephone to upselling or cross marketing of new products and services that would occur through a well placed solicitation, a pop-up advertisement or during a consumer initiated inbound call. At this point the National CRAs have effectively identified and created their own exclusive network of customers and the consumer would be left with the impression that the additional services offered could only be obtained through this centralized source, moreover, that the federal government has endorsed these products or services above all other competing products or services. Each of these scenarios is foreseeable and clearly undermines the intent of Congress in the creation of a centralized source.

³ The supplemental information accompanying the Proposed Rule ("Supplemental Information") provides that "The Proposed Rule would not prohibit the nationwide credit reporting agencies from advertising their products and services through the centralized source."

“610.2(a) The purpose of the centralized source is to enable consumers to make a single request to obtain annual file disclosures from all nationwide consumer reporting agencies, as required under section 612(a) of the Fair Credit Reporting Act, 15 U.S.C. 1681j(a)” Proposed Rule section 610.2(a).

“610.2(g) Any communication or instructions, including any advertising or marketing, provided through the centralized source shall not interfere with detract from, contradict, or otherwise undermine the purpose of the centralized source.” Proposed Rule section 610.2(a).

The FTC’s proposed authorization for nationwide CRAs to engage in marketing activities effectively treats similarly situated companies with competing products differently and leaves the public with the indelible impression that the federal government has endorsed these service providers over all others. With respect to the intended purpose of Section 610.2(a), Cendant Corporation believes that such an endorsement undermines the purpose of the rule and thus National CRAs should be prohibited from advertising through the centralized source.

Cendant appreciates the opportunity to comment on the FTC’s proposal. Cendant remains committed to working cooperatively with the FTC in finding feasible solutions to the concerns set forth herein.

Thank you for considering our views,

Respectfully submitted,

Kimberly Hunter - Turner