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FEDERAL TRADE COMMISSION

REBATE DEBATE

San Francisco, California

Friday, April 27, 2007

9:00 a.m.

Official Reporter: Adrian Edler

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**P R O C E E D I N G S****April 27, 2007****SAN FRANCISCO, CA****REBATE DEBATE CONVENED**

MR. GOLD: Hello, everybody. Could we get started? That was great.

Hi, my name is Matthew Gold, and I'm really excited to welcome everybody to the FTC's Rebate Debate. We've got a really exciting program scheduled here, and I'm really gratified to see such a wonderful attendance here. I think we're going to have a full house.

I've corresponded with quite a few of you over the last few weeks and months, and it's very gratifying for me to finally be putting some faces to names. And I hope all of you can introduce yourselves to me before the day is out, if we haven't met already.

As you can see from the agenda in your packets, we've got five panels today. There are three in the morning and two in the afternoon. And this agenda, by the way, is identical to the one that's been on our website for the last few weeks. So if you've seen that one, it's the same one.

The first four panels of the day are going to feature prepared presentations by panelists, and if everything goes according to plan there'll be some time for questions and answers at the end. During these first

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1 four panels, what we'd like you to do if you do have  
2 questions is to use the question cards that are in your  
3 packets. If you do, just jot down your question and  
4 waive it in the air, and Linda Badger will be roaming the  
5 aisles and you can pass it to her, and she'll get it to  
6 the moderator. But don't worry, if there's a need for  
7 extra question cards we've got more on the table over  
8 there by the water.

9 In the last panel of the day there's going to  
10 be a substantial period of time set aside for audience  
11 participation also. That will be kind of an open mic, in  
12 which you'll get a chance to make a comment or ask a  
13 question of one of the panelists.

14 Everyone's input here is really important. I  
15 know we have very limited spots as far as panelists are  
16 concerned, and so unfortunately I had to turn down some  
17 requests. But we really want your input, so it's  
18 important for you to use those question cards, or  
19 participate in the open mic at the end of the day.

20 Also keep in mind that there's a court  
21 reporter, and so if you -- right up front, so if you are  
22 speaking sometime during the day you're going to have to  
23 talk through a mic so he gets -- so he hears what you  
24 have to say. And also if you speak, please identify  
25 yourself, that's important also. We will be, all the

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1 proceedings today will be transcribed and eventually  
2 posted on the Rebate Debate website, so look for that in  
3 the weeks ahead. The link to the Rebate Debate will be  
4 directly accessible from the FTC's homepage for a period  
5 of time also. And in addition, all of the Power Points  
6 that are here today, that are presented today, will also  
7 be on the FTC's on the Rebate Debate portion of the FTC's  
8 website starting hopefully next week, but in any event,  
9 soon.

10 Now, I just want to get to a few housekeeping  
11 matters. Remember, please, that we are in a classroom at  
12 San Francisco State University.

13 [Phone ringing.]

14 Hello? Hi, Lesley.

15 MS. FAIR: Could you remind people to turn  
16 their cell phones off?

17 MR. GOLD: I forgot that one. Please everybody  
18 turn off your cell phones. I'm doing that right now.  
19 And that should have been my first housekeeping.

20 We're in a classroom, as I was saying, and just  
21 keep that in mind because there are other classes going  
22 on in the building, so when you're walking around the  
23 halls or talking outside our classroom.

24 The restrooms are located either way down the  
25 hall. I'm told that the ones to the right are a little

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1 larger, but if you go down the hall either direction  
2 you'll find them.

3 Also, I'm sure you've all seen the literature  
4 table outside. We've got a lot of brochures and other  
5 items that may be of interest to you. One particularly  
6 neat thing is the what we call the 'business briefcase,'  
7 which is this. I imagine they're already all taken by  
8 now. This is a little thing that looks like a business  
9 card, but it's actually a CD with several dozen of our  
10 most popular brochures on it.

11 And another item on there is our ID theft --  
12 [microphone interference] -- I'll keep my arm down, is  
13 our ID theft magnifying glass, and the magnifying glass  
14 comes in very handy for looking at all that fine print on  
15 the rebate forms.

16 Lastly, I'd like to introduce a few of the FTC  
17 staff who are here today, so in case anybody has any  
18 questions for FTC staff or just general orientation.

19 Linda Badger, you saw.

20 Dean Graybill, from our offices there.

21 Kerry O'Brien, is right there.

22 Evan Rose, is in front here.

23 And, Lesley Fair, who you've already heard talk  
24 on the phone, is there.

25 And, Mitch Katz (phonetic), is here also, he's

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1 with our press office.

2 Thanks again for coming today.

3 And I would like to present now Jeffrey  
4 Klurfeld, who is the Director of the FTC's western region  
5 here in San Francisco.

6 [Applause.]

7 **WELCOMING REMARKS FROM THE FTC**

8 MR. KLURFELD: As Matthew indicated, I am  
9 Jeffrey Klurfeld, and I have the honor and privilege of  
10 serving as the Director of the Western Region of the  
11 Federal Trade Commission. And I also welcome you to the  
12 Rebate, which we are pleased to be hosting here in San  
13 Francisco.

14 Over the years the Federal Trade Commission has  
15 brought a number of enforcement actions to remedy  
16 problematic rebate practices. Because consumer  
17 complaints persist, however, we thought we might take a  
18 different approach, and that is by bringing everyone  
19 involved in the rebate process, from the manufacturers  
20 and retailers who determine to offer the rebate, to the  
21 fulfillment houses who perform the back office paperwork,  
22 to the consumers who wait and sometimes wait and wait for  
23 receipt of their rebates, to discuss problems and  
24 solutions in a 360 degree forum or debate.

25 In hosting this forum, I'm reminded of an

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1 advice book that my wife made me read when we were  
2 confronting the challenges of our three somewhat  
3 exuberant adolescent children. And the title perhaps  
4 expresses some of the themes in the debate of rebates,  
5 and perhaps also some of the perceptions regarding the  
6 role of government. The title of the book is, *Get Out Of*  
7 *My Life, But First Can You Take Cheryl And Me To The*  
8 *Mall?*

9 [Laughter.]

10 MR. KLURFELD: You thought these were going to  
11 be just dry, desicated, opening remarks. Since this is  
12 also an election season I thought I might also introduce  
13 some presidential history into my remarks that might also  
14 reflect this tangent, and hopefully these anecdotes will  
15 also entertain you.

16 When I think of free and competitive markets I  
17 immediately think of Theodore Roosevelt, who was really  
18 larger than life and truly a champion of vigorous free  
19 markets. And as you know, he was apostrophized as the  
20 "Trust Buster." Indeed, his daughter Alice, whom Teddy  
21 could not manage, although he could manage the  
22 government, perhaps, and whose antics would have made her  
23 the poster kid for a tabloid press if there had been one  
24 at that time, she remarked that her father wanted always  
25 to be the bride at every wedding and the corpse at every

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1 funeral.

2 His cousin, Franklin Roosevelt, might be placed  
3 at the other end of the spectrum. Franklin loved  
4 regulating the economy and imposing codes and other  
5 government restrictions on entire industries. But  
6 Franklin got his comeuppance, and not just from the  
7 Supreme Court. He often was at the receiving end of  
8 Eleanor's, his wife, her rapier wit. And here is a true  
9 story. After FDR's first election he took residence in  
10 the White House. Eleanor thought it would be desirable  
11 to get a physical check-up, and at that time there wasn't  
12 a physician who was resident in the White House, so she  
13 had to go out of the White House, which she did. After  
14 returning from her appointment she went to see Franklin  
15 in the oval office. He asked her if everything had gone  
16 well, "yes," she said, then Franklin asked her if the  
17 doctor had said anything about, quote, "her big fat ass."  
18 Without missing a beat, Eleanor replied, "No, Franklin,  
19 your name never entered the conversation."

20 [Laughter.]

21 MR. KLURFELD: Now, I have a housekeeping  
22 detail, and that is -- whoops. It's part of my duties to  
23 animate and pump you up in the morning. We really do  
24 want to hear from all of you, and we have designed a  
25 rebate form of our own, hold it up, it's in your packets.

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1 And what we would like you to do is to fill it out, and  
2 you will notice that there are a place where you can  
3 indicate what your three biggest gripes are with rebates.  
4 It's essential that you provide this to us, if you are  
5 willing to do so, in anticipation of the last panel, when  
6 we are going to reveal the results. You can either put  
7 it in the boxes, which Matthew will now point to.

8 MR. GOLD: One right over there by the water,  
9 and one on the other box on the tables over there.

10 MR. KLURFELD: I have the honor of, you know,  
11 turning the letters to get a vowel, or something like  
12 that. Or you can give it to Kerry, Linda, or Matt, whom  
13 I also would like to recognize for their yeoman-like  
14 work, as well as other members of my staff, in organizing  
15 this.

16 So before you go to lunch, if you could  
17 complete that out and give it to them, that would be  
18 great.

19 And then I am also privileged to introduce our  
20 first speaker. She is Eileen Harrington. Eileen is the  
21 Deputy Director of the FTC Bureau of Consumer Protection  
22 in Washington, and in that capacity she is the nation's  
23 number two consumer protection enforcement official. Her  
24 presence here today is eloquent testimony to the  
25 importance of this event. Often people do not live up to

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1 their reputations when you get close. In Eileen's case  
2 this is certainly not true. She personifies intelligence  
3 and insight, she also has grace and gumption, and the  
4 American people is indebted to her for her strong and  
5 able leadership. Among her many distinctions is her  
6 service to America for her role in establishing the  
7 national Do Not Call Registry, and that is a gift that  
8 continues to give, as we know.

9           Anyway, it's my pleasure to turn the podium  
10 over to Eileen.

11           [Applause.]

12           MS. HARRINGTON: Thank you very much, Jeffrey.

13           I'll just get the mic up here. It really is  
14 such a privilege to be here today with all of you. And I  
15 want to begin by echoing and maybe even elaborating on  
16 what Jeffrey said about the incredibly good work that the  
17 team that has organized, that really conceived of this  
18 gathering and has put it together, have done: Matthew  
19 Gold, Linda Badger, Kerry O'Brien are the rebate team in  
20 our western regional office. And they, although we all  
21 serve the public and we are one FTC, I would say they own  
22 this issue and have done such good work developing  
23 principles, reaching out, learning, listening, and  
24 leading.

25           And so I want to commend them as well as my

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1 other colleagues who are playing leadership roles here  
2 today: Joe Mulholland from our Bureau of Economics is out  
3 from Washington; Lesley Fair, who is simply the most  
4 talented person at the Federal Trade Commission in a  
5 whole stable of talented people there's nobody like  
6 Lesley, as you will see later on; Mitch Katz is here from  
7 our Office of Public Affairs; Dean Graybill from our  
8 western region also will be presenting today. And if  
9 I've left anyone out in terms of the leadership group, I  
10 apologize. But what a good group, Jeffrey, you and Erica  
11 have here.

12 We're here today to do two of the things  
13 that -- to serve two of the functions that the Federal  
14 Trade Commission carries out that we value highly and  
15 take seriously. One of those is to study the  
16 marketplace, to understand what it is that's happening,  
17 to learn from people who are directly effected and are  
18 participating, so that we can do our jobs better. And  
19 the other function that we are here to carry out, and  
20 that we take so seriously, is our function in the area of  
21 education: educating ourselves and educating business and  
22 consumers about problems of deception and unfairness and  
23 how to avoid those.

24 This is one of many workshops that we're  
25 holding during this season at the FTC. We recently just

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1 earlier this week held a very important workshop in  
2 Washington on authentication of identity in connection  
3 with our work in the identity theft space. A couple of  
4 weeks ago the Commission held a very important three-day  
5 workshop on energy, also in Washington. Within the next  
6 couple of months we'll be holding an important spam  
7 summit, and an important workshop on childhood obesity  
8 and food marketing, those also in Washington.

9 This session is special and unique because it's  
10 here and it's not in Washington. This is the first of  
11 our workshops of this sort to be held outside of the  
12 beltway, and I think it really is a credit to the  
13 leadership and the staff in the western region that we're  
14 here doing this. It's a really smart thing to do, to do  
15 this here. But for Washington bound people letting go is  
16 not an easy task. And so I think it really is a  
17 wonderful compliment to the folks here in the western  
18 region that this is happening here. It's about time, and  
19 I'm really glad to be here with all of you.

20 Now, we use generally a three-prong strategy to  
21 learn and address issues in the consumer protection area.  
22 And today we're actually seeing all three prongs. I've  
23 mentioned studies, I've mentioned education. The third  
24 prong, and one that we use to further our education  
25 mission, as well as to correct deceptive and unfair

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1 practices in the marketplace, is the enforcement prong.  
2 And this morning I am announcing that the FTC has reached  
3 and is issuing today two consent decrees with companies  
4 to correct deceptive or unfair practices that they  
5 engaged in, we allege, in connection with rebate offers.  
6 And Matt has the press releases, which he'll be passing  
7 out so that you can read them, and pay absolutely no  
8 attention to what it is that I'm about to say.

9 [Laughter.]

10 MS. HARRINGTON: The first of the consent  
11 agreements that we're announcing this morning is with  
12 InPhonic, which is the largest online seller of cell  
13 phones and cell phone calling plans. The settlement with  
14 InPhonic stands for the principle that consumers must be  
15 put on notice in advertisements that offer rebates that  
16 the terms of the rebate program may be unusual,  
17 complicated, significantly different than what a consumer  
18 might reasonably expect from reading the advertisement of  
19 the rebate offer.

20 Now, in this case, InPhonic offered attractive  
21 prices, often free phones. Unfortunately, there were  
22 some material requirements that reasonable consumers we  
23 believe would not have anticipated, and that InPhonic did  
24 not adequately disclose in the advertisement. One of the  
25 principal problems with the advertisement and the failure

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1 to adequately disclose, was with the hyperlink on the  
2 website to the terms and conditions of the rebate offer.  
3 The hyperlink did not satisfy the Commission standard for  
4 adequate disclosure under Section 5. The best  
5 articulation of that standard is in some work that really  
6 was groundbreaking, that was done as a result of this  
7 kind of workshop that the Commission held in 2000, and  
8 that resulted in the development of a really important  
9 publication, *The Dot Com Disclosure Guide*, which is in  
10 the business briefcase that we have out front. So if you  
11 haven't picked up that little disk that Matthew held up,  
12 do it, and look at the *Dot Com Disclosure Guide*, because  
13 in this case that is really the basis for the  
14 Commission's analysis that the disclosures were not  
15 adequate.

16 Let me read to you from the *Dot Com Disclosure*  
17 *Guides*, which say that, 'you have label the link to  
18 convey the importance, nature, and relevance of the  
19 information it leads to. That is, the label should make  
20 clear that the link is related to a particular  
21 advertising claim or product, and indicate the nature to  
22 be found by clicking on it. Some text links may provide  
23 no indication about why a claim is qualified, or the  
24 nature of the disclosure. In most cases simply  
25 hyperlinking a single word or phrase in the text of an ad

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1       may not be effective. Although some consumers may  
2       understand that there is additional information  
3       available, they may have different ideas about the nature  
4       of the information and its significance. The same may be  
5       true of hyperlinks that simply say disclaimer, more  
6       information, details, or terms and conditions.'

7                 Here the hyperlink basically said, 'Rebate  
8       Offer.' It wasn't enough, it wasn't enough to alert  
9       consumers to the nature of the terms and conditions that  
10      came with this order, which included a requirement that  
11      consumers had to wait for to submit their rebate claim  
12      for between 180 to 210 days, would have to submit a  
13      number of bills, would have to fill out a form providing  
14      significant information including emails addresses and so  
15      forth. You can read about the case in the press release  
16      and online. But it's an important case that, once again,  
17      stands for all of the principles that the Commission  
18      articulated in the *Dot Com Disclosure Guides*.

19                 The second settlement we're announcing this  
20      morning is with Sanyo -- Soyo, I'm sorry, excuse me. If  
21      anyone is here from Sanyo I am really sorry.

22                 [Laughter.]

23                 MS. HARRINGTON: The Soyo settlement -- and is  
24      there anyone here from Sanyo this morning? Hands, hands,  
25      did you just have a heart attack?

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1           The Soyo settlement stands for the principle  
2           that rebate delivery promises have to be met. The  
3           promises you make you have to keep them. Now, the  
4           Commission has made this point in earlier settlements and  
5           it restates it in this case, where the promise was that  
6           consumers would receive their rebate within ten to twelve  
7           weeks. Ninety-five percent of consumers who receive  
8           rebates in this promotion received them outside of and  
9           beyond the twelve-week outer limit that was promised.  
10          The average was twenty-four weeks, and some waited for a  
11          year. Not good.

12           Now, we are very proud of our folks in the  
13          western region who did these cases. The Commission will  
14          stay on the beat in this and other areas, but really  
15          would be happy to never again bring another rebate  
16          enforcement action. And that's why we're here. We want  
17          to understand from the people who are most knowledgeable  
18          what the best practices are. We want to talk about how  
19          the best practices might get even more best. We want to  
20          understand what the consumer perspective is. And we want  
21          to, as Jeffrey said, work with all of the stakeholders to  
22          see to it that rebate offers which have tremendous  
23          benefit for manufacturers, for retailers, for consumers,  
24          alike, are made in a way that satisfies the promise and  
25          does not cause us down the road to have to announce more

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1 enforcement actions.

2 So I'm delighted to be here. I look forward to  
3 learning a lot today. And we'll turn it over to the  
4 first panel.

5 Thank you so much.

6 [Applause.]

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1                                   **PANEL 1: AN OVERVIEW OF REBATES**

2                                   MR. MULHOLLAND: Good morning. I'm on? Okay.  
3                                   Good morning, I'm Joe Mulholland. I'm an economist at  
4                                   the Bureau of Economics and the Federal Trade Commission.  
5                                   And I'll start off by saying I too would like to thank  
6                                   Matt, Linda, and Kerry for putting together this  
7                                   conference and for inviting me out here to moderate.

8                                   The issues raised by rebates are important and  
9                                   have a good deal of economics content. The Bureau of  
10                                  Economics hosted a conference last week that featured a  
11                                  number of prominent behavioral economists who discussed  
12                                  the research into various psychological aspects of  
13                                  consumer behavior, and the policy implications of the  
14                                  findings for consumer protection policy. One important  
15                                  area of research involved the way consumers make correct,  
16                                  incorrect, and often overly optimistic projections of  
17                                  their future behavior. One manifestation of which, of  
18                                  course, is the failure to follow through on the initial  
19                                  intention to redeem a rebate.

20                                  This first session here seeks to set the stage  
21                                  for the ensuing discussion of the various policy issues  
22                                  involved involving rebates by describing how rebates  
23                                  work, how they evolved, how they're used by consumers,  
24                                  and how they effect the profitability of the various  
25                                  stage of the product stage chain.

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1                   I think our three panelists are ideally  
2                   situated to provide this kind of overview for this  
3                   session. We're going to first of all look at consumer  
4                   behavior, how consumers respond to rebates, and how often  
5                   they redeem, why they redeem, why they don't redeem. The  
6                   second then is going to look at the rebate processing  
7                   process. And then the third is from the standpoint of  
8                   the rebate issuers, what are their motivations for  
9                   issuing rebates in the first place.

10                   Our first presenter is Tim Silk. He's an  
11                   Assistant Professor of Marketing at the Sauder School of  
12                   Business at the University of British Columbia. Tim is  
13                   an expert on consumer behavior related to rebate  
14                   promotions, in particular the ways in which offer  
15                   characteristics interact with behavioral biases to  
16                   influence purchase and redemption behavior. Tim recently  
17                   received his PhD in marketing from the University of  
18                   Florida. Which I think is quite important, his academic  
19                   work is complemented by his prior career in business,  
20                   where he was a marketing manager for a Canadian beverage  
21                   company, and an account manager for an advertising  
22                   agency.

23                   So, Tim, please?

24                   MR. SILK: Can you hear me okay? Great. Thank  
25                   you for the opportunity to speak. I'm trained as a

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1 consumer psychologist, and what I really care about is  
2 understanding what drives people's purchase and  
3 redemption behavior in the rebate context.

4 So I'm going to show you results from two  
5 sources of data. I've got some industry data, over 3,000  
6 promotions which can give insights into incremental sales  
7 and redemption. And then I run some experiments with  
8 people, with their own real money, with over 1,000  
9 consumers trying to look at what mechanisms are kind of  
10 influencing their purchase decisions and their redemption  
11 behavior.

12 So I'm going to start off here with some  
13 industry data. Sorry. Whereabouts is the? Oh, I didn't  
14 see that. Right there? Oh, all right, very good, okay.  
15 So what I'm going to show you first is some industry data  
16 from over 3,000 promotions. Sorry for the feedback here.  
17 Okay. Can you hear me still? Okay.

18 So what we have here, we have the percent  
19 sales. So this is basically what the industry will call  
20 lift or increase in sales. And what I'm plotting here is  
21 the lift that occurs from a \$1 rebate. What I have along  
22 the bottom here is what that \$1 rebate represents as a  
23 percentage off the list price. So down here we have say  
24 a 25 percent discount, which means it would be a \$1  
25 rebate on a \$4 offer. Here we'd have a 50 percent

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1 discount, so it would be a \$1 rebate on a \$2 offer,  
2 etcetera. And what you find here is people are very  
3 sensitive to the change in the discount percentage. So  
4 this is still all just a \$1 offer, but as that \$1  
5 represents a greater percentage of the list price people  
6 respond to that offer.

7 Now what we're going to show next is what  
8 happens when you increase the absolute size of the rebate  
9 and go to a \$5 offer. And what we'd expect is we'd see a  
10 big jump in lift because it's five times larger the  
11 offer. What we find is there is an increase, but it's  
12 not a very strong increase. It's significant, but the  
13 point here is that it kind of shows the same pattern as  
14 the \$1 offer. So people are incredibly sensitive to the  
15 percentage of the list price that the rebate represents.  
16 [Tape interference.] Jesus, sorry. Very sensitive. But  
17 they're not that sensitive to the absolute value.

18 And so here's the \$10. Of course, you don't  
19 see a lot of \$10 offers that represent more than 50  
20 percent of the list price, which is why it just stops  
21 here. And then there's a \$20 offer.

22 So the point here is that it's the percentage  
23 of the discount, not necessarily the absolute value of  
24 the rebate that seems to be driving the incremental  
25 sales. All right. And that they're increasingly

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1 sensitive to changes in the percentage. So as you move  
2 up the curve it's not only positively slow, but it's  
3 arching more and more up. All right.

4 So what this is telling us is that we could try  
5 and infer that perhaps this is because consumers have a  
6 tendency to frame rebates as a percentage discount. They  
7 look at the size of the offer, they look at the list  
8 price, and that's what they're sensitive to. And so the  
9 implication here is that people are going to be more  
10 responsive when the discount is high, so a \$5 rebate on a  
11 \$10 item is going to create more lift than a \$10 rebate  
12 on something that's twice the size but that as a smaller  
13 discount percentage. So the thing -- this is from  
14 industry data.

15 What I want to do now is let's take a look at  
16 some experiment results and figure out, well, how do we  
17 figure out what's actually driving the purchase behavior,  
18 and what time of things can we influence when we change  
19 the offer characteristics. So what I've done here is run  
20 a series of experiments where I have experimental  
21 control. I manipulate the offer characteristics while  
22 holding everything else constant, so I can really get out  
23 what's going on. And one thing I find is it's the  
24 confidence that they have that they will redeem that  
25 really drives a purchase decision. I ask consumers right

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1 when they're making their purchase decision with their  
2 own money in a natural context, how likely are you to  
3 redeem this rebate? How confident are you that you  
4 would, on a zero to a hundred percent scale? And what we  
5 find is the people that are buying are incredibly  
6 confident, and the people that aren't buying obviously  
7 are kind of moderately confident.

8 Now that doesn't seem that surprising.  
9 However, there is a point of view up there that consumers  
10 view rebates like an option, in that it's an option that  
11 you could or could not take up. And what this is telling  
12 you is that for the incremental buyers, the people that  
13 otherwise would not buy, only those that are extremely  
14 confident are buying, so they're not treating these  
15 things as an option. That's the point here. All right.

16 We also asked people, all right, you're really  
17 highly confident, maybe it's because you think redemption  
18 rates are really high on these things, and that's what's  
19 driving your confidence. So we ask them, what do you  
20 think the average redemption rate is on this particular  
21 rebate that you're buying? And the response was around  
22 54 percent. And so they're basically saying I understand  
23 that the redemption rate my guess is probably 55 percent,  
24 but I'm 95 percent confident that I'm going to do it.  
25 Now there's nothing wrong with that, as long as you

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1 follow through. And we'll look later if they do. All  
2 right. And there's no difference obviously between the  
3 buyers and those that aren't, in terms of what their  
4 estimates of redemption rates is. So this overconfidence  
5 or this confidence isn't stemming from some inaccurate  
6 perception of what redemption rates are in the  
7 marketplace. Okay. So it's what we call it's not a  
8 false consensus of fact.

9           So sorry for the -- it's from the mouse. So  
10 what drives purchase? And purchase is a function of  
11 really manipulating confidence. So what things can we do  
12 to manipulate confidence? So one thing we found was if  
13 we increase the percentage of the discount a higher  
14 proportion of people buy. So this is actually the  
15 proportion of potential consumers that actually bought  
16 the rebate offer. And here we have a 45 percent rebate,  
17 or 75 percent rebate. The confidence results, which I  
18 won't show you, there's just too much data to show, go in  
19 line with this. And what we're really doing, by  
20 manipulating the size of the discount percentage what  
21 we're really doing is manipulating the confidence, and  
22 that's manifesting itself in purchase behavior. All  
23 right.

24           The other thing we did is we manipulated the  
25 length of the application deadline, how many days they

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1 had from buying the offer to mailing. And when we give  
2 people more time they become more confident. So, again,  
3 confidence goes up and as a result you see higher  
4 purchase rates. And so what you've got here is over time  
5 as you increase the time you've got more people buying,  
6 but there's also the effect of the size of the discount  
7 percentage maintained. All right.

8 So you can either increase the size of the  
9 discount percentage, you can also give people more time.  
10 And the point here is that people tend to discount effort  
11 that occurs in the future. When things are 21 days away,  
12 ah, no problem, it seems easy, you know. What we call a  
13 temporal construal effect in psychology, that explains  
14 when things are far in the future we basically abstract  
15 them and they seem really easy. All right.

16 The other thing which I won't show on a graph  
17 here is if you conceal the application requirements  
18 people become more confident and they're more likely to  
19 buy. So I manipulated whether or not there was a  
20 detailed description of all the things they had to do to  
21 redeem the rebate, whether that was present or absent  
22 when they made the purchase decision. And when you  
23 disclose what's required to be done confidence drops,  
24 less people buy. Okay. So the point here is that when  
25 you don't disclose the effort it's not salient. And

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1 combine the fact that if it's far in the future it seems  
2 really easy. So you really do have to give consumers,  
3 you know, really detailed information in order for them  
4 to really improve their calibration.

5 So the question now is what drives redemption  
6 rates? So the point here is being highly confident  
7 doesn't necessarily predict your redemption behavior. So  
8 what I've done here is I've grouped the people that  
9 actually were successful in redeeming in dark, the people  
10 that weren't successful redeemers in light blue. And if  
11 I go back and say well maybe the reason that they didn't  
12 redeem was that, sure average confidence was high, but  
13 the people that didn't redeem were probably lower in  
14 their confidence than the ones that were successful. And  
15 we find, no, that's not the case. There's no difference.  
16 So being highly confident is not predicting what you're  
17 going to do. The people that failed to redeem were just  
18 as confident as those that were successful. All right.  
19 And when we look at their redemption rate estimates,  
20 again, there's no difference.

21 So this is what we call like a mis-calibrated  
22 consumer. You're highly confident, but your own  
23 probability of redemption is in fact very low. All  
24 right. And so this is an overconfidence problem.

25 And so the question is, what's driving

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1 redemption behavior? How do we influence whether or not  
2 they really redeem? So one way we can influence  
3 redemption behavior is increasing the rebate dollar  
4 value. Now here this is where the effect of the dollar  
5 value actually shows, and it's not about the discount  
6 percentage. So here again is our graph -- this is from  
7 real world data, all right, same axis, but except here  
8 now we have the redemption rate. And on the \$1 offer,  
9 yeah, the redemption rates actually are higher as the  
10 size of the rebates a larger discount. But now we start  
11 to see much stronger effects of the size of the rebate.  
12 Okay. So on the redemption side the dollar value of the  
13 rebate is having a big effect, where that was muted on  
14 the purchase side. Okay.

15 So it suggests there may be some type of  
16 reframing. At the time of purchase people look at things  
17 in terms of a percentage discount, but when they get home  
18 and look at the effort it's really about how much is it  
19 worth versus how much work it is, and now we see an  
20 effect of the size of the rebate.

21 The other thing is we play with that deadline,  
22 that also influences redemption behavior. Now this is  
23 what's interesting. In industry surveys with managers we  
24 ask them if we give people more time to redeem do we  
25 expect the redemption rate to increase or decrease. And

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1 they say it will go up, we're giving people more time,  
2 they'll get to it. We find the exact opposite. If you  
3 give -- this is a controlled study with real people's  
4 real money -- if we give people more time to redeem the  
5 redemption rates go down, it's pretty strong effect. And  
6 the question is, well why is that? That doesn't make any  
7 sense. You're telling me the people that we only gave  
8 one day to redeem the redemption rate's much higher than  
9 if we give them three weeks? And it's like absolutely.

10 And so the idea here is what you do here is you  
11 give people a long time you basically foster  
12 procrastination and forgetting behavior. All right. And  
13 I'll show you that in a minute. Longer delays, when you  
14 give people more time they take longer before they start  
15 the application process. Let me show you this, what this  
16 is is the number of days that elapse between buying and  
17 initiating the application process. What they had to do  
18 in our studies was go online to download an application  
19 form. That was the absolute first step to redeeming. So  
20 we know how long it took them between purchase and  
21 initiating that first step.

22 And the people on the 21 day condition are  
23 taking over 4 days before they even go and get the form.  
24 What's interesting is when you look at the delay between  
25 starting and finishing the application process, and so we

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1 look at the postmark date, look at how long people are  
2 taking. Not only are they waiting 4 days before they  
3 start, but then they wait another 12 days on average  
4 before they finish. Versus the people that are only  
5 given a day, they go and they get the form that day and  
6 they tend to mail it. Obviously there are some people  
7 that fall outside, they were late. But that's what's  
8 interesting, you're fostering delays. And that's what's  
9 kind of driving it.

10 The other thing we found is owner redemption  
11 requirements, you think well if I increase effort you're  
12 going to basically decrease the redemption rate. And  
13 what we found is the opposite. Here's the same graph  
14 before, when we increase the effort the redemption rates  
15 went up, not down. And the reason for that is people  
16 were buying, the effort was not disclosed, and when they  
17 actually experienced the high effort we angered them.  
18 Like, God damnit, I'm going to make sure I get my money,  
19 these guys are making me do too much work.

20 [Laughter.]

21 MR. SILK: And the evidence we have for that is  
22 that those delays I showed you decrease. When we give  
23 people -- this is the delay when we increase the effort.  
24 There's no difference in when they start the process, why  
25 is they haven't experienced any effort yet. But once

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1 they start and they realize, wow, how much work it is,  
2 they get done sooner, they don't delay in finishing the  
3 process. So there's a backlash effect.

4 I've got to wrap up. So I'm just going to go  
5 to the last points here. I'd be happy to talk with any  
6 of you if you have questions.

7 Repeat purchase. Among redeemers it was 40  
8 percent. We had people return and had a chance to  
9 purchase the same offer again. So we wanted to look at,  
10 you know, do you learn from your mistakes. Non-  
11 redeemers, only 8 percent of those bought. But the  
12 people that were successful, 40 percent of them bought.  
13 If you're in the high effort group you're much less  
14 likely to buy.

15 So the point here is that if you're ranking the  
16 effort up on people there's an opportunity that you could  
17 actually be increasing your redemption rates, rather than  
18 decreasing them, and then you're angering people and  
19 they're not buying the second time around. So there's no  
20 loyalty.

21 So just to wrap up. Confidence in redeeming  
22 drives purchase. Consumers tend to be overconfident,  
23 it's a function of the discount percentage, the deadline  
24 length and the disclosure of the application  
25 requirements, many fail to initiate the application

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1 process. And so maybe we're over-emphasizing the role of  
2 effort here. Much of breakage comes from people that  
3 never initiate the process, they didn't experience any  
4 effort. So increasing or decreasing the amount of work  
5 they do won't influence those people because they're not  
6 even starting the process.

7 And then high-effort rebates can be risky, can  
8 motivate higher redemption rates, there's a backlash  
9 effect that we found, repeat purchase, less likely.

10 But when we disclose the effort required that  
11 backlash effect goes away. Why? We're not violating  
12 expectations, people know what they're getting into.

13 So sorry for to rush through that. But I'd be  
14 happy to speak with any of you. And for those of you in  
15 industry, love to hear of your results show these  
16 patterns or if they differ. Thank you.

17 MR. MULHOLLAND: Now we're going to talk about  
18 the nuts and bolts of the fulfillment process itself for  
19 rebates. And here is Tom Diffley. Tom is Executive  
20 Vice-President of Business Development at Helgeson  
21 Enterprises. He has ten years of experience in promotion  
22 fulfillment with multiple service providers, providing  
23 directly -- working directly with large and small  
24 retailers, and market package goods, consumers  
25 electronics, and wireless services.

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1                   MR. DIFFLEY: Good morning. My name's Tom  
2                   Diffley, and I have been in promotion fulfillment for the  
3                   last ten years. So I thought I would start by  
4                   introducing you to promotion fulfillment. And there are  
5                   a number of terms that we use within our industry that  
6                   you may or may not have heard before. So I thought it  
7                   might be helpful if we would start with those.

8                   First of all, customers are the people with  
9                   whom we are interacting, as opposed to the general pool  
10                  of consumers. You can think of a customer as somebody  
11                  who has actually made a purchase from one of our clients.

12  
13                  A client are the people who hire us. And in  
14                  most cases they are manufacturers, service providers, and  
15                  retailers or E-tailers. And these are also companies who  
16                  fund the rebates. So they are the people, they are the  
17                  people who are paying the customers.

18                  Fulfillment company, what we are, we are the  
19                  third party who processes the request from the customers  
20                  and we ship whatever it is that the customer wants back  
21                  to those customers. We're also known as fulfillment  
22                  houses, fulfillment services providers, or FSPs, and  
23                  we're also simply called rebate processors.

24                  Promotions are what these customers get  
25                  involved in. And I specialize in consumer-based

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1 fulfillment and consumer-based promotions. There are  
2 other types of fulfillment out there. But these  
3 consumer-based offers call to action the customer to buy  
4 a product or service right now. These are also called  
5 promos, offers, deals, rebates.

6 And a rebate is a particular type of promotion  
7 where the customer receives a rebate check or a rebate  
8 card back by mail. These are also called MIRs, or mail-  
9 in rebates.

10 And a premium offer is a slightly different  
11 type of offer, and that's where the customer receives an  
12 item back by mail, or I guess via any courier. But this  
13 is as opposed to a rebate check.

14 And then invalid submissions are submissions  
15 that we have received from customers, but the customers  
16 didn't do everything that they were supposed to do. This  
17 is as opposed to customers who simply didn't participate  
18 in the process. But these customers who have mailed to  
19 us and didn't do what they are supposed to do, those  
20 submissions can be called invalid, disqualified,  
21 unqualified, rejected, non-compliant, a number of  
22 different expressions. But they all mean the same thing.

23 First of all, what are fulfillment companies  
24 and what do we do? We get involved when our clients or  
25 our prospective clients want to run a promotion and they

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1 require a third party like us to process the submissions.  
2 The companies running rebates typically don't have the  
3 facilities or the interest or the systems in place to  
4 process rebates, so they hire us to take over that, to  
5 take over all that interaction with the customer. And  
6 what we do, is we set up all of the different customer  
7 contact points. So where the customer may believe that  
8 he or she is dealing with a manufacturer or a service  
9 provider or a retailer or E-tailer, they are actually  
10 dealing with us.

11 So we are the PO Box, we are the telephone  
12 number, the email address. And we are also the  
13 organization corresponding with the customer, so we are  
14 the ones sending the checks, we are the ones sending the  
15 reject letters, and we're also the ones sending the  
16 status update email messages.

17 So we are, or we attempt to be, in most cases  
18 transparent to the customer. But we are serving as the  
19 manufacturer or the service provider in our interaction  
20 with the customer. We are providing support for that  
21 customer typically in three different ways and at three  
22 different points. Before the customer submits, we  
23 provide support via telephone and the web. After a  
24 customer submits, we also provide support via telephone  
25 and the web, and this would be a customer who is seeking

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1 a status inquiry. And then after a customer has  
2 participated we also support that customer via the phone  
3 or via the web. And if the customer has made a mistake  
4 we help that customer understand what the requirement was  
5 that he or she missed, and we help him or her get the  
6 materials together.

7 There are a few things that we are not. We are  
8 not the organization that creates the promotion. Our  
9 clients create the promotions. We are not out there, in  
10 most cases, actively promoting promotions. Typically our  
11 clients and prospective clients come to us with a need  
12 already.

13 We do not make the rules for qualification. We  
14 follow the rules. We can advise our clients on how to  
15 set up the rules to make things less burdensome for the  
16 customers, and make it a more pleasant experience. But  
17 ultimately it is the client who makes that decision.

18 I'm not advancing.

19 We do not have a financial stake in the  
20 promotions. And I read on, I read on blogs, I read just  
21 a number of different things out there, even some  
22 published statements by politicians, that seems to imply  
23 that we have some motivation to disqualify customers who  
24 send in. We process submissions, and it isn't of any  
25 interest to us whether the customer qualifies or

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1 disqualifies, we are process -- or we are paid to process  
2 submissions and take telephone calls. So whether we are  
3 mailing a check or whether we are mailing a reject letter  
4 to that customer is immaterial to us. We will get paid  
5 either way.

6 And also I get all sorts of telephone calls  
7 from prospective clients, from the press, people asking  
8 me -- they almost always lead with the same question,  
9 especially the press -- and the question is what  
10 percentage of customers respond to a rebate offer. And  
11 we're just, we're very mediocre resources to give this  
12 particular answer. And the reason is we know how many  
13 pieces of mail we see on an offer, but we don't know what  
14 the sell-through was, with the exception of certain types  
15 of offers where the client is the retailer or the E-  
16 tailer. But asking us to project what a response rate  
17 would be is extremely difficult.

18 In most cases history is the best indicator for  
19 any client or prospective client. If they've been  
20 running rebates in the past they will begin to understand  
21 what their response rates are.

22 Where did rebates come from? I've been in the  
23 industry ten years and I can tell you what I think, where  
24 I think they've come from, although Hal is in a better  
25 position to tell you where they have. If we take a look

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1 at rebates today we're probably all thinking about  
2 consumer electronics and rebates on hardware and software  
3 and even wireless services. But rebates have been around  
4 for quite a while. We just don't see many of them today  
5 on some of these products that used to be rebated pretty  
6 often.

7 If we go back a few years ago, wine and spirits  
8 were typically rebated, automotive was very popular, very  
9 high volume rebates. And also even packages goods. If  
10 you walk through a grocery store ten years ago you would  
11 see many, many mail-in offers on the shelves or  
12 advertised. And that's simply not a place where you see  
13 mail-in offers advertised today.

14 Did these offers evolve from premium offers --  
15 did rebates evolve from premium offers? I don't know.  
16 But there were, well, these offers still exist today, but  
17 there was something pretty common when I was a kid, and  
18 that was you save up the proofs of purchase off your  
19 cereal box and you send in the, you send in your shipping  
20 and handling and you get back your Tony the Tiger. Which  
21 is what I did in second grade, and then about a week  
22 later it was stolen, and that is an event that still  
23 stings today.

24 [Laughter.]

25 MR. DIFFLEY: But fulfillment companies were

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1 shipping and handling. When you took a look at the 1.95  
2 to get the Tony the Tiger pack to you, or the 3.95, that  
3 was, that was our part of it. So the 3.95 was our  
4 shipping and handling and we were shipping and handling.

5 It's also possible that they've evolved from  
6 try-me-free offers, which were pretty common with  
7 packaged goods, where if you bought two of the packaged  
8 good you would get the cost of one of those back by mail.  
9 And it's possible that you folks who offer consumer  
10 electronics products saw those offers, saw they were  
11 effective, and just got rid of the whole buy two of them  
12 and get the cost of one back by mail.

13 And then also I think they've evolved from  
14 coupons. And that it's coupons are a promotional tool  
15 that were simply not available with some of these  
16 consumer electronics retailers up until even just a few  
17 years ago.

18 In the last ten years I've seen a number of  
19 changes with mail-in rebates. Years ago the rebate  
20 amounts were quite small, it was very common to see one  
21 \$2 to \$10 rebates. You may see a few of those today.  
22 But for the most part the rebate amounts are considerably  
23 higher now.

24 There's another type of offer which is pretty  
25 common now, too, and those are rebates on services, as

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1       opposed to just rebates on products. And with services  
2       will typically come probation periods where you ask the  
3       customer to wait a period of time to prove that you are  
4       still on contract, or a customer in good standing, before  
5       you're eligible for the rebate.

6                Ten years ago there was another type of  
7       promotion, which was you would mail away for a kit, or  
8       you would mail away -- what was really popular was  
9       mailing away for a cookbook. Some of these offers would  
10      take place around the holidays, they were extremely high  
11      volume offers. And that type of promotion has  
12      essentially been eliminated by the web. There is  
13      absolutely no need to mail away for those items any more.  
14      You can go download those items on the web now.

15              Ten years ago there were, there were  
16      essentially a lack of, well, the technology didn't exist  
17      to communicate with a customer in a couple of additional  
18      ways that we're able to do today. For example, IVR  
19      wasn't as popular, so we're now able to make IVR  
20      applications available to customers so that they can call  
21      us and check their status.

22              Pushing email status to customers ten years ago  
23      was virtually unheard of, but seven years ago began to  
24      show up. And then of course web status, where the  
25      customer is able to check the status by themselves.

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1                   And this is something that I find is almost  
2                   ironic, but the same small office home office products  
3                   that have become so popular with rebates, and that have  
4                   been the highest volume rebaters, are actually the  
5                   products, and the services that made it possible for  
6                   customers to voice their concerns about rebates.

7                   And on average what I watched, in a well-  
8                   constructed offer roughly 90 percent of customers will  
9                   qualify. In other words, if we receive 100 pieces of  
10                  mail about 90 percent of those pieces of mail will  
11                  qualify. And I haven't seen that number change much over  
12                  the past 10 years.

13                  And then I can speculate a little bit about how  
14                  rebates will continue to change, at least some things  
15                  that I hope are going to change. I hope that clients  
16                  will -- our clients will continue to fund rebates faster  
17                  so that we can get checks out to customers more quickly.

18                  There is a great deal of pricing pressure on  
19                  us, the fulfillment companies. So I suspect that we'll  
20                  see more and more outsourcing of various parts of our  
21                  process.

22                  Premium items today exist, but I think they're  
23                  almost going to go away. A couple of different factors:  
24                  their shipping expense, the availability of the product.  
25                  Now let's say laptop batteries, for example, are really a

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1 good premium offer that still exists because they're  
2 highly complementary to the product that was originally  
3 sold. But as the production of those batteries gets  
4 outsourced getting a hold of those batteries on short  
5 notice becomes more difficult.

6 I think that prepaid rebate cards will replace  
7 some checks. You know, checks have been around for a  
8 long time, they're quite established. We haven't had  
9 much that's novel, and it looks like rebate cards could  
10 be something novel and exciting.

11 And then I also think that retailers and E-  
12 tailers are going to control more of the rebate process.  
13 And we're seeing quite a trend in that direction today.

14 Thank you.

15 [Applause.]

16 MR. MULHOLLAND: Thanks, Tom.

17 Our next speaker is Stuart Patterson, who is  
18 Senior Counsel at Hewlett-Packard. Stuart has worked at  
19 HP since 1997. Prior to that he practiced in San  
20 Francisco with the predecessor firm to Bingham McCutchen.  
21 Before law school at UCLA he worked on the legislative  
22 staff of Senator Bob Packwood and especially in regard to  
23 the commerce committee jurisdiction.

24 MR. PATTERSON: Good morning. Am I better  
25 there? Great, thanks. Apart from that I'd like to thank

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1 Matt and Kerry and Linda and Joe for inviting me here to  
2 speak. I didn't realize they were turning people down  
3 for panels, or I might be out there with you. And things  
4 like that.

5 I've been asked to kind of come and comment  
6 about ten reasons why, why do we do this, and what  
7 motivates us from a manufacturer's perspective and  
8 things. You've gotten a lot of insight already from the  
9 previous speakers.

10 The thing and in Tim's position, the first  
11 reason, and by far the most powerful reason is what we  
12 call demand generation. If the three rules of real  
13 estate are location, location, location, the three rules  
14 for us as rebate providers is demand generation, demand  
15 generation, demand generation. To draw attention to your  
16 products to increase sales to get the lift that Tim  
17 talked about.

18 I also wanted to touch on why we do it. Also I  
19 will be speaking to some of the challenges we see when we  
20 do it. We obviously want to do it. They allow us to  
21 target and see a return on an investment on an effort, on  
22 a promotion. What do you get back for what you've done.  
23 You see the lift and you can measure it and quantify it.

24 It's challenging to administer, because one  
25 reason we're here debating, consumers sometimes find the

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1 process frustrating.

2 We also in a regulatory environment have not  
3 only the Commission watching us, but numerous state  
4 regulators and enforcers, and a plaintiff's bar looking  
5 at you carefully. And there are numerous state statutes  
6 around price optics and things, so things you can do in  
7 general you'd like to nationwide you have to watch your  
8 marketing collateral. HP is gifted with a very vibrant  
9 and lively channel, which helps us a great deal with  
10 that, because they actually practice and work in those  
11 areas and can often inform us of those concerns.

12 And speaking of that, I would note as I got  
13 here without the hearing the FTC standard disclaimer  
14 about things. I would offer one of my own, I'm going to  
15 do my best to answer your questions and talk about our  
16 practices. I have some limits around confidentiality and  
17 privacy of our resellers and customers that may limit  
18 what I can say here today, or how far my comments might  
19 be read.

20 Number two, is the competitive response.  
21 What's going on there is not only that boy we're doing it  
22 because my brother's doing it, and I know how much Lesley  
23 and Eileen love hearing that explanation. But it also  
24 goes into the area of rebates allow somebody,  
25 particularly with a long lead time and sell-in, like with

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1 a lot of our products, to react to things in the  
2 marketplace. Someone may be coming out, someone who may  
3 have provided this laptop to the FTC. Because of the  
4 nature of their selling motions on the internet can price  
5 and do things much more dynamically than somebody who  
6 operates primarily through a channel.

7 So throwing a rebate at something, promoting it  
8 and developing it allows you to help respond to pricing  
9 pressure and makes of technology that's out there.

10 That's something that's very important to us.

11 Number three, improve and change the customer  
12 experience. This touches on what Tom was talking on of  
13 premium products primarily. A lot of our rebate offers  
14 when they were premiums in the premium area give you a  
15 taste or example, a prime example is an HP media pack of  
16 new and different paper. Maybe you will use your  
17 technology in a way you hadn't envisioned before. Maybe  
18 we'll give you some software that will expand the time  
19 you spend with it, and surprise and delight you with how  
20 you'd do it.

21 I would take a little issue with one of the  
22 things Tom said about the web doing it in because it's  
23 downloadable. I would agree the web has contributed to  
24 why you're seeing fewer of these, at least from us. One  
25 thing is they are very hard to manage because the web,

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1 it's very hard to control your target and demand on it.  
2 Word gets out about these things. And we have had a lot  
3 of dissatisfaction from our channel and from customers  
4 when you run short of the product. And even when you  
5 follow your mail order rule and do everything and notify  
6 you're going to get it to them, if people want their  
7 Halloween cookbook and pumpkin printing card ideas they  
8 really, you know, and marketers heard me explain this,  
9 they don't want it in November. Right? So it is a risk  
10 and a dissatisfier.

11 One way in wish fulfillment is being taken out  
12 of the premium thing is not only is are we cutting down  
13 on it, but we're trying to do it more at the reseller  
14 point of sale level. So you may come to the checkout  
15 with a qualifying purchase, and actually handed the kit,  
16 so you get it right there, and we can keep a much better  
17 tap on the amount and numbers of it, as well as  
18 expectations.

19 The other way to do it, the other reason we do  
20 it, that's very big for us, is a long line of consumer  
21 and small medium business products is to expand your  
22 product line and extend it. HP has moved into digital  
23 photography with a vengeance. We have Snapfish kind of  
24 things. When you buy a printer you may be offered a  
25 hundred free prints, or a discount or something of that

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1 nature. It's a way also in a bundled rebate to bring  
2 somebody in and offer a new experience for them.

3 Challenge products. [Microphone interference.]  
4 Am I too soft or too loud? It's just me, okay.  
5 Challenge products. This is a euphemism for when we have  
6 a miss. You may have a forecasting error, you may have a  
7 signal that isn't correct from the market and something  
8 comes out. You need to move product to get somebody new  
9 in.

10 Tom mentioned the automotive industry. We're  
11 all familiar with the year-end rebates that come in from  
12 that thing. It's no different in consumer electronics.  
13 We want to bring something out and push it in, it may be  
14 the competitor has landed with something that's more  
15 dynamic. So that may be something where you want to get  
16 a rebate in there as well. Life cycles really do drive  
17 us.

18 [Microphone issues.] No problem. Is that  
19 better? Okay, great.

20 See HP technology. It will work for you.

21 So the other big one my previous panel members  
22 have touched on is what we call 'customer touch.' This  
23 is it gives you an opportunity at all levels when you  
24 offer a rebate to have some interaction with the customer  
25 at the reseller level. If someone comes in and inquires

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1 about an advertised or promoted rebate it allows their  
2 customer service representative to say, hey, you know,  
3 you're interested in that, here's a complimentary  
4 product, or here's something else that may help a  
5 talented reseller who manages a market basket approach to  
6 a customer a way to maximize their interest, and  
7 hopefully add greater services or products to what their  
8 customer might be leaving their store with.

9 For us, obviously, and again mindful of  
10 concerns over consumer privacy, and HP is a strong opt-in  
11 company, you checked off the box and hopefully you will  
12 invite us to entice you with more rewarding and  
13 delightful offers about the product you just purchased  
14 from us, and you'll do that as part of the rebate  
15 service.

16 Tom also talked about web fulfillment. And  
17 that interaction where you're now being sent messages  
18 back and forth, it's an idea to show you that we progress  
19 and care. And the point was also made about particularly  
20 in technology products we give you the means to  
21 communicate with us and talk with us about it, and  
22 customer touch in developing some of the ways to help  
23 teach you and familiarize you with the capabilities of  
24 your product.

25 Market expectations. This is a kind of general

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1 rationalization for you do it so long that everyone  
2 expects you to do it. Again, rebates in the auto  
3 industry is a prime example. Being invited to come speak  
4 at this panel has caused me to focus a little bit more at  
5 where I'm hearing these offers. A couple of weeks ago  
6 during a spring break drive, I don't know whether this  
7 was a national or regional campaign, but a car  
8 manufacturer was putting an ad out playing on the sound  
9 frogs made of ribbets, ribbets -- rebate, rebate, rebate,  
10 to try and get people to come in. And I listened to it  
11 several times in the course of a lengthy drive, never  
12 heard the amount, you know, just the fact we're offering  
13 it that is going to get you to come in and hopefully  
14 think about this spring purchase of a new car. And  
15 that's just one example of it.

16 Sometimes we assume we're going to rebate  
17 because we do it so often, and I see the business people  
18 make the calculus wait a minute, this product doesn't  
19 need this or it's not wrong -- it's not right at this  
20 time, we can go forward and do it. But you actually get  
21 into an area of expectations.

22 And then you get into customer and distribution  
23 partner demand. I don't know if Tim had it in the rest  
24 of his slides, and I don't have an analytical approach to  
25 it, but as somebody who has been working in this area for

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1 well over seven years, I am amazed at hearing why people  
2 submit rebates and what they do with them. And we get,  
3 you know, we do get complaints, plenty of them. But we  
4 also get lots of thank you's. And it is fascinating to  
5 me how internal domestic economics, you know, somebody --  
6 we have acquaintances who use it to fund college  
7 education. I find that not advisable, but interesting,  
8 interesting.

9 [Laughter.]

10 MR. PATTERSON: There are others who use it for  
11 a night out, you know, comes in, thank you, kind of  
12 thing. Also people who count on it. Again, in a  
13 business like ours with a consumable business attached to  
14 it to fund the next purchase of the consumable, and it  
15 kind of makes them feel better about spending that kind  
16 of money on that. Just kind of interesting.

17 Finally, or not finally, next, the brand.  
18 Classic area here is bundled rebates, where if you can  
19 present a compelling package of rebates to a reseller or  
20 to customers you might draw more attention in a Sunday  
21 circular, you might draw it in store. It might be  
22 very -- somebody might realize, oh HP, they do hand-helds  
23 as well. The Commission knows all about that. But you  
24 have a chance to kind of hopefully aggregate your share  
25 of eyeballs or your share of customer awareness.

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1                   It's something as an adult survivor of a  
2 kitchen remodel, why all the appliances in my kitchen I  
3 couldn't make a decision, but oh there was a group rebate  
4 on it.

5                   Being it's time to wrap up. The final one is a  
6 marketing alliance idea. The best example in technology  
7 that many of you are familiar with, and regulators are  
8 familiar with, is the internet service provider offer  
9 that drew a lot of attention at the height of the dot com  
10 boom, and continues, that you try and partner with  
11 another brand that's on the move or on the rise, and it  
12 shows that you are compelling and interesting in today's  
13 market.

14                   Many of you have one of these. I'm holding up  
15 a cellular telephone. For the record, that is turned  
16 off, Lesley. And you're aware that you see the service  
17 provider and the handset provider put something together  
18 to kind of make a really compelling choice in that kind  
19 of thing.

20                   So the final thing to wrap up, for those of you  
21 who are bored in your next conference call, go to  
22 YouTube, search the word *rebate*, and you'll see something  
23 that will touch on Tom's point about how long these have  
24 been around. And, again, observe all intellectual  
25 property laws. You will see a Bill Cosby ad for a Texas

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1 Instruments personal computer touting a mail-in rebate.  
2 It's got to be early Cosby Show era, and he's sitting  
3 there and the bulk of the commercial is explaining how to  
4 file for a rebate, like you call, and it's totally  
5 different from where consumers are now. And thinking  
6 about it you'll also see a Portugese hand game called  
7 *Rabatae* (phonetic), and then you will, you will also see  
8 a five-minute seven-second blues jazz riff from a  
9 disgruntled customer of a cellular telephone rebate,  
10 which is entertaining, and, again, puts something towards  
11 the manufacturers of something else we need to be aware  
12 of of how someone can comment on what we're doing.

13 Thanks

14 [Applause.]

15 MR. MULHOLLAND: Thanks, Stuart. We're going  
16 to open it up for questions. And I wanted to start with  
17 a visitor.

18 MR. SYME: Thank you very much. My name is  
19 John Syme, I'm a lawyer with the Department of Justice  
20 from Canada. And I had a question for Professor Silk in  
21 relation to how consumers value rebate offers as compared  
22 to offers of a straight sale price type representation.  
23 And I'm wondering whether or not there are any studies  
24 that look at that issue, and look at sort of transaction  
25 utility in terms of, for example, on a given product

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1           whether or not a consumer would value a rebate offer of  
2           say 40 percent at say and compare that to say a 30  
3           percent or 20 percent straight sale price offer on that  
4           same product.

5                       MR. SILK: To my knowledge there's nothing  
6           that's done that. I've run some studies where I had the  
7           same percentage off, and I ran it as a sale versus a  
8           rebate. Because I was wondering if there's a perception  
9           that rebates are offered on inferior products. And I do  
10          get that. I asked them what you think this product is  
11          really worth that's less when it's a rebate than when  
12          it's a straight sale. But I don't know why that is. But  
13          it's not a strong effect. And it's definitely something  
14          we're studying, it's just lower down on the list of the  
15          things that we had on priorities. But if I find out more  
16          about it I'll definitely let you know. But unfortunately  
17          to my knowledge no one's really done that.

18                      On the quantitative side, we would like to get  
19          data from firms or from retailers where we can look at  
20          equivalent coupons versus rebates, versus straight  
21          discounts, and really look at how sales lift is affected  
22          by the format of the discount delivery. But, again, we  
23          don't have data on that. If anyone wants to provide it  
24          we can definitely look at it.

25                      MR. MULHOLLAND: I have one question for Stuart

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1 and Tom, and that's in regard to the incentive structure  
2 that fulfillment houses have. Could you talk a little  
3 bit about how that works? In other words, how does like  
4 your client monitor your performance in regard to say the  
5 rate say rejects that you have? Or exactly how does that  
6 work, and does it vary among different fulfillment houses  
7 and manufacturers?

8 MR. DIFFLEY: I'm sorry, I don't understand.

9 MR. MULHOLLAND: Well, what I'm thinking of is  
10 the example I'm thinking of is say in the automobile  
11 dealer, as far as warranty repairs are concerned, there  
12 has to be some sort of check there or the dealer just  
13 everything that comes in they call it a warranty work and  
14 they go ahead and do it. And is there some way or other  
15 that how they monitor your work? Let's say if you went  
16 ahead and accepted every single rebate offer that came  
17 in, as opposed to rejecting a certain number of them, is  
18 there some feedback you get from them regarding the  
19 percentage of rebates that you reject?

20 MR. DIFFLEY: Our clients can and do audit  
21 frequently, and they're looking at a couple of different  
22 things. They're looking at the quality of our data entry  
23 work, and then they're also looking at the speed of our  
24 work. But the way that we communicate the quality and  
25 the service to the client in between audits is through

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1 reporting. So this data is available to the client at  
2 all times. And part of it is reinforced through the  
3 invoicing process, because when we're looking for funding  
4 we have to provide invoices to the client for those  
5 customers who've qualified as well as the supporting  
6 documentation or, yeah, I guess the supporting data, for  
7 those qualifying customers.

8 Does that answer the question?

9 MR. MULHOLLAND: Yeah, okay.

10 MR. PATTERSON: So I guess my answer is pretty  
11 much the same. I mean, we manage our rebate vendor of  
12 which there is normally primarily only one, for  
13 simplicity sake, in the consumer space at least. You  
14 know, there are regular audits to see how well they're  
15 performing and how soon we're getting things out. There  
16 also are regular I think they may be weekly now, I don't  
17 know, they may be less, on if issues crop up, you know,  
18 with -- the complexity is really the hidden issue in a  
19 lot of these issues I talked about bundling and branding  
20 and things like that. And if we have a miscue we may  
21 know to, wow, that's coming in low, you want to lower  
22 your throttle on the qualified, you know, and allow more  
23 qualifieds to go through. That's just good business.

24 Back to the customer touch point, I obviously  
25 it's news to me the Soyo decision. But the comment I

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1 would make to that kind of treatment to customers is you  
2 are serious about your brand and in your interest it is  
3 far less expensive to pay a rebate to a nonqualified  
4 person than to anger a customer who potentially needs to  
5 come back and buy your brand again. And that tends to be  
6 our philosophy going forward with the eye towards there  
7 is the issue on the other side of consumer fraud. That  
8 there are people who are brilliant at working ours or our  
9 fulfillment house's systems to get more than they're  
10 entitled to by leaps and bounds. So it's a tension  
11 there.

12 MR. MULHOLLAND: We have room, we have time for  
13 one more question. Is there any question from the  
14 audience?

15 MR. GLASSER: Well, first I'd like to just say  
16 very quickly to Mr. Silk -- I'm sorry? Oh yes, Roy  
17 Glasser, E-journalist and consumer advocate.

18 First, I got to speak very quickly to Mr. Silk.  
19 I was very impressed with everything you said, but my  
20 research doesn't match yours.

21 I find that there are three types of rebate  
22 people. One of those, one is people who are buying  
23 something they really need like a washing machine or a  
24 refrigerator, and their response is going to be one kind.  
25 The second kind of rebate are the free after rebate, and

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1 the response from that is going to be much higher. And  
2 the third kind I would refer to simply as the casual  
3 rebate, and that kind of response is going to be much  
4 lower, some of those people don't care. And in both of  
5 the last two categories there are people who specifically  
6 are looking at the price because -- I'll get to that in a  
7 moment, but they are looking at the price and decide to  
8 buy solely on the price instead of and knowing they're  
9 not going to submit the rebate.

10 As far as the price goes, I see that even  
11 though items are coming up for sale and it's illegal to  
12 change the list price for the sale, the list prices are  
13 being changed for the sale, as though there's a  
14 difference in mark. Sometimes it goes up, sometimes it  
15 goes down.

16 I'd like to speak very quickly now to  
17 Mr. Diffley. You said that you don't have an interest in  
18 disqualifying rebates. You're an exception, sir. Some  
19 of the rebate processors advertise the high rejection  
20 rates as high as 25 percent that they have, in order to  
21 solicit business. I don't want to mention a company  
22 because someone from Parago will be here speaking, but  
23 this is happening, and not just from one company.

24 So if I could? Well, I've taken up enough  
25 time. Somebody else wants to speak.

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1 MR. MULHOLLAND: Well, thank you very much.  
2 This marks the end of this session. I'd like to thank  
3 all three panelists. I think this was very informative.

4 [Applause.]

5 MR. MULHOLLAND: And very much sets the stage  
6 for the remaining sessions. We'll take a 15 minute break  
7 now. And I would remind you again about filling out that  
8 survey, because that would really help for the afternoon  
9 session. 10:30.

10 Okay, 10:30, please for coming back.

11 (BREAK)

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**PANEL 2: REBATES: OPEN THE ENVELOPE AND CUT THE**

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1                   **CHECK: WHAT COULD GO WRONG?**

2                   MS. O'BRIEN: -- Federal Trade Commission, and  
3                   also the moderator of our next panel. And just to let  
4                   you know, again, all the PowerPoint presentations will be  
5                   on the website as soon as we can get our act together  
6                   tomorrow. So you'll all be able to see them.

7                   And I have a question for you. When consumers  
8                   send in their rebate forms, I mean they are just not  
9                   confident they are going to get their rebate check in the  
10                  mail. And I guess the answer to my question, you know,  
11                  is why is this, why is this happening. I think it's  
12                  either the reality, well, it's certainly the perception  
13                  that everyone's had a bad experience with rebates, or  
14                  they certainly know someone who has.

15                  And this panel is going to explore situations  
16                  where rebate offers have gone bad, or may go bad. And  
17                  hopefully the panel will set the stage for some of our  
18                  later panels that will talk about solutions to some of  
19                  these potential problems.

20                  With me today is Joe Ridout. He's with  
21                  Consumer Action. Consumer Action is the national non-  
22                  profit education and advocacy organization. And it's  
23                  been advancing consumer rights for three decades,  
24                  something like that, three and a half decades. And  
25                  during this panel Joe's sort of our voice of the

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1 consumer.

2 We also have with us Hal Stinchfield, who is a  
3 recognized expert in the field of rebate advertising.  
4 Currently he's working as a consultant working with  
5 marketers to develop and deliver more consumer-friendly  
6 rebate offers. So Hal today is sort of our eyes of the  
7 industry.

8 And finally, with us is my colleague Dean  
9 Graybill of the FTC. And he's going to be giving us a  
10 sort of law enforcement view of rebate advertising, and  
11 explain some of the bad consequences that can be  
12 [microphone interference] that fail to keep their rebate  
13 promises.

14 Of course, we all know the saying we learn from  
15 our mistakes, and hopefully during this panel we'll be  
16 able to learn from the mistakes of others.

17 So without further ado, I'll put on Joe,  
18 [microphone interference] before I get electrocuted.

19 MR. RIDOUT: Good morning. Can everybody hear  
20 back there? Might give it a little more. Thanks a lot  
21 for having me. It's a great honor to be here. My name's  
22 Joe Ridout. I'm with Consumer Action, as was mentioned.  
23 We're a consumer defense and education group that sends  
24 out about two million pieces of free information to  
25 consumers and other groups all over the country, and up

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1 to eight different languages every year.

2 We also maintain a hotline that receives a lot  
3 of complaints, or other kinds of comments from consumers  
4 about what they're experiencing in the marketplace with  
5 different companies. And rebates is one of the areas in  
6 which we hear a lot of different stories from consumers.

7 So I'm here to talk a little about the consumer  
8 side of the rebate experience, some problems that can  
9 arise, and what to do about it. I guess one thing we  
10 hear sometimes is that when there's a product defect  
11 rebates can be a dicey proposition, like with that  
12 microphone there. So hopefully this was not ordered on  
13 rebate.

14 [Laughter.]

15 MR. RIDOUT: Rebates have been characterized at  
16 times, at different times a tax on the disorganized, a  
17 reasonable tradeoff of consumer's time for money. Or  
18 sometimes when things go bad, as a ripoff that wasn't  
19 worth the time and aggravation that was invested in the  
20 process. Unfortunately, many consumers sometimes come  
21 away with the experience of rebate, emphasizing the  
22 'bait' part of the rebate, and it leaves a bad taste in  
23 one's mouth who's been denied a rebate that they felt  
24 they were entitled to.

25 Retailers at times see rebates as attractive.

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1 We're seeing a couple of retailers getting out of the  
2 rebate business, but many retailers still see rebates as  
3 attractive because they get to induce sticker swoon, the  
4 opposite of sticker shock, and entice consumers into  
5 buying products they might not always have been disposed  
6 to do so. Retailers can reap the benefits of advertising  
7 a lower price than they necessarily have to deliver to  
8 everyone.

9 Consumers for their part can find a terrific  
10 deal on certain items, but they often face a series of  
11 confusing and irritating obstacles in order to claim  
12 their rebate. For example, a rebate customer customarily  
13 must save the receipt, obtain the proper form or forms,  
14 fill out the paperwork completely, enter the product  
15 codes or offer codes, dissect the box the item came in,  
16 and submit the proper UPC code, send in all the  
17 documentation under the deadline, wait for a check to  
18 arrive months later probably will look a lot like junk  
19 mail, and then cash or deposit the check before it  
20 expires in a short amount of time. So consumers are  
21 faced with what seems at times like an endurance race of  
22 hoop jumping, and it's not a surprise that problems arise  
23 along the way.

24 It's no secret that many rebate companies try  
25 to encourage mistakes on the part of consumers. We

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1 recently saw on the part of Parago, the company behind  
2 Circuit City rebates, receive patent number 7120591 for a  
3 rebate processing system. This is from the application:

4 'The rebate processing system provides a user friendly  
5 interface, yet retains hurdles sufficient to maintain  
6 breakage.' Breakage, of course, rebate denials.

7 Consumers do make mistakes, and that's a lot of the  
8 reason why rebates go bad, to be sure. But that's just  
9 part of the story. And there are a lot of companies  
10 spending a lot of time and money trying to maximize how  
11 many of those mistakes consumers can make, and increase  
12 breakage, or rebate denials.

13 This is more from the application. 'By  
14 requiring post-purchase activities, the rebate offer  
15 attempts to reduce the number of successful rebate  
16 claimants.' And it goes on, 'Because rebate programs  
17 offer the potential for breakage, manufacturers can offer  
18 more valuable rebates compared to a straight reduction  
19 product price.'

20 So it's no secret. Some rebate companies  
21 freely admit that they are in the business of  
22 discouraging or denying rebates, as much as they are in  
23 the business of fulfilling rebates. And to be sure, some  
24 consumers are trying to game the system as well. It's  
25 not as though there's one party completely out to dupe

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1 the other, it's more the system being a game than  
2 consumers or the industry trying to game the system.  
3 There's a number of consumer websites out there, for  
4 example, that try to identify free after rebate items, or  
5 even unusual circumstances where someone could actually  
6 make money by buying a product, presuming that all the  
7 rebates go according to plan.

8 So sometimes, in some ways rebates can  
9 represent a strange convergence between consumers who  
10 want something for nothing and companies who want to give  
11 nothing for something that they promised as part of the  
12 original deal. So not surprising, this leads to a lot of  
13 problems. And I'll go into discussing how these impact  
14 consumers, and what we've heard from people about these  
15 experiences.

16 As I said, we maintain a hotline at Consumer  
17 Action where people call in and report what kinds of  
18 experiences they have, negative or positive. Some of the  
19 main rebate issues we hear are about items that were  
20 purchased as a gift, and they failed to qualify for the  
21 rebate because the original box went to the gift  
22 recipient, and they were unable to redeem their rebate.  
23 Rebate checks that were supposed to be mailed within say  
24 three months and arrived say nine months. These are all  
25 garden-variety complaints. We get forms that were

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1 properly completed but then denied.

2           Some of the more interesting ones involve a  
3 problem with the packaging or lack of information about  
4 what the rebate form should include. We heard from one  
5 consumer recently who bought a memory card and was  
6 eligible for two different \$20 rebates. On each form he  
7 had to put the serial number of the card. He couldn't  
8 find out where exactly the serial number was, so he  
9 included the number on the side of the box thinking it  
10 would be the best solution. It turned out the number was  
11 etched on the card itself, and it was a number you  
12 couldn't actually see with the naked eye, you needed a  
13 magnifying glass to see it. So better disclosure in  
14 these kinds of cases about where to put the pertinent  
15 information on rebate forms is really the least we should  
16 expect going forward.

17           Some consumers, it's interesting, find rebate  
18 forms so confusing and so intimidating that they enlist  
19 the help of salesmen of the product at the point of sale  
20 to help them fill out the rebate forms. And this, in  
21 itself, can create more problems should the salesman fail  
22 to fill out the form properly himself. Because we've  
23 heard, like I said, we've been hearing increasingly from  
24 consumers who have tried to get someone where they bought  
25 the cell phone or bought the computer to fill out the

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1 form for them because the consumer approaches sometimes a  
2 rebate with the sense of impending disaster, and they try  
3 to minimize the chance of that. But sometimes the  
4 salesman makes the same mistake filling out the wrong  
5 forms, switching a number, in this case the same result,  
6 a denial is what happens to the consumers.

7 And if the rebate is so confusing that people  
8 at the point of sale can't fill them out properly, here  
9 we have a serious problem, and there's no reason that  
10 these kinds of problems should be affecting people, if  
11 people even selling the products are having difficulties  
12 filling out the rebate form.

13 We heard a little earlier about how rebate  
14 companies are replacing check rebates with prepaid gift  
15 cards. It's certainly a trend that we're hearing about.  
16 And some consumers have been frustrated by this, because  
17 for example in California many people are aware or  
18 they've heard that gift certificates can expire in  
19 California. But they're not aware that bank-issued gift  
20 cards can, they certainly can, they usually begin to  
21 expire after six months, and that's the case with most of  
22 these prepaid gift card rebates as well. So many  
23 consumers are surprised to see their rebate dying a slow  
24 death when they thought it was just a gift card, a credit  
25 card, that would be just as useful and have the same

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1           longevity as a normal credit card or normal gift  
2           certificate from a store. That's not the case. And it  
3           takes some people by surprise.

4                        I should add there's been something of a  
5           backlash against rebates lately. Best Buy and Office Max  
6           are examples of a couple of retailers who really have  
7           washed their hands of rebates and have tried to get out  
8           of the business, because they found that so many consumer  
9           complaints were beginning to drag down the retailer's  
10          reputation. Others like Staples have moved towards  
11          processing rebates electronically, and removing some of  
12          the possibilities for things to go wrong. And really all  
13          rebates could be processed online. Although as I'll  
14          mention in an example in a second about how merely  
15          including an electronic component of submitting your  
16          rebate does not guarantee it's going to be any easier for  
17          the consumer.

18                       But more than the kinds of outright fraud or  
19          deliberate denials of rebates that were properly  
20          submitted, we hear more about ingenuous ways in which  
21          people can trip up, or rebate forms that have devilish  
22          little details that people often have great difficulty  
23          following.

24                       We heard from Eileen Harrington earlier about  
25          the case of InPhonic and Wirefly, and we heard a lot

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1 about these guys as well. They were offering substantial  
2 rebates for purchasing a cell phone, often \$200 or \$300,  
3 and the catch was the rebate form had to be submitted no  
4 later than seven months, and that sounds pretty fair.  
5 But the problem was it couldn't be submitted any sooner  
6 than six months. So it was a maddeningly small window,  
7 and it was one of those offers that not surprisingly led  
8 to widespread denials. There's a saying in the tech  
9 industry, it's called, 'Broken As Designed,' Broken As  
10 Designed. And this is a good example of a rebate that  
11 was broken as designed. People were not supposed to  
12 complete this, and it was designed with the intent of  
13 maximizing denials, rather than maximizing fulfillments.

14 We've been getting a lot of complaints about  
15 some -- a problem with direct rebate processing company  
16 called OnRebates. And it's interesting because this kind  
17 of represents a strange convergence between mail-in  
18 rebates and the new electronically-submitted rebates.  
19 With some of the OnRebate submissions they really are  
20 kind of like a Frankenstein-like hybrid of the worst  
21 elements of a mail-in rebate and an electronic rebate.  
22 The way it works with many of the rebates is the consumer  
23 has to go online, fill out a complex registration form,  
24 and then receive an email from the company acknowledging  
25 that the registration's complete, email the company back,

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1           then return online to complete that part of the  
2           registration process. But at that point they have to  
3           print up a rebate form, they have to fill it out  
4           manually, they have to cut out the UPC code, and guess  
5           what, they have to mail in all the documentation anyway.  
6           This is something that really doesn't serve the consumer  
7           at all, and it's really a good example of traps being set  
8           in the way of the less-sophisticated rebate submitter.

9                         So even when we have an electronic component  
10           that doesn't necessarily guarantee it's going to be any  
11           more user-friendly. And the OnRebate example is  
12           something that we take note of.

13                        The same company, it's interesting, too, they  
14           coincidentally they offer an option to process rebates  
15           more promptly in which basically they rebate back to  
16           themselves a portion of the rebate the consumer is  
17           entitled to. For about 10 percent of the rebate OnRebate  
18           promises to expedite the rebate processing, and from what  
19           we understand it really does expedite it significantly.  
20           But frankly, if this option's available it should be  
21           available to everyone, and it's deceptive to offer it  
22           only to those who are willing to pay 10 percent of the  
23           rebate back to the rebate company.

24                        Consumers also have privacy concerns. People  
25           feel sometimes like they're giving away their personal

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1 information without a lot in it for them. Sometimes that  
2 personal information can be just as much value as the  
3 rebate itself.

4 But we're encouraged by what the FTC is doing  
5 to defend consumer rights. We're very encouraged by the  
6 steps they've taken that were mentioned earlier this  
7 morning. We're also encouraged by some state actions,  
8 such as New York with AB8436 that requires strict  
9 deadlines for sending rebate checks, requiring forms to  
10 be more accessible to people who want to fill out rebate  
11 forms, and that companies have to accept copies of  
12 receipts rather than original receipts. These are fairly  
13 common sense solutions that can help consumers avoid  
14 these kinds of problems.

15 I should add that consumers themselves have  
16 been taking matters into their own hands to some extent.  
17 Consumer-generated websites like Fat Wallets, Slick  
18 Deals, or Rebate Place, all have helped share in  
19 disseminating information about how to contact rebate  
20 fulfillment houses, tips on how to make sure your rebate  
21 gets to the finish line, and which companies tend to  
22 cause the most problems, so that some of these problems  
23 can be avoided or at least identified.

24 So that's about all I have here. And I thank  
25 you very much.

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1 [Applause.]

2 MS. O'BRIEN: Next will be Hal. So thank you.

3 MR. STINCHFIELD: Today I'll give you a brief  
4 introduction of my background, so that you can see the  
5 perspective from which I'm looking at this topic. We'll  
6 talk about some of the most common misconceptions about  
7 rebates; consumer and marketer challenges with rebates;  
8 some of the fulfillment provider issues; what I think  
9 needs to change in order to help improve this process;  
10 and when a marketer knows that they're headed for  
11 trouble.

12 I'll start by dispelling any rumors and suggest  
13 that, yes, I have been in the business for 30 years.  
14 And, frankly, the Federal Trade Commission was not  
15 interested in all in rebates when I began, and there's a  
16 very good reason for that. Rebates were a quarter, that  
17 was a 25 cent piece. Our biggest issue in that day, by  
18 the way, was when a quarter got sealed into a coin card,  
19 inserted into a number 7 envelope, and labeled on the  
20 outside of it, and somewhere in the mail stream someone  
21 would take that envelope and slug it like that and make  
22 the quarter come out the other end and that was a mail  
23 theft, and that was about it. So there wasn't much fraud  
24 back then.

25 I have managed over 50,000 rebates and consumer

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1 promotions for the Carlson Marketing Group; as an equity  
2 partner for Young America; also for Boomerang Marketing,  
3 which was an E continuity startup, which was the original  
4 transmission of proofs of purchase over the web; and also  
5 as the senior vice-president for Marketing Services. And  
6 today my interest is on educating marketers on how to do  
7 a better job with these offers so they can increase their  
8 efficiency, effectiveness, customer satisfaction  
9 (inaudible). Clients include Symantec Corporation,  
10 United Health Care, Lorillard, PayPal, Pfizer, and a few  
11 others.

12 There is one project that I'm working on right  
13 now that's kind of interesting. I'm working for a prime  
14 contractor to the federal government on a one billion  
15 dollar initiative for the NTIA, that's going to give us  
16 two \$40 coupons when our televisions go dark February 17,  
17 2009.

18 My memberships are Promotional Marketing  
19 Association, as well as The Society of Consumer Affairs  
20 Professionals.

21 One of the most common misconceptions about  
22 rebates is that they're somehow inherently problematic,  
23 that rebates are bad. That's not what I'm finding. The  
24 problematic issues and the problems are not because of  
25 the fact that they are a rebate. They are not tactic-

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1 specific, they're not marketer-specific, and they're not  
2 retailer-specific. They're all program-specific, and  
3 every program is different. And so they have to be  
4 analyzed on a one-on-one basis. So all this hubbub about  
5 the consumer complaints and what not are somewhat  
6 generalized. And we can go through some examples there.

7 All problems and all issues are emanated from  
8 offer structure, offer communication, and offer  
9 execution. I'm sorry HP is in the room right now, but  
10 this could have been anybody's, as could the next  
11 subsequent six slides. So try to disregard the names  
12 here. But when I first looked at this I saw that I could  
13 buy a monitor for \$599, but after a \$350 rebate I could  
14 actually get it for \$199. And the fact of the matter is  
15 that that's not true. I have to buy the monitor, I have  
16 to buy the tower, I have to buy a printer, I have to buy  
17 Turbo Tax, and probably submit my first born in order to  
18 get that down to \$149. Now this may not be considered  
19 deceptive by the Federal Trade Commission, but I can  
20 assure you that in many state jurisdictions it is in fact  
21 illegal, just by the way it's positioned. And so we want  
22 to watch out for offers like that.

23 This next one is extraordinarily challenging  
24 for consumers in the software space, where a lot of the  
25 software folks were saying, free, free, free, free, free,

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1 but if you read the fine print down below here you find  
2 out that you not only have to purchase their product and  
3 submit their proof of purchase, but you may have to  
4 submit a competitive proof of purchase from a product  
5 that you purchased over a year ago. I can't find  
6 receipts of purchases I made last week, let alone a year  
7 ago. So I say that that's a little difficult, especially  
8 in a condition where it's in such fine print here that  
9 you're telling the consumer here that they can get it for  
10 free. Sure they can get it for free if they submit their  
11 proof, the receipt, and the receipt from a previously  
12 purchased product. So we kind of want to watch out for  
13 offer structure and communication that looks like this.

14 Communication piece I'm generally referring to,  
15 however, is the copy on the mail-in certificate, which is  
16 where a great deal of the deception occurs, or perceived  
17 deception occurs. I try to be balanced in this issue, so  
18 I say "perceived" as well.

19 Here's another offer where I thought I could  
20 get a Sonic Care probably for about \$15, because if I  
21 submitted the middle panel I could get a \$10 rebate, and  
22 if I submitted on the lefthand side I could get a \$5  
23 coupon off, excuse me, \$10 coupon off -- I haven't  
24 memorized the slides clearly -- but I thought I could get  
25 this price way down; but it says in the fine print here

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1 that you can either have one or the other, either the  
2 rebate or the coupon but not both. Now that's a little  
3 problematic because this offer was delivered in a free-  
4 standing insert would probably hit a circulation of 52  
5 million pieces. So what I'm essentially doing is I'm  
6 going to alienate about a half a million people who may  
7 have been interested in this offer just by including some  
8 small type thing here that says I can only have the  
9 rebate or the coupon, but not both.

10 This next one, I don't remember the, I don't  
11 remember the manufacturer here, but let me just indicate  
12 one challenge here. Not only is this fairly busy both on  
13 top as well as on that lower righthand panel, but here's  
14 a problem for a manufacturer. This manufacturer is  
15 simply asking for the consumer to fill in their name,  
16 address, city, state, and zip code, and the UPC symbols  
17 from the products they purchased, when in reality all  
18 they have to do is go to the store, look for those  
19 products, fill out the UPCs, and go get their \$35  
20 virtually with no proof of purchase. So we try to act a  
21 little bit balanced here to say it's not the fulfillment  
22 provider, it's not the retailer, it's not the marketer.  
23 Marketers have issues as well with the way they structure  
24 their offers, sometimes to the point where that's going  
25 to cost them a lot of money.

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1                   This next one, and I love Pepsi, I've worked  
2                   for them for many, many years, but you don't need just a  
3                   magnifying glass to read this copy, you need a  
4                   microscope. And that's just plain unfair for guys of my  
5                   age, I mean I'll never get that \$10 rebate, I've got news  
6                   for you. And there are a lot of them out there like  
7                   that. And I think the next one is going to be even more  
8                   so. The one after this, maybe.

9                   I think cross-ruffs can often be a challenge.  
10                  I think this was a very short timeline program. They had  
11                  to buy a DVD and 92 packages of Brachs products. This  
12                  isn't the worst example I've seen, but it's still a  
13                  little bit challenging for the consumer. The fact of the  
14                  matter is, excuse me, with most of these offers we're not  
15                  thinking about -- as marketers we're not thinking about  
16                  how the consumer is viewing what we're delivering to  
17                  them. We just create them, a product manager creates  
18                  them, he hands it off to an agency, the agency goes and  
19                  executes, and by then than brand manager's off on  
20                  something else again. So when his job is sort of in the  
21                  can, if you will, he's off onto some other thing. So  
22                  evaluating a promotion post-implementation or post-  
23                  execution is rarely done on the marketer side, and I  
24                  would encourage them to do so.

25                  Here's another one. This is just a beauty. I

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1 can't read that no matter how high I blow it up. And I'm  
2 thinking, what were they thinking? First of all, I don't  
3 know the sponsor here, I don't who's paying for it, I  
4 don't know what the prize is, I don't know what the  
5 expiration date is, I don't know what I can get for it,  
6 but I can say that this offer ran again in a free-  
7 standing insert probably in a circulation of 52 million  
8 pieces. It ran four weeks later, I can understand why,  
9 they didn't get any entries the first time, so they had  
10 to spend another quarter of a million dollars to  
11 distribute 52 million more of them. And even if they did  
12 there's no call to action here, there's no real  
13 motivation for the consumer to send in, because if you're  
14 only offering one prize and your circulation was 104  
15 million, why would you bother? I hope whoever's it is is  
16 not in the audience. I could get eggs thrown at me, I'm  
17 telling you.

18 So what are consumers challenged by? Consumers  
19 are challenged by unclear offer requirements, multiple  
20 mail-in certificate versions for the same offer,  
21 different terms and conditions for the same offer, and  
22 that's fairly common. I know they're used a lot, but  
23 attaches in bundles and cross-ruffs are just they're hell  
24 on wheels for consumers, they just cannot comply with  
25 them. So we either have to restructure them or figure

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1 out how to recommunicate them.

2 And we saw the printer offer, so I won't go  
3 through that.

4 And the most challenging consumer offer these  
5 days that I hear about is a rebate request invalidated  
6 for a legitimately attempted purchase. They actually  
7 went out and did this and for some stupid little minor  
8 reason that really wouldn't affect the marketer's budget  
9 they got disqualified.

10 We also hear, you know, if a manufacturer  
11 offers a rebate, and I hear this from governmental  
12 agencies and the press all the time, if a manufacturer  
13 offers a rebate why do they make it so difficult to  
14 comply with? So we're kind of shooting ourselves in the  
15 foot when we make these offers but we don't do them in  
16 such a way that's going to encourage compliance and high  
17 customer satisfaction, and still be affordable and  
18 efficient for the manufacturer. It absolutely has to  
19 change.

20 Rejection letter copy; offer expiration dates  
21 too short, not enough time, you see that, there's a lot  
22 of legislation on that; unclear offer copy; and offer  
23 limits enforced but not obviously communicated -- that's  
24 the fine print on the bottom that says limit one per  
25 household but nobody ever sees it so they submit in four

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1 times for it.

2 The marketer challenges I experience, and  
3 things that my clients will come to me about will be, you  
4 know, many rebates fail before they begin. They don't  
5 have in-house expertise to design consumer-friendly  
6 offers, or the created is relegated to an agency, or as  
7 is most common, they operate in silos. You have  
8 marketing, you have sales promotion, you have consumer  
9 affairs, you have finance, and you have treasury, but  
10 they never talk about what's going on. So the programs  
11 really have to be evaluated both before they're delivered  
12 and afterwards. And in many organizations it's so  
13 political that the cross-referencing of those  
14 communication pieces never takes place. And, again,  
15 they're usually calling me when it's too late, after the  
16 phones have been ringing off the hook or they're hearing  
17 from some governmental agency.

18 Fulfillment providers are also a challenge. So  
19 we can't throw all the mud at them. They rarely get to  
20 review the offer copy in advance. Sometimes they don't  
21 even know about an offer until they start receiving the  
22 mail, and they go, what's this? And then they have to go  
23 through their setup procedures. They usually aren't  
24 considered at all during the development process, they're  
25 sort of the last one on the end of the totem pole. And

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1 often reject thousands of consumer requests, perhaps as  
2 the original specifications called for, but not  
3 understanding that they're alienating half of the  
4 marketer's constituency. The margins are thin so they  
5 don't often have time to pick up the phone and call and  
6 say, you know, we're getting too many complaints here.

7 And it's difficult for fulfillment providers to  
8 understand how vocal consumers can be. So that needs to  
9 change. I think they should at least be supplied with  
10 the offer copy in advance of the offer so that they can  
11 have a look at it, maybe give you guys some feedback  
12 about what might work and what might not work. The  
13 processing agreement must specify what threshold a  
14 fulfillment house must notify a marketer, and that's as a  
15 percent of invalids to valids, so that they're not  
16 disqualifying the 50,000 out of a 100,000 that we talked  
17 about before, Matt.

18 Marketers must be made aware the consumer  
19 complaints might not only cause consumers to stop buying  
20 their products, but it could also be unlawful behavior,  
21 as is the case in Section 5.

22 I would also encourage marketers to use more  
23 common sense. If it looks problematic, it probably is.

24 And the fulfillment industry must pay closer  
25 attention to the problems inherent in the traditional

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1 mail-in process that caused all of this attention in the  
2 first place. I mean it really is a joint effort between  
3 marketers, advertising, fulfillment providers, to sort of  
4 get together and say, geez, why would it take 18 weeks to  
5 fulfill something? You know, is that intentional, is it  
6 deceptive, are we telling the consumer? Is it full  
7 disclosure? This is going to be an extraordinary issue  
8 in the gift card space and the prepaid space, both  
9 closed-loop and open-loop, when we get to the point where  
10 we're talking about dormancy fees, we're talking about  
11 maintenance fees, we're talking about split-tender where  
12 they can't use the extra four bucks left on the card. I  
13 mean this is extraordinary, I mean it's extraordinary.  
14 Sure that's a valuable and efficient tool, but if you  
15 don't disclose to the consumer what the condition is for  
16 which they're getting this card, don't bother, stay away  
17 from them.

18 Fulfillment also should be more innovative in  
19 coming up with more consumer-friendly processes. That is  
20 happening, for those of you who don't know, it is  
21 literally possible to submit a rebate today, submit for a  
22 rebate today, and get it back tomorrow. That technology  
23 exists, and there are a few pioneers out there who are  
24 doing it.

25 Marketers need to take a more proactive role in

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1 training their marketing and promotion personnel, and in  
2 their sales promotion personnel. People don't do this on  
3 purpose. We don't design offers that alienate the  
4 consumers. I said once in Business Week that that would  
5 be akin to brand suicide. We know that most of them are  
6 not doing it on purpose. So let's change that, and train  
7 the personnel who are handling these offers.

8 We also need to perform analyses that will lead  
9 to measurable and actual improvements in their  
10 promotions. So let's look at the data, analyze it, get  
11 it objective in nature, and present it to whoever's  
12 responsible for executing these offers. Usually senior  
13 management has to get involved to break through some of  
14 the political silos that exist in some marketers.

15 I contend that each successive offer has to  
16 have a higher customer satisfaction rate than the  
17 previous offer. And I think marketing departments need  
18 to listen more closely to their internal and external  
19 contact centers.

20 I'm doing what Tom did earlier, sorry, missing  
21 my slides here. Okay.

22 When do marketers know they're in trouble? If  
23 they hear from Matthew, that's a problem. If more than 3  
24 percent of their consumers are on any given program are  
25 invalidated. Tom cited 10, it really depends on both

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1 offer structure, size, how many proofs, and so on and so  
2 forth. But a good benchmark, you want to look at about a  
3 3 percent maximum. So if you're going over that -- I  
4 evaluated about 25 for a pharmaceutical firm and 24 of  
5 them were well beyond that, starting at 300 percent  
6 greater than that and going up. So this happens all the  
7 time, and it comes partly from the fact that a lot of the  
8 sales promotion departments and marketers have  
9 disappeared these days, so there's really kind of nobody  
10 minding the store.

11 If you hear from a state senator or Better  
12 Business Bureau, if more than 1 percent of your consumers  
13 are contacting your contact center, internally or  
14 externally, and oh by the way, those numbers are usually  
15 not aggregated, so you have an internal call center, you  
16 have a fulfillment call center, and you have an external  
17 call center, each of them are getting 2 percent, 2  
18 percent, nobody's saying that oh my God 7 percent of our  
19 consumers are really angry with us and our offerings.  
20 And those things have to be looked at.

21 If you haven't done training sessions for your  
22 marketing and sales promotion and agency personnel, you  
23 absolutely must begin to do so using real live data, and  
24 kind of blurring those political lines internally, and  
25 say, okay, this is for the good of the company. It

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1 doesn't matter who did it or whose fault it is, or why  
2 this happened, we have to break through that clutter and  
3 get it done and just plain educate.

4 And then if you don't have regular reviews with  
5 your call center and fulfillment suppliers to find out  
6 what's gone wrong, so that you can aggregate that data  
7 and continue training and your continuous improvement.

8 And that's it.

9 [Applause.]

10 MS. O'BRIEN: Thanks, Hal. Next up is Dean  
11 Graybill.

12 MR. GRAYBILL: Good morning. Use this one  
13 here. I should start out with the standard disclaimer  
14 that any statements I'm going to make are not necessarily  
15 reflective of the Commission. I'm the only one required  
16 to say that. But what I'd like to do is really  
17 give you first a very general overview of what are the  
18 laws that even apply here. You know, in some areas like  
19 mail orders, we have a rule that's very specific about  
20 things you got to do and the hoops you got to jump  
21 through. Here that's not the case. So what you see is  
22 us applying two very basic doctrines.

23 One is deceptive acts and practices. Frankly,  
24 I view this as a common sense sort of thing. Now, it may  
25 have very difficult applications, but the idea is are you

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1 making a representation, express or implied, that leaves  
2 a net impression about the value of this rebate or the  
3 ease of it, or the hoops you've got to jump through.

4 And then there's another lesser used doctrine  
5 called unfair acts or practices, which is reserved more  
6 for the situation where the harm isn't really stemming  
7 from what people were told so much as the seller has done  
8 something to structure the transaction that puts  
9 consumers in a bind they can't get out of. A good  
10 example of that is, you know, they tell you well you got  
11 to send in the UPC code, but it turns out that a lot of  
12 people don't get a box that has a UPC code on it. You  
13 know, that's a structural problem with the offer.

14 Over the years we've brought a lot of cases  
15 against a lot of types of firms. We don't discriminate,  
16 we welcome all comers. Bumble Bee Tuna, actually that  
17 was one of my favorites, where it was an offer you got 75  
18 cents off on your next purchase. So you take the can  
19 home and you got to peel the thing off, and then turn it  
20 around to look what that offer is, the 75 cents off if  
21 you buy 5 cans of tuna. So that was a very popular  
22 promotion.

23 And it's funny, for whatever reasons you see a  
24 lot of, a lot of things in the tech area. I don't know,  
25 I'm sure there's reasons for that that are beyond me.

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1 But I use the words "taken by surprise" to really  
2 describe this deception authority, as opposed to the  
3 unfairness authority. And again, you know, we do run  
4 across firms that it's just out and out fraud, you know,  
5 outfits that from the get go are just offering a specious  
6 thing.

7 That's not really what we're talking about  
8 today. We're not necessarily talking about intentional,  
9 venal actions, there can be just people not being  
10 realistic about the offer they're making and making  
11 exaggerated claims for what's going to happen. And then,  
12 and this is the biggest problem, usually they fail to  
13 communicate the very important types of conditions, such  
14 as the ones that were just spoken of earlier, in a way  
15 that, A, is understandable, that's noticeable, that will  
16 really sort of -- oh, you know, the real moment where you  
17 finally understand what the value and the onerousness of  
18 this thing really is.

19 One case that was brought some years ago, I  
20 think this was around 2000, was a Buy Dot Com, I'm sure  
21 it doesn't do it justice, but this was a full page  
22 newspaper ad appeared in USA Today, and so forth. The  
23 basic idea was that you could get a computer for I think  
24 it was \$269. And if you looked at this thing and you  
25 were looking in the newspaper, you wouldn't really see

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1 any signal that there's any mention of important  
2 conditions or considerations. But in 4 point type at the  
3 very top there was a bunch of gobbledygook which, again,  
4 you would need a microscope to discern. It goes gobble,  
5 gobble, gobble, then it goes down and says, 'Requires  
6 Compuserve activation.' Even then it's not telling you,  
7 what, a month? A free activation? For a month? Or what  
8 is it? That's the entirety of the disclosure in that ad.  
9 So that was one problem.

10 In fact there were some very important  
11 conditions having to do with this. One was that well you  
12 had to spend the money, \$869 up front, and then send in  
13 two different rebates to get your money back. That was  
14 one thing. The more important thing was it required a  
15 three-year subscription to Compuserve Internet Service at  
16 the cost of \$21.95 a month. Now, or you could pay \$792  
17 if you wanted to for that. And that wasn't all, you also  
18 if you decided to cancel out of that Compuserve thing you  
19 lost the rebate. And on top of that you had to pay  
20 another \$50 cancellation fee. So again, it's not a  
21 judgment about the wisdom of an offering like that, it's  
22 the fact that nobody understood this. Nobody really was  
23 made to understand that at the point of sale.

24 Now, I want to say one thing just in the  
25 middle, and that is, you know, FTC has had a pretty

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1 vigorous enforcement program, but none of it indicates  
2 any institutional opposition to the idea of rebates.  
3 Frankly, we're just neutral. We're just neutral about  
4 that like we are about everything in life. You know,  
5 it's if people -- well, maybe that's not true.

6 [Laughter.]

7 MR. GRAYBILL: But, you know, if people  
8 understand what is being offered they can reject it or  
9 they can accept it. There may be some rebates that just  
10 look silly to us, but although I'll have to say if  
11 they're counter-intuitive that does have to bear on how  
12 they should be dealt with, because the more counter-  
13 intuitive an offer is, you better, you better  
14 conspicuously disclose that.

15 And there's one prime bizarre example of that  
16 in our own office where Matt Gold, who was one of your  
17 people that introduced today, accepted an offer in 1993,  
18 he went out and bought a mattress for \$700 and he liked  
19 the price that it was, but he also saw there was a rebate  
20 offer, you can get 50 percent off. He filled out some  
21 paperwork, you get your 50 percent off if you send it in  
22 10 years from now. And I'm sure the company's on the  
23 golf course saying, you know, what a sweet promotion that  
24 was. But suffice it to say they didn't know who they  
25 were dealing with. And the years passed, children were

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1       born, and in May 2003 Matt's looking at his calendar,  
2       whoa I got to go to the doctor this morning, bing, time  
3       to get my rebate check, and he did. But the thing is  
4       they actually gave it to him. And, you know, it's like I  
5       either get a rebate check or I get a case, you know. But  
6       what's not to like. But that's just an example of, you  
7       know, it's bizarre, but frankly they conspicuously  
8       disclosed it. He understood what he was getting, he's  
9       one out of a million people who took it, and they  
10      followed through. So that would not be the profile of a  
11      case we would bring.

12                The InPhonic case we've already gone over to  
13      some degree, and I'm going to leave some time here so I'm  
14      not going to belabor it. Other than again as Eileen said  
15      this morning, one of the big issues in this was having to  
16      do with the use of hyperlinks, and actually the Buy Dot  
17      Com thing was InPhonic should have known from the Buy Dot  
18      Com case that we have concerns with this, because the Buy  
19      Dot Com case that's an internet seller, so that's a  
20      legitimate question, is well maybe they tell them all  
21      about it on the internet. Well, no, they didn't, because  
22      you went there, the first page, you know, it didn't tell  
23      you anything, there's a hyperlink. You go to the second  
24      page, it came out in drips and drops, it's like I'll tell  
25      you about this, I won't tell you about that. It wasn't

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1           until you got to about the fourth disclosure page, the  
2           fourth hyperlink, which, by the way, was a page that you  
3           didn't have to go through before ordering, that you  
4           finally got all the stuff.

5                        So that already gave notice about the use of  
6           hyperlinks as a -- and also the hyperlinks itself, and  
7           here's the important point, there wasn't those warnings  
8           and red flags around the hyperlink indicating read this,  
9           this is important. And actually if you looked at the  
10          order in Buy Dot Com, it didn't condemn the use of  
11          hyperlinks but it said you better say something like,  
12          'Owner's cancellation requirement, read here.' It wasn't  
13          quite that draconian, but I mean it was something like  
14          that, because people, you know, you don't always hit  
15          hyperlinks, you don't always know how important it is.  
16          You sort of assume they're going to tell me at some point  
17          how important these caveats are.

18                       Another reason InPhonic should have, and I'm  
19          not trying to paint a picture of evil here, I'm just  
20          saying this was not really cutting edge law in a way when  
21          we came out with InPhonic, because we also in May of 2000  
22          had come out with this thing, and again it's in the  
23          business card thing you have where Eileen already quoted  
24          from it. But there's actually two or three pages on  
25          hyperlinks alone. And the sort of thing you should think

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1 about before using that as your exclusive route to tell  
2 the truth. And you can also go to FTC.gov, which by the  
3 way is a wealth of information on these subjects and you  
4 print off a copy of this tonight if you want to.

5 Here I'll just quickly say, what did the  
6 hyperlinks say? Well, it's like Eileen said, it just  
7 basically said there's a rebate. I mean these two things  
8 where it said \$90 customer mail-in rebate. If you  
9 noticed there was a hyperlink you could get more  
10 information, but it certainly didn't send up any red  
11 flags that you better take a look at this in detail,  
12 otherwise.

13 There were some other aspects to the InPhonic  
14 case which also appear in other cases. And that is there  
15 was also a matter of, I think I'll just flip through this  
16 stuff, again, there was this aspect, as was mentioned  
17 before, about InPhonic, where there's just this weird 180  
18 day to 210 day window of time, no earlier, no later. You  
19 had to have proof of continuous wireless service, you got  
20 disqualified if you changed your phone number. And then  
21 there was also a twist in that case where they actually  
22 told people, hey you know what, if you don't quite get  
23 this right the first time we're going to help you out.  
24 They didn't, not many times, at least. So let's say you  
25 happened to forget to put your email address on the

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1 thing, it would reject it. They had big red stamps going  
2 reject. And telephone number, they would crater that  
3 one, too, right there. Ineligible or incomplete forms,  
4 did that.

5 Here was an example of that thing I was talking  
6 about before, which is an unfairness, which is there was  
7 also a problem of they had some things were somewhat  
8 standard, you know, the UPC code and this, this, and  
9 this. Also you were supposed to send in a guide to  
10 wireless service. And, you know, not all customers would  
11 get that stuff. So and then they would just  
12 automatically, you know, reject it. And they are 50  
13 percent. Now you've been hearing these figures about  
14 well what's the trigger point where you should start  
15 worrying, or at 10 percent has something gone wrong: 50  
16 percent of InPhonic customers that had sent in a rebate  
17 got rejected. When you got something like that something  
18 ain't right.

19 Last subject, and I'll quick speed through  
20 this, is just the idea of late fulfillment not going  
21 well. And InPhonic had, you know, sometimes -- you've  
22 heard much more wisdom on that than I can give you --  
23 small companies can get in over their head, large  
24 companies don't make it a priority, whatever. The Soyo  
25 case was mentioned, where 95 percent of Soyo's rebates

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1           were late.

2                         There was another case that was done by our San  
3           Francisco office which I thought was, I didn't have  
4           anything to do with, but it was I thought a great case,  
5           or interesting case, in that it was Comp USA. And Comp  
6           USA is a retailer, and they were advertising a  
7           manufacturer-funded rebate. And they made a promise,  
8           rebate checks will be mailed in six to eight weeks. And  
9           what happened there is that to put it simply a great many  
10          rebate checks were received as much as six months or more  
11          past that deadline, and some just weren't gotten at all.  
12          And frankly I think it was a case where the people  
13          handling the rebates, the QPS, which was the  
14          manufacturer, you know, they were in trouble, and they  
15          were having trouble with all sorts of things in the  
16          company, and they were going to go bankrupt ultimately.

17                         But you can ask yourself, well wait a minute,  
18          Comp USA is a retailer. Was it fair to hold them  
19          responsible for the problems of the manufacturer? Let me  
20          just say that in this case as in all cases, you know, we  
21          really are reasonable people, we hear the best arguments  
22          all sides can give, and frankly in this case the  
23          Commission went out of its way in the complaint to signal  
24          the reasons. And one, I forget the verbiage, what it  
25          was. Comp USA had knowledge and continued to advertize

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1 the same promotion up until just before QPS went  
2 bankrupt.

3 I would simply, I think that's pretty much it  
4 for me. I would say that if you want more knowledge  
5 about the cases we do, the FTC.gov website is a great  
6 wealth. One little research tool I used is that in every  
7 one of these cases, and I haven't mentioned two-thirds of  
8 them, are accompanied by press release, and very often  
9 electronically online on FTC.gov the press release of the  
10 company as well by electronic copy of the actual  
11 complaint and the order. Maybe not in some of the older  
12 cases, but almost in the last five years I think all of  
13 them. So you can go to FTC.gov, look for 'newsroom,'  
14 which is where you get the press stuff, and it's  
15 searchable by term, you can put in 'rebate,' or if you  
16 know you want to see Comp USA type in 'Comp USA,' it will  
17 bring up the press release, it will give you a chance to  
18 actually print out as well the pleadings and it's  
19 something where you can sort of fill in the details as to  
20 how we view these things.

21 Thank you.

22 [Applause.]

23 MS. O'BRIEN: If you, can you hear me? We have  
24 a couple of questions from the audience.

25 Start off with Joe, if you're ready. Do you

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1 have an interest in helping consumers, so if you hear  
2 from consumers about maybe interest in your organization  
3 actually help them individually?

4 MR. RIDOUT: At times we'll contact a retailer  
5 or fulfillment house to try to mediate when the problems  
6 have arisen. We can't do as much as the Federal Trade  
7 Commission or say the state Attorney General can do,  
8 because we don't have any jurisdiction like that. But we  
9 can try to mediate in a reasonable way so that it  
10 wouldn't get to the sort of the complaint where it would  
11 have to be brought to the attention of those  
12 organizations. But we do try to help, yeah.

13 MS. O'BRIEN: Great. And just so you know the  
14 FTC we welcome complaints from consumers, that's how we  
15 know the cases to bring.

16 I'm not sure who exactly this is directed to,  
17 but I'll just ask the question so anyone can answer.  
18 Copies of receipts present problems of consumer fraud, do  
19 you think consumers should shoulder some of  
20 responsibility?

21 MR. RIDOUT: Well, I don't think anyone would  
22 disagree with that. That sounds like -- consumers  
23 certainly have to shoulder some of the responsibility.  
24 But there certainly are methods by which you could  
25 securely determine if a copy of a receipt represented

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1 fraud, just an honest attempt to safeguard one's material  
2 in the event of a rebate form getting lost. There's  
3 certainly easier ways to do it, but consumers have to  
4 bear responsibility, but making a copy of a receipt I  
5 don't think presents an inordinate opportunity for fraud  
6 with the other safeguards in place.

7 MS. O'BRIEN: What is the NTIA?

8 MR. STINCHFIELD: The National  
9 Telecommunications and Information Administration  
10 division of the Department of Commerce.

11 MS. O'BRIEN: And I think this is probably  
12 directed at Hal. Have you seen that practices have  
13 changed on a national level because of the recent  
14 Connecticut law and Rhode Island law regarding rebates?

15 MR. STINCHFIELD: I think that because of all  
16 media attention, marketers are getting smarter about  
17 this, but it's kind of slow to come. The fulfillment  
18 industry is also getting a little bit smarter with  
19 electronic transmission of proofs of purchase and the  
20 submission of electronic rewards back to the consumer by  
21 ACH and other mechanisms that speed up the turn time.

22 I think with Senator Schumer, attention by the  
23 Federal Trade Commission, Better Business Bureaus, other  
24 Attorneys General, that in general the industry's getting  
25 smarter, it just has to accelerate that speed of

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1 learning.

2 MS. O'BRIEN: I know the answer to this  
3 question, this is one of my own, but I'll ask Dean  
4 anyway. Maybe you could tell folks what actions when the  
5 FTC actually takes an action, I mean what sort of  
6 remedies can we get?

7 MR. GRAYBILL: Death by hanging.

8 [Laughter.]

9 MR. GRAYBILL: But actually one example, in  
10 Comp USA, for example, there's almost always a conduct  
11 prohibitions, don't lie again, disclose XYZ. In Comp  
12 USA, for example, there was -- and this is a common  
13 provision, conduct order said have a reasonable basis at  
14 the time you're making the claim for the idea that you  
15 can deliver on it. Now you say, what's reasonable basis?  
16 It's a floating concept that has to be judged case by  
17 case. But that's one thing. The second is just say  
18 don't be late anymore. In Comp USA there was also a  
19 redress thing, I think it was \$15 to \$100, they had to  
20 offer redress. I'm not sure how much money that ended up  
21 actually being, but that's a very common result.

22 MS. O'BRIEN: Thank you. Here's another  
23 question toward you, Dean. I don't know if you have a  
24 comment based on this. But wouldn't it be useful to add  
25 to the FTC's disclosure guidance a point that unfamiliar,

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1 unusual, onerous, unexpected terms require more prominent  
2 disclosure?

3 MR. GRAYBILL: I would have thought it already  
4 is covered. But I mean certainly the concept. Again, we  
5 don't, I think as I said earlier, we don't make  
6 judgments, we don't regulate the content of offerings,  
7 that's too gimmicky, maybe we should but we don't. And  
8 that's not our job. But it is a truth, and there's truth  
9 in all types of advertising, you know, if you're leaving  
10 a net impression about the value of something and there's  
11 a totally counter-intuitive aspect to it, I've always  
12 viewed it as sort of a sliding scale, you know, the more  
13 counter-intuitive, the more onerous, the more unexpected,  
14 the more it affects the value of the offering, you better  
15 be -- you better err on the high scale of clearness and  
16 conspicuousness.

17 I think if you read the deception statement  
18 which we have as overarching thing on deception, I think  
19 it talks about it in general terms.

20 MR. STINCHFIELD: I would go one step further  
21 on that and suggest that the development of offer copy  
22 and the communication of offer copy is not an art, it is  
23 an absolute science. You can measure the invalid rates  
24 and the consumer's understanding of an offer simply by  
25 measuring those invalid rates and redesigning the offer

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1 copy in order to drive them down.

2 MS. O'BRIEN: I'm not sure exactly what this  
3 question is but I'll read it, because I've been having a  
4 hard time understanding it. What is legally  
5 objectionable about requiring that consumers comply with  
6 all disclosed terms of a rebate offer? Mr. Ridout paints  
7 a view of rebates that suggests that no reasonable person  
8 would attempt to participate in a rebate offer, then once  
9 consumers, I'm not sure, who to get to determine which  
10 requirements they comply with. Does that make sense?

11 MR. RIDOUT: Not exactly. I didn't mean to  
12 leave the impression that we felt that consumers should  
13 not comply with rebates, or that a reasonable consumer  
14 would steer clear of them. Merely we were highlighting  
15 some of the problematic areas that have befallen consumers  
16 who have complied with what they thought were the  
17 reasonable terms presented, that turned out to not be  
18 reasonable or turned out to be not complied with by  
19 either the rebate fulfillment house or someone else down  
20 the line.

21 But rebates in and of themselves we don't have  
22 any objection to, per se, merely the way that some of  
23 them have been unfairly presented and unfairly processed  
24 at times.

25 MS. O'BRIEN: And as Dean was saying earlier, I

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1 mean we're not really -- the FTC hasn't made a value  
2 judgment on the term so far, it's whether consumers are  
3 actually understanding them when they buy the product.

4 MR. RIDOUT: If you look at some of the reforms  
5 that some companies like Staples looked at the consumer  
6 complaints associated with rebates being their number one  
7 complaint they received from their clientele, then they  
8 reformed their rebate procedures a great deal. And  
9 that's really exemplary, as far as we're concerned, and,  
10 you know, they've reduced the complaints they've received  
11 enormously.

12 So rebates can work very well. But it's  
13 interesting to look at those that don't and figure out  
14 why.

15 MS. O'BRIEN: I don't know if any of you know  
16 the answer to this question, but can a rebate, a company  
17 that's offering a rebate actually refuse to mail to a PO  
18 Box?

19 MR. STINCHFIELD: You know, that's a good  
20 question. I think if it's clearly stated on the order  
21 form they're within their rights to say so, but I would  
22 pretty much caution against it, and work rather than on  
23 an elimination routine that precludes or prevents or  
24 makes it more difficult for a consumer to write different  
25 PO Boxes down in order to defraud the company and get

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1 multiple requests. They have to be careful there.

2 On the NTIA initiative it so stated in the rule  
3 making that PO Boxes are generally not allowed, that they  
4 generally would not constitute a U.S. household.  
5 However, there were exceptions, like territories in  
6 Alaska and Indian Reservations and the like. I don't  
7 think we have to go that far. A fulfillment provider  
8 could suggest send back a letter asking for either a  
9 rural route or a street address. I mean that's one  
10 possible out.

11 MS. O'BRIEN: All right, thank you. I think  
12 that's the end of our time for this panel.

13 [Applause.]

14 MS. O'BRIEN: We're going to take another short  
15 break and reconvene at 11:45. And I encourage you again  
16 to fill out your survey forms.

17 (BREAK)

18

19

20

21 **PANEL 3: THE FUTURE OF REBATES**

22 MR. GOLD: Our last panel of the morning is  
23 called The Future of Rebates. We're going to be looking  
24 at this topic from two different angles. First, we're  
25 going to hear from Matthew Edwards, who is an assistant

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1 professor in the Department of Law in the Zicklin School  
2 of Business at Baruch College in New York City.

3 Professor Edwards has written an article called, 'The  
4 Law, Marketing, and Behavioral Economics of Consumer  
5 Rebates' that will soon be published in the Stanford  
6 Journal of Law, Business and Finance. And I would  
7 certainly commend it to you once it's published.

8 One of the topics that he addresses in his  
9 article is the recent state laws and the increasing  
10 activity among state legislators in enacting and  
11 proposing laws in the area of rebates. As we heard in  
12 the last panel, there is no federal law that specifically  
13 governs rebates. Some states, though, have legislated in  
14 this area, and there's been quite a bit of legislative  
15 activity on the state level just in the last year or two.  
16 And Matt Edwards' presentation is going to focus on state  
17 laws, both existing and pending, in the area of rebates.

18 Our second presentation is going to be by Chris  
19 Quinlan, who is co-founder of PlusNet Marketing, which is  
20 a promotion marketing company in Wilmington, Delaware.  
21 PlusNet has developed an online rebate redemption model  
22 that he'll describe, which is very easy to use and  
23 attractive in a lot of ways from the consumer  
24 perspective. Chris is going to be describing in his  
25 presentation how his company's web-based rebate

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1 redemption model alleviates a lot of the issues about  
2 which consumers have complained over the years regarding  
3 rebates.

4 Now, that's not to say that the online  
5 redemption model answers all of the problems from the  
6 consumer's standpoint. And Eileen Harrington, who is our  
7 Deputy Director in the Bureau of Consumer Protection of  
8 the FTC in Washington, D.C. is going to be addressing  
9 some of those issues, and reacting to the issues that she  
10 hears in the first two panels.

11 One interesting facet of PlusNet Marketing's  
12 online redemption model is providing consumers with a  
13 variety of payment possibilities, alternative methods of  
14 payment for their rebate. And these raise certain  
15 disclosure issues, and Eileen, among other things, will  
16 be discussing some of those disclosure issues raised by  
17 those payment methods, such as gift cards.

18 So let's start out with Matt Edwards.

19 [Applause.]

20 MR. EDWARDS: It's an absolute delight to be  
21 with you here today to talk about rebates. This is an  
22 informal presentation on a paper that I'm working on. I  
23 have a longer paper that is coming out very soon in the  
24 Stanford Journal of Law, Business and Finance, as Matt  
25 Gold pointed out. And you can tell I'm from academia,

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1 because if you want a copy of that paper once it's  
2 published I'd love to send it to you, just give me a copy  
3 of your email address and your address, and I'll send it  
4 to you for free. It's just you tell me who you are and I  
5 mail it to you for free, which is a little bit different  
6 from some of you are used to dealing with.

7 When I was writing my first paper I found out  
8 about a large consulting firm that had done a study on  
9 rebates, and I thought it might be interesting to get  
10 their information, so I contacted them and said, you  
11 know, I'm writing this little academic paper, it would be  
12 nice to just see your report, and they told me it's  
13 \$15,000.

14 [Laughter.]

15 MR. EDWARDS: And I explained that I work for  
16 the City University of New York, and I teach  
17 underprivileged kids, and that sort of thing, and they  
18 explained to me it's \$15,000. So we do things a little  
19 bit differently. You give me your address and I actually  
20 just send you stuff for free. Oh yes, and this is  
21 informal, don't cite, quote or distribute, it's not ready  
22 at that stage. In fact, after I finish I'm going to have  
23 to ask you to forget that you've ever seen me.

24 [Laughter.]

25 MR. EDWARDS: Okay. We've heard about all the

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1 problems of rebates. Usually articles about rebates in  
2 periodicals are singularly unhelpful. They say rebates  
3 are a scam, rebates are a rip-off, they don't focus in on  
4 exactly quite often exactly why rebates are a scam or a  
5 rip-off. And most of my work goes trying to figure out  
6 the regulatory fit between very specific rebate problems  
7 and proposed solutions, and trying to guarantee that the  
8 problems that we are seeing with rebates are actually  
9 solved by the proposed solutions.

10 There's a lot going on in the area of  
11 regulation of rebates. New York recently passed a  
12 statute that, a significant statute that's the first of  
13 its kind probably in the country to so comprehensively  
14 regulate consumer rebates. The California legislature  
15 twice in recent years passed very significant rebate  
16 reforms, both times those bills were vetoed by Governor  
17 Schwarzenegger. Most recently in September 2006 a  
18 rebate law was passed in Texas, a fairly comprehensive  
19 statute that was also vetoed by the governor. And as has  
20 already been mentioned before, Senator Schumer in one of  
21 his Sunday afternoon press conferences called on the FTC  
22 to regulate rebates in January 2006.

23 So there's a lot of activity out there  
24 reflecting some of the problems that we've seen, some of  
25 the consumer angst over rebates, some of the problems

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1 that have been discussed already. There's a lot of  
2 agitation out there in the states in terms of doing  
3 something about the rebate problem, so the issue, of  
4 course, is what exactly is a problem and what should be  
5 done.

6 There's several major types of rebate  
7 regulations, and I'm not talking -- every state has an  
8 unfair and deceptive trade practice law, a very broadly  
9 worded law that could apply to rebates, just like the FTC  
10 has its Section 5 authority. I'm not talking about those  
11 broad laws that say you can't do anything that's unfair  
12 or deceptive, we're talking about laws that are much more  
13 specifically focused just at rebates, just at consumer  
14 rebates.

15 There's some laws that govern consumer price  
16 advertising. We're going to go over each one of these  
17 categories quickly. There's some new rules about  
18 mandatory rebate form availability; mandatory redemption  
19 periods that's saying how much time you have -- the  
20 consumer has to redeem the rebates; mandatory rebate  
21 award payment periods, how much time the rebate offeror  
22 has to pay the rebate; and then some rules about  
23 mandating the duplicate rebate receipts. So these are  
24 all state laws that are focused right at various  
25 practices within the rebate industry that are considered

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1 to be the most egregious, the most egregious problems.

2 Rebate price advertising, New York, California,  
3 Oklahoma, all require that if you advertise a rebate you  
4 make it very clear that the rebate redemption is required  
5 in order to obtain the advertised price. So this is a  
6 price advertising statute that these three states have,  
7 that basically says you have to clearly say this is  
8 price, this is the rebate, so it's a price after rebate.  
9 New Jersey assembly just passed a bill in January, 71 to  
10 8, and it's pending now before the New Jersey senate.

11 A lot of this stuff is in flux, so it's  
12 important in whatever state you're operating in, or if  
13 you're operating nationally that you consult an attorney,  
14 and not me, to make sure what you're doing is legal.

15 I'm not going to go through the California,  
16 read the California code to you, but it's basically just  
17 says that you have to be very clear, that you have to  
18 clearly and conspicuously make it known that to obtain  
19 the price advertised you have to mail in a rebate. So  
20 that's the California law, and there's other states with  
21 such laws.

22 Connecticut by regulation, and Rhode Island,  
23 have even tougher rebate advertising laws. And  
24 effectively -- and I want to thank Matt Gold for pointing  
25 this out to me because I sort of misstated my initial

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1 draft in my paper, Connecticut and Rhode Island actually  
2 make it an unfair or deceptive act just to advertise the  
3 price with price after rebate. So effectively rebate  
4 price advertising, price rebate final price, is unlawful  
5 in Connecticut and Rhode Island. That is a very, very  
6 strong approach, and it's an unusual approach in the law.  
7 So you can't advertise in Connecticut, you know, rebate  
8 price after rebate.

9 There was a proposal in Maryland just like  
10 that, that was stalled, and there's some proposals right  
11 now pending in Massachusetts for the same thing, where  
12 you can't advertise the price after rebate. And the idea  
13 is that it is inherently misleading to consumers because  
14 they can't understand the whole thing of a price and then  
15 a rebate, and then a price after rebate, this is  
16 something that they somehow they grapple with and can't  
17 really comprehend.

18 I'm going to quickly go through this. There's  
19 some laws that have long been on the books. One in  
20 California, it's called the subsequent event law, there's  
21 a law that says that you can't offer -- you can't tell  
22 somebody they'll receive a rebate if receiving a rebate  
23 is contingent on a later event, meaning something else  
24 has to happen to get the rebate. But the California  
25 courts have held that this does not apply to traditional

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1 mail-in rebates, even though by the text of the law it  
2 would seem that the fact there's a subsequent contingent  
3 event, mailing in the rebate, that it would apply to  
4 rebates. So just in the interest of comprehensiveness I  
5 put this in, but it doesn't really apply to rebates.

6 Maine and New York now have laws that ensure  
7 that rebate forms will be provided to consumers in an  
8 timely manner. So these are things about consumers  
9 showing up and saying I want to do the rebate but I show  
10 up at the store and there's no forms, and it's difficult  
11 to obtain forms. California had such a  
12 provision in its vetoed bill. There's been proposals of  
13 this kind in Arizona, Massachusetts and Texas. So these  
14 are the types of things where people saying I want to  
15 redeem but I can't get forms. So these are rules saying  
16 that if you're going to say you're offering a rebate you  
17 have to make sure that you have the forms available. A  
18 pretty reasonable requirement.

19 New York's approach, which I won't go into  
20 detail, obviously it's a lot of text on that slide, it  
21 basically says that you have to have the forms there  
22 where somebody makes the purchase, or you have to have  
23 some sort of method for them to generate the form. And a  
24 rebate offeror can comply with the statute simply by  
25 providing sufficient forms based on reasonably

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1 anticipated sales. So you don't violate the law if in  
2 New York if you provide sufficient rebate forms based on  
3 what you anticipate, and it turns out that you run out,  
4 that's okay, that's a safe harbor in the law. But if you  
5 anticipate having 20,000 come in, 100,000 people come in,  
6 and you put out 5 forms, that would be violating the law.  
7 And there's provisions in the law for internet and  
8 telephone sales. And these violations can give rise to  
9 damages of \$100 to \$1,000 per violation, under the GBL.

10 There's been almost no litigation or no cases  
11 under these provisions yet. They're very, very new.  
12 And, in fact, for those of you who are really interested  
13 there's another New York general business law, 391, with  
14 exactly the same number that has to do with the sale of  
15 used clothing. And somehow the New York legislature when  
16 they passed this new statute didn't realize they were  
17 giving two different laws the same number. Just  
18 something for any lawyers in the room, something of  
19 interest.

20 Rebate redemption time periods. New York now  
21 requires that you give people at least 14 days to redeem  
22 their rebates. California would have given consumers 30  
23 days. Schumer, Senator Schumer recommended 30 days. And  
24 there's a proposal pending right now in Massachusetts  
25 that would give consumers a full year, and hearings are

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1 being held this month that would require a year. And  
2 this is very interesting, it builds on Professor Silk's  
3 fascinating presentation earlier which the general  
4 feeling in legislatures is let's legislate longer  
5 periods, but the behavioral economics evidence and the  
6 marketing research indicates that longer deadlines might  
7 not necessarily be beneficial. And I rely on Professor  
8 Silk's research in this area in my paper, that longer  
9 deadlines might not be beneficial. But that's what  
10 consumers think they want, so that's what the legislators  
11 are pushing for are long, long deadlines, even though  
12 that might actually decrease redemption and increase  
13 breakage.

14 There's also rebate payment periods. New  
15 York's new law requires payment within 60 days. After  
16 somebody satisfies the rebate requirements California  
17 would have required 30 days. A proposal is now pending  
18 in Florida, for those of you who want to lobby the  
19 Florida senate, that would require payment in 15 working  
20 days. And then there were a couple of other proposals.

21 So these are things saying you have to pay  
22 people quickly, which, of course, the problem, as you  
23 know better than I do, these short payment periods may  
24 create complications between rebate offerors and  
25 fulfillment centers, and it may not be possible to pay

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1 people that quickly. But legislators are getting into  
2 the act, they want to mandate rapid payment of rebate  
3 rewards.

4 Rhode Island requires rebate offerors to accept  
5 copies of receipts now. So in Rhode Island you have to  
6 take a copy of a receipt. New York, there's a proposal  
7 pending that would require the provision of duplicate  
8 receipts, and of course many firms are already doing that  
9 on their own. There's many rebate offerors that provide  
10 duplicate receipt for rebate redemption, Best Buy,  
11 Circuit City, there's other firms that do this. And  
12 California also had a similar thing saying that you  
13 either have to accept duplicate receipts or accept  
14 copies, you have to provide receipts or accept copies.  
15 So this is the whole problem of people saying well I have  
16 the receipt but I need to hang on to the receipt in case  
17 I return the goods, or I need multiple receipts because  
18 there's multiple rebate offers, and that's a frustration  
19 some consumers have claimed, saying there's multiple  
20 rebate offers but they need original receipts for each  
21 one of the rebate offers. And so this would ameliorate  
22 that complaint to some extent.

23 Now, a ban altogether. In my paper, which I  
24 wrote a long time ago, I said this is not even an issue,  
25 so therefore it's not even really worth discussing,

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1 nobody's interested in banning rebates. But there are  
2 proposals pending now in New York and Massachusetts that  
3 would require payment of rebates at the point of sale.  
4 That is effectively a ban on rebates, if you require  
5 payment at the point of sale. In the past in New York  
6 this has not been successful. In New Hampshire it has  
7 not been successful. I have no indication of whether it  
8 will or will not be successful in Massachusetts, I doubt  
9 it. But this is the type, that's probably the most  
10 radical remedy, it would effectively be a ban on rebates  
11 if they require payment at the point of sale.

12 But there are things pending now in New York  
13 and Massachusetts requiring instant payment. And in many  
14 of these proposals legislators simply cite the newspaper  
15 articles that we've all read, and they cite those  
16 newspaper articles as evidence, and those newspaper  
17 articles as many in the room know are quite insipid and  
18 quite lacking in any sort of sustained reasoned  
19 discussion of the advantages and disadvantages of  
20 consumer rebates.

21 There's other miscellaneous proposals that have  
22 floated around in different states. Some proposals have  
23 said you have to give people a way of checking on the  
24 status of their rebates, some sort of mandatory method  
25 for checking on the status of the rebate. The second one

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1 is some sort of clear marketing of rebate reward checks.  
2 This is part of the whole junk mail thing that the checks  
3 look like junk mail. I'm very, very sympathetic to the  
4 complaints that consumers have about all of these things.  
5 Some of the complaints seem to be a little odd to me, the  
6 whole check is junk mail kind of you have the picture of  
7 the consumer getting something in the mail and oh what's  
8 this, you know, I think people can recognize a check in  
9 the mail. But some people say it looks like junk mail,  
10 so maybe there should be clearer markings on rebate  
11 reward checks.

12 And then the last thing is something that  
13 touches on what we talked about earlier, is requiring --  
14 forbidding rebate offerors from requiring too much  
15 personal information. They say, you know, they ask for  
16 everything on these forms. I've filled out a lot of  
17 rebates. I have not seen that they require an excessive  
18 amount of personal information, but some states have said  
19 that they want to limit the amount of information that  
20 could be required.

21 So then the question becomes for people at the  
22 FTC and at the state level, the bigger question stepping  
23 back is is this a good thing where we have 50 different  
24 states where different legal approaches might be tried on  
25 regulating rebates. On the one hand it gives you a good

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1 chance to experiment with different approaches, which is  
2 always a good thing in legal regulation. On the other  
3 hand it could complicate things for national retailers  
4 and rebate providers to have 50 different state laws to  
5 follow. So the question is would a single federal  
6 approach be better, some sort of best practices, would  
7 that be better, a state model law. What would be the  
8 best way for the whole industry? On the one hand you  
9 wouldn't like a strict law, but maybe a strict law that's  
10 the same everywhere would be easy to work with rather  
11 than a mishmash of strict laws and relatively lenient  
12 laws.

13 And building on Professor Silk's point, the  
14 question about creating what legislators think are  
15 consumer-friendly rules that actually have an adverse  
16 impact on consumers, you know, requiring so much,  
17 requiring levels of disclosure that might have an adverse  
18 impact, requiring deadlines that would end up making  
19 rebate offers not feasible. So the question is are we  
20 really helping consumers with some of this legal  
21 regulation, and what is the optimal level of regulation  
22 to ferret out the most egregious rebate conduct without  
23 deterring honest retailers and rebate offerors from  
24 providing something to consumers.

25 And then the last thing is more of an FTC

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1 thing, and also with the states, what is the better way  
2 to deal with this sort of thing, is it through litigation  
3 under unfair and deceptive trade statutes, simply picking  
4 out the worst players and having law suits against them.  
5 Or would it be better to legislate across the board or  
6 have a regulation across the board. And those are always  
7 difficult questions to answer, whether it's better to  
8 regulate via litigation or some sort of legislation  
9 across the board.

10 As I said, I'd love to have further contact  
11 with all of you. And if you want to get a copy of my  
12 first paper just stop by, I'll give you my card. And I'm  
13 going to write a follow-up piece, I'd love to send that  
14 to you and get input as well, because it's very difficult  
15 sometimes in the little office with no window to get an  
16 idea of what's going on in the real world. So I just  
17 sort of make stuff up.

18 [Laughter.]

19 MR. EDWARDS: And it's slightly better to  
20 actually talk to people that work in the business than to  
21 invent things, even though it might be less amusing  
22 personally.

23 Thank you.

24 [Applause.]

25 MR. GOLD: Next up we're going to have Chris

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1 Quinlan.

2 MR. QUINLAN: After Matt's presentation I'm  
3 kind of hoping I have a job next year with everything  
4 that's going on.

5 I'm going to talk to you a little bit about the  
6 process that we go through at PlusNet. First I'm going  
7 to give you a little background on the company, and then  
8 actually run you through a demonstration.

9 Basically what we've tried to do is transform  
10 the rebate industry from our side and the consumer  
11 behavior side, from a breakage model to a redemption  
12 model. And breakage for us is the uncashed funds, or  
13 unused funds on cards.

14 A little bit about the company, we were the  
15 first to launch in '99 an online rebate process at Rite  
16 Aid Corporation, we were the first to offer a completely  
17 online solution to redeem end value and actually validate  
18 and fulfill the rebates electronically. And our  
19 technology is free to the consumer.

20 This sort of, you know, the old way versus the  
21 new way, if you will. In fact, I have a couple things  
22 here. Traditionally you have to cut out UPCs, mail in  
23 all kinds of information. We've kind of taken that down  
24 to one process where you can actually use this receipt to  
25 actually go online. You can mail in the receipt at the

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1 bottom by filling out the information and drop it in the  
2 mail, or you can go online and we're going to go through  
3 a demonstration of that in a second.

4 This is just a little bit about what the  
5 consumers are saying. These are actual consumers that  
6 use the process, I do more shopping at Comp USA due to  
7 the rebate. This is by far the easiest process I've ever  
8 went through for a rebate. E-rebates are the best thing  
9 to happen. No postage. And then there's some longer  
10 ones that will actually be in part of the presentation.  
11 You get love the rebate system.

12 This is a key component to what we do, in terms  
13 of a constant communication with the consumer. We  
14 basically touch the consumer over four times with emails  
15 to tell them the status of actually if their rebate is  
16 approved, how they're going to get paid, rebate status  
17 check so it's an actual brand enhancement for the actual  
18 retailers as well as the vendors.

19 Some of the numbers, and I'm going to give you  
20 an update as of I think it's through April 15th, we're  
21 approaching 75 percent of our rebates are done online.  
22 Our average check turn time is down to 11 days. With  
23 some retailers there's actually a hold period for  
24 returns, so the 11 days is actually on top of that hold  
25 period. And we don't have 1 percent of contact, Hal,

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1 yet, but we're working on it.

2 This is what I'm going to walk you through, in  
3 terms of what the customer sees. One key point is that  
4 actually we can actually project redemption rates as well  
5 as sales rates, because of the historical POS data that  
6 we get from the retailers. And it can be done by  
7 category and/or brand.

8 So in this case the consumer makes a purchase  
9 at Comp USA, either online or in the store, they're told  
10 with the receipt they can file the rebate either  
11 electronically, or as I said earlier, they enter their  
12 information, they drop it in their mail. So at this point  
13 they're directed back to the Comp USA site. They either  
14 have an account where they log in or they can create an  
15 account. And on the other side, the lefthand side, is  
16 sort of all the FAQs, and then they can actually search  
17 the rebate categories as well. So if you have a user  
18 name and password you use it, if you're not a member you  
19 click there, we take demographic information from the  
20 consumer. All the demographic information's collected is  
21 used for customer service purposes, we don't sell or rent  
22 the lists.

23 And then, sorry, in some cases, and this will  
24 come up later, but we ask some relevant questions to the  
25 consumer that are optional. Just as you'll see this

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1 feeds into the back end processing part. So in this case  
2 it's are you a satellite radio subscriber.

3 Once a consumer is signed in they can actually  
4 submit a new rebate claim, they can check the status of  
5 their current rebate claims any that are outstanding, and  
6 they can actually find offers. They can also actually  
7 look up the history of what they have. So in some cases  
8 there's taxable events or potentially issues where you  
9 have to keep copies of your receipts, you don't have to  
10 do that in this system, it's all held for you.

11 At this point they have an E-Rebates account  
12 number. We verify their consumer information.  
13 Obviously, if there's something to update we can update  
14 it. And then we walk them through what we need off the  
15 receipt to validate that transaction.

16 So in this case -- it also we have a second  
17 step that they put the total of the receipt in, because  
18 we get all the POS data from the retailer, so we can  
19 actually match to make sure that if by chance somebody  
20 was trying to fish through the system and enter specific  
21 areas or at specific data points we still have the  
22 ability to weed them out through the actual total of the  
23 receipt. It's a big fraud issue, from our point.

24 The status, the status page, it's available 24-  
25 7, it shows you your pending rebates, it shows you the

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1 rebates paid, it shows the rebates not approved. Also  
2 with this slide if there was a multiple purchase piece,  
3 buy the printer, buy the laptop, buy the monitor, if you  
4 bought two of the three but didn't buy the third it would  
5 tell you right there what you needed to do to make that  
6 additional purchase.

7 This is sort of where we're headed after the  
8 assumption that the consumer actually makes their  
9 purchase online, or redeems the rebate online, or mails  
10 it in, and they've got a valid rebate.

11 Let me get to my page. And this is where we  
12 think the sort of the next generation of what we're doing  
13 is headed. It's a rebate option acceptance maximization.  
14 The platform provides the options for the consumer when  
15 they're actually validated for their rebate to get  
16 multiple payment options. So in this case what we do, we  
17 take the vendor product information, the rebate amount,  
18 the demographics that were collected earlier, the  
19 transaction profile of the consumer based on previous  
20 transactions, we put it through the system, and then  
21 understand that these offers on the righthand side are  
22 the most likely to appeal to that consumer. Okay.

23 So if a 37 year old male goes in to purchase a  
24 Epson printer we'll change on the fly here to HP. So  
25 what happens is we know what they purchased, they've got

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1 a \$50 rebate, they enter it online, it's validated,  
2 there's no mail-in, there's no UPCs, it goes through the  
3 system, and then it will spit out relevant offers based  
4 on that. So in this case we could use Snap Fish where  
5 they'd get a \$75 value for going to Snap Fish at that  
6 time, instead of the Epson cartridges and printers. So  
7 they're actually vendor-specific.

8 If, in fact, they don't want it, they can click  
9 through that piece and they don't want that actual offer  
10 they can go to another offer. So another alternate  
11 redemption choice could be based on the fact that they  
12 had earlier given us that information. The other piece  
13 is that all these other offers which are always valued at  
14 above the cash value of the rebate. So if they didn't  
15 want to do that, we sort of go to the second and third  
16 level offers, which go back to there's a Comp USA rebate  
17 card, no expiration date, and no dormancy fees for those  
18 cards. If, again, another shot at if they wanted to get  
19 their rebate tomorrow they could use the PayPal method,  
20 and if they were feeling I guess philanthropic they could  
21 donate to Make A Wish.

22 Now, at this point in time the consumer always  
23 has the option to go back for a check if they really  
24 wanted to check. It's there, it's just we give them a  
25 lot of offers up to that point to try and change their

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1 behavior.

2 And at this point in time the consumer actually  
3 chooses a card, and if they use the card in a certain  
4 period of time at Comp USA or at Comp USA dot com they  
5 get a 10 percent discount off their order.

6 Again, everything that we're doing today is  
7 either under patent protection already or actually in the  
8 process of being patented. In our situation we believe  
9 that everybody wins, because the consumer wins. There's  
10 a complete transparent process for the consumer to see  
11 all through the steps as to where they are with their  
12 rebate. The retailer wins because they don't have any of  
13 the backlash or brand suicide, as Hal mentions. And then  
14 the manufacturer wins obviously because of all those  
15 reasons. And we have a happy customer that actually buys  
16 more product from that brand and from that retailer.

17 That's pretty much it.

18 [Applause.]

19 MS. HARRINGTON: I'm going to stay seated right  
20 here, because I need to read my notes. I've been taking  
21 furious notes as our first two panelists presented, to  
22 provide hopefully some useful further questions,  
23 reactions, responses, so that you can watch at least in  
24 real time how one person who works at the FTC might think  
25 about some of these developments as they are playing out.

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1                   First, let me turn to Matt's wonderful  
2 presentation about developments in state law and respond  
3 with some thoughts about those. My first thought was  
4 that one of the things that makes as I listen to Matt  
5 talking about enactment of specific state laws and  
6 consideration of other legislative and regulatory  
7 provisions at the state level, my first thought was that  
8 one of the things that makes the Federal Trade Commission  
9 perhaps a somewhat different governmental entity is our  
10 very heavy reliance on economic analysis and our valuing  
11 of that as we go about thinking about what the most  
12 sensible approach is to government intervention in the  
13 marketplace.

14                   We, sometimes to the consternation of our  
15 critics, take quite a while in our formulation of  
16 marketplace issues and our response to those. And one of  
17 the reasons that we take quite a while is that we want to  
18 rely on empirical evidence to inform our assessment of  
19 what it is that is happening in the marketplace. We want  
20 to try to avoid what are often unintended consequences  
21 that can flow from regulation or legislation that may  
22 seemingly really hit right on the head of the nail the  
23 problem with some marketplace development, but when you  
24 look more deeply instead of hitting the nail right on the  
25 head you wind up splintering and shattering the very

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1 valuable prospect that you're trying to protect in the  
2 first place, which is the prospect of good value for  
3 consumers.

4 And so as I listen to the description of  
5 various state efforts to regulate in this area, my  
6 question is what do the economics tell us about that  
7 particular approach.

8 So let's look first at the category of price  
9 advertising. We heard that there have been enacted laws  
10 that say that you cannot advertise at all the price after  
11 rebate. And I'm wondering, and maybe somebody here knows  
12 the answer to this, Joe, are you here still? No, Joe  
13 Mulholland?

14 MS. ABRAHAMSON: I know the answer to the  
15 question.

16 MS. HARRINGTON: Well, let me -- is Joe  
17 Mulholland here? Rats. I'm wondering what we know about  
18 what's happening in Connecticut, where the law apparently  
19 prohibits advertisements of price after rebate. What is  
20 the answer to my question?

21 MS. ABRAHAMSON: Actually, there's a slight  
22 misstatement of the law. What the law says is that --

23 MS. HARRINGTON: Okay. Can everybody hear?

24 SPEAKER: No, you need a microphone.

25 MS. ABRAHAMSON: No one has ever said that to

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1 me in my life. Are we being recorded?

2 SPEAKER: And please introduce yourself.

3 MS. ABRAHAMSON: My name is Tsan Abrahamson,  
4 and I'm a (inaudible) attorney, I'm outside counsel, but  
5 we've dealt with this issue several times. What both the  
6 Connecticut and the Rhode Island laws say is not that you  
7 cannot advertise the net price, but that if you do you  
8 must give the rebate at point of purchase. So what that  
9 means is you can say buy an HP printer and get a \$20  
10 rebate and you can do a mail-in rebate for that, or an  
11 online rebate, but if you say buy an HP printer and  
12 you'll only pay \$100 after rebate, that is the net price,  
13 you must give that rebate at point of purchase.

14 MS. HARRINGTON: Okay, thank you for that.

15 Matt, did you want to say something? Hold on.

16 MR. EDWARDS: Yes, that's absolutely correct.  
17 And in the interest of simplifying the presentation I may  
18 have overly simplified what the Connecticut law says, but  
19 that's right, that's absolutely right.

20 MS. HARRINGTON: The concern is, my concern  
21 would be the same, and that is whether this, and I don't  
22 know the answer to this, but the concern we would have is  
23 whether this particular regulation would have the effect  
24 of discouraging the distribution of truthful information  
25 to consumers that could be of benefit.

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1           And the question, the way that we would look at  
2 this always is under the Section 5 standard that Dean so  
3 well explained, and that is whether there is material  
4 information that is misrepresented or that is not  
5 adequately disclosed in a way that in light of the  
6 overall impression left by the ad causes consumers to be  
7 misled.

8           And I'll put in another plug just using that  
9 example for what we think is the value of the elastic  
10 principle that is set forth in Section 5 of the FTC Act.  
11 So rather than prohibiting a particular kind of claim, we  
12 would look at the claim or the information that's  
13 provided in light of the entirety of the ad and ask what  
14 a reasonable consumer would understand the claim or the  
15 advertisement to mean. So that would be a concern I  
16 think that we would have, and a reason why generally  
17 speaking in the area of price advertising you don't see a  
18 lot of activity from the Federal Trade Commission.

19           Now, you might say well but you do have these  
20 guides on price advertising, and what I would say is yes  
21 we do, and those guides were promulgated a long time ago.  
22 And if you go to our website and look at our enforcement  
23 agenda and study our casework you won't find press  
24 releases announcing FTC enforcement actions based on our  
25 deceptive pricing guides, or any of the other pricing

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1 guides. Which isn't to say that we never would do such a  
2 thing, but we have a concern, a real concern about  
3 unintended consequences that can flow from this kind of  
4 regulation. And we've learned, I think everyone has, and  
5 as the school of law and economics has grown up over the  
6 years I think everyone has learned. And so hopefully we  
7 benefit from that.

8 I was interested in the laws that require  
9 rebate form availability and provide the safe harbor for  
10 reasonable expectation of response. That reminded me,  
11 you know, of the whole issue about rain checks a number  
12 of years ago. Same kind of issue. There were efforts  
13 made to require that retailers either have insufficient  
14 supply to meet 100 percent of the demand that item that  
15 was advertised, or that if rain checks were offered that  
16 there be some reasonable expectation, that there be some  
17 requirement that they have at least enough of the item on  
18 hand to meet reasonable expectation. There were efforts  
19 made, and maybe there are laws on the books in states,  
20 that essentially would prohibit the use of offer of rain  
21 checks, and say instead you have to have enough product  
22 on hand to meet 100 percent of the demand. Well, the  
23 unintended bad consequence there was that consumers then  
24 never had the opportunity to buy the item on sale,  
25 because no retailer wanted to run the risk of not having

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1 enough to meet the very last of the consumer requests for  
2 that product. And that didn't serve consumers well. An  
3 effort to regulate to protect consumers in some places  
4 really backfired and deprived consumers of the  
5 opportunity to buy the product on sale. Nobody wanted  
6 that.

7 And so, again, we learned. And by sharing that  
8 reflection in no way do I mean to say that people who  
9 advocated for consumer interests in those instances were  
10 wrong or did something bad, it's just that we learned.

11 I was interested in the comment regarding the  
12 ban on mail-in rebates, you know, where legislators or  
13 the proposed ban on mail-in rebates where legislators are  
14 relying on press accounts on things that happened.  
15 Again, bringing it back to the value of empirical  
16 evidence and really analyzing that before legislating or  
17 regulating.

18 Future challenges that Matt mentioned, you  
19 know, what will happen as more and more states or local  
20 governments move in with very specific laws or  
21 regulations in this area. Is it better to have a variety  
22 of different regulations, or will there be a call for one  
23 national standard. I guess I would make the observation  
24 that we think we have one national standard, and it's  
25 Section 5 of the Federal Trade Commission Act. And I

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1 think we would likely say, at least I would likely say,  
2 and I finally probably should issue the disclaimer that  
3 these comments reflect my views and not Dean Graybill's  
4 views, not Jeffrey Klurfeld's views, not Matt's views,  
5 but they're my views alone. And also I would bet that if  
6 we took a poll and the FTC -- among the FTC staff -- that  
7 the majority of us would think this way, why should this  
8 kind of advertising be treated differently than other  
9 kinds of advertising generally.

10 Now, sometimes Congress finds that there is a  
11 need to have a particular set of standards apply to a  
12 particular kind of advertising where there are important  
13 public interest needs for that kind of specific  
14 regulation. If the Congress were to do that here, we  
15 would of course say, you bet, you pass the laws, we  
16 implement them as you direct us to. But stepping back  
17 and asking the question about whether we would use our  
18 regulatory authority here, I think the answer is no we  
19 wouldn't generally. We think that Section 5 is a very  
20 good standard generally to apply to all advertising, and  
21 that we would always wonder whether there are special  
22 needs that would require a departure from that general  
23 principle for any particular kind of product or service.

24 So those were the thoughts that I had in  
25 response to your presentation, Matt.

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1 Chris, what an interesting model. It was  
2 innovative and interesting. And one of the questions  
3 that I had, and you people from the industry in the room  
4 can tell me this, is the word breakage a relatively  
5 recently developed term or has that always been around?

6 MR. STINCHFIELD: It's always been around. The  
7 confusion becomes the difference is between the --

8 MS. HARRINGTON: Hold on, Hal, we're going to  
9 get a microphone. Hal answering the question is the word  
10 "breakage" new, or is it being used more often than  
11 previously.

12 MR. STINCHFIELD: Hi, this is Hal Stinchfield.

13 MS. HARRINGTON: Or why am I hearing it all the  
14 time this year, and I never really heard much about  
15 breakage before?

16 MR. STINCHFIELD: That's a good question. It  
17 refers to the financial model dealing with the subject of  
18 mail-in rebates. And there are two terms here. One is  
19 breakage, which is the enticement of a product sold as a  
20 result of the enticement of a rebate offer but not  
21 actually redeemed. So that's someone who intended to  
22 redeem but didn't. And then the term "slippage" refers  
23 to a reward issued that has never been cashed.

24 And it's fairly current today simply because of  
25 all the legislation around the 42 state legislators going

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1 after rebates as a form of (inaudible), and I think that  
2 has raised the visibility, as has the value of rebates  
3 over the past several years going from a hundred million  
4 dollars to six billion dollars.

5 MS. HARRINGTON: Thank you. Slippage,  
6 breakage, you know, disease-age, it sounds like we could  
7 be at a personal injury law conference.

8 One thing that I was interested in was Chris's  
9 comment that the online program he was describing has the  
10 potential to shift rebates from a breakage model to a  
11 redemption model. And I was just -- I thought back to  
12 Professor Silk's presentation about the finding that  
13 those who don't redeem are more likely to avoid the next  
14 offer, if I think I've characterized that -- and just,  
15 you know, how then if that's the case making that shift  
16 from breakage to redemption might be a smart thing from  
17 the manufacturer's point of view, would stands to reason,  
18 and would help to avoid what I guess Hal referred to as  
19 brand suicide, perhaps.

20 Then as I watched the presentation on how the  
21 online redemption works or might work, one thought that I  
22 had is that as whether for an online redemption or any  
23 other purpose a lot of information is gathered from the  
24 consumer who is going to make the redemption request,  
25 would there be instances where it would appropriate to

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1 make disclosures about why the information is being  
2 collected? Would there be some need to talk about how  
3 that information is going to be used? Should there be a  
4 privacy policy included? And then we get into the whole  
5 question of how those policies are best disclosed. And,  
6 of course, the cardinal rule that you have to honor the  
7 privacy promises you make or we'll sue you.

8           Next thought that I had is particularly where  
9 in the example that we saw information is gathered, and  
10 consumers can go back on their E-bate [sic] account, or  
11 their E-Rebate account, and look at the history of their  
12 usage. There's a lot of information being collected  
13 there, and the general requirement that the party that  
14 holds that information have reasonable and appropriate  
15 procedures in place to protect any sensitive personal  
16 information that is included in the information that's  
17 available online would apply.

18           The FTC has brought 14 cases in the last couple  
19 of years challenging various entities failures to have in  
20 place reasonable and appropriate procedures to safeguard  
21 consumers' personal information. We've brought those  
22 cases also under Section 5 of the FTC Act. We think it's  
23 a law that's good for all seasons and all marketplace  
24 developments, including data security. And so if you are  
25 collecting that kind of information and it's available

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1 online and accessible online you better make sure that  
2 you've got appropriate and reasonable procedures in place  
3 to safeguard it. We've brought some cases where highly  
4 reputable retailers have shockingly had information  
5 sitting on a network where the network wasn't protected  
6 from the most basic and commonly known of hacking  
7 programs and products. You've got to safeguard the data.

8 Another question that I had on the rebate  
9 option acceptance maximization program, where there are a  
10 number of screens that you go through until the first  
11 choice that you saw was -- the first -- there was a  
12 question about do you listen to XM radio or do you like  
13 XM radio or something, and I wondered, and I'm not really  
14 sure how we would view this. But the question that I had  
15 was whether it would be material, whether a material  
16 piece of information that might be included on that  
17 screen is like if you say yes you're not going to see the  
18 other choices, or if you say no you're going to see a  
19 bunch of other choices. That is, and I don't know how we  
20 would look at that, it's just a question.

21 But if consumers don't know what the  
22 consequences or the implications are for answering a  
23 question a certain way, and it would be material for them  
24 to know those consequences, then maybe there's a need for  
25 a little bit more information on that slide. And I

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1 actually look forward over lunch to talking to some of my  
2 colleagues about what they think about that. I asked the  
3 question without offering a conclusion.

4 MR. QUINLAN: By the way, it does say that.

5 MS. HARRINGTON: It does?

6 MR. QUINLAN: Yes. It actually says, "no  
7 thanks, I prefer another payment option" if they click,  
8 "no."

9 MS. HARRINGTON: Okay. Well, good  
10 qualification, is that enough? Then that's my question,  
11 is that enough? Did I get it, would I get it, should I  
12 get it? I don't know.

13 Rebate cards offered. Gift cards. The FTC has  
14 recently announced settlements in a couple of gift card  
15 cases. There's been a shift we know in the gift card  
16 industry away from dormancy fees and expiration dates,  
17 but if there are on those, important to disclose.

18 And, finally, I was interested in the Master  
19 Card product, it says, "accepted wherever Master Card is  
20 offered." And I just had a question, I wondered, you  
21 know, really? Can you get a cash advance on that card,  
22 is that what that means? Or what does it mean to say,  
23 "accepted wherever Master Card is offered?" And, again,  
24 I look forward to talking to my colleagues about that.

25 So those were, Matt, my quick thoughts

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1 listening to these presentations about how we might view  
2 them.

3 [Applause.]

4 MR. GOLD: Thanks everybody for those  
5 presentations. I've gotten a number of questions from  
6 the audience, and we've got time for at least a couple of  
7 them.

8 First, following up, Eileen, with what you were  
9 discussing about the additional offers that are provided  
10 to consumers in PlusNet's model. One member of the  
11 audience wonders since the consumer signed up for a  
12 rebate and goes on to redeem the rebate, and Comp USA or  
13 PlusNet gives them the -- it says, 'requires consumers to  
14 submit to a sales pitch and see other promotions in order  
15 to get a rebate,' should this be disclosed somehow ahead  
16 of time. And the second question is, is this an unfair  
17 practice?

18 MS. HARRINGTON: Well, the nature of this whole  
19 site is marketing. I'm not sure that some disclosure  
20 that somebody is going to make offers on this site is  
21 material information, the disclosure of which is needed  
22 to prevent some kind of consumer injury or harm, or the  
23 likelihood of harm. So my initial response to that is  
24 no, no, and no.

25 MR. QUINLAN: The other thing is the consumer

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1 always has the option --

2 MS. HARRINGTON: Does anyone else think  
3 otherwise from the FTC? We could have a little debate  
4 right here.

5 MR. QUINLAN: The other thing is the consumer  
6 always has the option in the end and be to get the check.  
7 So if they go through the process and don't decide to  
8 purchase anything and/or don't decide to even a gift card  
9 they can get paper checks.

10 MR. GOLD: Okay. Another member of the  
11 audience, this one's directed to Matt Edwards. Talking  
12 about the Connecticut and Rhode Island laws, which  
13 prohibit essentially doing the math at a retail  
14 establishment. Is a website, do you know whether a  
15 website with an order page is considered a retail  
16 establishment under those laws?

17 MR. EDWARDS: No, I don't know.

18 MR. GOLD: And this one for Chris Quinlan. Do  
19 you, I think you mentioned during your presentation that  
20 even though you've got the online option, something like  
21 28 percent of consumers still send in prefer to do it by  
22 mail, do you have any idea why 28 percent of consumers  
23 still want to do it the old-fashioned way rather than  
24 doing it online? And also is this number consistent or  
25 has it been changing?

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1 MR. QUINLAN: Well, the first part is it's  
2 definitely been changing, it's been going down. So the  
3 online submissions have been rising. As I said, the  
4 updated numbers throughout April 15th across three  
5 different classes of trade, which is drug, grocery,  
6 consumer electronics, is 75-25. One of the things that  
7 we learned, and it's a while back, but with price line  
8 there's a lot of backlash because people couldn't  
9 actually go to a computer, and if they didn't have a  
10 computer they couldn't bid on milk. So I'm assuming that  
11 those same people don't want to go online and submit  
12 their rebates, they want to just mail it in the old-  
13 fashioned way. The only difference is it's a much more  
14 simplified process, because all they really have to do,  
15 and in some cases with their loyalty card number attached  
16 we don't even need their name and address, we get that  
17 file from the retailer with the transaction.

18 So all they actually have to do is drop the  
19 receipt into the mail and we process it for them. All  
20 we're doing is taking the receipt information on a mail-  
21 in and punching it into the system, data entering it.

22 MR. GOLD: Okay. And the question that I have  
23 for you, Chris, is I think part of your model or one of  
24 the attractive things parts of your model for consumers  
25 is the high percentage of consumers presumably who will

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1 attempt to redeem, and the relatively low redemption  
2 rate -- low -- relatively high redemption rate and the  
3 relatively low denial rate. Have you gotten any push-  
4 back [sic] from clients or potential clients who were  
5 concerned about these things?

6 MR. QUINLAN: No, the redemption rates haven't  
7 changed materially. And I think, I forget who was  
8 talking, I think it might have been Tim Silk, the whole  
9 idea is it's the rebate ratio that drives the redemption.  
10 It's the percentage of the cash that they're going to get  
11 back whether they're going to mail it in or do it online  
12 really hasn't materially changed the rate, if you will.

13 So we have -- the other side of that coin is we  
14 can project, if a vendor has a budget and they were doing  
15 \$50 rebates but didn't have any visibility into that, we  
16 can actually give them visibility to actually show them  
17 what their potential redemption rate's going to be based  
18 on their historical PLS data. So we can actually help  
19 them manage that cash flow. So if redemption did go up,  
20 is my point, we could ratchet back the potential rebate,  
21 and they'd understand it could still stay within that  
22 budget.

23 MR. GOLD: How about the other half, the low  
24 rate of, relatively low rate of rebate redemption  
25 denials?

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1 MR. QUINLAN: Well, again, we got into the  
2 business based probably on the consumer side of things,  
3 more so. And our whole idea was to make it easier for  
4 the consumer, so we don't have a rejection rate that's  
5 very high because it's sort of infallible information  
6 that's being passed back and forth between us in the  
7 retail end or vendor.

8 MR. GOLD: Okay. I'd like to thank our panel  
9 again. I think that's all we have time for.

10 [Applause.]

11 MR. GOLD: As we speak, a phone call is coming  
12 into the cell phone that it's vibrating, and there are a  
13 couple of calls that whoever's missed. Did anybody  
14 misplace a Samsung telephone? I will continue to hold  
15 onto it.

16 We're going to reconvene at 2:00 o'clock. You  
17 can leave your folders here.

18 [LUNCH]

19

20

21 **PANEL 4: INDUSTRY SOLUTIONS: EXPLORING BEST**  
22 **PRACTICES IN REBATE PROMOTIONS**

23 MS. BADGER: My name's Linda Badger, and I'm a  
24 staff attorney at the western region of the Federal Trade  
25 Commission. And now that you're all full from lunch, I

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1 was going to say now that you're all full from lunch we  
2 can start with the meat and potatoes panel, which is  
3 hearing practical solutions to the rebate problems we've  
4 all been talking about this morning and this afternoon.

5 First, we're going to hear best practices from  
6 a manufacturer's point of view. Manufacturers are  
7 ultimately responsible for every aspect of rebate  
8 promotions, from designing and advertising them to  
9 funding them and to having them fulfilled. And to give  
10 us this front-line perspective we're very pleased to  
11 welcome Mr. Christopher Ekren, who is the Senior Vice-  
12 President and Deputy General Counsel of Sony Electronics.

13  
14 So take it away, Chris.

15 [Applause.]

16 MR. EKREN: So thank you, Linda and Matt, and  
17 also everyone here. Sony views this area of great  
18 importance, and we really appreciate the chance to  
19 participate in this activity.

20 So obviously I'm with the law department at  
21 Sony. But the rebate responsibility is a corporate  
22 responsibility, it's not something that the law  
23 department owns or runs. But it's something that we're  
24 very intimately involved with, as a corporate culture  
25 we're part of a team. As an in-house lawyer I am part of

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1 the senior management culture that we try to inculcate  
2 within our organization.

3 So the essential elements in any best practice  
4 obviously is that senior management support and  
5 visibility in a clear corporate culture. In our  
6 corporation our president gets metrics (phonetic) and  
7 gets reports, and holds people accountable for how we  
8 manage our programs. This is something that very  
9 consciously those around him inject him into that role  
10 and get him the information so that we can drive the  
11 culture that we need to be effective and have effective  
12 rebate programs.

13 Our program basically is one of selecting third  
14 party vendors, because we don't have a core competence in  
15 our company of managing the very specialized process of  
16 rebates. And we understand there are companies that have  
17 developed the expertise that have the infrastructure, and  
18 it's not cost effective for us to build in a staff and  
19 manage all of that. So we have to be then partnering  
20 with people. We go through a formal RFP process, we look  
21 at in depth capabilities, we've developed a questionnaire  
22 over time, we continue to add to it, looking at the  
23 organizational structure of who we're going to partner  
24 with and work with. During in person interviews, site  
25 visits and inspections, we build into the contract key

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1 metrics and reporting.

2 The vendor selection is the most important  
3 aspect of this, because you really do have to put your  
4 company's reputation and your reputation with your  
5 consumers in the hands of a third party.

6 And we're a large company. So some of the  
7 things we're going to talk about here are perhaps not  
8 relevant to every organization. But from our perspective  
9 we felt, because we have many divisions that, for  
10 example, a camera division, or a PC division, etcetera,  
11 having an expertise in every division about how to do  
12 rebates in the best way was not cost effective, and it  
13 could lead to inconsistent implementations.

14 And so over time we decided we needed a central  
15 program management office, and we decided that rather  
16 than having someone loan from one department that  
17 probably had three other people pulling them in different  
18 directions, we were going to say there's going to be a  
19 dedicated coordinating head count.

20 Secondly, to standardize the process and to  
21 make sure that all of the issues were really thought of  
22 and thought of ahead of time, we developed a launch form  
23 that not only created a sort of internal directive for  
24 our program management office to proceed with the  
25 implementation, but also made sure the vendor was only

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1 getting directions from a central point within our  
2 company. Because otherwise what will happen is you'll  
3 have 15 people that have different pieces of a promotion,  
4 you'll have a marketing manager, you'll have maybe  
5 someone in the sales office, some of them dealing with  
6 Costco, some of them dealing with Parago, and they're all  
7 separately communicating, and that can and is a recipe  
8 for miscommunications, and ultimately you don't know who  
9 the owner of a decision is.

10 This is an eye chart, I'm sorry, but there is a  
11 lot to talk about with training. We do work with our  
12 vendor account management teams to understand how our  
13 internal processes work. We work with the vendor  
14 customer services teams, and also how to handle the  
15 customer issues. Create exception guidelines for the  
16 customer reps. We have a confidential set of guidelines  
17 for escalation type issues. And, of course, we do  
18 monitor individual sample interactions with consumers to  
19 make sure that the overall standards we've agreed to are  
20 followed.

21 In terms of the actual rebate coupon, what a  
22 lot of the learning we've had is that you just have to  
23 keep things simple. And so we created standard coupon  
24 templates in terms and conditions. The reason why we did  
25 that is because if you have as in our company you do over

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1 30 marketing groups, everybody tried to have their own  
2 coupon to fill slightly different parameters, different  
3 ideas of sort of what the marketing edict was going to  
4 be, what you are trying to drive there. And from an  
5 efficiency standpoint we found that once you learn  
6 certain lessons you should probably just continue to  
7 leverage those and not recreate the wheel.

8 But we also took into account what our vendor,  
9 I mean our resellers were telling us about what's easy  
10 for them to explain and administer, and what consumers  
11 can understand. And I think one of the lessons, and we  
12 constantly battle this, it's never one battle, is try to  
13 keep things very simple. Because while I think a lawyer  
14 can understand a certain level of language and perhaps  
15 I'd like to think most of our employees are sort of in  
16 the marketing area have college degrees and have a  
17 certain level of expertise in language, that isn't  
18 necessarily the demographic that's going to be  
19 interacting with the form.

20 One of the things we did as an online pre-  
21 qualification, and I know a number of vendors support  
22 this, it almost seems a little bit counter-intuitive to  
23 require or suggest, and it's actually a suggestion, not a  
24 requirement, somebody to go online and fill out or answer  
25 the questions they'd be answering anyways if they were to

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1 fill out the coupon and mail it in, and then determine  
2 whether in fact they are qualified for the rebate.  
3 Because if someone can fill out a coupon properly why  
4 would they have to go through an online process. So it's  
5 an optional thing, but what we often find is people don't  
6 read carefully the instructions. Sort of going through  
7 this process as part of the submission process actually  
8 helps them determine something that perhaps they can cure  
9 a better document so that they don't get rejected and  
10 they can get their money, or whatever they're looking  
11 for, as quickly as possible.

12 So I would recommend that. It's something that  
13 the team told me really is kind of a tweak to the process  
14 that may seem a little bit counter-intuitive, but really  
15 does seem to help. From a retailer's standpoint, and I  
16 think there's been a lot of progress in this area, a lot  
17 of legacy systems perhaps don't support every capability  
18 that you'd want to have to completely consistently  
19 represent rebate terms. So there's always an issue, well  
20 you only have 50 words, what can you fit in here, because  
21 we can only put so much on this little rebate slip. And  
22 that's how our company's going to do rebates, it's our  
23 way, or we're not going to do rebates with you, Sony.

24 I think that what it requires is teamwork and  
25 partnerships so that when the retailers are doing their

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1 implementation and you do negotiate with them about what  
2 really the consumer has to see, and make sure that that  
3 does get supported through their IT people and their  
4 system people.

5 From an inventory standpoint, when you're  
6 having a product that people are seeking to receive, you  
7 obviously need to have the products available. And that  
8 may seem extremely simple, and why can't that happen, but  
9 in a place like Sony that has a very complicated supply  
10 chain and all the vagaries of suppliers, there is a  
11 certain -- we run out of products all the time when we're  
12 trying to sell them just generally to consumers, and it's  
13 bad demand planning, it's things are more popular than we  
14 expected.

15 When you're offering any rebate there's a  
16 certain breakage rate that might be assumed, and when  
17 you're offering any premium there's a certain amount of  
18 people you expect will want it. But whatever turns out  
19 that whatever (inaudible) you're looking at becomes the  
20 rage for children, because they absolutely have to have  
21 it, then suddenly it's 2X what you expected, and that can  
22 happen. Do you have the relationship with the supplier  
23 that can supply that? If supplier A is not going to be  
24 able to supply that, do you have a supplier B? So we try  
25 to create this certain amount of expectations to our

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1 marketing people about what they have to line up before  
2 they put this offer out to the public.

3 And secondly, be able to give people an alternative to  
4 cash if we can't meet the expectation with, of course,  
5 the intent that we'll hopefully meet the expectation.

6 From an invoicing and funding standpoint, and  
7 this is something also, and again this is a big  
8 corporation type of issue, but we're talking about best  
9 practices and what we've had to do internally here to  
10 really satisfy what we think consumer expectations are.  
11 What we found is that a normal paid invoice in my  
12 bureaucratic company it takes an awful lot of people if  
13 it's a lot of money. And there's a lot of money that  
14 flows through rebate, so we needed to make sure that  
15 things weren't getting held up unless there was a real  
16 reason to hold it up.

17 And our internal processes were developed so  
18 that if someone wasn't moving on something fast enough,  
19 to pay a vendor, to fund something we promised consumers,  
20 we were going to assure that it got escalated to somebody  
21 else in the organization that could move the thing and  
22 move the process forward. So there is with a lot of  
23 internal controls, and I know every company here knows  
24 about Sarbanes Oxley, the need to not just have anybody  
25 in a company just say pay a large check to somebody.

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1 Balancing that need with the need to be responsive to the  
2 deadlines that we've committed to is something that we  
3 spend a lot of time thinking about and put in the process  
4 for.

5 But anything that is customer related does take  
6 a priority from a vendor standpoint, and it's a slightly,  
7 it's a different process because vendors are commercial  
8 companies and we have a contractual relationship with  
9 them where we can build in exactly what the payment  
10 expectations might be.

11 So I talked about reporting at the very  
12 beginning, in terms of how our CEO does get a roll-up  
13 report that talks about how we are performing to our  
14 promises, and also internally, you know, just some of the  
15 metrics we want to measure our internal people and how  
16 effective they are in running these processes. There's  
17 online access to it, it's prepared daily. There is a  
18 report that talks about how we're doing, and from the  
19 various standpoints the idea is to build enough of an  
20 alarm that if things aren't going right you can do an  
21 investigation and fix it before it actually gets felt by  
22 anybody.

23 From an inventory standpoint, again, the intent  
24 is knowing our supply chain, knowing the vendor  
25 relationships. Often -- I guess maybe we're unique in a

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1 sense, in that a lot of our (inaudible) actually are  
2 other Sony products, but it isn't necessarily always, it  
3 could be like a backpack or something that is made by an  
4 out-source. So we do need to have the reporting there to  
5 keep that going properly.

6 So again, we have a couple other reports going  
7 on with detailed reasons and issues that are coming up.  
8 One of the benefits is, is that if you see a trend going  
9 wrong you can -- in a sense you may not know the reason  
10 why but you can do an investigation, and perhaps the  
11 vendor is being a little bit too aggressive in looking at  
12 the exact requirements, and we can decide as a business  
13 decision, even though perhaps legally we don't have to  
14 give the customer the money, we're going to tell them,  
15 listen, from an expectation and a happiness standpoint  
16 it's just better if we relax those guidelines. And then  
17 that's a business decision that's made with the law  
18 department sometimes.

19 So that was just a really quick run-through. I  
20 know I have a limited time there. I know there's a Q&A  
21 session that we're hoping for. And I think it will be  
22 probably more interesting when you have the Parago  
23 perspective and Costco perspective to sort of  
24 synthetically add all this up and talk about how we work  
25 through the entire process to meet the customer

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1 expectations.

2 And I appreciate it, again, the chance to talk  
3 about those questions when they come.

4 [Applause.]

5 MS. BADGER: Well, thank you, Chris, very much  
6 for that presentation. And I want you to know that if  
7 you have questions just pass them to Matthew Gold here,  
8 and we can get those questions answered after the panel's  
9 over.

10 Now, I'd like to -- we're going to hear from  
11 Mr. Mike Reynolds, and he's the Executive Vice-President  
12 of Marketing Development and Strategy for Parago, Inc., a  
13 prominent national rebate processor fulfillment house.

14 Fulfillment houses, or rebate processors,  
15 really do the nitty gritty work in fulfilling and funding  
16 rebates, opening all the envelopes or looking at all the  
17 forms, and they're often caught in the middle when things  
18 go wrong.

19 So let's hear from Parago's Mike Reynolds about  
20 best practices from a fulfillment house's point of view.

21 MR. REYNOLDS: Thank you, Linda. I also would  
22 like to thank the FTC for putting this together today.  
23 It's a great opportunity really to discuss rebates end to  
24 end throughout the entire supply chain. And hopefully  
25 this is the beginning of many discussions going forward.

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1 So we certainly appreciate the opportunity.

2 A little bit about Parago, for those who don't  
3 know. We were founded in 1999, and we are a promotional  
4 services company. We've really been focused on elevating  
5 industry standards since that time. The founders of the  
6 company did not come out of the rebate processing space,  
7 but we saw it as an opportunity really to improve what  
8 had been at the time a process that obviously was long  
9 and drawn out, had some issues, and technology could  
10 solve some of those. And so many of us came out of the  
11 technology space.

12 We're really focused in on four pillars with  
13 the company, that being integrity, service, leadership,  
14 and innovation. I'm going to give you a sense of that  
15 through some of my remarks today. The key here has been  
16 working very closely with our clients. As you've heard,  
17 it's really a collaborative effort to process rebates and  
18 to put rebates out into the marketplace. And so that  
19 partnership is critical in working together with the  
20 clients to achieve optimal results in terms of the  
21 promotion itself and the consumer satisfaction.

22 Finally, I mentioned that we use technology.  
23 We have invested a tremendous amount in our technology  
24 infrastructure. And the focus has been to increase the  
25 accuracy of rebate processing, as well as the speed. And

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1 I'll show that a little bit later.

2 I do want to also add here there have been  
3 discussions throughout the morning regarding valids and  
4 invalids, and the rates, and those types of things. And  
5 while we're not yet to the 3 percent industry-wide that  
6 Hal mentioned, we're getting closer. And it's really the  
7 culmination of a couple of things, one has been the  
8 promotional design. And that's been talked about  
9 throughout the morning, how critical that is to really  
10 drive the percentage of invalid claims down lower and  
11 lower, because the promotion rules become much clearer,  
12 and it becomes much easier for the consumer.

13 We have also, through the technology, used a  
14 rules-based transaction processing engine that we  
15 developed, again, for accuracy. So the point is to  
16 really focus in on accurately processing the rebates, and  
17 if they are valid, pay them, pay them quickly. If  
18 they're invalid, notify the consumer quickly, and give  
19 them not only the reasons but how they might be able to  
20 rectify that situation.

21 As a result, we've seen invalid -- or valid  
22 rates increase to as high as 92 percent. So 8 percent  
23 invalid rates, with the top reasons for invalids  
24 typically being missing store receipt, missing UPC,  
25 postmark was out of range with the promotional rules, or

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1 the purchase date was outside of the promotional rules.  
2 You find those are the top four reasons for invalids. In  
3 a lot of cases the consumer, for instance, it was a  
4 missing store receipt, has the opportunity then to send  
5 that store receipt in and for that claim to be converted  
6 from an invalid status to a valid status and get the  
7 check out.

8 So there's a lot of best practices from a  
9 processing perspective. I'm just going to focus in on  
10 four today in recognition of the time here. Those four  
11 being paperless rebates, and we heard a little bit about  
12 that this morning; fast-turn times; submission scanning;  
13 and promotion design. All of these things are really  
14 best practices that tie back up to a consumer-centered  
15 approach to rebate processing, which is key, and  
16 obviously the basis for a lot of our conversations today.

17 So let me start with paperless processing. We  
18 got a good overview of this this morning, but the idea  
19 being eliminate the mail-in portion, and use the point of  
20 sale transaction data to validate the claim, and to do so  
21 very quickly. And certainly with the proliferation of  
22 the internet this is becoming more of an opportunity for  
23 the base of consumers in this country. So we have built  
24 solutions that really allow the consumer to go online,  
25 submit at that -- online at that time, and capture the

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1 data that they've got. And in many cases, and I'm going  
2 to show you an example of the Staples situation, if that  
3 online process has happened within say a couple of hours  
4 after the actual purchase we already have access to the  
5 transaction data to be able to indicate to the consumer  
6 right there on the spot whether their claim appears to be  
7 valid or invalid, based on a combination of the  
8 transaction number as well as the products that were  
9 purchased in that transaction.

10           Once we've received the point of sale data and  
11 therefore have the transactional data, which is the proof  
12 of purchase for the rebate, then we can move it very  
13 quickly through the process. One of the things that we  
14 have to be very careful about is fraud. And one of the  
15 aspects that we look at specifically for paperless is  
16 returns. And so in many cases the submission will be in  
17 essentially a hold period for the term of the return  
18 window. Therefore, if the consumer were to take the  
19 product back they would get their full refund of the  
20 purchase price, we would be able to validate that against  
21 the transaction data and it wouldn't get the rebate.

22           And of course the flip side is true as well.  
23 If they have not returned within that window, then the  
24 rebate check is sent out immediately. We obviously try  
25 to keep this a very tight window.

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1                   And then of course if it's invalid, and with  
2 paperless you see virtually no invalids because you're  
3 able to tell the consumer right there that the claim will  
4 be invalidated because the right product perhaps wasn't  
5 purchased within that transaction. But it also gives  
6 them an opportunity to correct that mistake, perhaps  
7 they've put in the wrong transaction identifier, as an  
8 example, so they can re-key that and it can be moved to  
9 the valid state.

10                   There are many benefits to paperless rebates.  
11 Consumers obviously have a much better rebate experience.  
12 We are able to proactively notify them of the validation  
13 or whether it's invalid. Fast turn times, we're really  
14 able to contract that period of time. The client also  
15 sees tremendous benefits, virtual elimination of fraud.  
16 Fraud has been a big issue in the rebate industry. We at  
17 Parago, and my peers at other rebate processors, have  
18 been working diligently over several years now to remove  
19 as much as we can fraud out of the rebate industry.  
20 Paperless virtually eliminates that rebate fraud, so  
21 there's a big benefit there.

22                   Also the accuracy of submissions. We get some  
23 handwriting that's very difficult to read. So when it's  
24 done online the beauty of that is that things like the  
25 consumer's address where the check is going to go is very

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1 accurate.

2 And finally, brand extension. From that I mean  
3 that it really, because it's a good consumer experience,  
4 elevates the client's brand in the eyes of the consumer.  
5 And actually what we're finding is that this is driving  
6 loyalty, loyalty of that consumer, frequency and recency  
7 of purchases. And, in fact, one of our best clients, Ace  
8 Hardware, recently launched Ace Rewards, which is their  
9 loyalty program, and they have integrated paperless  
10 rebates into that solution so that their loyal members  
11 are receiving all of the benefits of paperless rebates.

12 The experience, you saw it this morning, this  
13 is very similar in the case of Staples easy rebates. And  
14 there was a comment made earlier about how Staples has  
15 done a good job of working through some of the consumer  
16 experiences, and we've worked with them since 1999 in  
17 partnership to really move that along quite quickly.  
18 Staples easy rebates, which most people do know, is  
19 really the culmination of those efforts, and is a  
20 solution that works very, very easily. There is very  
21 little information for the consumer to have to enter in.  
22 And the key here is Staples makes sure it is very, very  
23 clear on the rebate form the two pieces of information  
24 that are required in order to claim that rebate: that  
25 being the transaction number and the promotion code, both

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1 of which are printed on the receipt.

2 Moving to turn times. The faster that we can  
3 pay the consumer the better the experience, no question  
4 there. We have been working diligently with our clients  
5 to bring that down, and we are now seeing in some cases  
6 turn times from the postmark date to the date they have  
7 the check in their hands as little as 21 days. So we've  
8 made substantial improvement there. There are many  
9 clients that are not there yet, that we continue to work  
10 on, and some that simply won't be able to get all the way  
11 down to 21 days, but that we can continue to make faster.

12 We have in the process removed several steps.  
13 You see in the middle, Linda commented on we're doing the  
14 nitty gritty, and in the middle you see some of that  
15 nitty gritty detailed. And we have removed several steps  
16 from 1999 till today, and automated those into the  
17 technology in order to compress that time frame.

18 To give you an idea, in 1999 it was estimated  
19 that the turn time as described, as I explained, was 12  
20 to 16 weeks. In 2007 we now are best practices getting  
21 down under 4 weeks, which could represent up to 75  
22 percent decrease in that turn time. We actually find  
23 with our clients right now across the board that north of  
24 90 percent of valid claims the check is actually out the  
25 door and in their hands in less than 6 weeks. So we're

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1 continually working to improve that, but it's coming down  
2 substantially.

3           The third area is submission scanning. And  
4 this is something that we've put in place here over the  
5 last couple of years. And rather than simply keying in  
6 the contents of the envelope and then bagging up the  
7 paper, if you will, and storing it out into a warehouse,  
8 we moved to scanning. This has allowed us to really  
9 literally take the entire contents of the envelope, as  
10 well as the outside of the envelope itself, create a  
11 digital image of all of that information, and key in off  
12 of the digital image. This actually has resulted in  
13 several benefits. The integration with data entry  
14 actually has yielded efficiencies, we're actually able to  
15 key the information in much faster, as well as improved  
16 accuracy. Rather than the data entry clerk looking down,  
17 they're literally they have the scanned image and the  
18 data entry screen side by side. And as a result we've  
19 actually seen a nice increase in data entry accuracy.

20           The other area of benefit is in the call  
21 center. The images are available to the customer  
22 services representatives within that transaction. So  
23 when a consumer calls the customer service representative  
24 can pull that up on their screen and they're looking at  
25 exactly what the consumer sent in. So while I'm not

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1 going to talk about consumer best practices, certainly a  
2 consumer best practice that has been talked about a lot  
3 is photocopy everything that you mail in. The beauty of  
4 that is the consumer's now looking at the photocopy, the  
5 customer service representative is looking at exactly  
6 what was sent in, and we can resolve the issue, whether  
7 it's that the consumer did not send something in and we  
8 can discuss what they need to send in, or whether we, in  
9 the case Sony just described, you know, perhaps the error  
10 was not significant enough and we've been informed by our  
11 client to pay the rebate claim.

12 Third, we've talked a lot about this today,  
13 promotion design. And we've seen lots of examples, and  
14 certainly this is a horrible one, and blends in all of  
15 the instructions to the consumer as well as the terms and  
16 conditions into one big mess of text. We need to  
17 continue to improve on this. This is one example. This  
18 also is a Staples rebate form. And the key here is that  
19 the instructions are very, very clear. I know it's  
20 small, and I apologize, because it's a long form. But  
21 you can see the rebate begin date, end date, and postmark  
22 date are clearly called out at the top. In the middle,  
23 clearly called out the address where to send the rebate.  
24 And at the bottom, the expectations, in this case four to  
25 six weeks. And the ability to check the status of that

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1 claim online. You know, we still have to get the terms  
2 and conditions in there, but if you were to read these,  
3 and you'll have an opportunity to when the presentation  
4 is made available, it's quite simple, it's quite  
5 straightforward, there's not a lot of difficult language  
6 in there. So that certainly has helped tremendously,  
7 versus burying it deep inside some terms and conditions.

8 So those are the four areas I wanted to talk  
9 about today. I, too, look forward to the question and  
10 answer session. We are making strides. We've made a lot  
11 of strides over the last eight years as an industry.  
12 There are still things obviously we can do to make this  
13 better. But just the fact that we're talking about it  
14 now is great. And the application of technology through  
15 a partnership between the clients and the processors is  
16 really going to help us get there. So thank you very  
17 much.

18 [Applause.]

19 MS. BADGER: Thanks, Mike. And that reminds me  
20 of our admonition that mouse print is for rats, so avoid  
21 it.

22 [Laughter.]

23 MS. BADGER: Our third panelist represents the  
24 retailer's point of view, and often retailers catch the  
25 heat for botched rebate programs even though they're just

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1 selling through products that carry a manufacturer's  
2 rebate. Customer complaints are bad for business, and  
3 costly as well.

4 Costco has a really intriguing before and after  
5 saga of how it tamed the rebate beast. And here to tell  
6 you the story is Joe Grachek, Vice-President and  
7 Merchandise Accounting Controller for Costco Wholesale  
8 Corporation.

9 Thanks, Joe.

10 [Applause.]

11 MR. GRACHEK: All right. Good afternoon,  
12 everyone. I wanted to give you a little bit of a story  
13 about Costco's journey through the mail-in rebate world  
14 and how we've went down one pathway and ultimately by  
15 doing what we thought was the best for members, best for  
16 shareholders and our employees, and our suppliers, came  
17 to some conclusions that we probably didn't think we were  
18 going to come to.

19 So Costco's all about maximizing the value to  
20 our members, our customers, and minimizing the cost of  
21 the expense or the administration of doing business for  
22 ourselves and for our suppliers. So that's the  
23 fundamental principle that we begin this process with.

24 A few years ago Costco developed software and  
25 systems with our fulfillment partner to be able to use a

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1 point of sale as the beginning of the rebate process. So  
2 we began using essentially printing a rebate receipt with  
3 each receipt at the warehouse. Many of you may have seen  
4 those if you shop at Costco. Initially it was a mail-in  
5 rebate program that was quite successful because it did  
6 make it easier for our members to submit rebates, but  
7 it's evolved into an electronic rebate program that has  
8 really become popular and have been a fan favorite with  
9 our members.

10 Essentially we worked with all of our  
11 suppliers, and with few exceptions our suppliers have  
12 joined us in this program where Costco has essentially  
13 manages all the rebate programs independent, so we don't  
14 have 200 supplier programs that are running through our  
15 warehouse. We have rebate programs that run through our  
16 warehouses to our members that Costco manages  
17 unilaterally, with few exceptions. All rebates are set  
18 up internally at Costco. The rebates are in the point of  
19 sale system, and they are electronically transmitted to  
20 our fulfillment partner who takes a submission from the  
21 members, bumps it up against the database at the point of  
22 sale, returns it to us for a validation process, and  
23 ultimately is funded and remits to the members. So it's  
24 a pretty quick and easy process.

25 One quick thing, the members this morning were

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1 talking a little bit about security of information. The  
2 system we developed resides within the Costco system, and  
3 so it has all the same internal controls as all our  
4 financial systems, and other internal company controls.  
5 So it's very secure information. Plus because we're  
6 fortunate enough to have a membership base that we're  
7 dealing with, the members really aren't required to put  
8 anything that's not already known, basically name and  
9 address, into the system, and that's just for the  
10 remittance of the check. So when the member files for a  
11 reimbursement or rebate it's fulfilled to the address  
12 they select, but no additional information has to go into  
13 the system.

14 From an internal administration perspective,  
15 Costco sets up the rebate program, Costco runs it through  
16 our buildings, Costco charges the suppliers the expense  
17 for running that rebate program, and Costco is then  
18 essentially in the control of assuring the highest levels  
19 of fulfillment as well as operating the program and  
20 efficiently as possible to reduce everyone's expenses.

21 Here's a copy of the rebate receipt that's  
22 printed out on the membership, and I don't know how well  
23 you can see it, but it's pretty similar to other point of  
24 sale receipts that are printed out.

25 Our goal is to maximize the fulfillment, reduce

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1 the rejections, and I think we've been real successful at  
2 doing this. So successful, I might add, that I think  
3 that was -- that's kind of where I'm going with this  
4 discussion is that our success in the level of  
5 fulfillment has let us and our suppliers in a unified way  
6 to say hey wait a second, there's a lot of inherent  
7 administrative expenses to run mail-in rebate programs,  
8 and maybe our administrative dollars are better spent  
9 somewhere else. And so maybe there's other programs out  
10 there that might be more beneficial to our customers,  
11 members, and to ourselves than a mail-in rebate program.  
12 And I think that's the interesting shift in the paradigm  
13 is that the more efficient we become the more programs  
14 are being changed to be more effective for everyone. So  
15 that's the unintended benefit of higher levels of  
16 fulfillment.

17 What we did, we started the program in 2000,  
18 rolled out the U.S. and Canada by 2001, and then we went  
19 online in 2003 with our program. What we require for the  
20 Costco program is that it has to have significant value  
21 if we're going to run a mail-in rebate. And that's  
22 another thing that's maybe different for us and some  
23 others is that we have to have at least 20 percent of the  
24 product value as the value to our member, it has to be  
25 real simple, it has to be membership based. The

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1 suppliers pay the set-up fee, the suppliers pay the  
2 transaction fee to administrate the program. So we want  
3 to make sure the suppliers are vested in the program  
4 financially in order for them to run a program through  
5 our systems.

6 Kind of our redemption rates as it stands  
7 today. It's a confusing slide. But basically if you  
8 look at \$5 rebates, in our automated system today we get  
9 a return of about 40 percent redemption, and that's with  
10 an easy online methodology, as well as the option to  
11 mail-in, about 40 percent. \$25 rebates, about 48  
12 percent. \$100 rebates, right around 80 percent. So  
13 there's still a number of consumers that don't utilize  
14 the process even though it has become simple and easy to  
15 do.

16 We'll just see the higher redemption rates, the  
17 higher dollars. When members are paid the check goes to  
18 the member, and they can go cash it however they want,  
19 but they can also cash it at Costco. One thing that was  
20 integral to this program was making it fair to the  
21 members and easy on them, so if the check becomes stale-  
22 dated we'll still cash the check, if a member's rebate,  
23 for whatever reason, they don't process the rebate but  
24 they had a valid rebate even after the system is -- or  
25 even after the window of redemption is closed but the

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1 supplier will still honor that rebate.

2 So we encourage our members to get the full  
3 value, and we're willing to eat some of that cost to make  
4 sure the members do get the value on top of the  
5 supplier's fulfillment requirements.

6 Now, if you see here, if you look at the bars  
7 you can see the number of redemptions over the last five  
8 years. The programs themselves have actually  
9 significantly declined. We had about six million rebate  
10 redemptions in fiscal '02, down to under two million  
11 redemptions in fiscal '06. And the reason for that is  
12 because, as I said earlier, suppliers and our merchants  
13 are realizing there's better ways to spend their  
14 administrative expense than on mail-in rebate programs.  
15 In the U.S. the average check amount is about \$15.10, if  
16 you look at all the rebates redeemed.

17 The other thing that members can do on our  
18 system is -- just I'm sure that most of our retail  
19 competitors are doing this online do about the same  
20 thing -- they can see, they can actually go in and see  
21 all the rebates that exist at the Costco they shop at.  
22 They can also see the status of their rebate, which I  
23 didn't show you here. They can see the status of their  
24 rebate, they can see the history of their rebate  
25 redemptions, and they can see all the rebates that exist

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1 where they shop. Also, we do make sure that even on the  
2 receipt that you get at the register, plus on our  
3 website, if you're not satisfied with the electronic  
4 submission, if you do want to make a phone call, we do  
5 have members who still prefer to make phone calls and we  
6 give them that opportunity. So and we have a call center  
7 in our offices. Our fulfillment partner also has a call  
8 center. And within those call centers, just so you know,  
9 is a focus for us just to make sure we have excellent  
10 service to our members, and so we have a real time  
11 monitoring process that we can utilize from our  
12 administrative offices to administrate or to monitor the  
13 administration of the phone calls within our third party  
14 provider, as well as internally at Costco. So we make  
15 sure that the members are getting the right service from  
16 on the phone lines too, even though that's not the  
17 preferred methodology.

18 Here's just a snapshot of what the site looks  
19 like when they're looking at rebates. You can look at  
20 this when you get the presentation, I guess.

21 Here's all the rebates that are listed in the  
22 system for a warehouse that a member shops at.

23 We'll always reissue rebate checks if they're  
24 lost. Full customer service is a big important thing for  
25 us.

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1           Let's see, I guess the biggest thing for us is  
2 someone mentioned earlier today if the members have a bad  
3 experience with a rebate program that might influence  
4 their decision to purchase in the future. And I think we  
5 take that really seriously at Costco. It's a big deal to  
6 us. We don't want to offer any program that our members  
7 can't be thrilled with, and that we can't support at the  
8 highest level. So we feel like we've been able to do  
9 that through our fulfillment partner and our internal  
10 systems that we've developed, but also we're finding that  
11 when you do it the right way there's just a chance there  
12 might be a better way to spend those dollars between you  
13 and your supplier partners.

14           And so stay tuned on that, and we'll see what  
15 rebates go in the future. Thank you.

16           [Applause.]

17           MS. BADGER: Thanks, Joe. And just for all of  
18 you that need some dessert after lunch we have some  
19 cookies on the side here where the coffee was, and those  
20 cookies were purchased from Costco.

21           [Laughter.]

22           MS. BADGER: So, thanks, Joe, on both accounts.

23           Finally, we're very pleased to welcome  
24 Ms. Linda Goldstein. Ms. Goldstein serves as the Vice-  
25 President of Government and Legal Affairs for the

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1 Promotion Marketing Association, and is also a partner  
2 with the law firm of Manatt, Phelps, and Phillips. And  
3 in her remarks Ms. Goldstein will unveil for the first  
4 time, your moderator hasn't even seen them yet, the PMA's  
5 new guidelines for rebate promotions.

6 So welcome and many thanks for speaking with us  
7 today.

8 [Applause.]

9 MS. GOLDSTEIN: Thank you. And we're delighted  
10 to be here on behalf of the Promotion Marketing  
11 Association. Every one of these events where we can get  
12 industry and government together to talk about the issues  
13 and collaborate on solutions, I think we have a wealth of  
14 experience in learning that it tends to solve the problem  
15 efficiently with everybody's interest in mind. So we're  
16 glad to be here participating at yet another stellar  
17 event.

18 Actually, let me just begin. I am here today  
19 representing the Promotion Marketing Association. And  
20 let me just tell you a little bit about who we are,  
21 because I think that will help explain some of the  
22 perspective that we took in defining best practices. We  
23 are the leading trade association representing the  
24 promotion marketing industry. Our members are quite  
25 diverse. We have a lot of package goods companies,

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1       retailers, online marketers. But in addition to the  
2       marketing segment of the community we also have promotion  
3       agencies, fulfillment companies, and so really companies  
4       that touch the rebate process from different sectors come  
5       into play in our association. And so that forces, as  
6       you'll see, some of what we're trying to identify to be a  
7       little bit more general than the individualized specific  
8       programs that you've heard about thus far.

9                 We're not new as an association to trying to  
10       deal with rebate issues. Actually for a very long time  
11       there's been a joint initiative between the PMA and the  
12       United States Postal Inspection Service, a rebate fraud  
13       data center whose objective was to detect, deter, and  
14       prevent rebate fraud, and actually they maintained a  
15       database of people who through a variety of parameters  
16       that were established were suspected of or were  
17       determined to have committed some kind of a rebate fraud.  
18       These people were identified and asked to sign voluntary  
19       assurances of discontinuance. And it's a quite effective  
20       program in combating consumer fraud.

21                 And I think the point for us that we want to  
22       stress there is that consumer protection is an important  
23       objective in determining best practices, but also  
24       permitting policies and procedures that are designed to  
25       deter consumer fraud is also an issue, and rebate fraud

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1 is a problem, a real problem for businesses.

2 So, as I said, some of our key learning points,  
3 just from that experience were that rebate fraud is real,  
4 that businesses can be victims too, and that ultimately  
5 consumer protection needs need to be properly balanced  
6 against the need to prevent customer fraud or fraud on  
7 the businesses.

8 In thinking about how to approach the best  
9 practices we took some considerations both from the  
10 marketer's side and from the consumer's side. We believe  
11 that rebates are a valuable promotional vehicle that  
12 benefits both marketers and consumers. For consumers  
13 there's a high perceived value, it's a genuine savings,  
14 and I think as you heard this morning, if the experience  
15 is good it's likely to stimulate future purchases.

16 For businesses, it's a highly effective  
17 marketing tool. I've put some numbers up here just to  
18 show the magnitude of rebates that are issued each year.  
19 I'm going to caveat it by saying these are unaudited  
20 figures, and really just designed to be illustrative  
21 rather than to be quoted.

22 I think the key issues for consumers, and what  
23 we've heard from our members where problems occur, are if  
24 the terms of the rebate offer are unclear or ambiguous,  
25 if the advertising fails to disclose material terms and

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1 conditions, as well as the other forms that the consumer  
2 gets once they've made the purchase and are in the  
3 process of trying to claim their rebate. There have been  
4 numerous problems with advertising of pricing being  
5 misleading, and consumers not really understanding  
6 exactly what it is that they're going to have to do when  
7 they go to the checkout counter and dip into their  
8 pocket.

9           Contingent rebates are becoming increasingly  
10 popular, particularly in certain industry segments, so  
11 the need to disclose those contingencies we think is very  
12 important.

13           From an operational standpoint, problems can  
14 arise if the window for purchases is too short, or the  
15 time period for redemption is too short, if the claim  
16 procedures are too onerous, or the rebates are not issued  
17 on a timely basis. And I think that that all confirms  
18 very much what you've heard this morning.

19           Some of the issues that businesses are facing,  
20 that our members are facing, we're troubled by  
21 inconsistent state regulation. There are, particularly  
22 in the area of advertising, there are on the books now  
23 state statutes that are inconsistent, and if you're  
24 trying to do a national promotion that can be quite  
25 challenging in terms of developing your advertising copy.

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1 And I think it's also important as we get into this  
2 process to recognize that a one size fits all approach  
3 doesn't work. I think the panel, this afternoon's panel  
4 demonstrates it in and of itself that different  
5 businesses, depending on their size, depending on the  
6 nature of the products or services that they're offering  
7 on their demographics, may have different approaches.  
8 Online certainly is an efficient way, but for some people  
9 that may not be an effective way for them.

10 So I think, again, we just looked at this from  
11 the standpoint of standardized language, standardized  
12 mechanical or operational procedures, could be  
13 problematic for all businesses concerned. And I think we  
14 also have to recognize that rebate practices are  
15 evolving, and as technology changes practices change to  
16 accommodate that. And so any regulation, legislation, or  
17 even best practices has to be sufficiently fluid to  
18 accommodate those evolving practices.

19 And we do need some conditions and restrictions  
20 to protect against consumer fraud, but those have to be  
21 balanced against the need to provide for appropriate  
22 consumer protection.

23 We are concerned, there has been a marked  
24 increase in legislative trends, rebate bills that have  
25 been proposed, many have not passed, but they continue to

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1       come and they continue to become more restrictive. And  
2       from a business standpoint our concern is if as we've  
3       seen in other areas, like gift cards or sweepstakes, we  
4       end up with inconsistent state regulations, what that  
5       will likely mean is that marketers will offer these  
6       programs less frequently. And for consumers that's not a  
7       positive output.

8               And so we really hope that maybe today is the  
9       start of a process to see just how far self-regulation  
10      can go if different parts of the industry come together  
11      to develop best practices. And I really feel the need to  
12      say that what we're going to share with you today is just  
13      one group's point of view. And I think there are lots of  
14      different perspectives that will have to weigh in before  
15      we can finally get a complete picture.

16              So in developing these practices, which I also  
17      want to say continue to be a work in progress in part  
18      because we really wanted to hear a lot of what was  
19      discussed today and take that back to our members and see  
20      how we might improve on what we're thinking thus far, but  
21      we've focused on three aspects of the rebate offer: the  
22      structure of the offer; the communication of the offer;  
23      and the fulfillment of the offer.

24              There are some general overriding principles,  
25      they sound logical and intuitive, but I think they're

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1       worth repeating. Three primary principles that rebate  
2       offers should be conducted in compliance with applicable  
3       laws and regulations, which we hope will be few and  
4       reasonable. That they should be designed in a manner to  
5       provide meaningful value to consumers. We're not going  
6       to specify a specific amount, but it should be a real  
7       value, they should not be illusory. And they should be  
8       conducted in a manner that deals with the consumer  
9       honestly and treats the consumer fairly.

10               In terms of the structure of the offer, the  
11       requirements should be reasonable and easy to follow.  
12       They should not be unduly onerous. And whatever terms  
13       and conditions are put on should have a rational business  
14       purpose, they should not be in there simply for the  
15       purpose of encouraging breakage or encouraging slippage.  
16       But if they can relate back to a rational business that  
17       the particular company has, we think it's appropriate for  
18       them to be included, and that will obviously vary by  
19       marketer.

20               Marketers should allow for a reasonable period  
21       of time between the purchase date and the submission  
22       deadline. We think that will address the short window  
23       period that consumers have expressed. And they should be  
24       designed to prevent fraudulent claims in a reasonable  
25       manner. In other words, again, whatever conditions are

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1 imposed, or limitations, no duplicate copies, or things  
2 like that, have a reason or a basis to prevent fraud,  
3 those should be acceptable. But the idea of preventing  
4 fraud shouldn't be used as a basis to impose unreasonable  
5 conditions.

6 In terms of communicating the offer, and I  
7 think here is where we really need to have some  
8 flexibility, and we intentionally have not specified  
9 manner, time, or placement of disclosures, because it  
10 will vary. Some of the disclosures will be very material  
11 to the purchase decision. Other disclosures are very  
12 important once the consumer needs to go through the  
13 process of claiming the rebate, and that should dictate  
14 where and how those disclosures are made. But as a  
15 general rule, marketers should ensure that all relevant  
16 information about the rebate offer is communicated at the  
17 appropriate time. And, again, as I say, that can vary.

18 The terms of the rebate offer should be  
19 presented in language that's clear, that's unambiguous,  
20 and easy for the consumer to understand and follow.

21 We do think that there are certain material  
22 terms and conditions of the offer that should be  
23 disclosed in all instances. And those would include the  
24 time; the identity of the product or products, in other  
25 words, to be specific about which one, which products or

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1 within a line the rebates apply to, to help reduce  
2 consumer error; the date by which the request has to be  
3 postmarked and/or received, and that should be indicated,  
4 whether it's a postmark or receipt date; date by which  
5 the product must be purchased; obviously the amount of  
6 the rebate; the manner in which the rebate will be  
7 provided. In particular we're seeing a growing trend  
8 towards providing rebates through other forums like gift  
9 cards or store value cards, or the like, and if it's  
10 going to be something other than a check the consumer  
11 should be told about it up front. And if it is something  
12 like a gift card or a store value card, any material  
13 limitations on the use of that should also be disclosed.

14 If the time for delivering the rebate, we use  
15 the mail order rule as a model here, is longer than 30  
16 days, we think that should be disclosed, and details  
17 about who to contact with questions. The offer terms  
18 should advise the consumer if there are any additional  
19 purchases that they have to make, or any additional costs  
20 that they're required to incur, any additional  
21 conditions, any geographical limitations, any limits on  
22 the number of rebates: one per household, one per  
23 purchase, one per email address. Obviously the specific  
24 procedures that have to be followed. A very clear  
25 description of exactly what items the customer has to

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1 provide in order to claim their rebate. And any material  
2 exclusions, limitations, or restrictions.

3 Two principles we wanted to highlight outside  
4 of the general requirements for clear and conspicuous  
5 disclosure of material terms, is to really focus on not  
6 misrepresenting the out of pocket cost to the consumer.  
7 So if the law permits we think it's a best practice to  
8 disclose both the pre-rebate price and a post-rebate  
9 price so that the consumer knows exactly what each  
10 element of the transaction is. And if the receipt of the  
11 rebate is contingent on the consumer fulfilling certain  
12 requirements, for example, if it's a rebate on a computer  
13 but you've got to be a member of an online service for a  
14 certain period of time, that should really be highlighted  
15 prominently in the advertising, because that may be a  
16 material inducement to the purchase.

17 On the fulfillment side, obviously the rebate  
18 offer should be fulfilled in accordance with the offer  
19 terms and conditions. They should be honored within the  
20 time period specified, which should be of a reasonable  
21 nature. They should be delivered to consumers in a  
22 manner that we can reasonably expect that the consumer  
23 will receive the rebate. So in some manner that's not  
24 likely to be perceived as junk mail by the consumer, but  
25 something that would indicate to the consumer that the

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1 contents of that envelope are important and that it would  
2 be worth the consumer's while to open them.

3 If the marketer will be relying on a third  
4 party to handle the fulfillment, again, we don't think  
5 it's our role to set forth specific requirements for  
6 third party fulfillment, but we do believe that our  
7 members should conduct some due diligence on the third  
8 party to ensure that they have the financial resources  
9 and the personnel necessary to meet anticipated demands.  
10 And that there should be a formal contract with the third  
11 party that sets out the expectations of both parties and  
12 what the respective obligations of both parties would be.

13 We think that the marketers need to work with  
14 their third party fulfillment companies to make sure that  
15 when there's an expected surge of consumer requests or  
16 interest in the rebate that that third party fulfillment  
17 company knows. So often some of the problems occur  
18 because there's a lack of proper communication between  
19 the marketer and the fulfillment company. They don't  
20 know what the media schedules are and they don't  
21 necessarily know when to expect that that surge will hit  
22 to make sure they have appropriate forms and personnel  
23 necessary to handle that.

24 And the marketers also need to work with their  
25 retailers to make sure that they have proper inventory on

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1 hand to meet those anticipated surges.

2 The marketers, or their third party fulfillment  
3 company should have reasonable processes and procedures  
4 in place to detect rebate fraud. We've learned through  
5 the experience from the rebate data fraud center  
6 experience that there are some indicators that you can  
7 give to your third party fulfillment company that can be  
8 early warning signs that there might be some fraud  
9 occurring.

10 The marketers should maintain clear records of  
11 the transaction. Consumers should be provided with  
12 reasonable cost-free method of making inquiries about  
13 their rebate, so there should be a cost-free customer  
14 service system in place with appropriate hold times and  
15 appropriate personnel to handle the inquiries in a timely  
16 manner.

17 And we think it's important to remember the  
18 privacy component, the data that's collected from  
19 consumers in connection with rebate offers should be used  
20 in accordance with the marketer's stated policies and  
21 applicable laws and regulations.

22 So those are our thoughts as of this moment.  
23 We welcome everyone's comments here and we will continue  
24 to keep you posted as we work these through. Thank you.

25 [Applause.]

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1 MS. BADGER: After hearing from all of our  
2 panelists on best practices, I think that we can sum it  
3 up in one word, and that's CARE. And I came up with a  
4 mnemonic because I basically can't help myself. C, be  
5 consumer friendly, make sure to keep the terms and  
6 conditions simple, something that consumers can follow,  
7 and communicate clearly with your consumer. A, be  
8 attentive, look for signs that problems are starting and  
9 nip them in the bud. R, be responsible, and we saw that  
10 from our manufacturer and retailer panelists today. Take  
11 responsibility for all the facets of rebate fulfillment,  
12 don't just pass the buck, or rebate promotion. And E,  
13 where possible use electronic submissions, they're really  
14 great for consumers, speed up the process, keep them  
15 informed, and it seems to cut back on the costs of rebate  
16 promotions as well.

17 So with that, I want to thank the panel as I've  
18 learned a lot today, and I know that everyone in the  
19 audience has. And thanks for your great presentations.

20 [Applause.]

21 MS. BADGER: And we have a lot of questions.  
22 And we have several questions that focus on what happens  
23 when the rebate check is not cashed by the consumers. So  
24 perhaps Mike Reynolds from Parago could start first and  
25 tell us what the policy is from the rebate processor's

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1 viewpoint.

2 MR. REYNOLDS: Well, I can certainly give you  
3 our process around that. The rebate checks that go out  
4 and are not cashed, first of all, there's two methods  
5 here in terms of receiving the funds and distributing  
6 those funds on checks. One is that we invoice our  
7 clients and they wire the money to us and then the checks  
8 are cut. The second is that the client in some cases has  
9 their own bank account and we write the checks off of  
10 their bank account.

11 In the case where it is being written off the  
12 Parago bank account then those funds, one of two things  
13 happens with those funds: one, they're returned back to  
14 the client; or two, in the case where they have elected  
15 to ask us to file that as unclaimed property with the  
16 appropriate states we provide that service to them. So  
17 it just depends on the client's situation, the clients  
18 sometimes take it upon themselves to handle the unclaimed  
19 property, and sometimes they ask us to do that.

20 MS. BADGER: Okay.

21 MS. GOLDSTEIN: I just wanted to add that on  
22 that issue is becoming an increasingly significant one on  
23 the state level. And state interests in escheating that  
24 property have escalated in the last several years. So  
25 all marketers that have any significant rebate program

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1 really need to have in place a parallel program for how  
2 that property will be handled for escheatment purposes.  
3 And it's no longer a situation where that can be a  
4 windfall to the marketer if those checks are uncashed.  
5 In fact, it can create greater headaches and greater  
6 potential liability for the marketers.

7 MS. BADGER: Okay. The next question again for  
8 Mike I think is how can a manufacturer like Staples, one  
9 of your clients, gain access to your reports on  
10 redemptions and submissions and so forth?

11 MR. REYNOLDS: How can Staples get it?

12 MS. BADGER: Staples, one of your clients.

13 MR. REYNOLDS: How do they get the data?

14 MS. BADGER: Right.

15 MR. REYNOLDS: Not the manufacturers but  
16 Staples themselves?

17 MS. BADGER: It says, 'How can a manufacturer  
18 gain access to Parago's reports for redemptions,  
19 submissions, etcetera?'

20 MR. REYNOLDS: Sure. We provide reporting,  
21 extensive reporting back to our clients on a weekly  
22 basis. So if the client is Staples then the reporting  
23 goes back to Staples. In some cases the manufacturer who  
24 may be sponsoring that rebate promotion through Staples  
25 wants to get the data as well, and basically that's just

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1 in cooperation with Staples. If our contract is directly  
2 with Staples it's their data, it's not ours, we don't  
3 have the ability to do anything with that without their  
4 permission. So typically what will happen is the  
5 manufacturer will work with Staples, and if that approval  
6 is given then we're more than happy to provide all of the  
7 data to the appropriate manufacturer. And our reporting  
8 system is designed in such a way that it's very easy to  
9 split out the reports by manufacturers.

10 MS. BADGER: Okay. And I'll throw this out to  
11 anyone who wants to answer it. One of our audience  
12 members wants to know, could you describe and/or give  
13 examples of what a contingent rebate is?

14 Linda?

15 MS. GOLDSTEIN: Well, there are many examples,  
16 but I think the one that is most common is you purchase  
17 product and that product may be linked to a service. So  
18 an example might be purchasing a phone and signing up for  
19 wireless service and the rebate you only become eligible  
20 for the rebate if you've remained a subscription member  
21 of that service for a certain number of months. So that  
22 the rebate -- the purchase itself is not qualifying you  
23 for the rebate, there's some additional obligation that  
24 has to be satisfied that won't occur until some point in  
25 the future.

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1 MS. BADGER: Okay. And another audience member  
2 would like to know whether rebate checks are subject to  
3 the mail order rule, the FTC has a mail order rule, and  
4 it provides that if you're going to send something late  
5 you have to give notice, and also after a while you have  
6 to give an opportunity to cancel. It does not --  
7 although it could apply to or does apply to merchandise  
8 premiums.

9 So if it's a product, then it applies. But if  
10 it's cash, it doesn't.

11 And the second part of the question is what  
12 should a manufacturer do when it's not making the stated  
13 time period for mailing the rebate checks? And here the  
14 admonition is don't put down something that you can't  
15 meet. If you really can't meet the eight to ten weeks  
16 then don't make the claim, and certainly don't continue  
17 to make the claim if you find out that there's going to  
18 be major delays or problems in meeting your promise. And  
19 if something happens then use every reasonable effort  
20 that you can to notify consumers of what kind of delay  
21 they're looking at.

22 The next question is one for Mike Reynolds of  
23 Parago. And it says, 'Some fulfillment houses outsource  
24 data entry to data entry companies and use contracted  
25 home workers to enter data, and how does Parago control

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1 that type of environment for accuracy and shrinkage of  
2 lost materials?'

3 MR. REYNOLDS: That's a great question. At  
4 Parago we have never used home workers. And largely the  
5 industry has moved away from that practice. We have  
6 never had that. We do use some outsource partners for  
7 parts of the process. And those partners must meet  
8 specific guidelines in order to work with us, including  
9 things that would fall into the integrity camp, we do  
10 substantial checks on them before they're ever allowed to  
11 have any part of the rebate process.

12 But to the second part of the question, the key  
13 here is two things: one, the outsource partner must be  
14 keying directly into our transaction processing platform.  
15 They cannot key into their own technology and then send  
16 us a file, for instance. So it must be keyed directly  
17 in, and therefore we are able to control that experience,  
18 and control the accuracy of in this case the data entry  
19 component of that. And then, two, we actually have  
20 substantial measurements in metrics that we use for our  
21 outsource partners on a monthly basis. And where they  
22 may be under our service level requirements, then quite  
23 frankly they are released as a partner and we no longer  
24 work with them.

25 So we have some very, very stringent guidelines

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1 in place. And the use of those partners has helped  
2 tremendously in terms of the speed and efficiency that  
3 I've talked to, as well as a comment that Linda made in  
4 terms of the seasonality of the business, and the peaks  
5 and valleys, if you will, in terms of the volume. It  
6 allows us to ramp up very quickly to accommodate the peak  
7 seasons and the peak volume that comes as a result.

8 MS. BADGER: Thank you for that. The other  
9 question we have is I think for Costco, and it says,  
10 'Have you eliminated mail-in rebates totally?'

11 MR. GRACHEK: We still have a small percentage  
12 of the actual mail-in. It's eligible for everyone to  
13 mail in just because there could be and there are members  
14 that prefer that method of submitting. So the lion's  
15 share of all of our submissions are online, but we will  
16 still offer that to members because there's always a few  
17 members that prefer to do it that way. So it's member's  
18 preference over anything else.

19 MS. BADGER: And I think the second part of  
20 that question is, 'Do most of your manufacturers give  
21 equal rebates given your new procedures, or have they  
22 decreased the value of the rebates offered?'

23 MR. GRACHEK: I think that what happens is as  
24 you evaluate the system you look at the cost of the  
25 transaction, the cost of administration, and the

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1 redemption amount. A lot of times our merchants and our  
2 manufacturers will sit down together and say how can we  
3 spend these dollars more effectively. And what Costco is  
4 kind of morphing into a little bit now, and it's not a  
5 direct transition, but what I see is a lot more instant  
6 rebates at the register because, number one, it's an  
7 instantaneous gratification for the customer; two, the  
8 data is available right away so you're not waiting for an  
9 outcome; and three, it's significantly less expensive to  
10 administrate for us and for our partners.

11 So if you go to Costco nowadays you're going to  
12 see coupon books and all that crazy junk out there, and  
13 you're going to see instant rebates noted on the signs,  
14 what the discussion was earlier today you'll see it  
15 netted on the signs because they're going to get it at  
16 the register. The register will show that rebate piece  
17 in the details so they know they got that as a rebate.

18 But I think the trend's going towards offering  
19 the instant rebate and reducing the number of mail-in  
20 programs in general.

21 MS. BADGER: Finally, and if I've butchered  
22 your questions you're going to have an opportunity to  
23 restate them in the next panel. But one consumer brought  
24 up the sticky problem of manufacturers or retailers  
25 requiring the original receipt, and the fact that then

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1 down the process somebody can say well we lost your  
2 submission, your rebate submission, and of course now you  
3 don't have your original receipts so you're rejected.  
4 And I was wondering if anyone on the panel has some ideas  
5 about that.

6 Joe?

7 MR. GRACHEK: Well, I just think that that's  
8 old school. And that was, you know, there was a fraud  
9 prevention concern with original data way back when.  
10 There's lots of consumer fraud especially in the low  
11 dollar rebates. We had people who understood the rules,  
12 they knew what levels of review were going on, and so you  
13 see lots of fraud if you didn't require original  
14 documentation.

15 Our strategy isn't to press the original  
16 documentation, and we're fortunate because we're a  
17 membership club, but now we just look at the system. I  
18 can tell what a member purchased and returned. And so we  
19 do fulfill the rebate on the original purchase, and then  
20 we have flags in our system and fraud detection routines  
21 that can tell if there was excessive amount of purchases,  
22 and then they tie in returns to those purchases, see if  
23 the rebates were fulfilled, and then go back to the  
24 member, or in some cases employee, who felt they saw a  
25 hole in the system and wanted to perpetrate a fraud.

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1                   So original information isn't nearly as  
2                   important as it used to be because the system data allows  
3                   us to do a much better job of protecting our dollars than  
4                   the old manual way of asking for original data.

5                   MS. BADGER: Isn't the retailer really in a  
6                   very good position to use electronic rebate programs,  
7                   because they have access to the data from consumers?

8                   MR. GRACHEK: Well, I mean we're in a unique  
9                   position because we're a membership club, and that makes  
10                  it easier for us. I'm sure grocery would have another  
11                  story to tell, or non-membership entities. But you can  
12                  still tie your exposure to your purchases or to your  
13                  sales to your customers, and you can tie it by location,  
14                  by date, by name in some cases because there's warranty  
15                  and everything else that has to go through it.

16                  So I think for bigger dollar purchases with  
17                  bigger rebates, even the non-member retailers have  
18                  customer data that I think is helpful. So it's just kind  
19                  of the focus from the retailer. You're right, the  
20                  retailer has to focus on this because the manufacturer in  
21                  most cases doesn't have the ability to focus on it.

22                  MR. REYNOLDS: Can I just add two pieces there?  
23                  One, is that we have seen over the last few years many  
24                  retailers taking a best practice, that being that they  
25                  actually print out at the point of sale a specific rebate

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1 receipt. Therefore, the original receipt, purchase  
2 receipt, is still in the hands of the consumer, and the  
3 rebate receipt is used for submission on the rebate.  
4 That's point number one.

5 Point number two to your follow-up question,  
6 Linda, is absolutely the beauty of the retailer is that  
7 they've got the transaction data, and within that  
8 transaction data it includes the purchased products and  
9 their SKUs. So that is the best validation source by  
10 far, and moving more to electronic submission is just a  
11 logical approach. The difficulty is really for  
12 manufacturers selling through a lot of different retail  
13 channels, and that's much more difficult, because that  
14 data is not readily available.

15 MS. BADGER: Okay. Well, we're out of time for  
16 this panel. We'll have a 15 minute break. Come back at  
17 3:30. I want to thank our panel once again for a  
18 wonderful presentation.

19 [Applause.]

20 [BREAK]

21

22 **PANEL 5: THE REBATE DEBATE: LEGISLATE,**  
23 **LITIGATE OR LOSE REBATES?**

24 MS. FAIR: Thank you for taking your seats so  
25 we can start our last panel of the day. I'm Lesley Fair,

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1 I'm an attorney with the Bureau of Consumer Protection in  
2 Washington. And is there a better place for me to be on  
3 business for a couple of days than with my brothers and  
4 sisters with the West Coast Regional Office of the FTC.

5 I'm also honored to be joined by some real big  
6 names in this area. We've basically been tasked with one  
7 of two things. The first thing we've been told to do is  
8 either, here is our choice, come up with a solution to  
9 the rebate questions addressed all day. Or number two, I  
10 think it was figure out how Sanjay stayed so long on  
11 American Idol.

12 [Laughter.]

13 MS. FAIR: So we've decided to take the easier  
14 task, and these three panelists will be discussing  
15 potential solutions today.

16 I am honored first to my right is Norma Garcia,  
17 a Senior Staff Attorney with the West Coast Regional  
18 Office of Consumer's Union, the nonprofit publisher of  
19 Consumer Reports magazine. In the house I grew up in,  
20 second I guess to either Dear Abby or Holy Scripture, was  
21 Consumer Reports magazine. I think sometimes my mother  
22 thinks I work for Consumer Reports magazine. So let's  
23 keep that fiction. But it's a group for whom we at the  
24 FTC have the greatest amount of respect, and we're  
25 thrilled that Norma Garcia is here today.

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1                   Next to Norma is Ed Kabak, who is the Chief  
2                   Legal Executive for the Promotion Marketing Association  
3                   based in New York. Before he took that position he had  
4                   extensive legal background in the advertising marketing  
5                   and promotion area. Ed is also a published author, a  
6                   book collector, and sort of a well-known raconteur, so  
7                   we're looking forward to the comments that he has today.

8                   Finally, at the end of the row, Jeff Greenbaum,  
9                   a partner in the New York law firm of Frankfurt Kunitz  
10                  Klein & Selz. Jeff is the former chair of the Consumer  
11                  Affairs Committee of the New York City Bar. He's also a  
12                  member of the Promotion Marketing Association's  
13                  Government and Legal Affairs Committee. He also, to be  
14                  frank, has one of the most facile and interesting minds  
15                  of any attorney I know, which means that both it's always  
16                  interesting and stimulating to talk to him, and also by  
17                  the end of the conversation I feel like I'm back in the  
18                  middle of a law school exam. So we have a lot to look  
19                  forward to from these three great panelists.

20                  I want to call your attention to the little  
21                  form, the results of our -- the questions that were asked  
22                  today. But before I do that, I really want to share one  
23                  form with you that I really thought had some amazing,  
24                  amazing results. Let me just read it to you briefly. It  
25                  said the top three problems, this person said the top

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1 four problems, sorry, we're not doing that, but what we  
2 do know is according to our very unscientific study, what  
3 a shock, I'm not suggesting that there might be a little  
4 bit of home team bias here, but the number one problem,  
5 according to the attendees today, was drum roll please,  
6 consumer error. Second, drum roll, consumer rebate  
7 fraud. And then we had a tie about for third, complex  
8 and confusing offers, delays in processing, and the  
9 problems with inconsistent industry standards with a need  
10 for industry standards. As I said, were we to have a  
11 hundred consumers or a hundred law enforcement officers,  
12 a hundred other people in the audience, perhaps we might  
13 get a slightly different response. But certainly this  
14 lets us know a little bit about where folks are coming  
15 from.

16 So let me start with just that question. I am  
17 not Miss Cleo, we've already sued her, but something  
18 tells me when I ask Norma Garcia if she -- if her top  
19 three were the same as those top three, I don't think I'm  
20 going out too far on a limb, to suggest she might have  
21 some slightly different perspectives. Norma, what were  
22 your -- how do you perceive these top three?

23 MS. GARCIA: Well, I'm happy to say you're not  
24 on the limb alone. We certainly see these as concerns  
25 that would naturally arise in the context of individuals

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1       who deal with this issue. But from the consumer  
2       perspective we have a slightly different take on it, and  
3       that is that we think that consumers really need to be  
4       able to get rebates easily, that there's too much  
5       difficulty involved in the process. And the obstacles  
6       that are in the way of consumers ultimately receiving  
7       those rebate checks for us is the number one problem.

8               Our second problem is we think that there are  
9       serious privacy considerations that are not being  
10      addressed in the consumer rebate process. And that is  
11      something obviously that hasn't been identified by this  
12      room as a top priority, but it is a top priority for us.

13             We also think that in terms of one of the best  
14      practices that is out there for consumers being able to  
15      receive the benefit of the rebate that they're offered,  
16      is the process that was described by the gentleman from  
17      Costco, where consumers can actually get the rebate at  
18      the cash register. We think that's number one, everyone  
19      should be doing that. So for us, best practices is also  
20      on the top of the list.

21             MS. FAIR: Ed, how about you?

22             MR. KABAK: Well, I actually come fairly close  
23      to the list you gave. In terms of getting the rebate at  
24      the cash register, I think that's difficult for a lot of  
25      reasons. One is it's necessary to detect consumer fraud,

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1 but secondly, and again particularly coming from an era  
2 in which paper is now to some extent replaced by  
3 electronics, it takes a couple weeks basically to turn  
4 around in a rebate processing to the extent you have to  
5 batch process it, you've got to validate and verify  
6 unusual problems, and then start printing and mailing the  
7 drafts of the rebate checks in whatever form they exist.  
8 And I think we heard from the last panel that basically  
9 the process of clearing rebates has gone down to like 21  
10 days or so from an even greater amount, and that's an  
11 achievement.

12 So it's very difficult to do that, and having  
13 rebates made available at the cash register I think  
14 unfortunately would basically encourage additional  
15 consumer fraud, which is an incremental problem as well.  
16 But I do think that is a solution that doesn't really  
17 help anyone in the industry. But what certainly should  
18 take place is clear and concise offers, and much in line  
19 with our suggested policies and with sufficiently clear  
20 disclosure we are certainly opposed to people hiding the  
21 ball as was made evident in Dean Graybill's presentation.  
22 PMA is a trade association that really wants to be  
23 associated with honest and ethical practices and pretty  
24 much straight shooting all the way.

25 MS. FAIR: What about you, Jeff? Any reaction

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1 to these top three?

2 MR. GREENBAUM: Well, I think that, and who  
3 knows whether this falls in the top three or not, but the  
4 advice that I give to clients is that, and I think it's a  
5 critical thing that really has to come out of this day,  
6 which just as an aside I'm so happy to be a part of this,  
7 this is really one of the most incredible days in terms  
8 of just the depth of the content, I mean the really  
9 unbelievable way we've covered this material, and I just  
10 really want to compliment you guys, because I feel like  
11 all I do is go to conferences on advertising and this is  
12 just, you know, one of the only ones that I've ever  
13 haven't left the room for two hours to make phone calls.  
14 So I really want to compliment you.

15 MS. FAIR: I'm a little concerned, because I'm  
16 often speaking at those conferences, Jeff.

17 [Laughter.]

18 MR. GREENBAUM: I would never, I would never  
19 leave the room for Lesley.

20 What I would want to say is I think the  
21 critical issue here is training. And it's training  
22 marketing people. In-house lawyers and outside lawyers  
23 when they're faced with these issues, if they're faced  
24 with a draft of a TV script or a produced TV commercial,  
25 or a draft of a print ad, or a program that's already

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1        been developed and out there and now we're trying to  
2        figure out how to advertise this thing. And if the  
3        lawyers are getting involved in the process at this point  
4        it's just way too late. We see all those disclosures  
5        thrown up there on the screen and you go lawyers are  
6        faced with programs that they're just not able to  
7        advertise. So I think that one of the things that  
8        lawyers really need to do is get with the marketing  
9        people before these programs are developed and sort of  
10       talk through, well if you're going to do this program  
11       let's talk about what it's going to mean in terms of how  
12       are we going to inform consumers in a clear and  
13       understandable way how this program is going to work. If  
14       you run a print ad with seven different rebate offers  
15       with bundling eleven different products that involve  
16       service credits and mail-in rebates, and in store instant  
17       rebates in some circumstances, you're never going to be  
18       able to advertise that thing properly.

19                        So I think that one of the big messages here is  
20       that in order to get something clear you're going to have  
21       to start early on in the process. And if you teach the  
22       marketing people, you know, what are the limits of what  
23       you can advertise in a clear way, it's going to solve a  
24       lot of these other problems.

25                        MS. FAIR: Let's talk about when we look at

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1 every step of the way, let's talk first about consumer  
2 education. Regardless of whether this is an accurate  
3 reflection, I think we would all agree that it's just  
4 good policy, it's good business, to do whatever can be  
5 done to educate consumers. I think Marcy Sims already  
6 took the an educated consumer is our best customer, I  
7 would have preferred that for an FTC slogan, but they've  
8 already got that.

9 How do we educate consumers? Assuming that  
10 that's at least part of the issue here, what are the  
11 effective ways do you think, and let me start with you,  
12 Norma, to educate consumers?

13 MS. GARCIA: We think it's very important for  
14 consumers to be educated, but they need to be educated  
15 about something that really works. If we're talking  
16 about educating consumers about a process that's too  
17 complex or too cumbersome, then what's the point. In the  
18 first place, we have to have a process that works for  
19 consumers. Ultimately the consumer is your customer.  
20 When consumers are unhappy you're going to be unhappy.  
21 It's going to impact your bottom line. So I agree with  
22 Jeff. When it comes to making sure that the people who  
23 are responsible for getting the message out there have  
24 the advice that they need on the front end to do it  
25 effectively and to do it within the confines of the law.

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1            Obviously to the extent that you can educate  
2 your consumers at the very beginning of the process of  
3 what's involved in a particular rebate process, assuming  
4 this is a sound process, and not a flawed one, that's the  
5 best thing.

6            We think that consumers need to know right up  
7 front, first point of contact, are you advertising a  
8 product and you're enticing consumers to come buy this  
9 product because you're offering a rebate? Well, right  
10 there and then in that advertising moment is when you  
11 should tell consumers what's going to be involved in the  
12 rebate process to get the full value of what is being  
13 offered to them.

14           Obviously we spend a lot of time educating  
15 consumers on a whole host of issues, but importantly, it  
16 needs to come from many sources. And the marketer in  
17 many cases is in the best place to give the most  
18 effective consumer education on the front end.

19           MS. FAIR: How would you respond, Ed or Jeff,  
20 about the role of the marketer in consumer education?

21           MR. KABAK: Well, I think the marketer  
22 certainly can get actively involved, even to the extent  
23 of using his website to publish simple guides as to how  
24 to respond to rebates. But I think ultimately even  
25 beyond that I don't think the process is necessarily that

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1           cumbersome. One of the things that came out of, I guess  
2           Tim Silk's presentation, is one of the main reasons why  
3           rebates aren't fulfilled is procrastination on the part  
4           of consumers. That doesn't excuse the failure to make  
5           appropriate disclosure when those kinds of situations  
6           take place.

7                         But education is certainly something that can  
8           be done in little -- even in pamphlets or in a website  
9           posting, and I think PMA from its standpoint will  
10          probably do the same kind of thing on its website.

11                        MS. FAIR: How many, how many consumers go to  
12          the PMA website, though?

13                        MR. KABAK: You know, we have an educational  
14          foundation, so we are thinking actually of doing it, you  
15          know, going forward with actually a separate educational  
16          website. We do have the Consumer Week website as well,  
17          for National Consumer's Week, so we do have already a  
18          consumer website to deal with coupon counts, we deal with  
19          the coupon counts. Yeah, we're a trade association as  
20          well.

21                        So, yes, the best solution for education really  
22          is self-reliant publication by the marketers I think, and  
23          that could be done in any number of a kind of ways.

24                        MR. GREENBAUM: I would say that consumer  
25          education is absolutely consistent with what advertising

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1 is about. Advertising is consumer education. And  
2 advertisers haven't done their job properly if they  
3 haven't clearly and accurately told consumers what it is  
4 they're going to get, and what the terms are, what the  
5 terms they're going to have to follow in order to get  
6 those things.

7 So what I would say is this is the third event  
8 that I've been to this week, and no one has asked the  
9 question that was asked at the other two events, which is  
10 how small can I make the disclosures in my advertising.  
11 And, you know, the response is as you would expect, which  
12 is well you have to educate consumers, are consumers  
13 going to see the disclosures, are they going to read  
14 them, and are they going to understand them. And I think  
15 that consumers don't need to look to other places to  
16 other organizations to educate consumers, they actually  
17 have to do it in the advertising.

18 And I think the thing that I would say that's  
19 absolutely critical, and one of the speakers but I can't  
20 remember who said it, which is you got to listen to what  
21 the consumers are saying. One of the pieces of advice  
22 that I give clients is read your consumer complaints,  
23 aggregate your consumer complaints. If people are  
24 complaining that they're not getting their products on  
25 time you got to look at, you got to look at that problem.

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1 If you're seeing too much, if you're seeing people not  
2 getting their mail-in rebates you got to fix the problem.  
3 I think your goal has to be improve the program each time  
4 you do it. And if that means making your offers clearer,  
5 if it means changing your offers, that's what you have to  
6 do.

7 And I think that companies are working toward  
8 that, because the reality is what my clients tell me is  
9 that if a rebate program doesn't work properly they don't  
10 have happy consumers and it causes problems. Certainly  
11 the statistics show that as well. So I think programs  
12 like this are excellent for helping marketers understand  
13 what the options are and what some of the problems are  
14 that consumers are running into, and I think it will  
15 help -- this day should help many, many people adjust  
16 some of their rebate terms to make them simpler.

17 MR. KABAK: I mean particularly if you want  
18 good customers, you don't want to give any consumer a bad  
19 experience because they're not likely to come back, not  
20 likely to come back to the same program. But it's also  
21 clear that consumers do enjoy rebates and manufacturers  
22 need them for a number of reasons, they're very, very  
23 valuable. I think the Hewlett Packard presentation made  
24 that clear, and basically it adds a tremendous amount of  
25 variety to the marketing mix, it's very, very helpful

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1 with respect to trial offers of new products, and it's  
2 particularly helpful when you're considering other  
3 products as well that are somewhat challenged or  
4 otherwise.

5 There are valid business reasons on both sides  
6 to continue a beneficial rebate relationships, and you  
7 don't want to basically lose your best customers by doing  
8 a bad program.

9 MS. FAIR: We've heard about bad programs,  
10 Hal's phrase, "brand suicide." So it seems that we've  
11 heard from real experts that the key is to give consumers  
12 the information they need in a clear and conspicuous way.  
13 Everybody seems to agree that's the right idea, and yet  
14 we still have thousands of complaints from consumers. So  
15 what needs to be done? What's the solution to the  
16 problem about the kind of information to be given in the  
17 ad?

18 MR. GREENBAUM: I think one thing I would say  
19 is that lawyers have to start to be a little bit less  
20 afraid. And what I mean by that is that often marketers  
21 today feel like they need to include more information in  
22 their disclaimers. And one thing that I do when I get an  
23 ad is I frequently cross-out disclaimers and I would say,  
24 look, a big block of text is probably not going to do you  
25 a lot of good, so let's look at this and make some hard

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1 decisions about what consumers really need to know.  
2 Often cases you can cut a disclaimer in half and suddenly  
3 turn it into something that is actually understandable to  
4 consumers.

5 So I think the first thing I would say to a  
6 marketer is take a look at your disclaimers, are people  
7 really going to be able to wade through it, and if not,  
8 take a hard look and start to cross some things out,  
9 start to eliminate, find the right time to disclose each  
10 piece of information. The point that Linda made in her  
11 presentation about the best practices was there's no one  
12 right answer about when information needs to be  
13 disclosed. It's going to depend on the type of terms and  
14 the type of offer, and I think you have to take a hard  
15 look. If you take a one size fits all you create this  
16 giant long paragraph that, you know, sort of makes you  
17 feel better that you've included every possible scenario  
18 that could possibly need to be included, you're going to  
19 have a disclosure that's probably not going to make  
20 anyone happy.

21 So I say start with less, and really figure out  
22 what are the critical things that consumers need to know.

23 MS. GARCIA: I think the governing principles  
24 have to be that the disclosure must be simple, it must be  
25 clear, and it must be accurate. And if you use those as

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1 your guiding principles I think you will come to the sort  
2 of conclusion that Jeff is suggesting here, and that is  
3 you're making sure that people know what they should know  
4 in a way that they can actually understand it. Otherwise  
5 there's really no point to even writing the words if  
6 they're not words that can communicate meaning.

7 MS. FAIR: I think one thing that crossed my  
8 mind, I know a number of you in the audience were present  
9 about five or six years ago at an event called  
10 'Disclosure Exposure' that the Federal Trade Commission  
11 put on with the National Advertising Division of the  
12 Better Business Bureau. And we gave kind of a bad  
13 example of an ad and had three leading ad agencies and  
14 their attorneys redo it. And I thought the interesting  
15 thing that they raised is the minute you start talking  
16 about what should be in the big block of text you're kind  
17 of on the wrong path already. That the best way to do it  
18 is to incorporate it into the offer itself, whether  
19 that's fonts, whether that's color, how that's done. But  
20 how do you get the point across that disclosure doesn't  
21 have to be done at the bottom of the page or in a  
22 superscript, how do you convey that?

23 MR. GREENBAUM: I think one thing I would say  
24 is that just incredibly revealing study that the FTC did  
25 in connection with the review of the endorsement guides.

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1 And for those of you who haven't read it, I suggest you  
2 take a look at the studies, it's on the FTC website.

3 SPEAKER: Is that an endorsement?

4 MR. GREENBAUM: It's more of a reference than  
5 an endorsement. But what the study showed, and it was  
6 really unbelievable, it was in the context of some weight  
7 loss ads and some business opportunity ads, and  
8 essentially the test ads had a disclosure in 14 point  
9 type in red in bold in the center of the ad, so, red,  
10 bold, center of the ad, not the bottom center, the center  
11 of the ad, and it was 14 point type. And what the study  
12 showed is that this disclosure was not effective.

13 So I mean unless all of you out there are using  
14 14 point, red, bold disclosures in the center of your ad,  
15 you know, you have a potential issue out there.

16 So I think what I would say is that, Lesley,  
17 the point you're making is absolutely right. Which is  
18 that disclosures often aren't doing the job, and we have  
19 to look very closely at better ways to communicate that  
20 kind of information to consumers. And certainly the  
21 point that you raised is a good one, and it's one that I  
22 work with clients a lot about, which is how can we make  
23 the disclosure part of the offer? How can we tell people  
24 that instead of sort of communicating a message to people  
25 in two separate places, how can we make it all part of

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1 one thing? And I think that those are difficult things  
2 to do, and it requires the lawyers getting involved early  
3 on in the process, and it requires some give and take on  
4 the creative side, and it may require, you know, some  
5 additional education in whatever forms to convince  
6 marketers that sometimes that's what's going to be  
7 required. But I don't think it's easy.

8 MS. FAIR: We've had a number of suggestions  
9 about possible solutions on the forms that attendees  
10 turned in. Let me just throw these out and whether you  
11 think this is a move toward a solution.

12 One proposed suggestion is more law enforcement  
13 actions at the federal and state level. How much effect  
14 do you think those have on changing company's policies?  
15 Ed?

16 MR. KABAK: I think if you're a legitimate  
17 company, as most of the companies are, and is engaging in  
18 any kind of commercial business, and you're a fly by  
19 night company, it has some effect. But really if you're  
20 a fly by night company, basically, it has a bigger effect  
21 to the extent that the people are caught. But I mean law  
22 enforcement is really not the solution. It's important  
23 that the FTC enforce Section 5, it's clearly important  
24 that they use the existing tools where there's empirical  
25 evidence of violation. But I don't think law enforcement

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1 is a solution by itself.

2 What's important, really, is the kind of self-  
3 regulatory standard, and education, and compliance, and  
4 better knowledge by all the parties.

5 I just don't see it as a solution to deal with  
6 the problem. Because I think even in areas where there  
7 has been enforcement in many cases there's not  
8 necessarily intentional misrepresentation. But there are  
9 errors, and there are mistakes, and the FTC is a very  
10 judicious arbiter of when and under what circumstances to  
11 bring cases.

12 So I don't think using an increased law  
13 enforcement standard is necessarily the way to go.

14 MR. GREENBAUM: I think the thing I would say  
15 is certainly the law enforcement that's happened has been  
16 tremendously effective and influential to marketers, and  
17 I think that we hear you. I think that when the FTC  
18 takes action, whether it's a report, or whether it's a  
19 workshop, or whether it's a new guide to industry that's  
20 issued, I think we really hear you and we really try to  
21 make adjustments based on that, and try and learn from  
22 it. So I think that what the FTC's doing is working, and  
23 I think that this workshop -- or at least it's the  
24 beginning of a process that is working. And I think that  
25 something like this now is going to have some effect,

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1 it's going to take some time for industry to digest it  
2 and work on technological changes, work on just different  
3 kinds of approaches. But I think it's a good productive  
4 process.

5 MR. KABAK: One more point. Coming from many  
6 years of being General Counsel different places, I mean  
7 when the FTC goes after a company, a significant company,  
8 or even a publically traded company and obtains a five to  
9 ten million dollar judgment from it, people pay attention  
10 to that. Lawyers and outside counsel usually walk around  
11 corporations with a news clip of that in their pocket.  
12 It's a very, very effective remedy when you're advising  
13 clients.

14 MS. GARCIA: From our perspective, law  
15 enforcement actions act as a deterrent to the sorts of  
16 practices that really take advantage of consumers. It  
17 sends a clear message to practitioners that they need to  
18 do something differently. So there's an educational  
19 component to it as well, as Jeff mentioned.

20 There's also another component that's really  
21 important from the consumer perspective. And that is  
22 that it creates consumer confidence in the regulatory  
23 agencies that are charged with protecting the public  
24 around these business practices. And from our  
25 perspective that's a really good thing as well.

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1 MS. FAIR: Another thing that's been raised, I  
2 guess kind of akin to the nutrition labeling on the back  
3 of a can of soup or a can of beans, what about the  
4 possibility some folks suggested of some kind of  
5 standardized rebate form? Do you think that's part of  
6 the solution, not part of the solution?

7 MR. GREENBAUM: I think it's not part of the  
8 solution. I think that what we would say is that there's  
9 a lot of different kinds of companies out there doing a  
10 lot of different kinds of offers with a lot of different  
11 kinds of products. I think the FTC has long believed in  
12 not stifling creativity, but basically using Section 5 as  
13 a way to look at practices and determine whether  
14 something's either deceptive or unfair. I don't think  
15 that, you know, either self-regulatory organizations or  
16 the government should -- needs to at this point set-up a  
17 nutrition label. I think there's lots of different ways  
18 that we can accomplish a goal of clear communication, and  
19 I think we have to continue to explore that.

20 MR. KABAK: I would just say the one size fits  
21 all does create a problem in a lot of areas, including  
22 the area of services, particularly when you're selling  
23 services, not just products, it's very, very complex.

24 MS. GARCIA: I think even if you're not moving  
25 towards standardized forms or language there should be an

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1 effort to move towards standardized simplicity, and  
2 easing conditions for consumers in order to redeem their  
3 rebates.

4 MS. FAIR: Some other people suggested FTC  
5 guidance, possibly rule-making. What about that as a  
6 solution, a possible solution to the problem?

7 MR. GREENBAUM: I think this may be a good time  
8 to mention, again, sort of Connecticut and Rhode Island.  
9 I think that there is certainly concern on the industry  
10 part to the extent that the states started to continue,  
11 continue to get into the business of adding new rebate  
12 restrictions, new rebate requirements, that are  
13 conflicting with other states, and are conflicting with  
14 general industry practice. Because what you're going to  
15 end up with is companies being forced to add more  
16 disclosures and to make their offers more complicated.

17 And one of the questions that Eileen raised  
18 that I don't think we got an answer to, which I wanted to  
19 at least give my point of view on, which is that I think  
20 that the effect that we've seen in Connecticut and Rhode  
21 Island is that those statutes have in fact hurt  
22 consumers. Because of companies reacting by providing  
23 instant rebates, you know, you can't turn a nation-wide  
24 program into a 48 state plus District of Columbia program  
25 that easily, so the easiest thing to do is simply to void

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1 Connecticut and Rhode Island.

2 So I think that the concern here is that by  
3 inconsistent regulation by various states it's really  
4 going to end up, there's a significant concern and I  
5 think we've already seen some evidence of that, of these  
6 offers not becoming available to consumers. So I think  
7 that the more easy we can make it for marketers to  
8 communicate this information in a simple way, and in a  
9 way that works the same everywhere we go, is going to  
10 make things easier --

11 Certainly encouraging other states not to add in  
12 things that are inconsistent. The sort of legislators  
13 that I've spoken to on this issue have really understood  
14 this idea. And I know that in some states they've  
15 specifically not gone down this road because they  
16 understand that prohibiting this sort of disclosure of  
17 the after rebate price is going to hurt consumers,  
18 because these offers are just not going to be made  
19 available to them.

20 So I think that, you know, anything we can do  
21 to help marketers do there -- make these offers in a  
22 consistent way, and give them easy guidance I think is a  
23 good one.

24 MS. GARCIA: I think if you have some standards  
25 promulgated by the FTC regarding what should happen with

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1 rebates and if they're effective standards, I think  
2 you're going to see less movement in the states to try  
3 and pass laws to deal with the problems that arise in the  
4 states. So to the extent that the FTC can take a  
5 leadership role in creating standards that are protective  
6 of consumers but at the same time leave room for the  
7 marketplace to work, I think you're going to see a  
8 positive effect in the states.

9 Now, that being said, if the states perceive  
10 that nothing is being done on any other level to protect  
11 consumers, and the concerns are very real, the states are  
12 going to step in, and you are going to see perhaps  
13 inconsistent methodology of promulgating laws in  
14 different states, a patchwork quilt of law-making. But  
15 that's happening for a reason. That's happening because  
16 the problems are real and no one else is addressing them.  
17 So to the extent that you can take care of that, I think  
18 everyone will be in a better place.

19 MS. FAIR: What form would you see that kind of  
20 guidance or advice coming in, Norma?

21 MS. GARCIA: I think the FTC should set  
22 standards for what should happen with respect to how the  
23 rebates are advertised, how they're delivered, the  
24 systems that are required for consumers in order to  
25 redeem those rebates, the processes by which those

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1 rebates must be fulfilled, the form in which those  
2 rebates must be fulfilled. I mean the idea of getting a  
3 check in the mail that looks like a piece of junk, I mean  
4 that's really bad, I've received that and geez I do this  
5 for a living. I almost threw mine away. And I can  
6 imagine a lot of people do. And there must be some ways  
7 that can be developed to protect consumers at every stage  
8 of the game and still provide room for this to be a  
9 viable industry.

10 MR. GREENBAUM: It sounds to me a little bit  
11 too soon for that. I think that certainly this workshop  
12 has been an important and useful dialogue. And I think  
13 we should look to industry to react and to develop its  
14 own guidelines, and to sort of track that and see how  
15 it's going. I also think technology is catching up. The  
16 fact that we've seen these incredible online fulfillment  
17 systems and how incredible they are, I think it's going  
18 to take some time for those things to roll out and be  
19 made available to more and more companies. So to me I  
20 look at that and I go we shouldn't develop a system that  
21 starts to regulate, to the extent that it is broken,  
22 regulate a broken system when the system is in an  
23 incredible state of flux right now. And chances are  
24 mail-in rebates are going to look very, very different a  
25 few years from now than they do today.

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1                   So I think that what we're doing here is a  
2 positive step. Letting regulations, letting self-  
3 regulation have a chance, as Linda mentioned in her  
4 presentation, is a good one. And I also think let  
5 technology have an effect, because it think that it will  
6 have a big one.

7                   MS. GARCIA: Well, rebates have been around for  
8 a while and there have been many opportunities to self-  
9 regulate, and unfortunately those haven't always been  
10 successful. To the extent they have been successful,  
11 developing rules and guidelines really would be  
12 consistent with those best practices. So those companies  
13 that are already engaging in those practices really have  
14 nothing to fear by the passage of or adoption of  
15 additional rules.

16                   There's plenty of room in this for everyone. I  
17 mean obviously technology will evolve, and the FTC  
18 hopefully will be very cognizant of that and leave room  
19 in whatever rules they create to add some flexibility for  
20 those sorts of developments. But self-regulation from  
21 our perspective hasn't worked, and to the extent that it  
22 has worked it shouldn't conflict with any strong rules  
23 that are put in place by the FTC.

24                   MR. KABAK: I would say going back to the same  
25 issue that it's important to give industry always a

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1 chance to self-regulate before any consideration is given  
2 to the imposition of particularly a federal standard.  
3 And particularly where, as here, it seems clear from the  
4 standpoint of protecting against consumer fraud and maybe  
5 improper procedures as well by certain manufacturers, the  
6 paperless kind of way of redeeming rebates may be a  
7 very -- a solution to a lot of people's problems.

8 I don't think it's a good idea to go to a  
9 federal standard. I don't think this is a situation like  
10 we had with CAN-SPAM, where there are other reasons to  
11 federalize or preempt any states. I think the trend in  
12 laws of the states has been sort of, sort of a tendency  
13 to slowly grow in some areas. But I think the technology  
14 will probably make things happen a lot faster and in very  
15 simple ways will clear up a lot of the issues, along with  
16 self-regulation. I don't think this is an issue in terms  
17 of state laws like gift cards, where there's clearly a  
18 major desire on the part of all states to eliminate  
19 dormancy expenses and reduce and deal with expiration  
20 dates. It doesn't have the same kind of impetus. I  
21 think that it's much better to let it evolve in a natural  
22 way.

23 MS. FAIR: I'm interested in your comment,  
24 everyone's comments about electronic submissions. And  
25 certainly we've seen some great suggestions and some

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1 intriguing ideas. What do we do right now, however, for  
2 the 20 percent of Americans who are not online, typically  
3 more likely to be older Americans or lower income  
4 Americans?

5 MS. GARCIA: One way to deal with that is by  
6 offering a rebate right at the cash register. That's the  
7 great equalizer, right? It doesn't matter whether you  
8 have a computer at home or if you even know how to use  
9 one, you're going to get your rebate right when you  
10 purchase that product. So that's one way to do it.

11 Another way perhaps is to have the next best  
12 thing, which might be a kiosk located in a store that the  
13 consumer can then go to, punch in a code, get the rebate  
14 check. This is one way to certainly diminish the digital  
15 divide.

16 MR. GREENBAUM: I think the one -- a couple  
17 concerns that I have, the first that I'm concerned with  
18 any steps we take that is going to take -- that are going  
19 to take away the value of rebates to consumers who you're  
20 getting the greatest value to them. I admit that I  
21 bought an expensive electronic product recently and it  
22 had a fairly long rebate period and I said I'll get to  
23 it, I'll get to it, and I admit that I forgot to send the  
24 rebate form in. So, you know, I think that maybe I'm not  
25 the one, I'm not elderly, and I have online access, so

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1 maybe I'm certainly not your target, but I do think that  
2 by adding all of these requirements, if we get in the  
3 business of telling marketers they have to do it a  
4 certain way and we're going to make it more expensive,  
5 we're going to make it more difficult, and we're going to  
6 tell them they only can provide programs where there's a  
7 rebate in store, we're just going to see fewer rebates  
8 available.

9 So I think that the answer is looking at what  
10 the problems are, encouraging companies to see where  
11 rebates are not happening, where consumers are not  
12 getting them, where the breakage is, where the slippage  
13 is, look at those problems and try to address those  
14 problems. They're going to be different for every  
15 company, they're going to be different for the types of  
16 products that are being sold, and encourage companies,  
17 continue to encourage companies to sort of address those  
18 problems. Because I think you're right, an online  
19 solution is not going to ever, at least in the  
20 foreseeable future, be the only solution, so we're going  
21 to have to continue to address ways to make rebates  
22 clear. And I think we saw some really helpful and  
23 impressive examples today of ways that can work.

24 MS. FAIR: Well, certainly our goal is to stop  
25 deceptionage [sic] through disclosureage [sic].

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1 [Laughter.]

2 MS. FAIR: But I think that raises the issue.  
3 I think Ed, he used -- he dropped the F bomb there,  
4 federal legislation. Some companies say, my gosh we have  
5 a crazy quilt of state by state legislation. Other folks  
6 are saying the response to that would be handling things  
7 at a federal level. How do you look at the prospect of  
8 whether federal legislation would be helpful or harmful  
9 in coming toward a solution?

10 MR. KABAK: How do I look at it? I don't think  
11 it necessarily would be helpful. I think it's basically  
12 there are plenty of laws on the books already. The FTC  
13 has more than enough statutory authority. So I don't  
14 think it needs to go beyond that with respect to its  
15 enforcement against companies that violate the law  
16 concerning rebates. I don't see it as necessary at all,  
17 and basically I don't think the state laws are that much  
18 yet a crazy quilt pattern that makes doing business  
19 impossible. Certainly to the extent that there are  
20 isolated cases where Rhode Island and Connecticut are  
21 examples, it does make doing business a little more  
22 difficult, but that's no reason to have a federal  
23 standard at this point.

24 MS. GARCIA: Well, from our perspective  
25 assuming that we're talking about an effective federal

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1 law that protects consumers, isn't it a good thing that  
2 consumers in California have the same protections as  
3 consumers in New York or Connecticut? I mean that's not  
4 a bad approach. So obviously we have to look at what  
5 sort of federal proposal we're talking about here. But  
6 that's not necessarily a bad approach.

7 MS. FAIR: Well, I have a few final questions  
8 at the end, but I want to give the audience a chance to  
9 ask questions since we have such esteemed experts.

10 I also get to channel my inner Oprah, so let me  
11 get the microphone, and trust me, I do have an inner  
12 Oprah, to see what questions the attendees have for the  
13 three experts we have on the panel.

14 Questions? Dr. Silk?

15 MR. SILK: Maybe it's not fair, it's not really  
16 a question. But I think from a behavioral perspective,  
17 and I'm not condoning legislation either way, I look at  
18 behavior very neutrally. There's a real opportunity to  
19 embrace a standard. It's not a coincidence that stop  
20 signs look the same in every state. There's an  
21 opportunity here to help the industry. You're allowing a  
22 few bad apples to pollute the name of rebates. I don't  
23 believe there will be consolidation of standards because  
24 there's no consolidation in the industry, there's too  
25 many players. And so to say that there's been no chance

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1 to give them a chance to self-regulate, I don't even  
2 think they've had a chance yet, it's not consolidated.  
3 So like how long do we wait for that to happen?

4 So I know that you have to give freedoms to the  
5 firms. I want to give freedom to the firms. But there  
6 is a behavioral advantage for all consumers to be able to  
7 identify is this a rebate program. That's what you want  
8 to do, you're trying to target these promotions.

9 And I don't think the instant rebate is part of  
10 the issue, because rebates are a price discrimination  
11 tactic, and there's nothing wrong with that, we have  
12 senior's discounts. So to go so far as to say should  
13 everyone be redeeming, that's not the issue, it's up to  
14 the consumer's choice, we have to allow them to behave.

15 But I think there's an opportunity here that if  
16 you were to standardize the visual format to some extent  
17 that would help both the firm and the consumer side. So  
18 if you could have responses to that.

19 MR. GREENBAUM: All I can say is I thought your  
20 presentation this morning was absolutely fascinating, and  
21 the next time I get a call from the western region I'm  
22 bringing you as an expert to defend me that my  
23 complicated offer that only had seven days to redeem was  
24 actually better for consumers.

25 I think, I think the point is that these are

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1 complicated issues and there isn't one obvious solution.  
2 And I think that your research shows that we have to  
3 really think very, very hard, and we have to sort of let  
4 people explore various solutions. Because certainly your  
5 research would show something very, very different than  
6 what would be what people would expect laws to say.

7 So I think that we have to -- this isn't the  
8 moment I think to legislate. There may come a time.  
9 There may be sufficient reasons to do so. But certainly  
10 Section 5 gives the FTC all the authority it needs to go  
11 after the bad actors. But at this point I think it's  
12 just not clear what any of that would say.

13 MS. FAIR: Other responses from Norma or Ed on  
14 Dr. Silk's point?

15 MR. KABAK: No. I would agree, though, and  
16 particularly since some of the material that was in the  
17 presentation was really counter-intuitive, you have to  
18 let the facts play out for themselves. And I don't see  
19 any need for a federal standard at this point. I think  
20 ultimately it will place sort of too heavy a hand on the  
21 shoulder of the industry and probably hurt the consumer  
22 in the end.

23 MS. FAIR: Other questions?

24 MS. GARCIA: I found your comment quite  
25 interesting, and I really appreciated the example you

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1 gave of the stop sign, and the reason why it's effective  
2 is because it actually communicates what it needs to  
3 communicate. So to the extent that rebates can be  
4 standardized to communicate essential information to  
5 consumers that's a good thing.

6 MS. FAIR: Other comments or questions? And if  
7 you could identify yourself?

8 MS. BIXLER: Diana Bixler. And I'm a marketing  
9 lawyer. And I would say that one of the things that  
10 rebates communicates to consumers, when you use that  
11 term, is that they need to submit something afterwards to  
12 obtain the dollar value benefit of that. So to the  
13 extent that you're suggesting that all, quote, rebates  
14 should be payable at the point of purchase you're  
15 essentially saying there will be no rebates, and  
16 basically removing that option from the option to  
17 promotional incentives that marketers have always  
18 enjoyed.

19 The idea, I mean absent saying instant rebate,  
20 everybody always assumes, or I hate to put thoughts into  
21 people's minds, but increasingly recently states have  
22 been adding a statutory definition of rebate, and in  
23 every case it calls for submission of something after the  
24 purchase to obtain the incentive to obtain the  
25 promotional value. And should you have to give it to

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1           them at the point of purchase you really, you know, how  
2           you account for it and who actually funds it behind the  
3           scenes is irrelevant, because we're talking about the  
4           message to consumers, and that's telling consumers there  
5           won't be any rebates or you're changing the definition of  
6           it. And as Jeff just noticed, it will reduce the values  
7           that are offered in those rebates.

8                       MS. FAIR: Comments from the panel?

9                       MR. GREENBAUM: I think maybe we should go back  
10           to that slide, which I know conveniently was removed from  
11           the screen.

12                      MS. FAIR: No, that's strictly our security 15  
13           minute cut-off that you saw on FTC computers. Good  
14           advice for everybody, but nothing --

15                      MR. GREENBAUM: But if you recall, the number  
16           one consumer the number one problem identified by this  
17           survey, admittedly unscientific, was consumer error. I  
18           think we do have to also react to the fact that look this  
19           is not all just a marketer problem, and that sometimes  
20           consumers are just not going to follow instructions, and  
21           they're going to make mistakes, and they're not going to  
22           do it right, and they're going to miss deadlines and  
23           they're not going to cash checks. And that is not  
24           something the marketer's responsible for. And you could  
25           put the Surgeon General's warning on the side of the

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1 package but there's still going to be people that are  
2 going to smoke.

3 So I think it is important to realize that  
4 there are limits to what marketers can do. And we can be  
5 reasonable and we can be clear about our offers, and we  
6 can look to make them better and clearer and easier to  
7 redeem, but at some point we're going to have to say to  
8 consumers you also have to take -- you also have to be a  
9 partner in this enterprise and take some responsibility  
10 for reading the terms of the offer and complying with  
11 them.

12 MS. FAIR: But considering the definition of  
13 deception under Section 5, is what reasonable consumer  
14 interpretation is, isn't the fact that consumers are the  
15 ones being confused by that say more about the offer than  
16 about the consumer?

17 MR. GREENBAUM: Well, I guess, of course, you  
18 know, it's an objective standard as opposed to the way  
19 consumers are actually reacting. And so I would say  
20 objectively when we look at an offer, you know, is this  
21 something that a reasonable consumer should be confused  
22 by? I think that there's a lot of things that the  
23 majority of Americans do and believe that I wouldn't  
24 consider to be reasonable. So but that's really not the  
25 purpose of this, of this program today.

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1                   But I do think it's not just about the  
2                   empirical data, it's about what would a reasonable person  
3                   looking at that offer and that ad believe. And I think  
4                   that that's in some level equally important, if not more  
5                   so, because that's the legal standard, than what  
6                   percentage of the breakage there is.

7                   MS. GARCIA: What happens when the consumer  
8                   tries to follow instructions that are just so complex  
9                   that no one can figure them out. I know of a case where  
10                  an individual was trying to redeem her rebate, she  
11                  couldn't figure it out, she went back to the store to get  
12                  their advice on how to do it, they thought they gave her  
13                  the right advice, and guess what, it was wrong, she  
14                  couldn't collect. This happens.

15                  So when we ask ourselves, our consumers of  
16                  course consumers have an obligation to follow  
17                  instructions. Everyone has that obligation. But what  
18                  instructions are we giving them? Are they instructions  
19                  that the reasonable consumer can follow? I certainly  
20                  hope so, because if not they start complaining. And when  
21                  they start complaining that adds heat under you, and  
22                  that's not a good thing for you either.

23                  MS. FAIR: We have a question here. If you'll  
24                  identify yourself?

25                  MR. WOODWARD: Hi, Greg Woodward, IMR Group. I

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1 just wanted to make two comments. First of all, I agree  
2 completely with the concept that technology is really the  
3 solution. And the second piece that the industry should  
4 regulate itself, and I think that's important.

5 The number one thing is to be able to make the  
6 consumer happy while allowing the manufacturers to  
7 benefit from the value of breakage, or the rebate versus  
8 the instant discount. We've developed that solution.  
9 And basically you mentioned something about the  
10 microphone, you mentioned an in-store kiosk and that's  
11 what we're going on lines with. We're preparing to  
12 launch an online solution and an in-store solution, which  
13 is real time, which operates as a service to the consumer  
14 for a fee, like a Coin Star machine would. This model is  
15 designed to stay ahead of legislation in the areas of  
16 liabilities and things like that. More importantly, it's  
17 protected by an international portfolio of patents and  
18 also can be implemented in the retail space without  
19 modifying any existing systems.

20 So there's a technology solution.

21 MS. GARCIA: Can I ask you a question? What  
22 are you fees like?

23 MR. WOODWARD: We don't charge fulfillment fees  
24 to the manufacturers.

25 MS. GARCIA: How about the consumer?

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1 MR. WOODWARD: Eight percent.

2 MS. GARCIA: Eight percent of the total rebate?

3 MR. WOODWARD: Coin Star's 8.2. It's an option  
4 to mail it in now. You can get a hundred percent on a  
5 store gift card and the retailer pays the fee. So this  
6 is something we started talking about at CES in January,  
7 and hopefully the technology, hopefully your solution  
8 will happen, the technology will solve the problems.

9 MS. GARCIA: Thank you.

10 MS. FAIR: Another question here?

11 MR. LAVERTU: Hi, my name is Fred Lavertu and  
12 I'm from (inaudible). And I hope you'll allow me to be  
13 your (inaudible) to your inner Oprah. It's a joke, I'm a  
14 married man, I'm taken.

15 [Laughter.]

16 MR. LAVERTU: About the notion that the -- and  
17 my wife will read this, true, and, hi, Suzy, by the way.  
18 I'll be home tomorrow.

19 Given the comments that, and I'm glad to see  
20 the panel, but anyways, Hal had said earlier that most of  
21 the practices that we've been talking about, and I work  
22 for (inaudible), we see complaints about these practices.  
23 To give some context we're the (inaudible) to the FTC.

24 But in any event, given that Hal's comment that  
25 a lot of these practices amount basically to brand

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1 suicide, and yet they still go on, how realistic is it to  
2 expect the industry to regulate itself when the practices  
3 themselves are first of all hurting themselves but still  
4 go on, but obviously there's a profit motive behind it.  
5 So how can we, or what can we or the industry offer to  
6 do, or prepare to do, to regulate itself?

7 MR. GREENBAUM: You know, I think those are  
8 obviously great questions, and I think that there are no  
9 easy solutions. And I think this is one step among many  
10 steps to try to look for a solution. I mean certainly  
11 you can post speed limit signs on the highway, but unless  
12 Lesley's driving you to work in the morning the federal  
13 government is not going to ensure that you don't go over  
14 the speed limits.

15 So I think that there is not one easy way to  
16 solve the problem and I think that federal legislation or  
17 a patchwork of state legislation is not going to solve  
18 the problem either. We're still going to have problems.  
19 We're still going to have offers that are confusing. And  
20 I think that the better solution is certainly this kind  
21 of discussion, education, and looking to technology to  
22 sort of enable marketers in a cost-effective way to make  
23 the consumer better.

24 MR. LAVERTU: If I may just pursue my answer.  
25 While it may be true that federal regulation is not the

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1 answer, and given that it's a U.S. problem I'm not going  
2 to comment on it, but what -- you've sort of answered my  
3 question, but what can the industry do? I mean I realize  
4 that you cannot stop me from driving my car 200 miles an  
5 hour if I feel like it, but as the people who are driving  
6 the car, what do you propose to do to help solve the  
7 matter? In other words, are you going to slow down? Or  
8 how are you going to do it.

9 MR. GREENBAUM: Well, you know, I'm not, look,  
10 I'm not here representing a specific company, so I don't  
11 think that I actually have specific proposals that I want  
12 to make on behalf of anyone other than to say that I  
13 think that these kinds of issues are the part of the  
14 discussions that companies are having. Companies really  
15 truly are looking for solutions and they don't want  
16 unhappy consumers. And I've never once had a discussion  
17 with a client ever where they said what can we do to make  
18 people not redeem this offer. And, you know, oh what  
19 great news, suddenly this rebate offer didn't cost us  
20 anything.

21 I think that the reality is these companies  
22 want repeat customers, they don't want the brand suicide.  
23 But I think the reality is is that change takes time and  
24 change is often very expensive, especially when you're  
25 talking about the redesign of big company systems and

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1 websites and all that. But I think we're moving in the  
2 right direction. And I think some of the changes we've  
3 seen today are really incredible examples of what can be  
4 done, and I think that this is just the beginning of  
5 seeing a lot more of that, at least hopefully it is.

6 MS. FAIR: Time for one more question.

7 MR. GLASSER: Hi, Roy Glasser. I spoke before.  
8 I'd like to say first that as a consumer I think that  
9 something needs to be done. The regulation, I think  
10 there needs to be some kinds of it. But as far as the  
11 forms go, I think if they were templates and the  
12 manufacturers could say well we'll pick this, this, and  
13 those conditions from it, and the wording was understood,  
14 they could see the totality of what they might choose,  
15 and they could then pick whatever they want to be  
16 smaller. But there has to be something. This concept of  
17 getting a rebate in 21 days, that company's been telling  
18 me that since 2002, and I when I get a rebate in 21 days  
19 the other 10 rebates take a lot longer than it says on  
20 paper.

21 So obviously things need to be done. And I  
22 think that complete government regulation is probably not  
23 the right way to go at this point, but there need to be  
24 guidelines and the crooks have to be gotten out of it.

25 MR. GREENBAUM: Yeah, I just think there's one

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1 good thing to say there, which is this is not about  
2 there's always going to be a small percentage of  
3 companies that are the bad guys. This is not about the  
4 bad guys. And we don't want to develop a system of best  
5 practices or legislate based on the sort of bad out-of-  
6 line acts of a few. We have to look at those people are  
7 going to be dealt with, there's sufficient authority both  
8 at the federal and state level to deal with it. And  
9 really what we're looking at here is for the people who  
10 are trying to do it the right way and who are looking for  
11 solutions how can we best help them to do that.

12 MR. KABAK: I would just say self-regulatory  
13 actions have taken place in a lot of industries, you've  
14 got (inaudible), you got NAD, Children's Food Initiative,  
15 and they need to be followed and dealt with, but they are  
16 an intelligent way of motivating people who have a real  
17 business and economic interest in proceeding fairly with  
18 consumers and honestly in a reasonable way to continue to  
19 do business with the consumers that also like this  
20 process, and without necessarily having the heavy hand of  
21 regulation and federal regulation brought down upon the  
22 industry.

23 MS. FAIR: We have, I'm sorry, Norma?

24 MS. GARCIA: One last comment on that.

25 Developing laws or regulations that are designed to get

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1 at the practices of even just the bad actors, that's a  
2 good thing. If you're doing the right thing these are  
3 not going to impact you at all. They're going to clean  
4 up the industry, they're going to create greater consumer  
5 confidence, and that's all positive.

6 MS. FAIR: I'm sorry that we have advertised  
7 that we're finishing at 4:30, we're going to make that a  
8 truthful and substantiated claim. But Matt Gold will  
9 mention how to put additional material and information in  
10 the record, and how to get everyone's point of view  
11 mentioned.

12 I'd like just one last question for the  
13 panelists. Assume this is a magic wand. It was paid for  
14 with lowest government contract bid, so that's what you  
15 get. Norma, if you have the magic wand what one change  
16 or one activity, what would you like the result of this  
17 event today to be, if you had if it was your choice,  
18 where should we go from here?

19 MS. GARCIA: Consumer's Union believes that  
20 rebating at the cash register is the best possible  
21 solution for consumers. That's our wish.

22 MR. KABAK: If I had my wish I would wish for  
23 the continued acceleration of technology which would  
24 solve a lot of these problems, and for the creation of  
25 appropriate self-regulatory standards to take place, and

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1 for the consumers themselves to be better educated and  
2 learn to read better.

3 MR. GREENBAUM: I think this is a very, very  
4 positive day, I think we got a lot of information, I  
5 think that a lot of useful information was shared. And I  
6 think it should be a continuing dialogue and we should  
7 continue to learn from each other. And we should  
8 continue to have these conversations. And we should  
9 revisit them in the not-too-distant future and see where  
10 we are and see what progress is being made.

11 MS. FAIR: Thank you very much. Thank you  
12 speakers. Thank you all.

13 [Applause.]

14 MS. FAIR: And the last word goes to Matthew  
15 Gold.

16 MR. GOLD: I'd just like to thank all our  
17 panelists and moderators, and especially our audience. I  
18 don't think I've ever been at an event like this where  
19 there's so little afternoon drop-off. It's very, very  
20 impressive.

21 Please continue to check out our website. I  
22 apologize, I don't have the URL off the top of my head.  
23 But it's the Rebate Debate website it's accessible  
24 directly from [www.FTC.gov](http://www.FTC.gov). Right on the home page there  
25 is the logo for this event, and it will lead you to the

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1 web page. That web page will remain active for the  
2 foreseeable future.

3 Like I said, all the Power Point presentations  
4 will be up in the near future, as will the transcript of  
5 the event once it's ready.

6 And most importantly, the email address that  
7 many of you used to preregister will remain active. And  
8 we urge all of the attendees here who were not able to  
9 participate, who couldn't comment or question as they  
10 wish, to use that email address to submit a comment once  
11 you've digested what went on here, and please let us  
12 benefit from your thoughts on the matter. So anything  
13 you would like to send us by way of that email address we  
14 would greatly appreciate.

15 MS. FAIR: What's the email address?

16 MR. GOLD: The email address is:  
17 rebatesworkshop@FTC.gov; rebatesworkshop@FTC.gov. But  
18 the safest thing to do is to access it from the website  
19 because it's a link and it will be sure to get here. But  
20 it's the same mailbox that was used for preregistration,  
21 and virtually all of you used that.

22 So thank you, again, all, for coming.

23 [Applause.]

24 ( A D J O U R N E D )

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**TRANSCRIPTIONIST'S CERTIFICATION**

I, V, Oliver, a duly designated transcriptionist, do hereby declare and certify under penalty of perjury that the foregoing pages 1 through 224

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1           constitute a true, complete and accurate transcript of  
2           the electronic recording taken on April 27, 2007, FTC  
3           Rebate Debate, in San Francisco, California.

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7           Executed May 9, 2007, at San Luis Obispo, California.

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