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STATEMENT BEFORE THE SENATE BANKING COMMITTEE

HEARING ON REGULATORY RELIEF PROPOSALS

June 21, 2005

The following written statement is submitted in support of S. 603, the Consumer Rental-Purchase Agreement Act, on behalf of the Coalition for Fair Rental Regulation.

S. 603 has been introduced once again in this Congress by Senator Mary Landrieu, and cosponsored by a number of other Senators, Republican and Democrat alike, including Senators Shelby and Johnson of this Committee. That legislation, standing alone or as part of an overall regulatory relief package, proposes to regulate the rent-to-own, or rental-purchase, transaction, for the first time at the federal level. In introducing this legislation, Senator Landrieu and her colleagues have successfully struck a balance between the interests of the consumers on the one hand and the rental merchants on the other.

For the record, it should be noted that this Committee first passed rental-purchase legislation in 1984. That bill, sponsored by Senators Hawkins and Gorton, would have required just a few disclosures in rental-purchase contracts, and would have provided only a minimum of other consumer protections. By way of contrast, S. 603 would mandate 10 contract disclosures, would require the disclosure of key financial and other information in advertisements and on price tags in store locations, in addition to the many substantive consumer protections the bill would establish. In this regard, it is fair to say that if enacted, this legislation would represent one of the most comprehensive, substantive federal consumer protection laws ever enacted.

1. Introduction to the RTO Industry and S. 603

The rent-to-own, or rental-purchase industry, offers household durable goods—appliances, furniture, electronics, computers and musical or band instruments are our primary product lines—for rent on a weekly or monthly basis. Customers are never obligated to rent beyond the initial term, and can return the rented product at any time without penalty or further financial obligation. Of course, customers also have the **option** to continue renting after the initial or any renewal rental period, and can do so simply by paying an additional weekly or monthly rental payment in advance of the rental period. In addition, rent-to-own consumers have the option to purchase the property they are renting, either by making the required number of renewal payments set forth in the agreement, or by exercising an early purchase option, paying cash for the item at any time during the rent-to-own transaction.

Our companies offering household durables typically provide delivery and set up of the merchandise, as well as service and replacement products, throughout the rental period. We do not check the credit of our customers, and do not require down payments or security deposits. Consequently, this is a transaction that is very easy to get into and out of, ideal for the customer

that wants and/or needs financial flexibility that only this unique, hybrid rental-and-purchase transaction affords.

The rent-to-own transaction appeals to a wide variety of customers, including parents of children who this week want to learn to play the violin, only to find that, two weeks later, the child is more adept at—and interested in—fiddling around. Military personnel who are frequently transferred from base to base, who want nice things for their apartments or homes but who often cannot afford, or do not want, to purchase these items, use rent-to-own. College students sharing apartments or dorms rent furniture, appliances and electronics from rent-to-own companies. The transaction serves the needs of campaign offices, summer rentals, Super Bowl and Final Four parties, and other similar short-term needs or wants.

Importantly, however, this transaction is also frequently used by individuals and families who are just starting out and have not yet established good credit, or who have damaged or bad credit, and whose monthly income is insufficient to allow them to save and make major purchases with cash. For these consumers, rent-to-own offers an opportunity to obtain the immediate use of, and eventually ownership if they so desire, of things that most of the rest of us take for granted—good beds for our children to sleep on, washers and dryers so they don't have to spend all weekend at the Laundromat, dropping coins into machines that they will never own. Computers so the kids can keep up in school, decent furniture to sit on and eat at, and so on. Rent-to-own gives these working class individuals and families a chance, without the burden of debt, and with all the flexibility they need to meet their sometimes uncertain economic circumstances. This is certainly a more viable alternative than garage sales, flea markets and second-hand stores.

Rent-to-own industry statistics indicate that approximately one in four transactions results in the renter electing to acquire ownership of the rented goods. In the other 75%, according to the industry numbers, customers rent for a short period of time and then return the goods to the store, typically in just a few weeks or months.

There are approximately 8,000 rent-to-own furniture, appliance and electronic stores throughout the country, and in Puerto Rico. Additionally, there are 5,000 or so musical instrument stores. The majority of companies operating in this business are "mom-and-pop" family owned businesses, with one or two locations in a particular city or town, although slightly less than one-half of all stores are owned by major, multi-state corporations.

Over the past 20 years, there has been a healthy and vigorous public debate, played out primarily at the state level, and to some extent here in Washington as well, about the appropriate method of regulating this transaction. Some individuals and groups have argued that rent-to-own is most similar to a credit sale, and consequently should be regulated as such. However, as you have just heard me describe, this transaction differs from consumer credit in a number of significant respects, most importantly in that the rent-to-own customer is never obligated to continue renting beyond the initial rental term, and has the unilateral right to terminate the agreement and have the products picked up at any time, without penalty. This is the critical distinction—under traditional credit transactions, the consumer **must make all of the payments** or risk default, repossession, deficiency judgments and, in worst cases, damaged credit and personal bankruptcy.

By way of stark contrast, the rent-to-own customer enjoys complete control over his or her use of the rented goods, and the terms of the rental transaction itself.

Forty-seven state legislatures have enacted rent-to-own specific legislation, beginning with Michigan in 1984. All of these legislative bodies concluded that this unique transaction is not a form of consumer credit, but instead is something very different. S. 603 is consistent with the approach taken by these various state laws. However, this proposal would set a **floor of regulation**, beyond which states would be free to regulate if the state legislatures saw the need to do so in response to local concerns and conditions. And in fact, any number of the existing state laws provide greater consumer protections than those imbedded in this bill, and those stronger regulatory frameworks would remain controlling in those states if this bill were to be enacted. Finally, if enacted, this legislation would align federal consumer protection law with federal tax law, which treats rent-to-own transactions as true leases and not as credit sales for income reporting and inventory depreciation purposes.

2. Summary of Bill Contents

This bill strikes a balance between the needs of consumers for protection from overreaching and unscrupulous merchants, and the need to establish and maintain a fair and balanced competitive marketplace in which honest businessmen and –women can survive and thrive.

The bill does 5 major things:

- One, it defines the transaction in a manner that is consistent with existing state rent-to-own laws, as well as federal tax provisions. As an aside, this definition is also consistent with the views of both the Federal Reserve Board Staff and the Federal Trade Commission, as expressed in their testimony before the House Financial Services Committee in the 107th Congress.

- Two, it provides for comprehensive disclosure of key financial terms in advertising and on price cards on merchandise displayed in these stores, as well as in the body of the rental contracts themselves. **These disclosure requirements were adopted in part from the recommendation of the FTC in its seminal report on the rent-to-own industry from 2000.** Overall, these requirements significantly exceed the disclosure mandates under Truth-in-Lending as well as the federal Consumer Lease Act.

- Three, the bill establishes a list of prohibited practices in the rent-to-own industry, a list similar in content and substance to the practices prohibited under the Federal Trade Commission Act, and under most state deceptive trade practices statutes. These provisions are unique—neither the Truth-in-Lending Act (TILA) nor the Consumer Lease Act (CLA) contains similar provisions.

- Four, the bill adopts certain universal substantive regulations shared by all of the existing state rental laws. For example, the bill would mandate that consumers who have terminated their rental transactions and returned the goods to the

merchant be provided an extended period of time in which to "reinstate" that terminated agreement—that is, to come back to the store and rent the same or similar goods, starting on the new agreement at the same place the customer left off on the previous transaction.

- Finally, the bill adopts the remedies available to aggrieved and injured consumers under the Truth-in-Lending Act.

In summary, this legislation would go farther in providing substantive protections for rent-to-own consumers than does any other federal consumer protection law on the books today.

3. Preemption

If enacted, this legislation would serve only to establish a **floor of regulation** of the rent-to-own transaction. State legislatures would have full opportunity to pass stronger laws and regulations, modify existing statutes, or even outlaw the transaction entirely if that is what those bodies believed was appropriate. In this respect, it must be clear that this bill does not preempt state law. However, it should also be recognized and understood that this bill would finally establish a federal or national definition of the term "rental-purchase," consistent with the definitions found in these various existing state statutes and within the Internal Revenue Code. Just as is the case under other federal consumer protection laws, including TILA and the CLA, states would not be permitted to define or "mischaracterize" the rent-to-own transaction in a manner that would be inconsistent with the definition in this bill.

4. The Argument Against APR Disclosures

Some groups have called for any federal rental-purchase legislation to include the disclosure of some sort of "imputed annual percentage rate" in these agreements. The industry believes that this view is misguided, for several reasons. First, in order for a transaction of any kind to include an interest component, there must be debt—that is, the consumer must owe a sum certain, and must be unconditionally obligated to repay that sum. That is simply not the case under the typical rent-to-own transaction. Second, the notion of "imputed interest" misleads as to the true economics of the RTO transaction, which has many benefits, services and options that traditional credit transactions just do not offer. For example, in addition to the immediate use of the rented merchandise, delivery and set up are included in the price, as is maintenance on the merchandise throughout the rental. If the item cannot be repaired at the customers' homes, then replacement products are delivered for use while the original rental item is being repaired. Additionally, as noted several times, rental customers always enjoy the unfettered right to terminate the transaction and return the products without penalty, as well as the right to reinstate such terminated agreements.

All of these additional benefits, services and options have value to the consumer. As the Federal Trade Commission noted in its seminal report on the rent-to-own industry in 2000:

> "**Unlike a credit sale, rent-to-own customers do not incur any debt**, can return the merchandise at any time without obligation for the remaining payments, and do not obtain ownership rights or equity in the merchandise until all payments are completed.
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> There are…some practical considerations that suggest that **an APR disclosure requirement for rent-to-own transactions may be difficult to implement, and could result in inaccurate disclosures that mislead consumers.**
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> In addition to the cash price of the merchandise itself, **the calculation of the APR also would have to take into account the additional consumer services and options bundled with the merchandise.** Rent-to-own dealers typically include delivery, pickup, repair, loaner, and other services in the basic rent-to-own rental rate. Many traditional retailers charge extra fees for these services, reflecting the value to the consumer and the cost to the seller. The return option provided with rent-to-own transactions also provides value to consumers and imposes costs on dealers, including the cost of retrieving, refurbishing, restocking, and re-renting the returned merchandise. **In a traditional retail credit sale, additional fees for these services and options, over and above the cash price of the merchandise itself, would be considered part of the amount financed, not part of the service charge.** Similarly, additional fees for these services and options should be considered part of the amount financed for rent-to-own transactions."

Two things are clear from the FTC Report. One, an imputed APR is an inappropriate and misleading disclosure in rental-purchase transactions because there is simply no debt involved in this transaction. Two, studies by the National Consumer Law Center and the U.S. Public Interest Research Group, purporting to show "interest rates" in rent-to-own transactions, fail to take into account the totality of the transaction and its benefits and services, and consequently must be considered misleading at best.

In conclusion, S. 603 is strongly supported by the rental-purchase merchants throughout the country because it represents fair and balanced regulation of the rent-to-own transaction at the federal level. This legislation is necessary so that a uniform public and economic policy is established where these transactions are concerned. States should and would have the ability to enact more stringent regulation of the transaction in response to local concerns and conditions if the need arises. However, by defining this transaction under federal consumer protection law, this Congress extends its traditional role in consumer regulation, as first established with the passage of the Truth-in-Lending Act nearly 40 years ago.