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**DEPARTMENT OF CONSUMER AFFAIRS COMMISSIONER JONATHAN MINTZ  
TESTIFIES BEFORE THE CITY COUNCIL COMMITTEES ON CONSUMER  
AFFAIRS AND CIVIL RIGHTS AT THEIR JOINT OVERSIGHT HEARING ON  
RENT-TO-OWN RETAILERS IN NEW YORK CITY**

*The following is Commissioner Mintz's testimony as prepared.*

"Good morning, Chairman Comrie, Chairman Seabrook and committee members. I am Jonathan Mintz, Commissioner of the Department of Consumer Affairs. I appreciate this opportunity to comment about rent-to-own activities in New York City.

"As its name implies, the rent-to-own business occupies a troublesome niche in the consumer marketplace. On the one hand, it's a short term rental for an initial period of up to four months, after which the consumer renews with each periodic payment or terminates the agreement by simply returning the product. On the other hand, it's a retail purchase of a product that a consumer automatically owns after making the last scheduled payment under the rental agreement. Combined, these rent-to-own activities are beyond the reach of laws governing credit sales even though to own the products, consumers must make periodic payments until they have fully paid the cost of purchase, just as they would in a retail credit sale.

"As touted in a report issued by the Association of Progressive Rental Organizations (APRO), rent-to-own transactions 'sprang up in the 1960's in response to a growing consumer need for acquiring the use of household products without incurring debt or jeopardizing the family credit.' The industry's customers 'come from all walks of life, desiring consumer durable goods...without the long term financial obligations associated with credit sales. What distinguishes rent-to-own from a retail credit sale is the term *rent*. There is no *interest* charged to consumers, no credit checks involved and customers can return the merchandise at any time. This no-obligation, no-debt feature is the cornerstone of rental purchase.<sup>1</sup>

"That's the industry's public relations story.

"The profile data about the industry shows some disturbing facts. Even though its national customer base grew only slightly from 2.7 to 3.0 million during the 12 years between 1995 through 2007, the industry's annual revenue leapfrogged nearly 80% from \$3.8 to \$6.8 billion.

"A Federal Trade Commission survey of 12,000 households a few years back tells us quite a bit about the rent-to-own customer base. Fifty-nine percent of rent-to-own customers had household incomes of less than \$25,000; 62 percent rented their residence; 68 percent lived in non-suburban areas; 31 percent were African-Americans; and 73 percent had a high school education or less.

"That FTC study also made clear that the vast bulk of customers really were purchasing, not renting. Fully seventy percent of rent-to-own merchandise was

purchased by the customer.

"Once customers have made a significant 'investment' in their payments, they rarely walk away from the merchandise as though it had been rented. Customers that have made six months or more of payments are 90 percent likely to then follow through and complete the full contract and purchase the merchandise.

"Comprising the vast bulk of the industry, there are currently 38 Rent-A-Center locations in New York City.

"In New York State, the 'rent-to-own' industry is governed by Article 11 of the Personal Property Law, which specifically distinguishes such transaction from credit sales, noting that contrary to a consumer's obligation to pay the full purchase price and related finance charges under a credit sales contract, consumers under rent-to-own agreements can terminate the contract at any time after four months without any further legal obligation to pay in full the cash price of the rented product. Under State law, if the consumer makes payments under the contract that equal twice the declared cash price, the renter automatically becomes the owner of the product as though it were sold.

"That may sound reasonable on first blush, but consider the significance of the difference between the rental characterization and the sales characterization. Here's a case in point of a rent-to-own contract for a used computer: The cash price for the computer with sales tax was listed as just under \$2,000. Along with some initial fees, the payment schedule called for 20 monthly payments of about \$165. After 20 payments, that's a total cost to the customer of over \$3,600. That means the convenience of the rental of a \$2,000 computer was over \$1,600...or the equivalent of an annual percentage rate equaling 70.9 percent. Remember that New York State's criminal usury ceiling is 25 percent for extensions of credit.

"Unfortunately, state disclosure requirements don't make the impact of those numbers clear. Mandated disclosures list the cash price, the number and amount of the periodic payments and total cost of acquiring ownership, which can be no more than twice the initial sales price. Consumers don't think they're renting a product and assess whether the rental charges and rates are reasonable. Instead, they think they're purchasing a product over time.

"We have other concerns with the scope of protection offered by the State's law. For instance, despite the clear reality that these transactions end up as sales, not rentals, consumers have limited property rights.

"In a rent-to-own agreement, a consumer's failure to pay the next scheduled payment automatically terminates the agreement. These consequences are more grave than a missed payment of a credit card. Among other consequences, termination would immediately end a consumer's right to possession of a product and would also entitle the business to immediately reclaim it. Since as a renter the consumer had no ownership rights in the goods, termination would also deprive consumers of the value of payments made toward the price unless consumers could invoke their rights to reinstate the contract under the short window of opportunity Article 11 makes available to them.

"Of even greater concern is the limited protection offered by the State's price ceiling. State law sets a cap on payments at twice the declared cash price. But enforcement of whether that declared cash price is reasonable is problematic, which is likely why the

state appears to have done so little of it.

"Article 11 requires that the declared cash price of a product reflect a market-based objective price that is intended to prevent sellers from arbitrarily quoting inflated prices as the baseline for the cap on the total amount the consumer has to pay to own the product. The law, however, sets that baseline as the price at which a merchant would offer to sell the product in the ordinary course of business to the consumer on the day of the rental. It is almost impossible to determine such prices, let alone to verify their compliance retroactively.

"This all sounds pretty discouraging. There are several state-level proposals that exist, including the recasting of these transactions as credit sales, and thus subject to the usury cap. The State could also always step up enforcement.

"But the City, with its heightened focus on leveraging city protections to help financially empower New Yorkers, has an idea closer to home. The City believes that one way to tackle the issues is through local licensure.

"Licensing by the New York City Department of Consumer Affairs would make it possible to do the following:

- New York City could require stores engaged in rent-to-own activities to make additional disclosures to more fully inform consumers about the nature of the transactions, including requiring the distribution of a Consumer Bill of Rights. That Bill of Rights would delineate the most relevant characteristics and costs of the transaction, and empower consumers to compare the proposed transaction with other forms of purchasing.
- New York City could require stores to use a contract template to ensure that required disclosures are made in plain language; we would also require that contracts be written in the same language used to negotiate the transaction.
- To aid enforcement, DCA would mandate record-keeping requirements that validate that the declared cash price was in fact based on the market, and require licensed stores to produce such records upon demand.
- Licensing requirements could also mandate compliance with key product recalls in order to protect consumers from harm.
- Local licensing means that DCA mediators would be able to address complaints, such as those concerning delivery and collection issues.
- Finally, local licensing means real and accountable enforcement.

"Requiring the licensing of rent-to-own activities would be a 'first' by any municipality. It would put New York City in the vanguard, leading the way for local and effective consumer protections in this troublesome industry.

"We look forward to working with the Council to craft appropriate legislation to implement our licensing recommendation. Thank you for the opportunity to testify here and I would be happy now to answer your questions."

<sup>1</sup> Association of Professional Rental Organizations (APRO), "About Rent-to-Own – Rent-To-Own Industry Overview," <http://www.rtohq.org/apro-rto-industry-overview.html> (January 22, 2009).