8-17-1979

Correspondence with Duane Pearsall regarding Pearsall's testimony submitted to the FTC

Timothy Wirth
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Mr. Duane D. Pearsall  
President  
Small Business Development Corporation  
6605 South Jay Drive  
Littleton, Colorado 80123  

Dear Duane:  

Thank you for your extremely thoughtful letter and the enclosed testimony which you submitted to the F.T.C. I appreciate your taking the time to fill me in—and, as always, your comments make a great deal of sense.  

In the testimony you enclosed, you outlined your experiences with current standard-setting procedure. I was pleased to see that you were able to get your product certified—but you must know that others have not been so fortunate. The introduction to the Standards and Certification Proposed Rule and Staff Report alludes to the evidence received by the F.T.C. about products which are not certified (copy enclosed) and which were consequently denied to the public.  

It seems to me that there is a gray area here. Your experiences lead me to believe that all is not as bad as the Staff Report would seem to indicate, yet common sense tells me that the F.T.C. is not entirely incorrect in its analysis of the problem. My own limited experience in communications regulation has shown to my satisfaction that a current provider of a product (in this case A.T.& T.) will go to incredible lengths to keep competition off the market. In this instance, Bell fought competition in the regulatory agencies, in the courts, and now in the Congress. And, quite interestingly, A.T. & T. relied to a great extent on a "standards argument" to make its case.  

I have taken the liberty of sending a copy of your comments to the F.T.C. for specific comment. Once I have heard from them, I'll be back in touch. At which point, I hope that
we can resume this discussion. My mind is open on this one. And, as you well know, I have little patience for regulatory agencies which attempt to implement proposals which have been rejected—either implicitly or explicitly—by the Congress.

Good to see you last month—let’s stay in touch.

With best wishes,

Sincerely yours,

Timothy E. Wirth

TEW:dlc
Enclosure
August 17, 1979

Mr. Michael Pertschuk
Federal Trade Commission
Pennsylvania Avenue at Sixth Street
Washington, D.C. 20580

Dear Mike:

Enclosed is a copy of a letter I received from Mr. Duane Pearsall concerning the proposed rule on Standards and Certification. By way of background, Duane was selected as "Small Businessman of the Year" by the S.B.A. He is one of the most thoughtful people of my acquaintance, and I urge you to give his comments your personal attention.

In addition, I would like to request that a member of the Commission staff prepare detailed comments on Duane's testimony. He is not only one of the most thoughtful people I know—he also has had personal experience in this field as a small businessman. You and I well know that most technological innovation comes not from the large corporations, but from the small businessmen of this nation. If the proposed rule would inhibit the development of these innovations—as Duane maintains—then I urge you to reconsider the approach outlined in the staff proposal.

Enclosed is a copy of the interim response I sent to Duane, for your information. I look forward to hearing from you.

With best wishes,

Sincerely yours,

Timothy E. Wirth

TEW:dlc
Enclosures (2)
May 21, 1980

Mr. Duane D. Pearsall  
President  
Small Business Development Corp.  
6605 South Jay Drive  
Littleton, Colorado 80123

Dear Duane:

Thank you so much for copying me with your May 16 letter to Burton Williams. Right on!

I want to thank you for your considerable help -- both moral support and lobbying support -- in the long battle to combat the regulation of standards. The House yesterday passed the conference report that was the outcome of all our lobbying. We expect the Senate to do so shortly and send the bill on to the President to sign. While we did not get all we wanted in the bill, we nevertheless scored a significant breakthrough. Congress has sent an unmistakable signal to the FTC.

Once again, thank you for all your help and let me tell you how much I have enjoyed getting to know you through the course of the past year.

Sincerely,

M. Kendall Fleeharty  
Associate Director for Corporate Policy
3/7/79

Dear Duane,

Thanks for sending me a copy of your letter to Mr. Duffy of ASHRAE. News and of his outstanding editorial. It is a gem.

We intend to oppose the FTC trade regulation rule with all the vigor we can muster.

With kindest regards,

Charles
May 12, 1980

Burton L. Williams, President
National Council on Fair Standards
133 Federal Street, Suite 600
Boston, Massachusetts 02110

Dear Mr. Williams,

I was shocked to learn of your coalition of "20 Small Business Firms" and your intended support of the Federal Trade Commission to take over the standards making process in this country.

Your purposes might be helpful to small business if you were to monitor standards and establish your own library although, at the outset, that is a monumental task, however, to allow the Federal Trade Commission to unilaterally expand its authority in the manner they propose, is to ask for more Government takeover of private programs with their inherent inefficiencies and paperwork.

As a small business man with an unusually broad exposure to the standards and certification process, I have testified in opposition to the original attempt at Government takeover which was known as S825 and which, fortunately, died in committee. Its sponsors were the former Senator Abourezk and other liberals including your Senator Ted Kennedy. After the issue was dormant for over 12 months, it suddenly emerged as a "proposed rule" of the Federal Trade Commission. This, in itself, is a blatant example of bureaucracy expanding itself to enact laws which have failed to make it through our legislative process.

I have also spent time and money testifying in opposition to the proposed rule during the series of FTC hearings on the subject. I accused the FTC of perpetrating fraud against the public by "packing" their hearings with small business people whom they believed to be in favor of the rule. Not only that, but offering to pay their expenses as well.

There is a place for the Federal Trade Commission and it has been designed to serve an important purpose. It currently has within its jurisdiction the responsibility to take action against non-competitive or monopolistic practices in our standards system. Your organization could well document any violations, submit them to the FTC and expect immediate action. No new rules nor legislative authority is necessary to accomplish this.
What the small business community does not need is more government. The only control our congress currently has on expansion of agencies is through the budget process, and that's not good enough. There is a real need for congressional oversight and the ability to veto proposed rules of any agency.

Very truly yours,

Duane D. Pearsall
Vice Chairman, Colorado Council on Small Business
Member, National Unity Committee on Small Business

DDP/ec
May 3, 1979

Mr. Henry B. Cabell
Presiding Officer (P.U.)
Federal Trade Commission
Washington, DC 20580

SUBJECT: Proposed Rule
Standards & Certification
Comments & Request to Present Oral Testimony

Dear Mr. Cabell:

On behalf of the Small Business Council of the Denver Chamber of Commerce, I would like to submit the following comments on the proposed rule relative to those issues affecting small business and, at the same time, request the opportunity to present oral testimony.

Since the proposed rule purports to aid small businesses in both the standards and certification processes, and since there are few very small businessmen with exposure to more than one industry technology, I feel compelled to speak in opposition to the proposed rule.

My background as a small businessman began in 1955 as a manufacturer's representative for the Rocky Mountain Area for several manufacturers of commercial and residential heating and air distribution products. I have served in many local offices of the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE), and on a national technical committee until 1978. Every product used in the mechanical systems for commercial buildings is subject to some performance rating or standard developed entirely by individuals donating their time and talents to improve their industry.

Beginning in 1963, I founded Statitrol Corporation which produced the first ionization smoke detector manufactured in the U.S.A., which was to receive Underwriters Laboratories listing. This means that it was tested by U/L to meet the standards of the National Fire Protection Association. In 1971, we introduced the first low-cost, battery-powered home smoke detector which, in five years, resulted in a $200.0 million industry - and saving hundreds from death by fire each year.

Our Company was able to grow from less than 30 people in 1971 to over 500 in 1975, with sales over $10.0 million due to three significant events - using our present standards system - which are diametrically opposite to the stories presented in the FTC document, "Proposed Rule and Staff Report".
Mr. Henry B. Cabell
May 3, 1979

First, the Household Fire Equipment Committee of NFPA (Pamphlet 74) recognized the life safety value of battery-powered home fire detectors and, at our request, were willing to propose a major change in the standard to allow their use. The NFPA Convention approval process took over one year, in order that all interested parties including the insurance industry, the Fire Marshalls Association, equipment manufacturers, and government, could have their input.

The second event was the cooperation and help extended by both Underwriters Laboratories, Inc. and Factory Mutual Testing Laboratories in testing our product. Factory Mutual, for instance, granted an approval even before NFPA standards were completely approved, demonstrating their flexibility to respond to product to improve life safety in the home. Underwriters Laboratories likewise expedited testing in advance of the final NFPA-approved standard, so as not to delay market introduction of the product.

The third event was the acceptance of the need for a home smoke detector by the International Conference of Building Officials (ICBO), allowing it to become a part of the Uniform Building Code, which then set the precedent for the rest of the country. It should be noted that the ultimate vote for approval of disapproval of ICBO standards is made, not by industry, but by hundreds of building inspectors from those cities who adopt the Uniform Building Code. If the legal technicians who prepared the FTC document could participate in the hours of debate by the many sectors of the building industry, it would be difficult to see how they could suggest that government control, as proposed by the FTC rule, could improve the process.

Because of these three independent and significant events which occurred personally to me in the standards and certification process, our company was able to grow and prosper in a manner reflecting the present opportunities within our free enterprise system.

As a result of our Company's success, I was named the 1976 National Small Businessperson of the Year by the Small Business Administration. Statitrol Corporation was sold in March, 1977, to a major corporation. To conclude this personal example, I have since resigned from the presidency of Statitrol Corporation to form my present company as a consultant to small business and, wherever possible, speak out for its support.

May I now revert to some general observations that tend to shake my confidence in our government processes.

First, understand that I am an individual consultant and not a major corporation subject to possible future retribution from the FTC for opposing its staff position on this issue. Were I speaking as a representative of a major corporation, I do not believe management would permit expressing anything but an attitude cooperative with FTC.
Second, I previously testified before Senator Abourezk in opposition to S825, referred to as the Voluntary Standards and Accreditation Act, which died in Committee. In a review of the Proposed Rule and Staff Report, dated December, 1978, it is obvious that most of the data came from the supporting documents or hearings testimony on S825, or its predecessor, S3555, began prior to 1975. The Bill has therefore been under study for at least four years. Why then are there so few examples of so-called injustices within the voluntary consensus standards system? It seems as if half of the supporting examples throughout some 645 pages of this document refer to either a boiler low-water cutoff device or a stack damper for flue shutoff.

Having been a service man and a service manager for one of the major control companies for seven years, and having sold both steam and hot water boilers for eleven years, I am familiar with both of those products. There may have been errors in judgment on the part of Standards Committees or certification bodies. However, particularly in the case of the stack damper, there is obvious deception on the part of the FTC and previously on the part of the staff of Senator Abourezk. The legal technicians have used the buzz-word "energy" as if it were a critically important term in 1969, at the time the damper was first submitted to AGA. In my opinion, the judgment in denying approval of that device was based on the opinion that it could be hazardous. The story, told in the light of today's energy crisis, injects a new "energy" dimension into the consideration that was not present in 1969.

If the abuses to the system are so rampant, why is the furnace flue damper incident referenced in at least thirty places in this document? In summary, there is no justification for such proposed massive interference by government into a system that has been working exceptionally well and to the benefit of the consuming public.

I strongly maintain the proposed rule will hurt small businesses rather than help them. Nothing is more formidable to the small businessman than to face the paperwork resulting from contacts with a government agency. It is a fact that government regulations impact the small businessman disproportionately harder than his larger brothers. In the past three years, I have attended many symposiums which consistently attempt to identify the problems of small business and what corrective legislation might be in order. Never, in any of these meetings, has the standards and certification system been mentioned. Over 16,000 small businesspersons to date have attended regional and local White House Conference meetings on small business. The standards and certification process has not been an issue. It, therefore, has not been perceived as a problem within the small business community. As a body, small business is fearful of - and abhors - government intrusion.

If the Federal Trade Commission had been carrying out its responsibilities as stated on page 241 -- "The Commission's Authority to Prohibit Unfair--Acts or Practices" -- it seems clear that the problem is not so much with the present consensus standards and certification system, but rather with the FTC. It seems that a review of the FTC performance record might be more justified and far less costly than to overhaul the entire standards and certification system.
Finally, having testified at the hearings on S825 and learning of its demise in Committee, there appears to be clear evidence that neither the Congress nor the Administration felt such action was justified. How then can a government agency unilaterally decide to "mandate" new laws that have failed in the legislative process? Have we reached the point where our Congress is unnecessary and that we are now forced to acquiesce to laws of the land authored and implemented by expansive government agencies?

Sincerely,

Duane D. Pearsall
President

DDP: sam
July 12, 1979

Mr. William H. Rockwell  
American National Standards Institute  
1430 Broadway  
New York, NY  10018

Dear Bill,

Thank you for your very kind letter of June 28.

I am still corresponding with small business groups to have them file a statement with FTC and with their local Congressional Delegates. Our best hope in defeating this terrible and undemocratic proposed rule is to restrict the budget of the Federal Trade Commission.

Following the hearing, I spent about two hours at the SBA because Bill Black of SBA is chairing an inter-agency committee to develop a position on the FTC rule. He was asked to do this by Dr. Howard Forman, Deputy Undersecretary of commerce, who attended the hearing. Bill Black is having difficulty at SBA since the Chief Counsel for Advocacy for SBA is an old friend of Michael Pertschuk. In addition, his immediate assistant, David Voight, was formerly on the staff of Senator Abourezk. I also understand another key person in the group is a recent transferree from the staff of the Federal Trade Commission. I have advised Milt Stewart, the Chief Counsel, and Vern Weaver, the Administrator, that I will fight them to the mat if they take any kind of position in favor of the proposed rule.

Bill Black, personally, is totally opposed to the rule, but must act within the positions adopted by his boss.

If I can get any of these Small Business Associations, and there are about 7, to write a position statement, I will be sure they copy you on it, if at all possible.

Sincerely,

Duane D. Pearsall  
President

DDP: sam

(303) 798-8360 or 795-3484 • 6605 SOUTH JAY DRIVE • LITTLETON, COLORADO 80123
June 28, 1979

Mr. Duane D. Pearsall  
President  
Small Business Development Corporation  
6605 South Jay Drive  
Littleton, CO 80123

Dear Mr. Pearsall:

I did want to write to congratulate you on the excellent job you did Tuesday at the FTC hearing, not only was your presentation well prepared and thought out, but you handled yourself very well on the difficult and lengthy cross-examination.

We greatly appreciate your help in our effort to stop this regulation. It is good to know we have such effective support.

Duane, I do want to get together with you and the other members of the small business groups to see what we can do to continue better input from small business communities to the standards process.

Again, thank you for good help.

Sincerely,

William H. Rockwell

WHR/dvm
July 12, 1979

Mr. Milt Stewart
Chief Counsel for Advocacy
Small Business Administration
1441 "L" St., N.W.
Washington, DC 20416

SUBJECT: FTC Proposed Rule
Standards & Certification

Dear Milt,

Sometime ago, you asked me to get with Bill Black and determine whether or not he understands the proposed rule and the general area of standards and certification.

I recently had a chance to get better acquainted with Bill during the first week of the FTC hearings, at which I presented the attached statement.

Since Bill has had experience in the sales of forest products, he certainly was opposed to building codes and standards. I feel confident he does indeed understand the standards and certification processes.

I had a chance to talk for about an hour with Dave Voight and his assistant, Chris. Dave very quickly acknowledges he does not understand the proposed rule.

I suspect one of your problems is that Bill Black seems to have trouble making his case clearly and concisely. There is no question, however, that Bill understands how bad the proposed rule really is, and personally would do anything to defeat it. I sense that he does feel the weight of responsibility for an inter-agency committee position, and therefore must document his reasons for a position very carefully.

Milt, I am going to try to get a statement from each of the Small Business Groups in opposition to the proposed rule. This action on the part of FTC is so bad that I intend to devote all the resources I can muster to defeat their objective. If such a rule passes the Commission, I intend to enlist the aid of a couple of legal foundations who delight in proving agency rules to be unconstitutional.

Sincerely,

Duane D. Pearsall
President

DDP:sam

(303) 796-8360 or 795-3484 · 6605 SOUTH JAY DRIVE · LITTLETON, COLORADO 80123