May 25, 2000

Dear Conferees on S. 761:

The goal of passage of historic electronic signatures legislation is close to being realized. However, the latest draft of the conference report on this legislation, perhaps inadvertently, contains language which needs to be amended if this legislation is to meet its prime objective of permitting electronic delivery of records across the country in the near future. We urge the parties involved in drafting the conference report to consider the following suggestions:

1. The Conferees seem to be agreed that in the interest of achieving uniformity across jurisdictions, it is not desirable to permit exceptions to UETA as reported. However, the draft we have reviewed would permit a state to enact UETA, but separately enact legislation requiring records to be delivered by mail or other means, effectively vitiating the national uniformity which H.R. 1714 was designed to achieve. We would respectfully suggest that drafters consider the following amendment to the May 24 conference draft to correct this problem:

On page 10, line 23, after the word "that" insert the following language: "any requirement of or pursuant to section 8 (b)(2) of such Act shall be preempted, and"

2. The draft conference report also contains a provision which would appear to delay the effective date of the act for most consumer transactions until October 1, 2001. If the purpose of this language, as we have been informed, is to permit law enforcement personnel or state regulators to have time to adopt standards for internal record keeping by entities they oversee, this objective can be achieved, we believe, with the following language:

On page 23, strike lines 11 through 13 and insert the following in lieu thereof: "With respect to any copy of such record which a provider is required by statute, regulation, or other rule of law to retain for law enforcement purposes, a Federal regulatory agency or a State regulatory agency may require that such copy be retained in non-electronic form until October 1, 2001."

3. The consent provisions of the Inslee amendments received widespread support when they were voted on by the House of Representatives, and we believe that they will be effective in assuring that consumers doing business with the companies we represent are empowered to make an informed decision to do business on line. It is in the interest of providers as well as consumers to be sure that the means of communication they mutually establish will be effective. It is, however, understood that some Conferees want further assurance that consumers agreeing to use electronic means do so effectively. We believe that the following language should assure that consumers are able to effectively access records sent electronically.

On page 4, strike lines 5-11 and insert the following language:

"(ii) if the person providing the electronic record that is the subject of the consent receives notice that the record was not received by the consumer or if the consumer notifies the provider of the electronic record that the consumer cannot access such record, the provider shall provide the consumer with a copy of the record in an accessible form, provided that, for the purpose of any time requirements, a good faith provision of an electronic record shall satisfy any legal requirement for provision of the record."

4. On page 9, strike the following language at line 21-22: "acting within the scope of such agents authority under applicable principals of agency law."

This language suggests that in an ongoing business to business ordering and purchasing relationship, which is done automatically through the use of computers programs, such software is subject to agency law. This would create substantial confusion in ongoing business relationships.

5. On page 5, line 22-page line 5. The legal effectiveness of a contract-but not a record-cannot be denied solely because of failure to obtain electronic consent or confirmation of consent in accordance with section 101(c)(ii), "except as may be provided by law other than this Act."

This renders meaningless the savings clause and is an open invitation for states to enact legislation to strip away the exception otherwise given. It also implies that any failure to meet the requirements of subsection (c) other than (c)(ii) would invalidate the contract. At a minimum the phrase "except as may be provided by a law other than this Act" should be deleted.

We hope you will take the time to consider these recommendations.

American Insurance Association
American Banker's Association
Countrywide Home Loans
Business Software Alliance
Charles Schwab & Co.
Electronic Financial Services Council
American Council of Life Insurers
US Chamber of Commerce
Securities Industry Association
NAII
National Retail Federation
Zurich Group
Consumer Mortgage Coalition
Fidelity Investments
Investment Company Institute
Information Technology Association of America
DLJ Direct
The Financial Services Roundtable
Electronic Check Clearing House Organization
Information Technology Industry Council
National Business Coalition on E-Commerce and Privacy
Real Estate Roundtable
First Union Corporation
Reinsurance Association of America
Consumer Bankers Association
American Electronics Association