

BEFORE THE
FEDERAL TRADE COMMISSION

COMMENTS OF
ACN, Inc.
ON THE
NOTICE OF PROPOSED RULEMAKING FOR THE BUSINESS
OPPORTUNITY RULE

Project No. R511993

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Prepared by:

John W. Hesse, II
CERO Strategies, LLC
2121 K Street, NW
Suite 800
Washington, DC 20037

On behalf of,

ACN, Inc.
13620 Reese Blvd. East
Building XII, Suite 400
Huntersville, NC 28078

ACN, Inc. (ACN) is pleased to have this opportunity to provide comments on the Notice of Proposed Rulemaking for the Business Opportunity Rule to the Federal Trade Commission (FTC) published in the Federal Register on April 12, 2006. ACN believes it critical to eliminate any confusion that might exist about legitimate direct selling companies. This set of comments provides an overview of: (1) ACN's global activities; (2) ACN's direct selling method; and (3) ACN's specific observations with respect to the Notice of Proposed Rulemaking for the Business Opportunity Rule.

1. Introduction to ACN

ACN is a global telecommunications company operating in 18 countries over 3 continents. It began its business in the US in 1993 and by 2004, it had global revenues of approximately \$500 million, with its business growing at around 40% annually. Globally, ACN is headquartered in North Carolina. Its North American Operations are directed from its offices in Michigan. Outside the US, it operates in 18 countries, typically through local operating companies, with regional headquarters in Amsterdam, The Netherlands and Sydney, Australia. A copy of ACN's global corporate profile is enclosed.

ACN's business consists of reselling fixed telephone, mobile telephone and Internet services to residential and small business customers. In order to serve its customers, of which there are approximately 1.5 million worldwide, it has (wholesale) contracts in place with many of the largest telecommunications operators globally, including British Telecom (BT), MCI, Deutsche Telecom and Telia Sonera. Moreover, ACN has over 1200 staff worldwide providing support services, including customer support, representative support, and marketing support and product and billing support.

ACN uses a direct selling method of marketing whereby independent sales representatives employ so-called "warm marketing", *i.e.* sales representatives approach people on a person-to-person basis to ask whether they would like to purchase ACN telephony services. No mass-market advertising is used. Its model includes a multi-level marketing component (MLM) in that such personal contacts, if interested, may also be invited to become representatives to sell ACN services on the same basis. ACN currently has approximately 100,000 sales representatives worldwide, approximately 50,000 of whom are in the US.

This MLM direct selling model enables ACN: (i) to reach telecommunications customers that are not traditionally reached by other selling methods, thereby introducing further competition into the market; (ii) to operate at substantially reduced customer acquisition costs in a low margin business and thereby offer cheaper services to customers; (iii) to provide opportunities to individuals to set up their own sales and marketing business, and (iv) to enable these individuals to sell a 'product', phone services, that because of infrastructure or back-office support requirements they could otherwise never sell on a smaller scale, because ACN acts as a centralized outsourced provider of that infrastructure and support.

The corporate group of ACN is actively committed to complying with all applicable laws, including telecommunications regulations and consumer protection laws. We have compliance departments on each continent where ACN does business that work closely with our legal

departments on compliance issues. The compliance department continually reviews the adherence of ACN's 100,000 independent sales representatives to the terms of their independent sales agreements with the company and with all of ACN's policies, procedures, compensation plans and, of course, applicable consumer protection laws. Working closely with ACN's legal department, ACN's compliance department evaluates and disciplines every infraction detected by the company, all with an eye towards making sure that ACN's customers and future independent sales representatives are acquired by its representatives with the same integrity as they would if recruited by the company directly. This effort ensures that all complaints discovered by or brought to the company are addressed. Needless to say, these legal and compliance expenses are substantial portions of ACN's operating budget.

In addition and singularly among direct selling companies, in the US, where ACN has been established since 1993, it has a legal advisory board of three former state attorneys general, each of whom, during his term in office, made overseeing enforcement of consumer protection laws a top priority. In addition to his credentials as a former attorney general, each of the individuals serving on ACN's Legal Advisory Committee has a distinguished resume as an attorney, and in a number of cases, as a judge. The Committee has but one goal for ACN, and that is to make sure ACN and its independent representatives are acting within the law. The Committee achieves this end using a number of methods. First, it serves an independent and objective review board for all of ACN's independent representative-related materials, including ACN's sales and marketing collateral, its compensation plans, and its policies and procedures. Second, the Committee reviews routinely kept sales and other statistics on an at-least monthly basis, in an effort to detect trends suggesting potential misbehavior on the part of ACN's independent representatives. Third, the Committee works hand in hand with ACN's internal compliance department to handle issues of independent representative misbehavior that are detected. Finally, the Committee is the public face of ACN's legal department, and members of the Committee appear at each of ACN's International Training Events, warning ACN's independent representatives in attendance of ACN's lack of tolerance for independent representatives who may flout corporate policies or the law.

ACN pioneered the concept of its Legal Advisory Committee in the United States, ACN's home territory. However, as ACN has expanded globally, the success of its US-based Committee has led ACN to expand the Committee. Recently, ACN added a Canadian Committee member, in recognition of ACN's enlarging presence in that country. At present, ACN is in the process of adding an Australian Committee member, and is actively searching for an appropriate European Committee member. Each of these expansion members of the Committee brings to the Committee the same highly respected consumer protection background as the Committee's original three US members, and will serve in an identical capacity with a specific focus on his region.

ACN is a member of the Direct Selling Association (DSA) in the US (its Executive Vice President, David Merriman, is a member of the Board of Directors of the Association). It is also a member of the Direct Selling Association in a variety of European countries. It actively monitors any legislation that might affect its activities. Its sales representatives' materials and training seminars are directed at ensuring compliance in sales activities with the appropriate law.

2. ACN's Direct Selling Distribution System

An ACN sales representative will enter into an independent representative agreement which regulates the terms under which the sales representative may market and promote ACN services and may sponsor further independent sales representatives, in accordance with ACN policies and practices. For an initial fee, and subsequent annual renewal fee, the representative is given access to ACN sales training, marketing, and back office support services, including telecommunications billing. The initial fee and renewal fees cover portions of the cost to ACN of operating these services.

An ACN sales representative is entitled to receive: (i) a commission on the revenue generated both by customers recruited directly by the sales representative and by customers recruited by sales representatives he/she has recruited ("down line customers") and/or (ii) certain bonuses for the subscription to ACN services of both new customers recruited by the sales representative or new "down line" customers. ACN sales representatives are not required to become ACN telephony customers, nor are ACN telephony customers required to become ACN sales representatives.

Thus ACN sales representatives do not gain any revenue from signing up new sales representatives. ACN sales representatives can only hope to generate income if they sell ACN telephony services, not if they simply recruit additional ACN sale representatives. Indeed, the overwhelming majority of ACN revenues are generated from billing and sales of telephony services to end customers. Only a small portion of those end customers are ACN sale representatives. A very small percentage of ACN's revenue is derived from the entry and renewal fee that ACN sales representatives pay to become part of the ACN sales network, and that revenue amount is more than consumed by ACN's costs in supporting the businesses of its independent representatives.

The ACN marketing plan contrasts with illegal pyramid schemes in that revenue from illegal pyramid schemes derives primarily from the expansion of the sales network through payments by new entrants for participating in the scheme, rather than from the sales of real products and/or services to consumers. In contrast, ACN's business depends solely on its highly competitive sales of telephony services and on the acquisition of new customers at the expense of other telecommunications companies.

3. Specific Comments Regarding The Notice of Proposed Rulemaking on Business Opportunities

As a member of the Direct Selling Association, ACN wishes to echo the Association's comments. The proposed rule as drafted would have a devastating effect on direct selling in the US. We fully support the Commission's purpose here, to reduce business opportunity fraud. Unfortunately, we do not believe that fraudulent actors will comply with any requirement proposed by the FTC. Consequently, the FTC must take into account the impact its proposed rule will have on legitimate businesses and impose minimal regulatory burdens.

There is no need to repeat the concerns raised by the DSA as they properly reflect our own analysis of the effect the current form of the rule would have on direct selling. Generally, we concur with the policy proposals suggested by the DSA and will actively support work to implement them. We would, however, like to emphasize two aspects of the proposed rule that are the most problematic and add a suggestion to the idea proposed by the DSA regarding formal recognition of self-regulatory efforts.

One of the most confusing and burdensome sections of the proposed rule is the seven-day waiting period to enroll new independent sales representatives. Section 437.2 is impractical and will fundamentally and adversely alter the way in which our company operates. We understand that the concept for this section is borrowed from the franchising regulations. Prospective franchisees understand that they are making a substantial investment. They are unlikely to be intimidated by procedural requirements. Direct sellers are not making a similarly substantial investment, which in fact is a primary attraction of pursuing a direct selling business opportunity. Direct sellers currently do not face any regulatory procedures to follow in order for them to become independent representatives, and were they to, such procedures would act as a substantial disincentive when balanced against the relatively low initial investment. Additionally, unlike franchises, ACN complies with the FTC's current three-day waiting period and further will refund start-up costs for 10 days upon cancellation of the sales agreement by the salesperson. Essentially, ACN offers a ten day right of rescission. Furthermore, the number of cancellation requests that we do receive is low. Therefore, we see only negative consequences to requiring a waiting period in the direct selling context, rather than any beneficial curing of a buyer's remorse that is not already achieved by the three-day cooling off period and ACN's cancellation policy.

Section 473.3 (6) of the proposed rule would require that each company maintain a geographically manageable, comprehensive database of individuals who have sold for it for the last three years, including names, cities, states, and telephone numbers. The rule would require the disclosure of all of these individuals to prospective salespeople, or alternatively, that the identities of ten geographically nearest purchasers be revealed to the prospect.

This requirement violates privacy laws and obligates companies like ACN to reveal confidential, personal information to prospective purchasers, even though independent representatives are easily located without infringement upon their privacy. Internet-based "411" information directory sites hold the names of individuals associated with most direct selling businesses. Additionally, ACN maintains a detailed web site where visitors can find contact information for the company and the nearest independent representative.

Finally, we believe that there is no reason to apply the proposed rule to companies that are adherents to other stringent regulatory compliance programs. In ACN's case, we spend hundreds of thousands of dollars each year providing disclosures to the Federal Communications Commission and state public utility commissions. These august bodies already investigate and monitor ACN's operations as a condition to granting ACN its telecommunications carrier licenses. We suggest that further discussions on the proposed rule on business opportunities take into account companies that already provide similar public disclosures either by creating an exemption, a safe harbor, or by marrying the compliance requirements. We look forward to discussing how such regulatory standards might be incorporated into the Commission's proposal.

By this submission, ACN supports the request by the DSA under Magnuson-Moss rulemaking requirements that the Commission schedule public hearings and/or workshops to discuss the implications of the proposed rulemaking on direct sellers. We ask to participate in that process in whatever forum that the FTC and the DSA agree upon.

ACN Corporate Profile

ACN is the world's largest direct selling telecommunications company offering highly competitive fixed line, local calling, long distance, mobile calling and Internet access as well as digital phone service with video phones to consumers and small businesses in North America, Europe and Asia Pacific. With double digit annual revenue growth and annualized revenue of over \$500 million, ACN is one of the fastest growing privately held companies in the world. Further expansion throughout Europe and Asia Pacific is planned.

ACN uses the proven, direct selling business model to provide value and choice to consumers while also providing Independent Representatives with an opportunity to form their own businesses. Bypassing traditional marketing methods, ACN's Independent Representatives use relationship marketing to inform their family and friends of money saving alternatives available on services they are already using. Because traditional marketing methods are not used, representatives are able to pass savings directly on to their customers.

The ACN Difference

<p>Traditional Marketing Methods</p> <p>Direct Mail Internet Ads Public Relations Magazine Ads Telemarketing Trade Shows Billboards Radio Ads TV Ads</p> <p>High COSTS</p> <p><i>Traditional Customer</i></p>	<p>ACN Relationship Marketing</p> <p>ACN Independent Representative</p> <p>SAVINGS</p> <p><i>ACN Customers</i></p>
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ACN saves millions by bypassing traditional marketing methods. ACN then passes these savings on to its customers and is able to reward its representatives for acquiring those customers.

The Company

Founded January 1993	Representatives Over 100,000 worldwide
Employees Over 1,000 worldwide	Annual Revenue 2002: \$236 million usd 2003: \$320 million usd 2004: \$427 million usd 2005: \$550 million usd
Customers Over 1,500,000 worldwide	

Countries of Operation

Australia	Ireland	Sweden
Austria	Italy	Switzerland
Belgium	Netherlands	United Kingdom
Canada	New Zealand	United States
Denmark	Norway	
France	Portugal	
Germany	Spain	

ACN's Services

- North America**
- Local & Long Distance Calling
 - Internet
 - Digital Phone Service with Video Phone
 - Wireless – coming soon
- Europe**
- Local Subscriber / Line Rental
 - Fixed Line
 - Mobile
 - Internet
- Asia Pacific**
- Fixed Line
 - Mobile
 - Internet

Founders & Executive Team

- Chairman & Co-Founder – Robert Stevanovski
 President & Co-Founder – Greg Provenzano
 VP & Co-Founder – Mike Cuppez
 VP & Co-Founder – Tony Cuppez
 CEO – Charles Berker
 COO North America – David Stevanovski
 COO Europe – David Colley
 COO Australia – Martin Peach
 CFO – James Mulcahy
 EVP – Dave Mentman
 QMO – Allan Van Buhler
 CIO/CTO – Frederic Kundz
 CTO VoIP – Alex Vishney
 General Counsel – Colleen Jones

ACN is a proud member of the Direct Selling Association (DSA) in many countries and serves on the DSA Board in the United States. The DSA is the national trade association of the leading firms that manufacture and distribute goods and services sold directly to consumers. Every member company pledges to abide by the Association's Code of Ethics as a condition of admission and continuing membership.



Direct Selling Industry is Exploding

- 49 million distributors globally
- 175,000 new distributors in the U.S. weekly & 475,000 globally
- \$120 billion in sales worldwide
- \$31.6 billion in North America
- \$88.4 billion overseas
- Growth over next 10 years expected to be higher than entire prior 50 years

Fortune Magazine,
August 9, 2004

"It's an investor's dream: an industry with steady annual growth, healthy cash flow, high return on invested capital, and long-term prospects for global expansion. That's the direct-selling industry, in which independent contractors sell products and services directly to customers, away from a fixed retail location."



ACN's leadership is comprised of the four original Co-Founders and an executive staff. Working together, this leadership team is active in ACN's operations; ensuring business practices continue to reflect the company's vision and mission.

ACN's Vision

To be a multi-billion dollar global direct seller of telecommunication services.

ACN's Mission

To provide our Independent Representatives with the premier global opportunity in the direct selling industry by offering essential services in the growing telecommunications industry and to provide customers greater choice and greater value for these essential services.

Vision. Ambition. Opportunity. Integrity.

These are the hallmarks of ACN, and the foundation upon which the Founders have built the company since it was first conceived.



ACN customers receive complete support, as do the businesses of ACN's representatives. A world-wide staff of over a thousand employees provides complete back office support for ACN representatives including marketing, provisioning, billing and more. Representatives are in business for themselves but never by themselves.

Using a variety of marketing vehicles, ACN's leadership is in constant communication with the representative base.

- Local, regional and international training events
- ACN's Success System – a start-up kit for new representatives
- Monthly and quarterly recognition, including website and magazine publications
- Weekly email announcements
- Weekly conference calls hosted by ACN leaders
- Flyers mailed weekly with representative commission checks



www.acninc.com

ACN Operational Centers



Charlotte, NC
Corporate
Headquarters



Farmington Hills, MI
World
Headquarters



Amsterdam,
The Netherlands
European Headquarters



Sydney, Australia
Asia Pacific
Headquarters



Aneka, Sweden
Nordic Home Office
& Customer Service
Center



Marquette, MI
U.S. Customer
Service Center



Montreal, Canada
Canadian Customer
Service Center

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