BEFORE THE

FEDERAL TRADE COMMISSION

COMMENTS OF

PRE-PAID LEGAL SERVICES, INC.

TO THE

NOTICE OF PROPOSED RULEMAKING FOR

THE BUSINESS OPPORTUNITY RULE, R511993

July 17, 2006

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Pre-Paid Legal Services, Inc. ("Pre-Paid") hereby respectfully submits its comments to the Federal Trade Commission's ("Commission") Notice of Proposed Rulemaking for the Business Opportunity Rule, R511993, 16 C.F.R. Part 437 (the "Proposed Rule"), published in the Federal Register on April 12, 2006.[1] The Proposed Rule attempts to combat the fraudulent behavior of a few sellers of business opportunities by imposing "streamlined"[2] disclosures and a seven day waiting period upon all sellers of business opportunities, regardless of the cost of that business opportunity and regardless of whether the seller has a refund policy in place that would allow a purchaser to receive a refund within thirty days.

As described below, these disclosures are not, however, "streamlined" and they impose significant and unreasonable compliance burdens upon legitimate companies such as Pre-Paid. Additionally, a seven day waiting period before someone may purchase a business opportunity that generally costs less than $150 is manifestly unreasonable and oppressively burdensome.

Pre-Paid therefore respectfully requests that the Commission modify the Proposed Rule to provide an exemption for two types of companies: both publicly held companies, which already make available more than sufficient information for any prospective purchaser to make an informed decision about the business opportunity the company provides, and privately held companies with (a) revenues in excess of $250 million in each of the past two years and (b) a minimally two-year-old thirty day refund policy that allows any purchaser ample opportunity to reconsider his or her decision. Alternatively, Pre-Paid requests that the Commission establish an exemption for companies where the threshold investment is $250 or less. Either exemption

[1] Proposed Business Opportunity Rule, 71 Fed. Reg. 19,054 (proposed April 12, 2006) (to be codified at 16 C.F.R. Part 437).

[2] *See id.* at 19,055.

would allow the Commission to combat fraudulent conduct while allowing responsible businesspeople, like Pre-Paid and its almost 500,000 "Independent Associates" who rely upon the income that Pre-Paid allows them to earn, the opportunity to continue to engage in their business activities.

I. Pre-Paid Legal Services, Inc.

Pre-Paid is located in Ada, Oklahoma, a small town of approximately 15,000 people, and it designs, underwrites, and markets legal expense plans to more than 1.5 million households throughout the United States and Canada. In 1972, Pre-Paid's CEO and President, Harland Stonecipher, founded Pre-Paid after he suffered a head-on car accident that left him with costly legal fees for which he had no legal protection. After recovering from the accident, Mr. Stonecipher realized that many middle-income Americans, including himself, did not have access to quality legal assistance. To address that problem, Mr. Stonecipher decided to start a company that would provide individuals and families with access to low-cost quality legal services if they needed them.[3]

Pre-Paid began as a small business and employed only three salesmen to solicit new members and service existing accounts. Today, Pre-Paid is publicly traded on the New York Stock Exchange (Symbol: PPD) and had total revenues in excess of $423 million in 2005.[4] It also has nearly 500,000 vested Independent Associates nationwide and almost 900 employees in Oklahoma. Indeed, Pre-Paid is now the second largest employer in Ada, with approximately 700 employees. In 2003, it moved into a six-story state-of-the-art campus in Ada on a road named "1 Pre-Paid Way." It has 90 employees in Duncan, Oklahoma and 90 employees in

[3] On August 8, 1972, Harland Stonecipher created Pre-Paid's predecessor, The Sportsman's Motor Club, which offered legal expense reimbursement services.

[4] *See* Pre-Paid Legal Services, Inc. Form 10-K for the fiscal year ending December 31, 2005 ("Pre-Paid 2005 10-K") at 20.

Antlers, Oklahoma. Pre-Paid is also opening a new call center in Duncan, which has the capacity to employ 300 people. Pre-Paid has engaged more than 1,200 attorneys, called "Provider Attorneys," to be available to provide covered legal services to its more than 1.5 million members.

Pre-Paid's legal expense plans (referred to as "Memberships") provide a variety of legal services, in a manner similar to health maintenance organization plans. Members pay a monthly fee, which averages approximately $20 per month. In most states, standard plan benefits include preventive legal services, including unlimited toll free access to a Provider Attorney for advice and consultation, motor vehicle legal defense services, trial defense services, IRS audit services, and a discount on legal services not specifically covered by the Membership.

Pre-Paid markets its Memberships through a multilevel marketing program that encourages individuals, called "Independent Associates," to sell Memberships and allows individuals to recruit and develop their own sales organizations. As of December 31, 2005, Pre-Paid had 468,365 vested Independent Associates.[5] An individual becomes an Independent Associate by paying an enrollment fee. Many of these individuals become Independent Associates because they want or need to supplement their income by working part-time. Although Pre-Paid does not keep demographic information about its Independent Associates, it knows that they are a diverse group. Upon enrollment, the Independent Associate is provided with a "new associate kit," which includes sales materials, information about Pre-Paid's products, and promotional materials. During the past two years, enrollment fees have generally been less than $150. Since approximately 1999, Pre-Paid has had a refund policy which allows a newly enrolled Independent Associate to receive a full refund of the enrollment fee upon request

[5] Pre-Paid 2005 10-K at 9.

within thirty days of his or her enrollment, if he or she has not sold any Memberships within that period.[6]

II. Pre-Paid Is Already Subject to Numerous Regulations

Pre-Paid is not operating in an unregulated environment. To the contrary, as a result of the national scope of its operations, the insurance nature of being a provider of legal services, rather than being a seller of products, and its publicly traded status, Pre-Paid is currently subject to numerous regulations and disclosure requirements. In fact, Pre-Paid's legal plans are regulated by state insurance commissions in fifteen states.[7] In several states, Pre-Paid is also required to answer to the state bar association.[8] Additionally, twenty-five states regulate business opportunities by statute.[9] In various states, those statutes require registration with the state, disclosure of marketing materials and other information, accurate representations and disclosures regarding potential earnings, and other safeguards similar to those in the Proposed Rule.

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[6] *See* Associate Agreement, Policies and Procedures ¶ 7.

[7] These states are: Alabama, Arizona, Arkansas, Florida, Georgia, Illinois, Massachusetts, Mississippi, Montana, Nebraska, North Dakota, Oregon, Tennessee, Virginia, and Wisconsin. Additionally, South Carolina's Department of Consumer Affairs and Texas's Department of Licensing and Regulation regulate Pre-Paid's legal plans.

[8] These states are: Florida, Hawaii, Indiana, Kentucky, Louisiana, Michigan, Mississippi, New Jersey, New York, Nevada, Tennessee, and West Virginia.

[9] *See* Alaska Stat. §§ 45.66.010 *et seq*.; Cal. Civ. Code §§ 1812.200 *et seq*.; Conn. Gen. Stat. §§ 36b-60 *et seq*.; Fla. Stat. §§ 559.80 *et seq*.; Ga. Code Ann. §§ 10-1-410 *et seq*.; 815 Ill. Comp. Stat. 602/5-1 *et seq*.; Ind. Code §§ 24-5-8-1 *et seq*.; Iowa Code §§ 551A.1 *et seq*.; Ky. Rev. Stat. Ann. §§ 367.801 *et seq*. and 367.990; La. Rev. Stat. Ann. §§ 51:1821 *et seq*.; Me. Rev. Stat. Ann. tit. 32, §§ 4691 *et seq*.; Md. Code Ann., Bus. Reg. §§ 14-101 *et seq*.; Mich. Comp. Laws §§ 445.902 and 445.903b; Mo. Rev. Stat. §§ 409.1000 *et seq*.; Neb. Rev. Stat. §§ 59-1701 *et seq*.; N.H. Rev. Stat. Ann. §§ 358-E:1 *et seq*.; N.C. Gen. Stat. §§ 66-94 *et seq*.; Ohio Rev. Code Ann. §§ 1334.01 *et seq*.; Okla. Stat. tit. 71, §§ 801 *et seq*.; S.C. Code Ann. §§ 39-57-10 *et seq*.; S.D. Codified Laws §§ 37-25A-1 *et seq*.; Tex. Bus. & Com. Code Ann. §§ 41.001 *et seq*.; Utah Code Ann. §§ 13-15-1 *et seq*.; Va. Code Ann. §§ 59.1-262 *et seq*.; Wash. Rev. Code §§ 19.110.010 *et seq*.

In addition, many states' general unfair trade practices laws bar sellers of business opportunities from making misrepresentations to customers. As an example, even in states with no specific business opportunity regulation, unfair trade practices laws have been applied to prohibit misrepresentations regarding future earnings in connection with marketing plans.[10]

Finally, Pre-Paid is already subject to the reporting requirements placed upon companies publicly traded on the New York Stock Exchange. In fact, Pre-Paid is already required to report several categories of information that would provide potential purchasers with information of an equivalent kind to that which the Commission proposes. For example, to meet its obligations in completing an annual report on a Form 10-K, Pre-Paid must describe risk factors faced by the company, material pending legal proceedings to which it is a party, and extensive financial information about the company. This information is readily available to Pre-Paid's Independent Associates and to all prospective Independent Associates.[11]

III. The Proposed Rule

As stated above, the Commission has submitted the Proposed Rule in order to combat fraud and other unfair or deceptive practices that have been committed by a few sellers of business opportunities against prospective buyers. Pre-Paid supports the Commission's mission to combat fraud and deceptive practices because these practices negatively affect the public perception of legitimate direct selling organizations such as Pre-Paid that do not engage in such

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[10] *E.g.*, Ala. Code 1975 § 8-19-5(20); *Kugler v. Koscot Interplanetary, Inc.*, 293 A.2d 682, 688 (N.J. Super. Ct. Ch. Div. 1972) (finding that New Jersey law barred misrepresentations regarding potential earnings); *Commonwealth by Packel v. Tolleson*, 321 A.2d 664, 693-94, 697 (Pa. Commw. Ct. 1974) (finding that Pennsylvania law barred misrepresentation of potential earnings among other wrongful acts), *aff'd*, 340 A.2d 428 (Pa. 1975).

[11] *See, e.g.*, the U.S. Securities and Exchange Commission's EDGAR Database, *available at* http://www.sec.gov/edgar/searchedgar/webusers.htm.

practices.[12] As described below, Pre-Paid believes, however, that the Proposed Rule is too broadly drafted and will, in fact, impose significant and unnecessary compliance burdens upon its Independent Associates and Pre-Paid itself and that the seven calendar day waiting period is manifestly unreasonable.

A. The Definition of "Business Opportunity" Results in All Direct Selling Companies Being Subject to Burdensome Disclosure Requirements and to an Unreasonable Waiting Period

Proposed Section 437.1(d) defines a "business opportunity" as any commercial arrangement in which:

> (1) The seller solicits a prospective purchaser to enter into a new business;
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> (2) The prospective purchaser makes a payment or provides other consideration to the seller, directly or indirectly through a third party; and
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> (3) The seller, expressly or by implication, orally or in writing, either:
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> (i) Makes an earnings claim; or
>
> (ii) Represents that the seller or one or more designated persons will provide the purchaser with business assistance.[13]

If a company engages in this kind of activity, regardless of the amount of the payment or other consideration and regardless of the existence of a refund policy, the Proposed Rule imposes a seven day waiting period before a potential purchaser may actually purchase the tools necessary for the business opportunity. The Proposed Rule also imposes significant recordkeeping requirements upon companies and salespeople, in order to make the required disclosures competently and accurately. Pre-Paid believes that the waiting period and required

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[12] For this reason, Pre-Paid is a member of the Direct Selling Association ("DSA"), and fully subscribes to the DSA's Code of Ethics, under which, among other things, Pre-Paid attests that it will not engage in "any deceptive, unlawful or unethical consumer or recruiting practice."

[13] Proposed Business Opportunity Rule, 71 Fed. Reg. at 19,087.

disclosures are unreasonably burdensome and that both (a) publicly held companies and (b) privately held companies that have had revenues in excess of $250 million in each of the past two years and that have had a thirty day refund policy that is at least two years old should be exempt from this Proposed Rule. Alternatively, there should be an exemption where the minimum investment is $250 or less.

1. The Waiting Period Is Unreasonably Burdensome and Should Not Be Applied To All Companies

Section 437.2 of the Proposed Rule creates a seven calendar day waiting period between the time when disclosure documents are presented to a potential purchaser of a business opportunity and when the potential purchaser may sign a contract or make a payment.[14] In Pre-Paid's case, for the past two years, the Independent Associate enrollment fees have generally been less than $150. Additionally, for the past seven years, Pre-Paid has allowed purchasers the opportunity to cancel and receive a full refund of their enrollment fee within thirty days. Thus, this waiting period is unnecessary and will significantly and adversely impact the ability of Pre-Paid's Independent Associates to make sales.

This waiting period is modeled on the Franchise Rule, which requires a five business day waiting period.[15] Pre-Paid and its Independent Associates are disheartened that the Commission is proposing that it is reasonable for a purchaser of a business opportunity, which in this case generally costs less than $150, to wait virtually the same amount of time as a purchaser of a franchise, which costs thousands of dollars. Unlike the ongoing costs of a franchise, the Independent Associate enrollment fee is a modest, one-time investment. Unlike franchise opportunities, the Pre-Paid business opportunity involves no complex contracts for the purchaser

[14] *Id*. at 19,088.

[15] *Id*. at 19,067.

to digest. Additionally, unlike franchise opportunities, there are no continuing obligations placed upon the newly enrolled Independent Associate and no further financial contributions are required. This process contrasts with the many contractual obligations routinely placed upon franchisees. To impose on Independent Associates the same waiting period as that which is imposed on franchise purchasers is patently unjustified.

The proposed waiting period also will create an unreasonable administrative burden on Pre-Paid, as Pre-Paid will be required to ensure that the waiting period is being complied with by its almost 500,000 Independent Associates. Rather than simply allowing newly enrolled Independent Associates to evaluate the business opportunity firsthand and to request a refund if they change their mind, as they currently may do, the Proposed Rule will force Pre-Paid and its Independent Associates to maintain significant records describing the date of first contact with a potential Independent Associate, and detailed information regarding the Independent Associate enrollment procedure, including the date when the Independent Associate enrolled. This proposed waiting period requirement is thus unduly burdensome and unreasonable. In light of the foregoing concerns, Pre-Paid believes that there should be no waiting period where a company either is (a) publicly held or (b) privately held with sales in excess of $250 million for each of the past two years and with an established refund policy such as Pre-Paid's. Alternatively, this waiting period should not apply to situations where the enrollment fee is $250 or less.

2. The Proposed Disclosures Are Onerous and Will Paint All Direct Selling Companies in a Falsely Negative Light

The Proposed Rule, as drafted, requires Independent Associates to make significant disclosures to potential Independent Associates.[16] The required disclosure sheet and its

[16] *See generally id*. at 19,088-89.

attachments include, among other things, substantiation of all earnings claims, a customized list of references or reference to a nationwide list, a listing of certain legal claims made against the company in the past ten years, regardless of the outcome, and both the number of enrolled Independent Associates and the number of Independent Associates who decided to cancel their enrollments during the past two years. Each of these listed disclosures is unreasonably burdensome for companies such as Pre-Paid and its nearly 500,000 Independent Associates, as explained below.

a. Earnings Claims

The Proposed Rule requires certain disclosures if an Independent Associate makes an "earnings claim." Proposed Section 437.1(h) defines an "earnings claim" as "any oral, written, or visual representation to a prospective purchaser that conveys, expressly or by implication, a specific level or range of actual or potential sales, or gross or net income or profits."[17] If an earnings claim is made, the seller is required to state the claim, disclose the beginning and ending dates of when the represented earnings were achieved, disclose the number and percentage of all purchasers during the relevant time period who achieved at least the amount claimed, list any characteristics that materially distinguish purchasers who achieved at least the represented level of earnings from the characteristics of the prospective purchasers, and state that written substantiation for the claim will be available upon request.[18]

Under this provision, companies will be required to provide information about the characteristics of purchasers who achieved at least the represented level of earnings that differ "materially" from the characteristics of the potential purchasers being offered the business

[17] *Id*. at 19,087.

[18] *Id*. at 19,088-89.

opportunity.[19] Companies have no way to know, however, what traits have made an Independent Associate successful, or how a prospective Independent Associate may be similar or different. Forcing companies to speculate about which characteristics are material will be of little or no benefit to the prospective Independent Associate; perhaps success was due to geographical location, or perhaps it was personal initiative.[20] There is no economically feasible way for Pre-Paid, or any company, to predict which variables were material, much less how material variables interrelate, and it is unreasonable to force companies to speculate or attempt to isolate interrelated variables that may or may not affect a person's earnings.

In light of the breadth of the definition of "earnings claim," the compliance cost of providing disclosures for all earnings claims is significant. Although the Commission suggests that these compliance costs would be optional,[21] the broad definition of "earnings claim" belies this assertion. Almost any statement about income made by the business opportunity arguably would be included in the definition of "earnings claim," thus necessitating significant administrative costs to disclose these claims accurately. The proposed broad definition is likely to lead to generalized, meaningless disclosures of earnings claims, which will actually harm both prospective purchasers of the business opportunity and the sellers of the opportunity.

b. References

As applied to Pre-Paid, Section 437.3(a)(6) of the Proposed Rule appears to require that each company provide to each potential purchaser of a business opportunity, as part of the disclosures, either a list of the ten geographically closest prior purchasers of a business

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[19] *Id*. at 19,089.

[20] To give a simple example, in a sparsely populated county, two individuals could live far apart yet share similar sales potential, while two individuals could live very near each other in an urban area but enjoy markedly different success rates.

[21] Proposed Business Opportunity Rule, 71 Fed. Reg. at 19,083.

opportunity or a nationwide list of all prior purchasers.[22] The lists are limited to prior purchasers within the last three years.[23] This requirement should be eliminated for four reasons. First, the requirement will violate the privacy rights of Pre-Paid's Independent Associates and may cause these individuals irreparable harm. Second, the requirement will potentially violate the attorney-client privileges of Pre-Paid's Independent Associates, because these Associates are generally members of Pre-Paid. This violation can also cause irreparable harm. Third, the Proposed Rule will place an unreasonable administrative burden upon Pre-Paid and similar companies that sell business opportunities. Finally, the Proposed Rule will unnecessarily jeopardize a company's proprietary information.

The Proposed Rule would require the disclosure of Pre-Paid's Independent Associates' identity without their permission, which in this time of identity theft, raises substantial privacy concerns. Few people enrolling as an Independent Associate are willing to have their contact information revealed without their knowledge. While some of the information may be available in a telephone book, there are important reasons, including personal safety, why individuals may choose not to list their telephone numbers. Furthermore, placing individuals' names in a list of enrolled Independent Associates would reveal additional information not available in a telephone book, namely an individual's income source. Revealing this information may discourage individuals from becoming Independent Associates. Pre-Paid and its Independent Associates therefore should not be forced to violate justified privacy concerns of its Independent Associates.

Second, most Independent Associates are members of Pre-Paid and the fact that these individuals may or may not have consulted with an attorney may breach the attorney-client

[22] *Id*. at 19,088.

[23] *Id*.

relationship of that individual. Consequently, Pre-Paid should not be required to violate this attorney-client relationship and there should be an exemption for companies like Pre-Paid.

Third, there is no simple way to administer this reference requirement. It will require Pre-Paid to create and maintain a system whereby its reference information is provided to Independent Associates recruiting other Independent Associates. Furthermore, the choice of either providing a list of the ten geographically closest Independent Associates or providing a nationwide list of all Independent Associates presents Pre-Paid with two negative options. On the one hand, if Pre-Paid chooses to provide a list of the ten closest Independent Associates, it would need to create a list of the closest Independent Associates *before an Independent Associate could even make the proposed disclosures*. Therefore, upon an expression of interest by a potential enrollee, the Independent Associate would need to contact Pre-Paid for a reference list. Any time required to compile this specific information would act as a de facto extension to the waiting period, which Pre-Paid already believes is unnecessary. This would lead to lost sales, as potential Independent Associates would likely lose interest over time.

On the other hand, providing a nationwide list of references is a more detrimental option than providing a list of the ten closest Independent Associates. Such a list would be nothing more than a client list from which Pre-Paid's competitors could simply pluck potential customers. In fact, even providing a ten person list creates concerns about revealing Pre-Paid's customer information. It is thus inappropriate to require companies to share their proprietary information in this way.

It is worthwhile to recall that Pre-Paid's Independent Associate enrollment fees have generally been less than $150. While reference disclosures may be commonplace in the franchise context, where investors often are called upon to pay thousands of dollars and

undertake serious contractual obligations, such disclosures are wholly inapposite in the context of business opportunities like that offered by Pre-Paid, where the enrollment fee is low and refunds can be obtained within thirty days of enrollment. The newly enrolled Independent Associate therefore has an ample opportunity to evaluate the opportunity through means other than access to a client list containing private information. Thus, there is no reason for companies such as Pre-Paid to provide a list of enrolled Independent Associates and compromise the privacy of these individuals and the company's proprietary information. This requirement should be eliminated in its entirety in the Final Rule.

c. Litigation Against Pre-Paid

Proposed Section 437.3(a)(3) requires disclosure of information about "any civil or criminal action for misrepresentation, fraud, securities law violations, or unfair or deceptive practices" within the ten years preceding the offering of the business opportunity.[24] As contemplated, the one-page general disclosure required of business opportunities by the Proposed Rule would have a check box to indicate whether there is information about such litigation to disclose.[25] If there has been such litigation, the seller would be required to attach a list containing the captions of all actions.[26]

This proposed disclosure requirement is unreasonably burdensome to direct selling companies, and of little use to potential purchasers, because it will capture a huge range of irrelevant litigation and then will present that information completely out of context. First, sellers will be required to disclose litigation *regardless of outcome*. This requirement places companies at the mercy of those who file lawsuits against them, without providing the

[24] *Id.*
[25] *Id.*
[26] *Id.*

companies with the opportunity to describe to potential purchasers the circumstances or outcome of the lawsuits.

In addition to capturing litigation regardless of outcome, the proposed required disclosures capture irrelevant types of litigation, such as securities litigation. In the current litigation climate, securities plaintiffs are likely to sue a publicly traded company immediately upon news of adverse financial information. There is no reason why this sort of litigation, which often is frivolous, should be disclosed to a potential Independent Associate. Similarly irrelevant are contractual disputes regarding property leases or employment, which also could fall within the disclosure requirements. These sorts of lawsuits have little bearing on the decision whether to enroll as an Independent Associate.

Furthermore, potential purchasers likely will be unaccustomed to the sheer volume of litigation faced by high-revenue, privately or publicly traded companies operating in the litigious climate of the United States. The potential Independent Associate, having rarely or never been sued himself or herself, is unlikely to be able to determine whether, for example, ten lawsuits in ten years constitutes an excessive amount of litigation or whether such litigation means that he or she should not purchase the opportunity. Although the Commission states that a prospective purchaser "can seek additional information [about litigation] if he or she so chooses,"[27] it is still difficult to obtain trial court filings, especially at the state court level. Additionally, it is worth reiterating that Pre-Paid already discloses all material pending legal proceedings to which it is a party to the public on a quarterly basis in its SEC filings. In contrast to the difficulty of obtaining trial court filings, potential purchasers of a business opportunity marketed by a publicly traded company such as Pre-Paid can quickly refer to Pre-Paid's SEC disclosures

[27] *Id*. at 19,069.

on-line.[28] Additionally, Pre-Paid has had a long standing refund policy which allows a prospective purchaser thirty days to evaluate his or her purchase. The litigation disclosure requirement consequently should not apply to (a) publicly held companies and (b) privately held companies that have had sales in excess of $250 million for each of the past two years and that have had an established refund policy. Alternatively, the disclosure requirement should not apply to companies whose minimum investment is $250 or less.

d. Cancellation and Refund History

Section 437.3(a)(5) of the Proposed Rule requires that sellers of business opportunities "[s]tate the total number of purchasers of the same type of business opportunity offered by the seller during the two years prior to the date of disclosure [and to] [s]tate the total number of oral and written cancellation requests during that period for the sale of the same type of business opportunity."[29]

This disclosure requirement will have limited utility for consumers. In light of Pre-Paid's liberal refund policy, newly enrolled Independent Associates may seek a refund of the enrollment fee for any number of reasons. Pre-Paid wants its Independent Associates to understand and appreciate the benefits of selling Pre-Paid legal plan Memberships. If, after considering the business opportunity, an enrolled Independent Associate decides that he or she does not wish to expend the effort necessary to sell Pre-Paid legal plans successfully, he or she is eligible for a full refund of the enrollment fee. Such a refund policy is to the benefit of all parties – Pre-Paid has put the business opportunity in the hands of an interested purchaser, and the purchaser has had a chance to gain a full understanding of how the business opportunity works.

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[28] *See, e.g.*, the U.S. Securities and Exchange Commission's EDGAR Database, *available at* http://www.sec.gov/edgar/searchedgar/webusers.htm.

[29] Proposed Business Opportunity Rule, 71 Fed. Reg. at 19,088.

The proposed refund and cancellation disclosure requirement will, however, penalize Pre-Paid for accepting cancellations, by creating a stigma on the initial disclosures. The number of cancellations will be offered as a number, and no additional information will be given. This disclosure requirement does not provide meaningful information.

In addition to having limited utility for consumers, the cancellation and refund disclosures will create an incentive for sellers to make refunds more difficult to obtain. It is easy to imagine unscrupulous parties offering their product or services at a relatively low price, coupled with a stated policy of no cancellations and returns, or cancellations or returns only within a very short time period, in order to minimize the number of refund requests. Moreover, the most unscrupulous sellers will simply ignore the disclosure requirements or falsify the number of cancellation or return requests. Given that Pre-Paid has had a long-standing refund policy and makes available significant information, this disclosure requirement should not be applied to companies like Pre-Paid.

IV. Conclusion

As indicated by these comments, although Pre-Paid supports the Commission's efforts to eliminate fraud in the sale of business opportunities, it also has deep concerns about certain aspects of the Proposed Rule. As a whole, the disclosures required by the Proposed Rule place an extraordinary burden on legitimate sellers that is not justified by an increased protection for consumers, especially where a significant amount of public information about the company is available through securities filings and the company already has a thirty day refund policy. The disclosure requirements, combined with the seven calendar day waiting period, will adversely impact legitimate direct sellers like Pre-Paid and the legions of individuals who participate in them.

Pre-Paid and its Independent Associates therefore urge the Commission to modify the Proposed Rule to exempt from these burdensome disclosures both (a) publicly held companies and (b) privately held companies with revenues in excess of $250 million in each of the previous two years and which have had, for at least two years, a thirty day refund policy. Alternatively, Pre-Paid and its Individual Associates request that the Commission exempt from the Proposed Rule companies that have a minimum investment of $250 or less.