

Business Opportunity Rule, R511993

REBUTTAL TO  
COMMENTS OF PRE-PAID LEGAL SERVICES, INC.  
IN CONNECTION WITH THE REVISED PROPOSED  
BUSINESS OPPORTUNITY RULE

Submitted by Gail Aird

*Points of Information:*

- (1) *Pre-Paid Legal Services, Inc. is referred to as “Pre-Paid”.*
  
- (2) *Pre-Paid has been under investigation by the Federal Trade Commission (“FTC”) since March 23, 2007; when the FTC caused a Civil Investigative Demand to be served upon Pre-Paid. According to Pre-Paid regulatory reports filed with the Securities & Exchange Commission (“SEC”) the subject matter of the FTC investigation includes Pre-Paid Identify Theft membership plans and its Affirmative Defense Response System (“ADRS”) program, which are sold by members of Pre-Paid’s MLM salesforce to employers and their employees.*
  
- (3) *Comments presented by Pre-Paid in connection with the Revised Proposed Rule are referred to as “Pre-Paid Comments”*
  
- (4) *Comments presented by Pre-Paid in connection with the Original Proposed Rule are referred to as “Pre-Paid Comments (Original Rule)”. Pre-Paid Comments in connection with the Original Rule are presented when such Comments are incorporated by reference in Pre-Paid’s Comment letter.*
  
- (5) *Unless otherwise noted, all references to the 10K shall be to Pre-Paid’s 10K (Annual Report) for the year ending December 31, 2007 filed with the Securities & Exchange Commission (“SEC”).*

THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK

Pre-Paid Comments

As of December 31, 2007, Pre-Paid had 442,361 "vested" Independent Associates... (Page 3) *Footnote 3: A sales associate is considered to be "vested" if he or she has personally sold at least three new Memberships per quarter or if he or she retains a personal Membership.*

- **Pre-Paid’s fraud in connection with its “vested” distributors rests on 2 elements. First, its inclusion of all distributors who maintain a membership (even if a distributor has not sold a membership in a decade or more) in its population of “vested” distributors. And, secondly, on creating a sales quota that Pre-Paid’s historical data shows has not been met by the overwhelming majority of its distributors.**

The statement that Pre-Paid has 442,361 vested distributors creates the false impression to potential recruits, which false impression was intended by Pre-Paid, that it has 442,361 distributors that are “vested” by and thru their sales of the Company’s memberships. The following data is compiled from Pre-Paid SEC filings.

Percentage of Vested Associates who failed to sell:  
 A single membership      More than 10 memberships

Year	Vested Associates	A single membership	More than 10 memberships
2007	442,361	79%	98%
2006	444,499	80%	98%
2005	468,365	78%	97.6%
2004	343,696	77%	97%
2003	329,600	74%	97%
2002	341,116	70%	96%
2001	286,488	72%	95%

A distributor is considered to be "vested" if he or she has personally sold at least three new Memberships per quarter (12 memberships per year) or if he or she retains a personal Membership. In the years 2007-2001, respectively, only 21%; 20%; 22%;

23%; 26%; 30% and 28% of Pre-Paid's entire population of vested distributors sold even one membership plan; let alone the 12 memberships required to meet Pre-Paid's sales quota.

Pre-Paid distributors purchase membership plans at full retail price (plus an enrollment fee that is not imposed on all members of the retail public). Therefore, absent any reduction in the retail price of a membership and considering the fact that distributors pay an enrollment fee that is not imposed on all members of the retail public; consumers join Pre-Paid's MLMs salesforce for only one reason—which is to sell membership plans and receive commissions.

### **FRAUDULENT MISREPRESENTATIONS IN CONNECTION WITH “VESTED” DISTRIBUTORS**

[http://wserver0.prepaidlegal.com/newCorp2/bus\\_opp/how\\_2.html](http://wserver0.prepaidlegal.com/newCorp2/bus_opp/how_2.html)

Get Paid Daily: “3. Receive residual compensation on your personal and organizational membership sales for as long as they stay in effect”.

**The statement that distributors receive residual compensation on their personal and organizational membership sales for as long as they stay in effect is FALSE.**

(1) Only “vested” distributors are entitled to receive residual compensation on their personal and downline membership sales....A vested associate is entitled to continue to receive commissions on prior sales... (10K at “General”)

(2) Non-vested associates are those that are no longer "vested" because they fail to meet our established vesting requirements...***Non-vested associates lose their right to any further commissions earned on Memberships previously sold...*** we have no continuing obligation to individually account to these associates as...and are

entitled to retain all commission earnings that would *be otherwise payable* to these terminated associates. (10K “Commissions to Associates”-Emphasis added)

(3) The ending unearned advance commission balances, net, above includes net unearned advance commission balances **of non-vested associates of \$56 million, \$49 million and \$40 million** at December 31, 2007, 2006 and 2005... (10K “Commissions to Associates”-Emphasis added)

**The lure of residual commissions is an integral part of the sales presentation made to potential recruits, i.e., work hard and you can “receive residual compensation on your personal and organizational membership sales for as long as they stay in effect”.**

In order to receive residual commission a distributor must either meet Pre-Paid’s sales quota, which has never been met by 95%-98% of all vested distributors in the years 2001-2007; or purchase and maintain a personal membership plan. Therefore, the overwhelming major of distributors must purchase and maintain a personal membership plan (at a cost of \$298.56 per year/ \$24.88 per month) **as a condition requisite for residual commission**. (2008 average annual membership fee <http://www.shareholder.com/ppd/ReleaseDetail.cfm?ReleaseID=302723> )

- **It’s amazing that all Pre-Paid needed to deceive consumers was one word—“VESTED”.**

#### Pre-Paid Comments

Pre-Paid also has some concern with section 437.I...which would extend the definition of "business opportunity"...where sellers represent that they will "buy back any or all of the goods or services that the purchaser . . . provides." Pre-Paid is concerned that...the meaning...could be stretched to include *unintended actions by*

*sellers...the use of the word "back" could suggest that the seller is merely providing a refund of the money originally paid by the purchaser... (Page 8-Emphasis added)*

**Why is Pre-Paid concerned with having to comply with the buy back provisions of the Revised Rule?**

- CLUE: “The use of the word "back" could suggest that the seller is merely providing a refund of the money originally paid by the purchaser”.

Is there anything that Pre-Paid sells its distributors, perhaps something that is a condition requisite to receiving commissions, that under the current provision in the Revised Rule would force Pre-Paid to provide the distributor [purchaser] with “a refund of the money originally paid”? The short answer is YES.

**Pre-Paid requires its distributors to purchase at least three (3) training programs as a condition requisite for commission entitlement.**

Pre-Paid’s falsely advertises on its corporate business opportunity website that for an enrollment fee of \$99, consumers can sell and receive commissions earnings on their sale of Pre-Paid legal plans, specifically including its (1) *Employee Benefit*; (2) *Business Plan/Home Based Business*; and (3) *Commercial Drivers legal plans*.

[http://wserver0.prepaidlegal.com/newCorp2/bus\\_opp/how\\_2.html](http://wserver0.prepaidlegal.com/newCorp2/bus_opp/how_2.html)

1. Market a Pre-Paid Legal membership and receive immediate commission income, plus ongoing compensation for all active members for as long as you are a Pre-Paid Legal Associate:

- Individual Memberships - Legal Plans & Identity Theft Shield™
- **Employee Benefit Memberships**
- Specialty Plan Memberships Legal Shield Rider, **Business Plan, Home-Based Business Rider, Commercial Drivers** Legal Plan, Law Officers Legal Plan. (Emphasis added)

In exchange for the payment of a \$99 enrollment fee, distributors cannot sell and receive commission earnings on their sale of Pre-Paid’s (1) *Employee Benefit*; (2) *Business Plan/Home Based Business* and (3) *Commercial Drivers legal plans*. In order to sell and receive commissions on these three (3) memberships distributors

must purchase Pre-Paid's (1) Employee Benefit (a/k/a employee group) training program for \$125; (2) Business Plan/Home Based Business training program for \$99; and (3) Commercial Drivers training program for \$100.

## **DISCLOSURES IN REGULATORY REPORTS FILED WITH THE SEC**

Sales associates are generally engaged as independent contractors are provided with training materials and are ***given the opportunity to participate in our training programs***. Sales associates are required to complete a specified training program *prior to marketing our Memberships to employee groups*. (10K 2007-"General"-Emphasis added)

Pre-Paid crafted the above in a concerted effort to conceal its practice of imposing mandatory purchases of training programs as a condition requisite for commission entitlement. The only conclusion, which is the conclusion intended by Pre-Paid, that can be formed by the above is that although Pre-Paid provides training programs for its distributors, distributors are only required to complete one specified training program; which is the training that is required of distributors in order to sell memberships to an employee group.

**In truth and in fact, the only "opportunity" Pre-Paid provides to distributors in connection with training is the "opportunity" to fulfill its mandatory purchase requirements in connection with training programs.**

The 10K devotes a specific section, titled "Specialty Legal Service Plans" which presents the details in connection with each specialty legal plan. This section, consistent with statements in prior 10K's, is void of any notice or reference to the fact that the purchase, by distributors of training packages, is mandatory for a distributor to sell and earn commissions on the specialty plans described in this section.

The extraordinary lengths Pre-Paid has gone to conceal its practice of imposing mandatory purchases of training packages on its distributors include, but is not limited to, omitting this practice from its (1) regulatory reports filed with the SEC; (2) business opportunity website; (3) comments to the FTC in connection with the Proposed Rule and (4) distributor websites (referred to by the Company as “e-Service”) designed for use by distributors selling its Employee Group; Business and Commercial Drivers memberships.

Distributor e-Service websites. <https://wsecure.prepaidlegal.com/html/benefits.html>

[CDLP Website](#) – A website used by Associates who are CDLP qualified to market the CDLP online. **(Must purchase a CDLP (Commercial Drivers) training package)**

[Group Marketing Website](#) – (This site is only available to Associates who are Group Qualified.\*) \*You can become group qualified by completing a corporate group sales training. **(Must purchase a Group training program)**

[Business Plan Website](#) – (This site is only available to Associates who are Business Qualified.\*) **(Must purchase a Business Plan training package)**

#### Pre-Paid Comments

An individual *becomes an Independent Associate by paying a modest enrollment fee.* During the past two years, enrollment fees have generally been less than \$150. Upon enrollment, the Independent Associate is provided with a "new associate kit,"... (Page 3-Emphasis added)

#### **RESTATEMENT OF THE ABOVE TO CONFIRM TO THE TRUTH**

An individual becomes a distributor by paying an enrollment fee, which has generally been less than \$150 during the past two years. The enrollment fee is the first in a series of ongoing financial obligations imposed upon the newly enrolled distributor as a condition requisite to sell and receive commission earnings on all the membership plans advertised to the public. The ongoing fees include, but are not limited to:



The mandatory purchase [to receive commission entitlement] of (1) an Employee Benefit (a/k/a employee group) training program for \$125; (2) a Business Plan/Home Based Business training program for \$99; and (3) a Commercial drivers training program for \$100.

The total amount of financial obligations imposed on distributors (as a condition requisite to receive commission earnings on all membership plans advertised, by Pre-Paid, to the public) is information that, if known, would be included in a consumers' decision in connection purchasing Pre-Paid's Business Opportunity; therefore, is material information.

*Note: Page 4 of Pre-Paid Comments includes Footnote 6. Footnote 6: See Comments of Pre-Paid Legal Services, Inc. to the Notice of Proposed Rulemaking for the Business Opportunity Rule, R5 1 1993 ("Pre-Paid Comments") at 6-7. Therefore, all Pre-Paid Comments on pages 6-7 are incorporated by reference into its current Comment letter.*

#### Pre-Paid Comments (Original Rule)

(1) In Pre-Paid's case, for the past two years, the Independent Associate enrollment fees have generally been less than \$150... (Page 7)

(2) Pre-Paid [is] 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...*Unlike the ongoing costs of a franchise*, the Independent Associate enrollment fee is a modest, one-time investment....**Additionally, unlike franchise opportunities, there are no continuing obligations placed upon the newly enrolled Independent Associate and no further financial contributions are required.** ... (Beginning on page 7, with the last sentence appearing on page 8-Emphasis added)

## FRAUDULENT MISREPRESENTATIONS

First, Pre-Paid refers to the \$150 as an enrollment fee “In Pre-Paid's case, for the past two years, the Independent Associate enrollment fees have generally been less than \$150”. Then, on the same page, Pre-Paid fraudulently misrepresents the \$150 as the cost to purchase Pre-Paid’s business opportunity: “ Pre-Paid...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”. Then, in a concerted effort to buttress its fraudulent representation that the \$150 is the total cost of a Pre-Paid business opportunity, Pre-Paid states: (1) “Unlike the ongoing costs of a franchise, the Independent Associate enrollment fee is a modest, one-time investment and (2) Additionally, unlike franchise opportunities, there are no continuing obligations placed upon the newly enrolled Independent Associate and no further financial contributions are required”

## BACKGROUND

The Original Proposed Rule contains the FTC’s historical experience in connection with fraudulent activities engaged in by business opportunity sellers. The following is found in the Notice of Proposed Rule at “c. Federal Register / Vol. 71, No. 70 / Wednesday, April 12, 2006 / Proposed Rules 19075: “h. Proposed Section 437.5(h): Costs and Material Characteristics:”

“A common complaint of victims of business opportunity fraud arises from misrepresentations about the costs... or central characteristics of a business opportunity offered to a prospective purchaser, or the goods or services needed to operate the business opportunity. *For example, a seller may misrepresent the total costs involved in purchasing or operating a business opportunity...* (Emphasis added)

By and through Pre-Paid’s false statements and misrepresentations in connection with the cost of its business opportunity; it has engaged in one of the very acts that the Rule is designed to prevent.

## MANDATORY VS. OPTIONAL PURCHASES

The purchase of 3 training programs is a mandatory (as opposed to optional) purchase requirement in order for consumers to market “and receive immediate commission income” on the specific memberships advertised to the public, which include, but are not limited to Pre-Paid’s Employee Group: Business; and Commercial Drivers membership plans. The cost to purchase the 3 training programs is \$324. Adding this amount to the \$99 enrollment fee; the total cost to purchase “the” specific Business Opportunity advertised by Pre-Paid to the public is \$423.

The following section addresses:

- (1) Pre-Paid’s numerous statements on the record of this rulemaking process in connection with its refund policy.
- (2) A Statement in Pre-Paid regulatory reports filed with the Securities & Exchange Commission (“SEC”) that distributors enrollment fees are non-refundable.

## PRE-PAID’S RELIANCE ON ITS REFUND POLICY TO GAIN EXEMPTION FROM THE RULE

### Pre-Paid Comments

- (1) 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 within thirty days...** (Page 4-Emphasis added)
- (2) ...Pre-Paid suggested that the Rule exempts publicly-held companies...that have a **strong refund policy** in place... (Page 4- Emphasis added)

*Note: Footnote 6 incorporates by reference Pre-Paid’s comments in connection with the Original Proposed Rule appearing at pages 6-7.*

### Pre-Paid Comments (Original Rule)

(3) Pre-Paid believes...publicly held companies... **that have had a thirty day refund policy that is at least two years old should be exempt from this Proposed Rule...** (Page 6- Emphasis added)

(4) ...Pre-Paid has allowed purchasers the opportunity to cancel and **receive a full refund of their enrollment fee within thirty days...** (Page 7-Emphasis added)

*Note: Footnote 12 on page 6-Pre-Paid Comment Original Rule: For this reason, Pre-Paid is a member of the Direct Selling Association ("DSA"), and fully subscribes to the DSA's Code of Ethics...*

DSA Code of Ethics pertaining to refunds: <http://www.dsa.org/ethics/code/#terms>

(5) ..."reasonable commercial terms" shall include the repurchase of marketable inventory *within twelve (12) months from the salesperson's date of purchase...* (Emphasis added)

(6) 1998 amendments made it clear that sales aids, *kits and promotional materials*, while not inventory or necessarily intended for resale, are subject to the repurchase requirement if a company requires their purchase or if there is a financial incentive associated with their sale. (Emphasis added)

Notwithstanding the above, the following statement (repeated in 10K's for the years 2002 thru 2007) is made in Pre-Paid regulatory filings with the SEC: "We derive revenues from services provided to our marketing sales force including a one-time **non-refundable enrollment fee** from each new sales associate for which we provide initial sales and marketing supplies"... (10K, Critical Accounting Policies-Emphasis added)

### Pre-Paid Comments

...Pre-Paid was deeply concerned with the original Notice of Proposed Rulemaking (the "Original Notice")...*Pre-Paid expressed concern in its comments to the Original*

*Notice that the proposed Rule would impose onerous disclosure requirements on legitimate businesses, without regard for its legitimate nature, the low cost of the opportunity sold, or the presence of a refund policy for purchasers. To address these concerns, Pre-Paid suggested that the Rule exempt publicly-held companies and large privately-held companies that have a strong refund policy in place. Alternatively, Pre-Paid suggested an exemption for opportunities costing less than \$250. (Page 4-Emphasis added)*

*Note: Pre-Paid incorporated by referenced its Comments (Original Rule) in connection with the disclosure requirements of the Original Rule.*

#### Pre-Paid Comments (Original Rule)

*In light of the breadth of the definition of "earnings claim," the compliance cost of providing disclosures for all earnings claims is significant....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. (Page 10-Emphasis added)*

In order to address Pre-Paid's statements above, it is essential to understand both Pre-Paid earnings claims and the FTC's historical experience in connection with earnings claims.

#### **PRE-PAID'S EARNING CLAIMS**

Pre-Paid submitted a Comment letter to the Original Proposed Rule. On September 29, 2006, Attorney Hal Neier submitted a Rebuttal to Pre-Paid's Comment letter.

<http://www.ftc.gov/os/comments/businessopprule/rebuttal/522418-13247.pdf>

On page 6 Mr. Neier presents the following chart (compiled from disclosures in Pre-Paid's regulatory reports filed with the Securities & Exchange Commission).

Percentage of Vested Associates who failed to sell:			
Year	Vested Associates	A single membership	More than 10 memberships
2005	468,365	78%	97.6%
2004	343,696	77%	97%
2003	329,600	74%	97%
2002	341,116	70%	96%
2001	286,488	72%	95%

On page 8 Mr. Neier presents his position on Pre-Paid false or deceptive earnings claims, including but not necessarily limited to, the following.

Even a cursory review of Pre-Paid's earnings claims reveals that Pre-Paid engages in precisely the sort of misleading disclosure that the Proposed Rule is designed to eliminate.... For example, on its website, Pre-Paid states that "if you market just 5 memberships per week, you'll receive \$500 per week! An accompanying chart projects this weekly commission to a total of \$26,000 annually. Another entry on Pre-Paid's website goes even further, stating: If only 30 individuals within your Organization sold just one membership per week, assuming a one-year commission advance with no chargebacks that would mean \$975 per WEEK! What if THEY each marketed three a week? What if they marketed **ONE A DAY? TWO A DAY? THREE A DAY?** Of course, not everyone reaches this level but think of what could happen if you did!

Pre-Paid's disclaimer that "not everyone" reaches the advertised level of sales may charitably be described as an understatement. In fact, as noted (in the chart) above, fewer than 2.5% of Pre-Paid's Associates sold even one plan per *month* in 2005, never mind the "5 memberships per week" or "THREE A DAY" cited in the above promotions.

The second representation is even more misleading when one considers that, in order to reach the level of income posited by Pre-Paid's website, a single associate would have had to recruit into his "Organization" thirty other Associates, all of whom would have to fall within whatever tiny fraction of the 2.5% is made up of Associates who manage to achieve one sale per week. In short, the chance of an Associate achieving an income anywhere near the levels touted on Pre-Paid's website is, for all practical purposes, zero. *End of Neier Rebuttal excerpts.*

### **FTC'S HISTORICAL EXPERIENCE IN CONNECTION WITH EARNINGS CLAIMS**

According to the Original Proposed Business Opportunity Rule [the FTC's] "law enforcement history demonstrates that the making of earnings claims *underlies virtually all fraudulent business opportunity schemes...*the Commission to date has brought over 140 cases against a multitude of business opportunities and related schemes, each of which lured unsuspecting consumers through false or deceptive earnings representations....In the Commission's experience, such claims are highly relevant to consumers in making their investment decisions and typically are the single most decisive factor in such decisions". (Emphasis added)

*Note: Emphasis added by the author of this letter. The source document for the following is the FTC's Notice of Proposed Rulemaking (16 CFR Part 437 Business Opportunity Rule).*

A. @19057: ...By far, the most frequent allegations in Commission business opportunity cases pertain to **false or unsubstantiated earnings claims**....

B. @19060: ...pyramid schemes often deceive consumers with the **promise of large potential incomes**. It is not uncommon for promoters of these schemes to claim potential incomes of thousands of dollars a week or month. Because of the claimed high earnings potential, pyramid schemes are highly successful in attracting prospective investors.....

C. @19074: As noted throughout this NPR, the making of **false earnings claims** is the most prevalent problem in the offer and sale of business opportunities.

➤ **Pre-Paid utilizes a multi-level (“MLM”) compensation model.**

The catalyst to make the false or deceptive earnings representations, which according to the FTC “lure unsuspecting consumers” into joining a business opportunity is the MLM compensation model. But for the fact that a business opportunity seller provides that members of its MLM salesforce can earn commission on sales made by their direct and indirect recruits, the incentive to use false or deceptive earnings claims to lure unsuspecting consumers into joining a business opportunity would be extinguished

**BENEFITS TO CONSUMERS VS. COST TO PRE-PAID**

**BENEFITS:** Protecting consumers from Pre-Paid’s false and deceptive earnings claims, which is the unlawful act the FTC determined “underlies virtually all fraudulent business opportunity schemes” will provide massive benefits to consumers.

**COSTS:** There are no significant costs to Pre-Paid to create a one page earnings disclosure document.

Any argument that providing a one page earnings disclosure document will necessitate significant administrative costs; therefore, should not be required is absurd. In order to accept the proposition that the cost to Pre-Paid exceeds the benefits to consumers, we would have to accept, *as true*, the proposition that permitting Pre-Paid to engage in the unlawful act that “underlies virtually all fraudulent business opportunity schemes” is justified by the alternative, which is to cause Pre-Paid to spend a miniscule portion of its \$457 million 2007 revenue to abide by the law.

*Note: Pre-Paid incorporated by referenced its Comments (Original Rule) in connection with the disclosure requirements of the Original Rule. In its comments in*



*connection with the Original Rule, Pre-Paid expressed its concern in connection with the refund and cancellation disclosure requirements of the Rule.*

#### Pre-Paid Comments (Original Rule)

Section 437.3(a) (5)...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...**This disclosure requirement will have limited utility for consumers** (Page 15-Cancellation and Refund History-Emphasis added)

#### Pre-Paid Comments (Original Rule)

... 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.* ... (Page 16)

The longevity, or lack thereof, of distributors is an essential element of a consumer's decision in connection with purchasing a Pre-Paid Business Opportunity.

According to Pre-Paid informing a potential recruit of the longevity, or lack thereof, of its salesforce "does not provide meaningful information". Let's put Pre-Paid's theory to a test.

According to the 10K, at December 31, 2006 Pre-Paid had 444,499 "vested" distributors; 148,802 new distributors enrolled in 2007; and, at December 31, 2007 it had 442,361 "vested" distributors. Totals: 444,499 distributors plus 148,802 new distributors is a total of 593,302 distributors. Year end 442,361 "vested" distributors.

In short, Pre-Paid recruited 148,802 new distributors and lost 150,941 distributors in 2007 (2,145 MORE THAN IT RECRUITED). This information could be easily compiled by Pre-Paid in the following chart form listing 2-5 years of distributor information and the form could be given to every potential recruit.

Year	Beginning Distributors	New Distributors	Total	Distributors quit/terminated	Year End Distributors
2007	444,499	148,802	593,301	150,941	442,361

**I challenge anyone to present a viable theory that the above would not be meaningful to a potential recruit.**

Caveat: The numbers above are false and misleading because the data in the 10K only identifies the beginning and ending population of "Vested" distributors.

Pre-Paid created the mechanism wherein its can easily identify the number of distributors that are "actively" selling memberships---which is the personal sale of 3 memberships per quarter. The way to stop Pre-Paid's fraud against consumers is simple. Just mandate that Pre-Paid disclose the number of "Active" distributors, (defined as a distributor who has met Pre-Paid's own sales "VESTING" criteria) at the beginning of the year; the number of distributors recruited and the number of "Active" distributors at year end. Tidbit: In the years 1995-2000, Pre-Paid identified the number of distributors that met its current vesting requirements as "Active" distributors.

#### Pre-Paid Comments

...The Commission has made clear its determination that the Revised Rule should not cover multilevel marketing opportunities." To that end, the Commission has specifically deleted the words "and training" from the last clause of the definition "to avoid the possibility that it could be interpreted as a "catch-all" capturing any business offering to provide training (this statement references footnote 12. Footnote 12: 73 Fed. Reg. at 16124. Further to this end, the Revised Notice deletes proposed section 437.1(c) (5), which would have extended the definition of "business

opportunity" to include advising or training of purchasers. See 73 Fed Reg. at 16 134.  
(Page 6)

- There is a glaring difference between a business opportunity providing training to its distributors and requiring mandatory purchases of training programs as a condition requisite for commission entitlement.

According to the 10K: Sales associates...are ***given the opportunity to participate in our training programs***. Sales associates are required to complete a specified training program *prior to marketing our Memberships to employee groups*.

It is true that the FTC deleted the words "and training" from the definition of business opportunities proposed for coverage under the Rule. It is also true that Pre-Paid will rely on the above statements in its 10K to exclude it from the ambit of a final Rule. The problem with Pre-Paid's likely use of the exclusion of training from the definition of business opportunities proposed for coverage is that FTC did not address; therefore did not exclude, the practice of business opportunity sellers requiring mandatory purchases of training programs as a condition requisite for commission entitlement from the definition of a business opportunity.

The reason the FTC did not address mandatory purchases of training programs as condition requisite for commission entitlement is because Pre-Paid concealed the fact it engages in this practice from the FTC. In order to remain consistent with the intent of the FTC, it is essential that the FTC "call out" the fact that any business opportunity seller that requires mandatory purchases of training programs as a condition requisite for commission entitlement are covered under the ambit of the Rule.

#### Pre-Paid Comments

First, Pre-Paid suggests that the language in subsection (2) be changed to read: The prospective purchaser makes a required payment of \$250 *or more*. . . ." This language would create a "**safe harbor**" provision to the rule that would

provide sellers with assurance that they will not be captured by the Revised Rule. In its Revised Notice, the Commission expressed concern that the **safe harbor**...would result in manipulation to meet safe harbor provision. (Beginning last paragraph Page 8-Emphasis added)

Pre-Paid manipulates the cost of its business opportunity by concealing the majority of the financial obligations imposed on distributors to sell and earn commissions on all memberships advertised by Pre-Paid to the public, **as the specific memberships distributors can sell and receive immediate earnings on**. The cost to purchase “the” Pre-Paid Business Opportunity advertised to the public is \$423 (\$99 enrollment fee plus \$324 for mandatory training package purchases. Notwithstanding this fact, Pre-Paid asks the FTC to provide an exemption for Business Opportunity sellers that charge under \$250. Then, for reasons known only to Pre-Paid, it presents the reason the FTC rejected similar requests, i.e., the FTC’s concern that Business Opportunity sellers (mirroring the acts currently engaged in by Pre-Paid) may manipulate the safe harbor provision.

#### Pre-Paid Comments

Pre-Paid's legal..."Memberships" provide a variety of legal services...Members pay a monthly fee, (an average of approximately \$20)... (Page 3).

Contrary to the above, the average membership fee, which was known to Pre-Paid at the time its Comments were submitted to the FTC, is \$24.88 (approximately \$25) per month. <http://www.shareholder.com/ppd/ReleaseDetail.cfm?ReleaseID=302723>

The FTC based its decision to craft the components of the Revised Rule based on the record of this rulemaking process at the time such decision was made. Likewise, when a final Rule is crafted the FTC must base all decisions, including without limitation any decision to exempt any class of Business Opportunities sellers (DSA members; MLMs: Direct Sellers or Network Marketing entities) from the ambit of a final rule –specifically on the record of this rulemaking process as it exists at the time the FTC determines the components of a final Rule.

