

United States Senate

WASHINGTON, DC 20510

November 14, 2007

The Honorable Deborah Platt Majoras
Chairperson
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Dear Chairperson Majoras:

We write to express our hope that the Federal Trade Commission (FTC) will properly consider public concerns raised in response to the proposed Business Opportunity Rule (R511993). We share your interest in consumer protection and are committed to protecting the public from unfair and deceptive business practices.

As you know, the proposed Business Opportunity Rule generated approximately 17,000 comments from the American public to the FTC. We are troubled by the potential for this proposed rule to over-regulate legitimate business activities. Many stakeholders have conveyed to us that the proposed rule has the potential to harm many longstanding and legitimate companies and to impair the ability of many Americans to engage in legitimate business opportunities, including direct selling companies.

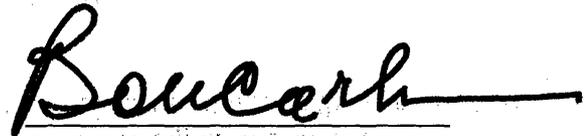
We encourage the FTC to work with those potentially affected individuals and business groups to develop a proposal that achieves the FTC's desired goals of consumer protection, while not adversely affecting legitimate business ventures or the benefits they provide the U.S. economy.

We appreciate your consideration of this important matter.

Sincerely,



Senator Lamar Alexander



Senator Bob Corker



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 13, 2007

The Honorable Bob Corker
United States Senate
Washington, DC 20510

Dear Senator Corker:

Thank you for your letter to the Federal Trade Commission concerning the Commission's proposed Business Opportunity Rule. As you know, the rulemaking proceeding is ongoing, and members of the Commission staff are currently reviewing comments submitted in response to the Notice of Proposed Rulemaking. Your letter and this response will be made part of the public record of that rulemaking proceeding, and I am happy to provide you with an overview of the proposed rule, as well as an update on the status of the rulemaking proceeding.

The Commission issued a Notice of Proposed Rulemaking concerning the proposed Business Opportunity Rule on April 12, 2006.³ The version of the rule that the Commission initially proposed was designed to prevent deception inflicted on prospective purchasers of a given business opportunity by ensuring that they receive a one-page disclosure document that provides essential material information concerning that business opportunity. The requirement to provide this disclosure document would cover all types of business opportunity sellers, including those employing the multi-level marketing – or “direct sales” – model. In the Commission's enforcement experience, fraudulent businesses have often passed themselves off as legitimate companies that use this business model. Specifically, many pyramid schemes have masqueraded as legitimate multi-level marketing companies.⁴

³See 16 CFR Part 437: *Business Opportunity Rule: Federal Trade Commission: Notice of Proposed Rulemaking*, 71 Fed. Reg. 19054 (April 12, 2006).

⁴The Commission has a long history of law enforcement action against pyramid schemes. *FTC v. Sun Ray Trading, Inc.*, No. 05-20402-CIV-Seitz/Bandstra (S.D. Fla. 2005); *FTC v. NexGen3000.com*, No. CIV-03-120 TUC WDB (D. Ariz. 2003); *FTC v. ICR Servs.*, No. 03 C 5532 (N.D. Ill. 2003); *FTC v. Trek Alliance, Inc.*, No. 02-9270 SJL (AJWx) (C.D. Cal. 2002); *FTC v. Universal Direct*, No. C 3-02-145 (S.D. Ohio 2002); *FTC v. SkyBiz.com*, No. 01-CV-0396-EA (X) (N.D. Okla. 2001); *FTC v. Bigsmart.com*, No. CIV 01-0466 PHX ROS (D. Ariz. 2001); *FTC v. Streamline Int'l, Inc.*, No. 01-6885-CIV-Ferguson (S.D. Fla. 2001); *FTC v. Equinox, Int'l*, No. CV-S-99-0960-JBR-RLH (D. Nev. 1999); *FTC v. Five Star Auto Club, Inc.*, No. CIV-99-1693 McMahan (S.D.N.Y. 1999); *FTC v. 2Xtreme Performance Int'l, LLC*, No. JFM 99CV 3679 (D. Md. 1999); *FTC v. FutureNet, Inc.*, No. CV-98-1113 GHK (BQRx) (C.D.

As your letter correctly notes, the Commission received more than 17,000 comments in response to the Notice of Proposed Rulemaking. Many comments express support for the proposed rule and the need to weed out fraudulent actors from the marketplace, but many comments also posit that the proposal would impose unintended compliance burdens on legitimate multi-level marketing companies.

Members of the Commission staff are currently considering whether the proposed definition of business opportunity achieves the proper balance – in its attempt to curb abuses inflicted on the public by pyramid schemes that purport to be business opportunities – while at the same time avoiding any unnecessary compliance burdens on legitimate multi-level marketing companies. These concerns are articulated very clearly and in detail in many of the comments the Commission has received. The staff appreciates these concerns and will carefully consider them as it determines what steps to recommend that the Commission take next in the ongoing Business Opportunity rulemaking proceeding.

I should note that the portion of the Federal Trade Commission Act that governs Commission promulgation of trade regulation rules, 15 USC 57a *et seq.*, provides numerous opportunities for public comment and oral participation with respect to any rulemaking proposals. I should also note, without prejudging any aspect of this matter in any way, that the final rule adopted at the conclusion of a Commission rulemaking proceeding often differs in various ways from the initial version proposed at the beginning of the proceeding.

We appreciate receiving your comments on this important consumer protection issue. If you or your staff have additional questions or comments or wish to provide additional information, please feel free to contact me or Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195. Thank you for your interest in the Commission.

Sincerely,



Donald S. Clark
Secretary of the Commission

Cal. 1998); *FTC v. Nia Cano*, No. 97-7947-CAS (AJWx) (C.D. Cal. 1997); *FTC v. Jewelway, Int'l*, No. CV-97 TUC JMR (D. Ariz. 1997); *FTC v. World Class Network, Inc.*, No. SACV-97-162-AHS (EEx) (C.D. Cal. 1997); *FTC v. Global Assistance Network for Charities*, No. 96-2494 PHX RCB (D. Ariz. 1996). *FTC v. Fortuna Alliance, LLC*, No. C96-799M (W.D. Wash. 1996).



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