Analysis of Proposed Consent Order To Aid Public Comment
In the Matter of America Online, Inc. and Compuserve Interactive Services, Inc.
File No. 002 3000

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from America Online, Inc. ("AOL") and its wholly owned subsidiary, CompuServe Interactive Services, Inc. ("CompuServe").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns the respondents' Internet access services. According to the FTC complaint, most subscribers to AOL's Internet service who wanted to cancel their service called AOL's customer service department. The responsibilities of AOL's customer service representatives included trying to retain subscribers who requested cancellation of their Internet service. The complaint alleges that AOL failed to implement appropriate measures to ensure that all customers' requests for cancellation were properly executed and that as a result, in numerous instances, subscribers who requested cancellation were not cancelled and continued to be charged monthly service fees. According to the complaint, this constituted an unfair business practice.

The complaint further alleges that AOL and CompuServe developed the "CompuServe $400 Rebate program" whereby consumers received a $400 cash rebate toward the purchase of an eligible computer, if they contracted for three years of CompuServe Internet service. In connection with the rebate program, respondents promised to provide rebate checks within 8-10 weeks, and in some cases, 45 days. According to the complaint, after receiving rebate requests in conformance with the offer, respondents extended the time period in which they would deliver the rebates without consumers agreeing to this extension of time and failed to deliver the rebates to consumers within the promised time period. According to the complaint, this constituted an unfair business practice.

The proposed consent order contains provisions designed to prevent AOL and CompuServe from engaging in similar acts and practices in the future. Specifically, Parts I and II address the cancellation of any Internet or online service, or any other product or service sold by means of a continuity program. Part I of the proposed order requires respondents to establish and maintain appropriate measures for ensuring that consumers' requests for cancellation of any such service or continuity program are promptly processed and that billing will cease prior to the next billing cycle.

Part II.A. of the proposed order prohibits respondents from continuing to charge any subscriber who has requested cancellation of any covered service or continuity program, even if the subscriber is recorded as having agreed to continue to be a subscriber, unless respondents first obtain the subscriber's express informed consent. For the subscriber's consent to be deemed "informed," the respondents must clearly and conspicuously disclose, before the subscriber consents, certain specified information, including a description of the pricing plan to which the subscriber is agreeing.

Part II.B. requires that respondents send a confirmation notice to any subscriber who has requested cancellation of any Internet or online service and who is recorded as having agreed to continue to be a subscriber. The notices are to be sent by first class mail in envelopes with "IMPORTANT: Confirmation of continued service" printed on the front. The notices confirm that consumers have agreed to continue their service, inform them of the terms of their continued service, and give them the opportunity to send back a cancellation request form, if they do not wish to continue their service. Part II.C. requires that respondents cancel the service of any subscriber who returns the cancellation request form.

Part II.D. provides that respondents refund fees to certain subscribers who return the cancellation request form. Subscribers are to be given refunds if they return the form within thirty days of the mailing of the confirmation notice and do not use the service for any significant period of time after they were recorded as having agreed to continue as subscribers.

Part II.E. requires that respondents send a confirmation notice to any subscriber who has requested cancellation of any continuity program other than Internet or online service and who is recorded as having agreed to continue to be a subscriber. If the subscriber has an active Internet or online service account with respondents, the notice can be sent by e-mail. Otherwise, it is to be sent by first class mail. Part II.F. requires that respondents provide a method through which subscribers who are notified pursuant to Part II.E. are able to cancel via telephone or U.S. mail.

Part III addresses the delayed rebates allegation and applies to respondents' offering of a rebate in connection with Internet or online service. Part III.A. prohibits the respondents from making any representation about the time in which any such rebate will be mailed, or otherwise provided to purchasers, unless they have a reasonable basis for the representation at the time it is made. Part III.B. prohibits respondents from failing to provide any such rebate within the time specified or, if no time is specified, within thirty days.

Parts IV through VII of the proposed order are reporting and compliance provisions. Part VIII is a provision "sunsetting" the order after twenty years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.