

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS:

**Robert Pitofsky, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary**

)
In the Matter of)
)
WEBTV NETWORKS, INC.,)
a corporation.)
_____)

**DOCKET NO. C-3988
DECISION AND ORDER**

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for Federal Trade Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent

agreement and placed such agreement on the public record for a period of thirty (30) days, and having duly considered the comments received, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent WebTV Networks, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its office or principal place of business located at 1065 La Avenida, Mountain View, California 94043.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. “Internet access product” shall mean “WebTV Classic,” “WebTV Plus,” any other version(s) of the WebTV set-top box, or any other Internet appliance or access product licensed or sold by respondent for connection to respondent’s Internet access service(s). “Internet access service” shall mean the “WebTV Network” service, including the services for the WebTV Classic and WebTV Plus devices, or any other version of respondent’s service for connection to the Internet.
2. “Clear(ly) and conspicuous(ly)” shall mean as follows:
 - A. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and visual portions of the advertisement if the claim triggering the disclosure is presented by both audio and video means. In any claim presented solely through visual or audio means, the disclosure may be made through the same means in which the claim is presented. Any audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. Any visual disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it.

- B. In a print advertisement, promotional material, or instructional manual, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.
- C. On a product package, the disclosure shall be in a type size and location on the principal display panel sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement, on any package, or on any log-on screen, dialog box, or other similar device.

- 3. Unless otherwise specified, “respondent” shall mean WebTV Networks, Inc., its successors and assigns and its officers, agents, representatives, and employees.
- 4. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

ORDER

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, packaging, advertising, promotion, offering for sale, sale, or distribution of any Internet access product or any Internet access service, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication:

- A. That the Internet access product and a computer are equivalent in their ability to provide access to content available on the Internet;
- B. That the Internet access product or the Internet access service provides access to all of the Internet’s content, including all of the entertainment and information available on the Internet;
- C. Regarding any other characteristic relating to access to the Internet’s content or functionality provided by the Internet access product or the Internet access service; or

- D. That respondent's upgrades to the Internet access product or the Internet access service keep users current with all the latest Internet content or functionality,

unless the representation is true.

II.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, packaging, advertising, promotion, offering for sale, sale, or distribution of any Internet access product or any Internet access service, in or affecting commerce, shall not make any representation, expressly or by implication, about the cost of such product or service, unless it discloses, clearly and conspicuously, that using such product or service to access the Internet may result in long distance telephone toll charges for consumers, if that is the case, and how consumers can determine whether they would be subject to long distance telephone toll charges for use of such service.

III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, shall disclose, clearly and conspicuously, on a log-on screen, dialog box, or other similar device, that appears prior to any Internet access product dialing a telephone number for which there is a long distance telephone toll charge:

- A. either that the user will incur such a charge, or that respondent's communications system indicates that the user will likely incur such a charge, which will accrue while such product is connected to the Internet access service if that telephone number is dialed;
- B. how the user can determine whether in fact (s)he will incur such a charge, and the amount of the charge (*e.g.*, notifying the user of the telephone number that such product will dial to connect to such service, and advising the user to contact his or her local and/or long distance telephone service provider(s) to confirm that (s)he will incur such a charge for dialing that telephone number and the amount of such a charge); and
- C. a source of information about means, if any, of avoiding such a charge.

In accordance with this Part, respondent must employ a procedure designed to ensure that the user expressly consents to proceed to connect on a toll basis, on the same screen as the disclosures required by this Part, before a long distance telephone toll charge is incurred.

IV.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, shall disclose, clearly and conspicuously, in any document stating respondent's Terms of Service, or its equivalent, and in any introductory kit, or its equivalent, that respondent provides to new subscribers upon signing up for any Internet access service, that consumers may incur long distance telephone toll charges as a result of using such service, if that is the case, and how consumers can determine whether they would be subject to long distance telephone toll charges for use of such service.

V.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, shall offer reimbursement to certain former subscribers to the WebTV Network Internet access service as provided in this Part.

- A. Respondent shall reimburse any former WebTV Network Internet access service subscriber, within thirty (30) days of receipt of the subscriber's "Reimbursement Application Form," appended to Attachment A to this order, as required under either subpart B or subpart C of this Part, who:
1. prior to March 1, 1999, incurred long distance telephone toll charges through use of the WebTV Classic and/or WebTV Plus Internet access product(s) and WebTV Network Internet access service within sixty (60) days of subscription to such service;
 2. has not been previously reimbursed for long distance telephone charges;
 3. canceled his or her subscription(s) to such service prior to April 1, 1999, within ninety (90) days after initiating subscription(s) to such service, and identified long distance telephone toll charges as a reason for the cancellation(s); and
 4. within sixty (60) days of receipt of Attachment A provides respondent with proof of the long distance telephone toll charge(s) incurred (*e.g.*, a copy of the subscriber's telephone bill(s) reflecting the long distance telephone toll charge(s) incurred, a copy of a check or other form of payment for the long distance telephone charges, or a written declaration from the subscriber to respondent indicating the long distance telephone toll charge(s) incurred). Provided, however, that in the event that a former

subscriber who applies for reimbursement provides a copy of a check (or checks) or other form of payment for the long distance telephone charges and not a copy of the subscriber's telephone bill(s) reflecting the long distance telephone toll charge(s) incurred, the subscriber's reimbursement shall be limited to the amount of the long distance telephone charges incurred but no more than one hundred dollars (\$100). Provided, further, that in the event that a former subscriber who applies for reimbursement does not provide any proof (as described above) reflecting the long distance telephone toll charge(s) other than a declaration, the subscriber's reimbursement shall be limited to fifty dollars (\$50).

- B. Respondent shall send, within ninety (90) days after the date of service of this order, by first class mail, exact copies of the "Reimbursement Offer Notification Letter and Application Form," attached hereto as Attachment A, to the last known address of any former WebTV Network Internet access service subscriber who, according to WNI's records, canceled his or her subscription(s) to the WebTV Network Internet access service prior to April 1, 1999, within ninety (90) days after initiating the subscription(s) to such service, and identified long distance telephone toll charges as a reason for the cancellation(s).

The front of the envelope transmitting Attachment A shall be in the form set forth in Attachment B to this order. The phrase "ATTENTION: WEBTV LONG DISTANCE CHARGE REFUND NOTICE" shall appear on the front of the envelope in typeface equal or larger in size to 14 point. The words "FORWARD & ADDRESS CORRECTION REQUESTED" shall appear in the upper left-hand corner, one-quarter of an inch beneath the return address. Except as otherwise provided by this order, no information other than that required by this Part shall be included in or added to the above items, nor shall any other material be transmitted therewith.

Respondent shall also mail the "Reimbursement Offer Notification Letter and Application Form" to any such former subscriber whose mailing is returned by the U.S. Postal Service as undeliverable and for whom respondent thereafter obtains a corrected address via the National Change of Address ("NCOA") registry. Respondent shall retain a NCOA licensee to update its list of such former subscribers under this subpart by processing the list through the NCOA database. The mailing required by this subpart shall be made within ten (10) days of respondent's receipt of a corrected address or information identifying each such former subscriber.

- C. Respondent shall send, by first class mail, exact copies of the "Reimbursement Offer Notification Letter and Application Form," attached hereto as Attachment

A, to any former WebTV Network Internet access service subscriber who canceled his or her subscription(s) to such service prior to April 1, 1999, within ninety (90) days after initiating subscription(s) to such service, and identified long distance telephone toll charges as a reason for the cancellation(s), and who contacts respondent to request reimbursement within one hundred and eighty (180) days after the date of service of this order. Respondent shall mail Attachment A to the address provided by such former subscriber within ten (10) days after the date of the request. The front of the envelope transmitting Attachment A shall be in the form set forth in Attachment B to this order.

- D. Respondent shall send reimbursement checks to former WebTV Network Internet access service subscribers, under either subpart B or subpart C of this Part, who complete and return to respondent the "Reimbursement Application Form" section of Attachment A to this order, postmarked within sixty (60) days of receiving it, and who fulfill the requirements set forth in subpart A of this Part. Respondent shall send each reimbursement check by first-class mail, postage prepaid, within thirty (30) days of receipt of each former subscriber's properly completed "Reimbursement Application Form." The front of the envelope transmitting reimbursement checks shall be in the form set forth in Attachment C to this order.
- E. Respondent shall notify any former WebTV Network and WebTV Plus Network Internet access service subscriber under subparts B or C of this Part who indicates on the "Reimbursement Application Form" that (s)he is attaching proof of the long distance telephone toll charge(s) incurred and fails to do so, or who fails to otherwise apply properly for a reimbursement, of any error in the former subscriber's "Reimbursement Application Form," and shall provide a reasonable opportunity for the former subscriber to rectify any such error.
- F. Within one (1) year after the date of service of this order, respondent shall furnish to the Commission separate lists of the former WebTV Network and WebTV Plus Network Internet access service subscribers who have applied for reimbursement pursuant to subparts B and C of this Part, the amount of each reimbursement request, and the date of mailing and amount of the reimbursement provided to each applicant.
- G. Respondent shall, for three (3) years after the date of service of this order, maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

1. Sufficient records to identify:
 - a. The name and last known address of each person sent a notification pursuant to this order and the date the notification was mailed; and
 - b. The name and address of each person who is notified by respondent that his or her reimbursement application is deficient;
2. Sample copies of all letters, descriptions, applications and forms sent to former WebTV Network Internet access service subscribers or others pursuant to this order; and
3. Each and every reimbursement application received.

VI.

IT IS FURTHER ORDERED that respondent WebTV Networks, Inc., and its successors and assigns, shall within thirty (30) days after the date of service of this order and for a period of five (5) years after the date of service of this order, send by first class certified mail, return receipt requested, to each current and future:

- A. advertising agency and retailer, exact copies of the notice attached hereto as Attachment D and this order. The mailing shall include no other document; and
- B. manufacturer, exact copies of the notice attached hereto as Attachment E and this order. The mailing shall include no other document.

For purposes of this Part, “manufacturer” shall mean each company or individual that manufactures, through an agreement with respondent, any Internet access product, for sale. “Retailer” shall mean each company or individual that sells any Internet access product or Internet access service with whom respondent has a cooperative advertising agreement, including, but not limited to, consumer electronics stores and direct marketing companies.

If consumers may incur long distance telephone charges as a result of using respondent's Internet access service, respondent shall maintain and staff during normal business hours the toll-free telephone number to which consumers are referred in Attachments D and E in a manner adequate to:

1. handle inquiries regarding such charges;

2. inform callers how they can determine whether they will incur such charges and the amount of such charges; and
3. the means, if any, by which consumers can avoid such charges.

VII.

IT IS FURTHER ORDERED THAT respondent WebTV Networks, Inc., and its successors and assigns, shall conduct a consumer education program, as set forth in this Part, about the limitations of Internet access products in their ability to access content available on the Internet.

A. Consumer Brochure

1. Within sixty (60) days after the date of service of this order, respondent shall produce, print and begin to distribute a color consumer brochure (“the brochure”) in the form and content set forth in Attachment F to this order.
2. Respondent shall distribute the brochure, in quantities sufficient to meet reasonably anticipated demand, to every WebTV retailer that respondent visits as part of its regular retailer site visits (either directly or through an agency retained by respondent for such purpose).
3. Respondent shall submit a production-ready copy of the brochure to Commission staff at least twenty (20) days prior to the first scheduled distribution of the brochure to retailers.
4. Respondent shall distribute the brochure to WebTV retailers at no cost to such retailers or to the public. Respondent shall use its best efforts to encourage WebTV retailers to make the brochure available in a prominent and readily accessible location in the area of the retail location where the Internet access products are sold.
5. Respondent shall monitor the demand for and supply of the brochure, and shall continue to produce and distribute the brochure as necessary to meet reasonably anticipated demand for a period of one (1) year after the date of service of this order.
6. Respondent shall provide to Commission staff written reports detailing the total number of brochures printed and distributed to WebTV retailers,

including any additional distributions of brochures to WebTV retailers subsequent to the initial distribution. Respondent shall submit such reports six (6) months and twelve (12) months after the initial distribution of brochures to WebTV retailers.

B. Internet Availability of the Brochure

Within sixty (60) days after the date of service of this order, respondent shall place a hypertext link to the brochure on its "WebTV Products" index Web pages (*i.e.*, <http://www.webtv.com/products/index.html> and <http://www.webtv.net/products/index.html>), or on any other Web page(s) on respondent's primary Web site(s) for its Internet access product(s) and/or Internet access service(s) (*e.g.*, <http://www.webtv.com> and <http://www.webtv.net>) that serves as the index Web page(s) for providing information regarding any characteristic relating to access to the Internet's content or functionality provided by the Internet access product(s). The hypertext link shall itself be clear and conspicuous, clearly identified as a hypertext link, and clearly labeled to convey the nature and relevance of the information it leads to, and shall take the consumer directly to the brochure on the click-through electronic page or other display window or panel. The brochure and hypertext link shall remain on such Web page(s) for a period of two (2) years from the date they were first placed on the site(s).

C. Print Advertisement

Respondent shall place a one-half page print advertisement, in the form and content set forth in Attachment G to this order, and in the publications and according to the dissemination schedule contained in Attachment H to this order.

VIII.

IT IS FURTHER ORDERED that respondent WebTV Networks, Inc., and its successors and assigns, shall for five (5) years after the last date of dissemination of any representation covered by this order maintain and upon request make available to the Federal Trade Commission for inspection and copying, all of respondent's advertisements and promotional materials containing any representation covered by this order.

IX.

IT IS FURTHER ORDERED that respondent WebTV Networks, Inc., and its successors and assigns, shall deliver a copy of this order to all current and future officers and to all current and future managers having responsibilities with respect to the subject matter of this order. Respondent shall also deliver a copy of this order, or in lieu thereof a detailed, written summary

of the requirements of this order, to all employees, agents and representatives having responsibilities with respect to the subject matter of this order. Respondent shall deliver this order, or the written summary, to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

X.

IT IS FURTHER ORDERED that respondent WebTV Networks, Inc., and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

XI.

IT IS FURTHER ORDERED that respondent WebTV Networks, Inc., and its successors and assigns, shall, within sixty (60) days after service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

XII.

This order will terminate on December 8, 2020, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;

- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Donald S. Clark
Secretary

ISSUED: December 8, 2000
SEAL