

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**      **Timothy J. Muris, Chairman**  
                                 **Mozelle W. Thompson**  
                                 **Orson Swindle**  
                                 **Thomas B. Leary**  
                                 **Pamela Jones Harbour**

	)	
<b>In the Matter of</b>	)	
	)	<b>DOCKET NO. C-4105</b>
<b>AMERICA ONLINE, INC. and</b>	)	
<b>COMPUSERVE INTERACTIVE</b>	)	
<b>SERVICES, INC., corporations</b>	)	<b>DECISION AND ORDER</b>
	)	
	)	

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents 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 respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for Federal Trade Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents 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 respondents have 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 for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to § 2.34 of its Rules, 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 America Online is a Delaware corporation with its principal office or place of business at 22000 AOL Way, Dulles, Virginia 20166.

CompuServe is a Delaware corporation with its principal office or place of business at 5000 Arlington Centre Boulevard, Columbus, Ohio 43220. It is a wholly owned subsidiary of respondent America Online.

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

### ORDER

#### DEFINITIONS

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

1. "Continuity Program" shall mean any plan, arrangement, or system pursuant to which a consumer receives periodic provisions of services or shipments of products without prior notification by the seller before each service period or shipment, regardless of any trial or approval period allowing the consumer to be reimbursed for or return the service or product.

2. "Significant period of time," with regard to usage of any Internet service or online service, shall mean a period of time that exceeds thirty (30) minutes.

3. "Rebate" shall mean cash, instant savings, instant credit, or credit towards future purchases, offered to consumers who purchase products or services from respondents, which is provided at the time of purchase, or subsequent to the purchase.

4. "Online service" shall mean any service which enables a consumer to connect, via modem or otherwise, to a computer network or other electronic network that provides access to content or features available only to that service's members.

5. "Receiving a properly completed request" shall mean the time at which the respondents receive from the rebate applicant all the information and materials required by the express terms of the rebate offer.

6. Unless otherwise specified, "respondents" shall mean America Online and CompuServe, their successors and assigns, and their officers, agents, representatives, and employees.

7. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any Internet or online service, or any other product or service that is sold by means of a continuity program, shall establish and maintain appropriate measures for ensuring that consumers' requests for cancellation of such service or continuity program are promptly processed and that billing for such product or service will cease prior to the next billing cycle.

II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any Internet or online service, or any other product or service that is sold by means of a continuity program, shall not continue to charge any subscriber for such service or continuity program who:

1. has requested cancellation of such service or continuity program; and
2. is recorded as having agreed to continue to be a subscriber to such service or continuity program,

unless respondents:

- A. First obtain the express informed consent of each such subscriber to continue to subscribe to such service or continuity program.

*Provided*, that a subscriber's consent will be deemed to be informed for the purpose of this Part II only if the respondents clearly and conspicuously disclose, before the subscriber consents to continued billing, the following:

- i. a description of the pricing plan of the service or continuity program to which the subscriber is agreeing, including periodic charges and any additional usage charges that may apply;
- ii. if the subscriber is being given a period of free service or continuity program shipments, the date on which the subscriber will be next billed for the service or continuity program, if he or she does not take further steps to cancel;
- iii. that the subscriber will be sent a confirmation notice within five (5) business days.

*Provided further*, that a subscriber's consent will be deemed to be express for the purpose of this Part II only if the respondents obtain the informed consent in a

manner which clearly evidences that the subscriber is consenting to continued billing for the service or continuity program.

- B. In the case of an Internet or online service, send the Confirmation Notice and Cancellation Request Form, attached hereto as Attachment A, to each such subscriber, according to the following instructions:
1. An exact copy of Attachment A shall be sent by first class mail, within five (5) business days from the date on which each such subscriber is recorded as having agreed to continue to be charged for, or continue to be a subscriber to, such service to the last known address of each such subscriber.
  2. The front of the envelope transmitting Attachment A shall be in the form set forth in Attachment B to this order. The phrase "IMPORTANT: Confirmation of continued service," shall appear on the front of the envelope in typeface equal or larger in size to 16 point. The words "Forward & Address Correction Requested" shall appear in the upper left-hand corner of each envelope, one-quarter of an inch beneath the name and logo of the service and 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.
  3. Respondents also shall mail the appropriate Confirmation Notice and Cancellation Request Form to any such 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. Respondents shall retain a NCOA licensee to update the addresses of such subscribers under this subpart by processing the subscribers through the NCOA database. The mailing required by this subpart shall be made within five (5) business days of respondent's receipt of a corrected address or information identifying each such subscriber.
- C. Respondents shall cancel the Internet or online service of subscribers who are notified pursuant to subpart B of this Part and who submit via U.S. mail or facsimile the Cancellation Request Form set forth in Attachment A with a valid account validator and signature. Cancellations would occur within 72 hours of respondents' receipt of the cancellation request.
- D. In the case of an Internet or online service, reimburse all fees for such service that any subscriber incurred subsequent to the date on which he or she was recorded as having agreed to continue to be charged for, or continue to be a subscriber to,

such service, if such subscriber:

1. requests a cancellation of such service within thirty (30) days of the date of the mailing of the confirmation notice that is required by subpart B of this Part; and
  2. the subscriber did not use such service for a significant period of time after he or she was recorded as having agreed to continue to be charged for, or continue to be a subscriber to, such service.
- E. In the case of a continuity program other than Internet or online service, send the Confirmation Notice attached hereto as Attachment C, to each such subscriber, according to the following instructions:
1. If the subscriber has an active Internet or online service account with respondents, an exact copy of Attachment C shall be sent by e-mail to such subscriber's primary or master e-mail account within five (5) business days from the date on which such subscriber is recorded as having agreed to continue to be charged for, or continue to be a subscriber to, such continuity program. The subject line of the e-mail transmitting Attachment C shall read "IMPORTANT: Confirmation of continued [name of continuity program]." The identification of the sender of the e-mail will be identical to that used on other e-mails sent by respondents to subscribers.
  2. If the continuity program subscriber does not have an active Internet or online service account with respondents, an exact copy of Attachment C shall be sent by first class mail, within five (5) business days from the date on which each such subscriber is recorded as having agreed to continue to be charged for, or continue to be a subscriber to, such continuity program service to the last known address of each such subscriber. The front of the envelope transmitting Attachment C shall be in the form set forth in Attachment D to this order. The phrase "IMPORTANT: Confirmation of continued [Name of continuity program]," shall appear on the front of the envelope in typeface equal or larger in size to 16 point. The words "Forward & Address Correction Requested" shall appear in the upper left-hand corner of each envelope, one-quarter of an inch beneath the return address.
- Provided, however,* respondents need not send a separate Confirmation Notice pursuant to this subpart with respect to a continuity program if: a) the subscriber to such continuity program requested cancellation of Internet or online service at the same time the subscriber requested cancellation of such continuity program, b) respondents send the

subscriber a Confirmation Notice pursuant subpart B of this part, and c) respondents cancel such continuity program when Internet or online service subscribers submit Cancellation Request Forms pursuant to subpart C of this part.

- F. Provide a method through which subscribers who are notified pursuant to subpart E of this Part are able to cancel such continuity program via telephone or U.S. mail. Cancellations would occur within 72 hours of respondents' receipt of the cancellation request.

### III.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any Internet or online service and the offering of a rebate, shall not:

- A. make any representation, in any manner, expressly or by implication, about the time in which any rebate will be mailed, or otherwise provided to purchasers unless, at the time the representation is made, respondents have a reasonable basis for such representation; or
- B. fail to provide any rebate within the time specified or, if no time is specified, within thirty (30) days of receiving a properly completed request for such rebate.

### IV.

IT IS FURTHER ORDERED that respondents, and their successors and assigns, shall maintain and upon request make available for copying:

- A. For five (5) years after the last date of dissemination of any representation covered by this order:
  - 1. All advertisements and promotional materials containing the representation;
  - 2. All materials that were relied upon in disseminating the representation; and
  - 3. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations;

- B. For each request for cancellation of any Internet service or online service, or continuity program, made by subscribers through the means provided for in Part II.C of the order, a record of the name and identification number of the employee who recorded the subscriber as having agreed to continue to be charged for, or continue to be a subscriber to, such service or continuity program, and the date on which such subscriber was recorded as having agreed to continue to be charged for, or continue to be a subscriber to, such service or continuity program;
- C. A record of the number of reimbursements issued each month to former subscribers pursuant to Part II.D of the order; and
- D. All consumer complaints received by respondents directly or indirectly through a third party in the prior three (3) year period, whether written, written memorializations of oral communications, or electronic mail, that relate or refer to:
  - 1. respondents' failure to cancel or delay in cancelling any Internet or online service, or any other product or service that is sold by means of a continuity program; or
  - 2. any dispute about charges for any such product or service; and

respondents' responses to such complaints, including information related to any reimbursements issued by respondents. For any such complaint or response that is communicated orally, respondents shall maintain a written memorialization of such complaint or response.

V.

IT IS FURTHER ORDERED that respondents, and their successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order. Respondents shall deliver this order 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.

## VI.

IT IS FURTHER ORDERED that respondents, and their 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, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

## VII.

IT IS FURTHER ORDERED that respondents, and their 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.

## VIII.

This order will terminate on January 28, 2024, 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 respondents 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: January 28, 2004  
SEAL

## ATTACHMENT A — FRONT

[To be printed on Company letterhead]

[DATE]

[NAME AND ADDRESS OF RECIPIENT]

[E-MAIL ADDRESS/USER NAME, IF APPLICABLE]

Re: [UNIQUE ACCOUNT IDENTIFIER]

Dear [RECIPIENT'S NAME]:

On behalf of [AMERICA ONLINE, INC. OR COMPU SERVE INTERACTIVE SERVICES, INC.], thank you for agreeing to continue your subscription to [NAME OF INTERNET OR ONLINE SERVICE]. We look forward to providing you with the highest quality of service.

This letter confirms that on [DATE] you agreed to continue your [NAME OF SERVICE]. Your service will be continued and you will be charged [PRICING PLAN] per [TIME PERIOD] as agreed. [IF ADDITIONAL HOURLY OR OTHER USAGE CHARGES APPLY TO THIS PRICING PLAN, DESCRIBE THOSE CHARGES]. [IF SUBSCRIBER ACCEPTED AN OFFER OF A CERTAIN PERIOD OF FREE SERVICE INSERT THE FOLLOWING SENTENCE: These charges will resume after your [PERIOD OF TIME] of free service expire(s) on [DATE], unless you contact us to cancel your subscription before this date.] [IF SUBSCRIBER ACCEPTED REDEEMABLE AOL SERVICE CREDITS INSERT THE FOLLOWING SENTENCES: As discussed, we will provide [NUMBER OF CREDITS] Service Awards to your Award Center account. To redeem: Go to AOL Keyword: "Award Center" and click the "Redeem Service Award Now" button. Remember to redeem your Service Award before [NEXT BILLING DATE] to avoid membership fees and that your Service Awards expire on [DATE], 6 months from date of issuance.] If you subscribe to any premium services, you will continue to enjoy them and will be billed accordingly. [IF SUBSCRIBER ACCEPTED REDEEMABLE AOL SERVICE CREDITS INSERT THE FOLLOWING SENTENCE: The Service Awards you will receive only apply to your monthly membership fees and not to premium services.] If you need further assistance or have any questions about your current services, please call our Billing Department at [TELEPHONE NUMBER].

If our records are incorrect and you wish to cancel your [NAME OF SERVICE] membership, you can fully complete and send the cancellation form on the reverse side of this letter to us at [COMPANY ADDRESS] or fax it to us at [TELEPHONE NUMBER].

Within [NUMBER] days of receipt of your request, we will mail you confirmation of your cancellation.

Thank you for choosing to stay with [NAME OF SERVICE] and giving us the opportunity to show you how the [NAME OF SERVICE] experience is now better than ever.

Sincerely,

[SIGNATURE]

[NAME PRINTED]

ATTACHMENT A — BACK

CANCELLATION REQUEST	
[UNIQUE ACCOUNT IDENTIFIER]	
DATE:	
BILLING CONTACT'S NAME:	
BILLING CONTACT'S ADDRESS:	
For security purposes, please provide <u>one</u> of the following three account validators: (1) the primary or master screen name, (2) the last 4 digits of the credit card, checking account, or telephone number to which the account is billed, <u>or</u> (3) the answer to your Account Security Question.	
<b>I called to cancel my [NAME OF SERVICE]. I did not wish to continue my [NAME OF SERVICE]. Please cancel my account upon receipt of this request.</b>	
<b>SIGNATURE:</b>	

Note: to ensure cancellation of your [NAME OF SERVICE] account you must provide an account validator and sign your name.

**ATTACHMENT B**

**NOTICE LETTER ENVELOPE**

[Name and logo of service]

[Company address]

**Forward & Address Correction Requested**

**Window Envelope**

[The following statement is to appear in a box, on the front of the envelope in black with a white background, in extra large typeface equal or larger in size to 16 point, bold type face]

**IMPORTANT: Confirmation  
of continued service**

## ATTACHMENT C

Dear [Recipient's name]:

Our records indicate that on [date] you agreed to continue your [name continuity program]. Your subscription will be continued and you will be charged [description of pricing plan].

If our records are incorrect and you wish to cancel your [name of continuity program] membership, you may call us at ((xxx) xxx-xxxx) or write us at [address].

Within [number] days of receipt of your request, we will e-mail you confirmation of your cancellation.

Thank you for choosing to continue your [name of service].

Sincerely,

[Name printed]

**ATTACHMENT D**

**NOTICE LETTER ENVELOPE**

[Company Name]

[Company address]

**Forward & Address Correction Requested**

**Window Envelope**

[The following statement is to appear in a box, on the front of the envelope in black with a white background, in extra large typeface equal or larger in size to 16 point, bold type face]

**IMPORTANT: Confirmation  
of continued [name of service  
or continuity program]**