

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

_____)	
In the Matter of)	FILE NO. 962-3096
)	
COMPUSERVE, INC.,)	AGREEMENT
a corporation.)	CONTAINING
)	CONSENT ORDER
_____)	

The Federal Trade Commission has conducted an investigation of certain acts and practices of CompuServe, Inc., a corporation, (“proposed Respondent” or “CompuServe”). Proposed respondent, having been represented by counsel, is willing to enter into an agreement containing a consent order resolving the allegations contained in the draft complaint. Therefore,

IT IS HEREBY AGREED by and between CompuServe, Inc., by its duly authorized officers, and counsel for the Federal Trade Commission that:

1. Proposed respondent CompuServe, Inc. is an Ohio corporation with its principal place of business or office at 5000 Arlington Centre Boulevard, Columbus, Ohio 43220-0212.
2. Proposed Respondent admits all the jurisdictional facts set forth in the draft complaint.
3. Proposed Respondent waives:
 - (a) Any further procedural steps;
 - (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
 - (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered into pursuant to this agreement.
4. This agreement and any related complaint shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of sixty (60) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this

agreement and so notify proposed Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute, for the purpose of this agreement or for any other purpose, any admission by proposed Respondent that any law has been violated as alleged in the draft complaint, or that any facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed Respondent, (1) issue its complaint corresponding in form and substance to the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed Respondent by any means specified in Section 4.4 of the Commission's Rules shall constitute service. Proposed Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order or the agreement.

7. Proposed Respondent has read the draft complaint and consent order. Proposed Respondent understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

For purposes of this order, the following terms shall have the meanings set forth below, unless specifically stated otherwise:

1. "Account" means a demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held either directly or indirectly by a Financial Institution, as defined below, and established primarily for personal, family, or household purposes.
2. "Financial Institution" means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an Account belonging to a Consumer.
3. "Consumer" means a natural person or other entity that may be billed for online services; provided that, for purposes of Paragraphs IV and VI of this order, "Consumer"

shall only mean a natural person.

4. "Electronic Fund Transfer," as defined by the Electronic Fund Transfer Act, 15 U.S.C. § 1693a(6), means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephone, or computer or magnetic tape so as to order, instruct, or authorize a Financial Institution to debit or credit an Account, except that it does not mean a transaction made using a debit card or debit card account which a consumer has identified as a credit card or credit card account.

5. "Online Service" shall mean a Respondent-Controlled access, information, communication, or transaction service which is made available to Consumers as a paid service via connection by computers, modems, or other means, to a proprietary or non-proprietary network of telecommunication or computer facilities.

6. Unless otherwise specified, "Respondent" shall mean CompuServe, Inc., its successors and assigns, and its officers, agents, servants, divisions, and employees.

7. "Respondent-Controlled" shall mean Respondent makes the management decisions affecting compliance with the provisions of this order.

8. "In or affecting commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that Respondent, directly or through any Respondent-Controlled corporation, subsidiary or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any Online Service in or affecting commerce, shall not misrepresent, expressly or by implication, the terms or conditions of any trial offer of any Online Service.

II.

IT IS FURTHER ORDERED that Respondent, directly or through any Respondent-Controlled corporation, subsidiary, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any Online Service in or affecting commerce, shall not represent, expressly or by implication, that the Online Service is offered "free," "without risk," "without charge," "without further obligation," or words of similar import denoting or implying the absence of any obligation on the part of the recipient of such offer to pay for the Online Service unless Respondent discloses clearly and prominently any obligation of the recipient to cancel or take other affirmative action to avoid charges for use of the Online Service.

Provided, that for purposes of this Paragraph II, "clearly and prominently" shall mean with respect to any representation, described in the foregoing paragraph and made in Respondent's detailed instructional materials (*e.g.*, starter kits, guidebooks) distributed to Consumers, a disclosure in a type size and in a location that are sufficiently noticeable so that an ordinary Consumer could notice, read, and comprehend it.

Provided, further, that for purposes of this Paragraph II, "clearly and prominently" shall mean, as to any representation described above in this Paragraph, apart from any representation covered by the preceding proviso, and made in the context of any advertisement or promotion of the Online Service through any media, including radio, television or other broadcast media, direct mail, interactive network (except as provided in Paragraph IV below), or print media (including promotion packages attached thereto), a statement directing Consumers to a location where the disclosure required herein will be available (*e.g.*, "For conditions and membership details," followed by: "load up trial software" or "see registration process" or words of similar effect.) In the case of an audio statement, the statement shall be delivered in a volume and cadence sufficient for an ordinary Consumer to notice, hear, and comprehend it. In the case of a video statement, the statement shall be of a size and shade and shall appear for a duration sufficient for an ordinary Consumer to notice, read, and comprehend it. In the case of print media, the statement shall be in a type size and in a location sufficient for an ordinary Consumer to notice, read, and comprehend it.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be permitted.

III.

IT IS FURTHER ORDERED that Respondent, directly or through any Respondent-Controlled corporation, subsidiary, or other device, in connection with the advertising, promotion, offering for sale, sale, distribution of, or billing for any Online Service in or affecting commerce, shall disclose, clearly and prominently, during the final registration process, and prior to the Consumer incurring any financial obligation or financial liability to Respondent, the terms of all mandatory financial obligations to Respondent which will be incurred by the Consumer as a result of using such Online Service, including but not limited to the following:

- A. The financial terms and conditions of any plan or practice (*e.g.*, trial offer) by which Consumers enroll in or renew enrollment in such Online Service and by which, accordingly, Respondent charges the Consumer; provided, that if such plan or practice exists, Respondent must also disclose clearly and prominently any obligation of the recipient to cancel or take other affirmative action to avoid charges for use of the Online Service and provide at least one reasonable means by which the Consumer may effectively cancel his or her enrollment by a date certain and thereby avoid further charges; and
- B. Any mandatory membership, enrollment, or usage fees (*e.g.*, monthly or hourly usage charges).

Provided, however, that for purposes of this Paragraph III, a disclosure is "clearly and prominently" made if it is of a size and shade, and appears for a duration sufficient for an ordinary Consumer to notice, read, and comprehend it. In addition to the foregoing, such disclosure shall not be avoidable by Consumers. Provided, further, that such disclosure shall not be deemed avoidable for purposes of this Order based solely on an ordinary Consumer's failure to read it.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be permitted.

IV.

IT IS FURTHER ORDERED that Respondent, directly or through any Respondent-Controlled corporation, subsidiary, or other device, in connection with any Electronic Fund Transfer from any Consumer Account, shall not:

- A. Fail to obtain Consumer authorization before initiating any Electronic Fund Transfer from any Consumer Account as required by Section 907(a) of the Electronic Fund Transfer Act, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), as more fully set out in Section 205.10 of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 C.F.R. § 205, Supp. I.

- B. Fail to provide any Consumer with advance notice of Electronic Fund Transfers from the Consumer's Account varying in amount from previous transfers as required by Section 907(b) of the Electronic Fund Transfer Act, 15 U.S.C. § 1693e(b), and Section 205.10(d) of Regulation E, 12 C.F.R. § 205.10(d), as more fully set out in Section 205.10 of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 C.F.R. § 205, Supp. I.

V.

IT IS FURTHER ORDERED that Respondent, directly or through any Respondent-Controlled corporation, subsidiary, or other device, shall, for five (5) years after the last date of dissemination of any representation covered by Paragraphs I-III of this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying business records demonstrating compliance with the terms and provisions of this order, except as provided for in Paragraph VI of this order, including, but not limited to:

- A. All advertisements, promotional materials, and instructional materials distributed or accessible to Consumers containing the representation;
- B. For five (5) years after the date of receipt or generation, all written complaints from Consumers, governmental or consumer protection organizations and responses thereto; provided, however, that in lieu of maintaining all electronic mail or similar communications, Respondent may comply with this provision by maintaining a representative sample of such communications.

VI.

IT IS FURTHER ORDERED that Respondent, directly or through any Respondent-Controlled corporation, subsidiary, or other device, shall, for two (2) years after the date of issuance of this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying all business records which demonstrate Respondent's compliance with Paragraph IV of this order; provided, however, that in lieu of maintaining all electronic mail or similar communications, Respondent may comply with this provision by maintaining a representative sample of such communications.

VII.

IT IS FURTHER ORDERED that Respondent, and its successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors, senior managers (*e.g.*, vice-presidents or above), and agents (including, without limitation, advertising agencies) having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent, and its successors and assigns, shall

prepare a summary of this order, and shall distribute a copy of that summary to all current and future managers with responsibilities or duties affecting compliance with the terms of this order.

VIII.

IT IS FURTHER ORDERED that Respondent, directly or through any Respondent-Controlled corporation, subsidiary, or other device, 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 dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a parent or Respondent-Controlled subsidiary or Respondent-Controlled 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.

IX.

IT IS FURTHER ORDERED that Respondent, directly or through any Respondent-Controlled corporation, subsidiary, or other device, shall, within sixty (60) days after the date of 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 it has complied with this order.

X.

This order will terminate twenty (20) years from the date of its issuance, 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.

Signed this _____ day of _____, 1997.

COMPUSERVE, INC.:

By: _____
STEPHEN HEATON, ESQ.
General Counsel and Secretary
CompuServe, Inc.

FEDERAL TRADE COMMISSION:

STEVEN D. SILVERMAN

NINA CHANG

Counsel for the Federal Trade
Commission

APPROVED:

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