

Complaint

125 F.T.C.

IN THE MATTER OF

PRODIGY SERVICES CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 907 OF THE ELECTRONIC FUND TRANSFER ACT, REGULATION
E AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3788. Complaint, March 16, 1998--Decision, March 16, 1998

This consent order prohibits, among other things, the New York-based Internet service provider from: misrepresenting the terms or conditions of any online service trial offer; or representing that online service is free or otherwise representing that consumers need not pay for the online service, unless any obligation to cancel or to take other action to avoid charges is disclosed clearly and prominently in the instructional materials, and all other advertisements include a statement directing consumers to where this disclosure is available.

Appearances

For the Commission: *Lucy Morris, David Medine, Nina Chang and Steven Silverman.*

For the respondent: *Richard Kurnit, Frankfurt, Garbus, Klein & Salz, New York, N.Y.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Prodigy Services Company, a general partnership, which has been succeeded by Prodigy Services Corporation, a corporation, has violated the provisions of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 41-58, as amended, as well as the Electronic Fund Transfer Act ("EFTA"), 15 U.S.C. 1693-1693r, as amended, and its implementing Regulation E, 12 CFR 205, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Prodigy Services Company was a New York general partnership comprised of two equal partners: International Business Machines Corporation and Sears, Roebuck and Company. Prodigy Services Corporation, a Delaware corporation with its principal office or place of business at 445 Hamilton Avenue, White Plains, New York, is a successor corporation to Prodigy Services Company, a general partnership. Prodigy Services Company, a general

partnership, and Prodigy Services Corporation, a successor corporation, shall be hereinafter collectively referred to as "Prodigy."

2. Prodigy has developed, advertised, offered for sale, sold, and distributed to the public its online service for personal computer users. Through its online service, Prodigy has provided consumers with a range of options including electronic mail, interactive magazines and newspapers, transactional services, and access to the Internet.

3. Prodigy has been and is now engaged in the regular practice of making "electronic fund transfer[s]" from "consumer" "account[s]" as those terms are defined in the Electronic Fund Transfer Act and its implementing Regulation E.

4. The acts and practices of Prodigy alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PRODIGY'S COURSE OF BUSINESS

5. Prodigy has disseminated, or has caused to be disseminated, advertisements for its online service through various media including, but not limited to, print, television, the Internet, direct mail, promotional materials, and instructional materials. These advertisements include, but are not limited to, the attached Exhibits A and B, which contain the following statements:

Exhibit A

10 free* hours

10 free hours* of prodigy to surf the internet

Free Trial!

FREE PRODIGY SOFTWARE*

FREE 1ST MONTH'S MEMBERSHIP

FREE 10 HOURS to explore PRODIGY in your first month

The advertisement contains a statement at the bottom of the back panel, in fine print, that provides:

* This trial offer includes the first month's membership fee and 10 free hours of trial usage the first month. Usage beyond the trial offer will result in extra fees, even during the first month. 10 free hours will not carry over into future billing months and may not be used for certain features. Some features may be charged for separately.

Offer details available during online enrollment. . . .

Exhibit B

Get 10 free hours* of Prodigy with easy Internet access!

Get 10 free hours to explore the Internet

To get free software and 10 free hours CALL US AT 1-800-PRODIGY

After your 10 free hours, Prodigy is only \$9.95 a month for 5 hours, with no extra charge for Internet access.

The advertisement contains a statement at the bottom of the front panel, in fine print, that provides:

*This offer includes first month's membership fee and 10 free hours of usage in the first month. Usage beyond the trial offer will result in extra fees. Some features charged for separately. . . .

6. Consumers choosing to participate in the free trial offer do so by connecting to the Prodigy service through a telecommunication modem attached to their personal computers. Upon their initial connection to the service, consumers view a series of enrollment screens which request identification and billing information, prompt them to select passwords for future access to the online service, and provide basic information about the online service.

7. At times relevant to this complaint, the online enrollment process included a "Welcome" screen, attached as Exhibit C, that provides, in part:

Exhibit C

Welcome to the PRODIGY service. There's never been a better time to connect with the PRODIGY service. Live on PRODIGY, right now, you can have instant access to investment advice, sports scores, business news, travel tips, games, an encyclopedia, and so much more!

To continue with the enrollment process, consumers next must choose one of three icons or "buttons" arrayed vertically on the right side of the "Welcome" screen. These buttons provide, in descending order, the following three options: "Enroll Now," "Plan Details," and "Guarantee." The "Enroll Now" button has a flashing border.

a. When consumers select the "Enroll Now" button from the "Welcome" screen, the enrollment process continues without display of either the "Plan Details" screen or the "Guarantee" screen.

b. The "Plan Details" button leads to a screen that provides:

Exhibit D

Plan Details

Prodigy offers several Membership Plans. For details about your Plan, please refer to the materials included with your software. Other plans are available online. Certain features are priced separately and prices are designated online. Charges for extra-fee features used by your household will be billed to your account when online, Jump: fees for details about pricing.

If you have any questions, please call us at 1-800-PRODIGY (1-800-776-3449).

From this screen, consumers next must choose one of two buttons to view another screen: "Previous Page" or "Enroll Now." The "Previous Page" button leads back to the "Welcome" screen. Choosing the "Enroll Now" button causes the enrollment process to continue without display of the "Guarantee" screen.

c. From the "Welcome Screen," the "Guarantee" button leads to a screen that provides:

Exhibit E

Satisfaction Guarantee

We want you to be completely satisfied with the service. If you're not, let us know during your first month and we'll cancel your Membership. Otherwise, we'll automatically continue your Membership. Other plans are available online.

From this screen, consumers next must choose one of two buttons to view another screen: "Previous Page" or "Enroll Now." The "Previous Page" button leads back to the "Welcome" screen. Choosing the "Enroll Now" button causes the enrollment process to continue without display of the "Plan Details" screen.

8. In the course of the enrollment process, Prodigy requires consumers to choose a billing method. Consumers must provide a credit, charge, or debit card number. Alternatively, consumers may choose an automatic checking account debiting program called AutoPay. Prodigy requires consumers choosing AutoPay to submit a written authorization form before debiting their accounts. Prodigy does not require such written authorization from consumers choosing to pay by debit card.

PRODIGY'S VIOLATIONS OF SECTION 5(a) OF THE FTC ACT

9. Through the means described in paragraphs five through eight, Prodigy has represented, expressly or by implication, that consumers who participate in its free trial offer will not be charged, provided

only that they use the trial time within one month of their initial sign-on and do not exceed ten hours of online use.

10. In truth and in fact, consumers who participate in Prodigy's free trial offer and do not exceed ten hours of online time during the month following their initial sign-on, but who fail to cancel their memberships during the trial period, incur charges. Therefore, the representation set forth in paragraph nine was, and is, false or misleading.

11. In the advertising and sale of its online service, Prodigy has represented, expressly or by implication, that consumers who participate in its free trial offer will not be charged, provided only that they use the trial time within one month of their initial sign-on and do not exceed ten hours of online use. Prodigy has failed to disclose adequately to consumers that, upon completion of ten hours of online use or one month from the date of initial sign-on, whichever is earlier, consumers who fail to contact Prodigy and cancel their trial memberships are automatically enrolled as members of Prodigy and are charged a monthly membership fee plus applicable usage fees. These fees continue to accrue until the consumers affirmatively cancel their memberships. Such facts would be material to consumers in their purchase or use of the Prodigy service. The failure to disclose these facts in light of the representation made was, and is, a deceptive practice.

PRODIGY'S VIOLATIONS OF SECTION 907 OF THE EFTA

12. As described in paragraph eight, in the course and conduct of its business, Prodigy in many instances has debited consumers' accounts via their debit cards without their written authorization. In addition, in the course and conduct of its business, Prodigy in many instances has failed to provide consumers with advance written notice of transfers from their accounts varying in amount from previous transfers.

13. Prodigy's aforesaid practices violate Sections 907(a) and (b) of the Electronic Fund Transfer Act, 15 U.S.C. 1693e(a) and (b), and Sections 205.10(b) and (d) of Regulation E, 12 CFR 205.10(b) and (d), as more fully set out in Section 205.10 of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 CFR 205, Supp. I.

14. The acts and practices of Prodigy as alleged in this complaint constitute deceptive acts or practices in or affecting commerce, in

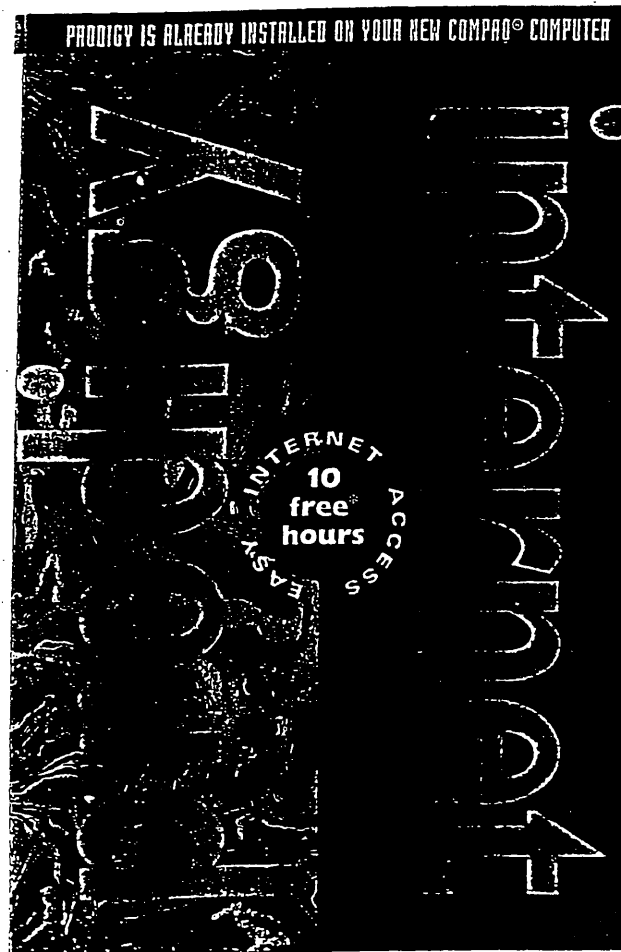
violation of Section 5(a) of the Federal Trade Commission Act. Such acts and practices additionally violate Sections 907(a) and (b) of the Electronic Fund Transfer Act, 15 U.S.C. 1693e(a) and (b), and Sections 205.10(b) and (d) of Regulation E, 12 CFR 205.10(b) and (d).

Commissioner Azcuenaga not participating.

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EXHIBIT A

EXHIBIT A-1

10 free hours of Prodigy to surf the Internet

**2 clicks and you're
on the Net**

Use your 10 free hours to surf the Internet... take a computer tour of White House. Browse the Library of Congress or correspond with millions of people around the world who share your interests. Featuring:

- * Point-and-click access to Internet's **Wide Web** and its vast resources.
- * Easy access to Internet's **USENET Newsgroups**.
- * Full Internet **E-Mail** to message anyone, anywhere in the world.

Prodigy America's hottest online service (now only free to the people and businesses you care most about).

No other online service offers all this:

- * Use The
- * Hundreds of busy leaders' books
- * International business advice magazines
- * The latest stock quotes
- * Leading news and financial news
- * Completely updated encyclopedias
- * Complete Library of Congress Reports
- * Multiple newspaper editions
- * And...
- * And...

Prodigy
ONLINE

HomeWork Helper™
- a complete study helper
updated daily, knows more than 700,000 facts to help your kids in school. Instant review notes and facts.

COMPAS Support
Online

Product news and information to help you support the new Compas II line of computers.

Getting started is simple!

Prodigy is so easy to use that even a child can use it. It's easy to get started. Just call 1-800-828-8282 and follow the on-screen instructions. It's easy to get started. Just call 1-800-828-8282 and follow the on-screen instructions. It's easy to get started. Just call 1-800-828-8282 and follow the on-screen instructions.

Welcome.

After you've started, spend a few moments in the **Prodigy America** area of the **Prodigy** Center. There you'll find out how to get started, where to find help online and how to use a lot of your time online.

* How much **Prodigy** can help you with your homework, which are the **Prodigy** features you can use to get started.

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EXHIBIT A

EASY INTERNET ACCESS!



Free Trial!

- * FREE PRODIGY® SOFTWARE*
- * FREE 1ST MONTH'S MEMBERSHIP
- * FREE **10** HOURS

to explore PRODIGY in your first month.

Connect now because the Internet's never been hotter and nobody makes it as easy as PRODIGY.

* The trial offer includes the first month's membership fee and 10 free hours of trial usage the first month. Usage beyond the trial offer will result in extra fees, even during the first month. 10 free hours will not carry over into future billing months and may not be used for certain features. Some features may be charged for separately.

Offer details available during online enrollment. Fees, service charges, features and allowances are as of 3/95 and are subject to change without notice. Credit card payment upon enrollment. Phone charges may apply. Some features not available outside the U.S. Service and instructions in English. Fees in U.S. Dollars. Limited time offer subject to change.

PRODIGY is a registered mark of Prodigy Services Company. Microsoft is a registered trademark, and Windows and the Windows Logo are trademarks of Microsoft Corporation. COMPAQ is a registered trademark of Compaq, Inc. ©1995 Prodigy Services Company. All rights reserved.

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EXHIBIT A-1

EXHIBIT B

Open doors you never knew existed.

The White House

The Ontario Science Center

The Louvre

NASA

Cornell University Movie Archives (L.I.C.)

The Vatican City

The British Museum

The Smithsonian Institution

The Office of the Secretary of Defense

The BBC London

The Stockholm Concert Hall

The Paris Opera

Göteborg University Sweden

The Astronomical Museum, Bologna

New Zealand Symphony Orchestra

get 10 free hours* of Prodigy with easy Internet access!

33235/8065

name _____

address _____

city _____ state _____ zip _____

signature _____ phone number () _____

we'll send you Prodigy software for Windows*

or call 1-800-PRODIGY ext. 661

*The offer includes five months of membership fee plus 10 free hours of access in one year month issues beyond this time will result in fees charged from your account unless you cancel membership before this spring feature changes to unlimited. Credit card members must charge non-refundable annual price after subject to credit card company's terms & conditions. Access some equipment may require for more than 1 hour PRODIGY software. The offer is available to new members only and is limited to one person per household.

prodigy.
what ever you're into

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EXHIBIT B

prodigy

Latest in Technology: Call 5. It's the new way to get it. Games: Call 5. It's the new way to get it. News: Call 5. It's the new way to get it. Sports: Call 5. It's the new way to get it. Music: Call 5. It's the new way to get it. Travel: Call 5. It's the new way to get it. Health: Call 5. It's the new way to get it. Education: Call 5. It's the new way to get it. And more.

The new Prodigy features a whole new look that makes it easier to find whatever you're into.

The best Internet access

While there are plenty of online services out there today, there's only one that gives you the easiest access to the Internet. And that's Prodigy. During a recent comparison test at the spring *Internet World* show, Prodigy was unanimously voted the best for Internet access.

Build your own home page

Prodigy is now the only online service that

get 10 free hours to explore the Internet

allows you to create your own

Hey, this is pretty cool. An Internet music store where you can hear bands you probably won't find in your local record shop! Wonder what else is out there?

Virtual World. It's like a Star Trek/Top Gun hybrid. Plus, in this online game you play real people (not computers).

home page on the Internet's World Wide Web. That way anyone surfing the Net can find out more about you, what you do, your interests, or even where you think you can find the best Bloody Mary.

Explore your interests

You could also choose to explore any of your other interests. Music. Investments. The mating ritual of the three-toed tree sloth. Because whatever you're into, we've got it.

To get free software and 10 free hours

CALL US AT 1-800-PRODIGY ext. 661, email us at free@prodigy.com or download the software directly from our World Wide Web location, www.asuranet.com (check your screen for our icon first; you may already have Prodigy installed). After your 10 free hours, Prodigy is only \$9.95 a month for 5 hours, with no extra charge for Internet access.

CALL 1-800-PRODIGY
(ext. 661)

prodigy
And here you're into

BUSINESS REPLY MAIL
FIRST-CLASS MAIL/PERMIT NO. 98/JOHNSON CITY, TN

POSTAGE WILL BE PAID BY ADDRESSEE

prodigy

P.O. BOX 3667
JOHNSON CITY, TN 37603-4467

NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

★ PRODIGY Service Enrollment

[Enroll Now](#)

There's never been a better time to connect with the PRODIGY service. Live on PRODIGY, right now, you can have instant access to investment advice, sports scores, business news, travel tips, games, an encyclopedia, and so much more!

Plan Details

Guarantee

Right now millions of people across the country use PRODIGY because it's fun, it's useful, and it's a great value.

See for yourself. Take a moment to enroll now.
Then, you too will be live on PRODIGY!

FREE[illegible]

SECRET

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EXHIBIT D

PRODIGY Service Enrollment

Plan Details

[Enroll Now](#)[Previous Page](#)

Prodigy offers several Membership Plans. For details about your Plan, please refer to the materials included with your software. Other plans are available online.

MEMBER SERVICES

Certain features are priced separately and prices are designated online. Charges for extra-fee features used by your household will be billed to your account. When online, Jump: fees for details about pricing.

If you have any questions, please call us at 1-800-PRODIGY (1-800-776-3449).



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EXHIBIT D

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Complaint

EXHIBIT E

PRODIGY Service Enrollment

Satisfaction Guarantee

[Enroll Now](#)

[Previous Page](#)

MEMBER SERVICES

We want you to be completely satisfied with the service. If you're not, let us know during your first month and we'll cancel your Membership. Otherwise, we'll automatically continue your Membership

Other plans are available online



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EXHIBIT E

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 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 the respondent with violation of the Federal Trade Commission Act and the Electronic Fund Transfer Act and its implementing Regulation E; and

The respondent, its attorneys, and counsel for the 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 the 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 Acts and Regulation, and that a 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Prodigy Services Corporation is an Ohio corporation with its principal place of business or office at 445 Hamilton Avenue, White Plains, New York.

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 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 Prodigy Services Corporation, 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 CFR 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 CFR 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 CFR 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 CFR 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.

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 on March 16, 2018, 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.

Commissioner Azcuenaga not participating.

IN THE MATTER OF
COMPUSERVE, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 907 OF THE ELECTRONIC FUND TRANSFER ACT, REGULATION
E AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3789. Complaint, March 16, 1998--Decision, March 16, 1998

This consent order prohibits, among other things, the Ohio-based Internet service provider from: misrepresenting the terms or conditions of any online service trial offer; or representing that online service is free or otherwise representing that consumers need not pay for the online service, unless any obligation to cancel or to take other action to avoid charges is disclosed clearly and prominently in the instructional materials, and all other advertisements include a statement directing consumers to where this disclosure is available.

Appearances

For the Commission: *Lucy Morris, David Medine, Nina Chang*
and *Steven Silverman*.

For the respondent: *Brian Dengler*, in-house counsel, Columbus,
OH.

COMPLAINT

The Federal Trade Commission, having reason to believe that CompuServe, Inc. ("CompuServe" or "respondent") has violated the provisions of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 41-58, as amended, as well as the Electronic Fund Transfer Act ("EFTA"), 15 U.S.C. 1693-1693r, as amended, and its implementing Regulation E, 12 CFR 205, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. CompuServe is an Ohio corporation with its principal office or place of business at 5000 Arlington Centre Boulevard, Columbus, Ohio.

2. CompuServe has developed, advertised, offered for sale, sold, and distributed to the public its online service for personal computer users. Through its online service, CompuServe provides consumers with a range of options including electronic mail, interactive magazines and newspapers, transactional services, and access to the Internet.