

Complaint

IN THE MATTER OF

MICROSOFT CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-4010; File No. 0023331
Complaint, May 15, 2001--Decision, May 15, 2001*

This consent order addresses representations by Respondent Microsoft Corporation about Pocket PC handheld computers -- personal digital assistants that feature Microsoft's Windows CE operating system -- regarding their ability to access the Internet and email accounts. The order, among other things, prohibits the respondent from making any misrepresentations about the ability of any covered device to access the Internet or email accounts, or about any performance characteristic of any covered device affecting access to the Internet or email accounts. The order also prohibits the respondent from making any representation about the ability of any covered device to access the Internet or email accounts without clearly and conspicuously disclosing any other products (such as a modem, mobile telephone, or adapter) or Internet or email access services that consumers must purchase in order to access the Internet or email accounts.

Participants

For the Commission: *Jock Chung, Keith Fentonmiller, Michael Ostheimer, Anne Maher, C. Lee Peeler, and Louis Silversin.*

For the Respondent: *Charles Buffon, Covington & Burling.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Microsoft Corporation, a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Microsoft Corporation is a Washington corporation with its principal office or place of business at One Microsoft Way, Redmond, Washington 98052.

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2. Respondent has designed and developed a Windows CE computer operating system for Pocket PC handheld computers. Respondent licenses this operating system to various manufacturers of Pocket PCs, including Hewlett-Packard Company and Compaq Computer Corp. Pocket PC devices using this operating system, including Hewlett-Packard Company's Jornada Pocket PC and Compaq Computer Corp.'s iPaq Pocket PC, function as personal digital assistants. They provide ready access to addresses, tasks, calendars, and memos and are equipped with software programs, including "Pocket" versions of respondent's Word, Excel, Outlook, and Internet Explorer.
3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.
4. Respondent has disseminated or has caused to be disseminated advertisements for Pocket PCs, including but not necessarily limited to the attached Exhibits A through C. These advertisements contain the following statements and depictions:

A. (Exhibit A: magazine advertisement)

"Can your palm do that?"

[Depiction: A man next to a close-up of an HP Jornada Pocket PC. The screen of the device shows an email that contains a hyperlink to an Internet URL address. Attached to the email are Microsoft Word and Excel documents.]

"Not unless it's holding a Pocket PC.

Who wants e-mail without attachments? No one! That's why the new Pocket PC lets you open all Microsoft® Word and Excel attachments as well as photos and HTML pages. You can also access your ISP, corporate network, Outlook®, and the most popular Internet e-mail accounts*, anytime."

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[An extremely fine print disclosure, in approximately 4 point type, in white print on an orange background, at the very bottom of the ad states:

*"*Pocket PCs support industry-standard POP3 and MAP4 e-mail protocols. Please check with your ISP to verify its support. Modem required. Sold separately."]*

B. (Exhibit B: magazine advertisement)

"Can your palm do that?"

[Depiction: A woman next to a close-up of a Compaq iPaq Pocket PC. The screen of the device shows the Internet Explorer program running. It displays the <http://mobile.msn.com/pocketpc> Web page which is headlined "msn[™] Mobile" and contains hyperlinks to Expedia.com[™] Travel, [MSNBC News](http://MSNBC.com), and several other services.]

"Not unless it's holding a **Pocket PC.**

Who wants only part of the Web when you can have it all? With the new Pocket PC, you can get online with Microsoft[®] Pocket Internet Explorer, take advantage of The Everyday Web at msn.com, or access any URL*. Order groceries, make a trade or book your next vacation knowing your transaction is secure. Or simply download your favorite pages and take them with you."

[An extremely fine print disclosure, in approximately 4 point type, in white print on an orange background, at the very bottom of the ad states:

*"*Online use requires modem, sold separately. msn.com is available free of charge on the World Wide Web. Connect time charges may apply."]*

C. (Exhibit C: magazine advertisement)

"Can your palm do that?"

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[Depiction: A man next to a close-up of an HP Jornada Pocket PC. The screen of the device shows an email that contains a hyperlink to an Internet URL address. Attached to the email are Microsoft Word and Excel documents.]

"Not unless it's holding a **Pocket PC**.

Who wants e-mail without attachments? No one! That's why the new Pocket PC lets you open all Microsoft® Word and Excel attachments as well as photos and HTML pages. You can also access your ISP, corporate network, Outlook®, and the most popular Internet e-mail accounts*, anytime."

[A fine print disclosure, in approximately 6 point type, in black print on an orange background, at the very bottom of the ad states:

*"*Pocket PCs support industry-standard POP3 and MAP4 e-mail protocols. Please check with your ISP to verify its support. Modem required. Sold separately."]*

5. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that Pocket PCs contain everything that consumers need to access the Internet and their email accounts, at anytime and from anywhere.

6. In truth and in fact, Pocket PCs do not contain everything that consumers need to access the Internet and their email accounts, at anytime and from anywhere. In order to access the Internet and their email accounts using Pocket PCs, when away from their computers ("remotely"), consumers must purchase and carry a separate modem or similar device that in most cases must be connected to a land telephone line or a mobile telephone. Moreover, many mobile telephones currently in use in the United States are not compatible with Pocket PCs. Therefore, the representation set forth in Paragraph 5 was, and is, false or misleading.

7. In its advertisements respondent has represented that consumers can use Pocket PCs to access the Internet and their

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email accounts, at anytime and from anywhere. In these advertisements, respondent has failed to disclose or failed to disclose adequately that in order to access remotely the Internet and their email accounts, consumers must purchase and carry a separate modem or similar device. This fact would be material to consumers in their purchase or use of the product. The failure to disclose this fact, in light of the representation made, was, and is, a deceptive practice.

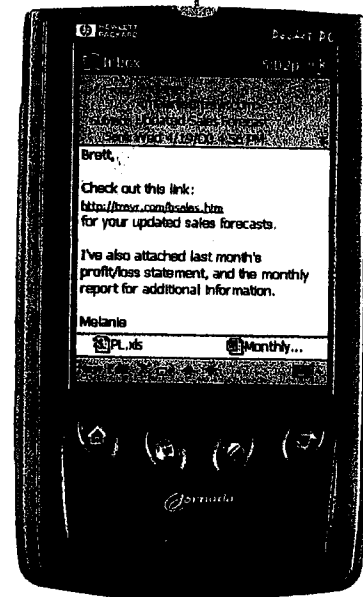
8. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this fifteenth day of May, 2001, has issued this complaint against respondent.

Can your palm do that?



EXHIBIT A



Not unless it's holding a **Pocket PC.**

Who wants e-mail without attachments? No one! That's why the new Pocket PC lets you open all Microsoft® Word and Excel attachments as well as photos and HTML pages. You can also access your ISP, corporate network, Outlook®, and the most popular Internet e-mail accounts*, anytime. So, the next time you open your palm...make sure it's holding a Pocket PC.

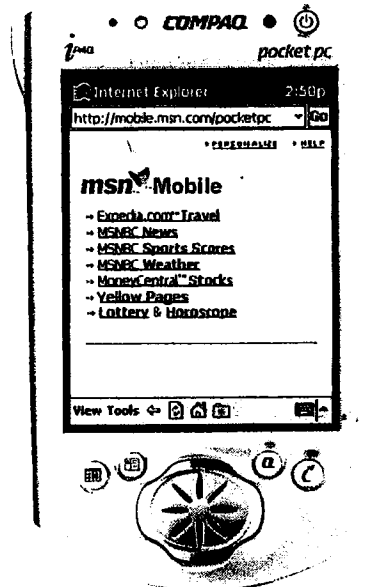
What else can the Pocket PC do?
Go to pocketpc.com



Where do you want to go today?

Microsoft

Can your palm do that?



Not unless it's holding a **Pocket PC.**

Who wants only part of the Web when you can have it all? With the new Pocket PC, you can get online with Microsoft® Pocket Internet Explorer, take advantage of The Everyday Web at msn.com, or access any URL*. Order groceries, make a trade or book your next vacation knowing your transaction is secure. Or simply download your favorite pages and take them with you. So, the next time you open your palm...make sure it's holding a Pocket PC.

What else can the Pocket PC do?
Go to pocketpc.com



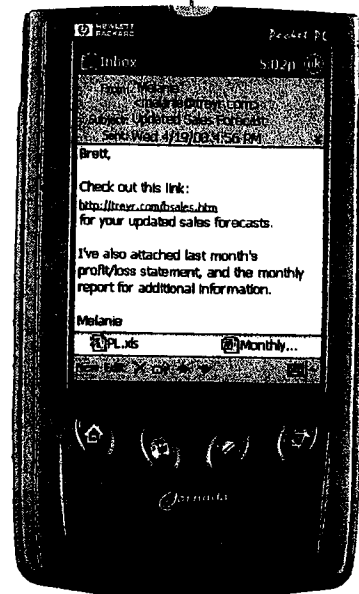
EXHIBIT B

Where do you want to go today?

Microsoft®

*Online use requires modem, sold separately. Not all content is available free of charge on the World Wide Web. Connect time charges may apply.
© 2000 Microsoft Corporation. All rights reserved. Microsoft, MSN, MoneyCentral, Where do you want to go today?, Windows, the MSN logo, and the Windows logo are either registered trademarks or trademarks of Microsoft Corporation in the United States and/or other countries.

Can your palm do that?



Not unless it's holding a **Pocket PC.**

Who wants e-mail without attachments? No one! That's why the new Pocket PC lets you open all Microsoft® Word and Excel attachments as well as photos and HTML pages. You can also access your ISP, corporate network, Outlook®, and the most popular Internet e-mail accounts*, anytime. So, the next time you open your palm...make sure it's holding a Pocket PC.

What else can the Pocket PC do?
Go to pocketpc.com



EXHIBIT C

*Pocket PCs support industry standard POP3 and IMAP4 e-mail protocols. Please check with your ISP to verify its support. Modem required. Sold separately. © 2000 Microsoft Corporation. All rights reserved. Microsoft, Outlook, Where do you want to go today?, Windows, and the Windows logo, are either registered trademarks or trademarks of Microsoft Corporation in the United States and/or other countries.

Where do you want to go today?

Microsoft

Decision and Order

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 attorney, 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, 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 Microsoft Corporation is a Washington corporation with its principal office or place of business at One Microsoft Way, Redmond, Washington 98052.
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.

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ORDER

DEFINITIONS

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

1. Unless otherwise specified, "respondent" shall mean Microsoft Corporation, a corporation, its successors and assigns and its officers, agents, representatives, and employees.
2. "Clearly and conspicuously" 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. Provided, however, that in any advertisement presented solely through visual or audio means, the disclosure may be made through the same means in which the ad is presented. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The 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 label, the disclosure shall be in a type size and location on the same display panel as the triggering representation sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

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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 or on any label.

3. In the case of advertisements disseminated by means of an interactive electronic medium such as software, the Internet, or online services, a disclosure made through the use of a hyperlink shall not be deemed "clear and conspicuous" unless the hyperlink itself is clear and conspicuous, is clearly identified as a hyperlink, is labeled to convey the nature and relevance of the information it leads to, is on the same webpage, online service page, or other electronic page and proximate to the triggering representation, and takes the consumer directly to the disclosure on the click-through electronic page or other display window or panel.

4. "Remotely access the Internet or email accounts" shall mean accessing the Internet or email messages when away from any computer.

5. "General-purpose ISP service" shall mean the category of services which allow consumers to access the Internet from personal computers. It shall not include a specific Internet access service, if respondent's product requires use of that specific service to access the Internet.

6. "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 corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any personal digital assistant or handheld Internet or email access device that requires the use of an additional device or connection to a telephone land line in order to remotely access the Internet or email accounts, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the ability of such product to access

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the Internet or email accounts, or any performance characteristic of such product affecting access to the Internet or email accounts.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any personal digital assistant or handheld Internet or email access device that requires the use of an additional device or connection to a telephone land line in order to remotely access the Internet or email accounts, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the ability of any such product to access the Internet or email accounts unless respondent discloses, clearly and conspicuously, any other products (such as a modem, mobile telephone, or adapter) or Internet or email access services, other than general-purpose ISP service, that consumers must purchase in order to access the Internet or email accounts using such product.

III.

IT IS FURTHER ORDERED that respondent Microsoft Corporation, 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:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. 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

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other communications with consumers or with governmental or consumer protection organizations.

IV.

IT IS FURTHER ORDERED that respondent Microsoft Corporation and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, and directors, and to all current and future managerial or supervisory employees, agents, and representatives having responsibilities with respect to the subject matter of this order. Respondent 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, except that no such delivery need be made if at that time respondent is not itself directly engaged in the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any personal digital assistant or handheld Internet or email access device that requires the use of an additional device or connection to a telephone land line in order to remotely access the Internet or email accounts.

V.

IT IS FURTHER ORDERED that respondent Microsoft Corporation 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

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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.

VI.

IT IS FURTHER ORDERED that respondent Microsoft Corporation 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.

VII.

This order will terminate on May 15, 2021, 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

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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.

Analysis

Analysis of Proposed Consent Order to Aid Public Comment

Issued when the Commission tentatively approved a proposed consent order on December 21, 2000

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Microsoft Corporation ("Microsoft").

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

This matter involves alleged misleading representations about Pocket PC handheld computers ("Pocket PCs") -- personal digital assistants ("PDAs") which feature Microsoft's Windows CE operating system, including Hewlett-Packard Company's Jornada Pocket PC and Compaq Computer Corp.'s iPaq Pocket PC. This matter concerns allegedly false and deceptive advertising claims made in advertisements regarding the ability of Pocket PCs to access the Internet and email accounts.

According to the FTC complaint, Microsoft falsely claimed that Pocket PCs contain everything that consumers need to access the Internet and their email accounts, at anytime and from anywhere. In fact, in order to access the Internet and their email accounts using Pocket PCs, when away from their computers ("remotely"), consumers must purchase and carry a separate modem or similar device that in most cases must be connected to a land telephone line or a mobile telephone; and moreover, many mobile telephones currently in use in the United States are not compatible with Pocket PCs. The complaint also alleges that in representing that consumers can use Pocket PCs to access the Internet and their email accounts, at anytime and from anywhere, Microsoft failed to disclose or failed to disclose adequately that in order to access remotely the Internet and their email accounts, consumers must purchase and carry a separate modem or similar

Analysis

device. The complaint alleges that the failure to disclose this material fact is a deceptive practice.

The proposed consent order contains provisions designed to prevent Microsoft from engaging in similar acts and practices in the future. Specifically, Parts I and II address representations regarding any PDA or handheld Internet or email access device that requires the use of an additional device or connection to a telephone land line in order to access the Internet or email accounts remotely ("covered devices").

Part I of the proposed order prohibits Microsoft from making any misrepresentations about the ability of any covered device to access the Internet or email accounts, or about any performance characteristic of any covered device affecting access to the Internet or email accounts.

Part II of the proposed order prohibits Microsoft from making any representation about the ability of any covered device to access the Internet or email accounts unless Microsoft discloses, clearly and conspicuously, any other products (such as a modem, mobile telephone, or adapter) or Internet or email access services (other than general-purpose ISP service, as defined in the order) that consumers must purchase in order to access the Internet or email accounts.

Parts III through VI of the order require Microsoft to keep copies of relevant advertisements and materials substantiating claims made in the advertisements, to provide copies of the order to certain of its personnel, to notify the Commission of changes in corporate structure, and to file compliance reports with the Commission. Part VII provides that the order will terminate after twenty (20) years under certain circumstances.

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

Statement

Concurring Statement of Commissioner Orson Swindle

I voted to issue both of these consent orders, because they are adequate relief for the violations alleged in the complaints. Nonetheless, I have strong reservations about the use of unenforceable “voluntary” consumer education. In each of these cases, staff negotiated with the proposed respondent to achieve a consumer education campaign that is being undertaken wholly outside the confines of the order. Consumer education remedies sometimes pose difficult issues, and Commissioners may disagree as to whether a particular consumer education remedy is appropriate and reasonably related to the complaint allegations. Yet the solution for such disagreements is not simply to excise such remedies from the legally enforceable obligations that respondents are undertaking in settlement. If consumer education is important enough to include in negotiations, there likely is some impact on what is achieved in negotiating the terms of the consent order itself. Moreover, to the extent that the FTC promotes such “voluntary” consumer education initiatives in our efforts to publicize the consent agreements, we may see many more deep-pocketed respondents seeking to add a bit of “voluntary” and unenforceable consumer education to a broader promotional campaign in exchange for a weaker order than might otherwise be negotiated.

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IN THE MATTER OF

VOICE MEDIA INCORPORATED, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-4012; File No. 0023003
Complaint, May 23, 2001--Decision, May 23, 2001

This consent order addresses representations by Respondent Voice Media Incorporated and its two officers and owners, Respondents Ron Levi and Paul Lesser -- who own and operate several adult entertainment web sites and sell memberships to their sites -- concerning the membership fees charged for those sites. The order, among other things, prohibits the respondents from making any false or misleading representation of material fact -- or omitting material information -- in connection with the advertising, promotion, offering for sale, or sale of any goods or services via the Internet, including, but not limited to, false or misleading representations that they will not charge consumers for goods or services during any free-trial period; (b) that their goods or services are “free,” “without risk,” “without charge,” or words of similar import; or that a request for a consumer’s credit or debit card number is for age verification only. The order also prohibits the respondents from requesting any payment information, other than for purposes of age verification, from any consumer before ensuring that the consumer has received prior notice of a number of material terms and conditions. In addition, the order prohibits the respondents from billing any consumer who has not agreed to purchase goods or services, and from unilaterally changing any terms or conditions of a given offer to a consumer in a way that would increase the consumer’s financial obligations.

Participants

For the Commission: *Nicholas J. Franczyk, John C. Hallerud, Rolando Berrelez, Steven Baker, and [Bureau of Economics]*.

For the Respondents: *James Steele, Steele & Persoff.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Voice Media Incorporated, and Ron Levi and Paul Lesser, individually and as officers of the corporation (“Respondents”), have violated the provisions of the Federal Trade Commission