

Complaint

IN THE MATTER OF

AMERICA ONLINE, INC., ET AL.

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

Docket C-4105; File No. 0023000

Complaint, January 28, 2004--Decision, January 28, 2004

This consent order addresses the manner in which Respondents America Online, Inc. ("AOL") – and its wholly owned subsidiary, CompuServe Interactive Services, Inc. – handled requests from subscribers to AOL's Internet access service who wanted to cancel their Internet access service, and operated the "CompuServe \$400 Rebate program," under which consumers received a \$400 cash rebate toward the purchase of an eligible computer if they contracted for three years of CompuServe Internet service. The order, among other things, requires the respondents to establish and maintain appropriate measures for ensuring that consumer requests to cancel any such online service or continuity program are promptly processed, and that billing will cease prior to the next billing cycle. The order also prohibits the respondents from continuing to charge any subscriber who has requested cancellation of any covered service or continuity program, unless respondents first obtain the subscriber's express informed consent, preceded by clear and conspicuous disclosure of certain specified information, including the pricing plan to which the subscriber is agreeing. In addition, the order requires the respondents to mail confirmation notices and cancellation request forms to subscribers who request the cancellation of any internet or online service and who are then recorded as having agreed to continue their subscriptions. The order also prohibits the respondents from making any representation about the time in which certain rebates will be mailed, or otherwise provided to purchasers – unless they have a reasonable basis for the representation at the time it is made – and from failing to provide any such rebate within the time specified or, if no time is specified, within thirty days.

Participants

For the Commission: *Michael Ostheimer, Laura Sullivan, Sydney Knight, Heather Hippsley, Mary Koelbel Engle, Louis Silversin, Gerard R. Butters and Paul A. Pautler.*

For the Respondents: *William C. MacLeod and John E. Villafranco, Collier Shannon Scott, PLLC.*

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COMPLAINT

The Federal Trade Commission, having reason to believe that America Online, Inc. ("respondent AOL"), and CompuServe Interactive Services, Inc. ("respondent CompuServe"), corporations (collectively, "respondents"), have 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 America Online, Inc. is a Delaware corporation with its principal office or place of business at 22000 AOL Way, Dulles, Virginia 20166.
2. Respondent CompuServe Interactive Services, Inc. is a Delaware corporation and a wholly owned subsidiary of America Online, Inc., with its principal office or place of business at 5000 Arlington Centre Boulevard, Columbus, Ohio 43220. America Online, Inc. controls the acts and practices of its subsidiary CompuServe Interactive Services, Inc.
3. Respondents have developed, advertised, promoted, offered for sale, sold, and distributed to the public Internet access services, including America Online Internet service ("AOL Internet Service") and CompuServe Internet service ("CompuServe Internet Service").
4. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.
5. Respondent AOL has offered various subscription plans for its AOL Internet Service, including, but not limited to, month-to-month subscription plans that entail automatically charging consumers monthly subscription fees until the consumers cancel their Internet service accounts.

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6. During the AOL Internet Service registration process, a series of screens are displayed to consumers, including a screen that contains the America Online Member Agreement ("Agreement"). The Agreement, portions of which are attached hereto as Exhibit A, includes the following statements:

Exhibit A: America Online Member Agreement

The America Online Member Agreement is a legal document that details your rights and obligations as an AOL member. You cannot become an AOL member until you have accepted the terms of the Member Agreement.

. . . .

You can cancel your membership by delivering notice to AOL's Customer Service Department at 1-888-265-8008, by sending your cancellation request via US mail to: AOL, PO Box 1600, Ogden UT 84401, or by fax at 1-801-622-7969. Cancellation will take effect within 72 hours of receipt of your request, and AOL will send you written confirmation.

7. Most AOL subscribers who wanted to cancel their Internet service called AOL's customer service department. The responsibilities of AOL's customer service representatives included trying to retain subscribers who requested cancellation of their Internet service. AOL failed to implement appropriate measures to ensure that all customers' requests for cancellation were properly executed. As a result, in numerous instances, subscribers who requested cancellation were not cancelled and continued to be charged monthly service fees.

8. Respondent AOL's practice described in Paragraph 7 has caused substantial injury to consumers, which was not outweighed by any countervailing benefits to consumers or competition and was not reasonably avoidable by consumers.

9. Respondents AOL and CompuServe developed the "CompuServe \$400 Rebate program" whereby consumers

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received a \$400 cash rebate toward the purchase of any eligible computer, if they contracted for three years of CompuServe Internet Service at a cost of \$21.95 per month, or for a total cost of \$790.20. In connection with the CompuServe \$400 rebate program, respondents promised to provide rebate checks within 8-10 weeks, and in some cases, 45 days.

10. After receiving rebate requests in conformance with Paragraph 9, respondents failed to deliver the rebates to consumers within the promised time period. Respondents extended the time period in which they would deliver the rebates to consumers without consumers agreeing to this extension of time.

11. Respondents' practice described in Paragraphs 9 and 10 has caused substantial injury to consumers, which was not outweighed by any countervailing benefits to consumers or competition and was not reasonably avoidable by consumers.

12. The acts and practices of respondents as alleged in this complaint constitute unfair 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 twenty-eighth day of January, 2004, has issued this complaint against respondents.

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To review any section of the Member Agreement, click on the blue, underlined text. You may then print, save or search that section. To review, print, save or search the full text of the Member Agreement, click [here](#).

The America Online Member Agreement

The America Online Member Agreement is a legal document that details your rights and obligations as an AOL member. You cannot become an AOL Member until you have accepted the terms of the Member Agreement. The Member Agreement provides very important information about your AOL membership, so you should take the time to

Termination and Cancellation

AOL Terms of Service

MAIN

Member Agreement

Termination and Cancellation

You can cancel your membership by delivering notice to AOL's Customer Service Department at 1-888-265-8008, by sending your cancellation request via US Mail to: AOL, PO Box 1600, Ogden UT 84401, or by fax at 1-801-622-7969. **Cancellation will take effect within 72 hours of receipt of your request, and AOL will send you written confirmation. If you cancel near the end of your billing period and are inadvertently charged for the next month's fee contact AOL at the toll free number above to have the charges reversed.** AOL reserves the right to collect fees, surcharges or costs incurred before you cancel your

Print

Save

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DECISION AND ORDER

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.

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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.

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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

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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:

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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

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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.

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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.

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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

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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.

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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

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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.

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.	
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.	
SIGNATURE:	

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]**

Analysis

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from America Online, Inc. ("AOL") and its wholly owned subsidiary, CompuServe Interactive Services, Inc. ("CompuServe").

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 concerns the respondents' Internet access services. According to the FTC complaint, most subscribers to AOL's Internet service who wanted to cancel their service called AOL's customer service department. The responsibilities of AOL's customer service representatives included trying to retain subscribers who requested cancellation of their Internet service. The complaint alleges that AOL failed to implement appropriate measures to ensure that all customers' requests for cancellation were properly executed and that as a result, in numerous instances, subscribers who requested cancellation were not cancelled and continued to be charged monthly service fees. According to the complaint, this constituted an unfair business practice.

The complaint further alleges that AOL and CompuServe developed the "CompuServe \$400 Rebate program" whereby consumers received a \$400 cash rebate toward the purchase of an eligible computer, if they contracted for three years of CompuServe Internet service. In connection with the rebate program, respondents promised to provide rebate checks within 8-10 weeks, and in some cases, 45 days. According to the complaint, after receiving rebate requests in conformance with the offer, respondents extended the time period in which they would deliver the rebates without consumers agreeing to this extension

Analysis

of time and failed to deliver the rebates to consumers within the promised time period. According to the complaint, this constituted an unfair business practice.

The proposed consent order contains provisions designed to prevent AOL and CompuServe from engaging in similar acts and practices in the future. Specifically, Parts I and II address the cancellation of any Internet or online service, or any other product or service sold by means of a continuity program. Part I of the proposed order requires respondents to establish and maintain appropriate measures for ensuring that consumers' requests for cancellation of any such service or continuity program are promptly processed and that billing will cease prior to the next billing cycle.

Part II.A. of the proposed order prohibits respondents from continuing to charge any subscriber who has requested cancellation of any covered service or continuity program, even if the subscriber is recorded as having agreed to continue to be a subscriber, unless respondents first obtain the subscriber's express informed consent. For the subscriber's consent to be deemed "informed," the respondents must clearly and conspicuously disclose, before the subscriber consents, certain specified information, including a description of the pricing plan to which the subscriber is agreeing.

Part II.B. requires that respondents send a confirmation notice to any subscriber who has requested cancellation of any Internet or online service and who is recorded as having agreed to continue to be a subscriber. The notices are to be sent by first class mail in envelopes with "IMPORTANT: Confirmation of continued service" printed on the front. The notices confirm that consumers have agreed to continue their service, inform them of the terms of their continued service, and give them the opportunity to send back a cancellation request form, if they do not wish to continue their service. Part II.C. requires that respondents cancel the service of any subscriber who returns the cancellation request form.

Analysis

Part II.D. provides that respondents refund fees to certain subscribers who return the cancellation request form. Subscribers are to be given refunds if they return the form within thirty days of the mailing of the confirmation notice and do not use the service for any significant period of time after they were recorded as having agreed to continue as subscribers.

Part II.E. requires that respondents send a confirmation notice to any subscriber who has requested cancellation of any continuity program other than Internet or online service and who is recorded as having agreed to continue to be a subscriber. If the subscriber has an active Internet or online service account with respondents, the notice can be sent by e-mail. Otherwise, it is to be sent by first class mail. Part II.F. requires that respondents provide a method through which subscribers who are notified pursuant to Part II.E. are able to cancel via telephone or U.S. mail.

Part III addresses the delayed rebates allegation and applies to respondents' offering of a rebate in connection with Internet or online service. Part III.A. prohibits the respondents from making any representation about the time in which any such rebate will be mailed, or otherwise provided to purchasers, unless they have a reasonable basis for the representation at the time it is made. Part III.B. prohibits respondents from failing to provide any such rebate within the time specified or, if no time is specified, within thirty days.

Parts IV through VII of the proposed order are reporting and compliance provisions. Part VIII is a provision "sunsetting" the order after twenty years, with certain exceptions.

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.

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IN THE MATTER OF

GENERAL ELECTRIC COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE
COMMISSION ACT

Docket C-4103; File No. 0310097
Complaint, December 18, 2003--Decision, January 28, 2004

This consent order addresses the acquisition by Respondent General Electric Company, through its subsidiary, GE Aircraft Engines – the world's leading manufacturer of jet engines for military and civil aircraft – of the nondestructive testing business group of Agfa-Gevaert N.V. The order requires the respondent to divest its worldwide Panametrics ultrasonic nondestructive testing products business – including products such as portable flaw detectors, corrosion thickness gauges, and precision thickness gauges, which are used to inspect the structure and tolerance of materials without damaging the materials or impairing their future usefulness – to R/D Tech, Inc., or to another acquirer approved by the Commission. The order also prohibits the respondent, for a period of one year, from soliciting or inducing any employees or agents of the ultrasonic NDT equipment business involved in the divestiture to terminate their employment with R/D Tech. An accompanying Order to Maintain Assets requires General Electric to preserve the Panametrics ultrasonic NDT business as a viable, competitive and ongoing operation until the divestiture is achieved.

Participants

For the Commission: *Joanne C. Lewers, Randall A. Long, Stephanie C. Bovee, Stephanie A. Parks, Sylvia M. Brooks, Steven K. Bernstein, Anne R. Schenof, Elizabeth Piotrowski, John Yun, Jeffrey H. Fischer and Mary T. Coleman.*

For the Respondent: *Michael N. Sohn and Jonathan I. Gleklen, Arnold & Porter.*

COMPLAINT

Pursuant to the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that Respondent General Electric Company ("GE"), a