

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

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

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

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

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

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

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

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 This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed Respondent, (1)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

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

## ORDER

### DEFINITIONS

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

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

shall only mean a natural person.

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

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

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

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

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

#### I.

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

## II.

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

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

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

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

## III.

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

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

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

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

#### IV.

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

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

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

V.

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

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

VI.

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

VII.

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

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

#### VIII.

IT IS FURTHER ORDERED that Respondent, directly or through any Respondent-Controlled corporation, subsidiary, or other device, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a parent or Respondent-Controlled subsidiary or Respondent-Controlled affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which Respondent learns less than thirty (30) days prior to the date such action is to take place, Respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

#### IX.

IT IS FURTHER ORDERED that Respondent, directly or through any Respondent-Controlled corporation, subsidiary, or other device, shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

#### X.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any Respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of the order, and the dismissal or ruling is either

not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

COMPUSERVE, INC.:

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



FEDERAL TRADE COMMISSION:

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STEVEN D. SILVERMAN

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NINA CHANG

Counsel for the Federal Trade  
Commission

APPROVED:

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LUCY MORRIS  
Assistant Director  
Division of Credit Practices

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DAVID MEDINE  
Associate Director  
Division of Credit Practices

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JOAN Z. BERNSTEIN  
Director  
Bureau of Consumer Protection

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

\_\_\_\_\_) )  
In the Matter of )  
) )  
COMPUSERVE, INC., ) DOCKET NO.  
a corporation. )  
) )  
\_\_\_\_\_) )

**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 C.F.R. § 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 43220-0212.
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.
3. CompuServe 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 EFTA and its implementing Regulation E.
4. The acts and practices of CompuServe alleged in this complaint have been in or affecting commerce as “commerce” is defined in Section 4 of the FTC Act.

**COMPUSERVE’S COURSE OF BUSINESS**

5. CompuServe 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

Take a joy ride on the information superhighway! . . .  
Courtesy of your friends at CompuServe®. C'mon, your  
first 10 hours are FREE!

\* \* \*

**Hop on the information highway with CompuServe for  
10 free hours of fun, news, games, live chat,  
entertainment, and lots more!**

\* \* \*

**Get more out of life, work, and play -- and get 10 hours  
plus your first month's membership FREE!**

\* \* \*

Dear friend . . . .

[Y]ou can take a 10-hour free ride on that highway right  
now with CompuServe®. All you need is your computer, a  
modem, and the two free CompuServe disks included with  
this letter.

\* \* \*

You really have nothing to lose. You've got everything you  
need right now. Your first month's membership is free.  
And during your first month, you and your family will have  
10 free hours to explore CompuServe and the world of the  
Internet. If you decide that CompuServe isn't for you, you  
can cancel at any time with no obligation whatsoever.

The advertisement contains an insert card attached to which are two computer disks that  
permit access to CompuServe's online service. On the reverse side of this card, a bold-  
face statement provides:

**Go now. Go fast. Go free.  
To start enjoying your 10 free hours on CompuServe,  
use the two disks on the back of this card . . . .**

A fine-print statement at the bottom of the card provides:

Please have your credit card ready. If you use more than ten hours  
during your first month's free membership, you will be billed \$2.95

per hour by CompuServe. Thereafter you will be billed \$9.95 per month for membership, plus \$2.95 for each hour after 5 hours.

**Exhibit B**

**GET CONNECTED TODAY FOR FREE!  
COMPUSERVE CONNECTS YOU TO A WORLD OF  
EDUCATION, FUN, BUSINESS COMMUNICATION  
AND MORE.**

\* \* \*

**CONNECT TO COMPUSERVE TODAY AND TRY  
VIRTUALLY EVERYTHING WE OFFER - ON US.**

\* \* \*

**EXPLORE COMPUSERVE FOR ONE MONTH FREE!**

For a monthly membership fee of \$9.95 US\*, you and your family have access to a phenomenal world of education, entertainment and communication. And it's easy to begin. All you need is your home computer, your regular phone line and a modem. Plus, to help you get started, we'll give you one FREE month of membership (a \$9.95 US\* value) plus 10 FREE\* hours your first month to explore virtually everything we offer.

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

\*All pricing quoted in US dollars.  
Some premium services carry additional charges. Communication surcharges may apply in some areas. Some mail services are not included within your 5 free hours. CompuServe is for use subject to the terms, operating rules and conditions found online.

6. Consumers choosing to participate in the free trial offer typically do so by connecting to the CompuServe service through a telecommunication modem attached to their personal computers. Upon their initial connection to the service, consumers view a series of registration screens including, but not limited to, the attached Exhibit C. The registration screens obtain identification and billing information from consumers, verify the consumers' user identification numbers and passwords, and provide basic information about the online service,

including the following details about the terms of the free trial offer:

### Exhibit C

#### 10 FREE HOURS TO START.

To help you get started on CompuServe, we're giving you one free month of membership (a \$9.95 value) and 10 free hours during your first month to explore the services you choose. Surf the Internet..Send e-mail..Set up travel reservations. It's all completely up to you.

But what if you don't use all 10 hours your first month? Or what if you use more? No problem. Use as many or as little of your 10 hours as you want -- just be sure you use them within your first month (30 days) online. After that, they expire. If you do go over 10 hours, additional time is only \$2.95 US per hour.

The registration screen continues with basic membership terms including the monthly charges incurred by CompuServe members:

#### 5 FREE HOURS A MONTH.

Then, if you choose to continue your membership (and we're certain you will!) you'll get 5 FREE hours each month. And -- starting at the beginning of your second month -- you'll pay a monthly membership fee of \$9.95 US. Remember that your hours can't be carried over to the next month. Additional online hours are only \$2.95 each.

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

7. Through the means described in Paragraphs 5 and 6, CompuServe 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 from their initial sign-on and do not exceed ten hours of online use.

8. In truth and in fact, consumers who participate in CompuServe's free trial offer and use less than 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 7 was, and is, false or misleading.

9. In the advertising and sale of its online service, CompuServe 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 from their initial sign-on and do not exceed ten hours of online use. CompuServe 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 CompuServe and cancel their memberships are treated as members of CompuServe and are charged a monthly membership fee plus applicable hourly 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 CompuServe service. The failure to disclose these facts in light of the representation made was, and is, a deceptive practice.

### **COMPUSERVE'S VIOLATIONS OF SECTION 907 OF THE EFTA**

10. In the course of the online registration process, consumers must select one of several payment options listed on a registration screen titled "Signup - Billing/Country." These options include credit and charge cards and a payment method referred to as "Direct Debit." CompuServe automatically debits the checking accounts of consumers choosing the Direct Debit option, but requires such consumers to sign and submit a written authorization form before debiting their accounts. Additionally, although CompuServe does not identify debit cards as a payment option, its payment system will process debit cards presented by consumers in place of credit cards. CompuServe does not, however, obtain written authorization under such a circumstance.

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

12. CompuServe'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 C.F.R. §§ 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 C.F.R. § 205, Supp. I.

13. The acts and practices of CompuServe 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 C.F.R. §§ 205.10(b) and (d).

Therefore, the Federal Trade Commission this \_\_\_\_\_ day of \_\_\_\_\_, 1997 has issued this complaint against respondent.

By the Commission.

Donald S. Clark  
Secretary

SEAL:

[Exhibits A-C attached to paper copies of complaint, but not available in electronic form.]

## ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from CompuServe, Inc. (“CompuServe”).

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) 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.

The complaint alleges that CompuServe’s advertisements and statements online to consumers violated the Federal Trade Commission Act (“FTC Act”). Section 5 of the FTC Act prohibits false, misleading, or deceptive representations or omissions of material information. See 15 U.S.C. §§ 45-58, as amended. The complaint also alleges that CompuServe’s billing practices violated the Electronic Fund Transfer Act (“EFTA”) and its implementing Regulation E. Sections 907(a) of the EFTA and 205.10(b) of Regulation E permit preauthorized electronic transfers from consumer accounts only if such transfers are authorized by consumers in writings that are signed or similarly authenticated. See 15 U.S.C. § 1693e(a); 12 C.F.R. § 205.10(b). Sections 907(b) of the EFTA and 205.10(d) of Regulation E require advance written notice to consumers of preauthorized transfers varying in amount from previous preauthorized transfers. See 15 U.S.C. § 1693e(b); 12 C.F.R. § 205.10(d).

The complaint alleges that CompuServe represented that consumers who participate in its free trial offer will not be charged, provided only that they use the ten hours of allotted trial time within one month of their initial sign-on and do not exceed ten hours of online use. This representation is false, according to the complaint, because consumers who participate in CompuServe’s free trial offer and use less than 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. The complaint also alleges that CompuServe 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 cancel are treated as members of CompuServe and are charged a monthly membership fee plus applicable hourly fees. These fees continue until the consumers affirmatively cancel their memberships. These practices, according to the complaint, constitute deceptive practices in violation of Section 5 of the FTC Act.

The complaint also alleges that, because CompuServe has debited consumers’ accounts via their debit cards without their authorization, it violated Sections 907(a) of the EFTA and 205.10(b) of Regulation E. In addition, the complaint alleges that CompuServe failed to provide consumers with advance written notice of transfers from their accounts varying in amount from previous transfers, thereby violating Sections 907(b) of the EFTA and 205.10(d) of Regulation E.

The proposed consent order contains provisions designed to remedy the violations



charged and to prevent CompuServe from engaging in similar acts and practices in the future. Specifically, Paragraph I of the proposed order prohibits CompuServe, in connection with advertising, promoting, selling, or distributing any online service, from misrepresenting the terms or conditions of any trial offer of such online service.

Paragraph II of the proposed consent order prohibits CompuServe, in connection with advertising, promoting, selling, or distributing any online service, from representing that the online service is “free,” “without risk,” “without charge,” “without further obligation,” or words of similar effect unless CompuServe discloses, “clearly and prominently,” any obligation to cancel or take other affirmative action to avoid charges for use of the Online Service.

Paragraph II also contains two provisos that set out the requirements of a “clear and prominent” disclosure. First, with respect to a covered representation made by CompuServe in detailed instructional materials distributed to consumers (*e.g.*, starter kits and guidebooks), the disclosure must be in a type size and in a location that are sufficiently noticeable so that an ordinary consumer could notice, read, and comprehend it. Second, as to representations made through other media, CompuServe must provide a statement directing consumers to a location where the required disclosure 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). Audio statements shall be delivered in a volume and cadence sufficient for an ordinary consumer to notice, hear, and comprehend them. Video statements shall be of a size and shade and shall appear for a duration sufficient for an ordinary consumer to notice, read, and comprehend them. 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.

Paragraph III supplements Paragraph II. It provides that CompuServe, in connection with advertising, promoting, selling, or distributing any online service, shall disclose, “clearly and prominently,” during the final registration process, and prior to consumers incurring any financial obligation or liability, the terms of all mandatory financial obligations that will be incurred by consumers as a result of using such online service. Specifically, subparagraph III.A. requires CompuServe to disclose the financial terms and conditions of any plan (*e.g.*, trial offer) by which consumers enroll in or renew enrollment in the online service. Moreover, if such plan exists, CompuServe must disclose, “clearly and prominently,” any obligation to cancel or take other affirmative action to avoid charges and provide at least one reasonable means by which consumers may effectively cancel their enrollment. Subparagraph III.B. requires CompuServe to disclose any mandatory membership, enrollment, or usage fees (*e.g.*, monthly or hourly usage charges).

For purposes of 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. The disclosure shall not be avoidable by consumers.

Paragraph IV requires CompuServe, in connection with an electronic fund transfer from a consumer account, to obtain authorization for the transfer, as required by Section

907(a) of the EFTA and Section 205.10(b) of Regulation E. In addition, CompuServe must provide advance notice of electronic fund transfers from consumer accounts that vary in amount from previous transfers, as required by Section 907(b) of the EFTA and Section 205.10(d) of Regulation E.

Paragraphs V through IX contain provisions generally found in Commission consent orders, including record-keeping requirements, distribution requirements, notice requirements, and a requirement that CompuServe submit a report setting forth the manner in which it has complied with the consent order.

Finally, Paragraph X contains a provision terminating the order, under ordinary circumstances, twenty years from the date of its issuance.

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.