various types of electronic payment systems available to consumers; (2) the obligations of consumers, merchants, and financial institutions in using such systems; (3) the methods by which such payment systems are used, including how consumers may attempt to prevent the fraudulent use of those systems; (4) the legal protections available to consumers; and (5) the organizations, including law enforcement agencies, from which consumers may obtain further information or assistance. The consumer education program must be approved by the Commission's Associate Director for Credit Practices.

Finally, Paragraph XIII 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.

Donald S. Clark,

Secretary.

Statement of Commissioner Roscoe B. Starek, III, Concurring in Part and Dissenting in Part in America Online, Inc., File No. 952–3331

Although I have voted to accept for public comment the consent agreement with America Online, Inc. (''AOL''), the extensive consumer education remedy contained in paragraph XII of the proposed order is far too broad. Once again, a majority of the Commission is willing to use a negotiated settlement to compel speech that it would have virtually no chance of persuading a court to require.

The proposed consumer education program is an extremely comprehensive endeavor that no doubt will provide valuable information to consumers of online services about the use of electronic payment systems. Further, it is more closely related to the violations alleged in the complaint than the sunscreen advertising ''consumer education'' remedy in the proposed consent agreement with Schering-Plough Healthcare Products, Inc. accepted for comment two months ago.[1] Nonetheless, as a fencing-in remedy it is too broad to be reasonably related to AOL's alleged law violations.

The complaint alleges that AOL misrepresented and deceptively failed to disclose material information about its billing practices, misrepresented the terms of its checking account debiting program, and violated provisions of the Electronic Fund Transfer Act and its implementing Regulation E pertaining to consumer authorization of electronic payments. As fencing-in relief, the order requires AOL to establish and implement a program lasting at least one year to educate consumers about the use of electronic payment systems.[2] The program must ''be of a scope and employ media reasonably necessary to reach a wide audience of Consumers [of online services], including but not limited to'' 50,000 color brochures, the Internet, and AOL's online service. Proposed order, ¶XII(C) (emphasis added).

The order also requires that the program include, but not be limited to, information about: various types of electronic payment systems available to Consumers; obligations of Consumers, merchants, and Financial Institutions in using such systems; how such payment systems are used, including the means by which Consumers may attempt to prevent the fraudulent use of those systems; various legal protections available to Consumers under each system; and organizations, including law enforcement agencies, from which Consumers may obtain further information or assistance. Proposed order, ¶XII(D) (emphasis added).

Although some form of consumer education program may well be warranted as fencing-in relief, this program goes too far. AOL is not so likely to engage in a whole host of future law violations that it should be required to educate consumers about how to use ''various types of electronic payment systems'' and how to attempt to prevent fraudulent use of those systems. Nor do I think that it is reasonable in scope to require AOL to inform consumers about their own obligations and the obligations of merchants and financial institutions generally in using electronic payment systems. Similarly, requiring AOL to educate consumers about ''various legal protections'' for consumers using electronic payment systems is too broad to be reasonably related to the prevention of future deception like or related to that alleged in the complaint. That the alleged deception here involves the use of electronic payment systems is not enough of a nexus to justify a consumer education program covering all risks, obligations, and law violations involving electronic payment systems. Following that logic, information about driving a car and traffic laws would be reasonably related to a violation of the Commission's Used Car Rule.[3]

Finally, the consumer education provision would require content and dissemination ''not limited to'' what is stated in the order. Although it is not clear how the Commission could enforce content and dissemination requirements not described in the order, it makes little sense to accept language indicating that even the extensive dissemination measures and speech described in the proposed order may not be enough to comply with the basic requirement to establish a program to educate consumers about the use of electronic payment systems.

If this relief were sought in litigation, rather than obtained through a consent agreement, it would not withstand scrutiny under the First Amendment. The information that the order specifically requires AOL to disseminate is far more extensive than necessary to prevent future violations by AOL, and the boundaries of the ''not limited to'' language are unclear. Even if a respondent waives its First Amendment rights in a consent agreement, the Commission—as a government agency acting in the public interest—should not compel speech through negotiation that it has no colorable chance of obtaining in litigation.

[FR Doc. 97–12581 Filed 5–13–97; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 962–3096]

CompuServe, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would, among other things, require the respondent, an Internet service provider, when offering a ''free trial'' with automatic membership enrollment or renewal, to disclose clearly and prominently any obligation to cancel to avoid charges, to provide at least one reasonable means of canceling, and to obtain consumers' authorization before debiting their accounts. The complaint

[1] See Schering-Plough Healthcare Products, Inc., File No. 942–3341 (separate statements of Commissioner Azcuenaga and Commissioner Starek concurring in part and dissenting in part).

[2] Within 90 days of the order's issuance, AOL must submit, for review and approval by the Associate Director of the Bureau of Consumer Protection's Division of Credit Practices, a draft plan for the program and drafts of any materials to be disseminated. Proposed order, ¶XII.

[3] See Used Motor Vehicle Trade Regulation Rule, 16 CFR Part 455.

accompanying the consent agreement alleges that CompuServe's ''free trial'' offers resulted in unexpected charges for many consumers, because the offers did not make clear that consumers had an affirmative obligation to cancel before the trial period ended. As a result, consumers who failed to cancel were automatically enrolled as members and began incurring monthly charges. The complaint also alleges that CompuServe failed to obtain appropriate authorization before making electronic withdrawals from the accounts of consumers.

DATES: Comments must be received on or before July 14, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

David Medine, Federal Trade Commission, S–4429, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580, (202) 326–3025

Lucy Morris, Federal Trade Commission, S–4429, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580, (202) 326–3295

Steven Silverman, Federal Trade Commission, S–4429, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580, (202) 326–2460.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for May 1, 1997), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

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 writing that are signed or similarly authenticated. *See* 15 U.S.C. § 1693(a); 12 CFR § 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 CFR § 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.

Donald S. Clark,

Secretary.

[FR Doc. 97–12582 Filed 5–13–97; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 952–3332]

Prodigy Services Corporation; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair method of competition, this consent agreement, accepted subject to final Commission approval, would, among other things, require the respondent, an Internet service provider, when offering a ''free trial'' with automatic membership enrollment or renewal, to disclose clearly and prominently any obligation to cancel to avoid charges, to provide at least one reasonable means of canceling, and to obtain consumers' authorization before debiting their accounts. The complaint accompaning the consent agreement alleges that Prodigy's ''free trial'' offers resulted in unexpected charges for many consumers, because the offers did not make clear that consumers had an affirmative obligation to cancel before the trial period ended. As a result, consumers who failed to cancel were automatically enrolled as members and began incurring monthly charges. The complaint also alleges that Prodigy failed to obtain appropriate authorization before making electronic withdrawals from the accounts of consumers.

DATES: Comments must be received on or before July 14, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: David Medine, Federal Trade Commission, S–4429, 6th St. and Pa. Ave., NW., Washington, DC 20580. (202) 326–3025. Lucy Morris, Federal Trade Commission, S–4429, 6th St. and Pa. Ave., Washington, DC 20580. (202) 326–3295.

Steven Silverman, Federal Trade Commission, S–4429, 6th St. and Pa. Ave., NW., Washington, DC 20580. (202) 326–2460.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for May 1, 1997), on the World Wide Webb, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

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 Prodigy Services Corporation (''Prodigy'').

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 Prodigy'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