

false and deceptive advertising of Gateway's Internet access service, "Gateway.net." The Commission's proposed complaint alleges that Gateway advertised that with the purchase of certain computer models, Gateway.net Internet access service would be included for free for one year, or could be purchased for a flat fee, such as \$14.95 a month. In fact, for many consumers one year of Gateway.net was not free or obtainable for a flat fee, because these customers incurred long distance charges to access Gateway.net, or were charged \$3.95 per hour by Gateway for the use of a "toll-free" telephone number to access the service. The Commission's proposed complaint challenges these "free" or "flat-fee" ads as both misrepresentations and as failures to disclose material facts under Section 5 of the FTC Act. Further, the complaint alleges that Gateway falsely represented that the use of its "toll-free" 1-888 number to connect to the Internet was free to consumers. In fact, Gateway charged consumers \$3.95 per hour for the use of this "toll-free" number.

The proposed consent order contains provisions designed to prevent Gateway from engaging in similar acts and practices in the future. Part I of the proposed order prohibits the company from misrepresenting the price or cost of any Internet access service, or of any "toll-free" telephone number. Under the order, the term "Internet access service" is defined as "any service that enables a consumer to access the Internet or any other electronic network."

Part II of the order prohibits representations regarding the price or cost of any "1-800" or "toll-free" telephone number provided to the consumer by Gateway unless it discloses, clearly and conspicuously, the dollar amounts of any hourly surcharges and any other fees it charges for the use of such numbers. Part III of the proposed order requires that Gateway clearly and prominently disclose that consumers may have to pay long distance telephone charges, hourly surcharges, or other costs in excess of local telephone service charges to access any Internet access service. Gateway must disclose the dollar amounts of any such fees within its control or the control of any of its promotional partners providing the service. It must also provide a means for each consumer to ascertain whether he or she would incur such fees to access the service, and inform consumers that they should contact their local telephone company to determine whether using the access telephone number for the location closest to them

will result in charges in excess of local telephone service charges.

Part IV of the order requires that Gateway maintain customer support to answer consumer inquiries regarding any Internet access service, including but not limited to, an adequately staffed toll-free number where consumers can determine whether they have a local access number for such service.

Part V is a redress provision requiring that Gateway refund all charges for "toll-free" numbers paid by local access plan gateway.net customers who registered for the plan between January 19, and April 1, 1999, and who paid such fees up until August 15, 1999. Parts VI through IX of the proposed order contain the usual reporting and compliance provisions, and, Part X 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. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,
Secretary.

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FEDERAL TRADE COMMISSION

[File No. 002 3061]

Juno Online Services, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before June 14, 2001.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Darren Bowie or Laura Sullivan, FTC/S-4002, 600 Pennsylvania Ave., NW., Washington, DC 20580. (202) 326-2018 or 326-3327.

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 an accepted by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 15, 2001), on the World Wide Web, at <http://www.ftc.gov/os/2001/05/index.htm>. A paper copy can be obtained from the FTC Public Reference Room, Room H-130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. 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 containing a consent order from Juno Online Services, Inc. ("Juno").

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.

Juno is an Internet service provider with approximately 842,000 subscribers to its fee-based services and nearly 4 million total active subscribers. Juno typically charges subscribers a flat monthly fee for its fee-based services. The company's subscriber revenues reached early \$34.5 million for 1999 and \$73.9 million last year.

This matter concerns allegedly false claims for its "free" and fee-based online services. The Commission's proposed complaint alleges:

- Juno falsely represented that consumers participating in its free trial periods for its fee-based Internet service could cancel at any time before the free trial expired and avoid incurring charges, and Juno failed to disclose the restrictive procedures that subscribers must follow to cancel this service;
- Juno misrepresented the duration of its free trial offers for its fee-based service and, in other instances, failed to disclose that these free trial periods must be completed within a month;
- Juno misrepresented that there were no additional costs associated with using its free Internet service, and failed to adequately disclose important information about potential long distance telephone toll charges ("toll charges") in promoting its free, fee-based and free trial period offers;
- Juno failed to adequately disclose in its advertising for certain rebate programs both the possibility of incurring toll charges while using its fee-based Internet service and applicable cancellation penalties; and
- Juno misrepresented that its Internet service was available for purchase at certain prices, when it was not, and concurrently misrepresented the purpose for which it solicited credit card and other personal identifying information from consumers

The proposed consent order contains several provisions designed to prevent Juno from engaging in similar acts and practices in the future and requires redress for certain injured consumers.

Part I of the proposed consent order prohibits Juno from misrepresenting the price or cost of any electronic mail, Internet or other online service ("Internet services"). The Part also prohibits Juno from misrepresenting the ability or terms by which consumers can cancel these Internet services, or the amount of time consumers have to use these services during a free trial period before fees are charged. Part I further prohibits Juno from falsely representing that Internet service is available for purchase—when it is not—and from falsely representing why it requests or collects credit card or any other personal identifying information from consumers.

Part II of the proposed consent order prohibits Juno from beginning to compute the billing cycle or free trial period for its Internet services before the consumer is able to use these services. In cases, however, where it is necessary to provide consumers with a software upgrade or hardware installment before

they can use these services as advertised, Juno can comply with this Part if it clearly and conspicuously discloses when it will begin to compute the billing cycle or free trial period for these consumers before they register for these services.

Part III of the proposed consent order requires Juno to clearly and conspicuously disclose obligations that consumers have to cancel their Internet service and the procedures consumers must follow to effectively cancel their service.

Part IV of the proposed consent order requires Juno to provide consumers with reasonable means to cancel its Internet services, at a minimum providing for cancellation through e-mail and a toll-free telephone number. The Part further requires Juno to maintain adequate customer support to promptly handle requests for cancellation, terminating service before the next billing cycle.

Parts V and VI of the proposed consent order require Juno to disclose clearly and conspicuously potential toll charges associated with its services and any cancellation penalties.

Part VII of the proposed consent order requires that Juno provides consumers with reasonable means to determine the telephone numbers available for accessing its Internet services and the town or city where these numbers are located—at least making this information available in a directory posted on its Web site and through a toll-free telephone number. The Part further requires Juno to maintain adequate customer support to respond to consumer inquiries about its access telephone numbers.

Part VIII of the proposed consent order prohibits Juno from using or disclosing the personal identifying information obtained by the company in connection with its deceptive dry test advertisements. The Part further conditions the Commission's approval of this consent order on the veracity of representations made by Juno that: (1) did not collect credit card numbers provided by consumers responding to these dry test advertisements; (2) it has since deleted any other personal identifying information that it did collect from consumers in connection with these advertisements; and (3) it did not share this information with any third party.

Part IX of the proposed consent order prohibits Juno from providing the means and instrumentalities for any third party to violate any provision of the consent order.

Part X of the proposed consent order requires Juno to offer reimbursement to

certain consumers for toll charges incurred in the first two months of subscribing to its Internet services. Eligible consumers include those who: (a) subscribed to Juno's Internet service as part of a rebate program that required the purchase of another product or service and subscription to respondent's Internet services for a period of more than a month; and (b) cancelled their subscription and either (i) identified the unavailability of a local access number as a reason for the cancellation; or (ii) complained to Juno about incurring telephone toll charges. Eligible consumers are required to supply Juno with a copy of their telephone bill(s) reflecting the amount of the toll charges they incurred. Consumers, however, who incurred such toll charges at least 18 months prior to the date on which they mailed their application form, also can prove their claim with (a) a copy of a check or other form of payment; or (b) a written declaration indicating the amount of the toll charges that they incurred. Consumers who provide these alternative proofs of claim are entitled to receive a reimbursement not to exceed a maximum dollar amount.

Parts XI through XV of the proposed consent order are standard record keeping and compliance provisions. Part XIII requires that respondent provides a summary and explanation of the consent order requirements and the consent order to all retailers and other parties who promoted its Internet services as part of a rebate program. Part XVI of the proposed consent order "sunsets" the order after twenty years, with certain exceptions.

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

By direction of the Commission.

Donald S. Clark,
Secretary.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary of Health