

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

In the Matter of

**JUNO ONLINE SERVICES, INC.,
a corporation.**

FILE NO. 002-3061

**AGREEMENT CONTAINING
CONSENT ORDER**

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

IT IS HEREBY AGREED by and between Juno Online Services, Inc., by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent Juno Online Services, Inc., is a Delaware corporation with its principal office or place of business at 1540 Broadway, New York, NY 10036.
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 pursuant to this agreement.
4. This agreement 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 thirty (30) 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 an admission by proposed respondent that the law has been violated as alleged in the draft complaint, or that the 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 This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1)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 with 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's address as stated in this agreement by any means specified in Section 4.4(a) 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, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the draft complaint and consent order. It 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 definitions shall apply:

1. Unless otherwise specified, "respondent" shall mean Juno Online Services, Inc., a corporation, its successors and assigns and its officers, agents, representatives, and employees.
2. "Clearly and conspicuously" shall mean as follows:
 - A. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services and software), the disclosure shall be presented simultaneously in both the audio and visual portions of the advertisement. Provided that, in any advertisement presented solely through visual or audio means, the disclosure may be made through the same means in which the ad is presented. Provided further that, in any advertisement communicated through interactive media which is presented predominantly through visual or audio means, the disclosure may be made through the same means in which the ad is predominantly presented. The audio disclosure

shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The visual disclosure shall be of a size and shade, with a degree of contrast to the background against which it appears, and shall appear on the screen for a duration and in a location, sufficiently noticeable for an ordinary consumer to read and comprehend it.

- B. In a print advertisement, promotional material, or instructional manual, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.
- C. On a product label, the disclosure shall be in a type size and location on the principal display panel sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

3. In the case of advertisements disseminated by means of an interactive medium, such as the Internet, online services and software, a disclosure made "through the use of a hyperlink" shall mean a hyperlink that in itself is clear and conspicuous, is clearly identified as a hyperlink, is labeled to convey the nature and relevance of the information it leads to, is on the same Web page or other electronic page, and proximate to the triggering representation, and takes the consumer directly to the disclosure on the click-through electronic page or other display screen or panel.

4. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any electronic mail, Internet, or other online service in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication:

- A. the price or cost to consumers of such service;
- B. the ability of or terms by which consumers can cancel any such service;
- C. the amount of time consumers have to use such service during any free trial period without incurring any charges or fees;
- D. that any such service is available for purchase when it is not; and

- E. the purpose for which respondent is requesting or collecting credit card or any other personally identifying information from consumers.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any electronic mail, Internet or other online service, in or affecting commerce, shall not begin to compute:

- A. the billing cycle for such service; or
- B. any free trial period for such service,

until the consumer is able to access such electronic mail, Internet or other online service.

Provided that, where an existing subscriber to any of respondent's services requires a software upgrade or any new or existing subscriber requires a hardware installation to use any such electronic mail, Internet or other online service in the manner advertised, respondent may comply with this Part if it provides clear and conspicuous notice, prior to such subscriber registering for such service, of the date certain from which respondent will begin to compute the (i) billing cycle for such service; or (ii) any free trial period for such service.

III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any electronic mail, Internet or other online service, in or affecting commerce, shall disclose, clearly and conspicuously:

- A. in any advertisements or promotional materials for such service, any and all obligations of the consumer to cancel the service to avoid incurring any charges or fees; and
- B. during the registration process for any such service and thereafter, in a manner that is readily accessible by consumers: (1) all cancellation procedures consumers must follow to cancel the service; and (2) the date certain by which consumers must cancel the service to avoid incurring any charges or fees.

Provided that, for the purposes of Part III. B, the information respondent is required to clearly and conspicuously disclose shall be deemed "readily accessible" if respondent makes such information available to consumers:

1. through the use of a clear and conspicuous hyperlink on respondent's Web site, that is labeled to convey the nature and relevance of the information it leads to, and directly takes the consumer to the information required by Part III. B on the click-through electronic page or other display screen or panel; and
2. through the use of a toll free telephone number.

IV.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any electronic mail, Internet or other online service, in or affecting commerce, shall:

- A. provide to consumers reasonable means to cancel any such service, including, but not limited to, means to cancel electronically and through a toll-free telephone number.

Provided that, respondent shall only be required to clearly and conspicuously disclose the means to cancel electronically to any consumer whose request for cancellation through a toll-free telephone number is not answered by respondent within 2 minutes;

- B. maintain adequate customer support to receive and process consumers' requests for cancellation of any such service; and
- C. process promptly any consumer's request for cancellation of any such service and terminate such service prior to the next billing cycle.

V.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any electronic mail, Internet or other online service that is sold or distributed in connection with the purchase of another product or service, shall not make any representation, in any manner, expressly or by implication, about the price or cost to consumers of such electronic mail, Internet or other online service, or of such other products or services, unless it clearly and conspicuously discloses:

- A. the dollar amounts of any and all fees, charges, rebate repayments, and other costs consumers are required to pay to cancel any such electronic mail, Internet or other online service;

- B. that consumers may have to pay long distance telephone charges, or if it is the case, any other costs in excess of local telephone service charges to access such electronic mail, Internet, or other online service;
- C. the dollar amounts of any costs assessed by respondent, if any;
- D. means for consumers to determine the telephone numbers available for accessing such electronic mail, Internet, or other online service and the town or city where those numbers are located; and
- E. that consumers should contact their local telephone company to determine whether using the access telephone number for the location closest to them will incur charges in excess of local telephone service charges.

Provided that, in the case of advertisements disseminated by means other than through an interactive electronic medium, respondent may comply with Part V. E above by making a clear and conspicuous disclosure of the information required by that subpart at the time consumers inquire, through means provided by respondent, about the availability of telephone numbers for accessing any such electronic mail, Internet or other online service and the town or city where those numbers are located.

Provided further that, in the case of advertisements disseminated through an interactive electronic medium, respondent may make the disclosures required by this Part through the use of a hyperlink as follows:

1. For Part V. A above, any hyperlinks used must be labeled: “Early Cancellation May Result in Additional Charges. Click Here.”; and
2. For Part V. B through E above, any hyperlinks used must be labeled: “Additional Phone Charges May Apply. Click Here.”

VI.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any electronic mail, Internet or other online service not covered under Part V of this order, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the price or cost to consumers of such service, unless it clearly and conspicuously discloses:

- A. that consumers may have to pay long distance telephone charges or, if it is the case, any other costs in excess of local telephone service charges to access such

electronic mail, Internet, or other online service;

- B. the dollar amounts of any costs assessed by respondent, if any;
- C. means for consumers to determine the telephone numbers available for accessing any such service and the town or city where those numbers are located; and
- D. that consumers should contact their local telephone company to determine whether using the access telephone number for the location closest to them will incur charges in excess of local telephone service charges.

Provided that, respondent may comply with Part VI. A through D above, if it:

- 1. in the case of advertisements disseminated through an interactive electronic medium, discloses the information required by Part VI. A through D above, through the use of a hyperlink labeled “Additional Phone Charges May Apply. Click Here.”; and
- 2. discloses, clearly and conspicuously, in advertisements and promotional materials disseminated by means other than through an interactive electronic medium that “Additional Phone Charges May Apply” and also discloses, clearly and conspicuously and prior to the consumer registering for any such service, the information required by Part VI. A through D above.

VII.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any electronic mail, Internet or other online service that is sold or distributed in connection with the purchase of another product or service, in or affecting commerce, shall:

- A. provide reasonable means that are readily accessible to consumers, including at a minimum a toll-free telephone number and a directory accessible on its Web site, to determine the telephone numbers available for accessing any such service and the town or city where those numbers are located; and
- B. maintain adequate customer support to respond to consumer inquiries regarding the telephone numbers available for accessing any such electronic mail, Internet or other online service and the town or city where those numbers are located.

VIII.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division or other device, shall refrain from using or disclosing, except as required in connection with a judicial, legislative or administrative investigation or proceeding or to respond to a request made by a government agency, any personal identifying information retained in its archived database that it collected prior to the entry of this order in connection with the advertising, promotion or offering for sale of any electronic mail, Internet or other online service that respondent advertised for sale, but failed to provide to consumers. By signing this order, respondent hereby certifies that, in connection with advertisements and promotions referred to in this Part: (i) respondent did not transmit to its server(s) any of the credit card information it solicited from consumers; (ii) it has deleted from its server(s) all of the other personal identifying information that it did collect from consumers; and (iii) it did not share such information with any third party. The Commission's acceptance of this settlement is contingent upon the above certification.

IX.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, shall not provide the means and instrumentalities to any other party in making any deceptive representation or deceptive material omission prohibited by this order, in connection with the advertising, promotion, offering for sale, sale, or distribution of any electronic mail, Internet, or any other online service.

X.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, shall offer reimbursement to certain present and former subscribers of its electronic mail and Internet access services as provided in the Part.

SUBSCRIBERS ELIGIBLE FOR REDRESS NOTIFICATION LETTERS

- A. Respondent shall notify by the means required in subpart B of this Part any present or former subscriber of its electronic mail or Internet service who prior to service of this order:
1. subscribed to such service as part of a rebate program that required the purchase of another product or service and subscription to respondent's Internet access service for a period of more than a month; or
 2. canceled his or her subscription(s) to such service and:
 - a. identified the unavailability of a local access number as a reason for the cancellation(s); or

- b. complained to respondent about incurring long distance telephone toll charges (“toll charges”) through the use of such service.

REDRESS NOTIFICATION LETTERS

- B. Respondent shall send, within thirty (30) days from the date of service of this order, by first-class mail to the last known address of each subscriber exact copies of:
 1. the “Refund Offer Notification Letter and Application Form,” attached hereto as Attachment A, to subscribers identified under subpart A.1 of this Part; and
 2. the “Refund Offer Notification Letter and Application Form,” attached hereto as Attachment B, to subscribers identified under subpart A.2 of this Part.

The front of the envelope transmitting Attachment A shall be in the form set forth in Attachment C to this order. The phrase “ATTENTION: Important Information Inside - JUNO LONG DISTANCE Refund Program” shall appear on the front of the envelope in typeface equal or larger in size to 14 point. The front of the envelope transmitting Attachment B shall be in the form set forth in Attachment D to this order. The phrase “ATTENTION: Important Information Inside- JUNO LONG DISTANCE Refund Program” shall appear on the front of the envelope in typeface equal or larger in size to 14 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. 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.

Respondent shall also mail the appropriate “Refund Offer Notification Letter and Application Form” to any such former 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. Respondent shall retain a NCOA licensee to update its list of such former subscribers under this subpart by processing the list through the NCOA database. The mailing required by this subpart shall be made within ten (10) days of respondent’s receipt of a corrected address or information identifying each such former subscriber.

- C. Respondent shall send, by first class mail, exact copies of:

1. the “Refund Offer Notification Letter and Application Form” attached hereto as Attachment A to any subscriber identified under subpart A.1 of this Part who contacts respondent to request reimbursement within one hundred eighty (180) days after the date of service of this order; and
2. the “Refund Offer Notification Letter and Application Form” attached hereto as Attachment B to any subscriber identified under subpart A.2 of this Part who contacts respondent to request reimbursement within one hundred and eighty (180) days after the date of service of this order.

Respondent shall mail Attachment A or Attachment B to the address provided by such subscribers within ten (10) days after the date of the request. The front of the envelope transmitting Attachment A shall be in the form set forth in Attachment C to this order and the front of the envelope transmitting Attachment B shall be in the form set forth in Attachment D to this order.

REDRESS

- D. Respondent, within thirty (30) days of receipt of a subscriber’s “Refund Application Form,” appended to either Attachment A or Attachment B of this order, shall:
1. reimburse all subscribers identified under subparts A.1 or A.2 of this Part for any toll charge(s) incurred prior to the date of service of this order and through use of respondent’s Internet service within sixty (60) days of subscription to such service, for which any such subscriber has not been previously reimbursed. Provided that, in cases where any such subscriber has received partial reimbursement for such toll charge(s), respondent shall reimburse such subscriber for the remainder of such charge(s.) Provided further that, each such subscriber identified under subparts A.1 or A.2 of this Part shall provide respondent with a copy of the subscriber’s telephone bill(s) reflecting the toll charge(s) incurred. Provided, however, in the event a subscriber who applies for reimbursement incurred such telephone charge(s) at least 18 months prior to the date his or her “Refund Application Form,” appended to either Attachment A or Attachment B of this order, is postmarked, respondent shall:
 - a. reimburse an amount not to exceed one hundred dollars (\$100) to any such subscriber who provides:
 - (1) a written declaration indicating the amount of the telephone charges incurred and that his or her telephone company is

unable to send a copy of the telephone bill(s) because such charges were incurred at least 18 months prior to the date such declaration is signed; and

- (2) a copy of a check (or checks) or other form of payment for the toll charge(s); and
 - b. reimburse an amount not to exceed fifty dollars (\$50) to any such subscriber who only provides respondent with a written declaration indicating the amount of the telephone charges incurred and that his or her telephone company is unable to send a copy of the telephone bill(s) because such charges were incurred at least 18 months prior to the date such declaration is signed.
2. not require repayment of the rebate received by any subscriber identified under subpart A.1 of this Part:
 - a. who has canceled or who cancels respondent's Internet service within ninety (90) days after the date of service of this order; and
 - b. for whom no local telephone number is available to access such service;
- E. Respondent shall send reimbursement checks to any subscriber who completes and returns to respondent (1) the "Refund Application Form" section of Attachment A to this order; or (2) the "Refund Application Form" section of Attachment B to this order, postmarked within sixty (60) days of receiving it, and who fulfills the requirements set forth in subpart D of this Part. Respondent shall send each reimbursement check by first-class mail, postage prepaid, within thirty (30) days of receipt of each eligible subscriber's properly completed "Refund Application Form." The front of the envelope transmitting reimbursement checks shall be in the form set forth in Attachment E to this order.

OPPORTUNITY FOR APPLICATION CORRECTION

- F. Respondent shall notify any subscriber who indicates on the "Refund Application Form," appended to either Attachment A or Attachment B of this order, that (s)he is attaching proof of the toll charge(s) incurred and fails to do so, or who fails to otherwise apply properly for a reimbursement, of any error in such subscriber's "Refund Application Form," and shall provide a reasonable opportunity for such subscriber to rectify any such error.

RECORD KEEPING

- G. Respondent within thirty (30) days from service of this order, shall compile and furnish to the Commission separate lists of subscribers identified under (1) subpart A.1 of this Part and (2) subpart A.2 of this Part. Such lists shall contain the name and last known address of each subscriber eligible under subparts A.1 and A.2 of this Part.
- H. Within one (1) year after the date of service of this order, respondent shall furnish to the Commission separate lists of the subscribers of respondent's Internet service who have applied for reimbursement pursuant to subparts A.1 and A.2 of this Part, the amount of each reimbursement request, and the date of mailing and amount of the reimbursement provided to each applicant.
- I. Respondent shall, for three (3) years after the date of service of this order, maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:
 - 1. Sufficient records to identify:
 - a. The name and last known address of each person sent a notification pursuant to this Part and the date the notification was mailed; and
 - b. The name and address of each person who is notified by respondent that his or her reimbursement application is deficient;
 - 2. Sample copies of all letters, descriptions, applications and forms sent to subscribers identified in (1) subpart A.1 and (2) subpart A.2 of this Part, or others pursuant to this order; and
 - 3. Each and every reimbursement application received.

XI.

IT IS FURTHER ORDERED that respondent Juno Online Services, Inc. and its successors and assigns shall for five (5) years after the last date of dissemination of any representation covered by this order maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation.
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their

possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

XII.

IT IS FURTHER ORDERED that respondent Juno Online Services, Inc., and its 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. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

XIII.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, shall within thirty (30) days after the date of service of this order, send by first-class mail, return receipt requested, exact copies of this order and the notice attached hereto as Attachment F, to any third party with which respondent has entered into a contract or any other agreement, prior to the entry of this order, for the advertising, promotion, or sale of respondent's electronic mail, Internet, or other online service as part of any rebate program requiring the purchase of another product or service and subscription to respondent's Internet access service for a period of more than a month.

XIV.

IT IS FURTHER ORDERED that respondent Juno Online Services, Inc., and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as practicable after obtaining such knowledge. All notices required by the Part shall be sent by certified mail to the Associate Director, Division of Consumer Protection, Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

XV.

IT IS FURTHER ORDERED that respondent Juno Online Services, Inc., and its successors and assigns shall, within sixty (60) days after service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

XVI.

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 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 _____ 2000

JUNO ONLINE SERVICES, INC.

By: _____
An officer of the corporation

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APPROVED:

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