

**ATTORNEY GENERAL OF THE STATE OF NEW YORK  
INTERNET BUREAU**

**IN THE MATTER OF:**

**AMERICA ONLINE, INC.**

**ASSURANCE OF DISCONTINUANCE**

Pursuant to the provisions of Article 22-A of the New York General Business Law (GBL), and Section 63(12) of the Executive Law, Eliot Spitzer, Attorney General of the State of New York, has made an inquiry into certain business practices of America Online, Inc. ("AOL"). Based upon that inquiry, the Attorney General concludes as follows:

**FINDINGS OF ATTORNEY GENERAL**

1. AOL is a Delaware corporation, with its principal place of business at 22000 AOL Way, Dulles, Virginia 20166.
2. AOL provides Internet access service in New York, and nationwide.
3. AOL currently has more than twenty-one million subscribers of AOL-branded Internet service in the United States. Approximately 1.9 million of these subscribers are New York residents.
4. The Attorney General has conducted an investigation into complaints, received from consumers, asserting that AOL has not cancelled its subscribers' accounts upon request, thus resulting in these subscribers being billed after they cancelled their Internet service. The Attorney General found that certain of AOL's practices likely led to these problems and/or created an atmosphere that led some consumer service representatives to fail properly to process cancellation calls. Some of these practices are briefly described below.

5. Since 1998, AOL has had in place a system of monetary bonuses and penalties applicable to its consumer services representatives handling cancellation calls. AOL refers to these representatives as "Save Employees," or "Retention Consultants" (hereinafter "Save Employees"), because they are tasked with and rewarded for "saving" subscribers who contact AOL with the initial purpose of canceling their accounts, *i.e.*, persuading these members to remain AOL members.

6. At various times since 2000, AOL has required that in order to earn the incentive portion of his or her salary ("save bonuses"), a Save Employee must "save" a set percentage of all subscribers who call AOL to cancel their Internet service. In 2002, for instance, this minimum "save rate" for each Save Employee was 48 percent; in August 2004, AOL increased it to 49 percent.

7. These save bonuses have been relatively lucrative. For instance, AOL's October 2003 Saves "Incentives and Rewards" guide, distributed to Save Employees, described how "Johnny Saver," who, in a given month, recorded 655 "24 hour" saves (*i.e.*, the consumer did not cancel AOL service within 24 hours of the save), and 320 "90 day saves" (*i.e.*, the consumer did not cancel AOL service within 90 days of the save) would earn a bonus of \$3115 for that month.

8. By contrast, according to AOL materials, "low savers," *i.e.*, those with save rates below the prescribed targets, did not receive these bonuses, and might be referred for "additional training," or deemed ineligible for promotions.

9. Employing various internal procedures to monitor randomized cancellation calls, including procedures required under a January 2004 Consent Order with the FTC,<sup>1</sup> AOL has

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<sup>1</sup> In re America Online, Inc., No. C-4105, 2004 F.T.C. LEXIS 7 (Jan. 28, 2004).

confirmed that certain Save Employees have failed properly to honor cancellation calls and/or failed to handle cancellation calls in accordance with AOL's member retention policies. On those occasions in which AOL detects that a Save Employee failed to follow proper procedures, it may address this in various ways, including by providing additional training, warnings, and in certain cases, termination.

### Statutory Violations

10. The Attorney General believes and alleges that, with respect to its employees' handling of such cancellation calls, AOL has violated New York General Business Law § 349 and New York Executive Law § 63(12).

11. **IT NOW APPEARS** that AOL is willing to enter into this Assurance of Discontinuance, without admitting any violation of law. The Attorney General acknowledges that AOL has cooperated fully and in good faith with this inquiry and is willing to accept the terms of this Assurance of Discontinuance pursuant to Executive Law § 63(15) in lieu of commencing a statutory special proceeding.

### **AGREEMENT**

**IT IS HEREBY UNDERSTOOD AND AGREED** by and between AOL and the Attorney General that:

12. This Assurance of Discontinuance (hereinafter "Assurance") shall apply to AOL in its transactions with New York residents, whether acting through its principals, directors, officers, shareholders, employees, representatives, agents, assigns, successors, or other business entities, whose acts, practices or policies are directed, formulated or controlled by AOL.

13. Within sixty days of the execution date of this Assurance, qualification for

compensation paid by AOL to any call center personnel based on subscribers' consent to continue service in lieu of cancellation of their accounts (e.g., "save bonuses") will no longer be dependent on any minimum saves rate.

14. AOL shall develop a new system of third-party verification whereby, as to every instance in which an AOL member calls AOL with the initial and/or stated purpose of canceling service, an independent third party will verify and record the member's consent to continue service. AOL shall retain all records of such cancellation calls for at least three years.

15. By no later than January 10, 2006, AOL will begin to roll out this verification system in certain call center retention queues, with the effect that, at a minimum, approximately 20-25% of all cancellation calls will be verified in this way by this date; by April 30, 2006, at a minimum, approximately 40-50% of all cancellation calls will be verified in this way. AOL will implement this third-party verification system across all remaining queues by no later than June 1, 2006. During this implementation period (January 10, 2006 through June 1, 2006), AOL will send periodic written reports (approximately one per month or as otherwise agreed by the parties) to the Attorney General that detail AOL's progress in implementing this third-party verification system. If, prior to June 1, 2006, AOL believes in good faith that an extension of thirty days is necessary to complete this project, then it will notify the Attorney in writing and provide a detailed explanation for such delay. Consent to an extension will not be unreasonably withheld.

16. During the implementation period defined in the previous paragraph, AOL will not provide incentive compensation to Save Employees whose queues have implemented third-party verification unless the saves have been verified. Further, once third-party verification is implemented across all queues, all Save Employees' incentive compensation (if any) will be

based solely on saves that have been confirmed through third-party verification.

17. AOL shall, within ten days of the execution date of this Assurance, pay to the State of New York the sum of \$1,200,000 as penalties, and \$50,000 as investigatory costs.

18. AOL shall provide repayments of up to four months of assertedly improper post-cancellation charges to all eligible New York consumers who, within 120 days of the execution date, submit in writing to either AOL or to the Attorney General a signed statement that includes the following information: (a) billing contacts' name and address; (b) the primary or masterscreen name, last four digits of the credit card, checking account, or telephone number to which the account is billed, or the answer to the member's Account Security Question; and (c) a statement that the claimant called to cancel an AOL-branded Internet Service account, did not agree to continue service, and the account was not canceled. This signed statement, if directed to AOL, should be mailed to: America Online, Inc., Attn: NY Member Refund Claims, PO Box 17250, Jacksonville, FL 32245-7250. AOL may assess such claims against its account history records, and if such records indicate that the claimant (i) is not a former AOL member; (ii) was not at any time saved as described in paragraph ¶ 5 of this Assurance; (iii) has already received a refund or chargeback equal to the amount of the asserted claim; or (iv) has also submitted a timely claim in *Clough v. America Online, Inc.*, No. D-CJ-2001-13 (D. Ct. Okla. Oct. 21, 2004), then AOL may provide such information to the Attorney General, together with any relevant records, and will propose and negotiate with the Attorney General an alternative resolution of the claim, if appropriate. AOL will designate an AOL employee to whom the Attorney General may submit claims that it receives directly from consumers.

19. Within six months from the execution date of this Assurance, AOL will submit to

the Attorney General a sworn, certified report setting forth (a) the number of claims received pursuant to ¶ 18; (b) the amount of payments made; and (c) the number and corresponding value of any claims AOL has referred to the Attorney General for a possible alternative resolution and/or denial, pursuant to ¶ 18.

20. On or before August 1, 2006, AOL shall submit to the Attorney General a sworn, certified letter or affidavit setting forth its compliance with all terms of this Assurance.

21. Nothing contained in this Assurance shall be construed to alter or enhance any existing legal rights of any consumer or to deprive any person or entity of any existing private right under the law.

22. Nothing contained herein shall be construed as relieving AOL of the obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of this Assurance be deemed permission to engage in any act or practice prohibited by such law, regulation or rule.

23. The acceptance of this Assurance by the Attorney General shall not be deemed approval by the Attorney General of any of AOL's business practices, and AOL shall make no representation to the contrary.

24. This Assurance is contingent on and relies on the truthfulness and accuracy of all representations made by AOL during this investigation.

25. The "execution date" of this Assurance shall be August 22, 2005.

**WHEREFORE**, the following signatures are affixed hereto this 22nd day of August, 2005.

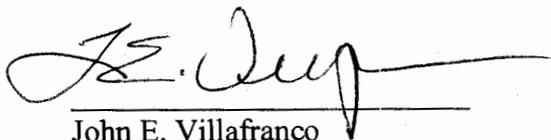
AMERICA ONLINE, INC.

By:



An Officer of AOL Hereby Authorized  
To Enter into this Assurance

By:



John E. Villafranco  
Collier Shannon Scott  
Counsel for AOL  
(202) 342-8400

ELIOT SPITZER

Attorney General of the

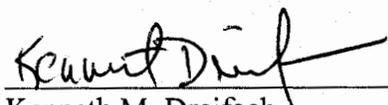
State of New York

120 Broadway

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By:

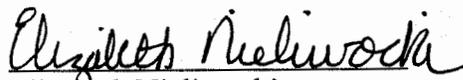


Kenneth M. Dreifach

Assistant Attorney General In Charge

INTERNET BUREAU

By:



Elizabeth Nielwocki

Assistant Attorney General