

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

IN THE MATTER OF:

PEOPLEPC, INC. d/b/a PEOPLE PC Online

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, Andrew M. Cuomo, Attorney General of the State of New York, has made an inquiry into certain business practices of PeoplePC, Inc. d/b/a People PC Online (“PeoplePC”), which owns and operates the website, peoplepc.com. Based upon that inquiry, the Attorney General concludes as follows:

FINDINGS OF ATTORNEY GENERAL

1. PeoplePC, Inc. (“PeoplePC”) is a wholly owned subsidiary of EarthLink, Inc. and is incorporated under the laws of Delaware with its principal place of business at 100 Pine Street, San Francisco, California 94111. PeoplePC owns and operates the website “peoplepc.com.”
2. EarthLink, Inc. is incorporated under the laws of Delaware with its principal place of business at 1375 Peachtree Street, Level A, Atlanta, Georgia 30309.
3. PeoplePC has approximately 1.6 million subscribers. Approximately 50,041 are New Yorkers.
4. Through its own website and websites of such organizations as the American Association of Retired Persons (“AARP”), PeoplePC offers to provide low cost, easy-to-use Internet service through dial-up telephone connections that utilize telephone numbers provided

by PeoplePC.

5. For example, a typical home page for PeoplePC states:

Unlimited Internet Access

\$5.47 per month for the first 3 months

Email Virus Protection. Phisher Security. Spam Controls.

Pop-Up Blocker. Up to 4 Email Addresses. And More!

6. PeoplePC also prominently advertises that it provides “fast, easy connections”

through its “Smart Dialer”:

Our smart dialer makes it easy for you to choose multiple access numbers and then it automatically selects which of those is available each time you log on. So you get fast, easy connections in just one click.

* * *

Just enter your area code and then select from the list of available cities or even select individual numbers within that city. That’s it! Smart Dialer chooses which of those numbers is the fastest and most available each time you log on.

7. Based on the consumer’s local telephone number, the “Smart Dialer” proposes a list of access numbers having the same area code or in the same geographic area and directs the consumer to select several through which to connect to the Internet. While all of the numbers provided by the “Smart Dialer” have the same area code as the consumer’s telephone number or appear to be in the same geographic area, they may not be local numbers and the use of these numbers to access PeoplePC’s Internet service may result in additional charges.

8. PeoplePC does not clearly and conspicuously disclose on the web page promoting the low price for PeoplePC’s Internet service that consumers who use telephone connections to access PeoplePC’s Internet service may incur additional costly toll charges that far exceed the advertised low monthly price.

9. In addition, PeoplePC does not disclose on the web page demonstrating how its “Smart Dialer” works the fact that consumers may incur costly toll charges if they do not verify with their local telephone company that the access numbers provided are in fact local.

10. Instead, PeoplePC places information regarding toll charges in locations on its website that are neither prominent nor adequately identified such as in PeoplePC’s lengthy, legalistic Online Services Agreement, which is accessible through a hyperlink inconspicuously labeled “Legal.” Information regarding toll charges is also available through other inconspicuous hyperlinks labeled “Access Numbers” and “FAQs.”

11. While PeoplePC requires consumers to click a box immediately prior to purchase indicating that they agree to be “responsible for determining whether phone toll-charges will result from the use of any phone numbers . . . selected for dial-in Internet access,” this statement in and of itself is inadequate to alert consumers to the real possibility that (i) the selection of certain access numbers proposed by PeoplePC, including those with the same area code or in the same geographic area as the consumer’s local number, may result in substantial additional charges and (ii) consumers need to check all numbers, including those that have the same area code or appear to be in the consumer’s geographic area, with their telephone company.

12. The Attorney General has received complaints from consumers who signed up for PeoplePC’s low cost Internet service only to find themselves billed substantial additional amounts for local access charges they could not afford and to which they had not knowingly agreed.

13. The Attorney General finds that the practices described above violated New York General Business Law §§ 349 and 350 and New York Executive Law § 63(12).

14. **IT NOW APPEARS** that PeoplePC is willing to enter into this Assurance of Discontinuance (“Assurance”), without admitting any violation of law. The Attorney General is willing to accept the terms of this Assurance of Discontinuance pursuant to Executive Law Section 63(15) in lieu of commencing a statutory special proceeding.

AGREEMENT

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

15. This Assurance shall apply to PeoplePC and its respective principals, directors, officers, shareholders, employees, representatives, agents, assigns, successors, or other business entities whose acts, practices or policies it directs, formulates or controls.

16. “Aggrieved consumer” shall mean any New Yorker who filed a complaint with the New York State Attorney General’s Office or any New Yorker who complained to PeoplePC or Earthlink relating to the subject matter of this investigation during the time period prior to and up to six months following the execution date hereof.

17. “Clear(ly) and conspicuous(ly)” shall mean of a size and shade appearing on the web page, printed page or other visual advertisement in a manner so as to be reasonably unavoidable and readable and is presented prior to the consumer incurring any financial obligation, and using language and syntax sufficient for an ordinary consumer to read and understand the disclosure; provided, however, that nothing contrary to, inconsistent with, or that otherwise interferes with a consumer’s understanding of the disclosure shall be used in any advertisement.

18. "Hyperlink" means a link of a web page that leads directly to another web page on the same or a different website.

19. On its website and in its non-web based advertising, PeoplePC shall clearly and conspicuously disclose all material terms of its Internet service subscriptions, including

- (i) that consumers who access PeoplePC's Internet service may incur telephone toll charges from their local telephone service provider as a result of using PeoplePC's Internet service in addition to the advertised monthly rate;
- (ii) that access numbers proposed by PeoplePC may carry additional charges even if the access number contains the same area code, or is in the same geographic area as, the consumer's telephone number; and
- (iii) an explanation as to how consumers can determine whether they will be subject to such additional charges.

20. PeoplePC shall make clear and conspicuous disclosures regarding the existence of possible additional charges wherever it advertises a price for its Internet services and/or wherever it makes reference to access numbers, telephone or other charges, fees or payment options (collectively referred to as "payment/access references"). These disclosures shall be in close proximity to the advertised price and payment /access reference. In the event that these disclosures are too detailed to be described fully in proximity to the advertised price or payment/access references, PeoplePC may utilize a hyperlink or other similar technology to link the consumer directly to a web page that provides the clear and conspicuous disclosures about possible additional charges. The hyperlinks, or any other similar technology, must be in close proximity to the advertised price and payment/access reference, reasonably unavoidable and

readable, and clearly labeled to indicate the nature of the disclosures, i.e., “Local telephone charges may also apply.”

21. PeoplePC shall, upon execution of this Agreement, make restitution to an aggrieved consumer in the amounts as follows: (a) three months’ account service charges, and (b) one month’s telephone toll charges for calls made using an access number suggested, offered or made available by PeoplePC unless such consumer has already been compensated by PeoplePC for such charges.

22. PeoplePC shall, upon execution of this Agreement, pay to the State of New York, by certified check, \$20,000: \$10,000 as penalties and \$10,000 as investigatory costs.

23. Within ninety (90) days of the execution of this Assurance and every ninety (90) days thereafter up to a period of one (1) year after the date of execution of this Assurance, PeoplePC shall forward to the Attorney General an affidavit, subscribed to by a PeoplePC officer authorized to bind PeoplePC, confirming that PeoplePC is in full compliance with each and every term of this Assurance. Said affidavit shall include a sample of PeoplePC’s then current website revised to comply with this Assurance.

24. Nothing contained herein shall be construed to deprive any person or entity of any existing private rights under the law, nor shall anything contained herein be construed to deprive PeoplePC of any rights or defenses under the law.

25. Nothing contained herein shall be construed as relieving PeoplePC 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.

26. The acceptance of this Assurance by the Attorney General shall not be deemed approval by the Attorney General of any of PeoplePC's business practices, and PeoplePC shall not make any representation to the contrary.

27. Any violation of the terms of this Assurance shall constitute *prima facie* evidence of violation of the applicable law in any civil action or proceeding thereafter commenced against PeoplePC by the Attorney General.

28. This Assurance shall be effective as of the "execution date" set forth below.

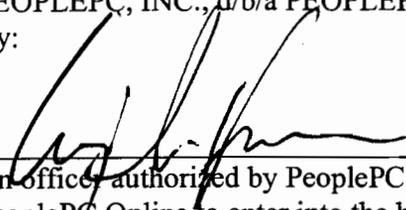
29. All notices or other communications sent by PeoplePC hereunder shall be sent by trackable, overnight delivery, and addressed to:

Office of New York Attorney General
Chief, Internet Bureau
120 Broadway
New York, NY 10271

WHEREFORE, the following signatures are affixed hereto this 20th day of ^{September} ~~July~~, 2007

(the "execution date").

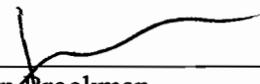
PEOPLEPC, INC., d/b/a PEOPLEPC Online
By:



An officer authorized by PeoplePC, Inc., d/b/a
PeoplePC Online to enter into the herein
agreement

ANDREW M. CUOMO
Attorney General of the
State of New York
120 Broadway
New York, New York 10271-0332

By:



Justin Brookman
Assistant Attorney General In Charge
INTERNET BUREAU



Karen Geduldig
Assistant Attorney General
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