

July 1, 1999

Mr. Donald S. Clark
Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20680

**Re: Interpretation of Rules and Guides for Electronic Media -- Comment,
FTC File No. P974102**

Comments of Dell Computer Corporation

Dear Secretary Clark:

Dell Computer Corporation submits these supplemental comments in response to the Request for Public Comments published in the Federal Register on May 6, 1998 (63 Fed. Reg. 24996) ("Notice") and the FTC's announcement that the record in this proceeding is open for the submission of additional comments.

Dell is the world's leading direct computer systems company and is the leading computer systems vendor to U.S. small and medium businesses. Ranked No. 78 among the Fortune 500 companies and No. 363 in the Fortune Global 500, Dell currently sells more than \$18 million in products each day over the Internet. Dell's online sales now account for approximately 30 percent of its annual sales, which were \$434 million for the first quarter of 1999, and \$19.9 billion for the past four quarters. One of the company's strategic goals is to do at least 50 percent of its business online by the end of the year 2000.

Dell is strongly committed to responsible online business practices, and backs this commitment in several ways. For example, Dell is a proud participant in and founding member of the BBB*OnLine* Privacy Program. (Dell received BBB*Online*'s first seal.) Dell also offers one of the industry's first online shopping guarantees, which gives Dell's online customers assurance with regard to e-commerce related credit card theft, misuse, and fraud.

Dell appreciated the Commission's invitation to participate in the May 14, 1999 public workshop. The discussion during the workshop made clear that the Internet is still in an early stage. Consumers, vendors, and regulators all are learning from one another, and we were encouraged by the free and frank nature of the comments made at the workshop. The following themes, among others, emerged from the discussion:

Context. In this medium, it is extremely difficult, if not impossible, to mandate specific design requirements that implement the performance standards ("proximity," "clear and conspicuous") on which the Commission is focused. Whether a particular line of text or labeled button is sufficiently "proximate" or "clear and conspicuous" or "repeated" in the context of the Internet will require case-by-case examination. Standards drawn from the print context (like font size, distance down the page, or distance across several pages) simply do not make sense in this new medium, in which variations in consumers' computer equipment make it difficult for an advertiser to guarantee that its disclosures will appear in a particular type size or location on every consumer's screen. It may be that new norms will emerge as this developmental medium changes. For the moment, however, specific rules are unlikely to meet their intended goals in this consumer-driven, constantly evolving context. The use of performance standards -- rather than design requirements -- is especially important at this stage. Technical standards may freeze retailers into ineffective methods of communication, due to the rapid pace of technological evolution in the industry. Indeed, such ineffective methods could have the undesirable effect of annoying consumers, thus decreasing advertisers' ability to communicate. Additionally, technical requirements are likely to make it more difficult for small businesses to compete on the Internet.

Change. The Internet changes every moment of every day. Online consumers are very quick to abandon sites that frustrate them, and commercial sites are very quick to change. Consumers are empowered by this constant change, because the explorability of this medium is only increasing. Given the pace of change in e-commerce, a measured approach to regulation makes sense.

Consumers. The best consumer (from any perspective) is a confident and well-informed consumer, and for this reason disclosures should be easy to find, legible, and understandable. It is clear, however, that the consumer-enabling nature of Internet technology has major implications for Commission policy. Consumers can use the Internet to obtain enormous amounts of information, choose what they want to examine, study it at their leisure, and return for further examination when they want. Moreover, new Internet access devices and plans will make it possible for many more citizens of the world to have access to the Internet. The Commission should undertake a broad examination of consumer behavior through research and case-by-case enforcement, as necessary to combat fraud. Consumers will best be served by a cautious approach to regulation that allows the medium to flourish.

Dell will focus its additional comments on four issues: the use of performance standards; "unavoidability"; prominence; and audio/visual disclosures.

Performance standards provide appropriate guidance for consumers and vendors.

The Commission's overall approach to the issue of whether required disclosures are clear and conspicuous has been to apply a general performance standard: Whether in the context of all of the elements of the advertisement, the disclosure is "displayed in a manner that is readily noticeable, readable and/or audible (depending on the medium) and understandable to the audience to whom it is disseminated." Dell believes that this approach is desirable. However, in the Notice, the Commission indicated that it might impose particular technical requirements in determining whether a disclosure is clear and conspicuous in the context of electronic media.

"Clear and conspicuous" is not an end. It is a means by which deception can be avoided. In the print medium, it is possible to adopt proxies for what is "clear and conspicuous" by talking about font sizes and proximity. The Internet, however, has several characteristics that differentiate it from print, television, and all other media. These characteristics include explorability, personalization, and the ability to track consumer behavior. The right proxy for "clear and conspicuous" in this new medium is likely to be a combination of elements that draws on these characteristics.

We recommend that the Commission adopt a performance standard that suggests that linking is an acceptable method for providing disclosures, that such links should be sufficiently prominent to be noticed by users, and that links to disclosures should be clearly and consistently labeled within each site. Consumers are used to following hypertext links that take them to new screens, and vendors are used to labeling links. Dell's experience, based on extensive usability testing and site usage, has been that customers click on a variety of hypertext links and view a number of pages prior to making their final purchase. The hypertext linking convention is a well-accepted standard for Internet users today. Standards are constantly changing, however, as both consumers' tastes and Internet technology evolve. The Commission should consider adopting performance standards that make the most of existing technologies and that allow for development of future technologies.

"Unavoidability" is a double-edged sword.

The Commission has suggested that disclosures ordinarily should be "unavoidable," *i.e.*, the consumer should necessarily be exposed to the disclosure without having to take any affirmative action, such as scrolling down a page or clicking on a link, activating a "pop-up," or entering a search term to view the disclosure. It has also suggested that disclosures should remain accessible by consumers at all times, even after the consumer hyperlinks to another page.

Dell believes that the "unavoidability" requirement and the specific means suggested for making Internet disclosures "unavoidable" are overly restrictive and unduly burdensome. There are no such requirements for other media, and Internet operators should not be subject to special duties. In addition, the use of "mandatory" screens or pop-up screens "giving me stuff I didn't ask for" is not received favorably by Internet users, who value control over information flow. Users usually close pop-up screens without looking at them, and such screens give users little chance to print or otherwise save a disclosure for the future. The technology that is usually used for pop-up screens, called JavaScript, is not supported in all browsers, can be turned off at a user's option, and may act differently in some browsers. Pop-up screens are likely to be ineffective in making the user aware of the disclosure presented inside the screen -- and they may also push the viewer away from the site presenting the pop-ups.

In Dell's experience, Internet users value the provision of context sensitive information, focusing on information needed for the task they are performing at the time. The Internet is rapidly moving to a model of buyer-controlled commerce that bears little resemblance to the seller-controlled model in place today. Consumers can gather more information than they can in a paper-based world, and can quickly move from site to site. The quantity of information can be overwhelming; it is important to allow users to determine the optimal amount of information that they require before making a purchase. For these reasons, requiring constant access to disclosures would, in many instances, impede the efficient transmission of information over the web and be ineffective in protecting consumers. If Internet operators make all "disclosures" available at all times, it is likely that users will become desensitized to the useful messages contained within those disclosures. The Commission should not impose detailed access requirements, and should instead proceed on a case-by-case basis using its existing performance standards.

The Commission should avoid specifying how or where disclosures should be made.

The Commission has expressed the view that the effectiveness of disclosures is ordinarily enhanced by their proximity to the representation they qualify, especially for triggering representations. In particular, it believes that disclosures on the same screen as the triggering term are likely to be more effective than those on separate screens. The Commission has requested information on whether consumers generally link to each available page on a web site, and the circumstances under which consumers are more likely to examine the top of a web page, rather than the middle or the bottom of a web screen. Our usability testing has shown over time that there is no single "right" way to navigate a web site. Customers often move in a random fashion, throughout the site.

Scrolling v. linking. There is much debate over how to design a web page to convey information most effectively, and in particular whether consumers prefer scrolling or clicking links. Designers have two basic choices when deciding how much to put on a

web page. They can create lots of short pages, with little content or need for scrolling. Or they can create fewer but longer pages, with lots of content requiring scrolling. Context is key; indeed, the effectiveness of a disclaimer may actually be higher if it is on a separate page, with a clearly labeled link. The Commission should keep in mind that users may resize their browser windows, making it almost impossible to predict what a user will see without scrolling. Scrolling has become a well-accepted method for reading online commerce pages, as well as other standard electronic documents like spreadsheets.

Dell believes that it is inappropriate for the Commission to specify **how** disclosures should be made on a web page (i.e., available through links or scrolling). The question is quite unsettled, and any regulatory policy based on information available at this time likely would be unreliable.

Placement. Dell also believes that the Commission should not mandate **where** particular disclosures are made on the page. The design of a web page itself can influence the frequency of scrolling to various portions of the page, by indicating to consumers where valuable information will be obtained. The Commission should not express a preference for placement of information at a particular point in the page, since the best placement will vary from case to case. Dell's experience has been that many users simply scroll through the site looking for particular words or visual keys to help them complete their tasks. We have found that there is no common or consistent usage pattern for users that would help us identify the exact position in which a chosen piece of text is likely to be "best" placed.

The prominence of disclosures depends on their context.

The Commission has suggested that disclosures that are large in size and/or emphasized through contrasting color, and remain visible or audible for a sufficiently long duration, are likely to be more effective than those lacking that prominence. The Commission has requested comments as to whether new display technologies (i.e., animation) unique to electronic media add to or detract from the prominence of disclosures.

Based on our testing, animation causes delays in the user's experience of a given site. Animations at the sites we tested were achieved by repeatedly displaying a series of images to simulate movement. In many cases, users ignored the content of the animations, but they would sometimes sit and wait through several complete cycles -- up to several minutes -- for the page to finish displaying. Also, if a user clicked somewhere else on the screen during the animation, his click would often be ineffective. Users became frustrated and impatient. In focus group research conducted in March 1999, Dell asked consumers about their reactions to flashing images found on competing web sites. Most respondents said they ignore the animation and look for informational text that is more meaningful. The web is a constantly changing medium. Two years ago, animated

graphics were all the rage and caught users' attention. Now, animated graphics are less favored by consumers because they are viewed as "advertisements" (like carnival barkers) rather than places for important information. Based on this evidence, Dell believes that animation or other flashy techniques may not be effective devices for sites that are marketing to consumers; that being said, however, it does not appear to us that users are distracted by animation from seeing important text (such as disclosures) in which the user is interested.

Requiring both audio and visual presentation of disclosures is unnecessary.

The Commission suggests that disclosures are likely to be more effective if they are presented in the same mode (audio or visual) in which the triggering or relevant claim is presented, and that making disclosures in both modes generally enhances effectiveness.

Dell's judgment is that audio technologies are not currently at a point where they are worth incorporating into a commercial web site, and Dell is not now planning to use such technology. Many factors underlie this view, including compatibility, the bandwidth available to the average user, and lack of a clear user benefit from audio in the purchase process. Several factors can influence the effectiveness of audio disclosures, including the quality of the customer's audio equipment, the customer's settings (both within the operating system and within the browser), the customer's Internet connection, and the format of the audio message. There is no "standard" audio format that will always be heard by all customers. The FTC should refrain from requiring use of audio technology. Such a requirement would unfairly create a barrier to entry for companies with fewer resources, and would slow users' ability to navigate around the Internet. Even for web sites that use audio and visual technology, the choice of which to use for a particular disclosure should be left to the web operator, and not dictated by rule.

Conclusion

As a company deeply committed to furthering the safety, predictability, and ease of global electronic commerce, Dell applauds the Commission's efforts to ensure that consumers are shielded from deceptive advertising campaigns. Dell urges the Commission to keep in mind its dual interests in this context: protecting consumers from unfair and deceptive advertising, and ensuring the future of the Internet as a vital marketing space that will contribute greatly to the economy of the U.S. In this context, caution is surely appropriate. Applying across-the-board rules drawn from the paper-based world to this new, explorable, interactive, and ever-changing medium may not make sense.

Respectfully submitted,

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