



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

September 10, 2004

Russell W. Schrader, Esq.
Senior Vice President and
Assistant General Counsel
Visa U.S.A. Inc.
Post Office Box 194607
San Francisco, CA 94119-4607

Re: *Gateway Learning Corporation, File No. 042-3047, Docket No. C-4120*

Dear Mr. Schrader:

This acknowledges your letter regarding the proposed consent order in the above-entitled proceeding. Your letter was placed on the public record pursuant to Rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and was given serious consideration by the Commission.

Your letter, among other things, notes that the Commission's Privacy Rule implementing Subtitle A of Title V of the Gramm-Leach-Bliley Act (GLBA)¹ prohibits a financial institution from disclosing nonpublic personal information to nonaffiliated third parties other than as described in the initial notice provided to consumers unless it provides revised privacy and opt-out notices to consumers and a reasonable opportunity for consumers to opt out, and consumers do not opt out. Your letter also notes that the proposed order in Gateway Learning requires the company to obtain the opt-in consent of consumers before applying a material change in its privacy policy to previously collected information. Your letter requests that the Commission make clear that the opt-in standard in the proposed order does not apply under the GLBA.

The Commission's complaint does not allege that Gateway Learning is a financial institution covered by the GLBA or that it violated the GLBA. Therefore, the proposed order does not represent an interpretation of the GLBA and does not purport to alter the GLBA's requirements. Gateway Learning allegedly violated Section 5 of the FTC Act by misrepresenting that it would not share personal information (including information about children) with third parties and that it would notify consumers of changes to the privacy policy. Further, the Commission alleges that Gateway retroactively applied material changes to its privacy policy to personal information collected under the earlier policy. The remedy in the order – which requires that Gateway Learning obtain consumers' express affirmative ("opt-in")

¹16 C.F.R. Part 313, *Privacy of Consumer Financial Information*.

consent prior to applying future material changes to previously-collected information – is appropriate under these circumstances.

After reviewing your comment, the Commission has determined that the public interest would be best served by according final approval to the consent order. Thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary