

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

031 0201

COMMISSIONERS: **Timothy J. Muris, Chairman**
 Mozelle W. Thompson
 Orson Swindle
 Thomas B. Leary
 Pamela Jones Harbour

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In the Matter of)	
)	Public Record Version
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ITRON, INC.,)	
a corporation;)	
)	
and)	
)	Docket No. C-4114
SCHLUMBERGER ELECTRICITY, INC.)	
a corporation.)	
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DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed Acquisition by Respondent Itron, Inc. (“Itron”) of Schlumberger Electricity, Inc. (“Schlumberger”), hereinafter referred to as “Respondents,” and 51% of the shares of Walsin Schlumberger Electricity Measurement Corporation (a Taiwan corporation), and certain foreign assets of Schlumberger Canada Limited, Schlumberger Distribucion S.A. de C.V., Schlumberger Servicios S.A. de C.V., and Axalto S.A. (formerly Schlumberger Systemes S.A.), all owned indirectly by Schlumberger Limited, and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such

Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true,

and waivers and other provisions as required by the Commission's Rules; and

The Commission, having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to section 2.34 of its Rules, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent Itron, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 2818 North Sullivan Road, Spokane, Washington 99216.

2. Respondent Schlumberger Electricity, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 313-B North Highway 11, West Union, South Carolina 29696.

3. Hunt Technologies, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at 6436 Country Road II, Pequot Lakes, Minnesota, 56472.

4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. "Itron" means Itron, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Itron, Inc., and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.
- B. "Schlumberger" means Schlumberger Electricity, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures,

subsidiaries, divisions, groups and affiliates controlled by Schlumberger Electricity, Inc., and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.

- C. “Hunt” means Hunt Technologies, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Hunt Technologies, Inc., and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.
- D. “Acquirer” means either Hunt Technologies, Inc. or any other entity that receives the prior approval of the Commission to acquire the RF AMR Assets pursuant to Paragraphs II. and III. of this Order.
- E. “Acquisition” means the proposed acquisition by Itron of Schlumberger Electricity, Inc., 51% of the shares of Walsin Schlumberger Electricity Measurement Corporation (a Taiwan corporation), and certain foreign assets of Schlumberger Canada Limited, Schlumberger Distribucion S.A. de C.V., Schlumberger Servicios S.A. de C.V., and Axalto S.A. (formerly Schlumberger Systemes S.A.), all owned indirectly by Schlumberger Limited, by means of a Purchase Agreement, dated July 16, 2003, and all amendments thereto.
- F. “AMR” means automatic meter reading.
- G. “Closing Date” means the date on which Respondents (or a Divestiture Trustee) and an Acquirer close on a transaction to license the RF AMR Assets as required by Paragraphs II.B. and III.B. of this Order.
- H. “Commission” means the Federal Trade Commission.
- I. “Confidential Business Information” means all information that is not in the public domain related to research, development, manufacture, marketing, commercialization, distribution, importation, cost, pricing, supply, sales, sales support, or the use of particular assets.
- J. “Copyrights” means any copyrights, mask works, and other copyrightable works whether registered or unregistered.
- K. “DAP” means DAP Technologies, a corporation organized, existing, and doing business under and by virtue of the laws of Canada. Within the United States, its office and principal place of business is located at 5525 West Cypress Street, Suite 205, Tampa, Florida, 33607. DAP Technologies is a subsidiary of Neptune Technology Group, Inc.

- L. “Effective Date” means the date the Acquisition is consummated.
- M. “Electric ERT” means Itron’s transmitter within the family of Series 41 or 45ES-1, 45ER-1, 45EN-1 transmitters in electromechanical or solid state configuration that is installed on or within an electricity meter and sends a consumption reading using RF waves to a remote RF AMR Receiving Device.
- N. “Electricity Meter” means any current or future electricity measuring meters manufactured for sale exclusively in the United States, Canada or Mexico or used by any electric utility located in the United States, Canada or Mexico.
- O. “Elster” means Elster Electricity, LLC, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 208 S. Rogers Lane, Raleigh, North Carolina 27610.
- P. “ERT” means Itron’s Encoder-Receiver-Transmitter.
- Q. “GE” means General Electric, a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 41 Woodford Avenue, Plainville, CT 06062.
- R. “Governmental Entity” means any Federal, state, local or non-U.S. government or any court, legislature, governmental agency or governmental commission or any judicial or regulatory authority of any government.
- S. “Hunt License and Supply Agreement” means the license agreement entered into between Hunt and Itron, dated on or before the date this Order becomes final, as well as all amendments, exhibits, attachments, agreements, and schedules thereto, related to the RF AMR Assets to be conveyed to accomplish the requirements of this Order. The Hunt License and Supply Agreement is attached to this Order as non-public Appendix A.
- T. “Landis + Gyr” means Landis + Gyr, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 2800 Duncan Road, Lafayette, Ind. 47904-5012.
- U. “Licensing Agreement” means either the Hunt License and Supply Agreement or any other agreement that receives the prior approval of the Commission between Respondents and an Acquirer (or between the Divestiture Trustee and an Acquirer), as well as all amendments, exhibits, attachments, agreements, and

schedules thereto, related to the licensing of the RF AMR Assets.

- V. “Meter Manufacturer” means a company that manufactures residential Electricity Meters, including, but not limited to, Elster, GE, Landis + Gyr, and Sensus, and their successors.
- W. “Neptune” means Neptune Technology Group, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Alabama, with its office and principal place of business located at 1600 Alabama Highway 229, Tallassee, Alabama, 36078.
- X. “Patents” means any and all United States patents, patent applications, continuations, continuations-in-part, divisionals, reissues, and reexaminations thereof.
- Y. “Person” means any natural person, partnership, association, or corporate or governmental organization or entity.
- Z. “R-300” means Schlumberger’s transmitter known as the R-300 in electromechanical or solid state configuration that is installed on or within an electricity meter and sends a consumption reading using RF waves and using only Itron’s protocol to a remote RF AMR Receiving Device.
- AA. “Respondents” means Itron and Schlumberger, individually and collectively.
- BB. “RF” means radio frequency.
- CC. “RF AMR Assets” includes the following:
 - 1. The RF AMR Electric Endpoint Intellectual Property; and
 - 2. The RF AMR Mobile Receiving Device Intellectual Property.
- DD. “RF AMR Electric Endpoint” means the Electric ERT and the R-300.
- EE. “RF AMR Electric Endpoint Intellectual Property” means all intellectual property owned or licensed by Respondents to use, make, distribute, offer for sale, promote, advertise, sell, import or export, or have used, made, distributed, offered for sale, promoted, advertised, sold, imported or exported RF AMR Electric Endpoints, including but not limited to, Software, inventions, technology, formulations, specifications, Patents, patent applications, Trade Secrets, Copyrights, know-how, research materials, technical information, designs, drawings, manufacturing information, integration information, testing and quality control data related to RF AMR Electric Endpoints including, but not limited to,

(i) all algorithms, circuits, documentation, tools, data, communication protocols; and (ii) all such technology that relates to ANSI standards applicable to either the Electric ERT or the R-300, and including further, without limitation:

1. the Electric ERT and R-300 Trademarks; and
2. the following RF AMR Electric Endpoint related documentation:
 - a. Reference designs;
 - b. Assembly documentation;
 - c. Approved supplier lists;
 - d. Complete bill of material information;
 - e. Printed circuit board build data;
 - f. Functional test design information to enable testers to be built and operated;
 - g. Laser tune operational specifications and design requirements;
 - h. In circuit test specifications and design requirements;
 - i. Manufacturing process information;
 - j. Control and design information as related to serial numbers;
 - k. Product acceptance criteria; and
 - l. Quality metrics.

FF. “RF AMR Mobile Receiving Device” means a handheld or vehicle transportable data collection unit, including, but not limited to, a handheld or laptop computer, used to remotely gather electricity, gas, or water consumption data from an RF AMR Electric Endpoint or water or gas ERT using only Itron’s protocols.

GG. “RF AMR Mobile Receiving Device Intellectual Property” means the Itron application programming interfaces and protocols that enable an RF AMR Mobile Receiving Device to remotely gather electricity, gas, or water consumption data from an RF AMR Electric Endpoint or water or gas ERT.

HH. “RF AMR Receiving Device” means any technology used for remotely receiving

electricity, gas, or water consumption data transmitted via RF technology.

- II. “Sensus” means Sensus Metering Systems, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 8609 Six Forks Road, Raleigh, North Carolina 27615.
- JJ. “Software” means all computer software and firmware (in source code and object code forms) owned, licensed or used by, or developed for, Respondents for the radio transmission of data from a meter to an RF AMR Mobile Receiving Device, including all upgrades, enhancements or new releases of such software, and all tools, documentation, commentaries, flow-charts, data or other materials used in the development, maintenance and support of such software.
- KK. “Trademarks” means any trademarks, trade names, service marks, logos, and other source-identifying symbols or devices, and any combination thereof and variations thereof, whether registered or unregistered.
- LL. “Trade Secrets” means any proprietary inventions, discoveries, improvements, know-how, works-in-progress, processes, designs, concepts, and ideas that are: (i) not generally known and not readily ascertainable by proper means; and (ii) maintained by Respondents as proprietary and confidential.

II.

IT IS FURTHER ORDERED that:

- A. Within ten (10) days after the Effective Date, Respondents shall grant a royalty-free, perpetual, irrevocable, transferable (subject to the specific terms in the Hunt License and Supply Agreement), non-exclusive (subject to the specific terms in the Hunt License and Supply Agreement) license to the RF AMR Electric Endpoint Intellectual Property, in good faith, to Hunt pursuant to and in accordance with the Hunt License and Supply Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of Hunt or to reduce any obligations of Respondents under such agreements), and such agreement, if approved by the Commission as the Licensing Agreement for the RF AMR Electric Endpoint Intellectual Property, is incorporated by reference into this Order and made a part hereof as non-public Appendix A.
- B. If, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Hunt is not an acceptable acquirer of the RF AMR Electric Endpoint Intellectual Property or that the manner in which the

licensing was accomplished is not acceptable, then, after receipt of such written notification:

1. Respondents shall immediately notify Hunt of the notice received from the Commission and shall as soon as practicable effect the rescission of the Hunt License and Supply Agreement; and
 2. Respondents shall, within six (6) months from the date this Order becomes final, grant an irrevocable, non-exclusive, perpetual, transferable, royalty-free license to the RF AMR Electric Endpoint Intellectual Property, at no minimum price, to an acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission.
- C. Any Licensing Agreement that has been approved by the Commission between Respondents and an Acquirer of the RF AMR Electric Endpoint Intellectual Property shall be deemed incorporated into this Order, and any failure by Respondents to comply with any term of such Licensing Agreement shall constitute a failure to comply with this Order.
- D. Pending licensing of the RF AMR Electric Endpoint Intellectual Property, Respondents shall take such actions as are necessary to maintain the viability and marketability of the RF AMR Electric Endpoint Intellectual Property and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the RF AMR Electric Endpoint Intellectual Property.
- E. Respondents shall:
1. Within fifteen (15) days after the Closing Date, deliver to the Acquirer, at Respondents' expense
 - a. A copy of all RF AMR Electric Endpoint Intellectual Property relating to the Electric ERTs in its control as it exists as of the Closing Date including, but not limited to, copies of all plans, drawings, designs, specifications, schematics, source code compilers, reports, studies, data, component sources, and test equipment information relating to the Electric ERT; and
 - b. A list of Respondents' customers who have purchased Electric ERTs within the five (5) years prior to the Effective Date.
 2. Within ninety (90) days after the Closing Date, deliver to the Acquirer, at Respondents' expense, a copy of all RF AMR Electric Endpoint Intellectual Property relating to the R-300 in its control as it exists as of

the Closing Date including, but not limited to, copies of all plans, drawings, designs, specifications, schematics, source code compilers, reports, studies, data, component sources, and test equipment information relating to the R-300.

3. For a period of three (3) years after the Closing Date, provide the Acquirer with:
 - a. updates to the RF AMR Electric Endpoint Intellectual Property that are being incorporated and made for sale to customers at least ninety (90) days in advance of such updates being made available to customers; and
 - b. at the Acquirer's request, technical assistance in connection with those updates.
- F. At the Acquirer's request, the Respondents shall enter into an agreement with the Acquirer in which Respondents shall manufacture and deliver, in a timely manner and under reasonable terms and conditions, approved by the Commission, a supply of RF AMR Electric Endpoints for a period of time sufficient to allow the Acquirer to manufacture RF AMR Electric Endpoints independently of Respondents.
1. If Hunt is approved as the Acquirer and the Hunt License and Supply Agreement is approved as the Licensing Agreement, the supply of RF AMR Electric Endpoints shall be pursuant to this Order and the terms of the Hunt License and Supply Agreement, which is non-public Appendix A to this Order.
 2. During the term of agreement provided for in this Paragraph II.F., Respondents may enter in an agreement with one or more of the Acquirer's customers whereby the Respondents shall provide a warranty for an RF AMR Electric Endpoint that it manufactures for the Acquirer and which is supplied to customers of the Acquirer. Such warranty agreement shall be in substantially the form set forth in the "Hunt Customer License and Warranty Agreement" attached as an Exhibit to the Hunt License and Supply Agreement. *PROVIDED, HOWEVER*, that such warranty agreement shall not extend beyond fourteen (14) months after the date such RF AMR Electric Endpoint is shipped to the customer. *PROVIDED FURTHER, HOWEVER*, any information supplied by the Acquirer or the Acquirer's customers as part of such warranty agreement to Respondents shall be kept confidential and separate from those persons at Respondents involved in the sale and marketing of RF AMR Electric

Endpoints; and Respondents shall take all steps necessary to prevent all such persons from obtaining or obtaining access to such information.

- G. Respondents shall make available, at the Acquirer's request, technical assistance to the Acquirer to assist in the manufacture and sale of RF AMR Electric Endpoints. For a period not to exceed 18 months following the Closing Date, Respondents' obligation to make such assistance available shall include, among other things:
1. advice to enable the Acquirer to obtain all necessary permits, consents, and approvals from any Governmental Entity to sell the RF AMR Electric Endpoints; and
 2. personnel, assistance, and training, at an Itron facility to manufacture the RF AMR Electric Endpoints, including but not limited to, technical assistance relating to the process technology, quality assurance, quality control, and sales training. Respondents shall continue providing such assistance and training until the Acquirer is reasonably satisfied that it can manufacture and sell the RF AMR Electric Endpoints in substantially the same manner and quality employed or achieved by or on behalf of Respondents. Respondents shall provide such assistance to the Acquirer in a timely manner. Pursuant to this Paragraph II.G., Respondents shall make available 200 hours of such assistance without cost to the Acquirer. *PROVIDED, HOWEVER*, Respondents' obligation to make available technical assistance pursuant to this Paragraph II.G. shall not extend more than three (3) months beyond the ending of Respondents' supplying RF AMR Electric Endpoints to the Acquirer pursuant to any supply agreement approved under this Order.
- H. Respondents shall not:
1. Restrict in any way the use of Confidential Business Information related to the RF AMR Electric Endpoints by the Acquirer's employees who were at any time employed by Respondents and involved in the research, development, manufacturing, distribution, sale, or marketing of the RF AMR Electric Endpoints; and
 2. Use or disclose, directly or indirectly, any of the Acquirer's Confidential Business Information (other than as necessary to comply with the requirements of this Order) related to the research, development, manufacturing, marketing, or sale of the RF AMR Electric Endpoints.
- I. The purpose of the licensing and transfer of the RF AMR Electric Endpoint Intellectual Property is to ensure the continued use of the RF AMR Electronic

Endpoints in the same business in which the RF AMR Electronic Endpoints were engaged at the time of the announcement of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. At the written request of the Acquirer and within ten (10) days of such request, Respondents shall grant a royalty-free, perpetual, irrevocable, transferable (subject to the specific terms in the Hunt License and Supply Agreement), non-exclusive (subject to the specific terms in the Hunt License and Supply Agreement) license to the RF AMR Mobile Receiving Device Intellectual Property, in good faith, to Hunt pursuant to and in accordance with the Hunt License and Supply Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of Hunt or to reduce any obligations of Respondents under such agreements), and such agreement, if approved by the Commission as the Licensing Agreement for the RF AMR Mobile Receiving Device Intellectual Property is incorporated by reference into this Order and made a part hereof as non-public Appendix A.
- B. If, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Hunt is not an acceptable acquirer of the RF AMR Mobile Receiving Device Intellectual Property or that the manner in which the licensing was accomplished is not acceptable, then, after receipt of such written notification:
 - 1. Respondents shall immediately notify Hunt of the notice received from the Commission and shall as soon as practicable effect the rescission of the Hunt License and Supply Agreement;
 - 2. Respondents shall, within six (6) months from the date this Order becomes final, grant an irrevocable, non-exclusive, perpetual, transferable, royalty-free license to the RF AMR Mobile Receiving Device Intellectual Property, at no minimum price, to the acquirer of the RF AMR Electric Endpoint Intellectual Property pursuant to Paragraph II.B.2., and in a manner that receives the prior approval of the Commission.
- C. Any Licensing Agreement that has been approved by the Commission between Respondents and an Acquirer of the RF AMR Mobile Receiving Device Intellectual Property shall be deemed incorporated into this Order, and any failure

by Respondents to comply with any term of such Licensing Agreement shall constitute a failure to comply with this Order.

- D. Pending licensing of the RF AMR Mobile Receiving Device Intellectual Property, Respondents shall take such actions as are necessary to maintain the viability and marketability of the RF AMR Mobile Receiving Device Intellectual Property and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the RF AMR Mobile Receiving Device Intellectual Property.
- E. Respondents shall:
1. Within fifteen (15) days after the license is granted pursuant to Paragraph III.A. of this Order, deliver to the Acquirer, at the Respondents' expense, a copy of the RF AMR Mobile Receiving Device Intellectual Property, including, but not limited to, all public and non-public information that is necessary for the RF AMR Mobile Receiving Device Intellectual Property; and
 2. Respondents shall make no changes to its RF AMR Mobile Receiving Device or its RF AMR Electric Endpoints which would have the effect of materially diminishing the ability of the Acquirer's RF AMR Electric Endpoint radio frequency signals to be read by its RF AMR Mobile Receiving Device.
- F. At the Acquirer's option, Respondents shall sell RF AMR Mobile Receiving Devices and any related products to the Acquirer at the actual price it generally charges its distributors.
1. For any RF AMR Mobile Receiving Device sold pursuant to this Paragraph III.F., Respondents may enter in an agreement with one or more of the Acquirer's customers whereby the Respondents shall provide a warranty for an RF AMR Mobile Receiving Device that it manufactures and supplies to such customer on behalf of the Acquirer. Such warranty agreement shall be in substantially the form set forth in the "Hunt Customer License and Warranty Agreement" attached as an Exhibit to the Hunt License and Supply Agreement.
 2. For any RF AMR Mobile Receiving Device sold pursuant to this Paragraph III.F., Respondents may enter into an agreement with the Acquirer whereby the Respondents shall provide a warranty for an RF AMR Mobile Receiving Device that it manufactures and supplies to the Acquirer for the Acquirer's own use. Such warranty agreement shall be in substantially the form set forth in the "Hunt Software License and

Warranty Agreement” attached as an Exhibit to the Hunt License and Supply Agreement.

- G. Respondents shall not:
1. Restrict in any way the use of Confidential Business Information related to the RF AMR Mobile Receiving Devices by the Acquirer’s employees who were at any time employed by Respondents and involved in the research, development, manufacturing, distribution, sale, or marketing of the RF AMR Mobile Receiving Devices; or
 2. Use or disclose, directly or indirectly, any of the Acquirer’s Confidential Business Information (other than as necessary to comply with the requirements of this Order) related to the research, development, manufacturing, marketing, or sale of the RF AMR Mobile Receiving Devices.
- H. Within ten (10) days after the Effective Date, Respondents shall assign, without any charge for the act of assignment, all rights and obligations of the agreement dated April 17, 1995, between Respondent Itron and Schlumberger Industries, Inc., Electricity Division and Schlumberger Industries Electricity Division of Schlumberger Canada Limited (“1995 Agreement”) either (i) to DAP and Neptune, or, (ii) if DAP and Neptune decline the assignment, within sixty (60) days after the Effective Date, to another manufacturer of RF AMR Receiving Devices.
1. The assigned rights shall include, among other things, all rights as are granted in the 1995 Agreement relating to meter reading systems that have the capability to read data transmitted from an Electric ERT and an R-300. *PROVIDED, HOWEVER*, the Respondents are not required by this Paragraph to assign the rights to make an Electric ERT or R-300 or the rights to the production of an Electric ERT or R-300.
 2. The Respondents shall submit a copy of the assignment to Commission staff prior to the assignment to DAP and Neptune.
 3. If Respondents assign the 1995 Agreement to a person other than DAP and Neptune, Respondents shall make such assignment only to a manufacturer of RF AMR Receiving Devices that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission.
 4. In the event Respondents fail within sixty (60) days after the Effective Date to assign the contract rights as required in this Paragraph III.H., the

Commission may appoint a trustee, in a manner similar to that described in Paragraph V. of this Order, to make such an assignment.

- I. The purpose of the licensing and transfer of the RF AMR Mobile Receiving Device Intellectual Property is to ensure the continued use of the RF AMR Mobile Receiving Devices in the same business in which the RF AMR Mobile Receiving Devices were engaged at the time of the announcement of the Acquisition, to maintain the number of entities engaged at the time of the announcement of the Acquisition selling RF AMR Mobile Receiving Devices, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

IV.

IT IS FURTHER ORDERED that:

- A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint one or more Interim Monitors to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order and the Licensing Agreement.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If neither Respondent has opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Interim Monitor, Respondents shall be deemed to have consented to the selection of the proposed Interim Monitor.
- C. Not later than ten (10) days after appointment of the Interim Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondents' compliance with the relevant terms of the Order and the Licensing Agreement in a manner consistent with the purposes of the Order.
- D. If one or more Interim Monitors are appointed pursuant to this Paragraph IV., Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of each Interim Monitor:
 1. The Interim Monitor shall have the power and authority to monitor the Respondents' compliance with the terms of the licensing and interim supply terms of the Order and the Licensing Agreement, and shall exercise such power and authority and carry out the duties and responsibilities of

the Interim Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission.

2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission.
3. The Interim Monitor shall serve until the later of:
 - a. the completion by Respondents of the licensing of all relevant assets required to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed pursuant to this Order in a manner that fully satisfies the requirements of the Order and notification by Respondents to the Interim Monitor that the Acquirer is fully capable of producing or having produced an RF AMR Electric Endpoint independently of Respondents; or
 - b. the completion by Respondents of the last obligation of any agreement entered into between Respondents and an Acquirer pursuant to Paragraphs II.F. and II.G. of this Order.
4. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondents' compliance with their obligations under the Order, including, but not limited to, their obligations related to the RF AMR Assets. Respondents shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with the Order.
5. The Interim Monitor shall serve, without bond or other security, at the expense of Respondents on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of the Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities. The Interim Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission.
6. Respondents shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the

Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.

7. Respondents shall report to the Interim Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondents, and any reports submitted by the Acquirer with respect to the performance of its or Respondents' obligations under the Order or the Licensing Agreement. Within one (1) month from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondents of its obligations under the Order.
8. Respondents may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER*, such agreement shall not restrict the Interim Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Interim Monitor's duties.
- F. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph IV.
- G. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order.
- H. An Interim Monitor appointed pursuant to this Order may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

V.

IT IS FURTHER ORDERED that:

- A. If Respondents have not licensed the RF AMR Assets as required by Paragraphs II. and III. of this Order, the Commission may appoint a Divestiture Trustee to license the RF AMR Assets in a manner that satisfies the requirements of Paragraphs II. and III. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to license the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Within ten (10) days after appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant licensing or transfer required by the Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver or otherwise convey the RF AMR Assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed.

2. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described herein to accomplish the licensing, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the Divestiture Trustee has submitted a licensing plan or believes that the licensing can be achieved within a reasonable time, the licensing period may be extended by the Commission; *PROVIDED, HOWEVER*, the Commission may extend the licensing period only two (2) times.
3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the licensing. Any delays in licensing caused by Respondents shall extend the time for licensing under this Paragraph V. in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to license expeditiously and at no minimum price. The licensing shall be made in the manner and to an Acquirer as required by this Order; *PROVIDED, HOWEVER*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; *PROVIDED FURTHER, HOWEVER*, that Respondents shall select such entity within five (5) days of receiving notification of the Commission's approval.
5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and

responsibilities. The Divestiture Trustee shall account for all monies derived from the licensing and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the licensing of all of the relevant assets that are required to be licensed by this Order.

6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
 7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be licensed by this Order.
 8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
 9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph V.
- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the licensing required by this Order.

- G. The Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Interim Monitor pursuant to the relevant provisions of this Order.

VI.

IT IS FURTHER ORDERED that if Hunt licenses the RF AMR Assets pursuant to Paragraphs II. and III. of this Order, Hunt shall not, for a period of five (5) years from the date this Order becomes final, sell or otherwise convey, directly or indirectly, all or substantially all of the RF AMR Assets (excluding transactions in the ordinary course of business, such as sales of inventory to customers) to any Meter Manufacturer without sixty (60) days prior notice to the Commission. Such notice shall contain the proposed agreement with all attachments and documents that would be responsive to Item 4©) of the Premerger Notification and Report Form under the Hart-Scott-Rodino Premerger Notification Act, Section 7A of the Clayton Act, 15 U.S.C. § 18a, and Rules, 16 C.F.R. § 801-803, relating to the proposed transaction. The Bureau of Competition may request additional information and documents related to the proposed transaction and may allow the transaction to consummate before the sixty-day time period has run. *PROVIDED, HOWEVER*, that prior notification shall not be required by this paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

VII.

IT IS FURTHER ORDERED that:

- A. If Hunt is approved as the Acquirer pursuant to Paragraph II.A., then beginning thirty (30) days after the date this Order becomes final, and every sixty (60) days thereafter until Respondents have completed their supply and technical assistance obligations under Paragraphs II.F. and II.G. of this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with the terms of the entire Order. Respondents shall submit at the same time a copy of their reports concerning compliance with this Order to the Interim Monitor, if any Interim Monitor has been appointed.
- B. If Hunt is not approved as the Acquirer pursuant to Paragraph II.A., then beginning thirty (30) days after the date this Order becomes final, and every thirty (30) days thereafter until Respondents have licensed the RF AMR Assets pursuant to Paragraphs II.B. and III.B. and have completed their supply and technical assistance obligations under Paragraphs II.F. and II.G. of this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with the terms of the entire Order. Respondents shall submit at the same time a copy of their reports concerning compliance with this Order to the Interim Monitor, if any Interim Monitor has been appointed. Respondents shall

include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with this Order, including a description of all substantive contacts or negotiations related to the licensing of the relevant assets and the identity of all parties contacted. Respondents shall include in these reports copies of all written and electronic communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the completion of such obligations.

- C. Beginning twelve (12) months after the date this Order becomes final, and annually thereafter on the anniversary of the date this Order becomes final, for the next four years, Respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which they are complying and have complied with this Order.

VIII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of the Respondents, (2) acquisition, merger or consolidation of Respondents, or (3) any other change in the Respondents that may affect compliance obligations arising out of the order, including but not limited to assignment, the creation or dissolution of subsidiaries, or any other change in Respondents.

IX.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of Respondents related to compliance with this Order; and
- B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

X.

IT IS FURTHER ORDERED that this Order shall terminate on August 5, 2014.

By the Commission, Commissioner Harbour recused.

C. Landis Plummer
Acting Secretary

SEAL

ISSUED: August 5, 2004

NONPUBLIC APPENDIX A

[Redacted from Public Record Version]