

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

COMMISSIONERS: **Joseph J. Simons, Chairman**
 Noah Joshua Phillips
 Rohit Chopra
 Rebecca Kelly Slaughter
 Christine S. Wilson

In the Matter of)
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 US Foods Holding Corp.,)
 a corporation,))
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 Services Group of America, Inc.,)
 a corporation,))
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 and))
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 Food Services of America, Inc.,)
 a corporation.))
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DECISION AND ORDER
Docket No. C-4688

DECISION

The Federal Trade Commission (“Commission”) initiated an investigation of the proposed acquisition by Respondent US Foods Holding Corp. (“US Foods”) of certain subsidiaries of Respondent Services Group of America, Inc. (“SGA”), including SGA’s Food Services of America, Inc. (“FSA”) (collectively, “Respondents”). The Commission’s Bureau of Competition prepared and furnished to Respondents the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint 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.

Respondents and the Bureau of Competition executed an agreement (“Agreement Containing Consent Order” or “Consent Agreement”) containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3)

waivers and other provisions as required by the Commission's Rules, and (4) a proposed Decision and Order and Order to Maintain Assets.

The Commission considered the matter and 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. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments; at the same time, it issued and served its Complaint and Order to Maintain Assets. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure described in Rule 2.34, the Commission makes the following jurisdictional findings, and issues the following Decision and Order ("Order"):

1. Respondent US Foods 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 9399 W. Higgins Road, Suite 100, Rosemont, Illinois, 60018.
2. Respondent SGA 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 16100 N. 71st St., Suite 500, Scottsdale, Arizona, 85254.
3. Respondent FSA 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 16100 N. 71st St., Suite 400, Scottsdale, Arizona, 85254. Respondent FSA is a subsidiary of Respondent SGA.
4. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over Respondents, and this proceeding is in the public interest.

ORDER

I. Definitions

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

- A. "US Foods" means US Foods Holding Corp., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, divisions, groups, and affiliates controlled by US Foods Holding Corp., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the date the Acquisition is completed, "US Foods" includes FSA, and the following other SGA subsidiaries: Amerifresh, Inc., Ameristar Meats, Inc., Gampac Express, Inc., and Systems Services of America, Inc.
- B. "SGA" means Services Group of America, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Services Group of America, Inc. (including, but not

limited to, FSA, Amerifresh, Inc., Ameristar Meats, Inc., Gampac Express, Inc., and Systems Services of America, Inc.), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

- C. “FSA” means Food Services of America, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Food Services of America, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. “Acquirer” means each Person approved by the Commission to acquire, respectively, the Boise Broadline Divestiture Assets, the Fargo Broadline Divestiture Assets, and the Kent Broadline Divestiture Assets pursuant to this Order.
- E. “Acquisition” means the acquisition by US Foods of certain subsidiaries of SGA, as described in, and contemplated by, the Stock Purchase Agreement by and between US Foods, Inc., Services Group of America, Inc., Amerifresh, Inc., Ameristar Meats, Inc., Food Services of America, Inc., Gampac Express, Inc., Systems Services of America, Inc., and US Foods Holding Corp., dated July 28, 2018.
- F. “Acquisition Date” means the date on which the Acquisition is consummated.
- G. “Boise Broadline Divestiture Assets” means the Broadline Distribution Assets relating to the Boise Distribution Center; *provided, however*, that if the Boise Broadline Divestiture Assets are divested to Shamrock pursuant to the Shamrock Divestiture Agreement, then the Boise Broadline Divestiture Assets shall not include those assets excluded by the Shamrock Divestiture Agreement, which is attached to this Order as Non-Public Appendix 3; *provided further, however*, that the Contract with each Boise Multi-Location Customer assigned to Shamrock pursuant to the Shamrock Divestiture Agreement shall provide Shamrock all of the customer ship-to location(s) historically serviced out of the Boise Distribution Center for each such Boise Multi-Location Customer.
- H. “Boise Distribution Center” means the distribution center located at 1495 North Hickory, Meridian, Idaho, 83642.
- I. “Boise Multi-Location Customer” means any customer who, as of the Divestiture Date, is serviced by Respondent FSA out of the Boise Distribution Center and is also serviced by Respondent FSA out of at least one other distribution center that is not the Boise Distribution Center; *provided, however*, the term “Boise Multi-Location Customer” shall exclude any customer excluded pursuant to the Shamrock Divestiture Agreement.
- J. “Brands” means all of Respondent FSA’s trademarks, trade dress, logos, service marks, trade names, brand names, and all of Respondent FSA’s rights to any Third Party proprietary names and marks.

- K. “Broadline Distribution Assets” means all of Respondents’ rights, title, and interest in and to all assets, tangible or intangible, of whatever nature and wherever located, primarily relating to or used in connection with: (i) a specified Broadline Distribution Center, including both (a) assets removed and not replaced after the announcement of the Acquisition and (b) Designated Distribution Assets; and (ii) the operation of a Broadline Distribution Business associated with that Broadline Distribution Center (including Software).
- L. “Broadline Distribution Business” means the purchasing, stocking, warehousing, logistics planning, marketing, advertising, delivery, distribution, and sale of a broad array of foodservice products, including private label offerings, and the provision of related value-added services in, from, and relating to a specified Broadline Distribution Center.
- M. “Broadline Distribution Center(s)” means the following distribution centers owned and operated by Respondents:
1. Boise Distribution Center;
 2. Fargo Distribution Center; and
 3. Kent Distribution Center.
- N. “Broadline Divestiture Assets” means the following:
1. Boise Broadline Divestiture Assets;
 2. Fargo Broadline Divestiture Assets; and
 3. Kent Broadline Divestiture Assets.
- O. “Business Information” means all books, records, and data, wherever located and however stored, used in the Broadline Distribution Business, including documents, written information, graphic materials, and data and information in electronic format, along with unwritten knowledge of employees, contractors, and representatives. Business Information includes records and information relating to research and development, manufacturing, process technology, production, sales, marketing, logistics, advertising, creative material, personnel, accounting, business strategy, business processes and practices, information technology systems, management systems, suppliers, procurement practices, bidding practices, customers, customer purchasing histories, customer preferences, delivery histories, delivery routing information, policies and procedures, food safety, handling and recalls, and all other aspects of the Broadline Distribution Business. For clarity, Business Information includes all of Respondents’ rights and control over information and material provided to any other Person.
- P. “Cash-Wa” means Cash-Wa Distributing Co. of Kearney, Inc., a corporation organized, existing, and doing business under and by virtue of the state of Nebraska with its

executive offices and principal place of business located at 401 West 4th Street, Kearney, Nebraska, 68847.

- Q. “Cash-Wa Divestiture Agreement” means the Asset Purchase Agreement by and among Cash-Wa Distributing Co. of Kearney, Inc., Food Services of America, Inc., US Foods, Inc. and US Foods Holding Corp. dated June 24, 2019. The Cash-Wa Divestiture Agreement is attached to this Order as Non-Public Appendix 1.
- R. “Commission” means the Federal Trade Commission.
- S. “Confidential Business Information” means any non-public Business Information relating to the Broadline Divestiture Assets:
1. Obtained by Respondents prior to the Divestiture Date; or
 2. Obtained by Respondent US Foods after the Divestiture Date, in the course of performing Respondent US Foods’ obligations under any Divestiture Agreement (including the provision of any Transition Assistance);
- Provided, however,* that Confidential Business Information shall not include information that:
1. Was, is, or becomes generally available to the public other than as a result of a breach of this Order;
 2. Was or is developed independently of and without reference to any Confidential Business Information; or
 3. Was available, or becomes available, on a non-confidential basis from a third party not bound by a confidentiality agreement or any legal, fiduciary or other obligation restricting disclosure.
- T. “Consent” means any approval, consent, ratification, waiver, or other authorization.
- U. “Contract” means a contract, lease, sub-lease, or other agreement or obligation, whether written or unwritten.
- V. “Designated Distribution Assets” means:
1. Real property interests (including fee simple interests and real property leasehold interests, whether as lessor or lessee), including all easements, appurtenances, licenses, and permits, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;
 2. Tangible personal property (other than inventories or accounts receivable), owned or leased as of the date the Acquisition was announced (or equivalent

replacements), including machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, and vehicles, together with all express or implied warranties by manufacturers, sellers, or lessors, and all maintenance records and operating manuals;

3. Intangible rights and property, including Intellectual Property, owned, used, or licensed (as licensor or licensee) by Respondent, going concern value, goodwill, telecopy and telephone listings, domain names, internet sites, web portals, and social media accounts;
4. Inventories and accounts receivable;
5. Business Information; *provided, however*, Respondents may retain a copy of Business Information as required or necessary for use in Respondents' retained businesses or for legal, regulatory, and compliance purposes;
6. Contracts, and all outstanding offers or solicitations to enter into any Contract, and all rights thereunder and related thereto; *provided, however*, that Replacement Contracts may be substituted for Shared Contracts;
7. Governmental Authorizations and all pending applications therefor or renewals thereof;

Provided, however, that Designated Distribution Assets need not include:

1. Corporate, business, or other names of Respondents or any logo, trademark, service mark, domain name, trade or other name or any derivation thereof, *provided, however*, at the request of an Acquirer, use of such names shall be permitted on a transitional basis;
2. Software that Respondents have not materially modified (other than through user preference settings) and that an Acquirer can readily purchase or license from sources other than Respondents;
3. Enterprise software that Respondent FSA also uses in businesses other than the Broadline Distribution Business;
4. The portion of any books and records that contains information about any business other than the relevant Broadline Distribution Business divested to an Acquirer;
5. Any original document that the Respondents have a legal, contractual, or fiduciary obligation to retain the original; *provided, however*, that Respondents shall provide copies of the records and shall provide an Acquirer access to the original materials if copies are insufficient for regulatory or evidentiary purposes;

6. Assets that are specifically identified as excluded assets in a Divestiture Agreement that is approved by the Commission unless necessary for an Acquirer operate the relevant Broadline Distribution Business.
- W. “Direct Cost” means cost not to exceed the cost of labor, material, travel, and other expenditures to the extent the costs are directly incurred to provide the relevant assistance or service. “Direct Cost” to an Acquirer for the labor of a Respondent’s employees shall not exceed the then-current average wage rate for such employee, including benefits.
- X. “Divestiture Agreement” means any agreement between Respondents (other than Respondent SGA after the Acquisition Date) (or a Divestiture Trustee appointed pursuant to Paragraph IX of this Order) and an Acquirer, including all amendments, exhibits (including the related transition services agreement), attachments, and schedules thereto, to purchase Broadline Divestiture Assets, that has been approved by the Commission to accomplish the requirements of this Order, including the following:
1. The Shamrock Divestiture Agreement;
 2. The Cash-Wa Divestiture Agreement; and
 3. The Harbor Divestiture Agreement.
- Y. “Divestiture Date” means the date on which each divestiture required by this Order is completed.
- Z. “Divestiture Trustee” means the person appointed pursuant to Paragraph IX of this Order.
- AA. “DMA” means Distribution Market Advantage, Inc. a for profit corporation, organized, existing and doing business under and by the virtue of the laws of Illinois with its executive offices and principal place of business located at 1515 E. Woodfield Road, Suite 600, Schaumburg, Illinois 60173.
- BB. “DMA Broadline Distribution Customer” means a customer (i) with a Contract for broadline foodservice distribution with DMA as of the Acquisition Date; and (ii) for which DMA had submitted a bid or otherwise engaged in negotiations to provide broadline foodservice distribution anytime since January 1, 2018.
- CC. “DMA Confidential Business Information” means any non-public books, records, and data, along with unwritten knowledge of employees, in the possession or control of Respondent SGA or Respondent FSA relating to DMA;

Provided, however, that DMA Confidential Business Information shall not include information that:

1. Was, is, or becomes generally available to the public other than as a result of a breach of this Order;

2. Was or is developed independently of and without reference to any DMA Confidential Business Information; or
 3. Was available, or becomes available, on a non-confidential basis from a third party not bound by a confidentiality agreement or any legal, fiduciary or other obligation restricting disclosure.
- DD. “Fargo Broadline Divestiture Assets” means the Broadline Distribution Assets relating to the Fargo Distribution Center; *provided, however*, that if the Fargo Broadline Divestiture Assets are divested to Cash-Wa pursuant to the Cash-Wa Divestiture Agreement, then the Fargo Broadline Divestiture Assets shall not include those assets excluded by the Cash-Wa Divestiture Agreement, which is attached to this Order as Non-Public Appendix 1; *provided further, however*, that the Contract with each Fargo Multi-Location Customer assigned to Cash-Wa pursuant to the Cash-Wa Divestiture Agreement shall provide Cash-Wa all of the customer ship-to location(s) historically serviced out of the Fargo Distribution Center for each such Fargo Multi-Location Customer.
- EE. “Fargo Distribution Center” means the distribution center located at 4101 15th Ave., NW, Fargo, North Dakota, 58102.
- FF. “Fargo Multi-Location Customer” means any customer who, as of the Divestiture Date, is serviced by Respondent FSA out of the Fargo Distribution Center and was also serviced by Respondent FSA out of at least one other distribution center that is not the Fargo Distribution Center; *provided, however*, the term “Fargo Multi-Location Customer” shall exclude any customer excluded pursuant to the Cash-Wa Divestiture Agreement.
- GG. “Governmental Authorization” means any license, registration, or permit issued, granted, given or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement.
- HH. “Harbor” means Harbor Foodservice of Seattle LLC, a limited liability company organized, existing, and doing business under and by virtue of the laws of Washington with its executive offices and principal place of business located at 3901 Hogum Bar Road, NE, Lacey, Washington 98516.
- II. “Harbor Divestiture Agreement” means the asset purchase agreement by and among Harbor Foodservice of Seattle LLC, Food Services of America, Inc., US Foods, Inc. and Harbor Wholesale Grocery Inc. dated May 7, 2019. The Harbor Divestiture Agreement is attached to this Order as Non-Public Appendix 2.
- JJ. “Intellectual Property” means, without limitation, all:
1. Patents, patent applications, and inventions and discoveries that may be patentable;

2. Know-how, trade secrets, Software, technical information, data, registrations, applications for Governmental Authorization, inventions, processes, best practices, formulae, protocols, standards, methods, techniques, designs, quality control practices and information, research and test procedures and information, and safety, environmental and health practices and information; and
 3. Rights in any jurisdiction to limit the use or disclosure of any of the foregoing, and rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation, or breach of any of the foregoing.
- KK. “Kent Broadline Divestiture Assets” means the Broadline Distribution Assets relating to the Kent Distribution Center; *provided, however*, that if the Kent Broadline Divestiture Assets are divested to Harbor pursuant to the Harbor Divestiture Agreement, then the Kent Broadline Divestiture Assets shall not include those assets excluded by the Harbor Divestiture Agreement, which is attached to this Order as Non-Public Appendix 2.
- LL. “Kent Distribution Center” means the distribution center located at 18430 East Valley Highway, Kent, Washington, 98032.
- MM. “Monitor” means the Person appointed as Monitor in this Order.
- NN. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization, or other entity or governmental body.
- OO. “Relevant Employees” means any and all full-time employees, part-time employees, or contract employees, who were employed by or under contract with the Broadline Distribution Business at any time during the ninety (90) days preceding the Acquisition Date or at any time after the Acquisition Date, and whose duties relate or related to the Broadline Distribution Business.
- PP. “Relevant Notice Area” means the areas identified in Non-Public Appendix 4 to this Order.
- QQ. “Replacement Contracts” means Contracts entered into by Respondents in advance of the Divestiture Date that: (i) replace Shared Contracts with separate Contracts for a Broadline Distribution Center included within the Broadline Divestiture Assets; and (ii) provide the associated Broadline Distribution Business with no less favorable terms, services, and economic benefits that would have been under the Shared Contracts.
- RR. “Respondents” means US Foods, SGA, and FSA, collectively and individually.
- SS. “Shamrock” means Shamrock Foods Company, a company organized, existing, and doing business under and by virtue of the laws of Arizona with its executive offices and principal place of business located at 3900 E. Camelback Road, Suite 300, Phoenix, Arizona 85018.

- TT. “Shamrock Divestiture Agreement” means the Asset Purchase Agreement by and among Shamrock Foods Company, Food Services of America, Inc. and US Foods, Inc. dated June 24, 2019. The Shamrock Divestiture Agreement is attached to this Order as Non-Public Appendix 3.
- UU. “Shared Contracts” means Contracts that relate to both (i) a Broadline Distribution Business associated with a Broadline Distribution Center that is included within the Broadline Divestiture Assets and (ii) other businesses retained by Respondents.
- VV. “Shared Intellectual Property” means Respondent’s FSA Intellectual Property (other than trademarks and domain names) that, prior to the Divestiture Date, is used by both the Broadline Distribution Business and Respondents’ retained businesses.
- WW. “Shared Intellectual Property License” means a perpetual, non-exclusive, fully paid-up, irrevocable, and royalty-free license(s) to use any Shared Intellectual Property to operate a Broadline Distribution Business.
- XX. “Software” means computer programs related to the Broadline Distribution Business, including all software implementations of algorithms, models, and methodologies, whether in source code or object code form, firmware (permanent software programmed into a read-only memory), middleware (software that acts as a bridge between an operating system or database and applications), databases and compilations (including any and all data and collections of data), applications, and all associated documentation (including user manuals and training materials). Software includes any data mining technology used to track customer ordering and delivery patterns.
- YY. “Third Parties” means Persons other than Respondents or the Acquirer(s).
- ZZ. “Transition Assistance” means services, assistance, cooperation, training, and access to personnel regarding the transfer and operation of the Broadline Distribution Business, including, but not limited to, accounting and finance, human resources (including employee benefits, payroll), information technology and systems, logistics (including purchasing, distribution, warehousing, supply chain management), manufacturing, quality control, operating permits and licenses, regulatory compliance, governmental regulation, research and development, and sales and marketing (including customer service, and customer transfer logistics), the use of Respondent FSA’s Brands for transitional purposes, as well as providing assistance in acquiring and obtaining access to all Software used in the provision of such services.

II. Divestitures

IT IS FURTHER ORDERED that:

- A. Respondent US Foods shall divest, no later than 30 business days after the Acquisition Date, absolutely, and in good faith each of the following:

1. The Boise Broadline Divestiture Assets, as an on-going business, to Shamrock pursuant to the Shamrock Divestiture Agreement;
2. The Fargo Broadline Divestiture Assets, as an on-going business, to Cash-Wa pursuant to the Cash-Wa Divestiture Agreement; and
3. The Kent Broadline Divestiture Assets, as an on-going business, to Harbor pursuant to the Harbor Divestiture Agreement;

Provided, however, if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Shamrock, Cash-Wa, or Harbor is not an acceptable Acquirer, then, after receipt of such written notification, Respondents shall: (1) immediately notify each such Acquirer of the notice received from the Commission and shall as soon as practicable, but no later than within five (5) business days, rescind the relevant Divestiture Agreement(s); and (2) within six (6) months of the date Respondents receive notice of such determination from the Commission, divest the Boise Broadline Divestiture Assets, Fargo Broadline Divestiture Assets, or Kent Broadline Divestiture Assets, as applicable, absolutely and in good faith, at no minimum price, as on-going businesses to an Acquirer or Acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

Provided further, however, that if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that the manner in which any of the divestitures was accomplished is not acceptable, the Commission may direct Respondents, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture including, but not limited to, entering into additional agreements or arrangements, as the Commission may determine are necessary to satisfy the requirements of this Order.

- B. At the request of an Acquirer, no later than the Divestiture Date, Respondent FSA shall grant a Shared Intellectual Property License to each such Acquirer to use Shared Intellectual Property to operate the relevant Broadline Distribution Business, including by extending existing services, developing new products and services, and expanding, constructing, or operating additional distribution facilities; and with respect to any Software included in the Shared Intellectual Property that is being used by the Acquirer during the period in which Respondent US Foods is providing Transition Assistance, such Software shall include rights to all updates and improvements made to such Software during the time that the Respondent US Foods is providing Transition Assistance to the Acquirer.
- C. No later than each Divestiture Date, Respondent US Foods shall, at its sole expense:
 1. Obtain any Consents necessary to permit Respondents to divest the relevant Broadline Divestiture Assets, including Contracts and Governmental Authorizations, to an Acquirer, and to permit the Acquirer to continue the Broadline Distribution Business without interruption or impairment; or

2. Assist the Acquirer in obtaining any Contracts or Governmental Authorizations which Respondents have no legal right to assign, transfer, or sublicense;

Provided, however, Respondent US Foods may satisfy this requirement by certifying that the Acquirer has obtained all such Consents directly with each of the relevant Third Parties.

- D. Respondents shall cooperate and assist each Acquirer (or any other Person with whom Respondents engage in negotiations to acquire the Broadline Divestiture Assets) with a due diligence investigation of the Broadline Divestiture Assets and Broadline Distribution Business, including by providing sufficient and timely access to all information and employees customarily provided as part of a due diligence process.

III. Divestiture Agreements

IT IS FURTHER ORDERED that:

- A. The Divestiture Agreements shall be incorporated by reference into this Order and made a part hereof, and any failure by Respondents to comply with the terms of any Divestiture Agreement shall constitute a violation of this Order.
- B. The Divestiture Agreements shall not limit, or be construed to limit, the terms of this Order. To the extent any provision in a Divestiture Agreement varies from or conflicts with any provision in the Order such that Respondents cannot fully comply with both, Respondents shall comply with the Order.
- C. Respondents shall not modify, replace, or extend the terms of any Divestiture Agreement after the Commission issues the Order without the prior approval of the Commission, except as otherwise provided in Commission Rule 2.41(f)(5), 16 C.F.R. § 2.41(f)(5).

IV. Confidential Business Information

IT IS FURTHER ORDERED that:

- A. Respondents shall (i) not disclose, directly or indirectly, (including as to Respondents' employees) Confidential Business Information to any Person other than (a) the relevant Acquirer; (b) other Persons authorized by that Acquirer or staff of the Commission to receive such information; (c) the Commission; (d) the Monitor; and (e) the Divestiture Trustee if one is appointed; and (ii) not use for any reason or purpose any Confidential Business Information received or maintained by Respondents relating to the Broadline Divestiture Assets or Broadline Distribution Centers; *provided, however,* that Respondents may disclose or use such Confidential Business Information in the course of:

1. Performing their obligations or as permitted under the Order to Maintain Assets, the Decision and Order, or the Divestiture Agreements; or
 2. Complying with financial reporting requirements, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the Broadline Divestiture Assets or Broadline Distribution Centers, or as required by law.
- B. If disclosure or use of any Confidential Business Information is permitted to Respondents' employees or to any other Person under Paragraph IV.A of this Order, Respondents shall limit such disclosure or use (i) only to the extent such information is required, (ii) only to those employees or Persons who require such information for the purposes permitted under Paragraph IV.A, and (iii) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.
- C. Respondents shall enforce the terms of this Paragraph IV as to their employees or any other Person, and take such action as is necessary to cause each of their employees and any other Person to comply with the terms of this Paragraph IV, including implementation of access and data controls, training of employees, and all other actions that Respondents would take to protect their own trade secrets and proprietary information.
- D. Prior to the Acquisition Date, Respondents shall (i) not use or disclose, and as applicable, destroy all records of DMA Confidential Business Information as instructed by DMA, including but not limited to, information related to DMA operations, governance, Third Party relationships, capabilities, business plans, strategies, and projections; and (ii) certify in the subsequent compliance report submitted to the Commission that all DMA Confidential Business Information has been destroyed, and (iii) provide notice to DMA of the same; *provided, however*, (1) DMA Confidential Business Information that is necessary to fulfill Respondents' ongoing obligations to customers shall not be destroyed until such time that it is no longer necessary to fulfill such obligations, and (2) as of the Acquisition Date, all copies of DMA Contracts shall be in the sole custody of the legal department of Respondents, which shall release information to other employees of Respondents only as needed to fulfill Respondents' ongoing obligations to customers. Respondents may retain a copy of DMA Confidential Business Information in accordance with internal policies and procedures for legal, regulatory and compliance purposes, and may disclose or use such DMA Confidential Business Information for the purpose of complying with financial reporting requirements, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcement actions threatened or brought against the Broadline Divestiture Assets or Broadline Distribution Centers, or as required by law. *Provided further, however*, at the Acquirer's option, any DMA Confidential Business Information relating to the Broadline Distribution Center transferred to the requesting Acquirer shall be transferred to that Acquirer by Respondent FSA prior to being destroyed. Notice of the destruction of DMA Confidential Business Information shall be provided to DMA in writing and a copy shall be sent to the staff of the Federal Trade Commission.

V. Asset Maintenance

IT IS FURTHER ORDERED that from the date Respondents sign the Consent Agreement until the Divestiture Date, Respondents shall:

- A. Maintain each of the Broadline Distribution Centers and all Broadline Distribution Assets in substantially the same condition (except for normal wear and tear) as they existed at the time Respondents signed the Consent Agreement;
- B. Take such actions that are consistent with the past practices of Respondents in connection with each Broadline Distribution Center and all the Broadline Distribution Assets, and that are taken in the ordinary course of business and in the normal day-to-day operations of the Broadline Distribution Centers;
- C. Keep available the services of the current officers, employees, and agents of Respondents; and maintain the relations and goodwill with suppliers, landlords, customers, employees, agents, and others having business relations with the Broadline Distribution Centers and the Broadline Distribution Assets; and
- D. Preserve the Broadline Distribution Centers and Broadline Distribution Assets as ongoing businesses and not take any affirmative action, or fail to take any action within Respondents' control, as a result of which the viability, competitiveness, or marketability of the Broadline Distribution Centers and Broadline Distribution Assets would be diminished.

The purposes of this Paragraph V are to: (1) preserve the Broadline Distribution Assets as viable, competitive, and ongoing businesses until the Divestiture Date, (2) prevent interim harm to competition pending the relevant divestitures and other relief, and (3) help remedy any anticompetitive effects of the Acquisition as alleged in the Commission's Complaint.

VI. Employees

IT IS FURTHER ORDERED that:

- A. Respondents shall cooperate with and assist each Acquirer, when applicable, to evaluate and retain any and all Relevant Employees necessary to operate the Broadline Divestiture Assets in substantially the same manner as Respondents prior to the divestiture, including but not limited to:
 - 1. Within a reasonable time, but in no event later than 20 days after a request from an Acquirer, Respondents shall (i) identify all Relevant Employees (ii) allow the Acquirer to inspect the personnel files and other documentation of all Relevant Employees, to the extent permissible under applicable laws, and (iii) allow the Acquirer, to the extent permitted by law, an opportunity to meet personally with

and interview any Relevant Employee outside the presence or hearing of any employee or agent of Respondents;

2. Respondents shall (i) not offer any incentive to any Relevant Employee to decline employment with the Acquirer, (ii) remove any contractual impediments that may deter any Relevant Employee from accepting employment with the Acquirer, including but not limited to, any non-compete or confidentiality provision of employment or other Contracts with Respondents that would affect the ability of such employee to be employed by the Acquirer, and (iii) not otherwise interfere with the recruitment, hiring, or employment of any Relevant Employee by the Acquirer; and
3. Respondents shall, to the extent permissible by law, (i) vest all current and accrued pension benefits as of the date of transition of employment with the Acquirer for any Relevant Employee who accepts an offer of employment from the Acquirer and (ii) provide each Relevant Employee with reasonable financial incentive, including continuation of all employee benefits and regularly scheduled raises and bonuses, as necessary to accept offers of employment with the Acquirer.

Provided, however, that this Paragraph does not require, nor shall it be construed to require, any Respondent to terminate the employment of any employee or to prevent Respondents from continuing to employ any Relevant Employee(s) in connection with the Acquisition or the divestiture of the Broadline Divestiture Assets.

- B. For a period of 2 years after the Divestiture Date, Respondents shall not solicit or induce any Relevant Employee who has accepted an offer of employment with an Acquirer to terminate such employment; *provided, however,* that Respondents may (i) advertise for employees in newspapers, trade publications, or other media not targeted specifically at the Relevant Employees; (ii) hire Relevant Employees if employment has been terminated by an Acquirer, or who apply for employment with Respondents, so long as such Relevant Employees were not solicited by Respondents in violation of this Paragraph; or (iii) hire any Relevant Employees if the Acquirer has notified Respondents in writing that the Acquirer does not intend to make an offer of employment to that Relevant Employee, or where such an offer has been made and the Relevant Employee has declined the offer.

VII. Transition Assistance

IT IS FURTHER ORDERED that Respondents shall:

- A. Provide the Acquirer(s) with Transition Assistance (i) to efficiently transfer the relevant Broadline Divestiture Assets to each Acquirer and (ii) to operate the relevant Broadline Divestiture Assets and Broadline Distribution Business in a manner equivalent in all material respects to the manner in which Respondents operated the Broadline Divestiture

Assets and Broadline Distribution Business prior to the Acquisition, including the ability to develop new products, increase sales of current products, make reasonable modifications to the relevant Broadline Distribution Business, and maintain the competitiveness of the relevant Broadline Distribution Business;

B. Provide Transition Assistance:

1. As set forth in a Divestiture Agreement, or as otherwise reasonably requested by the Acquirer (whether before or after the Divestiture Date);
2. At the price set forth in a Divestiture Agreement, or if no price is set forth, at Direct Cost; and
3. For a period sufficient to meet the requirements of this Paragraph, which shall be at least 24 months after the Divestiture Date, *provided however*, that for any Transition Assistance for the use of Respondent FSA's Brands, the applicable period shall be 12 months after the Divestiture Date;

C. Allow the Acquirer to terminate at any time, in whole or in part, any Transition Assistance provisions of the Divestiture Agreement upon commercially reasonable notice and without cost or penalty;

D. At an Acquirer's request, file with the Commission a written request to extend the time period of any such Transition Assistance; and

E. Not cease providing Transition Assistance due to a breach by the Acquirer of a Divestiture Agreement and not seek to limit any damages (such as indirect, special, and consequential damages) which the Acquirer would be entitled to receive in the event of Respondents' breach of any agreement relating to the provision of Transition Assistance.

VIII. Monitor

IT IS FURTHER ORDERED that:

- A. Bradford A. Wise shall be appointed Monitor to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Order.
- B. No later than one (1) day after the Acquisition Date, Respondents shall, pursuant to the agreement executed by the Monitor and Respondents and attached as Appendix 1 (Monitor Agreement) and Non-Public Appendix A (Monitor Compensation) to this Order, transfer to the Monitor all the rights, powers, and authorities necessary to permit the Monitor to perform his duties and responsibilities in a manner consistent with the purposes of this Order.

- C. In the event a substitute Monitor is required, the Commission shall select the Monitor, subject to the Consent of US Foods, which Consent shall not be unreasonably withheld. If US Foods has not opposed, in writing, including the reasons for opposing, the selection of a proposed substitute Monitor within ten (10) days after notice by the staff of the Commission to US Foods of the identity of any proposed substitute Monitor, US Foods shall be deemed to have Consented to the selection of the proposed substitute Monitor. Not later than ten (10) days after appointment of a substitute Monitor, US Foods shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondent's compliance with the terms of this Order and the Divestiture Agreements in a manner consistent with the purposes of this Order.
- D. Respondents shall Consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
1. The Monitor shall have the power and authority to monitor Respondents' compliance with the terms of this Order and the Divestiture Agreements, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of this Order and in consultation with the Commission, including, but not limited to:
 - a. Assuring that Respondents expeditiously comply with all obligations and perform all responsibilities as required by this Order, and the Divestiture Agreements;
 - b. Monitoring any Transition Assistance and transition services agreements; and
 - c. Assuring that Confidential Business Information is not received or used by Respondents or the Acquirers, except as allowed in this Order.
 2. The Monitor shall (i) monitor Respondents' compliance with the obligations set forth in this Order and (ii) act in consultation with the Commission or its staff, and shall serve as an independent third party and not as an employee or agent of any Respondent or of the Commission.
 3. The Monitor shall serve for such time as is necessary to monitor Respondents' compliance with the provisions of this Order and the Divestiture Agreements.
 4. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request related to Respondents' compliance with their obligations under this Order and the Divestiture Agreements. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the

Monitor's ability to monitor Respondents' compliance with this Order and the Divestiture Agreements.

5. The 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 Monitor shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.
 6. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the 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 malfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor.
 7. Respondents shall report to the Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor, including any reports submitted by the Acquirer with respect to the performance of Respondent's obligations under this Order and the Divestiture Agreements.
 8. Within one (1) month from the date the Monitor is appointed pursuant to this Paragraph, every sixty (60) days thereafter, and otherwise as requested by the Commission, the Monitor shall report in writing to the Commission concerning the performance by Respondents of their obligations under this Order, and the Divestiture Agreements.
 9. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Monitor and each of the 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 Monitor's duties.
- F. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor pursuant to Paragraph VIII.C, above.

- G. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order and the Divestiture Agreements.
- H. A Monitor appointed pursuant to this Order may be the same Person appointed as a Divestiture Trustee pursuant to this Order.

IX. Divestiture Trustee

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the obligations imposed by Paragraph II of this Order, the Commission may appoint a Divestiture Trustee to divest any remaining Broadline Distribution Assets, and perform Respondents' other obligations in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General brings an action pursuant to Section 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 divest the required assets. 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 Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by 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, and stated in writing their 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.
 - 1. Not later than ten (10) days after the 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 effectuate the divestitures required by, and satisfy the additional obligations imposed by, this Order.
 - 2. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondents shall Consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

- a. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to effectuate the divestitures required by, and satisfy the additional obligations imposed by, this Order.
- b. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described in Paragraph IX.B to effectuate the required divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan to divest, or believes the divestitures can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court; *provided, however,* the Commission may extend the divestiture period only two (2) times.
- c. 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 divested 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 divestiture. Any delays caused by Respondents shall extend the time for divestiture under this Paragraph for a time period equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
- d. The Divestiture Trustee shall use commercially reasonable 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 divest expeditiously and at no minimum price. Each divestiture 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 Person, and if the Commission determines to approve more than one such acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondents from among those approved by the Commission; *provided further, however,* that Respondents shall select such Person within five (5) days after receiving notification of the Commission's approval.
- e. 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 divestiture and all expenses incurred. After approval by the Commission 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 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 divestiture of all of the relevant assets that are required to be divested by this Order.

- f. 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 gross negligence, malfeasance, willful or wanton acts, or bad faith by the Divestiture Trustee.
- g. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
- h. The Divestiture Trustee shall report in writing to Respondents and to the Commission every thirty (30) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
- i. 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.
- j. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, representatives, and assistants to sign an appropriate confidentiality agreement relating to Commission materials and

information received in connection with the performance of the Divestiture Trustee's duties and responsibilities.

- C. If the Commission determines that the 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 IX.
- D. 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 divestitures required by this Order.

X. Prior Notice

IT IS FURTHER ORDERED that:

- A. Respondent US Foods shall not, without providing advance written notification to the Commission in the manner described in this Paragraph:
 - 1. Acquire any Third Party broadline distribution center in the Relevant Notice Area servicing broadline distribution customers; or
 - 2. Enter into any Contract to participate in the management, operation, or control of any Third Party broadline distribution center in the Relevant Notice Area serving broadline distribution customers.
- B. Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (herein referred to as "the Notification"), 16 C.F.R. § 803 App., and shall be prepared and transmitted in accordance with the requirements of that Part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondent US Foods and not of any other party to the transaction. Respondent US Foods shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondent US Foods shall not consummate the transaction until thirty (30) days after certifying substantial compliance with the request for additional information or documentary material. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. *Provided, however*, that prior notification shall not be required by this Paragraph X 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.

XI. Compliance Reports

IT IS FURTHER ORDERED that:

- A. Respondents shall:
1. notify Commission staff via email at bccompliance@ftc.gov of the Acquisition Date no later than 5 days after the Acquisition Date, and
 2. submit each of the complete Divestiture Agreements to the Commission at ElectronicFilings@ftc.gov and bccompliance@ftc.gov no later than 30 days after each Divestiture Date.
- B. Respondents shall submit verified written reports (“compliance reports”) in accordance with the following:
1. An interim compliance report 30 days after the Order is issued, and every 60 days thereafter until Respondents have fully complied with the provisions of Paragraph II of this Order; and
 2. Additional compliance reports as the Commission or its staff may request.
- C. Respondent US Foods shall submit an annual compliance report one year after the date this Order is issued, and annually for the next 9 years on the anniversary of that date.
- D. Each compliance report shall set forth in detail the manner and form in which Respondents intend to comply, are complying, and have complied with this Order. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondents are in compliance with the Order. Conclusory statements that Respondents have complied with their obligations under the Order are insufficient. Respondents shall include in their reports, among other information or documentation that may be necessary to demonstrate compliance, a full description of the measures Respondents have implemented, are implementing, or plan to implement to ensure that they have complied, are complying, or will comply with each paragraph of the Order, and a description of all substantive contacts or negotiations for the divestitures and the identities of all parties contacted. Respondents shall retain copies of all material written communications to and from such parties, as well as all non-privileged internal memoranda, reports, and recommendations concerning completing their obligations under the Order for a period of 3 years, and shall provide copies of those records to Commission staff upon request.
- E. Each compliance report shall be verified in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondents shall submit an original and 2 copies of each compliance report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to the Compliance Division at

bccompliance@ftc.gov. In addition, Respondents shall provide a copy of each compliance report to the Monitor if the Commission has appointed one in this matter.

XII. Change in Respondents

IT IS FURTHER ORDERED that Respondent US Foods shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of Respondent US Foods;
- B. Any proposed acquisition, merger, or consolidation of Respondent US Foods; and
- C. Any other change in Respondent US Foods including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

XIII. Access

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon five (5) days' written notice to the applicable Respondent made to its principal United States offices, registered office of their United States subsidiaries, or headquarters addresses, such Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business hours of such Respondent 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 such Respondent related to compliance with this Order, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of such Respondent; and
- B. The opportunity to interview officers, directors, or employees of such Respondent, who may have counsel present, related to compliance with this Order.

XIV. Purpose

IT IS FURTHER ORDERED that the purpose of the divestiture is to ensure the continuation of the Broadline Distribution Businesses as ongoing viable businesses engaged in the same business in which the assets 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 in this matter.

XV. Term

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date this Order is issued.

By the Commission.

April J. Tabor
Acting Secretary

SEAL

ISSUED

NON-PUBLIC APPENDIX 1

Cash-Wa Divestiture Agreement

NON-PUBLIC APPENDIX 2

Harbor Divestiture Agreement

NON-PUBLIC APPENDIX 3

Shamrock Divestiture Agreement

NON-PUBLIC APPENDIX 4

Relevant Notice Area

APPENDIX 1
Monitor Agreement

NON-PUBLIC APPENDIX A

Monitor Compensation