

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright

<p>In the Matter of</p> <p style="padding-left: 40px;">Nielsen Holdings N.V., a corporation;</p> <p style="padding-left: 80px;">and,</p> <p style="padding-left: 40px;">Arbitron Inc., a corporation.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Docket No. C-</p>
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DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Nielsen Holdings N.V. (“Nielsen”) of the outstanding voting shares of Respondent Arbitron Inc. (“Arbitron”), 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 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 Order (“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, now in conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Nielsen is a corporation organized, existing and doing business under and by virtue of the laws of the Netherlands, with its office and principal place of business located at 85 Broad Street, New York, New York 10004.
2. Respondent Arbitron 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 9705 Patuxent Woods Drive, Columbia, Maryland 21046-1572.
3. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of the Respondents, and this proceeding is in the public interest.

ORDER

I.

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

- A. “Nielsen” means Nielsen Holdings N.V., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Nielsen Holdings N.V., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, the term “Nielsen” shall include Arbitron.
- B. “Arbitron” means Arbitron Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Arbitron Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Acquirer” means a Person approved by the Commission to acquire particular assets or rights that Respondents are required, pursuant to this Order, to assign, grant, license, divest, transfer, deliver, or otherwise convey.
- D. “Acquisition” means Nielsen’s acquisition of Arbitron pursuant to an Agreement and Plan of Merger executed December 17, 2012.
- E. “Arbitron Calibration Panel” means the subset of individuals recruited from the Arbitron PPM Panel that provides single source reach levels and overlaps for television, tablets, smartphones, personal computers, and radio (or any other device that performs similar functions), by asking the panelists in addition to their Arbitron PPM Panel responsibilities to download software on their home personal computer, tablets, and

- smartphones (or any other device that performs similar functions); “Arbitron Calibration Panel” includes the panel of people as expanded pursuant to Paragraph IV. of this Order.
- F. “Arbitron PPM Panel” means the panel of individuals in the U.S. who have been recruited by Arbitron to carry Arbitron’s Portable People Meter® (“PPM”) device to measure their exposure to encoded audio signals.
- G. “Balance of Nation Panel” means a group of individuals recruited to supplement the Arbitron PPM Panel, such that when combined with the Arbitron PPM Panel, national audience projections are possible or enhanced.
- H. “Calibration Panel Data” means the data from the Arbitron Calibration Panel or from the expansion of the Arbitron Calibration Panel.
- I. “Commission” means Federal Trade Commission.
- J. “comScore” means comScore, Inc., a corporation located at 11950 Democracy Drive, Suite 600, Reston, Virginia 20190.
- K. “Confidential Information” means information not in the public domain, including, but not limited to, information regarding methodology, encoding share, customer identity, or customer contract details. “Confidential Information” shall not include any information that: (1) is publicly available when provided, disclosed, or otherwise made available; or (2) becomes publicly available after it is provided, disclosed, or otherwise made available by means other than a violation of this Order or Respondents’ breach of a confidentiality or non-disclosure agreement.
- L. “Cross-Platform Services” means any U.S. service that measures viewing of content, for the purpose of determining the size and composition of the audience of such programming and/or advertising across multiple distribution platforms including, but not limited to, television, online, mobile, radio and tablets (or any other device that performs similar functions), but in all events measuring at least television and online, and related insights and analytics.
- M. “Direct Cost” means cost not to exceed the cost of labor, material, equipment, travel, and other expenditures to the extent the costs are directly incurred to provide the assistance or services required by this Order and that would not otherwise be incurred by Respondents. “Direct Cost” to the Acquirer for its use of any of Respondents’ employees’ labor shall not exceed the then-current average wage rate for such employee, including benefits.
- N. “Encoding Equipment” means all equipment relating to the encoding of audio signals for detection by PPMs, including updates thereto.
- O. “Encoding Technology” means all intellectual property, rights, know-how, licenses, and agreement related to the encoding of audio signals for detection by PPMs, including updates thereto
- P. “ESPN” means the multi-platform media company, ESPN, Inc., a subsidiary of The Walt Disney Company, which focuses on sports-related programming including live and recorded event telecasts, sports talk shows, and other original programming, that

distributes its content on multiple platforms including cable and satellite television, online, mobile, and radio.

- Q. “Key Arbitron Employees” means the employees listed on Confidential Exhibit A of this Order.
- R. “Link Meter Technology” means (1) all software (source code and object code) intended for use in Project Blueprint that enables comScore to synchronize its media measurement data with the panelists in the Arbitron Calibration Panel; and (2) all other rights and interests arising out of, in connection with, or in relation to such software, including, but not limited to, all rights to causes of action and remedies related thereto.
- S. “MRC” means the Media Rating Council, which accredits audience measurement services.
- T. “Monitor” means the monitor appointed pursuant to Paragraph VI. of this Order.
- U. “Panelist Characteristics” means the following information, provided on a non-personally identifiable basis, for a panelist: (1) age; (2) gender; (3) race/ethnicity; (4) presence of children in the household; (5) size of household; (6) time zone; (7) DMA and metro market code; and (8) five-digit zip code .
- V. “PPM Equipment” means all equipment related to the operation of, and collection of data from, PPMs, including updates thereto.
- W. “PPM Technology” means all intellectual property rights, know-how, licenses, and agreements related to the operation of, and collection of data from, PPMs, including updates thereto.
- X. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, or other business or government entity, and any subsidiaries, divisions, groups or affiliates thereof.
- Y. “Project Blueprint” means the collaboration between Arbitron and comScore for ESPN as contemplated by (1) the Multi-Platform Research Agreement with ESPN between Arbitron, comScore, and ESPN, executed August 8, 2012; and (2) the Collaboration Agreement between Arbitron and comScore, effective August 1, 2012.
- Z. “Prospective Acquirer” means the Person that Respondents (or the Divestiture Trustee, if appointed) intend to submit or have submitted to the Commission for the Commission’s prior approval pursuant to Paragraph II.A. (or Paragraph VII., if applicable) of this Order.
- AA. “Radio Data” means all data from the Arbitron PPM Panel that reflect Panelist Characteristics, dictionary of reported data fields, and records of encoded radio content detected by the panelists’ PPMs as reported consistent with the practices Arbitron used for reporting data for Project Blueprint.
- BB. “Remedial Agreement” means the agreement between Respondents and the Acquirer that includes the provisions required by this Order and that has been approved by the Commission, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be offered to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed.

- CC. “Television Data” means all data from the Arbitron PPM Panel that reflect Panelist Characteristics, dictionary of reported data fields, and records of encoded video content detected by the panelists’ PPMs as reported consistent with the practices Arbitron used for reporting data for Project Blueprint, and additionally including time shifted viewing data (which shall include video on demand) identified as such, which additional time shifted viewing data shall be provided to the Acquirer at Direct Cost.

II.

IT IS FURTHER ORDERED that:

- A. No later than three (3) months after Respondents execute the Agreement Containing Consent Order, Respondents shall divest the Link Meter Technology absolutely and in good faith and at no minimum price, to an Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission (including execution of a Remedial Agreement) and shall, pursuant to a Remedial Agreement, license to that Acquirer, on a non-exclusive basis, all know-how related to the Link Meter Technology;
1. Respondents shall obtain, and the Acquirer shall grant to Respondents, a royalty-free right to use the Link Meter Technology, for purposes of complying with the requirements of this Order;
 2. *Provided, however,* that both the Acquirer and Respondents shall have unrestricted rights to use the know-how relating to the Link Meter Technology and each shall covenant not to bring litigation against the other to enjoin or seek recompense for the use of the Link Meter Technology or software designed to perform similar functions.
- B. No later than the date Respondents divest the Link Meter Technology to the Acquirer pursuant to Paragraph II.A., above, Respondents shall, pursuant to a Remedial Agreement, for a period no less than eight (8) years from the date of the divestiture required by Paragraph II.A., above:
1. License to the Acquirer, on a royalty-free basis, for use in developing and providing a calibration panel and/or Balance of Nation Panel for the provision of Cross-Platform Services:
 - a. the Encoding Technology; and
 - b. the PPM Technology; and
 2. Provide, at Direct Cost to the Acquirer, such technical assistance (including know-how relating to the Link Meter Technology), Encoding Equipment, and/or PPM Equipment, as requested by the Acquirer to enable the Acquirer to:

- a. provide Cross-Platform Services, including to encode additional content and/or advertising and developing and managing any panel using the PPM Technology for Cross-Platform Services provided by the Acquirer to its customers, and
 - b. obtain accreditation by the MRC in connection with the provision of Cross-Platform Services.
- C. No later than the date Respondents divest the Link Meter Technology to the Acquirer pursuant to Paragraph II.A., above, Respondents shall, pursuant to a Remedial Agreement and consistent with the requirements of Paragraph IV.B.1., for a period of no less than eight (8) years from the date of the divestiture required by Paragraph II.A., above, provide to the Acquirer for purposes of developing and providing Cross-Platform Services to its customers, and grant to the Acquirer a perpetual, royalty-free license (for data delivered during the term of the Remedial Agreement) for the use of:
 1. Television Data;
 2. Radio Data; and
 3. Calibration Panel Data;

Respondents shall provide the Television Data, Radio Data, and Calibration Panel Data (except for five-digit zip code data) to the Acquirer on a respondent-level basis and an aggregated basis by specified customers' stations, networks, websites, and/or other media distribution platforms, as identified by the Acquirer, in such form, at such frequency as reasonably requested by the Acquirer, but in no event less frequent than the frequency Arbitron used for reporting data for Project Blueprint, and according to such metrics as reasonably requested by the Acquirer; *provided, however*, that, with respect to five-digit zip code data, Respondents shall provide the total number of individuals by zip code as reasonably requested by the Acquirer (but at least monthly); and if Respondents make any zip code data, or any segment reporting derived from zip codes, available to its customers of national Cross-Platform Services, then Respondents shall provide five-digit zip code data to the Acquirer sufficient to provide similar information to Acquirer's customers, as reasonably requested by the Acquirer; *provided further, however*, that Respondents shall have and retain full and exclusive right, title, and ownership interest in and to any information provided by Respondents to the Acquirer except that the Acquirer shall have the right to use the information to develop and provide Cross-Platform Services to its customers pursuant to the Remedial Agreement; *provided further, however*, that, with respect to Radio Data, the Acquirer may not disclose Radio Data to any customer of the Acquirer who is not also a subscriber to Arbitron radio ratings.

- D. Respondents shall:
 1. Have no authority to, and shall not exercise or attempt to exercise any authority to, market or price the Cross-Platform Services that the Acquirer sells to the Acquirer's customers,

2. Not be entitled to any revenue, or portion thereof, that the Acquirer collects from its customers, or attempt to collect any revenue, or portion thereof, from the Acquirer attributable to revenue that the Acquirer collects from its customers; and
 3. Not make any change to the PPM Technology or Encoding Technology that has the effect of eliminating or impairing the ability of the PPM to collect records of encoded video content.
- E. The Remedial Agreement shall be incorporated by reference into this Order and made a part hereof. Respondents shall comply with all terms of the Remedial Agreement, and any breach by Respondents of any term of the Remedial Agreement shall constitute a failure to comply with this Order. If any term of the Remedial Agreement varies from the terms of this Order (“Order Term”), then to the extent that Respondents cannot fully comply with both terms, the Order Term shall determine Respondents’ obligations under this Order. No Remedial Agreement shall limit or contradict, or be construed to limit 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 any Acquirer or to reduce any obligations of Respondents under such agreement.
- F. The purpose of this Paragraph II is to ensure that the Acquirer can offer Cross-Platform Services, with the goal of providing a national syndicated cross-platform audience measurement service, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission’s complaint.

III.

IT IS FURTHERED ORDERED that Respondents shall:

- A. No later than ten (10) days after a request from a Prospective Acquirer, provide the Prospective Acquirer with the following information for each Key Arbitron Employee, as and to the extent permitted by law:
1. Name, job title or position, date of hire, and effective service date;
 2. A specific description of the employee’s responsibilities;
 3. The base salary or current wages;
 4. The most recent bonus paid, aggregate annual compensation for Respondents’ last fiscal year, and current target or guaranteed bonus; if any;
 5. Employment status (i.e. active or on leave or disability, full-time or part-time);
 6. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated

employees; and

7. At the Prospective Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the Key Arbitron Employee;
- B. No later than ten (10) days after a request from a Prospective Acquirer, provide to the Prospective Acquirer an opportunity to meet personally and outside the presence or hearing of any employee or agent of any Respondent, with any one or more of the Key Arbitron Employees, and to make offers of employment to any one or more of the Key Arbitron Employees.
 - C. Not interfere, directly or indirectly, with the hiring or employing by the Prospective Acquirer of any Key Arbitron Employees, not offer any incentive to such employees to decline employment with the Prospective Acquirer, and not otherwise interfere with the recruitment of any Key Arbitron Employees by the Prospective Acquirer;
 - D. Remove any impediments within the control of Respondents that may deter Key Arbitron Employees from accepting employment with the Prospective Acquirer, including, but not limited to, removal of any non-compete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by the Prospective Acquirer, and shall not make any counteroffer to a Key Arbitron Employee who receives a written offer of employment from the Prospective Acquirer; *provided, however*, that nothing in this Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee.
 - E. For Key Arbitron Employees who have accepted offers of employment with the Acquirer, not, for a period of one (1) year following the date such Key Arbitron Employee begins employment with the Acquirer, directly or indirectly, solicit or otherwise attempt to induce such Key Arbitron Employees to terminate his or her employment with the Acquirer; *provided, however*, that Respondents may:
 1. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at Key Arbitron Employees; or
 2. Hire Key Arbitron Employees who apply for employment with Respondents, as long as such employees were not solicited by Respondents in violation of this Paragraph; *provided further, however*, that this Paragraph shall not prohibit Respondents from making offers of employment to or employing any Key Arbitron Employee if the Acquirer has notified Respondents in writing that the Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the employee's employment has been terminated by the Acquirer.

- F. For any employees (except those listed on Confidential Exhibit B) who are terminated by Respondents who had responsibilities for or were involved in Project Blueprint or who are engineers knowledgeable about the Encoding Technology, Respondents shall remove any impediments within the control of Respondents that may deter such employee from accepting employment with the Acquirer, including, but not limited to, removal, solely to the extent needed for the Acquirer's provision of Cross-Platform Services, of any non-compete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by the Acquirer, and shall not make any counteroffer to such an employee who receives a written offer of employment from the Acquirer.

IV.

IT IS FURTHER ORDERED that:

- A. Respondents shall:
1. Manage and maintain (and expand as required by Paragraph IV.A.2., below) the Arbitron Calibration Panel consistent with Respondents' own business practices and under the following conditions:
 - a. Respondents shall assure that the Arbitron Calibration Panel comprises at least two thousand panelists no later than six (6) weeks after the date of the signing of the Remedial Agreement;
 - b. Respondents shall require the Acquirer to pay the Direct Costs directly attributable to managing and maintaining the Arbitron Calibration Panel; *provided, however*, that Respondents may enter into a Remedial Agreement that includes additional payments to which the Acquirer agrees, as approved by the Commission;
 - c. the Acquirer shall have full and exclusive right, title, and ownership interest in and to any and all data generated by the Arbitron Calibration Panel; for the avoidance of doubt, Respondents shall retain all right, title and ownership interest in all underlying data from the PPM Panel that is an input into the data generated by the Arbitron Calibration Panel;
 - d. at the Acquirer's option, Respondents shall have the right to use the data generated by the Arbitron Calibration Panel at a cost negotiated and agreed to by the Acquirer and Respondents, as reviewed and approved by the Monitor in consultation with Commission staff;
 - e. *provided, however*, that Respondents shall have no obligation to manage and maintain the Arbitron Calibration Panel if the Acquirer requests in writing (with copies to the Commission staff and the Monitor) that it no longer requires that the Arbitron Calibration Panel be maintained; and
 - f. *provided, further, however* that Respondents shall have no obligation to continue to manage and maintain the Arbitron Calibration Panel if (1) the

Acquirer fails to pay the Direct Costs directly attributable to managing and maintaining the Arbitron Calibration Panel as required by the Remedial Agreement; (2) Respondents notify the Acquirer, the Monitor, and Commission staff of Acquirer's failure to pay Direct Costs and give the Acquirer thirty (30) days from receiving that notice to cure the failure; and (3) the Acquirer fails to cure.

2. At the request of the Acquirer, expand the Arbitron Calibration Panel beyond the two (2) thousand panelists required in Paragraph IV.A.1.a. to enable national projections under the following conditions:
 - a. Respondents shall require the Acquirer to pay the Direct Costs directly attributable to the expansion of the Arbitron Calibration Panel; *provided, however,* that Respondents may enter into a Remedial Agreement that includes additional payments to which the Acquirer agrees, as approved by the Commission;
 - b. the Acquirer shall have full and exclusive right, title, and ownership interest in and to any and all data generated by the expansion of the Arbitron Calibration Panel; and
 - c. at the Acquirer's option, Respondents shall have the right to use the data generated by the expansion of the Arbitron Calibration Panel at a cost negotiated and agreed to by the Acquirer and Respondents, as reviewed and approved by the Monitor in consultation with Commission staff;
- B. Respondents shall manage and maintain (and expand as required by Paragraph IV.B.2. below) the Arbitron PPM Panel consistent with Respondents' own practices and under the following conditions:
 1. Respondents shall require the Acquirer to pay the Direct Costs directly attributable to the cost of providing the data generated by the Arbitron PPM Panel to the Acquirer; *provided, however,* that Respondents may enter into a Remedial Agreement that includes additional payments to which the Acquirer agrees, as approved by the Commission; and
 2. At the request of the Acquirer, expand the Arbitron PPM Panel to enable national projections under the following conditions:
 - a. Respondents shall require the Acquirer to pay the Direct Costs directly attributable to such expansion and to the collection of those data that are provided to and used solely by the Acquirer; *provided, however,* that Respondents may enter into a Remedial Agreement that includes additional payments to which the Acquirer agrees, as approved by the Commission;
 - b. the Acquirer shall have full and exclusive right, title, and ownership interest in and to any and all data generated by the expansion of the Arbitron PPM Panel; and

- c. at the Acquirer's option, Respondents shall have the right to use the data generated by the expansion of the Arbitron PPM Panel at a cost negotiated and agreed to by the Acquirer and Respondents, as reviewed and approved by the Monitor in consultation with Commission staff.

V.

IT IS FURTHER ORDERED that after the date of the divestiture of the Link Meter Technology, Respondents shall not disclose, provide, discuss, exchange, circulate, convey, or otherwise furnish Confidential Information of the Acquirer, directly or indirectly, to or with any of Respondents' employees, officers, directors, agents or representatives with responsibilities relating to Respondents' audience measurement business, except as necessary to comply with the requirements of this Order.

VI.

IT IS FURTHER ORDERED that:

- A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor ("Monitor") to assure that Respondents comply with all obligations and perform all responsibilities required by this Order and the Remedial Agreement.
- B. The Commission shall select the Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Monitor, Respondents shall be deemed to have consented to the selection of the proposed Monitor.
- C. Not later than ten (10) days after the appointment of the Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers upon the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondents' compliance with the requirements of this Order and the Remedial Agreement.
- D. If a Monitor is appointed by the Commission, 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 requirements of this Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the underlying purpose of this Order and in consultation with the Commission or Commission staff.

2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
3. The Monitor shall serve until termination of this Order.
4. The Monitor shall report in writing to the Commission every sixty (60) days concerning the Monitor's duties and responsibilities.
5. 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. 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 Remedial Agreement.
6. 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.
7. Respondents shall indemnify the Monitor and hold the Monitor harmless against all 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 gross negligence, willful or wanton acts, or bad faith by the Monitor.
8. 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*, that such agreement shall not restrict the Monitor (and its representatives) from providing any information to, or receiving information from, the Commission.
9. 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 related to Commission materials and information received in connection with the performance of the Monitor's duties.

10. In the event the Commission determines that the Monitor is no longer willing or able to perform his/her duties under this Order, or has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor in the same manner as provided in this Paragraph.
11. 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.
12. The Monitor appointed pursuant to this Paragraph VI. may be the same person appointed as the Divestiture Trustee pursuant to Paragraph VII. of this Order.

VII.

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the divestiture and licensing obligations of Paragraph II. of this Order, the Commission may appoint a Divestiture Trustee to perform Respondents' obligations in a manner that satisfies the requirements of this Order, including, but not limited to, Paragraphs II. and IV. 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 VII.A. 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 in the media industry. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a 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. No 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 divestiture 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 divestiture required by, and satisfy the additional obligations imposed by, this Order.
 - b. the Divestiture Trustee shall have six (6) months after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the six (6) month period, the Divestiture Trustee has submitted a plan to satisfy the obligations of Paragraphs II. and IV. of this Order, or believes that such obligations can be achieved within a reasonable time, the period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court; *provided, however*, that the Commission may extend the period for only an additional three (3) months.
 - 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 under this Paragraph VII. 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 subject to the provisions of Paragraphs II. and IV., including, but not limited to, the requirement that the Acquirer pay Direct Costs as required by Paragraphs IV.A.1.b, IV.A.2.a., IV.B.1., and IV.B.2.a. The 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 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 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, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.

- 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 VII.
- 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.
- E. The Divestiture Trustee appointed pursuant to this Paragraph VII. may be the same person appointed as the Monitor pursuant to Paragraph VI. of this Order.

VIII.

IT IS FURTHER ORDERED that:

- A. No later than thirty (30) days after the date this Order is issued, and every thirty (30) days thereafter until the Link Meter Technology is divested and the Remedial Agreement entered into pursuant to Paragraph II of this Order is approved by the Commission, Respondents shall submit to the Commission (and a complete copy to the Monitor) a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. For the period covered by this report, the report shall include, but not be limited to, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraph II of this Order, including a description of all substantive contacts or negotiations and the identity and contact information of all parties contacted. Respondents shall include in the reports copies of all material written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing the obligations.
- B. One (1) year after this Order is issued, annually for the next seven (7) years on the anniversary of that date, and at other times as the Commission may require, Respondents shall file verified written reports with the Commission setting forth in detail the manner and form in which they have complied and are complying with this Order.

IX.

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

- A. Any proposed dissolution of such Respondent;
- B. Any proposed acquisition, merger, or consolidation of such Respondent; or

- C. Any other change in such Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

X.

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

- A. Access, during business 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, which copying services shall be provided by Respondents at the request of the authorized representative(s) of the Commission and at the expense of the Respondents; and
- B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

XI.

IT IS FURTHER ORDERED that this Order shall terminate eight (8) years after the date this Order is issued.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED:

Confidential Exhibits A and B

[Redacted From the Public Record Version, But Incorporated By Reference]