

Complaint

110 F.T.C.

IN THE MATTER OF  
MEDICAL STAFF OF DOCTORS' HOSPITAL OF PRINCE  
GEORGE'S COUNTY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF  
THE FEDERAL TRADE COMMISSION ACT

*Docket C-3226. Complaint, April 14, 1988—Decision, April 14, 1988*

This consent order prohibits, among other things, the medical staff of a hospital in Prince George's County, Maryland from engaging in concerted, coercive conduct to prevent or impede a health maintenance organization or others from offering health care services.

*Appearances*

For the Commission: *Jane R. Seymour.*

For the respondent: *Richard C. Morgan and H. Robert Halper, O'Connor & Hannan, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Medical Staff of Doctors' Hospital of Prince George's County has violated the provisions of said Act, and it appearing that a proceeding by it would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Medical Staff of Doctors' Hospital of Prince George's County ("Medical Staff"), is an unincorporated association, organized and existing under the laws of the State of Maryland, and is located at Doctors' Hospital of Prince George's County ("Hospital") at 8118 Goodluck Road, Lanham, Maryland. The Medical Staff is composed of all physicians, dentists and podiatrists who have been granted privileges to treat patients at the Hospital.

PAR. 2. Most, if not all, members of the Medical Staff are engaged in the business of providing health care services for a fee. Except to the extent that competition has been restrained as herein alleged, most, if not all, members of the Medical Staff have been and are now in competition among themselves and with other health care providers in Prince George's County, Maryland. The Medical Staff's physi-

cian members constitute approximately half of the practicing physicians in Prince George's County.

PAR. 3. The Medical Staff engages in substantial activities for the economic benefit of its members. It is a "corporation" within the meaning of Section 4 of the Federal Trade Commission Act.

PAR. 4. The acts and practices herein alleged are in commerce or affect commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. By impeding the operations of the Health Plan, an interstate business, as alleged herein, respondent has affected commerce. In addition, members of the Medical Staff charge fees and collect payments that, in substantial part, are paid directly or indirectly with federal funds or funds received interstate from insurance companies, employers and other payers. The Medical Staff's members also purchase and use drugs, supplies and other health care equipment manufactured outside the State of Maryland. The flow of such funds and equipment is affected by the acts and practices of the Medical Staff and its members as herein alleged.

PAR. 5. The Hospital is a general, acute-care hospital with 250 beds. It is owned by American Medical International, Inc. ("AMI"). At the time of the acts and practices herein alleged, AMI was also the majority owner of the George Washington University Health Plan ("the Health Plan"), a health maintenance organization ("HMO"). At the time of the herein alleged acts and practices, the Health Plan, which had approximately 19,000 members, had offices only in Washington, D.C. Federal Government employees and their dependents constitute a substantial portion of the Health Plan's members.

PAR. 6. In October 1985, the Health Plan announced its plan to open an HMO facility in Prince George's County. This HMO facility was to be the Health Plan's first facility in Prince George's County, and the Health Plan intended to staff it with full-time faculty members of George Washington University. The Health Plan's purpose in opening this HMO site was to expand its operations from Washington, D.C., into Maryland in order to enhance its competitive position in the populous suburban areas around Washington, D.C.

PAR. 7. Beginning at least as early as November 1985, the Medical Staff, acting as a combination of its members or in conspiracy with at least some of its members, attempted to and did prevent, impede, or limit the operations of the Health Plan in Prince George's County. The principal purpose of the Medical Staff and its members in engaging in this combination or conspiracy was to protect Medical Staff members from competition. The specific competitive concerns of the members of the Medical Staff included the following:

A. Members engaged in primary care were concerned that they would lose both present and potential patients to the new Prince George's County HMO facility;

B. Members who are specialists were concerned that they would lose referrals to specialists connected with George Washington University; and

C. Members did not want the Hospital's owner, AMI, to compete with them through the Health Plan.

PAR. 8. In furtherance of this combination or conspiracy, the then-President of the Medical Staff appointed an Ad Hoc Task Force to meet with AMI officials. In meetings between the Ad Hoc Task Force and AMI officials and in other contacts with AMI officials and others, representatives of the Medical Staff threatened, coerced and pressured AMI not to open its planned HMO facility in Prince George's County. Representatives of the Medical Staff threatened that the Medical Staff would act collectively to prevent AMI from opening the planned HMO facility, and if AMI opened the facility the members of the Medical Staff would force the Hospital to close.

PAR. 9. As a result of the combination, conspiracy, acts and practices herein described, AMI and the Health Plan suspended their plans to open a new HMO facility in Prince George's County. However, AMI could not totally abandon its plans to operate an HMO in Prince George's County because it had made a commitment to the Federal Office of Personnel Management to provide a Health Plan facility located in Prince George's County for Federal employees from January 1, 1986, to December 31, 1986. AMI therefore entered into a temporary, one-year arrangement with certain members of the Medical Staff to treat the Health Plan patients in the members' private offices. In January of 1986, the Health Plan began operations in Prince George's County pursuant to the temporary arrangement. This arrangement, however, did not provide advantages that the planned HMO facility would have provided.

PAR. 10. At the end of 1986, AMI announced that it had sold its majority interest in the Health Plan back to George Washington University. The University opened the previously planned HMO facility in Prince George's County in March of 1987.

PAR. 11. The effects, tendency or capacity of the combination, conspiracy, acts and practices described in paragraphs six through eight are and have been to restrain trade unreasonably and hinder competition in the provision of health care services in Prince George's County and to deprive consumers of the benefits of competition in the following ways, among others:

A. Competition was restrained between physicians and the Health

Plan, and between the Health Plan and other prepaid health plans in Prince George's County;

B. The Health Plan's patients and other consumers were deprived of the benefits of competition, including certain benefits offered by the planned HMO facility; and

C. The Health Plan was restricted in its ability to serve consumers and compete in the provision of health care services.

PAR. 12. The combination, conspiracy, acts and practices herein described constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. Such combination, conspiracy, acts and practices, or the effects thereof, are continuing and will continue in the absence of the relief herein requested.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondent, Medical Staff of Doctors' Hospital of Prince George's County, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, 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 the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedures prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent, Medical Staff of Doctors' Hospital of Prince George's County, an unincorporated association organized and existing under the laws of the State of Maryland, has its principal place of business

at Doctors' Hospital of Prince George's County, 8118 Goodluck Road, Lanham, Maryland.

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

#### ORDER

##### I.

For purposes of this order, the following definitions shall apply:

A. "*Medical Staff*" means the respondent Medical Staff of Doctors' Hospital of Prince George's County, its officers, agents, representatives, employees, committees, task forces, and its successors or assigns.

B. "*Corrective action*" means action taken pursuant to and in conformance with the Medical Staff's by-laws against any person with clinical privileges at Doctors' Hospital of Prince George's County who fails to provide evidence of malpractice insurance coverage or whose professional conduct or activities are detrimental to patient safety or to the delivery of quality patient care or are unreasonably disruptive to the operation of Doctors' Hospital of Prince George's County.

C. "*Integrated joint venture*" means a joint arrangement to provide pre-paid health care services in which physicians who would otherwise be competitors pool their capital to finance the venture, by themselves or together with others, and share substantial risk of adverse financial results caused by unexpectedly high utilization or costs of health care services.

##### II.

*It is ordered*, That the Medical Staff, directly, indirectly, or through any device, in connection with the provision of health care services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from organizing, facilitating, or acting in furtherance of any agreement or combination, either express or implied, among any physicians, to refuse, or threaten to refuse, to deal with, or otherwise coerce, any person or entity for the purpose or with the effect of preventing or restricting the offering or delivery of health care services by any health maintenance organization, hospital or other health care facility.

## III.

A. *It is provided*, That this order shall not be construed to prohibit the Medical Staff or its members from engaging, pursuant to the Medical Staff's by-laws, in credentialling, corrective action, utilization review, quality assurance, peer review, or hospital policy-making at Doctors' Hospital of Prince George's County, where such conduct by the Medical Staff neither constitutes nor is part of any agreement, combination, or conspiracy the purpose or effect of which is to impede unreasonably the development or operation of any health maintenance organization, hospital or other health care facility.

B. *It is further provided*, That this order shall not be construed to prohibit the Medical Staff from facilitating the formation of an integrated joint venture that refuses to deal with any person or entity, as long as the physicians participating in the joint venture remain free to deal with any third-party payer other than through the joint venture.

## IV.

A. *It is further ordered*, That within thirty (30) days after service of this order, the Medical Staff shall mail a copy of this order and the accompanying complaint to the Executive Director of Doctors' Hospital of Prince George's County, to the President of the George Washington University Health Plan, and to each of the Medical Staff's members.

B. *It is further ordered*, That the Medical Staff shall, within sixty (60) days after service of this order, and at any time the Commission, by written notice, may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which the Medical Staff has complied and is complying with this order.

C. *It is further ordered*, That the Medical Staff shall promptly notify the Commission of any change in the Medical Staff's business address or of any proposed change in its organization that may affect compliance obligations arising out of this order.

Commissioner Bailey not participating.

## IN THE MATTER OF

## MULTIPLE LISTING SERVICE MID COUNTY, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF  
THE FEDERAL TRADE COMMISSION ACT

*Docket C-3227. Complaint, April 20, 1988—Decision, April 20, 1988*

This consent order prohibits, among other things, a Brooklyn, N.Y. real estate firm from participating in various practices that have allegedly restrained price and service competition among residential real estate brokers. Respondent is prohibited from: requiring that any applicant or member operate a full time office; fixing, maintaining or recommending any division of commission between selling and listing brokers; adopting any policy that has the purpose or effect of exclusive agency listings; requiring any member to inform Mid County or any of its members of the commission agreed to between any listing broker and homeowner; and adopting any policy having the purpose or effect of delaying the solicitation of a listing agreement.

*Appearances*

For the Commission: *Michael J. Bloom* and *Alfred J. Ferrogari*.

For the respondent: *Bruce H. Schneider, Stroock, Stroock, & Lavan*, New York City.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended (15 U.S.C. 41 *et seq.*), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that respondent Multiple Listing Service Mid County Inc. ("Mid County"), a corporation, has violated and is violating Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

PARAGRAPH 1. As used in this complaint:

(1) "*Multiple listing service*" shall mean a clearinghouse through which member real estate brokerage firms regularly and systematically exchange information on listings of real estate properties and share commissions with other members.

(2) "*Broker*" shall mean any person, firm, or corporation that, for another and for a fee or commission, lists for sale, sells, exchanges, or

offers or attempts to negotiate a sale, exchange, or purchase of an estate or interest in real estate.

(3) "*Applicant*" shall mean any owner or co-owner of a real estate brokerage firm who is duly licensed as a real estate broker within the State of New York, and who has applied on behalf of his or her firm for membership in respondent's multiple listing service.

(4) "*Member*" shall mean any real estate brokerage firm that is entitled to participate in the multiple listing service offered by Mid County.

(5) "*Listing agreement*" shall mean any agreement between a real estate broker and a property owner for the provision of real estate brokerage services.

(6) "*Listing broker*" shall mean any broker who lists a real estate property with a multiple listing service pursuant to a listing agreement with the property owner.

(7) "*Selling broker*" shall mean any broker, other than the listing broker, who locates the purchaser for a listed property.

(8) "*Exclusive agency listing*" shall mean any listing under which a property owner appoints a broker as exclusive agent for the sale of the property at an agreed commission, but reserves the right to sell the property personally to a direct buyer (one not procured in any way through the efforts of any broker) at an agreed reduction in the commission or with no commission owed to the agent broker.

(9) "*Exclusive right to sell listing*" shall mean any listing under which a property owner appoints a broker as exclusive agent for the sale of the property, and agrees to pay the broker an agreed commission if the property is sold, whether the purchaser is located by the broker or any other person, including the owner.

(10) "*Mid County's Service Area*" shall mean the territory within which Mid County provides its multiple listing service.

PAR. 2. Mid County is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1706 Flatbush Avenue, Brooklyn, New York.

PAR. 3. Mid County is and has been at all times relevant to this complaint a corporation organized for its own profit or for the profit of its members within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

PAR. 4. In the course and conduct of their businesses, and through the policies, acts and practices described below, Mid County and its members are involved with or affect:

(a) a substantial interstate flow of funds used in the financing of real estate located within Mid County's Service Area;

(b) a substantial amount of financing of real estate located within Mid County's Service Area that is guaranteed or insured under federal government programs;

(c) the sale of a substantial amount of title and homeowners' insurance by interstate insurers to owners of property located within Mid County's Service Area; and

(d) the franchise operations of those interstate chains of real estate brokerage firms that include one or more members of respondent Mid County.

As a result, the general business practices of respondent and its members are in or affect commerce within the meaning of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

PAR. 5. Mid County is, and for some time has been, providing a multiple listing service for member real estate brokerage firms.

The member firms are owned and operated by real estate brokers who, for a commission, provide the service of bringing together buyers and sellers of residential real estate located within Mid County's Service Area, as well as other services designed to facilitate sales of such properties.

Each member agrees to submit all of its exclusive agency listings and exclusive right to sell listings pertaining to residential real estate located within Mid County's Service Area for publication to the entire membership of the multiple listing service, and to share commissions with those member firms that successfully locate purchasers for properties it has listed.

Only members may participate in the multiple listing service.

PAR. 6. Membership in Mid County's multiple listing service provides valuable competitive advantages in the brokering of residential real estate sales in Mid County's Service Area. Membership significantly increases the opportunities for brokerage firms to enter into listing agreements with residential property owners, and significantly reduces the costs of obtaining up-to-date and comprehensive information on listings and sales.

PAR. 7. Publication of listings on Mid County's multiple listing service generally is considered by sellers and their brokers to be the fastest and most effective means of obtaining the broadest market exposure for residential property in Mid County's Service Area.

PAR. 8. Sales of real estate listings published on Mid County's multiple listing service totaled about \$30.3 million in 1983, \$38.9 million in 1984, and for 1986, reached \$53.8 million. Almost the entire dollar volume of such listings consisted of sales of residential real estate located within Mid County's Service Area.

PAR. 9. Except to the extent that competition has been restrained as described herein, Mid County's members are and have been in

competition among themselves in the provision of residential real estate brokerage services within Mid County's Service Area.

PAR. 10. In adopting the policies and engaging in the practices described in paragraphs eleven through sixteen below, Mid County has been and is acting as a combination of its members, or in conspiracy with some of its members, to restrain trade in the provision of residential real estate brokerage services within Mid County's Service Area.

PAR. 11. Mid County required as a condition of membership in Mid County that each applicant operate a full-time real estate brokerage office.

The purposes, capacities, tendencies or effects of this requirement have been to impede new membership in Mid County and to impede entry into the business of brokering residential real estate sales in Mid County's Service Area.

PAR. 12. Mid County required that the listing broker retain no more than 40% of the commission due on the sale of residential real estate subject to an exclusive right to sell agreement, and that the remainder go to the selling broker.

Mid County required that the listing broker retain no more than 30% of the commission due on the sale of residential real estate subject to an exclusive agency listing, and that the remainder go to the selling broker.

The purposes, capacities, tendencies or effects of these limitations on the listing broker's ability to retain commissions have been to deprive consumers of the advantages of competition among Mid County's members to list and to sell residential real estate in Mid County's Service Area.

PAR. 13. Mid County subsequently revised its rules to provide that the listing broker shall have exclusive discretion as to the terms of the division of commissions. The term "exclusive discretion," in this context, may be construed as excluding the homeowner from any role in the determination of the division of commissions between the listing broker and the selling broker.

The capacities, tendencies or effects of this rule have been to deprive consumers of the competitive advantages of negotiating with the listing broker the division of commissions.

PAR. 14. Article 6 of Mid County's Code of Ethics states: "To prevent dissension and misunderstanding and to assure better service to the owner, the broker should urge the exclusive listing of property unless contrary to the best interests of the owner." The phrase "exclusive listing of property," in this context, may be construed as referring only to exclusive right to sell listings.

The capacities, tendencies or effects of Article 6 of Mid County's

Code of Ethics have been and are to discourage brokers from soliciting or accepting exclusive agency listings, and to deprive consumers of the advantages of competition with respect to the types of real estate brokerage services offered by Mid County's members.

PAR. 15. Mid County has required and continues to require that brokers disclose to one another, or to Mid County, the total commission or the split of commission.

The purposes, capacities, tendencies or effects of this policy or practice have been to fix commission rates, and to reduce the likelihood of discounting or other price competition among members of Mid County.

PAR. 16. Mid County enforced a rule prohibiting any member other than the listing broker from soliciting the listing of any property, the listing of which is filed with the multiple listing service, until the filed listing has expired.

The purposes, capacities, tendencies or effects of this practice have been to restrain competition by members other than listing brokers to obtain renewal of listings of properties located within Mid County's Service Area, to stabilize the price of brokerage services pertaining to the sale of residential real estate located in Mid County's Service Area, and to deprive owners of property located within Mid County's Service Area of the advantages of price and other forms of competition that otherwise would be offered.

PAR. 17. The policies, acts, practices, and combinations or conspiracies described in paragraphs ten through sixteen above constitute unfair methods of competition or unfair acts or practices in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

The alleged conduct may continue or recur in the absence of the relief requested.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an

admission by respondent that the law has been violated as alleged in such complaint, 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 the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

(1) Respondent Multiple Listing Service Mid County Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1706 Flatbush Avenue, Brooklyn, New York.

(2) The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and the respondent, and the proceeding is in the public interest.

#### ORDER

##### *Definitions*

For purposes of this order, the following definitions shall apply:

(1) "*Multiple listing service*" shall mean a clearinghouse through which member real estate brokerage firms regularly and systematically exchange information on listings of real estate properties and share commissions with other members.

(2) "*Broker*" shall mean any person, firm, or corporation that, for another and for a fee or commission, lists for sale, sells, exchanges, or offers or attempts to negotiate a sale, exchange, or purchase of an estate or interest in real estate.

(3) "*Applicant*" shall mean any owner or co-owner of a real estate brokerage firm who is duly licensed as a real estate broker within the State of New York and who has applied on behalf of his or her firm for membership in respondent's multiple listing service.

(4) "*Member*" shall mean any real estate brokerage firm that is entitled to participate in the multiple listing service offered by Mid County.

(5) "*Listing agreement*" shall mean any agreement between a real

estate broker and a property owner for the provision of real estate brokerage services.

(6) "*Listing broker*" shall mean any broker who lists a real estate property with a multiple listing service pursuant to a listing agreement with the property owner.

(7) "*Selling broker*" shall mean any broker, other than the listing broker, who locates the purchaser for a listed property.

(8) "*Exclusive agency listing*" shall mean any listing under which a property owner appoints a broker as exclusive agent for the sale of the property at an agreed commission, but reserves the right to sell the property personally to a direct buyer (one not procured in any way through the efforts of any broker) at an agreed reduction in the commission or with no commission owed to the agent broker.

(9) "*Exclusive right to sell listing*" shall mean any listing under which a property owner appoints a broker as exclusive agent for the sale of the property and agrees to pay the broker an agreed commission if the property is sold, whether the purchaser is located by the broker or any other person, including the owner.

## I.

*It is ordered,* That respondent Mid County, its successors and assigns, and its directors, officers, committees, agents, representatives, and employees, directly or indirectly, or through any corporation, subsidiary, division, or other device, in connection with respondent's operation of a multiple listing service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

(A) Requiring, urging, recommending or suggesting that any applicant or member:

(1) operate an office full-time or during customary or specified hours;

(2) derive any particular amount or portion of income from real estate brokerage; or

(3) engage in real estate brokerage full-time or during customary or specified hours;

*Provided, however,* That nothing contained in this subpart shall prohibit respondent from adopting or enforcing any reasonable and non-discriminatory policy to assure that its members are actively engaged in real estate brokerage and that listings published on respondent's multiple listing service are adequately serviced.

(B) Adopting any policy or taking any other action that has the

purpose or effect of unreasonably discriminating against any prospective applicant, applicant or member that is a new entrant in the market or new to respondent's multiple listing service.

(C) Fixing, establishing, maintaining, recommending or suggesting any rate, range or amount of any division or split of commission or other fees between any selling broker and any listing broker.

(D) Adopting or maintaining any policy or taking any other action that has the purpose or effect of restricting any homeowner's participation in the determination of the division or split of commission or other fees between any listing broker and any selling broker.

(E) Restricting or interfering with:

(1) any broker's offering or accepting any exclusive agency listing;

or

(2) the publication on respondent's multiple listing service of any exclusive agency listing of a member;

*Provided, however,* That nothing contained in this subpart shall prohibit respondent from: (a) including a simple designation, such as a code or symbol, that a published listing is an exclusive agency listing; or (b) applying reasonable terms and conditions equally applicable to the publication of any listing, whether exclusive agency or exclusive right to sell.

(F) Requiring any member to publish or otherwise distribute to or among members of respondent, or to respondent, the rate or amount of commission agreed to between any listing broker and any property owner; provided, however, that nothing contained in this subpart shall prohibit respondent from publishing or otherwise distributing to or among members of respondent the rate or amount of commission to be paid.

(G) Adopting or maintaining any policy, or taking any other action that has the purpose, capacity, tendency or effect of prohibiting, discouraging or delaying the solicitation of a listing agreement for any property; provided, however, that nothing contained in this subpart shall prohibit respondent from adopting or enforcing any reasonable and nondiscriminatory policy that prohibits any member from using information provided to it by Mid County that pertains to a specific listed property in the solicitation of a listing agreement for that property.

## II.

*It is further ordered,* That respondent Mid County shall:

(A) Within thirty (30) days after this order becomes final, furnish

an announcement in the form shown in Appendix A to each member of Mid County.

(B) Within sixty (60) days after this order becomes final, amend its by-laws, rules and regulations, and other of its materials to conform to the provisions of this order and provide each member with a copy of the amended by-laws, rules and regulations, and other materials.

(C) For a period of three (3) years after this order becomes final, furnish an announcement in the form shown in Appendix A to each new member of Mid County within thirty (30) days of the new member's admission.

### III.

*It is further ordered, That respondent Mid County shall:*

(A) Within ninety (90) days after this order becomes final, submit a verified written report to the Federal Trade Commission setting forth in detail the manner and form in which respondent has complied and is complying with this order.

(B) In addition to the report required by paragraph III(A), annually for a period of three (3) years on or before the anniversary date on which this order becomes final, and at such other times as the Federal Trade Commission or its staff may by written notice to respondent require, file a verified written report with the Federal Trade Commission setting forth in detail the manner and form in which respondent has complied and is complying with this order.

(C) For a period of five (5) years after this order becomes final, maintain and make available to the Commission staff for inspection and copying, upon reasonable notice, all documents that relate to the manner and form in which respondent has complied with this order.

(D) Notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in respondent that may affect compliance obligations arising out of this order.

Commissioner Bailey not participating.

#### APPENDIX A

[Respondent's Regular Letterhead]

As you may be aware, the Federal Trade Commission has entered into consent decrees with several multiple listing services in order to halt certain multiple listing service practices. To avoid litigation, Multiple Listing Service Mid County has entered into such a consent agreement. The agreement is not an admission that Mid County

or any of its members has violated any law. For your information, the substantive provisions of the consent decree are reproduced below:

ORDER

I.

*It is ordered*, That respondent Mid County, its successors and assigns, and its directors, officers, committees, agents, representatives, and employees, directly or indirectly, or through any corporation, subsidiary, division, or other device, in connection with respondent's operation of a multiple listing service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

(A) Requiring, urging, recommending or suggesting that any applicant or member:

- (1) operate an office full-time or during customary or specified hours;
- (2) derive any particular amount or portion of income from real estate brokerage; or
- (3) engage in real estate brokerage full-time or during customary or specified hours;

*Provided, however*, That nothing contained in this subpart shall prohibit respondent from adopting or enforcing any reasonable and nondiscriminatory policy to assure that its members are actively engaged in real estate brokerage and that listings published on respondent's multiple listing service are adequately serviced.

(B) Adopting any policy or taking any other action that has the purpose or effect of unreasonably discriminating against any prospective applicant, applicant or member that is a new entrant in the market or new to respondent's multiple listing service.

(C) Fixing, establishing, maintaining, recommending or suggesting any rate, range or amount of any division or split of commission or other fees between any selling broker and any listing broker.

(D) Adopting or maintaining any policy or taking any other action that has the purpose or effect of restricting any homeowner's participation in the determination of the division or split of commission or other fees between any listing broker and any selling broker.

(E) Restricting or interfering with:

- (1) any broker's offering or accepting any exclusive agency listing; or
- (2) the publication on respondent's multiple listing service of any exclusive agency listing of a member;

*Provided, however*, That nothing contained in this subpart shall prohibit respondent from: (a) including a simple designation, such as a code or symbol, that a published listing is an exclusive agency listing; or (b) applying reasonable terms and conditions equally applicable to the publication of any listing, whether exclusive agency or exclusive right to sell.

(F) Requiring any member to publish or otherwise distribute to or among members of respondent, or to respondent, the rate or amount of commission agreed to between any listing broker and any property owner; provided, however, that nothing contained in this subpart shall prohibit respondent from publishing or otherwise distributing to or among members of respondent the rate or amount of commission to be paid.

(G) Adopting or maintaining any policy, or taking any other action that has the purpose, capacity, tendency or effect of prohibiting, discouraging or delaying the solicitation of a listing agreement for any property; provided, however, that nothing contained in this subpart shall prohibit respondent from adopting or enforcing any reasonable and nondiscriminatory policy that prohibits any member from using infor-

mation provided to it by Mid County that pertains to a specific listed property in the solicitation of a listing agreement for that property.

Mid County previously revised several of its policies in response to concerns expressed by the Federal Trade Commission staff. Further, Mid County has now made additional changes to certain of its by-laws, rules, and regulations to comply with the consent agreement.

## IN THE MATTER OF

## FLORENCE MULTIPLE LISTING SERVICE, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF  
THE FEDERAL TRADE COMMISSION ACT

*Docket C-3228. Complaint, April 20, 1988—Decision, April 20, 1988*

This consent order prohibits, among other things, a Florence S.C. firm from conspiring to exclude certain licensed real estate brokers from membership in and use of the multiple listing service, and from restricting competition among multiple listing service members in the services they individually provide to the public. Respondent is also prohibited from requiring new members to have owned and operated a business for six months before application for membership and from insisting on a vote of FMLS members as a condition of membership.

*Appearances*

For the Commission: *Jacques Feuillan.*

For the respondent: *John A. McInnes, Florence Multiple Listing Service, Inc., Florence, S.C. and Haigh Porter, Haigh Porter, P.C., Florence, S.C.*

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that respondent Florence Multiple Listing Service, Inc., a corporation, has violated and is violating Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

PARAGRAPH 1. As used in this complaint:

a. "*Listing*" shall mean any agreement between a real estate broker and a property owner for the provision of real estate brokerage services.

b. "*Exclusive right to sell listing*" shall mean any listing under which a property owner appoints a specified broker as his or her exclusive agent for the sale of a property and contracts to pay to that broker an agreed commission if a ready, willing and able buyer is procured or if the property is sold, whether by the broker or by any other person, including the owner.

PAR. 2. Respondent Florence Multiple Listing Service ("FMLS") is a corporation organized, existing, and doing business under and by virtue of the laws of the State of South Carolina. FMLS's principal office and place of business is located at 121 S. Warley Street, Florence, South Carolina, in Florence County. The 1986 population of Florence County was approximately 110,000, and the 1986 population of the City of Florence (which is that County's largest city) was approximately 30,000.

PAR. 3. FMLS is now, and since 1972 has been, providing a multiple listing service for its members' real estate brokerage firms in parts of Florence County, including the city of Florence and town of Timmons-ville, and in Darlington County, including the City of Darlington ("the Florence area"). The 1986 population of the City of Darlington was approximately 8,000. The FMLS members' firms are owned and operated by real estate brokers. Each member of FMLS owns 250 shares of its stock, which are non-transferable except between the members and FMLS. Only members' firms may participate in the FMLS's multiple listing service. Each member agrees to submit his or her firm's Florence area exclusive right to sell listings for publication on the multiple listing service to the entire FMLS membership, and to share any brokerage commissions due with any member whose firm successfully locates a purchaser for any property so listed. FMLS charges its members a fee for each new listing published on its multiple listing service. Payment of the fee entitles the member to have his or her listing published for twelve successive months or until such time as the property is sold, whichever comes first.

PAR. 4. Membership in FMLS provides valuable competitive advantages in the brokering of residential real estate in the Florence area. FMLS membership significantly increases the opportunities of members' brokerage firms to enter into listings with residential property owners, as owners generally consider FMLS publication of listings to be the fastest, most effective and most convenient means of obtaining the broadest market exposure for residential property in the Florence area. FMLS membership also significantly reduces the costs of obtaining up-to-date and comprehensive information on listings and sales.

PAR. 5. FMLS is the only real estate multiple listing service serving the Florence area. As of July 1986, real estate brokers at forty-one firms—approximately 65 percent of real estate brokerage firms operating in the Florence area—were members of FMLS. Nearly all of the active, full-time residential real estate brokers doing business in that area work at those brokerage firms. In calendar year 1985, at least 75 percent of the total dollar volume of residential real estate sales in Florence County that were transacted using the services of a real estate brokerage firm involved listings that were published on the

FMLS. Also during 1985, at least 85 percent of the total dollar volume of residential real estate sales in Florence City involved listings published on the FMLS. Sales of residential real estate listings published on the FMLS totaled approximately \$40 million in 1985.

PAR. 6. In the conduct of their businesses and through the policies, acts, and practices described below, FMLS and its members are involved with or affect:

- a. a substantial interstate flow of funds used in the financing of Florence area real estate;
- b. a substantial amount of Florence area real estate financing guaranteed or insured under Federal government programs;
- c. the sale by interstate insurers to Florence area property owners of a substantial amount of title and homeowners' insurance; and
- d. the franchise operations of those interstate chains of real estate brokerage firms that include one or more members of FMLS.

As a result, the policies, acts and practices of FMLS and its members are in or affect commerce within the meaning of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

PAR. 7. Real estate brokers doing business in the State of South Carolina must be licensed by the South Carolina Real Estate Commission pursuant to state law. The state law licensing requirements include:

- a. completion of prescribed courses of study;
- b. three years experience as a licensed salesperson; and
- c. passing a written examination.

PAR. 8. Except to the extent that competition has been restrained as described below, the FMLS members and their brokerage firms are now and have been in competition among themselves and with other brokers and brokerage firms with respect to the provision of residential real estate brokerage services in the Florence area.

PAR. 9. In adopting the policies and engaging in the acts and practices described in paragraphs 10 and 11 below, the FMLS has been and is now acting as a combination of its members, or in conspiracy with some of its members or others, to restrain trade in the provision of residential real estate brokerage services in the Florence area.

PAR. 10. FMLS requires each member to abide by its bylaws, rules and regulations. If any member or member's firm is found to be in violation of any FMLS rule or other FMLS policy, the member is subject to penalties or disciplinary action, including suspension or termination of membership.

PAR. 11. Since at least 1985, FMLS has:

- a. maintained a bylaw that requires applicants for membership to

have "owned a real estate business" for at least six months prior to application;

b. maintained a bylaw providing that applicants who satisfy all other conditions of membership cannot become members unless they also receive an affirmative vote for admission from two-thirds of the FMLS members who choose to vote on the question;

c. maintained a bylaw that requires a member to agree that neither the member's firm nor any one in the member's firm join any multiple listing service or other real estate information exchange service that competes with FMLS;

d. maintained a bylaw that prohibits publication on the FMLS of information relating to any property offered for sale unless the seller has first agreed to grant the listing broker an exclusive right to sell listing; and

e. maintained a policy that, as a condition of membership in the FMLS, an applicant agree that neither the applicant's firm nor any one in the applicant's firm will own or operate a business that competes with real estate brokerage by, for example, assisting homeowners to market their homes without the traditional full array of brokerage services.

PAR. 12. The purposes, effects, tendency or capacity, of the combination or conspiracy alleged in paragraph 9 above and the policies, acts or practices of the FMLS described in paragraphs 10 and 11 above, have been and are to restrain competition unreasonably in one or more of the following ways, among others:

a. restraining or deterring the entry of new brokerage firms, and of new joint ventures or shared brokerage or multiple listing services, in competition with the FMLS multiple listing service;

b. limiting consumers' ability to choose among a variety of brokerage firms competing on the basis of price, contract terms and services;

c. restraining competition among brokerage firms based on willingness to offer or accept different contract terms that may be attractive and beneficial to consumers, such as terms that allow the property owner to pay a reduced commission or no commission if the owner sells the property through means alternative to a broker's services;

d. limiting the ability of consumers to negotiate lower prices for brokerage services or brokerage contract terms that may be more advantageous for them than an exclusive right to sell listing; and

e. limiting the ability of residential property sellers to compete with real estate brokers in locating purchasers.

PAR. 13. The policies, acts, practices, and combinations or conspiracies described above constitute unfair methods of competition or unfair acts or practices in violation of Section 5 of the Federal Trade

Commission Act, 15 U.S.C. 45. The alleged acts and practices, or the effects thereof, are continuing in nature and will continue in the absence of the relief herein requested.

#### DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the Florence Multiple Listing Service, Inc. ("FMLS"), and FMLS having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

FMLS, its duly authorized officer, its attorney, and counsel for the Federal Trade Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all of the jurisdictional facts set forth in the aforesaid complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, 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 the respondent has violated the said Act, and that the complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedures prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. FMLS is organized, existing, and doing business under and by virtue of the laws of the State of South Carolina, with its offices and principal place of business located at 121 South Warley Street, in the City of Florence, State of South Carolina.

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

## ORDER

*Definitions*

For the purposes of this order, the following definitions shall apply:

1. "*Multiple listing service*" shall mean a clearinghouse through which members' real estate brokerage firms exchange information on listings of real estate properties and share sales commissions with members who locate purchasers.

2. "*Listing*" shall mean any agreement between a real estate broker and a property owner for the provision of real estate brokerage services.

3. "*Exclusive agency listing*" shall mean any listing under which a property owner appoints a broker as exclusive agent for the sale of the property at an agreed commission, but reserves the right to sell the property personally to a direct purchaser (one not procured in any way through the efforts of any broker) at an agreed reduction in the commission or with no commission owed to the agent broker.

4. "*FMLS*" shall mean the Florence Multiple Listing Service, Inc. and its successors, assigns, officers, directors, committees, agents, representatives, members or employees.

## I.

*It is ordered*, That respondent FMLS, directly, indirectly or through any device, in or in connection with the operation of a multiple listing service in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44, shall cease and desist from:

(A) Adopting, maintaining or enforcing any bylaw, rule, regulation, policy, agreement or understanding, or taking any other action that has the purpose or effect of:

(1) Conditioning membership in FMLS or use of its multiple listing service on the length of time any applicant has owned, operated or maintained a real estate brokerage firm or other business;

(2) Requiring as a condition of FMLS membership or use of its multiple listing service that applicants who satisfy FMLS's other conditions of membership receive the approval by vote of any portion of FMLS members; or

(3) Conditioning membership in FMLS or use of its multiple listing service on any person's refraining or withdrawing from ownership, operation or other association with any lawful business.

(B) Forbidding publication through respondent FMLS's multiple listing service of any exclusive agency listing, or restricting such publication in any way other than by requiring designation of the listing as one granting an exclusive agency or by imposing terms applicable to all listings accepted for publication by the FMLS multiple listing service.

## II.

*It is further ordered, That FMLS shall:*

(A) Within ninety (90) days after this order becomes final, amend its policies, bylaws, guidelines, rules and regulations, and any other of its instructive or suggestive materials to conform to the provisions of this order.

(B) For a period of five (5) years after this order becomes final:

(1) provide to any applicant who has been denied membership prompt and clear written notice of the denial, specifying the membership requirements not met and explaining in what manner the requirements are not met; and

(2) maintain in one separate file, segregated by the names of the applicants, all documents and correspondence that discuss, refer, or relate to any denied or approved application.

(C) For a period of three (3) years after this order becomes final furnish promptly, by first-class mail, a copy of the announcement in the form shown in Appendix A to any person who inquires about, or who submits an application for, membership in the FMLS.

(D) For a period of three (3) years after this order becomes final furnish promptly, by first-class mail, a copy of this order to any person who requests a copy.

## III.

*It is further ordered, That FMLS shall:*

(A) Within thirty (30) days after this order becomes final, mail an announcement in the form shown in Appendix A, and a copy of the Complaint and Decision and Order to each member of FMLS.

(B) Within ninety (90) days after this order becomes final, submit a written report to the Federal Trade Commission setting forth in detail the manner and form in which FMLS has complied and is complying with this order.

(C) Notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in FMLS, such as dissolution, assign-

ment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any change in its incorporation that may affect compliance obligations arising out of this order.

Commissioner Bailey not participating.

#### APPENDIX A

##### ANNOUNCEMENT

As you may be aware, the Florence Multiple Listing Service, Inc. ("FMLS") has entered into a consent agreement with the Federal Trade Commission that has now become final. Acceptance of this agreement is for settlement purposes and does not constitute an admission that the FMLS has violated the law. The following is a brief summary of the provisions of the order issued pursuant to the consent agreement:

1. Eligibility for membership: The FMLS no longer requires, as a condition of membership, that a broker have owned and operated a business for a six-month period or any other time period. In addition, the FMLS no longer requires that any applicant or member who satisfies FMLS's other conditions of membership receive the approval by vote of any portion of FMLS members. Specific eligibility or membership requirements are set forth in official FMLS bylaws and policies. If any membership application is denied, the FMLS promptly will provide to the applicant a written explanation of the specific reasons for the denial.

2. Property listings that limit or differ from an exclusive right to sell arrangement: The FMLS will not prohibit members from entering exclusive agency listings—listings in which the broker and owner contract that the owner will owe a reduced commission or no commission to the agent broker if the owner locates the purchaser entirely independent of the services of any real estate broker. The FMLS will publish all listings of this type but may give notice that the listing is an exclusive agency listing rather than an exclusive right to sell listing.

3. Broker's development of or participation in organizations, services, businesses or ventures that compete with one another or with the MLS: The FMLS will not prohibit members from operating or joining any lawful business.

The FTC does not endorse any practice of the FMLS. For more specific information, you should refer to the FTC order itself. [A copy of the order is attached.]<sup>1</sup>

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President

Florence Multiple Listing  
Service, Inc.

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<sup>1</sup> The sentence enclosed in brackets is required to be included in this Announcement only when the Announcement is sent to members of respondent Florence Multiple Listing Service as required by Part III(A) of the proposed order to which this Announcement is attached as an appendix.

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Complaint

## IN THE MATTER OF

## NEC HOME ELECTRONICS (U.S.A.), INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF  
THE FEDERAL TRADE COMMISSION ACT*Docket C-3229. Complaint, May 11, 1988—Decision, May 11, 1988*

This consent order requires, among other things, a Delaware computer corporation, with its principal office in Wood Dale, Ill., to provide consumer redress and to contact each consumer who purchased a 32K board. The consent order also prohibits the respondent from falsely claiming that any of its computer hardware products currently has a stated memory capacity or other capability and from claiming that purchasers of its products have access to a stated memory capacity or other capability, unless the respondent has substantiation for the claim.

*Appearances*

For the Commission: *Jock K. Chung.*

For the respondent: *William Blumenthal and D.E. Rosenthal, Sutherland, Asbill & Brennan, Washington, D.C.*

## COMPLAINT

The Federal Trade Commission, having reason to believe that NEC Home Electronics (U.S.A.), Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. For the purposes of this complaint, the following definition shall apply:

1. "RAM" means random access memory, and refers to the memory capacity of a computer. RAM is measured in small, basic units of storage or memory called "bytes" or in K bytes (K = 1024 bytes).

PAR. 2. NEC Home Electronics (U.S.A.), Inc., is a Delaware corporation with its principal office or place of business at 1255 Michael Drive, Wood Dale, Illinois.

PAR. 3. Respondent imports, advertises, offers for sale and sells computer hardware and software products and accessories, including the NEC PC-8000 Series microcomputer system.

PAR. 4. From 1981 to 1984, respondent imported, advertised, offered for sale, sold and distributed the NEC PC-8001A microcomputer, the NEC PC-8012A input/output ("I/O") Unit and PC-8012A-02 32K

RAM memory boards as accessories to the I/O Units. During the above time period, respondent distributed and sold said microcomputer, I/O unit, and memory boards, as well as other PC-8000 Series accessories and related equipment, from its principal place of business to distributors, retailers and, ultimately, purchasers located in various states of the United States.

PAR. 5. Respondent maintains, and has maintained, a substantial course of business, including the acts and practices set forth herein, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. In connection with the marketing of computer products, respondent has disseminated and now disseminates advertisements and promotional material for the purpose of promoting the sale of its products.

PAR. 7. Typical statements in said advertisements and promotional materials, but not necessarily inclusive thereof, are found in the promotional materials attached hereto as Exhibits A and B. Among other things, these promotional materials contain the following unqualified descriptions of the RAM capacity for the PC-8001A microcomputer and the PC-8012A I/O Unit:

(a) PC-8001A: "RAM - 32K Bytes (expandable to 160K Bytes with PC-8012A I/O Unit);" and

(b) PC-8012A I/O Unit: "32K RAM (expandable to 128K with additional boards)."

PAR. 8. Through the use of the statements referred to in paragraph seven and others, respondent has represented, directly or by implication, that the average person, without any special expertise, could expand the memory capacity (RAM) of the PC-8001A microcomputer from 32K bytes to 160K bytes with the addition of the PC-8012A I/O Unit and memory boards.

PAR. 9. In truth and in fact, at the time of the dissemination of the foregoing representation, the average person, without any special expertise, could not expand the memory capacity (RAM) of the PC-8001A microcomputer from 32K bytes to 160K bytes with the addition of the PC-8012A I/O Unit and memory boards, because only a person who was a computer programmer or who had access to a sophisticated software operating system, which has never been made available for sale in the United States, could accomplish this expansion. Therefore, the representation referred to in paragraph eight was and is false and misleading.

PAR. 10. The acts and practices of respondent as alleged in this complaint constitute unfair and deceptive acts or practices in or af-

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Complaint

fecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

## EXHIBIT A

**Specifications****PC-8001A Microcomputer**

<b>PC-8001A Microcomputer</b>		<b>N-BASIC Language Highlights</b>	
<b>CPU</b>	$\mu$ PD780c-1 (Z-80A compatible), 4MHz	<b>Number systems</b>	Integer, floating-point octal and hexadecimal
<b>ROM</b>	24K Bytes	<b>Significant figures</b>	16 digits maximum
<b>RAM</b>	32K Bytes (expandable to 160K Bytes with PC-8012A I/O Unit.)	<b>Line numbering</b>	Zero to 65529
<b>CRT</b>	Keyboard selectable 80 characters x 20 or 25 lines 72 characters x 20 or 25 lines 40 characters x 20 or 25 lines 36 characters x 20 or 25 lines 248-symbol character set. Includes complete English upper and lower case, complete ASCII, numerous Greek characters and graphics patterns Graphic function: 160 x 100 matrix Color: 8-colors. Black, blue, red, magenta, green, cyan, yellow, white. Other functions: Reverse, blink, secret	<b>Multi-statements</b>	Included
<b>Cassette interface</b>	FSK system (1200, 2400 Hz), 600 baud	<b>Direct execution</b>	Included
<b>Printer interface</b>	Standard Centronics included	<b>Variable names</b>	Start with English letter, followed by any combination or length of English letters or numerals. Only the first two characters are significant.
<b>Keyboard</b>	English upper/lower case characters, numeric keypad, control keys, screen editing function keys, and five programmable function keys	<b>Arrays</b>	255 dimensions. Suffix from zero to 65535, limited by available memory.
<b>Serial interface</b>	Built-in TTL-level serial port, 4800/2400/1200/600/300 baud. (Refer to user's manual for actual character transfer speed in terminal mode.)	<b>Graphic functions</b>	Draw lines and boxes. "GET @" stores graphics from screen into an array. "PUT @" places graphics from an array onto the screen.
<b>Power Supply</b>	AC 120V $\pm$ 10%, 60Hz	<b>Color function</b>	Included (text and graphics)
<b>Dimensions</b>	430mm (16.9") width x 260mm (10.2") depth x 80mm (3.1") height	<b>Access to I/O, memory</b>	Included (P*EK, POKE, OUT, INP)
<b>Weight</b>	Approximately 4Kg (8.8 lbs.)	<b>Formatted output</b>	Included (PRINT USING statement)
		<b>IF-THEN-ELSE</b>	Included
		<b>Editing function</b>	Screen editing from keyboard
		<b>Machine word monitor</b>	Included
		<b>Terminal mode</b>	Included (ASCII)
		<b>Disk file</b>	Possible in both sequential and random access modes

**NEC**

NEC America, Inc.  
1401 Estes Avenue  
Ann Arbor, Michigan 48106

EXHIBIT B

**Specifications**

**PC-8012A I/O unit**

The PC-8012A I/O unit is designed to expand the memory capacity of the PC-8001A microcomputer, and to accommodate interfaces and peripherals.

<b>ROM</b>	2K PROM area (chips are optional)
<b>RAM</b>	32K RAM (expandable to 128K with additional boards)
<b>FDC I/O port</b>	(direct connection for the PC-8031A disk drive)
<b>Interrupt control circuitry</b>	8 priority levels implemented, 16 possible. (Real-time interrupt generating capability)
<b>Expansion</b>	7 slots available for expansion boards
<b>Power supply</b>	115v AC $\pm$ 10%, 60Hz
<b>Power consumption</b>	15w (for rated load)
<b>Operating temperature</b>	0°C-35°C (32°F-95°F)
<b>Operating humidity</b>	20%-80% (with no condensation)
<b>Storage temperature</b>	-15°C-60°C (5°F-140°F)
<b>Dimensions</b>	430mm (17½") width x 320mm (12½") depth x 150mm (6") height
<b>Weight</b>	7 kg (15½ lbs.)

**NEC**  
 NEC America, Inc.  
 1401 Estes Avenue

## DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, 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 the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent NEC Home Electronics (U.S.A.), Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1255 Michael Drive, in the City of Wood Dale, State of Illinois.

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

## ORDER

1. For the purposes of this order, all references to the "memory capacity" of a computer product shall include both its random access memory ("RAM") and its read only memory ("ROM").

## I.

*It is ordered,* That respondent NEC Home Electronics (U.S.A.), Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the importation, manufacture, advertising, offering for sale, sale, or distribution of the PC-8000 Series microcomputer system, or any other computer hardware product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

a. That any such product has a stated memory capacity, or has any other directly related capacity or capability, unless such representation is true.

b. That it is possible for a purchaser of any of respondent's products to use or access any stated capacity or capability or perform any stated directly related function, unless, at the time such representation is made, respondent possesses and relies upon a reasonable basis for such representation.

c. That any such product will, in the future, have a stated memory capacity, or any other directly related capacity or capability, unless at the time such representation is made respondent possesses and relies upon a reasonable basis for said representation.

## II.

*It is further ordered,* That:

a) Within ninety (90) days of the date of service on respondent of this order, respondent shall compile from its own records and those of its current and past distributors, dealerships and users' groups a current, up-to-date mailing list of each customer who purchased a PC-8012A-02 32K RAM Board(s) during the time period January 1, 1981 to December 31, 1984. If respondent does not possess or have access to the required customer records, then it shall, within a reasonable period of time, mail a letter to each current and past distributor or dealership and each company-sanctioned NECHE users' group at their present or last known business address requesting these records and shall compile a mailing list of retail customers based on the information received.

b) Within thirty (30) days of compiling the mailing list mentioned above, respondent shall send by first class mail to each customer named on the mailing list compiled in accordance with the requirements of paragraph II.a), above, a dated letter, plus an enclosed post-

card, in the form prescribed in Appendix A to this order. The letter shall bear the customer's name and address, as identified on the mailing list, and no information other than that required by this paragraph shall be included in or added to the letter or postcard, nor shall any other material be transmitted with the letter or postcard without the express written approval of Commission staff. In addition, the envelope shall state the customer's name and address and shall include the following statement, printed clearly and conspicuously in the lower, left-hand corner of the envelope: **IMPORTANT INFORMATION INSIDE: REFUND OFFER**

The required postcard shall be in the form and approximate same size as the one prescribed in Appendix A to this order. The postcard shall be postage-paid and contain respondent's address.

In the event that any of the above-mentioned letters are returned due to the inability of the post office to deliver or forward to the addressee, the respondent is ordered to compile a list of the names of all these addresses. If the respondent receives a 32K RAM board refund request from any customer whose name was on the mailing list but whose letter was returned as undelivered by the Post Office, then the respondent is ordered to complete a new mailing, in accordance with the provisions of this order, to the return address shown on the customer's purchase order or other correspondence. Respondent's obligation under this paragraph to complete a new mailing shall expire one year after service upon respondent of this order.

Pursuant to the requirements contained in the letter attached as Appendix A, and subject to any limitations listed below, respondent shall offer each customer named in the above-mentioned mailing list the following:

1. Respondent will remit to each customer who purchased PC-8012A-02 32K RAM board(s), a check calculated according to the following formula: If refund requests to NECHE for less than 100 RAM boards are made, then the customer will be given \$150 per RAM board. If refund requests for more than 100 RAM boards are made, then the amount to be refunded will be calculated as follows:

$$\frac{\$15,000}{\text{number of RAM board refund requests received within one year of service of this order}} = \text{amount of refund per RAM board}$$

2. Respondent shall send out all checks within thirteen (13) months after service upon respondent of this order. For each customer whose

