FEDERAL TRADE COMMISSION

[[File No. 951 0015]

Wright Medical Technology, Inc., et al.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Tennessee-based research and development corporation to transfer to the Mayo Foundation, the licensor of the implant technology to Orthomet, Inc., a complete copy of all assets relating to Orthomet's business of researching and developing orthopaedic implants for use in human hands, and would also require Wright Medical Technology to obtain Commission approval before acquiring any interest in any firm that has received, or has applied for, Food and Drug Administration approval to market orthopaedic hand implants in the United States.

DATES: Comments must be received on or before March 6, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Richard Dagen or Benjamin Tahyar, FTC/S–2627, Washington, D.C. 20580. (202) 326–2628 or 326–2889.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

In the Matter of Wright Medical Technology, Inc., a corporation, Kidd, Kamm Equity Partners, L.P., a limited partnership, Kidd, Kamm Investments, L.P., a limited partnership, and Kidd, Kamm Investments, Inc., a corporation.

The Federal Trade Commission (''Commission''), having initiated an investigation of the acquisition of all the outstanding shares of common and convertible preferred stock of Orthomet, Inc. (''Orthomet'') by Wright Medical Technology, Inc. (''WMTI''), a subsidiary of Kidd, Kamm Equity Partners, Inc. (''KKEP''), KKEP's general partner, Kidd, Kamm Investments, L.P. (''KKI''), and KKI's general partner, Kidd, Kamm Investments, Inc. (''KKI, Inc.''), and it now appearing that WMTI, KKEP, KKI, and KKI, Inc., hereinafter sometimes referred to as ''Proposed Respondents,'' are willing to enter into an Agreement Containing Consent Order (''Agreement'') to (i) divest and license certain assets, (ii) cease and desist from certain acts, and (iii) provide for certain other relief:

It is hereby agreed by and between Proposed Respondents, by their duly authorized officers and their attorneys, and counsel for the Commission that:

1. Proposed Respondent WMTI is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 5677 Airline Road, Arlington, Tennessee 38002.

2. Proposed Respondent KKEP is a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at Three Pickwick Plaza, Greenwich, Connecticut 06830.

3. Proposed Respondent KKI is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located c/o Kidd, Kamm & Company, 9454 Wilshire Boulevard, Suite 920, Beverly Hills, California 90212.

4. Proposed Respondent KKI, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at Kidd, Kamm & Company, 9454 Wilshire Boulevard, Suite 920, Beverly Hills, California 90212.

5. Proposed Respondents admit all the jurisdictional facts set forth in the draft of complaint.

6. Proposed Respondents waive:

(a) any further procedural steps;

(b) the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) all rights to seek judicial review or otherwise to challenge or contest the validity of the order pursuant to this Agreement; and

(d) any claims under the Equal Access to Justice Act.

7. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify the Proposed Respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

8. This Agreement is for settlement purposes only and does not constitute an admission by the Proposed Respondents that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

9. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to Proposed Respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following Order to divest and license and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to Order to Proposed Respondents' addresses as stated in this Agreement shall constitute service. Proposed Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

10. Proposed Respondents have read the proposed complaint and Order contemplated hereby. Proposed Respondents understand that once the

Order has been issued, they will be required to file one or more compliance reports showing they have fully complied with the Order. Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I.

It is ordered that, as used in this Order, the following definitions shall apply:

A. ''WMTI'' means Wright Medical Technology, Inc., its subsidiaries, divisions, groups and affiliates controlled by WMTI, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

B. ''KKEP'' means Kidd, Kamm Equity Partners, L.P., its subsidiaries (including WMTI), divisions, groups and affiliates controlled by KKEP, and their respective general partners, directors, officers, employees, agents and representatives, and their respective successors and assigns.

C. ''KKI'' means Kidd, Kamm Investments, L.P., its divisions, groups and affiliates controlled by KKI, and their respective general partners, directors, officers, employees, agents and representatives, and their respective successors and assigns.

D. ''KKI, Inc.'' means Kidd, Kamm Investments, Inc., its subsidiaries, divisions, groups and affiliates controlled by KKI, Inc., and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

E. ''Orthomet'' means Orthomet, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, with its principal place of business located at 6301 Cecilia Circle, Minneapolis, Minnesota 55439.

F. ''Respondents'' mean WMTI, KKEP, KKI, and KKI, Inc.

G. ''Commission'' means the Federal Trade Commission.

H. ''Acquisition'' means the acquisition by WMTI of outstanding shares of stock of Orthomet pursuant to a cash tender offer commenced on October 17, 1994.

I. ''Mayo'' means the Mayo Foundation for Medical Education and Research, a Minnesota Charitable Corporation, with its principal place of business located at 200 First Street SW, Rochester, Minnesota 55439.

J. ''Mayo PIP Orthopaedic Finger Implant Design'' means the Mayo proximal interphalangeal prosthesis design together with modifications, enhancements, and improvements, whether or not patentable, that is the subject of a technology license contract between Mayo and Orthomet dated as of December 24, 1992.

K. ''Mayo MCP Orthopaedic Finger Implant Design'' means the metacarpophalangeal prosthesis design developed as a cooperative effort between Mayo and Orthomet, together with modifications, enhancements, and improvements, whether or not patentable, that is the subject of a technology license contract between Mayo and Orthomet dated as of May 1, 1993.

L. ''Mayo CMC Orthopaedic Finger Implant Design'' means the carpometacarpal prosthesis design developed as a cooperative effort between Mayo and Orthomet, together with modifications, enhancements, and improvements, whether or not patentable, that is the subject of a technology license contract between Mayo and Orthomet dated as of May 1, 1993.

M. ''Licensed Inventions'' means (1) the Mayo PIP Orthopaedic Finger Implant Design, (2) the Mayo MCP Orthopaedic Finger Implant Design, and (3) the Mayo CMC Orthopaedic Finger Implant Design.

N. ''Technology License Contracts'' means the contracts between Mayo and Orthomet (1) relating to the Mayo PIP Orthopaedic Finger Implant Design and any amendments thereto, (2) relating to the Mayo MCP Orthopaedic Finger Implant Design and any amendments thereto, and (3) relating to the Mayo CMC Orthopaedic Finger Implant Design and any amendments thereto.

O. ''Orthopaedic Finger Implants'' means orthopaedic implants designed for use in the proximal interphalangeal joint, the metacarpophalangeal joint, and the carpometacarpal joint of the human hand.

P. ''Orthomet/Mayo Orthopaedic Finger Implant Business'' means Orthomet''s or WMTI's business of researching and developing Orthopaedic Finger Implants for eventual commercialization based upon the Licensed Inventions.

Q. ''Orthomet/Mayo Orthopaedic Finger Implant Research Assets'' means all tangible and intangible assets constituting or otherwise relating to the Orthomet/Mayo Orthopaedic Finger Implant Business, including but not limited to:

1. All books, records, CAD files and other documents;

2. All data, materials, and information relating to the Orthomet/Mayo Orthopaedic Finger Implant Business, including, but not limited to, FDA approvals for Orthopaedic Finger Implants, list of clinicians, clinical testing, surgical techniques and protocols, surgical instrumentation design development, and biomechanical materials;

3. All intellectual property, including, but not limited to, patents and patent applications, formulas, processes, technology, know-how, trade secrets, manufacturing information, specifications, plans, drawings, designs and data, product prototypes, and other tangible embodiments of know-how, including, but not limited to, the technology and know-how required to manufacture commercially acceptable products; and

4. All products testing and laboratory research data and samples, including, but not limited to, bench testing, wear testing, and materials testing.

R. ''Orthopaedic Finger Implant Licensee'' means the party or parties, other than Respondents, to whom Mayo licenses the Licensed Inventions.

S. ''FDA'' means the United States Food and Drug Administration.

T. ''510(k) Application'' means an application made to the FDA pursuant to 21 U.S.C. § 350(k), or successor provisions.

U. ''IDE Application'' means an application made to the FDA pursuant to 21 C.F.R. § 812.20, or successor provisions, for an investigational device exemption.

II.

It is further ordered That: A. Within five (5) days after the date this Order becomes final, Respondents shall:

1. Transfer to Mayo a full and complete copy of the Orthomet/Mayo Orthopaedic Finger Implant Research Assets;

2. Grant Mayo a license to such assets, where applicable, with full right of sublicense thereunder, in perpetuity; and

3. Make any and all such arrangements and transfers as are necessary to enable Mayo to license an Orthopaedic Finger Implant Licensee.

B. Upon reasonable notice and request from the Orthopaedic Finger Implant Licensee, Respondents shall provide reasonable assistance to the Orthopaedic Finger Implant Licensee regarding the Orthomet/Mayo Orthopaedic Finger Implant Research Assets transferred pursuant to Paragraph II.A of this Order. Such assistance shall include consultation with knowledgeable employees of Respondents as the Orthopaedic Finger Implant Licensee's facilities or at such other place as is

mutually satisfactory to Respondents and the Orthopaedic Finger Implant Licensee for a period of time sufficient to satisfy the Orthopaedic Finger Implant Licensee's management. However, Respondents shall not be required to continue providing such assistance for more than six (6) months. Respondents may require reimbursement from the Orthopaedic Finger Implant Licensee for all the actual hourly cost of pay and benefits for Respondents' personnel providing the assistance and, if travel is required, the travel cost and per diem subsistence incurred by Respondents in providing the assistance to the Orthopaedic Finger Implant Licensee.

C. Pending the transfer (and licensing, where applicable) of Orthomet/Mayo Orthopaedic Finger Implant Research Assets, Respondents shall take such actions as are necessary to maintain the viability and marketability of Orthomet/Mayo Orthopaedic Finger Implant Research Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of Orthomet/Mayo Orthopaedic Finger Implant Research Assets except for ordinary wear and tear.

III.

It is further ordered That: A. If Respondents do not, within six (6) months of the date this Order becomes final, obtain the Commission's approval for an Orthopaedic Finger Implant Licensee pursuant to the procedures set forth in § 2.41(f) of the Commission's Rules of Practice, 16 C.F.R. § 2.41(f), Respondents shall:

1. Take whatever steps are necessary to effect the immediate termination of the Technology License Contracts within five (5) days after the end of the six (6)-month period;

2. After the termination of the Technology Licensee Contracts, refrain from entering into any agreement of any sort with Mayo relating to the Licensed Inventions or to the Orthomet/Mayo Orthopaedic Finger Implant Research Assets; and

3. Within ten (10) days of the termination of the Technology License Contracts ordered in this Paragraph, divest to Mayo absolutely and in good faith the Orthomet/Mayo Orthopaedic Finger Implant Research Assets and grant Mayo, where applicable, a license to such assets with full right of sublicense thereunder, in perpetuity. Respondents shall retain no interest or rights in the Orthomet/Mayo Orthopaedic Finger Implant Research Assets. Mayo shall have the exclusive power and authority to grant a license relating to the Licensed Inventions.

The purpose of licensing an Orthopaedic Finger Implant Licensee other than Respondents is to ensure the continuation of the Orthomet/Mayo Orthopaedic Finger Implant Research Assets as an ongoing research project for Orthopaedic Finger Implants to be approved by the FDA for sale in the United States and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

B. Upon reasonable notice and request from the Orthopaedic Finger Implant Licensee, Respondents shall provide reasonable assistance to the Orthopaedic Finger Implant Licensee regarding the Orthomet/Mayo Orthopaedic Finger Implant Research Assets divested pursuant to Paragraph III.A of this Order. Such assistance shall include consultation with knowledgeable employees of Respondents at the Orthopaedic Finger Implant Licensee's facilities or at such other place as is mutually satisfactory to Respondents and the Orthopaedic Finger Implant Licensee for a period of time sufficient to satisfy the Orthopaedic Finger Implant Licensee's management. However, Respondents shall not be required to continue providing such assistance for more than six (6) months. Respondents may require reimbursement from the Orthopaedic Finger Implant Licensee for all the actual hourly cost of pay and benefits for Respondents' personnel providing the assistance, and, if travel is required, the travel cost and per diem subsistence incurred by Respondents in providing the assistance to the Orthopaedic Finger Implant Licensee.

IV.

It is further ordered That Respondents shall not without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. For a period of ten (10) years from the date this Order becomes final, acquire more than 1% of the stock, share capital, equity, or other interest in any concern, corporate or non-corporate, that (1) has filed a 510(k) Application or IDE Application relating to Orthopaedic Finger Implants or, within two (2) years prior to any such proposed acquisition, has announced publicly its intention to submit either of such applications, or (2) has received FDA approval relating to Orthopaedic Finger Implants.

B. For a period of ten (10) years from the date this Order becomes final, acquire any assets (including, but not limited to, any technology, know-how, and other intellectual property) that relate to Orthopaedic Finger Implants (1) for which a 510(k) Application or IDE Application has been filed or for which the intention to file such applications has been publicly announced within two (2) years prior to any such proposed acquisition, or (2) for which FDA approval has been received. The foregoing prohibition shall not apply to (i) the acquisition of materials, supplies, inventory, testing equipment or manufacturing equipment in the ordinary course of business, or (ii) the acquisition of product evaluations and product testing and laboratory research data (relating to Orthopaedic Finger Implants owned by Respondents), including, but not limited to, bench testing, wear testing and materials testing, from outside laboratories, outside testing facilities or other third parties, in the ordinary course of Respondents' business.

C. For a period of ten (10) years from the date the Technology License Contracts are terminated pursuant to Paragraph III.A of this Order, enter into any agreement with Mayo relating to Orthopaedic Finger Implants.

V.

It is further ordered That,

A. Within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until Respondents have fully complied with the provisions of Paragraphs II and III of this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraphs II and III of this Order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with these Paragraphs of this Order, including a description of all substantive contacts or negotiations undertaken by Respondents, and assistance offered by Respondents to Mayo for accomplishing the provision (and licensing, where applicable) of Orthomet/Mayo Orthopaedic Finger Implant Research Assets required by this Order, including the identity of all parties contacted by Respondents. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the requirements of Paragraphs II and III of this Order.

B. One (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and

at other times the Commission may require, Respondents shall file with the Commission verified written reports setting forth in detail the manner and form in which they have complied and are complying with Paragraph IV of this Order.

VI.

It is further Ordered That, for the purpose of determining or securing compliance with this Order, Respondents shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents, relating to any matters contained in this consent order; and

B. Upon five (5) days' notice to Respondents, and without restraint or interference from Respondents, to interview officers of employees of Respondents.

VII.

It is further Ordered That Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in Respondents such as dissolution, assignment, sale resulting in the emergence of a successor, or the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of the Order.

VIII.

It is further ordered That, notwithstanding any other provision of this Order, this Order shall terminate twenty (20) years from the date this Order becomes final.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted provisionally an agreement containing a proposed Consent Order from Wright Medical Technology, Inc. (''Wright''), a subsidiary of Kidd, Kamm Equity Partners, L.P. (''KKEP''), a limited partnership, KKEP's general partner, Kidd, Kamm Investments, LP (''KKI''), and KKI's general partner, Kidd, Kamm Investments, Inc. (collectively, the ''Respondents''), under which Respondents would transfer and license certain assets relating to orthopaedic finger implants as well as cease and desist from certain acts.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested people. Comments received during this period will become part of the public record. After sixty (60) days the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

On October 17, 1994, Respondents commenced a cash tender offer to acquire substantially all of the outstanding shares of common and convertible preferred stock issued by Orthomet, Inc. (''Orthomet''). The proposed complaint alleges that the proposed acquisition, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 45 in the market for the sale of orthopaedic implants used or intended for use in the human hand approved by the United States Food and Drug Administration (''FDA'') and in the market for the research and development of such orthopaedic implants.

For the past several years, Orthomet has been the exclusive licensee of the Mayo Foundation for Medical Education and Research (''Mayo Foundation'') relating to certain orthopaedic joint implants used or intended for use in the human hand originally designed by orthopaedic surgeons working at the Mayo Foundation. During that period Orthomet worked alongside the Mayo Foundation to develop and refine the Mayo Foundation's original design with a goal towards eventual commercialization. As a result of the proposed acquisition, the exclusive license agreements between Orthomet and the Mayo Foundation relating to the orthopaedic implants, which have since been made non-exclusive, would be assigned to Wright.

The proposed Consent Order provides that within five (5) days of the Order becoming final, Respondents shall transfer to the Mayo Foundation a complete copy of all assets relating to Orthomet's business of researching and developing orthopaedic implants used or intended for use in the human hand and, where applicable, grant to the Mayo Foundation a license to such assets with full rights of sublicense in perpetuity. The proposed Consent Order is intended to free the Mayo Foundation to find another non-exclusive licensee, in addition to Wright, to develop for eventual commercialization orthopaedic implants used or intended for use in the human hand.

In the event that the Mayo Foundation has not found another non-exclusive licensee acceptable to the Commission within six (6) months of the date the proposed Consent Order becomes final, Respondents shall take whatever steps are necessary to terminate the license agreements between the Mayo Foundation and Wright relating to orthopaedic implants used or intended for use in the human hand and divest to the Mayo Foundation all assets relating to Orthomet's business of researching the developing orthopaedic implants used or intended for use in the human hand. The Mayo foundation shall then be free to license, whether exclusively or non-exclusively, any firm other than Respondents to develop for eventual commercialization orthopaedic implants used or intended for use in the human hand.

Under the provisions of the Order, Respondents are also required to provide to the Commission a report of their compliance with the transfer and divestiture provisions of the Order within sixty (60) days following the date this Order becomes final, and every sixty (60) days thereafter until Respondents have either transferred or completely divested all assets relating to Orthomet's business of researching and developing orthopaedic implants used or intended for use in the human hand. The proposed Order will also require Respondents to cease and desist for ten (10) years from acquiring, without Federal Trade Commission approval, any interest in any firm that either has received FDA approval to market orthopaedic implants used or intended for use in the human hand in the United States or has filed a 510(k) or investigational device exemption (''IDE'') application for approval from the FDA or has publicly announced its intention to do so. The proposed Order also requires the Respondents, for ten years, to seek Federal Trade Commission approval before acquiring any assets relating to market orthopaedic implants used or intended for use in the human hand for which a 510(k) or IDE application has been filed or for which the intention to file such applications has been publicly announced, or for which FDA approval has been received. Finally, in the event that Respondents are required to terminate their license agreements with the Mayo Foundation, the proposed Order will also prohibit Respondents for ten (10) years from entering into any agreement with the Mayo Foundation relating to orthopaedic implants used or intended for use in the human hand, without Federal Trade Commission approval. One year from the date the Order becomes final and annually thereafter for nine (9) years, Respondents will be required to provide

to the Commission a report of their compliance with the cease and desist provisions of the proposed Order.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95–96 Filed 1–3–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt C–3544]

Columbia/HCA Healthcare Corporation; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order permits, among other things, the hospital company to complete its acquisition of Medical Care America, but requires it to divest the Alaska Surgery Center within twelve months to a Commission-approved entity. If the transaction is not completed in the designated time frame, the respondents are required to permit the Commission to appoint a trustee. In addition, the consent order requires the respondent, for ten years, to obtain Commission approval before acquiring an interest worth more than $1 million in any outpatient surgical services facility in Anchorage, Alaska, and before selling such an interest to any entity that operates an outpatient surgical services facility in Anchorage, Alaska.

DATES: Complaint and Order issued December 6, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Mark Horoschak, FTC/S–3115, Washington, DC 20580, (202) 326–2756.

SUPPLEMENTARY INFORMATION: On Friday, September 23, 1994, there was published in the **Federal Register**, 59 FR 48883, a proposed consent agreement with analysis In the Matter of Columbia/HCA Healthcare Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95–92 Filed 1–3–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 932 3357]

Abovo, Inc., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Massachusetts company and its president from making false or unsubstantiated performance claims about any communication aid they offer in the future, and from making representations concerning the efficacy of their communication devices in enabling individuals with disabilities to communicate through facilitated communication, unless the respondents have competent and reliable scientific evidence to substantiate the representation.

DATES: Comments must be received on or before March 6, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld or Kerry O'Brien, San Francisco Regional Office, Federal Trade Commission, 901 Market St., Suite 570, San Francisco, CA 94103, (415) 744–7920.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9 (b)(6)(ii) of the Commission's Rules of Practices (16 CFR 4.9(b)(6)(ii)).

In the Matter of: Abovo, Inc., a corporation, and Susan L. Lakso, individually and as an officer of said corporation.

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Abovo, Inc., a corporation, and Susan L. Lakso, individually and as an officer of said corporation (''proposed respondents''), and it not appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Abovo, Inc., by its duly authorized officer, and Susan L. Lakso, individually and as an officer of said corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Abovo, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at Cabotville Industrial Park, 165 Front Street, 4th Floor, B Building, in the City of Chicopee, State of Massachusetts.

Proposed respondent Susan Lakso is an officer of said corporation. She formulates, directs and controls the policies, acts and practices of said corporation and her address is the same as that of said corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.