



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the Secretary

December 27, 2011

Peter T. Barbur, Esquire  
Christopher D. Belielieu, Esquire  
Cravath, Swaine & Moore LLP  
Worldwide Plaza  
825 Eighth Avenue  
New York, NY 10019-7474

Re: Alan B. Miller and Universal Health Services, Inc., et al., FTC Docket No. C-4309

Dear Messrs. Barbur and Belielieu:

This letter responds to Universal Health Services, Inc.'s Motion For Extension of Time to Divest the Las Vegas Divestiture Assets ("Motion"), filed by you on behalf of Respondents Alan B. Miller and Universal Health Services, Inc., et al. (collectively, "Universal" or "Respondents") in the above-captioned matter on October 3, 2011. In its Motion, Universal seeks an extension of time to divest until March 31, 2012. Under the terms of the Decision and Order ("Order") issued in this matter, which were agreed to by Respondents, Universal is required to divest the Las Vegas Divestiture Assets no later than six months after the date the Order became final, i.e., by October 31, 2011, to an acquirer that receives the Commission's prior approval, and in a manner that also receives the Commission's prior approval. Universal has failed to complete the required divestiture within the Order's deadline. For the reasons discussed below, Universal has not met its burden under the Commission's Rules and the applicable legal standards for showing good cause why its Motion should be granted. Accordingly, the Commission has denied the Motion.

In reaching its decision, the Comm

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<sup>1</sup> On November 15, 2010, the Commission accepted an Agreement Containing Consent Orders in this matter for public comment. The Commission subsequently issued a modified final Decision and Order (i.e., the Order) on April 19, 2011, which became final on April 29, 2011.

of the largest providers of acute inpatient psychiatric services in three relevant geographic markets: the Las Vegas, Nevada, Metropolitan Statistical Area; the State of Delaware; and the Commonwealth of Puerto Rico. The Order requires Universal to divest the Divestiture Assets, as defined,<sup>2</sup> within specified time periods,<sup>3</sup> in each of the Relevant Areas, as defined:<sup>4</sup> the State of Delaware; the Las Vegas, NV, MSA; and the Commonwealth of Puerto Rico. In particular, Paragraph III.A. of the Order requires Universal to divest the Las Vegas Divestiture Assets, as defined,<sup>5</sup> “[n]o later than six (6) months after the date [the] Order becomes final” (i.e., by October 31, 2011), only to an acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission.<sup>6</sup> Paragraph VIII.A. of the Order provides that the Commission may appoint a trustee (“Divestiture Trustee”) to, among other things, divest the Las Vegas Divestiture Assets if Respondents have not fully complied with the obligations imposed by Paragraph III. of the Order.

On May 20, 2011, Universal filed an application (“May 20<sup>th</sup> application”) seeking the Commission’s prior approval to divest the Las Vegas Divestiture Assets to Signature Healthcare Services, LLC (“Signature”), an entity wholly owned by Dr. Soon Kim. As described below, the Commission’s staff engaged in detailed discussions with Universal and with Signature concerning the proposed divestiture to Signature, and conducted an extensive review of Signature as a “Prospective Acquirer,” as defined,<sup>7</sup> of the Las Vegas Divestiture Assets. On September 15, 2011, Universal filed a Notice of Withdrawal of the May 20<sup>th</sup> application.

In its Motion, Universal requests that the Commission

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<sup>2</sup> Order ¶ I.O.

<sup>3</sup> Order ¶¶ IIA., III.A., IV.A.

<sup>4</sup> Order ¶ I.DD.

<sup>5</sup> Order ¶¶ I.T., V., CC.

<sup>6</sup> Pursuant to a consent settlement with the State of Nevada, Universal must comply with essentially identical divestiture obligations according to the terms of a Final Judgment, filed on November 15, 2010, by the Attorney General for the State of Nevada (“Nevada Attorney General”), in the United States District Court for the District of Nevada.

<sup>7</sup> Order ¶ I.X.

and granting an extension of time rests in the discretion of the Commission.<sup>8</sup> As the Commission's publicly-available guidance makes clear, failure to consummate a required divestiture within the time limit set by the Order (i.e., not just file for approval) is a violation of the Order and can result

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<sup>8</sup> *United States v. Swingline, Inc.*, 371 F. Supp. 37, 45 (E.D.N.Y. 1974).

<sup>9</sup> 15 U.S.C. § 45(l) See Statement of the Federal Trade Commission's Bureau of Competition on Negotiating Merger Remedies, at n.30 and accompanying text, <http://www.ftc.gov/bc/bestpractices/bestpractices030401.htm>.

<sup>10</sup> See, e.g., Letter re: In the Matter of Service Corporation International, Inc., et al., Docket No. C-4174 (April 25, 2008), <http://www.ftc.gov/os/caselist/0610156/080501letter.pdf>.

<sup>11</sup> Universal was required to divest the Delaware Divestiture Assets by October 31, 2011 (Order ¶ II.A.). It filed an application for approval to divest to PHC, Inc., which was approved by the Commission on June 3, 2011. The divestiture closed on July 1, 2011.

<sup>12</sup> Universal is required to divest the Puerto Rico Divestiture Assets by January 30, 2012 (Order ¶ IV.A.). It filed an application for approval to divest the assets to United Medical Corporation and related individuals and entities on September 28, 2011. Commission action on the application is pending. ¶ 109 of 110



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<sup>15</sup> On November 7, 2011, Universal filed an application seeking Commission approval for divestiture of the Las Vegas Divestiture Assets to Strategic Behavioral Health, LLC and related entities.

<sup>16</sup> The requirements of the Order to Hold Separate and Maintain Assets, and the oversight of the Hold Separate Trustee appointed by the Commission, will help assure the continued viability, competitiveness and marketability of the Divestiture Assets pending divestiture. They are not substitutes, however, for a timely divestiture, which remains the core remedy in this Order.

The Commission reserves the right to appoint a Divestiture Trustee or take such further action as circumstances warrant.

By direction of the Commission.

Donald S. Clark  
Secretary