

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

**COMMISSIONERS:**      **Andrew N. Ferguson, Chairman**  
                                 **Rebecca Kelly Slaughter**  
                                 **Melissa Holyoak**  
                                 **Mark R. Meador**

In the Matter of	)	
	)	<b>DECISION AND ORDER</b>
<b>Gateway Services, Inc.,</b>	)	<b>Docket No.</b>
a corporation,	)	
	)	
<b>Gateway US Holdings, Inc.,</b>	)	
a corporation.	)	
	)	
	)	
	)	

**DECISION**

The Federal Trade Commission initiated an investigation of certain acts and practices of Respondents Gateway Services, Inc. and Gateway US Holdings, Inc. (collectively, “Respondents” or “Gateway”). The Commission’s Bureau of Competition prepared and furnished to Respondents the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, based on Respondents use of Covered Non-Compete Agreements restricting their employees.

Respondents and the Bureau of Competition executed an Agreement Containing Consent Order (“Consent Agreement”) containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission’s Rules, and (4) a proposed Decision and Order.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the said Act, and that a complaint should issue stating its charges in that respect. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments; at the same

time, it issued and served its Complaint. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure described in Rule 2.34, the Commission makes the following jurisdictional findings:

1. Respondent Gateway Services, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of Ontario, Canada with its executive offices and principal place of business located at 109-230 Hanlon Creek Blvd, Guelph, Ontario N1C 0A1, Canada.
2. Respondent Gateway US Holdings, Inc. is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware with its executive offices and principal place of business located at 2 Daniels Way, Cranston, Rhode Island 02921.
3. The Commission has jurisdiction of the subject matter of this proceeding and over Respondents, and the proceeding is in the public interest.

## **ORDER**

### **I. Definitions**

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

- A. “Gateway Services” means Gateway Services, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; the joint ventures, subsidiaries, including Gateway US Holdings, Inc., partnerships, divisions, groups, and affiliates controlled by Gateway Services, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. Gateway also includes Regency Pet LLC.
- B. “Gateway US” means Gateway US Holdings, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; the joint ventures, subsidiaries, including Regency Pet LLC, partnerships, divisions, groups, and affiliates controlled by Gateway US Holdings, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Gateway” or “Respondents” means Gateway Services and Gateway US.
- D. “Commission” means the Federal Trade Commission.
- E. “Agreement” means any agreement, contract, understanding, or provision or term thereof, whether express or implied, written or unwritten.
- F. “Covered Employee” means a Person employed by Respondents, previously employed by Respondents during the previous one year prior to the date this Order is issued, or in

the process of being employed by Respondents, in the United States, including third-party contractors. Covered Employee does not include the individuals listed in Nonpublic Appendix A.

- G. “Covered Non-Compete Agreement” means an Agreement between Respondents and a Covered Employee that restricts or restrains the right or ability of the Covered Employee to seek or accept employment with any Person, to operate a business, or otherwise to compete with Respondents for any period of time after the conclusion of the Covered Employee’s employment with Respondents; provided that a Covered Non-Compete Agreement does not include Agreements containing a non-competition covenant entered into with a Respondent’s director, officer, or senior employee, in conjunction with the grant of equity or equity-based interests in Respondents. Nothing in this definition prohibits Respondents from entering non-competes Agreements in conjunction with the sale of a business, provided that individuals subject to such an agreement have a pre-existing equity interest in the business being sold.
- H. “Person” means both natural and artificial persons, including corporations, partnerships, and unincorporated entities.

## **II. Injunction**

**IT IS FURTHER ORDERED** that Respondents, in connection with their activities in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, shall:

- A. Cease and desist from, directly or indirectly, entering or attempting to enter into, maintaining or attempting to maintain, enforcing or attempting to enforce, or threatening to enforce a Covered Non-Compete Agreement.
- B. Cease and desist from, directly or indirectly, communicating to a Covered Employee or any prospective or current employer of that Covered Employee that the Covered Employee is subject to, a Covered Non-Compete Agreement.
- C. Not prohibit a Covered Employee in any Agreement with that Covered Employee from soliciting current or prospective customers, except with respect to those current or prospective customers with whom the Covered Employee, in the last 12 months of his or her employment by Respondents, had direct contact or personally provided service.

## **III. Notice to Covered Employees**

**IT IS FURTHER ORDERED** that Respondents shall:

- A. No later than 45 days from the date this Order is issued, deliver to each Covered Employee that is subject to a Covered Non-Compete Agreement from the date this Order is issued a letter in the form of Appendix B and a copy of this Order. Respondents shall deliver Appendix B to each Covered Employee by name, either:

1. By U.S. Mail, return receipt requested; or
  2. Via email transmittal with a proof of a read-receipt, or where no read-receipt can be provided, proof of delivery.
- B. No later than 30 days from the date this Order is issued, and continuing for the duration of this Order, post a clear and conspicuous notice in the documentation, electronic or otherwise, provided to each new Covered Employee upon hire that states:

“IMPORTANT: Your employment with Gateway in this position is not and will not be subject to a Non-Compete provision. This means that once you stop working for Gateway:

- You may seek or accept a job with any company or person – even if they compete with Gateway.
- You may run your own business – even if it competes with Gateway.
- You may compete with Gateway at any time following your employment with Gateway.
- You may solicit customers whom you did not have direct contact with or whom you did not personally provide service to during your employment with Gateway, and following expiration of your non-solicit period, may solicit any potential customer.
- We can still enter or enforce other agreements, such as agreements that prevent current or former employees from using or disclosing Gateway’s confidential business information and trade secrets and non-solicitation agreements to the extent that such non-solicit agreements are permitted by law.

#### **IV. Compliance Obligations**

**IT IS FURTHER ORDERED** that Respondents shall:

- A. Immediately cease enforcing all existing Covered Non-Compete Agreements in the United States, and not require any Covered Employee who is party to an existing Covered Non-Compete Agreement in the United States to pay any fees or penalties relating to a Covered Non-Compete Agreement.
- B. No later than 30 days after the date on which this Order is issued, provide a copy of this Order and the Complaint to each of Respondents’ directors, officers, human resources officers, and the most senior human resources employee who oversees hiring each of the Respondent’s United States locations.
- C. For a period of 10 years from the date this Order is issued, provide a copy of this Order and the Complaint to any Person who becomes a director, officer, human resources officer, or the most senior human resources employee who oversees hiring at each of Respondents’ United States locations, and provide such copies within 30 days of the commencement of such Person’s employment or term.

- D. Require each Person to whom a copy of this Order is furnished pursuant to Paragraphs IV.B and IV.C to sign and submit to Respondents within 30 days of the receipt thereof a statement that (1) represents that the undersigned has read the Order, and (2) acknowledges that the undersigned has been advised and understands that non-compliance with the Order may subject Respondents to penalties for violation of the Order.
- E. For a period of 5 years after taking each action obligated by Paragraphs IV.A-D of this Order, Respondents shall retain documents and records sufficient to record Respondents' compliance with said obligations.

## **V. Compliance Reports**

**IT IS FURTHER ORDERED** that Respondents shall file verified written reports ("Compliance Reports") in accordance with the following:

- A. Respondents shall submit:
  - 1. Interim Compliance Reports 30 days after the date this Order is issued, and then one report 6 months after the date the Order is issued;
  - 2. Annual Compliance Reports one year after the date this Order is issued, and annually for the next 9 years on the anniversary of that date; and
  - 3. Additional Compliance Reports from any Respondent as the Commission or its staff may request.
- B. Each Compliance Report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondents are in compliance with this Order. Conclusory statements that Respondents have complied with their obligations under the Order are insufficient. Respondents shall include in their reports, among other information or documentation that may be necessary to demonstrate compliance, (1) a full description of the measures Respondents have implemented and plan to implement to comply with each paragraph of this Order, including a list of all persons who received the notice required by Paragraph III.A of this Order, together with proof of service of the notice (which service may be satisfied by sending the notice via email, as described in Paragraph III.A) and (2) upon the Commission's request, a copy of any employment agreement (apart from a collective bargaining agreement) that Respondents enter or implement after execution of the Consent Agreement.
- C. For a period of 5 years after filing a Compliance Report, Respondents shall retain all material written communications with each party identified in each Compliance Report as required by Paragraph V.B and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling Respondents' obligations under this Order during the period covered by such Compliance Report. Respondents shall provide copies of these documents to Commission staff upon request.

- D. Respondents shall verify each Compliance Report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondents shall file their Compliance Reports with the Secretary of the Commission at [ElectronicFilings@ftc.gov](mailto:ElectronicFilings@ftc.gov) and the Compliance Division at [bccompliance@ftc.gov](mailto:bccompliance@ftc.gov) as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a).

## **VI. Change in Respondents**

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

- A. The dissolution of Gateway Services, Inc., or Gateway US Holdings, Inc.;
- B. The acquisition, merger, or consolidation of Gateway Services, Inc. or Gateway US Holdings, Inc.; or
- C. Any other change in Respondents, including assignment and the creation, sale, or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

## **VII. Access**

**IT IS FURTHER ORDERED that**, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five days' notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession, or under the control, of Respondents related to compliance with this Order, which copying services shall be provided by Respondents at their expense; and
- B. To interview directors, officers, or employees of Respondents, who may have counsel present, regarding such matters.

## **VIII. Purpose**

**IT IS FURTHER ORDERED that** the purpose of this Order is to remedy the harm to competition the Commission alleged in its Complaint and to prevent the Respondents from entering into, maintaining, or enforcing or threatening to enforce, a Covered Non-Compete Agreement

**IX. Term**

**IT IS FURTHER ORDERED** that this Order shall terminate 10 years from the date it is issued.

By the Commission, Commissioner Slaughter dissenting.

April J. Tabor  
Secretary

SEAL:  
ISSUED:

**NONPUBLIC APPENDIX A**

**Excluded Employees**

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



## APPENDIX B

[Gateway letterhead]

[Name and email address of Covered Employee] VIA U.S. MAIL or EMAIL

Re: Covered Non-Compete Agreement with Gateway

Dear [name of Covered Employee]:

You are receiving this letter because you are a Covered Employee affected by a consent Order that we have entered into with the Federal Trade Commission (“Commission”).

As you know, Gateway US Holdings, Inc. and Gateway Services, Inc. (“collectively Gateway”) previously required employees not to compete with Gateway for a period of time following their employment with the company.

The Commission has been investigating the use of Non-Compete Agreements by Gateway in the United States. As part of this investigation, Gateway has reached a settlement agreement with the Commission to terminate Gateway’s Covered Non-Compete Agreements. The Commission has alleged that Gateway’s use of Covered Non-Compete Agreements with you and certain other employees has a tendency to restrict job mobility and harm competition. We have entered into a consent Order (“FTC Order”) with the Commission under which we will not reinstate these Covered Non-Compete Agreements for 10 years. Consistent with our prior announcement, any Covered Non-Compete Agreement between you and Gateway is null and void.

### **What is a Covered Non-Compete Agreement?**

A Covered Non-Compete Agreement restricts an employee’s ability to seek or accept a job with another company, to operate his or her own business, or otherwise to compete with his or her former employer after he or she has left the company. These agreements sometimes (but not always) use words like “non-competition” or “non-compete.”

### **How the FTC Order affects you**

The FTC Order requires us to:

1. Cancel all Covered Non-Compete Agreements with certain current or former Gateway employees in job positions identified in the Order;
2. Stop entering into Covered Non-Compete Agreements with employees in those positions; and
3. Release you from the Covered Non-Compete Agreement with us.

This means that once you stop working for Gateway:

- You may seek or accept a job with any company or person – even if they compete with Gateway.
- You may run your own business – even if it competes with Gateway.

- You may compete with Gateway at any time after you leave Gateway.
- You may solicit customers whom you did not have direct contact with or whom you did not personally provide service to during your employment with Gateway, and following expiration of your non-solicit period, may solicit any potential customer.

We can still enter or enforce agreements that prevent solicitations of employees and customers for a period of time, to the degree that those restrictions comply with the law, or that prevent current or former employees from using or disclosing Gateway's confidential business information and trade secrets— for example, if the employee goes to work for someone else or themselves.

### **Where to get more information**

To learn more about this case, please read the attached FTC Order [], or visit [URL that goes to the ftc.gov press release]. This letter summarizes the main points of the matter, but the only official source of information is the FTC Order. The FTC Order reflects an agreement between the FTC and Gateway that settles the FTC's allegations regarding the Covered Non-Compete Agreements. It does not constitute an admission by Gateway that it has violated the law or that any of the facts alleged by the FTC regarding Gateway's conduct are true.

If you have concerns about whether Gateway or any Gateway employees are complying with their obligations under the Order – or how the Order applies to you or your colleagues – contact [name] in Gateway's legal department at [phone] or [email], or the FTC by contacting [FTC contact] at [phone] or [email].

Sincerely,

[Name]

Chief Human Resources Officer