

IN THE MATTER OF

ALLIED CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT

Docket C-3157. Complaint, June 17, 1985—Decision, June 17, 1985

This consent order with Allied Corporation and King Radio Corporation requires Allied to divest the King Weather Radar Line to Narco Avionics, Inc., or another Commission-approved purchaser. With certain exceptions, the order also prohibits Allied, for a period of ten (10) years, from acquiring, without the Commission's prior approval, any interest in any company that manufactures or sells general aviation weather detection systems in the United States.

Appearances

For the Commission: *Stephen W. Riddell, Sandra G. Wilkof, Laurie T. Baulig and John C. Weber.*

For the respondents: *Brian D. Forrow*, in-house counsel, Morris Township, N.J. and *C. Benjamin Crisman, Jr. and Peter E. Greene, Skadden, Arps, Slate, Meagher & Flom*, Washington, D.C., for respondent Allied Corporation, and *Owen M. Johnson and Paul B. Hewitt, Akin, Gump, Strauss, Hauer & Feld*, Washington, D.C., for respondent King Radio Corporation.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent, Allied Corporation ("Allied"), has acquired respondent, King Radio Corporation ("King"), both corporations subject to the jurisdiction of the Commission, and that such acquisition constitutes a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45 and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. DEFINITIONS

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

(a) *General aviation aircraft* means those aircraft predominantly

used for private purposes rather than (i) for military purposes or (ii) for the transport of people or cargo for a fee.

(b) *Airborne weather detection system* means (i) a product designed for use in aircraft consisting of a display, a sensor device and an antenna, that uses radio waves to detect and display weather conditions and is designed to enable a pilot to evaluate and avoid adverse weather conditions, or (ii) a product designed for use in aircraft, consisting of a receiver system that detects lightning and is designed to enable a pilot to evaluate and avoid adverse weather conditions. *Airborne weather detection system* shall also include any device that performs the same function in the same manner as the King products designated KGR 356 and KGR 358 for display on the products, defined in (b)(i) and (b)(ii) above.

II. ALLIED

2. Allied is a corporation organized under the laws of New York with its executive offices at Columbia Road and Park Avenue, Morris Township, New Jersey.

3. Allied is a major worldwide supplier of industrial chemicals, petroleum and natural gas, scientific laboratory instruments, typesetting equipment, semiconductor components, automotive parts and aviation and aerospace products.

4. The Bendix Aerospace Sector of Allied develops and manufactures products used in military and civil aircraft, spacecraft, missiles and other defense and space exploration products.

5. In 1983, Allied had sales of \$10.02 billion, assets of \$7.65 billion, and net income of \$98 million.

III. KING

6. King is a corporation organized under the laws of Kansas with its executive offices at 400 North Rogers Road, Olathe, Kansas.

7. King is primarily engaged in the design, manufacture and distribution of electronic communication, navigation, weather radar and flight control equipment for general aviation aircraft.

8. In 1983, King's sales amounted to approximately \$86 million, and it had about \$76 million in assets.

IV. JURISDICTION

9. At all times relevant herein, respondent, Allied, and respondent, King, have been and are now engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and are corporations whose businesses are in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

V. THE ACQUISITION

10. On or about September 26, 1984, Edward King, Chairman of the Board and founder of King entered into a stock purchase agreement to sell his 47.5% share of voting stock in King to AC Acquisition Corporation, a wholly-owned subsidiary of Bendix, itself a subsidiary of Allied. In addition, a trustee for a trust which controls a 6.2% interest in King agreed to sell that interest to AC Acquisition. Pursuant to another agreement AC Acquisition would be merged into King. The total acquisition, which has been valued at \$109.8 million, was consummated on January 31, 1985.

VI. TRADE AND COMMERCE

11. The relevant market in which to evaluate the effects of this acquisition is the manufacture and sale, in the United States and worldwide, of airborne weather detection systems designed for use in general aviation aircraft.

12. Allied and King are actual, direct competitors in the manufacture and sale, in the United States and throughout the world, of airborne weather detection systems designed for use in general aviation aircraft.

VII. EFFECTS OF THE ACQUISITION

13. The effects of the acquisition of King by Allied may be substantially to lessen competition or to tend to create a monopoly in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act as amended, 15 U.S.C. 45 because, *inter alia*:

(a) Substantial direct competition between Allied and King in the relevant line of commerce will be eliminated;

(b) Already high concentration in the relevant line of commerce will be increased, thereby increasing the likelihood of successful collusive behavior among the remaining firms in the relevant line of commerce; and

(c) King will be eliminated as a significant independent competitive influence on the relevant lines of commerce.

VIII. VIOLATION CHARGED

14. The acquisition of the stock of King by Allied violates Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of the acquisition of King Radio Corporation ("King") by the Allied Corporation ("Allied"), and Allied and King having been furnished hereafter with a copy of a draft complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Allied and King with violations of the Clayton Act and Federal Trade Commission Act; and

Allied, King, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by Allied and King 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 Allied and King 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 Allied and King have violated the said Acts, 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. Allied is a corporation organized, existing and doing business under and by virtue of the laws of New York with its executive offices at Columbia Road and Park Avenue, Morris Township, New Jersey.

2. King is a corporation organized, existing and doing business under and by virtue of the laws of Kansas with its executive offices at 400 North Rogers Road, Olathe, Kansas.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Allied and King, and the proceeding is in the public interest.

ORDER

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

(A) *Allied* means Allied Corporation, its predecessors, divisions, subsidiaries, groups and affiliates controlled by Allied and their re-

spective directors, officers, employees, agents and representatives and their respective successors and assigns.

(B) *King Radio* means King Radio Corporation, its predecessors, divisions, subsidiaries, groups and affiliates controlled by King Radio and their respective directors, officers, employees, agents and representatives and their respective successors and assigns.

(C) *King Weather Radar Line* means all airborne weather detection systems currently manufactured, sold or owned by King Radio, including but not limited to the KWX 565 and the KWX 58 weather radar systems; all airborne weather detection systems that King Radio has under development, including but not limited to the KWX 57, the KWX 460, and improvements or modifications to the KWX 56 or KWX 58 systems; and any other plans or research related to airborne weather detection systems. The KWX 56 and the KWX 58 weather radar systems shall be construed to include, respectively, the KI 244 and the KI 248 control/indicators, the KA 126 and the KA 128 combined antenna/receiver/transmitter units and the KGR 356 and the KGR 538 graphics interface units.

(D) *Airborne weather detection system* means (1) a product, consisting of a display, a sensor device and an antenna, that uses radio waves to detect and display weather conditions and is designed to enable a pilot to evaluate and avoid adverse weather conditions and is designed for use in aircraft; or (2) a receiver system designed for use in aircraft that detects lightning and is designed to enable a pilot to evaluate and avoid adverse weather conditions. *Airborne weather detection system* shall also include any device that performs the same function in the same manner as the King Radio products designated KGR 356 and KGR 358 for display on the products, defined in D (1) and D (2) above.

(E) *Piece Parts* are components and raw materials purchased or made by King Radio for use in manufacturing, producing or repairing the King Weather Radar Line or spare parts. *Kits* are all Piece Parts required to assemble a specific quantity of the King Weather Radar Line.

I.

It is ordered, That:

(A) Within eight (8) months from the date this order becomes final, Allied shall divest, absolutely and in good faith all of the assets described below, so as to transfer the King Weather Radar Line as a viable product line such that a purchaser could compete as a manufacturer and seller of airborne weather detection systems:

(1) All inventories, including Piece Parts, Work-In-Process, finished

goods and kits solely dedicated to the King Weather Radar Line, as determined pursuant to a physical inventory to be taken approximately seven (7) days in advance of the closing of the sale, except that Allied may retain, at its discretion, sufficient quantities of Finished Goods and spare parts as to be able to service, maintain and repair its products in the field and fulfill those contracts not assignable to the purchaser.

(2) All tooling, whether or not in the custody of vendors, and test equipment, including fixtures thereof, solely dedicated to the King Weather Radar Line.

(3) All know-how, and trade secrets, if any, solely dedicated to the King Weather Radar Line, including one patent (no. 3973145) and one patent application (no. 412913).

(4) All engineering and design drawings, including but not limited to all documentation for software contained in or used in the manufacture of the King Weather Radar Line; all documentation related to a new weather radar antenna/receiver/transmitter unit that is in the early development stage; all documentation related to a design for a test adapter to enable the testing of the KGR 356 and KGR 358 graphics interface units utilizing an Apple Computer; and all other documentation, design and development studies, inventory, models and all other data related to the King Weather Radar Line.

(5) All processes, bills of material, maintenance manuals, pilots' guides, TSO reports, advertising literature and brochures solely dedicated to the King Weather Radar Line; vendor and distribution lists; and documentation related to a sales history and marketing of the King Weather Radar Line to the extent that such documentation is separable from other confidential information not related to the King Weather Radar Line.

(6) All purchase orders for Piece Parts on order to the extent that they are assignable and solely dedicated to the King Weather Radar Line, all customer lists for King Weather Radar Line products and all contracts for the sale of King Weather Radar Line to the extent that they are assignable.

(B) Divestiture of the King Weather Radar Line shall be made to Narco Avionics, Inc. pursuant to the terms of the Agreement of Purchase and Sale attached hereto as Exhibit A, or to such other purchaser or purchasers that receive(s) the prior approval of the Commission and only in a manner that receives prior approval of the Commission.

(C) For a period of ninety (90) days following the divestiture of the King Weather Radar Line, or such longer period (not to exceed six (6) months) as agreed between the purchaser and Allied, Allied shall assist the purchaser in the start-up and manufacturing process of the King Weather Radar Line by making personnel available to train and

educate employees of the purchaser selected by it in all facets of the start-up, manufacture, production and repair of the King Weather Radar Line. Allied shall name a single technical coordinator to serve as the focal point for such technical assistance. For such technical assistance, Allied may assess the purchaser an amount in accord with the terms of the Agreement of Purchase and Sale attached hereto as Exhibit A, or may charge the purchaser an amount not to exceed its cost for the time and materials (plus a reasonable material burden rate) involved, plus its reasonable travel, lodging and subsistence costs, if any.

(D) Pending the divestiture of the King Weather Radar Line required by this Order, Allied shall use its best efforts to advertise, promote, manufacture and sell the King Weather Radar Line at substantial present levels. Allied shall also continue to fund all ongoing research and development projects with regard to the King Weather Radar Line at 1984 levels. Allied shall be required to designate an appropriate King Radio employee to be responsible for managing the King Weather Radar Line pending its divestiture.

(E) Pending the divestiture of the King Weather Radar Line required by this order, Allied and King shall maintain the viability, integrity and marketability of the properties described in Paragraph I (A) and shall not use or permit the destruction, removal or impairment of any assets to be divested except in the ordinary course of business and except for ordinary wear and tear.

II.

*It is further ordered, That, for a period of ten (10) years from the date this order becomes final, Allied shall not, without the prior approval of the Commission, directly or indirectly, acquire any stock, share capital or equity interest in any concern engaged in, or any assets used in the manufacture and sale in or to the United States, of airborne weather detection systems designed for use in general aviation aircraft; provided, however, that nothing in this order shall prohibit Allied from (i) acquiring, for investment purposes only, an interest of not more than one (1) percent of the stock, share capital or equity of any such concern; or (ii) making purchases, in the ordinary course of business, of components and equipment used to manufacture airborne weather detection systems (e.g., tools, test equipment and components). For the purposes of this Paragraph, the term *general aviation aircraft* means those aircraft predominantly used for private purposes rather than (i) for military purchases or (ii) for the transport of people or cargo for a fee.*

III.

It is further ordered, That if Allied has not accomplished the divestiture required by Paragraph I of this order within the eight-month period, Allied shall consent to the appointment of a trustee who shall have the power and authority to accomplish the divestiture at the most favorable price and terms available consistent with this order's unconditional obligation to divest. The trustee shall be a person with experience and expertise in acquisitions and divestitures and shall be selected by the Commission subject to Allied's consent, which shall not be unreasonably withheld. The trustee shall serve at the cost and expense of Allied based on reasonable and customary terms. The trustee's compensation shall be based on reasonable and customary terms. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee divesting the trust assets. The trustee shall have the cooperation of Allied in accomplishing the divestiture within a reasonable period not to exceed ten (10) months and subject to the prior approval of the Federal Trade Commission. The appointment of a trustee shall not preclude the Commission from seeking civil penalties and other relief available to it for any failure by Allied to comply with Paragraphs I through VI of this order.

IV.

It is further ordered, That within sixty (60) days from the date on which this order becomes final and the first two sixty (60) day periods thereafter and every ninety (90) days thereafter until Allied has fully complied with the provisions of Paragraph I of this order, Allied shall submit in writing to the Commission a verified report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with that provision of this order. All such compliance reports shall include a summary of all discussions and negotiations with any persons who are potential purchasers of the assets to be divested as specified in Paragraph I of this order, including the identity of all such persons, copies of all written communications to and from such persons, and all internal memoranda, reports and recommendations concerning divestiture.

V.

It is further ordered, That for a period of ten (10) years from the date on which this order becomes final, Allied shall notify the Commission at least thirty (30) days prior to any proposed corporate changes that

may affect compliance obligations arising out of this order, such as dissolution, assignment or sale resulting in the emergency of successor corporations and the creation or dissolution of subsidiaries.

VI.

On the first anniversary of the date this order becomes final and on every anniversary date thereafter for the following nine (9) years, Allied shall submit to the Commission a verified written report setting forth the manner and form in which it has complied or is complying with this order.

EXHIBIT A *

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made and entered on this 23rd day of January, 1985 (the "Agreement") by and between Narco Avionics, Inc., a Delaware corporation, with its principal offices at 270 Commerce Drive, Fort Washington, Pennsylvania 19034 ("Buyer") and King Radio Corporation, a Kansas corporation, with its principal offices at 400 North Rodgers Road, Olathe, Kansas 66062 ("Seller").

Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, on the terms and conditions set forth herein, a portion of the assets used in the business and operations of Seller set forth in paragraph 1 below, which has been generally identified by Seller as its Weather Radar Product Line and Graphics Interface Product Line, more particularly described as:

(a) All Airborne Weather Detection Systems currently manufactured, sold or owned by Seller, including but not limited to:

- (1) The KWX 56 Weather Radar System consisting of the KA 126 Antenna/Receiver/Transmitter and the KI 244 Control/Indicator;
- (2) The KWX 58 Weather Radar System consisting of the KA 128 Antenna/Receiver/Transmitter and the KI 248 Control/Indicator;
- (3) The KGR 356 Graphics Interface Unit; and
- (4) The KGR 358 Graphics Interface Unit;

(b) All Airborne Weather Detection Systems that Seller has under development, including but not limited to the KWX 57 and KWX 460, and improvements or modifications to the KWX 56 or KWX 58 systems; and

(c) Any other plans or research related to Airborne Weather Detection Systems.

all of which to be sometimes hereinafter referred to individually as the "Products", and collectively (including the items set forth in paragraph 1) as the "Product Lines".

In consideration of the mutual covenants, agreements, representations and warranties hereinafter contained, the parties agree as follows:

1. Purchase and Sale.

* Material which the Commission has granted confidential treatment has been replaced in the text with the symbol [***].

At the closing (the "Closing") as hereinafter defined in paragraph 3.1(a), Seller shall sell, transfer and convey to Buyer, and Buyer shall purchase and accept:

(a) *Inventories.* All inventories, including Piece Parts, Work-In-Process, Finished Goods and Kits solely dedicated to the Product Lines subject to the provisions of paragraph 1.1 and 1.2.

(b) *Tooling and Test Equipment.* All tooling, whether or not in the custody of vendors and test equipment including fixtures thereof, solely dedicated to the Product Lines, as set forth in *Exhibit 1(b)*.

(c) *Industrial Property Rights.* All know-how, and trade secrets, if any, solely dedicated to the Product Lines, one patent (no. 3973145), one patent application (no. 412913). Copies of the assignment of the patent and patent application are annexed to this Agreement as *Exhibit 1(c)*.

(d) *Documents, Lists and Design Data.* All engineering and design drawings including but not limited to processes, bills of material, maintenance manuals, pilots' guides, TSO reports, advertising literature and brochures solely dedicated to the Product Lines; vendor and distribution lists; all documentation for software contained in or used in the manufacture of the Products; all documentation related to a new weather radar antenna/receiver/ transmitter unit that is in the [***] developmental stage; all documentation related to a design for a test adapter to enable testing of the KGR 356 and KGR 358 graphics interface units utilizing [designated equipment]; all other documentation, design and development studies, inventory, models and other data related to the Products; and documentation related to a sales history and marketing of the Product Lines to the extent that such documentation is separable from other confidential information not related to the Product Lines.

(e) *Purchase Orders and Contracts.* All purchase orders for Piece Parts on order to the extent that they are assignable and solely dedicated to the Product Lines, all customer lists for the Product Lines and all contracts for the sale of Products to the extent that they are assignable, as set forth in *Exhibit 1(e)* to be provided at the Closing.

1.1 *Limitation on Inventory.* Anything to the contrary notwithstanding, Buyer, at its election, shall not be obligated to purchase, accept and pay for Piece Parts in excess of those necessary to manufacture more than a cumulative total of [***] Weather Radar Products and, in addition thereto, a cumulative total of [***] Graphics Interface Products.

1.2 *Retention by Seller.*

(a) Anything to the contrary notwithstanding, Seller shall retain and not convey to Buyer all Piece Parts, purchase orders for Piece Parts not solely dedicated to the Product Lines, and purchase orders for Piece Parts solely dedicated to the Product Lines that are not assignable after efforts are made to request such vendors to permit such assignment from Seller to Buyer. Seller shall also retain and not convey to Buyer contracts for the sale of spare parts, and for Products that are not assignable after efforts are made to request such vendors to permit such assignment from Seller to Buyer. Seller shall also retain the right to continue to conduct business with vendors and distributors set forth on the vendor and distributor lists. Seller shall also retain and not convey to Buyer a sufficient quantity of Finished Goods and spare parts, in Seller's discretion, as to be able to service, maintain and repair its Products in the field and fulfill any contracts not assignable to Buyer.

(b) Buyer shall grant to Seller a nonexclusive, irrevocable, royalty free license (including the right to grant sublicenses) (i) under the patent and patent application to be conveyed herein, to make, have made, use, and sell Piece Parts and (ii) to utilize the tooling (in the custody of vendors) to be conveyed herein, only as necessary for Seller to service, maintain and repair the Products sold by Seller to third parties prior to the

Closing. Such license shall be for the duration of any patents that are in existence or may be issued that are conveyed herein, and for the life of the tooling. The license to be used is set forth as *Exhibit 1(c)*, annexed to this Agreement.

1.3 *Definitions.* As used herein the following terms apply:

- (a) "Finished Goods" shall mean each completed Product.
- (b) "Piece Parts" shall mean components and raw material purchased or made by Seller for use in manufacturing, producing, maintaining or repairing the Products or spare parts.
- (c) "Kits" shall mean all required Piece Parts to assemble a specific quantity of the Products.
- (d) "Work-In-Process" shall mean Products in various stages of manufacture or production.
- (e) The phrase "solely dedicated to the Product Lines" in connection with assets to be conveyed herein, shall mean those assets which have no use or value to Seller in connection with its business other than for the Product Lines.
- (f) "Weather Radar Products" shall mean the KWX 56 and KWX 58 weather radar systems.
- (g) "Graphics Interface Products" shall mean the KGR 356 and KGR 358 Graphics Interface units.
- (h) "Airborne Weather Detection System" shall mean (1) a product, consisting of a display, a sensor device and an antenna, that uses radio waves to detect and display weather conditions and is designed to enable a pilot to evaluate and avoid adverse weather conditions and is designed for use in aircraft; or (2) a receiver system designed for use in aircraft that detects lightning and is designed to enable a pilot to evaluate and avoid adverse weather conditions. "Airborne Weather Detection System" shall also include any device that performs the same function in the same manner as the Seller's products designated KGR 356 and KGR 358 for display on the products defined in (h)(1) and (h)(2) above.

2. *Purchase Price.* The purchase price shall consist of a payment made at the Closing as set forth in paragraph 2.1 below, payments or credits as set forth in paragraph 2.2 below, and payments made over a period of seven years as set forth in paragraph 2.3 below.

2.1 *Current Payment.* At the Closing, Buyer shall pay to Seller as part of the purchase price, [* * *]. Such payment shall be made by certified check or wire transfer at the election of the Seller.

2.2 *Payments and Credits.*

(a) Buyer shall also pay to Seller, as part of the purchase price, a sum [* * *] for Finished Goods on hand at the Closing (and in the production process) to be conveyed to Buyer, plus [***] of such costs for variance factors, and a sum [* * *] for its Kits, Piece Parts and Work-In-Process on hand at the Closing (and in the production process) to be conveyed to Buyer, plus [***] of such costs as a material burden rate.

(b) The Buyer shall receive a credit of [* * *] which credit shall be deducted from sums due Seller under paragraph 2.2(a). The net amount due Seller after deduction of the credit shall be payable in accordance with the terms of paragraph 2.2(c).

(c) Such sums due Seller pursuant to paragraph 2.2(b) shall be payable in principal increments of [* * *] ninetieth (90th) day following the Closing Date, and on each ninetieth (90th) day thereafter, until fully paid, in accordance with a promissory note bearing a rate of interest of [***] per annum in the form set forth as *Exhibit 2.2(c)* annexed to this Agreement. If less than [* * *] is due Seller, the full sum shall be paid to Seller on the ninetieth (90th) day following the Closing Date, plus interest due. In

the event an adjustment in the cost of inventory that was in production is necessary, such an adjustment shall be made pursuant to paragraph 4.7.

2.3 Additional Payments.

(a) In addition, Buyer will pay, as part of the purchase price, the sum of [* * *] with interest at [* * *] per annum, payable in 27 equal installments of [* * *] and a final installment of [* * *] in accordance with an unsecured promissory note set forth in *Exhibit 2.3(a)*. Payments shall commence on the ninetieth (90th) day following the final payment due under the promissory note set forth in *Exhibit 2.2(c)*, and shall continue on each ninetieth (90th) day thereafter, until fully paid.

3. The Closing.

3.1 *Closing.* The purchase and sale of the Product Lines contemplated by this Agreement and the assignment, conveyance and transfer thereof by Seller to Buyer, and payment, delivery of a promissory note, execution of a license agreement, guarantees, security interests, and performance of other obligations as set forth in this Agreement, which are considered conditions of Closing, shall take place at: the offices of Allied Bendix Aerospace, 1000 Wilson Boulevard, Arlington, Virginia 22209, at such time and date to be mutually agreed upon after appropriate approvals are obtained from the FTC pursuant to the FTC investigation, or at such other time and place as the parties may agree to in writing ("Closing Date").

3.2 *Instruments of Transfer.* At the Closing, Seller will deliver to Buyer an Assignment and Bill of Sale, passing all right, title and interest in and to the Product Lines free and clear of all liens, security interests and other encumbrances in the form set forth in *Exhibit 3.2*, annexed to this Agreement.

4. Standard Costs, Physical Inventory Count and Transfer of Inventory.

4.1 The inventories, including Finished Goods, Kits, Piece Parts and Work-In-Process have been valued at [* * *] in accordance with Seller's accounting practices.

4.2 Within approximately seven days prior to the Closing, Seller and Buyer together, will count the inventory on hand, not committed to production, (including test counts and sample counts, where total counting is impractical), and establish an agreed upon quantity which will be valued at Seller's cost plus [***]. Seller and Buyer will supervise the packaging and sealing of the cartons of such inventory. The quantities as established will not be subject to adjustment, since Buyer will have partaken in the inventories count and sealing of such cartons.

4.3 Seller will continue production until approximately one day prior to Closing. An estimated amount of inventory in production will be established and valued at Seller's cost plus [***].

4.4 At the Closing, the cost of inventory on hand (plus [***]) and the cost of the estimated inventory in production (plus [***]) will serve as the basis of payment pursuant to the promissory note described in paragraph 2.2(c).

4.5 As soon as practicable after the Closing Date, per agreement of the parties, the inventory on hand (not in production) will be shipped to Buyer on a carrier designated by Buyer, f.o.b. Seller's plant.

4.6 Within thirty (30) days after the Closing, as soon as practicable, Seller will gather up the inventory that was in production (possibly in three plants) and place it in a central location at Seller's plant. Seller and Buyer will count the inventory that was in production and will supervise the packaging and sealing of the cartons of such inventory, which will be valued at Seller's cost (plus [***]). The quantities established will not be subject to adjustment.

4.7 An adjustment between the estimated quantity of inventory that was in production given at the Closing by Seller, and the actual quantity of such inventory will be

made, if required, and such adjustment in terms of costs will be reflected in a new promissory note to be executed by Buyer containing the same terms as set forth in *Exhibit 2.2(c)* (except for the adjustment in principal), which new promissory note shall bear interest at [***] from the Closing Date, and the original note will be destroyed.

4.8 The inventory in production will be shipped to Buyer as soon as practicable after packaging it, on a common carrier designated by Buyer, f.o.b. Seller's plant.

4.9 Buyer will, in its discretion, within forty-five days from the Closing Date, examine the valuation of the inventory at Seller's cost (plus [***]) to determine whether Seller accurately and consistently applied its standard costs to the inventory. Adjustments, if necessary, in terms of costs will be reflected in the new promissory note. The new promissory note will be substituted for the original promissory note as set forth in *Exhibit 2.2(c)* and delivered to Seller within sixty days after the Closing Date.

4.10 Seller will take reasonable steps to secure the inventory while it is in Seller's custody. The risk of loss shall pass from Seller to Buyer in accordance with the terms set forth in paragraph 11.14.

4.11 In the event Buyer and Seller do not agree on the quantity of the inventories or the consistency or accuracy of the application of the valuation of such inventories, then the issues involved in the dispute shall be referred to an auditor to be mutually agreed upon, and such auditor shall perform an independent review of the facts in order to resolve specific issues. The determination of such auditor shall be final with respect to the matters in dispute. All costs associated with such auditor shall be shared equally by Buyer and Seller.

4.12 Any payments received by Seller in error for purchases made from Buyer by Buyer's customers after the Closing Date, will be endorsed over to Buyer or remitted to Buyer.

5. Representations and Warranties of Seller.

5.1 *Organization.* Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Kansas and has all necessary corporate power and authority to own, lease and operate its properties and to carry on its business and the business of the Product Lines as now being conducted. No party, other than Seller, has any right, title or interest, or to the knowledge of Seller, has asserted any such right, title, or interest, in and to the Product Lines.

5.2 Authority.

(a) At the Closing Seller will have the full corporate power and authority to enter into this Agreement and to carry out the transactions contemplated hereby, and all proceedings required to be taken by Seller to authorize the execution, delivery and performance of this Agreement have been properly taken and this Agreement constitutes a valid and binding obligation of Seller enforceable in accordance with its terms. Other than an investigation of the Federal Trade Commission ("FTC") regarding the acquisition by The Bendix Corporation ("Bendix") of Seller's voting stock, which investigation may determine that Seller be required to dispose of the Product Lines that are the subject of this Agreement to a Buyer to be approved by the FTC (hereinafter referred to as the "FTC Investigation"), there is no litigation, proceeding, or investigation pending, or to the best of Seller's knowledge threatened, which questions the validity or enforceability of this Agreement or seeks to enjoin the consummation of any of the transactions contemplated hereby.

(b) Other than the FTC Investigation and agreements between the FTC, Bendix and/or Seller that may have been entered into pursuant to such investigation, neither the execution and delivery hereof, nor the consummation of the transactions contemplated hereby, nor compliance by Seller with any of the provisions hereof will conflict with or result in a breach of or default under any of the terms, conditions, provisions of any agreement, instrument or obligation to which Seller is a party, relative

to the Product Lines, or by which it or its properties and assets may be bound or affected or (2) result in violation of any order, writ, injunction, decree, statute, rule or regulation applicable to Seller or the Product Lines.

5.3 *Inventories, etc.* The inventories of Seller regarding the Product Lines on the Closing Date will consist of items of a quality and quantity usable and salable in the ordinary course of business as it was conducted by Seller during the past year. Such inventories have been valued at [* * *] in accordance with the normal inventory valuation practices of the Seller for the Product Lines. The market value of the tooling and test equipment, cumulatively to be conveyed herein equals or exceeds [* * *]. The value of the inventories to be conveyed to Buyer will exceed [* * *].

5.4 *Brokers and Finders.* Seller has not retained any broker or finder or paid or agreed to pay any broker's or finder's fee or commission for or on account of the transactions contemplated by this Agreement.

5.5 *Manufacturing Capability.* The assets of the Product Lines conveyed by Seller herein contain sufficient information, data and other assets for Seller to be able to manufacture the Products. Seller does not guarantee that Piece Parts conveyed herein (exclusive of the Kits) are sufficient to allow full assembly of individual Products.

5.6 *Gross Margin.* The Gross Margin on Weather Radar Products, in accordance with Seller's standard accounting practices over the past year, on average, has not been less than [***], as reported in Seller's monthly Cost of Sales Reports.

5.7 *Product Values.* Except as stated in this subparagraph Seller has no knowledge of any circumstances which would make the Product Lines obsolete or diminish the market for the Product Lines taken as a whole. The parties understand, however, that the KWX 58 Product may diminish the sales of the KWX 56 Product and the KGR 358 Product may diminish the sales of the KGR 356 Product, and the parties further understand that the markets may naturally diminish by virtue of Buyer being a new entrant into the marketplace.

5.8 *Disclosure.* No representation or warranty by Seller in this Agreement, and no statement, certificate or other document furnished, or to be furnished, by or on behalf of Seller under this Agreement, and the Exhibits hereto, contains or will contain any untrue statement of material fact or intentionally omits any material fact necessary to make the statements contained herein or therein not misleading.

6. *Representations and Warranties of Buyer.* Buyer represents and warrants to Seller as follows:

6.1 *Organization.* Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware and has all necessary corporate power and authority to conduct its business as such business is now being conducted, and to own its property and the Product Lines.

6.2 *Authority.* At the Closing Buyer will have full corporate power and authority to enter into this Agreement and carry out the transactions contemplated hereby; all proceedings required to be taken by it to authorize the execution, delivery and performance of this Agreement have been properly taken; and this Agreement constitutes a valid and binding obligation of Buyer enforceable in accordance with its terms.

6.3 *Brokers and Finders.* Buyer has not retained any broker or finder or paid or agreed to pay any broker's or finder's fee or commission for or on account of the transactions contemplated by this Agreement.

6.4 *Litigation or Proceedings*

Other than the FTC investigation, there is no litigation, proceedings, or investigation pending, or to the best of Buyer's knowledge threatened, which questions the validity or endorsement of this Agreement or seeks to enjoin the consummation of any transactions contemplated hereby.

(b) Neither the execution and delivery hereof, nor the consummation of the transactions contemplated hereby, nor compliance by Buyer with any of the provisions hereof, will result in violation of any order, writ, injunction, decree, statute, rule or regulation applicable to Buyer.

6.5 *Collateral*. The collateral given to secure payment of sums due under paragraph 2.2 herein is valued at approximately \$1,200,000.00, and other than Seller's lien to be placed thereon, is and will contain only one prior lien, to wit, a first mortgage held by The Crocker Bank in a sum not to exceed \$650,000.00, there being sufficient remaining equity to secure payments under paragraph 2.2 herein. Buyer will offer to Seller a second mortgage on the collateral set forth in paragraph 11.3 to secure such payments.

6.6 *Disclosure*. No representation or warranty by Buyer in this Agreement, and no statement, certificate or other document furnished or to be furnished by or on behalf of Buyer under this Agreement, and the Exhibits hereto, contains or will contain any untrue statement of material fact or intentionally omits any material fact necessary to make the statements contained herein or therein not misleading.

7. *Conditions Precedent to Buyer's Performance*. All obligations of Buyer to consummate the transactions as contemplated by this Agreement are subject to the fulfillment of each of the following conditions at or prior to Closing (unless waived in writing by Buyer):

7.1 All representations and warranties of Seller contained herein, and in any document delivered pursuant hereto, shall be true and correct in all material respects when made and as of the Closing.

7.2 All obligations required by the terms of this Agreement to be performed by Seller shall have been duly and properly performed in all material respects and Buyer shall have received a certificate, dated the Closing Date, signed by an officer of Seller to such effect.

7.3 Seller shall have delivered to Buyer a certified copy of a resolution adopted by the Board of Directors of Seller authorizing the execution, delivery and performance of this Agreement.

7.4 There shall have been no change in the Product Lines, except changes in the ordinary course of business none of which shall have been materially adverse to an Product.

7.5 There shall not have been any legal action or other proceedings brought by third parties to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or to obtain other relief in connection with this Agreement, or the transactions contemplated hereby, nor shall any such actions be pending or threatened.

7.6 The FTC shall have approved this transaction in a final order of a consent decree and shall have permitted the acquisition by Bendix of Seller's voting stock, or in the alternative, the FTC shall have affirmatively indicated that no consent decree is required.

7.7 The FTC shall have approved Buyer as a party to this transaction.

7.8 Buyer shall have received from counsel for Seller a written opinion dated at the Closing Date, addressed to Buyer, in a form and substance to be mutually agreed upon by Buyer's and Seller's counsel.

8. *Conditions Precedent to Seller's Performance*. All obligations of Seller to consummate the transactions as contemplated by this Agreement are subject to the fulfillment of each of the following conditions at or prior to the Closing (unless waived in writing by Seller):

8.1 All representations and warranties of Buyer contained herein, and in any document delivered pursuant hereto, shall be true and correct in all material respects when made and as of the Closing.

8.2 All obligations required by the terms of this Agreement to be performed by Buyer shall have been duly and properly performed in all material respects and Seller shall have received a certificate, dated the Closing Date, signed by an officer of Buyer to such effect.

8.3 Buyer shall have delivered to Seller a certified copy of the resolution adopted by the Board of Directors of Buyer authorizing the execution, delivery and performance of this Agreement.

8.4 There shall not have been any legal action or other proceedings brought by third parties to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or to obtain other relief in connection with this Agreement, or the transactions contemplated hereby, nor shall any such actions be pending or threatened.

8.5 The FTC shall have approved this transaction in a final order of a consent decree and shall have permitted the acquisition by Bendix of Seller's voting stock, or in the alternative, the FTC shall have affirmatively indicated that no consent decree is required.

8.6 The FTC shall have approved Buyer as a party to this transaction.

8.7 Seller shall have received from counsel for Buyer a written opinion dated as of the Closing Date, addressed to Seller, in a form and substance to be mutually agreed upon by Buyer's and Seller's counsel.

9. Indemnification.

9.1 Seller's Indemnity.

(a) Seller shall indemnify and hold harmless Buyer, for a period of one year from the Closing Date, against any damage, loss, cost, liability or expense (including reasonable attorneys' fees), which arise out of or result from (a) the incorrectness or breach of any of the representations or warranties of Seller contained in this Agreement, or given in writing on the Closing Date, and (b) the failure on the part of Seller to perform any covenants or agreements on its part to be performed.

(b) Buyer shall give Seller prompt written notice of any matter which may give rise to Buyer's right to indemnity hereunder. Such notice shall identify the nature of the matter and, if appropriate, the persons making the claim from which Buyer's rights to indemnity may arise. Prior to the settlement of any claim, or the defense of any litigation with a third party which may give rise to indemnity hereunder, Seller shall give the opportunity to participate in negotiation and settlement discussions or to assume the defense of such litigation, as the case may be. Any claim of indemnification hereunder shall include a statement specifying the nature and amount of the damages, losses, costs, liabilities and expenses incurred by Buyer, for which indemnification is claimed hereunder.

9.2 Buyer's Indemnity.

Buyer shall indemnify and hold harmless Seller, for a period of one year (except for the payments due under this Agreement, which period of indemnification shall be one year) from the Closing Date, against any damage, loss, cost, liability or expense (including reasonable attorneys' fees), which arise out of or result from (a) the incorrectness or breach of any of the representations or warranties of Buyer contained in this Agreement, or given in writing on the Closing Date, and (b) the failure on the part of Buyer to perform any covenants or agreements on its part to be performed.

Seller shall give Buyer prompt written notice of any matter which may give rise to Seller's right to indemnity hereunder. Such notice shall identify the nature of the matter and, if appropriate, the persons making the claim from which Seller's rights to indemnity may arise. Prior to the settlement of any claim or the defense of any litigation with a third party which may give rise to indemnity hereunder, Buyer shall

be given the opportunity to participate in negotiation and settlement discussions or assume the defense of such litigation, as the case may be. Any claim of indemnification made hereunder shall include a statement specifying the nature and amount of the damages, losses, costs, liabilities and expenses incurred by Seller, its successors or assigns, for which indemnification is claimed hereunder.

10. *Nature and Survival of Representations and Warranties.* All statements contained in this Agreement and in any certificate, instrument, or document delivered by or on behalf of either of the parties pursuant hereto shall be deemed representations and warranties by the respective parties hereunder. All representations and warranties made hereunder shall survive the Closing for a period of one year from the Closing Date.

11. *General Provisions*

11.1 *Guarantees.* At the Closing, Buyer shall have obtained and delivered to Seller, a Guarantee by Edward M. Zimmer, Jr., in his personal capacity, and not as an officer of Narco, that Edward M. Zimmer, Jr. shall be and remain primarily liable as a guarantor of any payments due Seller under this Agreement. Such Guarantee shall be in the form annexed to the promissory notes.

11.2 *Accelerated Schedule.* On a best efforts basis, Seller, on the signing of this Agreement up to the Closing Date, shall accelerate its schedule of manufacturing Products and Kits to a reasonable rate as determined by Seller in excess of its current rate of production.

11.3 *Collateral.* Buyer shall offer the following collateral as security to secure all sums due Seller under the promissory note set forth in paragraph 2.2(c), and shall execute at the Closing all documents reasonably required by Seller to enable Seller to perfect its security interest in the collateral.

Collateral: A commercial building owned by Edward M. Zimmer, Jr., Trust, located on Monroe Avenue, Houston, Texas valued at approximately \$1.2 million, the appraisal to be supplied at Closing.

11.4 *Allocation of Payments.* Seller and Buyer agree that the purchase price shall be allocated in accordance with *Exhibit 11.4*.

11.5 *Product Support, Product Liability.*

(a) Buyer shall be responsible for supporting all Products and spare parts sold by it to Buyer's customers, including repairs to Products and spare parts, whether or not under warranty, and shall be responsible for and, upon the Closing, automatically assume the costs and expenses, including expenses affiliated with the defense of lawsuits and claims, that arise in connection with Products and spare parts sold by Buyer to its customers.

(b) Seller shall be responsible for supporting all Products and spare parts sold by it to Seller's customers, including repairs to Products and spare parts, whether or not under warranty, and shall be responsible for and, upon the Closing, automatically assume the costs and expenses, including expenses affiliated with the defense of lawsuits and claims, that arise in connection with Products and spare parts sold by Seller to its customers. Sales of Products and spare parts by Seller to Buyer, in connection with this transaction shall not be deemed a sale to Seller's "customer", and accordingly, Buyer and not Seller shall be responsible for and, upon the Closing, shall automatically assume the Product support, repairs, costs, and expenses, including the expenses affiliated with lawsuits and claims, that arise in connection with Products and spare parts, if any, sold by Seller to Buyer as part of this transaction. Sales of Products from Seller to Buyer as part of this transaction shall be serialized and identified at the Closing in *Exhibit 11.5(b)*. Anything to the contrary notwithstanding, after consumma-

tion of this transaction, in the event Seller purchases Products or spare parts from Buyer to support Seller's Products in the field, or for systems installations, Buyer shall extend to Seller the same warranty it offers to its other customers.

11.7 *Technical Assistance.* Seller shall assist Buyer in the start-up and manufacturing process of the Product Lines by making personnel available to train and educate employees of Buyer in all facets of the start-up, manufacture, production and repair of the Products and the transfer of Seller's research and development concerning the Products. The individual employees of Seller and the number of such employees made available for such technical assistance shall be determined by the Seller. A single technical coordinator shall be named by Seller to serve as the focal point for such technical assistance. Such technical assistance shall be made available, as may be required by Buyer, for a period of [* * *] following the Closing (but may be extended by mutual consent of the parties). Such technical assistance for [* * *] following the Closing shall be made available as part of the purchase price and is valued by the parties at [* * *]. Any technical assistance rendered by Seller to Buyer, per agreement of the parties, after such [* * *] period shall be paid for by Buyer on a time and material basis, for the costs incurred by Seller, [* * *] for each labor hour expended by Seller's personnel in rendering technical assistance. In addition, for technical assistance rendered after the [* * *] the Buyer shall pay to Seller the cost of material paid for or expended by Seller [* * *] related to the technical assistance. Such technical assistance may be rendered at Seller's or Buyer's plant or at other places to be mutually agreed upon. Buyer shall pay all reasonable costs expended for transportation, lodging and subsistence of Buyer's and Seller's personnel involved in the technical assistance program when travel away from home is required. Seller shall invoice Buyer for such technical assistance, costs and expenses and such invoices shall be due and payable within thirty days after receipt thereof.

11.8 [* * *]

11.9 *Sale Made "As Is, Where Is".* The sale of the Product Lines is made on an "as is, where is" basis which shall be reflected in the Assignment and Bill of Sale.

11.10 *"King" Name.*

(a) The Buyer shall not utilize the "King" name and logo in the manufacture, marketing, distribution and sale of products, except to indicate in its advertising literature and brochures, for a period not to exceed three years from the Closing Date, that the Products were "formerly manufactured by King Radio Corporation". Buyer shall have the exclusive use of the nomenclature KWX 56, KWX 58, KGR 356, KGR 358, KA 128, KI 244 and KI 248 for the Product Lines acquired hereunder. All tooling shall be modified by Buyer to remove the King name and logo, and such name and logo shall be removed by Buyer from all Products and Piece Parts manufactured by Buyer. With respect to Products manufactured by Seller and sold to Buyer, as part of this transaction for subsequent resale to Buyer's customers, Buyer shall place a permanently affixed label on such products indicating that they were sold by Buyer.

(b) The "King" name and logo shall not be placed on the front panel of Airborne Weather Detection Systems for a period of seven years from the Closing Date. Anything to the contrary notwithstanding, Seller will be permitted to advertise "Bendix" weather radar equipment together and in connection with Seller's non-weather radar equipment, provided further that Seller will not identify "King" as the source of manufacture of any weather radar except as required by law.

11.11 *Further Assurances and Cooperation.* In connection with the transactions contemplated by this Agreement, the parties agree to execute such additional documents and papers, and perform and do such additional acts and things as may be reasonably necessary or proper to effectuate and carry out all of the provisions and the intent of this Agreement.

11.12 *Notices.* All notices to be given by either party to this Agreement to the other party hereto shall be in writing and shall be given in person or by depositing such notice in the United States mail, registered or certified, postage prepaid addressed as follows (unless either party designates a different address in writing to the other party for communicating notices):

To Buyer: Narco Avionics, Inc.
270 Commerce Drive
Fort Washington, PA 19304
Attention: President

With a carbon copy to:

Edward M. Zimmer, Jr.
Post Office Box 277
Laguna Beach, CA 92652

To Seller: King Radio Corporation
400 North Rodgers Road
Olathe, KS 66062
Attention: President

With a carbon copy to:

Allied Bendix Aerospace
1000 Wilson Boulevard
Arlington, VA 22209
Attention: General Counsel

11.13 *Payment of Expenses, Taxes and Closing Costs.* Each of the parties shall pay all costs and expenses incurred or to be incurred by it in negotiating and preparing this Agreement and in closing and carrying out the transactions contemplated hereby. All sales taxes and like taxes payable in connection with the sale, conveyances, assignments, transfers and deliveries to be made to Buyer hereunder, shall be borne by the Buyer.

11.14 *Deliveries and Risk of Loss.* The Product Lines to be conveyed by Seller to Buyer pursuant to the Agreement shall be delivered f.o.b. Seller's factory, 400 North Rodgers Road, Olathe, Kansas to Buyer, or to a private or common carrier acceptable to Buyer, for delivery to premises designated by Buyer, as soon after the Closing as practicable. Irrespective of the date upon which such Product Lines are delivered to Buyer, or to a private or common carrier, and notwithstanding any agreement, express or implied, that Seller and Buyer may enter into for Seller to hold or store such Product Lines on a temporary basis for Buyer after the Closing, the risk of loss, damage or destruction of such Product Lines shall pass from Seller to Buyer on the Closing Date, immediately after consummation of such Closing.

11.15 *Announcements.* No public or other announcement, including any press releases regarding this Agreement, or the transactions contemplated hereby, shall be made by either Seller or Buyer without advance notice to and prior approval by the other party which notice shall include the text of such announcement or release.

11.16 *Entire Agreement.* This writing constitutes the entire Agreement of the parties with respect to the subject matter hereof and may not be modified, amended or terminated except by a written agreement specifically referring to this Agreement and signed by the parties hereto.

11.17 *Waiver.* No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the party giving such waiver, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

Decision and Order 105 F.T.C.

11.18 *Successors and Assigns.* This Agreement shall be binding upon and inure to the benefit of each of the parties hereto, and their successors and assigns.

11.19 *Severability.* If any clause or provision of this Agreement shall be held invalid or unenforceable by the final determination of a court of competent jurisdiction, and all appeals therefrom shall have failed or the time for such appeals shall have expired, such clause or provisions shall be deemed eliminated from this Agreement but the remaining provisions shall nevertheless be given full force and effect.

11.20 *Captions.* The paragraph headings contained herein are for the purpose of convenience and are not intended to define or limit the contents of said paragraphs.

11.21 *Choice of Law.* This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Kansas.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day, month and year first above written.

KING RADIO CORPORATION

By: Louis J. Giuliano
Vice President & Group Exe.
Bendix Aerospace Sector

NARCO AVIONICS, INC.

By: Edward M. Zimmer, Jr.
President

EXHIBIT 1(b)

Radar Tooling

THIS IS CONFIDENTIAL MATERIAL

EXHIBIT 1(c)

ASSIGNMENT

WHEREAS, King Radio Corporation, a Kansas corporation, located at 400 North Rodgers Road, Olathe, Kansas, hereinafter "Assignor," is sole owner of and desires to formally assign to Assignee the U.S. Letters Patent and Patent Application listed below; and having conveyed certain tooling in an Assignment and Bill of Sale dated, _____, to Assignee; and

WHEREAS, Narco Avionics, Inc., a Delaware corporation located at 270 Commerce Drive, Fort Washington, Pennsylvania 19034, hereinafter "Assignee", desires to acquire the entire right, title and interest in and to said U.S. Letters Patent and Patent Application, subject to the grant to the Assignor of certain license rights therein; and desires to acquire the right, title and interest to tooling set forth in an Assignment and Bill of Sale dated _____ from Assignor to Assignee, subject to the grant, to the Assignor of certain license rights in such tooling;

UNITED STATES PATENT

<u>Patent No.</u>	<u>Issue Date</u>	<u>Title</u>	<u>Inventor</u>
3973145	August 3, 1976	Weather Radar Transistorized Pulse Modulator	Jerry C. Schmitt Terry K. Michie

381

Decision and Order

UNITED STATES PATENT APPLICATION

<u>Serial No.</u>	<u>Filing Date</u>	<u>Title</u>	<u>Inventor</u>
412913	August 30, 1982	Apparatus and Method for the Correction of Attenuation Induced Errors In a Weather Radar Receiver	James Lyall

NOW, THEREFORE, THIS DEED WITNESSETH: that for and in consideration of One Dollar (\$1.00) to Assignor in hand paid and other good and valuable consideration, the receipt of which is hereby acknowledged, that Assignor has sold, assigned, transferred and set over, and by these presents does hereby sell, assign, transfer and set over unto the said Assignee, the entire right, title and interest in and to said U.S. Letters Patent and Patent Application, and any reissues or extensions thereof, together with all rights to recover for past infringements thereof, subject to the grant to the Assignor of an non-exclusive, irrevocable, royalty-free, license, with rights to sublicense, to make, have made, use and sell Piece Parts under said U.S. Letters Patent and Patent Application and any reissues or extensions thereof, for the life of the patent and any patent issued under the Patent Application listed herein, the same to be held and enjoyed by Assignee, for its own use and benefit and for the use and benefit of its successors, assigns and legal representatives, subject to the license granted herein.

Furthermore, Assignee grants to Assignor the license and right to use tooling in the custody of vendors to make, have made, use and sell for itself and its successors and assigns, certain Piece Parts from said tooling in the custody of vendors, for the life of such tooling, which tooling was conveyed to Assignee pursuant to an Assignment and Bill of Sale dated _____, from Assignor to Assignee.

IN WITNESS WHEREOF, the Assignor and Assignee hereunto set their respective hands and affixed their respective seals, this _____ day of _____, 1985, by their duly authorized representatives.

Attest: _____ KING RADIO CORPORATION, Assignor

By: _____

Title: _____

(Seal) Title: _____

Attest:

_____ Narco Avionics, Inc., Assignee

Title: _____

(Seal) Title: _____

ATTESTATION FOR ASSIGNOR

County of _____

State of _____

On this _____ day of _____, 1985, before me personally appeared _____, to me personally known, who being by me duly sworn, did say he is _____ of King Radio Corporation, the Assignor above-named an

Decision and Order

105 F.T.C.

knowledgeed that he executed the foregoing instrument on behalf of said Assignor and pursuant to authority duly received.

Notary Public

My Commission Expires: _____
(Seal)

ATTESTATION FOR ASSIGNEE

County of _____
State of _____

On this _____ day of _____, 1985, before me personally appeared _____, to me personally known, who being by me duly sworn, did say that he is _____ of Narco Avionics, Inc., the Assignee above-named and acknowledged that he executed the foregoing instrument on behalf of said Assignee and pursuant to authority duly received.

Notary Public

My Commission Expires: _____
(Seal)

EXHIBIT 2.2(c)PROMISSORY NOTE

Date: _____

For value received, the undersigned, Narco Avionics, Inc., a Delaware corporation, ("Narco") promises to pay to the order of King Radio Corporation, a Kansas corporation, ("King") the principal sum of \$_____ payable with interest as hereinafter provided at the offices of King Radio Corporation, 400 North Rodgers Road, Olathe, Kansas 66062, Attention: Chief Financial Officer, or at such other place as the holder may designate in writing. The principal of this Note is payable in _____ equal installments of [* * *] and one final installment of the principal balance due, with such installment payments commencing on the ninetieth (90th) day from the date hereof, and each following installment due ninety (90) days following the previous payment due, until fully paid.

Interest on the unpaid principal balance of this Note shall accrue from the date hereof at the rate of [***] percent per annum. Accrued interest shall be payable from time to time on the dates for payments of installments of principal as herein provided. The undersigned shall have the right to prepay all or any part of this Note without penalty.

Any amounts not paid as herein provided shall bear interest at the rate of [***] percent per annum. Default in the payment of any part of the principal or interest, when due, shall, at the option of the holder hereof, at once mature the whole of the principal and interest due under this Note, without notice to the maker, endorsers, or guarantors, if any.

It is expressly agreed that if suit is brought on this Note, or if collected through bankruptcy, insolvency, or other judicial proceedings, the holder hereof shall be entitled to recover all reasonable expenses incurred in connection with such collection, suit or proceedings, including reasonable attorney's fees and legal expenses.

The undersigned and all endorsers and guarantors hereby waive presentation for

381

Decision and Order

payments, notice of payment extensions, protest, notice of protest, and diligence in bringing suit against any maker, endorser or guarantor, hereof. The endorsers shall also waive notice of default and nonpayment, but Narco and any guarantors shall be entitled to a notice of default and nonpayment, in writing, and shall have ten (10) days from the receipt of such notice to cure the default and nonpayment.

NARCO AVIONICS, INC.

By _____

Authorized Officer

Seal

GUARANTEE

The undersigned, Edward M. Zimmer, Jr., in his personal capacity, and not as an officer of the maker of the above Note, shall be primarily liable for payments due under the above Note, and hereby guarantees to the holder of the above Note, prompt payment of all sums which shall become due to the holder pursuant to the foregoing Promissory Note whether or not extended by the parties to the above Note, and hereby waives, with respect to the above Note, notice of payment extensions, protest, notice of protest, and diligence in bringing any suit against any maker, endorser or guarantor of the above Note, and further agrees to remain primarily liable in the event the terms of payment of principal or interest are extended under the Note. Edward M. Zimmer, Jr. shall be entitled to notice of default and nonpayment in writing and shall have ten (10) days from receipt of such notice to cure such default and nonpayment.

Edward M. Zimmer, Jr.

Individually

EXHIBIT 2.3(a)

PROMISSORY NOTE

[* * *]

Date: _____

For value received, the undersigned, Narco Avionics, Inc., a Delaware corporation, ("Narco") promises to pay to the order of King Radio Corporation, a Kansas corporation, ("King") the principal sum of [* * *] payable with interest as hereinafter provided at the offices of King Radio Corporation, 400 North Rodgers Road, Olathe, Kansas 66062, Attention: Chief Financial Officer, or at such other place as the holder may designate in writing. The principal of this Note is payable in 27 equal installments of [***] each, and one final installment of [***] with such installment payments commencing on the ninetieth (90th) day from the date following the final payment due under a promissory note of same date as herein from Narco to King given pursuant to an Agreement of Purchase and Sale dated _____, and each following installment due ninety (90) days following the previous payment date, until fully paid.

Interest on the unpaid principal balance of this Note shall accrue from the date hereof at the rate of [***] percent per annum. Accrued interest shall be payable from time to time on the dates for payments of installments of principal as herein provided. The undersigned shall have no right to prepay all or any part of this Note without the written consent of King.

Any amounts not paid as herein provided shall bear interest at the rate of [***] percent per annum.

It is expressly agreed that if suit is brought on this Note, or if collected through bankruptcy, insolvency, or other judicial proceedings, the holder hereof shall be enti-

Decision and Order

105 F.T.C.

tled to recover all reasonable expenses incurred in connection with such collection, suit or proceedings, including reasonable attorney's fees and legal expenses.

The undersigned and all endorsers and guarantors hereby waive presentation for payments, notice of payment extensions, protest, notice of protest, and diligence in bringing suit against any maker, endorser or guarantor, hereof. The endorsers shall also waive notice of default and nonpayment, but Narco and any guarantors shall be entitled to a notice of default and nonpayment, in writing, and shall have ten (10) days from the receipt of such notice to cure the default and nonpayment.

NARCO AVIONICS, INC.

By _____

Seal

Authorized Officer

GUARANTEE

The undersigned, Edward M. Zimmer, Jr., in his personal capacity, and not as an officer of the maker of the above Note, shall be primarily liable for payments due under the above Note, and hereby guarantees to the holder of the above Note, prompt payment of all sums which shall become due to the holder pursuant to the foregoing Promissory Note whether or not extended by the parties to the above Note, and hereby waives, with respect to the above Note, notice of payment extensions, protest, notice of protest, and diligence in bringing any suit against any maker, endorser or guarantor of the above Note, and further agrees to remain primarily liable in the event the terms of payment of principal or interest are extended under the Note. Edward M. Zimmer, Jr. shall be entitled to notice of default and nonpayment in writing and shall have ten (10) days from receipt of such notice to cure such default and nonpayment.

Edward M. Zimmer, Jr.

Individually

EXHIBIT 3.2ASSIGNMENT AND BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS:

That, King Radio Corporation, a Kansas corporation ("Transferor"), for good and valuable consideration paid to Transferor by Narco Avionics, Inc., a Delaware corporation ("Transferee"), receipt of which is hereby acknowledged, and in accordance with the terms of an Agreement of Purchase and Sale, dated as of _____, 1985 between Transferor and Transferee (the "Purchase Agreement"), by these presents does hereby sell, convey, transfer and assign unto Transferee, its successors and assigns, the following assets of Transferor on an "as is, where is" basis:

(a) *Inventories.* Inventories, including Piece Parts, Work-In-Process, Finished Goods and Kits set forth in an inventory list annexed hereto, subject to adjustment within thirty (30) days after the Closing Date in accordance with an Agreement of Purchase and Sale dated _____, between Transferor and Transferee.

(b) *Tooling and Test Equipment.* Tooling, and test equipment including fixtures thereof, as set forth in *Exhibit 1(b)* annexed hereto, subject to a license and right by Transferor to make, use and have made Piece Parts utilizing the tooling in the custody of vendors, for the life of such tooling.

(c) *Industrial Property Rights.* All know-how, and trade secrets, if any, solely dedicat-

412913) pursuant to an Assignment of such patent and patent application (subject to a license to Seller) set forth in *Exhibit 1(c)* annexed hereto.

(d) *Documents, Lists and Design Data.* All engineering and design drawings in reproducible form, including processes, bills of material, maintenance manuals, pilots' guides, TSO reports, advertising literature and brochures solely dedicated to the Product Lines; vendor and distribution lists; applicable documentation for software contained or related to the manufacture of the Weather Radar Products; documentation as it exists related to a new antenna/receiver/transmitter unit that is in the [***] developmental stage; documentation related to a design for a test adapter to enable testing the Graphics Interface Products utilizing [designated equipment], other design and development studies and documentation related to the Products; studies, documentation, inventory, models and all other data related to weather radar units under development if any, including but not limited to the KWX 57 and KWX 460 projects; and documentation related to a sales history and marketing of the Product Lines to the extent that such documentation is separable from other confidential information not related to the Product Lines.

(e) *Purchase Orders and Contracts.* All purchase orders for Piece Parts and all contracts for the sale of Products as set forth in *Exhibit 1(e)* annexed hereto.

TO HAVE AND TO HOLD the same to Transferee, its successors and assigns, forever.

1. Transferor does for itself and for its successors and assigns, covenant to Transferee, its successors and assigns that Transferor is the sole owner of all of the assets which are to be sold and conveyed to Transferee hereunder and Transferor has all necessary power and authority to sell and convey such assets to Transferee, and that such assets are free and clear of all mortgages, liens, and encumbrances of any nature which are not of record.

2. Transferor agrees that, at any time and from time to time after the date hereof, it will, upon the request of Transferee, execute and deliver all such further documents and take all such further action as may be required for the better conveyance, transfer and assignment of the assets, properties and rights intended to be conveyed, transferred and assigned hereby.

3. This instrument and the covenants and agreements contained herein shall be binding upon Transferor, its successors and assigns and shall inure to the benefit of Transferee, its successors and assigns.

IN WITNESS WHEREOF, King Radio Corporation has executed this instrument in its corporate name by its duly authorized officer as of _____, 1985.

KING RADIO CORPORATION

By _____

SEAL

EXHIBIT 11.4

Purchase Price Allocation

THIS IS CONFIDENTIAL MATERIAL

IN THE MATTER OF
MIDDLE ATLANTIC CONFERENCE

DISMISSAL ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket 9185. Complaint, Sept. 18, 1984—Order Dismissing Complaint, June 27, 1985

The Federal Trade Commission has dismissed the complaint in this matter since the collective ratemaking activities of respondent are immunized by the state action doctrine. The Commission has found that "further prosecution of this matter does not appear to be in the public interest."

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 Middle Atlantic Conference, a corporation, hereinafter sometimes referred to as "respondent," has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

For the purposes of this complaint the use of the present tense includes the past tense and the following definitions apply:

Carrier means a common carrier of property by motor vehicle.

Intrastate transportation means the pickup or receipt, transportation and delivery of property for compensation wholly within any State of the United States by a carrier authorized by that state to engage therein.

Tariff means a publication and any supplements thereto stating the rates of a carrier for the intrastate transportation of property, excluding general rules and regulations.

Member means any carrier or other person that pays dues or belongs to Middle Atlantic Conference or to any successor corporation.

Rate means a charge, payment or fixed price according to a ratio, scale or standard for direct or indirect transportation service.

Collective rate means any rate or charge established under any contract, agreement, understanding, plan, program, combination or conspiracy between two or more competing carriers, or between any carrier and respondent.

PARAGRAPH 1. Respondent, Middle Atlantic Conference, is a corporation organized, existing and doing business under and by virtue of