UNITED STATES OF AMERICA BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:	Deborah Platt Majoras, Chairman Orson Swindle Thomas B. Leary Pamela Jones Harbour Jon Leibowitz
In the Matter of)

RAMBUS INCORPORATED, a corporation.

Docket No. 9302

ORDER DENYING JOINT APPLICATION TO POSTPONE BRIEFING AND STAY COMMISSION ACTION ON COMPLAINT COUNSEL'S MOTION TO COMPEL, AND ESTABLISHING BRIEFING SCHEDULE FOR THAT MOTION

)

)

On July 2, 2004, Complaint Counsel filed a Motion to Compel Production of, and to Reopen the Record to Admit, Documents Relating to Respondent Rambus Inc.'s Spoliation of Evidence ("Motion to Compel"). On July 8, 2004, Complaint Counsel and Rambus filed a Joint Stipulation and a Proposed Order that would postpone briefing and stay Commission action on the Motion to Compel until the Court of Appeals for the Federal Circuit resolved Rambus's pending Petition for Writ of Mandamus ("Petition") seeking to overturn the disclosure of documents ordered by the United States District Court for the Eastern District of Virginia. On August 18, 2004, the Court of Appeals for the Federal Circuit denied Rambus's Petition.

On August 25, 2004, Rambus filed a petition for rehearing and rehearing *en banc*. On September 1, 2004, the original Federal Circuit panel denied the petition for rehearing, but the Federal Circuit thereafter directed Infineon to respond to the petition for rehearing *en banc* by September 15, 2004. On September 3, 2004, Complaint Counsel and Rambus filed with the Commission a Revised Stipulation Postponing Briefing and Staying Commission Action on Complaint Counsel's Motion to Compel Production of, and to Reopen the Record to Admit, Documents Relating to Respondent Rambus Inc.'s Spoliation of Evidence, and an accompanying Proposed Order ("Joint Application").

The Commission has determined that it should not defer resolving Complaint Counsel's Motion to Compel until the Federal Circuit has ruled on Rambus's petition for rehearing *en banc*. The Commission has to make its own determinations regarding the scope and content of the record in this matter. The Commission will review with interest any opinion or other resolution of the issues pending before the Federal Circuit that may be relevant to the

Commission's resolution of the Motion to Compel. The Commission has determined, however, not to delay these administrative proceedings in the interim. Accordingly,

IT IS ORDERED THAT the Joint Application of Complaint Counsel and Rambus be, and it hereby is, **DENIED**; and

IT IS FURTHER ORDERED THAT Rambus may file an Answer to Complaint Counsel's Motion to Compel on or before October 18, 2004, and any such Answer shall address whether the Commission should order an *in camera* review of the allegedly privileged materials at issue in the Motion to Compel.

By the Commission.

Donald S. Clark Secretary

ISSUED: October 4, 2004