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January 10, 2000

*By Facsimile*

Michael Verne, Esq.  
Staff Attorney  
Pre-Merger Notification Office  
Federal Trade Commission  
Sixth Street and Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

*Re: Hart-Scott-Rodino Antitrust Improvements Act of 1976*

Dear Mr. Verne:

This facsimile confirms our telephone conversations of last week in which we described the applicability of the investment purposes exemption from the filing requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("the HSR Act") set forth in Rule 802.9 promulgated under the HSR Act to the circumstances described below.

In our telephone conferences, we described to you the acquisition by an acquiring company ("Company A") of 80% of the outstanding voting securities of an acquired company ("Company B") in a transaction that is being separately reported under the HSR Act. As a result of such acquisition, five stockholders of Company B will receive voting securities of Company A having a fair market value, in each case, in excess of \$15 million, but constituting, in each case, less than 10% of the voting securities of Company A.

We indicated to you that, to our knowledge, at least three of the five stockholders of Company B who will receive equity securities of Company A (the "Investor Stockholders") will not serve, and will not cause any of their partners, officers, employees or other representatives ("Representatives") to serve, on the board of directors of Company A or any subsidiary of Company A, nor will any such Investor Stockholders or Representatives serve as an officer or employee of Company A or any subsidiary of Company A. In addition, we indicated that, to our knowledge, such Investor Stockholders are not competitors of Company B. We also indicated

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that the Investor Stockholder who is a natural person (the "Management Stockholder") will serve as an executive officer and as a director of Company B and one of the Investor Stockholders may have a Representative serve as a director of Company B. In addition, we noted that under a stockholder agreement to be executed at the closing of the merger, Company A will have the right to nominate four directors of Company B, and the five Investor Stockholders of Company B, as a group, will have the right to nominate three directors of Company B. None of these five Investor Stockholders has the right acting by itself to nominate any director.

Our understanding from our telephone conversations is that the Investor Stockholders, who will not either serve, or have a Representative serve as an officer or director of Company B, will not be required to file a Notification and Report Form under the HSR Act because, based on the foregoing facts, their acquisition of voting securities of Company A qualifies for the investment purposes exemption set forth in Rule 802.9 under the HSR Act. Our further understanding from our telephone conversation is that the Management Stockholder and the Investor Stockholder that may have its Representative serve as a director, do not meet the investment purposes requirements of Rule 802.9 and, accordingly, will be required to file Notification and Report Forms under the HSR Act.

If you do not agree with our understanding of the matters discussed this morning, please contact me or my partner [REDACTED], as soon as possible.

Very truly yours,

[REDACTED]

[REDACTED]

AGREE -

B. Michael Verne

1/11/2000

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