801.10

[redacted]

January 23, 2001

BY FACSIMILE

Mr. Michael Verne
Premerger Notification Office
Bureau of Competition
6th & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Fair Market Value Determination

Dear Michael:

I am writing to confirm the advice I received from you on Thursday, January 4, 2001. For the sake of completeness, I will summarize the pertinent facts below.

Company A, through Subsidiary 1, owns 70% of the partnership interests in Partnership P. Through Subsidiary 2, it is purchasing the remaining 30% of Partnership P's interests. Both Subsidiary 1 and Subsidiary 2 are wholly owned subsidiaries of Company A. Thus, I understand that the Premerger Notification Office will treat the transaction as Company A acquiring 100% of the underlying assets of Partnership P. Because there is no determined purchase price, Company A will have to make a fair market value ("FMV") determination pursuant to 16 C.F.R. § 801.10(b) and (c)(3).

The underlying assets of Partnership P could theoretically be sold to any potential purchaser, including one who could relocate those assets to any number of jurisdictions. The fair market value of this collection of assets is at most $9-13 million dollars. However, the partnership also holds a license to operate in its present jurisdiction. By state commission regulation, there are a fixed number of licenses available. Unless Company A agrees to give up the license held by Partnership P, no buyer could operate the assets of Partnership P in its present locale because there are no available licenses to be issued. Accordingly, it is theoretically possible that were Company A to sell Partnership P, it could receive more than $9-13 million dollars based on its ability to extract a premium payment for its concession to give up its license. This license, however, is non-transferable and cannot be sold as part of the collection of assets included within Partnership P. Indeed, a buyer that desired to operate the assets of Partnership P in its present locale could theoretically convince another license holder to give up its license so that the Commission has a license to issue to it. Because the agreement by a third party to give up a license so that the purchaser of Partnership P's assets may receive a license would not be considered an acquisition of an asset, such a theoretical premium payment, in this case, should

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not be included as part of the FMV calculation. Thus, the FMV of P's assets remains at most $13 million and the partnership roll-up described above is not reportable under the Hart-Scot-Rodino Antitrust Improvements Act of 1976, as amended, because it fails the "size-of-transaction" test.

If I have incorrectly described your advice, please give me a call as soon as possible at the above number.

Sincere[redacted]

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AGREE.

B. Michael Verne

1/23/01

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