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A T T O R N E Y S A T L A W
[REDACTED]

March 19, 2001

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COMMUNICATIONS
DIVISION
C/PTA

By Hand

Ms. Nancy Ovuka
Premerger Office
Federal Trade Commission
6th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Ms. Ovuka:

This is to confirm our conversation on February 20, 2001, that an unjust enrichment payment to be made to the FTC does not need to be included in calculating the purchase price for Hart-Scott-Rodino ("HSR") purposes.

Company A plans to sell licenses to Company B which Company A purchased from a third party who had obtained them in an FCC auction. The licenses had been originally purchased at a discounted price because the purchaser qualified as a small business. Company B is a large company which could not have received the same discount if it had directly purchased the licenses from the FCC.

Company A now plans to sell the licenses to Company B for \$50 million in cash. FCC rules provide that where licenses are resold within a stated period of time to companies which could not have qualified for the small business discount, the large purchaser (Company B in this instance) has to pay a fee to the FCC termed, an "unjust enrichment" payment.

The amount of unjust enrichment which Company B is expected to have to pay the FCC is about \$800,000. If that amount is added to the \$50 million cash purchase price stated in the purchase agreement, the size-of-transaction test will be met, and an HSR filing would be necessary.

[REDACTED]

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The issue I discussed with you was whether the unjust enrichment payment made to the FCC must be added to the stated purchase price to determine the value of the licenses. You said that you and your colleagues had decided that the unjust enrichment payment was more like a cost of doing business and would not need to be added to the purchase price either as consideration or as an assumed liability.

Should you disagree with the above analysis, please let me know [REDACTED]

Thank you, as always, for your assistance.

Sincerely,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE