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January 20, 2005

Mr. Michael Verne
Federal Trade Commission
Premerger Notification Office
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Non-Reportability Of Certain Indirect Acquisitions of Partnership Interests

Dear Mr. Verne:

The purpose of this letter is to confirm our telephone conversation of two weeks ago in which you indicated that the transaction described below relating to the indirect acquisition of interests in a limited partnership would not be reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (as amended, the "Act") and the applicable regulations (the "Regulations"). Because the transaction is complicated and involves another reportable transaction, I thought it best to give you the opportunity to review in writing the transaction we discussed. This letter includes more detail than we discussed by telephone, because I now have more information.

For purposes of your review of this letter, please assume that the size-of-the-parties test is met.

Facts

Corporation A is a publicly-traded corporation engaged in the business of ground based wireless telecommunications and is its own ultimate parent entity. Corporation B is a wholly-owned subsidiary of Corporation A. Individual X, his wife and two trusts for their minor children each own 25%, 100% in the aggregate, of the voting securities of both Corporation Y and Corporation Z, and therefore Individual X is the ultimate parent entity of both Corporation Y and Corporation Z.

It is proposed that Corporation Y and Corporation Z be merged with and into Corporation B, with Corporation B as the surviving corporation. Pursuant to the merger, the stock of Corporation Y and Corporation Z will be converted into the right to receive stock of Corporation A. The value of the stock of Corporation A to be received in the merger will exceed $200 million and will represent more than 10% of the outstanding stock of Corporation A. It is

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recognized that Individual X will have to make a filing under the Act with respect to the acquisition of the stock of Corporation A.

Partnership P is a privately held limited partnership engaged in the business of satellite based telecommunications and is its own ultimate parent entity. At the closing of the transaction, the only assets of Corporation Y and Corporation Z will be an aggregate 5.89% interest in Partnership P as a limited partner and an aggregate 5.89% interest in the stock of Corporation GP, whose only assets will consist of an interest in Partnership P as a general partner.

The general partner of Partnership P does not have any economic interest in Partnership P, all economic interests being with the limited partners. When Partnership P was initially formed, the limited partners were given a percentage of the stock in Corporation GP equal to their percentage interest in Partnership P as limited partners. The partnership agreement provides that, when an interest in Partnership P as a limited partner is transferred, the same percentage of stock in Corporation GP as the percentage interest as a limited partner being transferred must also be transferred to the transferee. Therefore, the ownership of Corporation GP will always be identical to the ownership of interests as limited partners. The value of the stock of Corporation GP is nominal and certainly substantially less than $50 million.

As a result of the transaction, Corporation A will not, for purposes of the Act, hold 50% or more of the profits of Partnership P or have the right to 50% or more of the assets of Partnership P in the event of the dissolution of Partnership P.

Analysis

As a general rule, the acquisition of 100% of the stock of a corporation for $50 million or more would be a reportable event. In this instance, however, all that Corporation A is actually acquiring as a result of the transaction is an approximate 44.5% (5.89% in this transaction) interest as a limited partner in Partnership P and an approximate 44.5% (5.89% in this transaction) interest in the general partner of Partnership P. The direct acquisition of less than 100% of a partnership is not a reportable event under the Act and the Regulations, regardless of the dollar value of the transaction. In this case, the acquisition of less than 100% of a partnership occurs indirectly, and although the "look through" provisions of 16 C.F.R. §802.4 do not specifically apply, you indicated that the Premerger Notification Office would apply the rationale of the "look through" provisions here for the acquisition by Corporation A of less than 50% of the partnership interests.

Therefore, the indirect acquisition by Corporation A (through the merger with Corporation B) of 100% of Corporation Y and 100% of Corporation Z, which is the indirect acquisition of an approximate 44.5% (5.89% in this transaction) interest as limited partner in Partnership P and an approximate 44.5% (5.89% in this transaction) interest in the general partner of Partnership P (whose sole asset is an interest in Partnership P and which has no economic interest in Partnership P), would not be reportable. The reasoning is that a non-

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reportable acquisition of less than 100% of a partnership does not become a reportable transaction just because the acquisition occurred in the form of the acquisition of 100% of the stock of a corporation, here Corporation Y and Corporation Z, as long as control of the partnership (for purposes of the Act and the Regulations) does not change.

Even if the rationale of the "look through" provisions were held not to apply to the acquisition of the 5.89% interest in the stock of Corporation GP, the transaction would still not be reportable because the value of the 44.5% interest in the stock of Corporation GP held as a result of the transaction is substantially less than $50 million.

After you have had an opportunity to review this letter, please confirm that my analysis of the transactions is correct. My direct telephone number is [redacted]

Thank you as always for your valuable assistance.

Sincerely,

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Agree -
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1/24/05

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