

802.1(d)

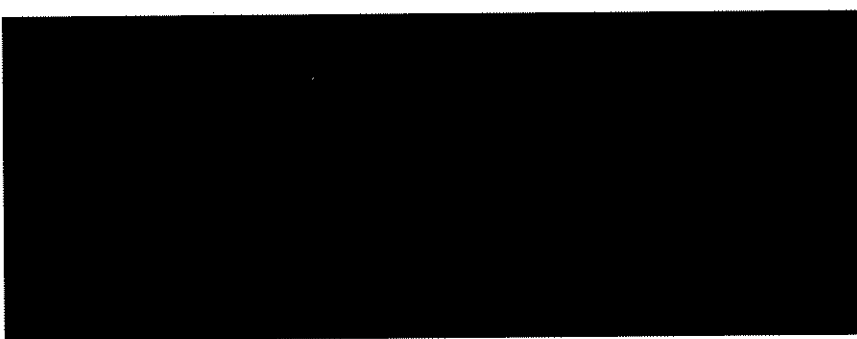
Verne, B. Michael

From: [Redacted]  
Sent: Wednesday, February 01, 2006 2:41 PM  
To: Verne, B. Michael  
Subject: An 802.1(d)(4) question

A company is in the business of generating computerized data and selling it to customers. It has its own terrestrially interconnected computer network, including the facilities for worldwide data delivery to its customers via the network. The company wishes to outsource the data delivery function and the network that performs that function. The acquisition price exceeds the HSR minimum filing threshold and the parties satisfy the SOP tests. The buyer will continue to provide the same data delivery services to the company and its customers over the acquired computer network.

Rule 802.1(d)(4) provides an exemption if the network data delivery function constitutes "management and administrative support services," but the rule also says that "distribution" is not eligible for the exemption. The buyer of the computer network will not engage in "distribution" the way a typical distributor would seek out and sell or re-sell to its own customers. Rather, the buyer will receive data supplied by the company and deliver it to customers of the company, as directed by the company. Seems to me that is a classic "administrative support service" and ought to be within, rather than outside, the exemption.

Yes?



Agree -  
Buehl  
2/1/06

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