[redacted]

VIA FACSIMILE

February 6, 1995

Mr. Richard Smith
Premerger Notification Office
Federal Trade Commission
Washington, D.C.

Re: Application of Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act")

Dear Dick:

The purpose of this letter is to confirm the oral advice you gave me on behalf of the Premerger Notification Office of the Federal Trade Commission in our telephone conversation of February 3. During our conversation I described the terms of a proposed limited liability company and you agreed with me that the transaction would not be reportable under the Act because the size of transaction test is not satisfied.

The proposed transaction is the formation of a limited liability company and involves parties who satisfy the size of person test. Two [redacted] will contribute approximately $14 million each to the limited liability company, will each lend over $1 million to the limited liability company, which loans will be documented by promissory notes that contain commercially reasonable terms and conditions including scheduled periodic principal and interest payments, will each become members of the limited liability company and will each have a 50% economic interest in the limited liability company. A [redacted] organization will also be given a membership interest in the limited liability company, but will not contribute any assets to the limited liability company nor have any economic interest in the limited liability company. The limited liability company will have a board of managers, which will act similarly to a board of directors of a corporation. The board will be comprised of 9 managers, 2 of whom will be appointed by one of the [redacted] 2 of whom will be appointed by the other [redacted] and 4 of whom will be appointed by the [redacted] organization. The CEO of the limited liability company will serve *ex officio* as the ninth manager.

Under the Premerger Notification Office's recently articulated criteria for determining whether or not memberships of a limited liability company are voting securities, it appears that the memberships in this case should be considered voting securities. Even if these memberships are voting securities, the size of transaction test is not met by any of the parties. The amount contributed by each [redacted] to the limited liability company establishes the value of the [redacted] at less than $15 million each. The fact that each [redacted] will make a

loan to the limited liability company should not increase the value of their respective memberships.. Therefore, none of the members can be said to hold voting securities having a value in excess of $15 million. While the limited liability company will have assets of more than $25 million, none of the members should be considered to hold 50% or more of the voting securities because none of the memberships confers the right to elect 50% or more of the board.

Please contact me at [redacted] upon receipt of this letter to let me know if I have correctly stated the position of the Premerger Notification Office.

Very truly yours,

[redacted]

AD

2/7/95. Writer advises that loans to LLC are being made at about an 8.5% interest rate, which is a "commercially reasonable" rate. Advised that if rate were below a "commercially reasonable" rate, the difference must be added to value of "voting securities" held by members. Writer advised that such is not the case here & concurred in conclusion that formation of LLC was not reportable under 802.2c. (Loans to LLC by members have nothing to do with assets of LLC.)

RBSmith