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VIA FACSIMILE

February 10, 1995

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

Re: Application of Hart-Scott-Rodino Antitrust Improvements Act of 1976

AIC

Dear Dick:

Pursuant to our telephone conversation of February 7, I have been able to clarify the structure of the proposed formation of Newco, which I outlined in my letter of February 6 to you and Tom Hancock. The following is a revised description of the transaction.

The proposed transaction is between two parties who satisfy the size of person test, Company A and Company B. Company A and Company B are both not-for-profit corporations. They propose to form a not-for-profit corporate joint venture, Newco, which will own and operate a [REDACTED]. Company A and Company B will form Newco prior to closing and will be its corporate members. Newco will be a shell corporation until the consummation date of the joint venture. On or about the consummation date, (i) Company B will contribute approximately \$3.3 million in cash to Newco, (ii) Newco will borrow approximately \$10 million through the issuance of tax exempt bonds, and (iii) Newco will purchase from Company A certain [REDACTED], which have a value of approximately \$21 million, for a purchase price of approximately \$13.3 million. After the conclusion of these actions, Company A will have a 65% interest in Newco and Company B will have a 35% interest in Newco. Company A is a [REDACTED] and will have significant [REDACTED] outside of Newco. Company B is an [REDACTED] and will have significant [REDACTED] operations outside of the joint venture.

This transaction is essentially the formation of a not-for-profit joint venture corporation (Newco) by Company A and Company B, in which Company A will contribute \$21 million of operating assets and will receive a 65% membership interest in Newco and an equalization payment from Newco of \$13.3 million and Company B will contribute \$3.3 million in cash and

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will receive a 35% membership interest in Newco. The only reason that the parties have worded the deal documents to reflect a "purchase" by Newco of assets from Company A (as opposed to a contribution by Company A of those assets coupled with an equalization payment) is to assure a more favorable tax treatment under the tax-exempt bonds to be issued by Newco. It is not at all uncommon for parties to characterize a transaction in one manner for tax purposes and in another manner for other purposes. I urge the Premerger Notification Office to view this transaction as the formation of a not-for-profit joint venture corporation which involves an equalization payment and not as a purchase of assets by Newco from Company A. I believe that this argument should be especially persuasive in this case because a notification filing would merely report Company A's acquisition of its own assets.

I look forward to hearing from you regarding the Premerger Notification Office's position on this proposed transaction. Please contact me at [REDACTED] as soon as you have reached a position.

Very truly yours,

[REDACTED SIGNATURE]

A/D

2/13/95

Called the writer and told her that we regard the transfer of the hospital from A to Newco as ~~the~~ part of the formation of a non-profit joint venture and thus exempt, rather than a reportable purchase by Newco. The factors that support this interpretation are, first, this appears to be the intent of the parties, and, second, the payment from Newco to A is less than the value of the hospital. This latter fact makes it easier to characterize this payment as an equalization payment. The purchase language in the deal documents is, moreover,

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