COMMISSION
PREMERGER NOTIFICATION
OFFICE

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VIA FACSIMILE

September 13, 1995

Mr. Richard Smith
Premerger Notification Office
Federal Trade Commission
Washington, D.C. 20580

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

Dear Dick:

I am writing to ask you, on behalf of the Premerger Notification Office, to review the terms of the proposed transaction described in this letter so that we may discuss the application of the Act to this proposed transaction.

The proposed transaction is between two parties, the ultimate parent entities of which are [redacted] A and [redacted]. The parties will satisfy the size of person test. [redacted] A and [redacted] B are both not-for-profit corporations and they own and operate acute [redacted] facilities and operations. The parties propose to form a joint venture, which will provide various administrative, support and [redacted] to certain of the [redacted] and other [redacted] owned and operated by [redacted] B in a certain community. However, most of the [redacted] in that community will be outside the joint venture and will be continued independently by the two parties. Furthermore, outside of the joint venture [redacted] has other significant operations and [redacted] B owns and operates acute care [redacted] and has other related [redacted] operations in several other states.

The structure of the proposed joint venture is almost entirely dictated by the federal and state income tax consequences of the transaction and the restraints of current and future tax-exempt bond financing by the parties. Initially, until an IRS Revenue Ruling is obtained, the joint venture will be conducted through three separate entities: (i) a new IRC §501(c)(3) not-for-profit corporation, (ii) a new, to be formed IRC §501(e) not-for-profit corporation, and (iii) a new, to be formed for-profit corporation. An IRC §501(e) corporation is treated as tax-exempt under IRC §501(c)(3) for federal tax purposes; however, use of an IRC §501(e) corporation will allow the parties to avoid an "unrelated business income" problem that might otherwise arise if certain operations were conducted through the new IRC §501(c)(3) corporation.

Generally speaking [redacted] will be conducted through the new IRC §501(c)(3) corporation, certain administrative and support services described in IRC §501(e) will be conducted through the new IRC §501(e) corporation, and other administrative and support services will be conducted through the new for-profit corporation. The new IRC §501(c)(3) corporation was formed in May but has not yet commenced operations other than to apply for certain regulatory approvals. The new IRC §501(c)(3) corporation does not yet have any assets other than $50,000 contributed by the parties at the time of incorporation. Each of the three corporations will be owned 50/50 by the parties.

In order to retain, for debt covenant purposes, at th[redacted] level, the depreciation of plant and equipment used by the joint venture, the parties will lease certain depreciable property to the joint venture corporations. These leases will be for less than the remaining useful life of the depreciable property, will be at a fair market rent, and will not be classified for accounting purposes as capital leases.

In the formation of the joint venture, the parties will contribute to the new IRC §501(c)(3) corporation certain assets associated with selected [redacted] which services will then be offered exclusively through the IRC §501(c)(3) corporation in the community, plus cash by one of the parties to even out the value of the contributions. In addition, the parties will lease to the IRC §501(c)(3) corporation certain depreciable assets associated with the [redacted]

In the formation of the IRC §501(e) corporation , the parties will contribute to the new corporation cash and certain assets related to the administrative and support services to be provided by the joint venture, in exchange for corporate memberships in the new corporation, and will lease certain depreciable property to the new corporation.

The formation of the for-profit corporation will also involve a combination of assets being contributed by the two parties and assets being leased by the two parties. The voting securities (50% each) to be acquired by the parties will have a value of less than $15 million and the new for-profit corporation will have assets of less than $25 million. In determining the value of the voting securities and the asset value of the new corporation, the value of leased assets will not be included.

Assuming that the parties are successful in obtaining a Revenue Ruling from the IRS, at some future date the parties may want to combine the operations of the new IRC §501(e) corporation into the existing IRC §501(c)(3) corporation.

I would like to confirm with you my analysis of the application of the Act to the formation of the joint venture using these three corporations, as well as application of the Act to the proposed combination of the IRC §501(e) corporation and the IRC §501(c)(3) corporation after the receipt of the Revenue Ruling.

Analyzing the pieces of the joint venture separately, the formation of the new IRC §501(e) corporation is exempt under *either* (i) the Premerger Notification Office's position regarding the inapplicability of 16 C.F.R. §801.40 to the formation of a not-for-profit corporate joint venture where there are no voting securities, or (ii) 16 C.F.R. §802.40. Likewise, the capitalization of the new IRC §501(c)(3) corporation should be exempt under *either* (i) the Premerger Notification Office's position regarding the inapplicability of 16 C.F.R. §801.40 to the formation of a not-for-profit corporate joint venture where there are no voting securities, or (ii) 16 C.F.R. §802.40. The formation of the new for-profit corporation also should not be reportable under the Act because the size of transaction test will not be satisfied by either party. In addition, I believe that, under the principles of 16 C.F.R. §802.30, any future combination of the IRC §501(c)(3) corporation and the IRC §501(e) corporation should be exempt from the Act as long as the resulting entity remains owned 50/50 by the two parties.

Please telephone me a[redacted] to let me know the Premerger Notification Office's position on my analysis of the application of the Act to this joint venture structure. For your information, the parties intend to seek a business advisory letter from the Department of Justice regarding this joint venture.

Very truly yours,