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LLC

[REDACTED]

[REDACTED]

[REDACTED]

June 5, 1996

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PREMIER  
COMMUNICATIONS

VIA HAND DELIVERY

John M. Sipple, Esq.  
Assistant Director  
Bureau of Competition  
Federal Trade Commission  
Room 338  
Sixth Street & Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Re: Hart-Scott-Rodino Reportability of  
Start-Up Limited Liability Company

Dear Mr. Sipple:

We represent one of the founding parties of a Delaware limited liability company known as [REDACTED] LLC (the "LLC"), the certificate of formation for which was filed on June 3, 1996.<sup>1</sup> The LLC will have as its purpose the construction and operation of a new, start-up foundry that will manufacture integrated circuit wafers and provide certain manufacturing services to its customers in connection therewith.

The LLC is not to be organized or managed as a corporation. It will instead be organized and managed as to result in it being treated as a partnership for federal income tax purposes. The LLC shall terminate no later than the 30th anniversary of the date of formation, unless sooner terminated by mutual agreement of the parties or upon certain other events, including, for example, bankruptcy, breach, etc. The members of the LLC (the "Members") will be (1) a Delaware corporation, which is a subsidiary of a corporation organized under the laws of the Republic of [REDACTED] (together, "Manufacturer"), (2) three U.S.

<sup>1</sup> The filing of the certificate of formation with the Delaware Secretary of State is a ministerial act. The LLC will not have any members until the Limited Liability Company Agreement of the LLC is executed, sometime in the week of June 10.

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corporate customers of Manufacturer, each of which is a reporting company for purposes of the Securities Exchange Act of 1934 and will agree to "take or pay for" their respective aliquot portions of the products of the new foundry, and (3) a small group of third party investors (the "Third Party Investors"), also Members, who will hold about 2 1/2% of the equity in the aggregate.

The corporate (so-called "Managing") Members will manage the LLC, acting through a "Board of Directors." The Board will consist of seven Directors. The Manufacturer shall appoint four Directors, only one of whom may vote. Each of the three corporate customers will appoint one voting director. The Third Party Investors will have one observer on the Board of Directors who initially will be one of the Third Party Investors. Each of the initial Directors will be an employee of the appointing Member at the time of appointment. Each appointed Director shall serve at the pleasure of his or her appointing Member, and only the appointing Member may remove its appointed Director. A Director may resign by written notice to his or her appointing Member. Vacancies shall be filled by appointment by the Member which appointed the Director whose position has become vacant. Each voting Director will hold the same number of votes as the percentage interest in the LLC held by the Member that appoints that voting Director. Certain extraordinary actions also require supermajority votes of the Members who vote on the basis of each Member's Percentage Interest in the LLC.

The parties believe that, on the basis of these facts, the transaction is not reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. When you have reviewed this letter, please call me with your comments.

Very truly yours,

*A advised regulator that based on the facts presented the formation of the LLC is not reportable as the formation of a corporate JV. Advice is based on the fact that the LLC's members are corporations and the members are appointing employees to act on their behalf on the Board. If outside persons were being appointed, this formation would be potentially reportable.*