

801.1(b)(2), 801.2(d)

[REDACTED]

VIA FACSIMILE

July 11, 1996

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 ask you, on behalf of the Premerger Notification Office, to review the terms of a proposed transaction, which will be structured as described in this letter and the accompanying attachment, so that we may discuss the application of the Act to the proposed transaction.

The proposed transaction is among six entities, four of which (A, B, C and D) are not-for-profit corporations and two of which (E and F) are political subdivisions of a State whose charters were enacted by the State legislature. [REDACTED] is a non-stock corporation whose members are individuals and is its own ultimate parent entity. [REDACTED] B is a non-stock corporation which does not have any members. The board of directors of [REDACTED] are elected by [REDACTED] B and [REDACTED] B is therefore the ultimate parent entity of [REDACTED] B. [REDACTED] B has other business activities outside of its interest in [REDACTED] B. [REDACTED] B, a non-stock corporation and its own ultimate parent entity, has as its members the members of its governing board. [REDACTED] D is also a non-stock corporation and its own ultimate parent entity. The members of [REDACTED] D are individuals. Each of the four not-for-profit entities will satisfy the \$100,000,000 "size of person" test under 15 U.S.C. §18a(a)(2). [REDACTED] E and F, the two political subdivisions, are controlled (through the right to elect the board) by another political subdivision and should not be considered "persons" under the definition contained in 16 C.F.R. §801.1(a).

The six entities propose to form a not-for-profit corporate joint venture, Newco, which will be a non-stock, non-member corporation. Prior to the formation of Newco, [REDACTED] A, B, C and D will amend their charters to add a member, which will have the power to control the [REDACTED] through certain reserve powers and through the right to approve the election of a majority of the board of directors of the [REDACTED]. At the time of the formation of Newco, each of [REDACTED] A, B, C and D will contribute the controlling membership to Newco in exchange for



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the right to appoint a director of Newco. Thus, Newco will become the controlling member of each of [REDACTED] A, B, C and D, and each of [REDACTED] A, B, C and D will receive the right to appoint a member of Newco's board.

Prior to the formation of Newco, each of [REDACTED] E and F (the political subdivisions) will form a non-stock, not-for-profit corporation (Corporations E-1 and F-1), whose members will be [REDACTED] E and F, respectively. Because [REDACTED] E and F are political subdivisions, each of Corporations E-1 and F-1 will be its own ultimate parent entity. Moreover, even though Corporations E-1 and F-1 will be "persons" under the Act, they will have minimal assets upon formation and will not satisfy the "size of person" test under 15 U.S.C. §18a(a)(2). Like each of the other [REDACTED] each of [REDACTED] E and F will receive the right to appoint a director of Newco at the time of Newco's formation. Newco will become the controlling member of Corporations E-1 and F-1 at the time of Newco's formation. In addition, Corporations E-1 and F-1 will enter into management agreements with [REDACTED] E and F, respectively, pursuant to which they will manage [REDACTED] E and F.

Each of [REDACTED] B, C and D, E and F will have the right to elect a director to the Newco board of directors and, in addition, there will be two community representatives on the Newco board.

The structure prior to the formation of Newco and after the formation of Newco is depicted on the diagram attached to this letter.

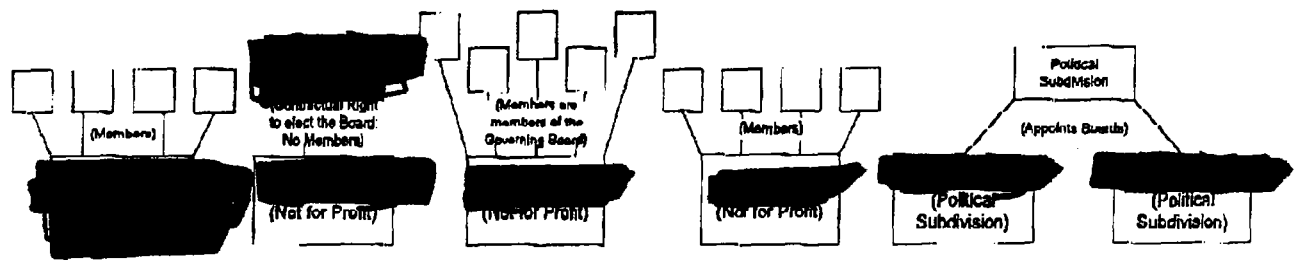
I believe that, on the basis of the facts presented in this letter, the Premerger Notification Office should view this proposed transaction as the formation of a non-stock, not-for-profit joint venture corporation which does not require premerger notification under the Act. I would like to speak with you as soon as possible to discuss the Premerger Notification Office's position with respect to this proposed transaction. Please telephone me at [REDACTED] your earliest convenience.

Very truly yours,

[REDACTED SIGNATURE]

7/26/96 John Syple advised writer that the effect of the formation of Newco was to give control of A, B, C and D, and E-1 and F-1, to Newco. Newco must file as the acquiring person for the purchase of the assets of B, C and D as if it had acquired A. Three fees will be required. (E-1 and F-1 do not meet the size of person test since they are their own UPEs and since they are controlled by political subdivisions which do not qualify as persons. OOC LA

Before Transaction



Transaction

[REDACTED] B, C and D will amend their charters to add a controlling membership. In the formation of Newco, A, B, C and D will contribute these controlling memberships to Newco in exchange for the right to appoint a director of Newco. E and F will form new non-stock, not-for-profit corporations (Corporations E-1 and F-1), which will enter into management contracts with E and F. E and F will also receive the right to elect a director of Newco at the time of its formation and Newco will become the controlling member of Corporations E-1 and F-1.

After Transaction

