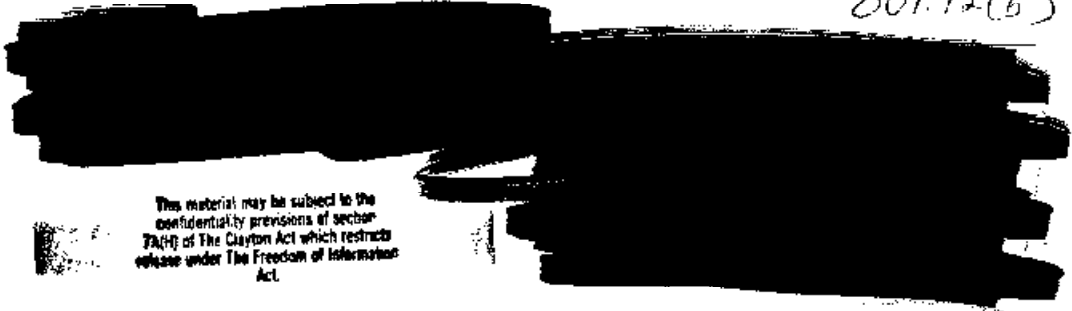


801.12(b)



This material may be subject to the confidentiality provisions of section 7A(f) of The Clayton Act which restricts release under The Freedom of Information Act.

August 12, 1998

Ms. Nancy Ovuka
Federal Trade Commission
Premerger Notification Office
Bureau of Competition, Room 301
6th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Ms. Ovuka:

The purpose of this letter is to confirm our telephone conference on August 5, 1998, relating to the Federal Trade Commission's interpretation of the formula under Rule 801.12(b) of the rules promulgated under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, for purposes of calculating the percentage of voting securities held to determine control of a corporation, as applied to the following facts:

X is the Chairman of the Board and Chief Executive Officer of a privately held company (the "Company"). The Company has outstanding one class of common stock and four series of preferred stock, Series A, B, C and D. The common stock and the Series A and B preferred stock have voting rights. The Series C preferred stock is entitled to vote only for purposes of electing one director to the Company's board of directors, upon the occurrence of a default and on certain significant corporate events. The Series C preferred stock is not entitled to vote for the election of any of the other directors of the Company. The Series D preferred stock has no voting rights, but is convertible at any time into common stock. The Company also has outstanding warrants to purchase common stock.

The Company presently has six members on its board of directors. Pursuant to a shareholders' agreement, the Series A and Series C preferred stock are each entitled to elect one director to the Company's board of directors. The remaining four directors are elected by majority vote of the Company's shareholders.

Ms. Nancy Ovuka

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X holds approximately 84% of the outstanding shares of common stock, the remaining 16% of which are held by management of the Company. The Series A and B preferred stock is held by outside investors. The Series C preferred stock is held by outside investors and X. Of the 315,000 outstanding shares of capital stock of the Company entitled to vote for the election of directors (including the Series C preferred stock which can only vote for one director), X holds 158,000 shares and the other shareholders of the Company 157,000 shares in the aggregate, respectively. Of the 228,500 shares entitled to vote for the election of directors (excluding the Series C preferred stock), X holds 150,000 shares and the other shareholders of the Company 78,500 shares in the aggregate, respectively. In effect, X's share ownership permits him to elect the remaining four directors of the Company.

Applying the formula of Rule 801.12(b) to the foregoing, X holds approximately 57.5% (if the Series C preferred stock is included) and approximately 56% (if the Series C preferred stock is excluded), respectively, of the voting securities of the Company.

Under the circumstances, you concluded that, (a) under Rule 801.12(b), convertible preferred stock which does not have voting rights until converted, and options and warrants, are not counted in determining control and (b) X is the ultimate parent entity of the Company.

Please call me immediately at [REDACTED] should the position of the Federal Trade Commission staff with regard to this matter be different from that set forth above. In addition, please retain this letter in your files. I appreciate very much your assistance and helpful advice in this matter.

Very truly yours,
[REDACTED]