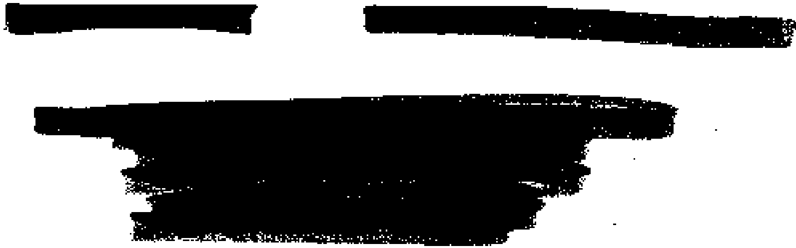

September 17, 1998
(Revised)

VIA FACSIMILE

Mr. Michael Verne
Federal Trade Commission
Sixth Street, Pennsylvania Avenue N.W., Room 301
Washington, D.C. 20580

Re: Application of Hart-Scott-Rodino Antitrust Improvements Act, 15U.S.C.18a (the "Act")

Dear Mr. Verne:

In accordance with our previous conversations, and at your direction, this letter is submitted to you to obtain the FTC's opinion respecting my client's potential acquisition of certain voting securities to be issued pursuant to a Chapter 11 bankruptcy reorganization. Based upon our analysis of the Act and the applicable regulations, it is our belief that our client's acquisition will not meet the reporting requirements of the Act in that it (i) fails to meet the "Size of the Transaction Test"; our client will not receive beneficial ownership of voting securities valued in excess of $15,000,000 or entitling it a 15% equity interest in the acquired person; and (ii) the acquisition is exempt pursuant to 15 U.S.C. 18(a)(c)(9) in that it will be made for investment purposes only and will not involve the beneficial ownership of more than 10% of the outstanding securities of the issuer. In effect, the essence of this acquisition is that our client, in an effort to recoup trade debt owed to it by a Chapter 11 debtor, has been left with no option other than to accept securities pursuant to the plan of reorganization.

Applicable Parties

- "A Corp" - refers to our client which is a multi-national telecommunications service provider. A Corp's activities in the United States are directed through its UK and US subsidiaries. Pursuant to the reorganization plan and merger agreement of D Corp, A Corp's UK subsidiary will receive voting securities of W Corp. A Corps United States services are principally limited to the commercial market involving the transmission of data and the provision of private/dedicated lines.

AGREE, RELUCTANTLY WITH (i), AND AGREE WITH (ii). SEE NOTES ON p. 4-5.

- "D Corp" - is a reseller of voice transmission services in the United States. D corp is presently a Debtor in a chapter 11 bankruptcy proceeding, pursuant to its plan of reorganization and merger agreement with W Corp D Corp's creditors, which includes A Corp, will receive restricted and partially contingent voting securities in W Corp.

- "W Corp" - is a U.S. based company engaged in the development, manufacture and marketing of telecommunications equipment. Its common shares are publically traded on the NASD National Market.

Summary of the Facts

Over an approximate two-year period, in the ordinary course of business and pursuant to various service agreements, A Corp provided D Corp with telecommunication services. During this period D Corp failed to pay its invoices and became indebted to A Corp in the approximate amount of $32,000,000. Due to its distressed financial condition and substantial debt obligations to trade creditors, including A Corp, D Corp filed a voluntary Chapter 11 bankruptcy petition. Throughout the bankruptcy proceeding, D Corp has remained a "debtor in possession" with its management retaining control of the company. In its efforts to reorganize, D Corp's management has negotiated and structured a reorganization plan and merger agreement involving its acquisition by W Corp through the issuance of restricted and partially contingent shares of W Corp to D Corp's creditors.

One-Third (1/3) of the W Corp shares will be issued to the creditors at the time of closing with the remaining two-thirds (2/3's) *contingent* upon D Corp achieving certain EBITDA earnings levels over an approximate 3 year period. However , for accounting purposes, in order to preserve and carryover certain favorable tax attributes of D Corp, W corp will issue the *contingent shares* to a disbursing agent to be registered in the particular creditor's name with that creditor being entitled to vote those shares and receive dividends (however W Corp has indicated it has not and will not be issuing dividends). *If the earnings contingencies are not met the disbursing agent will automatically return the contingent shares to W Corp.*

Based upon D Corp's financial history and its traditionally low profit margins we believe there is serious question as to whether D Corp will be able to achieve the required level of EBITDA performance necessary for the issuance of the contingent shares.

Estimated Stock Distribution To A Corp

- Closing Distribution - At closing A Corp will receive approximately 296,250 restricted W corp common shares. The transferability of these shares will be restricted for a one year period.

- Year 1998 Contingent Shares - If D Corp meets the specified 1998 EBITDA earnings target A corp will receive approximately 148,125 restricted W corp common shares. The transferability of these shares will be restricted for six months from the date released by the disbursing agent

- Year 1999 Contingent Shares - If D Corp meets the specified 1999 EBITDA earnings target A corp will receive approximately 222,187.5 restricted W corp common shares. The transferability of these shares will be restricted for six months from the date released by the disbursing agent.

- Year 2000 Contingent Shares - If D Corp meets the specified 2000 EBITDA earnings target A corp will receive approximately 222,187.5 restricted W corp common shares. The transferability of these shares will be restricted for six months from the date released by the disbursing agent.

Valuation of A Corp's Potential Equity Interest

The shares issued to A Corp, whether issued at closing, or subsequently issued upon satisfaction of an EBITDA contingency will be restricted and may not be transferred for a specified period. Accordingly, although W Corp's common shares are publically traded we believe that the appropriate valuation method for these shares is that of fair market value pursuant to 16 CFR §801.10(a)(2)(ii)[1]. Accordingly, due to the one year transfer restriction on the closing shares, and due to the current market volatility our client believes that these shares should be valued at a discount of at least 25% off its publically traded price. With respect to the contingent shares we believe that an analysis of their value is unnecessary as our client will not possess beneficial ownership of these shares at the time of closing. However, if my client were to value these shares it believes that due to the nature of the contingency and the subsequent transferability restrictions, they would be fairly valued at a discount of at least 85% off its publically traded price.

Based upon our estimates at no time do we believe A Corp will obtain an equity interest in W Corp of greater than 10%. Of W Corp's outstanding shares.

The following is a summary of A Corp's potential acquisition value of W Corp voting securities based upon its (i) current publically traded price of $23 per share, and its (ii) discounted fair market value:

	Publically Traded Value	Fair Market Value

[1]Additionally, it should be noted that in calculating the number of W Corp shares to be issued to the D Corp creditors in exchange for D Corp's acquisition, W Corp's valued D Corp at $300,000,000 and divided by $32, W Corp's then market price per share. We do not believe that $32 amounts to a "determined acquisition price" pursuant to 16 §CFR 801.10(a).

Closing Shares -	296,250 x 23 = $6,813,750	$6,813,750 x 75% = $5,110,312
Year 1998 Contingent Shares	148,125x23 = $3,406,875	$3,406,875x15% = 511,031
Year 1999 Contingent Shares	222,187.5x23= $5,110,312	$5,110,312x15%= 766,547
Year 2000 Contingent Shares	222,187.5x23= $5,110,312	$5,110,312x15%= 766,547

<u>This valuation analysis is based upon the good faith determination of a designee of the Board of Directors of A Corp.</u> *(1)

Analysis - A Corp's Acquisition Does Not Meet the Size of the Transaction Test

Pursuant to Section 18(a)(3) of the Act, to qualify as an "Acquiring Person", A Corp must possess beneficial ownership of (a) 15% or more of the voting securities in W Corp, or (b) an aggregate total amount of voting securities in W Corp in excess of $15.0M. As previously indicated, A Corp's acquisition of voting securities in W Corp, whether contingent or issued at closing, in aggregate, do not amount to a 15% equity interest in W Corp. Moreover, A Corp's acquisition does not meet the $15.0M threshold requirement for the following reasons:

- At the time of closing A Corp will have beneficial ownership of 296,250 voting shares in W Corp which constitute less than a 10% equity interest in W Corp and which have a fair market value less than $15.0M. Even at current publically traded prices the value of these closing shares will only amount to approximately $6.8M.

- At the time of closing A Corp will not have "beneficial ownership" of the contingent shares for the following reasons: (i) The contingent shares will be held by W Corp's disbursing agent to be released to A Corp only if D Corp achieves the specified EBITDA levels; (ii) If the EBITDA levels are not satisfied the contingent shares will automatically be returned to W Corp without any compensation to A Corp; (iii) A Corp will not be entitled to transfer or dispose of the shares; (iv) A Corp will not benefit from the appreciation of these shares since they may automatically revert back to W Corp; (v) Voting rights granted will be inconsequential as A Corp's equity interest will be nominal; and finally, (vi) Dividend rights granted are inconsequential as W Corp has historically refused to issue dividends and has indicated that it will continue to do so in the future.

DISAGREE - I THINK THAT BY VIRTUE OF VOTING RIGHTS | RIGHTS TO DIVIDENDS (EVEN IF THERE WILL BE NO DIVIDENDS) BEING TRANSFERRED, A CORP HAS TAKEN BENEFICIAL OWNERSHIP OF THE "CONTINGENT" SHARES.

Analysis - A Corp's Acquisition Is For Investment Purposes Only

Pursuant to §18(a)(c)(9) of the Act, A Corp's acquisition of W Corp shares is exempt as an acquisition solely for investment purposes. A Corp's proposed acquisition is one of necessity dictated by the terms of the reorganization plan and merger agreement prepared and negotiated

*(#1) - ALTHOUGH THE DISCOUNTING OF THE CONTINGENT SHARES TO ONLY 15% OF CURRENT TRADED VALUE SEEMS A BIT EXTREME TO ME, IF IT CAN BE REPRESENTED THAT THIS IS A GOOD FAITH DETERMINATION OF THE BOARD, I DON'T THINK WE CAN DISPUTE IT.

by D Corp. A Corp's intent is simply to recoup the trade debt owed to it by D Corp. Accordingly, consistent with the Statement of Basis and Purpose, 43 Fed.Reg. 33,465(1978), A Corp's acquisition can only be characterized as that of a "passive investor". A Corp has no intention of participating in the formulation, determination or direction of the basic business decisions of W Corp. Additionally, no A Corp director is a director of either W Corp or D Corp and A Corp cannot directly designate a director of D Corp or W Corp. Even assuming A Corp were issued all of the contingent shares, its estimated equity interest in W Corp will approximate only 4%-7% of outstanding shares.

Moreover, A corp is not a direct competitor of D Corp or W Corp. As indicated, with respect to the US market A Corp's services are focused on providing "data" transmission services and private/dedicated capacity lines to commercial customers. In contrast, D Corp's primary market involves the resale of "voice" transmission services to telecom carriers and retail sellers. D Corp does not provide private/dedicated lines, and in fact could be a potential customer of A Corp with respect to these services. While A Corp does provide some "voice" transmission services, these services constitute only a small fraction of its business and represents a market that A Corp is moving rapidly away from. In fact, based upon annualized revenues from August 1998, A Corp's US based operations will generate approximately $25.0M in gross revenue. Of this amount only $1.0M of gross revenue will result from voice transmission services. Additionally W Corp's primary business relates to the development and manufacture of telecommunications equipment, an area in which A Corp does not participate. Accordingly, A Corp's acquisition should be viewed solely as that of a passive investor exempt from the reporting requirements of the Act.

Your review and opnion respecting this matter is appreciated. Kindly advise if additional information is required.

Sincerely,

Law Offices of [redacted]

[redacted] (9/23/98)

AGREE THAT A. CORP. CAN AVAIL ITSELF OF THE 802.9 EXEMPTION IN THIS SCENARIO –

[signature]
9/28/98