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October 20, 1999

Michael Verne
Bureau of Competition, Room 303
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Mr. Verne:

We represent a potential acquiror corporation (the "Acquiror") in connection with a proposed acquisition of substantially all of the operating assets of a target corporation (the "Target") engaged in a similar service business in different geographic markets from those currently served by the Acquiror. We respectfully request your concurrence in our position that the proposed acquisition would not require either the Acquiror or the Target to file a Premerger Notification and Report under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act").

The Acquiror had total assets of $14.0 million as of December 31, 1998, and revenues of $68.0 million for the fiscal year ended December 31, 1998. Financial information for the Target is consolidated with the financial statements of its parent (the "Target Parent"), whose assets and sales both exceed $100 million.

The Acquiror is currently discussing with the Target Parent the purchase of substantially all of the operating assets of the Target for a cash price that consists of various components totaling $9.9 million. In addition, the Target Parent has proposed that the Acquiror acquire Target's accounts receivable existing as of the closing date for an additional cash price payable at closing, subject to adjustment pursuant to the risk-retention arrangement described below. The Acquiror has indicated that it may be prepared to do so, provided that the acquisition of the accounts receivable not trigger the requirement to file a Premerger Notification under the Act. We respectfully seek your concurrence in our position that the purchase of the accounts

receivable, as structured by the parties and described below, together with the purchase of the assets, will not trigger the Act's Premerger Notification requirement.

The parties have tentatively agreed that the purchase price for the accounts receivable will equal the greater of (a) 75% of the carrying value of the accounts receivable on the closing date, or (b) the carrying value of the accounts receivable under 60 days on the closing date, but in no event greater than $5.0 million. For example, based on figures provided by the Target as of September 23, 1999, the carrying value of the Target's accounts receivable under 60 days was approximately $5.3 million, and 75% of the carrying value of the accounts receivable as of that date was approximately $4.9 million. Applying these numbers to a theoretical closing on that date, the accounts receivable payment under the agreement would equal the $5.0 million cap, since the carrying value of the accounts receivable under 60 days exceeded $5.0 million.

Under the proposed terms, at closing the Acquiror would acquire the accounts receivable subject to the following provision. On the date which is 90 days following the closing (the "Settlement Date"), the Acquiror and the Target would make the following adjustments:

1. In the event that the accounts receivable collected through the Settlement Date are less than the $5.0 million payment, the Acquiror would be entitled to retain a face amount of uncollected accounts receivable necessary to make up the difference between the amount actually collected and the $5.0 million payment. The balance of the uncollected accounts receivable would then be assigned to the Target for collection or other disposition for its sole account.

2. In the event that the accounts receivable collected through the Settlement Date exceed the $5.0 million payment, the Acquiror would be obligated to remit to the Target the amount in excess of $5.0 million and assign to the Target any remaining uncollected accounts receivable for collection or other disposition for its sole account.

Under the arrangement described above, we believe that the Acquiror would only be acquiring beneficial ownership of accounts receivable equal to the $5.0 million payment, because it would be obligated to remit to the Target

any amount collected in excess of $5.0 million. Therefore, we believe that the acquisition price for the accounts receivable attributed to the Acquiror for purposes of analysis under the Act would not exceed $5.0 million. Indeed, as structured, this arrangement would leave the Acquiror with the risk that the accounts receivable actually collected by it following the Settlement Date might result in total collections of less than the $5.0 million payment, if the uncollected accounts receivable retained for the purpose of making up the shortfall are not collected in their entirety.

AGREE Further, we believe that the arrangement under discussion does not amount to avoidance of the Act's Premerger Notification requirements. The purchase price provisions, including the accounts receivable payment, are the result of arms-length negotiations which reflect the economic value of the assets to be acquired by the Acquiror. The fact that the parties have structured an acquisition of $14.9 million in assets rather than some other value of assets is, we submit, immaterial, so long as the economic rights transferred do not exceed the acquisition price. See 16 C.F.R. §801.10.

Assuming resolution of various other business issues, the parties envision executing a definitive agreement toward the end of this week. Accordingly, we would greatly appreciate your advice on the foregoing matters at your earliest convenience. If you require additional information or would like to further discuss any of these matters, please contact the undersigned at [redacted] or [redacted], counsel for the Target, at [redacted]

[redacted]

cc: [redacted]

AGREE THAT ACQUISITION PRICE WON'T EXCEED $5MM. ADVISED CALLER THAT THE BOARD OF THE ACQUIROR MUST ALSO DETERMINE THAT THE FAIR MARKET VALUE OF THE ASSETS WILL NOT EXCEED $5MM IF SO, THIS IS NON-REPORTABLE.
N. OVUKA CONCURS.
B. Michael Verne
10/21/99