Rule: 807.70
Staff: Michael Verne
Response: Since (redacted) is 50% held by (redacted) . Paid A to this closing, this step consist the non-profit formation of a partnership.
Agree this is non-reportable – B. Michael Verne 1/13/00
File #: 0001005

(redacted) (redacted) (redacted)

(redacted) **CONFIDENTIAL**

January 13, 2000

<u>VIA FACSIMILE</u>
Mr. Michael Verne
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Room 301
Washington, D.C. 20580

Re: (redacted) Joint Venture and Related Acquisition –
Not Reportable Under Hart-Scott-Rodino

Dear Mr. Verne:

On behalf of our client (redacted). I write to confirm the substance of our conversations on December 17 and 20, 1999 and our joint conference call with (redacted) counsel for (redacted) on December 17, 1999, in which you advised us that no aspect of the proposed joint venture between (redacted) described below, is subject to the reporting requirements of Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR").

Specifically, this letter confirms your analysis as to why three distinct aspects of the transaction are not reportable under HSR: (1) the initial creation of the (redacted) joint venture; (2) the parties respective contributions of their interests in several Texas partnerships to the joint venture (the "Texas Transaction") which will result in the joint venture holding 100% of the outstanding interests in each of the partnerships; and (3) the subsequent transfer of additional assets by the parties to the joint venture and related transfer of control of the partnership from (redacted).

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[1] The entities controlled by (redacted) own the following portions (redacted) 2% (redacted) 34.4%) and (redacted) 37.6%).

(redacted), an indirect, wholly-owned subsidiary of (redacted) owns 60% (redacted) and PCS owns the remaining 40%.

(redacted) is a limited partnership which is an indirect, wholly-owned subsidiary of (redacted) is owned by four entities: 1) (redacted); 2) (redacted) Mobile Systems of Northern New Jersey, Inc.; 3) (redacted); 4) (redacted) Inc. All four of these entities are controlled by (redacted) directly or

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Since (redacted) is 50% held by (redacted) prior to the closing, this step . . . The non-reportable formation of a partnership.

abandon their proposed merger. The Stage II closing will take one of two forms, depending upon whether or not (redacted) and (redacted) consummate their merger.

(redacted)

The Stage II Closing

If (redacted) and (redacted) consummate their merger (redacted) contribute certain (redacted) wireless assets, liabilities and accompanying FCC and other regulatory licenses and approvals to (redacted) will contribute additional assets, liabilities and accompanying FCC and other regulatory licenses and approvals to (redacted) will issue additional partnership interests to (redacted) and (redacted) adjusting their relative partnership interests to reflect their contributions to the partnership. After the Stage II closing (redacted) will control 55% and (redacted) will control 45% of the (redacted) partnership interests.

If, however (redacted) and (redacted) do not consummate their merger before the Stage II closing (redacted) will contribute the remainder of its domestic wireless operations to (redacted) in return for additional partnership interests. (redacted) also will contribute certain additional wireless assets, liabilities and accompanying FCC and other regulatory licenses and approvals to (redacted) will issue additional partnership interests to (redacted) and (redacted) such that (redacted) will control 67% of (redacted) and (redacted) will own the remaining 33%.

The Consent Decree

On December 6, 1999 the Antitrust Division announced that (redacted) and (redacted) had entered int a proposed consent decree to address any concerns the Antitrust Division may have regarding the (redacted) joint venture. The proposed decree is in the form of an amendment to the Bell Atlantic/GTE Corporation proposed consent decree entered into with the Antitrust Division in May, 1999. The proposed decree add (redacted) as a party to the earlier (redacted) decree.

The amended proposed consent decree addresses competitive issues arising from overlaps in the wireless businesses among (redacted) by both the proposed (redacted) merger and the (redacted) joint venture. The proposed decree would require the (redacted) and/or (redacted) to divest certain assets and licenses in areas where the parties would hold overlapping wireless assets or FCC licenses.

Discussion

You have confirmed that no HSR filing would be required for the Stage I closing, the Texas

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by contributing the wholly owned entities each firm created to acquire and which presently hold their

therefore would exempt from HSR reporting requirements pursuant to 16 C.F.R. § 802.70. Thus, (redacted) and (redacted) would be relieved of any HSR filing obligation that might otherwise arise for Stage II of their transaction.

Although §802.70 is itself sufficient to relieve the parties from any filing obligation for Stage II of their transaction, we also discussed whether the PNO's interpretation of the non-reportability of partnership formation also may exempt this transaction. The Agreement obligates both (redacted) and (redacted) complete both stages of their proposed transaction. Both stages are interrelated parts of a single transaction, even though they will be temporally separated. Accordingly, Stage II arguably is not reportable for the same reasons that Stage I is not reportable. We understand, however, that you disagree that a filing would not be required on this basis for a variety of reasons including: (1) that the timing of the Stage II closing is uncertain; (2) the form and amount of contributions to made at Stage II depends on events outside of the parties control (state and FCC approvals for the (redacted); and (3) control of (redacted) will change at the uncertain time of Stage II closing.

Accordingly, you have advised us that were it not for the §802.70 exception, the reportability of Stage II would depend upon whether state partnership law treats the change in respective interests of the partners in (redacted) as a reformation or continuation of the then-existing (redacted) partnership. If viewed as a reformation, then both the shift in control and the associated contributions of assets to the partnership would not be reportable. On the other hand, if viewed as a continuation of an existing partnership, the transfers of assets from the parties to the joint venture may be viewed as a reportable assets acquisition if the other jurisdictional thresholds were met. Int is unnecessary to further evaluate

(redacted)

cc: (redacted)

(redacted)