802.70

[redacted]

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January 13, 2000

VIA FACSIMILE
Mr. Michael Verne
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
[redacted]
Washington, DC 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 [redacted] described below, is exempt from the reporting requirements

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

[redacted] Although we had previously confirmed with Dick Smith of your office that the first and third aspects of the transaction noted above were not themselves reportable, we were unaware of the Texas Transaction at the time of our communication with Mr. Smith. Therefore,

[redacted]

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we sought to contact Mr. Smith to reconfirm that the Texas Transaction is not independently

Material Facts

On September 21, 1999 executed a U.S. Wireless Alliance Agreement ("Agreement" or "proposed transaction"), pursuant to which they will form a joint venture designed to enhance the parties' ability to provide national wireless service and other benefits to consumers. The vehicle for creating the joint venture is a preexisting Delaware general partnership known as the d/b/a

interests in an to consummate the proposed transaction in two stages as more fully explained below.

The Stage I Closing

At the Stage I closing, will transfer to the partnership: 1) certain assets

(32.646%).

an indirect, wholly-owned subsidiary o owns 60% o nd PCS owns the remaining 40%.

is a limited partnership which is an indirect, wholly-owned subsidiary o is owned by four entities: 1) 2) Mobile Systems II,

is a wholly-owned subsidiary of which is a

SINCE IS CURRENTLY HELD BY PRIOR TO THIS CLOSING, THIS STEP CONSISTS OF THE NON-REPORTABLE FORMATION OF A PARTNERSHIP.

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[redacted] ownership of competing or overlapping wireless assets and FCC licenses. In return [redacted] will issue a new partnership interest to [redacted] entitling it to approximately 65.1% of [redacted] revenues and approximately 65.1% of [redacted] assets upon dissolution. [redacted] would own the remaining 34.9% of [redacted] As presently structured, therefore, [redacted] temporarily will become [redacted] ultimate parent entity at the Stage I closing.

The Texas Transaction

After the execution of the Agreement, [redacted] and [redacted] reached

[redacted] by [redacted]s. Prior to consummating the [redacted] Transaction, [redacted] and [redacted] through their respective 50% partnership interests in a partnership known as [redacted] have an indirect interest in each of three limited partnerships, Dallas MTA, LP, Houston MTA LP, and San Antonio MTA LP. [redacted] holds 80% of the outstanding partnership interests in each partnership [redacted] holds the other 20% interest in each of the three partnerships.

Pursuant to the Purchase Agreement, [redacted] and [redacted] through other

[redacted] 9% limited partnership interest from [redacted] in each partnership. In the Alliance

Agreement." The net effect of the agreements is that both the 80% interest in each partnership presently held by [redacted] as well as the additional 20% interests presently held separately by

The Stage II Closing

If [redacted] and [redacted] consummate their merger [redacted] will contribute certain [redacted] wireless assets, liabilities and accompanying FCC and other regulatory licenses and approvals to [redacted] [redacted] will contribute additional wireless assets, liabilities and

[redacted]

[redacted]

Mr. Michael Vamo

[redacted]

interests to reflect their contributions to the partnership. After the Stage II closing [redacted]

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 [redacted] will issue additional partnership interests to [redacted] and [redacted] such that [redacted] will control 67% [redacted]

The Consent Decree

On December 6, 1999 the Antitrust Division announced that [redacted] and [redacted] had entered into 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 adds [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] created by both the proposed [redacted] merger and the [redacted]

Discussion

The Stage I Closing is Not Reportable

You have confirmed that the Stage I closing is not reportable under HSR because it would be deemed to be the formation of a new partnership. Even though [redacted]

interests are held, directly or indirectly, by [redacted]

[redacted]

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Therefore, [redacted]'s contribution of assets to [redacted] in exchange for a 67% interest in the [redacted] partnership will be deemed, for HSR purposes, to be the formation of a new partnership. Pursuant to the PNO's long-standing interpretation that the formation of a partnership does not give rise to a filing obligation under the HSR Act [redacted] principle further exempts from a reporting obligation both [redacted] acquisition of its 67% part of the formation transaction.

Accordingly, Stage I of the transaction is not reportable under the HSR Act.

The Texas Utilities Acquisition Is Not Reportable Under HSR

The [redacted] Transaction can itself be thought of as a two step transaction. In step one, subsidiaries of [redacted] and [redacted] will each purchase for cash or cash equivalents 11% and 9% respectively of the outstanding partnership interests in each of the three [redacted] partnerships. Since neither [redacted] or [redacted] will hold 100% of the interests in any of the partnerships as a result of this acquisition, the PNO would not treat the acquisition of the partnership interests as either an acquisition of assets or of voting securities and therefore such acquisitions would not trigger an HSR filing obligation.

In the second step of the [redacted] Transaction, [redacted] will each contribute their newly acquired partnership interests to their [redacted] joint venture as part of the partnerships involved in the [redacted] Transaction at the close of Stage I of the [redacted]

You have explained that where there are several partnerships in the chain of control, it is the PNO's position that a single, non-partnership person must control 100% of the interests in the partnership that is at the highest tier within the chain for the non-partnership [redacted] shall effect their contributions to [redacted] in either of two ways: (1) by directly partnerships.

[redacted]

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neither will be deemed to have acquired 100% of the underlying assets of the partnerships that

Section 802.70 exempts transactions from the requirements of the HSR Act if,

two transactions. Indeed, the decree specifically references both th Agreement and Plan of Merger dated July 28, 1998 and the U.S. Wireless Alliance Agreement

Markets."

Given these facts, you have confirmed that the transfer of additional assets to the partnership pursuant to Stage II of the Agreement and/or the erger would be transfers of assets from entities "pursuant to or in accordance with" the proposed consent decree, and therefore would be exempt from HSR reporting requirements pursuant to 16 C.F.R. § 802.70. Thus, and 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

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 the contributions to made at Stage II depends on [illegible] outside of the parties control (state and FCC approvals for the eal); and (3) control of will change at the uncertain time of the Stage II closing.

[redacted]

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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 a continuation of the then-existing [redacted] partnership. If viewed as a reformation, then both the shift in control and the [redacted] the joint venture may be viewed as a reportable asset acquisition if the other jurisdictional thresholds were met. It is unnecessary to further evaluate these issues, however, given your confirmation that § 802.70 exempts Stage II of the transaction.

Conclusion

For the foregoing reasons, it is our understanding that you have agreed that each of the following acquisitions is exempt from the reporting requirements of HSR: (1) the acquisitions to occur at the Stage I closing of th[redacted] joint venture; (2) the [redacted]

If you believe that this letter is in any way inconsistent with the advice that you have rendered in this matter, I would appreciate your calling me as soon as possible. As always, [redacted]

Sincerely,

[redacted]

cc: [redacted]

AGREE THIS IS NON-RESPONSIVE
Brad Peterson
11/13/00

[redacted]