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Premerger Notification Office  
Bureau of Competition  
Room 301  
Federal Trade Commission  
Washington D.C. 20580

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which restricts release  
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10, 1980

Attention: Wayne Kaplan

Dear Mr. Kaplan:

We spoke with you last month relative to the need for submitting a Hart-Scott-Rodino Premerger Notification Report under certain described facts. As a follow-up, we would like to confirm

We understand from our discussions that for any one of the

we will assume that, based on the facts presented, you are in agreement with the analysis contained in this letter.

FACTS

Background

The proposed transaction involves the acquisition of approximately 4,900 acres of unimproved real property (the "Real Property") by a newly-formed [REDACTED] limited partnership (the "Acquiring Partner") from [REDACTED] [REDACTED]

[REDACTED] subsidiary of a [REDACTED] holding company with other

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subsidiaries principally involved in the businesses of natural gas transmission, digital telecommunication, and real estate

Act) (the "Acquired Person") has total assets in excess of \$100 million. The Seller had held the real property for possible

activities on the property and beekeepers to maintain beehives thereon. The aggregate annual rental from these leases is approximately \$30,000.

The Acquiring Person is a newly formed Florida limited partnership formed for the purpose of acquiring and developing

#### General Partners

in cash. The entire aggregate contribution by the general partners was made at the time of formation.

The second type of investor will be a limited partner. Each

the time of subscription (\$50,000) and with the balance to be paid in three annual installments. In particular, a person acquiring a limited partnership interest will be legally obligated to make the remaining installment payments for the limited partnership interest in accordance with the following schedule:

<u>Date Due</u>	<u>Amount</u>
September 1, 1988	\$30,000

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If all of the limited partnership interests are sold, it is anticipated that total cash in the amount of \$3,500,000 will be paid in at the time of subscription by the limited partners and

Debenture Holders

The third type of investor in the limited partnership will be an investor who lends money to the limited partnership in

advance a portion of the total purchase price that he becomes obligated to advance. The balance of the funding under the Debenture will be obtained by the limited partnership by advances

corresponding with the dates on which additional capital contributions are due from the various purchasing limited

issued in denominations of \$1,000 and any integral multiple thereof, the limited partnership anticipates that each Debenture Holder will be issuing a minimum of \$200,000

In particular, a person acquiring a Debenture or Debentures will be legally obligated to advance with respect to each \$200,000 of Debentures subscribed for \$21,000 at the time the Debenture

is required to be made in accordance with the following schedule:

<u>Date</u>	<u>Amount</u>
September 1, 1988	\$47,000
September 1, 1989	47,000
September 1, 1990	45,000

Use of Initial Cash Proceeds

acquisition. In connection with the acquisition, the Acquired



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Person will accept a purchase money note and mortgage for the balance of the purchase price.

Notification Requirements of the Hart-Scott-Rodino Anti-Trust Improvements Act of 1976 Because the Transfer is in the Ordinary Course of Business

Section 7A(c)(1) of the Hart-Scott-Rodino Anti-Trust Improvements Act of 1976 (the "Act") provides that "acquisition

the premerger notification and waiting period provisions.

To be exempt, the transfer of realty must either be in the ordinary course of business of the purchaser or the ordinary course of business of the seller, but need not be in the ordinary course

unimproved and has not been generating any material income stream in the hands of the Seller, the transfer of the Real Property will be treated as being in the ordinary course of business of the Seller and the parent of the Seller for purposes of Section 7A(c)(1).

The Real Property being acquired is a small portion of the property of the Acquired Person and therefore, as a result of the acquisition of the Real Property by the Acquiring Person, the Acquiring Person will not hold all or substantially all of the assets of the Acquired Person of any operating division of the Acquired Person. See Section 802.1(b).

Accordingly, on the basis of these facts, neither the Acquired Person, the Seller nor the Acquiring Party would need to file a Premerger Notification with respect to the transfer of the Real

NOT SUBJECT TO MINIMUM SIZE REQUIREMENTS

- a. Rights to Receive Additional Capital Should Have Minimal Value.

we have assumed for purposes of this analysis that the Acquired Person has total assets in excess of \$100 million. Accordingly, in order to be subject to the notification requirements, the Acquiring Person must have total assets or annual net sales of \$10 million or more. Section 7A(c) of the Act.

Because the Acquiring Person is a newly formed partnership,

and expense. Therefore, for purposes of section 801.11 of the Premerger Notification Rules (16 C.F.R. 801.11), the Acquiring

in determining the total assets of the Acquiring Person, we

of the Acquiring Person by "all cash that will be used by the acquiring person as consideration in the acquisition of assets from... [the] acquired person... and less all cash that will be used for expenses incidental to the acquisition...".

Under this analysis, almost three-fourths of the cash held by the Acquiring Person at the time of the acquisition will be used to acquire the Real Property or for payment of expenses incidental to the acquisition. The portion of cash so used may

The only other "assets" that the Acquiring Person will have at the time of the acquisition are the rights to receive additional

advised us that in computing total assets, the rights to receive the additional contributions and the rights to receive additional

rights to the Acquiring Person (which is essentially the value of the respective contract rights); this value would not necessarily be small, and indeed in all likelihood would be substantially

or advanced. One would expect that such contract rights would have a relatively small value because of the unsecured nature of the obligations of the limited partners and the Debenture Holders

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contributions and advances will be made

receive additional contributions and the rights to receive additional advances, then if the cash held by the Acquiring Person at the time of the acquisition (net of the cash to be used to acquire the Real Property or to pay for expenses of the acquisition) plus the value of the rights to receive additional contributions and the rights to receive additional advances is less than \$10,000,000, the transaction as described in this letter will not be subject to the prenotification filing and waiting period of the Act.

b. Rights to Receive Additional Capital Should Not Be Considered as Assets for Purposes of the Act.

Even if the right to receive additional contributions from the limited partners and additional advances from the Debenture Holders have a value such that the total assets of the Acquired Person immediately prior to the acquisition exceed \$10,000,000 the transaction will be exempt from the prenotification filing and

should be treated the same as cash for purposes of Section 801.11(e).

In the background material preceding the new final rules, (effective April 10, 1987) and recently adopted by the Federal Trade Commissions, the Federal Trade Commission has stated that "the Commission staff has for some time stated that acquiring persons should not include as assets cash or loans that will be used to make an acquisition.

The introduction goes on to state that "the Commission is intending to adopt this staff position and incorporate it in Section

As previously described, the Real Property that is being acquired by the Acquiring Person will become subject to a purchase money note and first mortgage in favor of the Seller and a second mortgage in favor of the Debenture Holders. The dollars that are to be received pursuant to the additional capital contribution

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designed to be used and, when received, will be used, to make installments of principal and interest on the first mortgage and installments of interest on the second mortgage.

Therefore, although the cash is being received on a deferred basis, the rights to receive additional capital contributions and the rights to receive additional advances on the Debentures are assets in the nature of cash or loans that will be used to make the acquisition (even though such amounts will not be received until a later date).

Clearly, from a policy standpoint, the deferred obligations should be treated the same as cash and the staff's position appears

to be an amount such that the total assets of the acquiring person would exceed \$10,000,000 (if the value of such rights were to be

the same as cash as described in Section 801.11(e).

SUMMARY

In sum, given the above described facts and analysis and our

to the prior notification of the waiting period under the Act.

If we have misunderstood our discussions with your office or under the above-described facts, we will appreciate hearing from you. If we have not heard from you to the contrary before July

with the position of the Federal Trade Commission.

Thank you for your attention to this matter. Should you have

*Partially confused  
but the transaction requires  
to be submitted*

Sincerely,  


*person test and this information is  
admitted 7/12/07*