

[REDACTED]

September 5, 1991

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Pre-Merger Notification Office
Bureau of Competition
Federal Trade Commissions
Sixth Street and Pennsylvania Avenue, N.W.
Room 303
Washington, D.C. 20580
FAX: (202) 326-2050

Attention: Hy David Rubenstein
Staff Attorney

Re: Identification No. [REDACTED]

Acquisition of [REDACTED]

Dear Mr. Rubenstein:

Reference is hereby made to the Hart-Scott-Rodino
Pre-Merger Notification Form (with documentary attachments
thereto (the "H-S-R Notice") relating to the above-referenced

[REDACTED]

~~proposed acquisitions (the "Proposed Acquisitions") filed with~~

[REDACTED] (the "Seller") has entered into (i) an Agreement and Plan of Merger dated [REDACTED] (the "Merger Agreement") with the Buyer, whose ultimate parent is [REDACTED] pursuant to which [REDACTED] will merge with [REDACTED] a wholly-owned subsidiary of the Buyer, becoming a wholly owned subsidiary of the Buyer and (ii) a Purchase Agreement dated [REDACTED] (the "Purchase Agreement") with [REDACTED].

[REDACTED] The Buyer has the option under each of the Merger Agreement and Purchase Agreement to pay the purchase price to the Seller in either cash or Class A Common Stock of the Buyer. The Seller will not accept Class A Common Stock of the Buyer to the extent that the amount of such stock delivered, ~~when combined with shares of Class A Common Stock beneficially~~

~~has amended, will equal or exceed 10% of the issued and outstanding Class A Common Stock of the Buyer. In the event that the Buyer elects to pay the purchase price in Class A Common Stock of the Buyer, it is the Seller's intention to sell most of the securities so acquired shortly after the acquisition and distribute the remaining shares to various investors in the Seller.~~

~~to the fact that such acquisition was solely for investment~~

Seller would not be considered "solely for investment purposes" because the Buyer and [REDACTED] are allegedly competitors.

This letter, submitted at the request of the Federal Trade Commission, demonstrates that (i) [redacted] and the Buyer are not competitors and (ii) the Seller's receipt of stock in the Buyer fits squarely within the "solely for investment purposes" exception Section 7A(c)(9) of the Act.

A. [redacted] and the Buyer are not competitors

Based upon discussions with [redacted] sole involvement in

market. The geographic markets of cellular telephone companies were determined by the Federal Communications Commission (the "FCC") pursuant to regulation, utilizing Metropolitan Statistical Areas ("MSAs") and Rural Statistical Areas ("RSAs"). See 47 CFR §22.903 (a copy of which is attached hereto as Exhibit A). For a cellular telephone company to operate in any given cellular market, the FCC's prior authorization is required.

In any cellular market, the FCC authorizes only two competing systems, one operating on the B frequency block and the other operating on the A frequency block. 47 CFR §22.902(b) (a copy of which is attached hereto as Exhibit A).
[redacted]

[redacted] application to the FCC its Cellular Geographic Service Area ("CGSA"), the size of which may not exceed the applicable MSA

cellular telephone service. Outside of its CGSA,

1/ A de minimis overlap of cellular markets is permissible under FCC regulations due to the inherent nature and contours of the radio signal. 47 CFR §22.903(a). This overlap, however, is irrelevant to the determination of the geographic market because it is insignificant and because it is not essential to competitive
[redacted]

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cellular telephone service would be provided by a carrier

cellular operators compete within their MSA or RSA by expanding geographic coverage (their CGSA), devising service plans, adding special features and cutting telephone prices. Each cellular geographic market is distinct with exclusive competitors to each market and a competitor gains access to that market solely by obtaining FCC authorization to provide service on one of the two frequency blocks in that cellular market.

Following the consummation of the proposed acquisitions, [redacted] will operate only in the following MSAs or RSAs and compete only with the following persons:

2/ Although many CGSAs are coterminous with the MSA or RSA boundaries, the FCC's regulations contemplate that cellular licensees may have CGSAs that comprise only a portion of an MSA or RSA. For example, in an MSA or RSA there may be

RSA had more than one wireline operator, all seeking to provide cellular services in that RSA. Competition within any cellular market, however, is still between only two cellular companies due to the fact the licensees authorized on the same frequency block operate in different CGSAs or cellular markets. Thus, a cellular consumer seeking to obtain cellular services in any particular cellular market only has two companies from which to choose - a Block B licensee and a Block A licensee.

TABLE I

Competitors of the Seller in Each Cellular Market^{3/}

MSA or RSA

Block A Competitor

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

The FCC's definition of geographic cellular markets fully

National Bank, the Court held that, even though two banks proposing to merge did business outside of the four-county Philadelphia metropolitan area, because state law authorized such banks to branch only in such four-county area and because

Concord, Mass. v. Boston Edison Co., 721 F.Supp 1456, 1459-60 (D. Mass. 1989); United States v. Waste Management, Inc. 742

close proximity (45 to 50 minute drive) due to existing competitors exclusivity to either city).

Unlike a bank, which can take deposits and originate loans beyond its immediate service area, a cellular telephone

geographic market definition in its decision. Due to the

The Status of RSA Cellular Markets, each prepared by FCC, as of May 15, 1991 and July 11, 1991, respectively.

Philadelphia National Bank, the geographic market of a cellular telephone company is the MSA or RSA in which it is licensed to operate. Therefore, the Seller and the Buyer, operating in different MSAs and RSAs, are not competitors.

B. The facts and circumstances regarding the Seller's acquisition of stock in the Buyer clearly indicates the Seller's investment intent.

So long as a person acquiring stock in another does not ~~interfere to participate in the formulation of basic business~~ decisions of an issuer, the acquisition of such stock is solely for investment purposes and therefore exempt from the filing requirements under the Act. 43 Fed. Reg. 33465 (a copy of which is attached hereto as Exhibit B). All extrinsic ~~evidence in the present acquisition indicates the investment~~

- rests with the Buyer, not the Seller.

2. The amount of stock to be received by the Seller constitutes a small portion of the outstanding stock of the Buyer, clearly an amount insufficient to influence management where the ultimate parent of the Buyer, [REDACTED] is an individual.

3. ~~It is the intention of the Seller to sell most of the~~

among its investors, an intent that is wholly in line with the "solely for investment purposes" exemption.

4. As is demonstrated above, neither the Seller nor [REDACTED]

[REDACTED] and [REDACTED] areas.

CONCLUSION

As demonstrated above, any acquisition of stock of the
Buyer by the Seller is merely a form of payment of the purchase price for the Proposed Acquisition and made solely

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for investment purposes. For the reasons stated above, [REDACTED] should not be required to file a pre-merger notification in connection with its acquisition of stock in the Seller.

Since this transaction is on a short timetable, I respectfully request expedited review of this letter. If you have any questions, please don't hesitate to call me.

Very truly yours,

[REDACTED]

cc:

[REDACTED]

[REDACTED]

EXHIBIT A

CONFIDENTIAL

CONFIDENTIAL (h) OF

8. released

1. 1981, as amended, 50 CFR 81.5, Oct. 7, 1980

Geographic areas within the cellular service area to be served by the applicant are: New England, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, Oklahoma, Kansas, Nebraska, Iowa, Missouri, Arkansas, Louisiana, Mississippi, Alabama, Georgia, Florida, and Puerto Rico.

Areas. At the time of filing, no areas may be added to the Rural Service Area (RSA) other than those specifically identified in the application. The RSA may be modified by the Commission upon a showing of need.

1-90

with a map of the service area showing the cellular service areas within the RSA.

The Commission shall determine whether the proposed service areas are in the public interest and whether the applicant has the capability to provide the service.

1-90

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12.904

that the cellular service area within a given geographic area is in the public interest.

the above information shall be used to determine the public interest.

12.904

Area	(MHz)
600	
397	
323	
225	
166	
126	
98	
57	
37	
20	
13	
10	
9	
7	

the above information shall be used to determine the public interest.

12.904

service shall be provided to the public interest.

12.904

eviation circuit (d) shall be used for the purpose of this section.

12.904

EXHIBIT B

