

JS

[REDACTED]

[REDACTED]

[REDACTED]

January 11, 1995

VIA FE #3891931330

Premerger Notification Office
Room 303
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

and

VIA FE #3891931341

Director of Operations
Antitrust Division
Room 3214
Department of Justice
10th Street and Constitution Ave., N.W.
Washington, DC 20530

Re: [REDACTED]

Ladies and Gentlemen:

and a [REDACTED] A [REDACTED] propose to enter into a

between [REDACTED] and will pass the tax effects of these profits and losses to the joint venturers. The joint ven

[REDACTED]

joint venture entity (the "LLC") will be a limited liability company, probably to be formed under [REDACTED] The

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LLC will operate in [REDACTED] and, to a limited extent, in nearby counties in certain contiguous states.

It is apparent that the creation of such a new provi-

wholly pro-competitive. It similarly appears clear that the formation of the LLC, a non-corporate entity, is not subject to the Premerger Notification Filing Requirements of the Hart-Scott Rodino Antitrust Improvements Act (the "Act")

The parties to the proposed joint venture do, however, wish to preclude the possibility of any inquiry at a later date to write to disclose the basis of the conclusions noted above and, if necessary, attempt to address any questions regarding the subject of this letter. The parties are anxious to proceed opportunity for early discussions on the subject of the letter.

A. The Inapplicability Of The Act To Formation

[REDACTED] (directly or through wholly-owned [REDACTED])
[REDACTED] The LLC will be structured to assure that the tax effects of these profits and losses flow through to [REDACTED]. The various businesses will, in turn, be conducted through newly-created entities which will similarly not be in corporate form, so that their profits, losses and tax effects will ultimately flow through to [REDACTED]. The LLC may make capital calls on the joint venturers. The LLC will be managed by a group of individuals designated in equal numbers by [REDACTED]. They will act by majority vote. The ultimate structure of the venture will include a re-insurance company, to be organized in corporate form, which will represent [REDACTED] of the [REDACTED] and be 100% beneficially owned by the joint venturers.

The [REDACTED] Limited Liability Act [REDACTED] permits the creation of an entity which is not a corporation [REDACTED]. The members of the LLC are [REDACTED].

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members or by managers appointed by the members. LLCs may, by operating agreement, allocate "income, gain, loss, deduction or credit" as is set forth in the operating agreement of the LLC. [REDACTED]. Like partnerships, they can be structured to pass their tax effects through to the owners.

The initial funding for the LLC of approximately \$16,000,000 will be provided by [REDACTED] (\$11,000,000) and [REDACTED] (\$5,000,000). This amount is anticipated to be sufficient to cover working capital needs as well as to satisfy capital and reserve requirements. In the event of certain contingencies, additional capital will be contributed by [REDACTED] in accordance with an agreed upon formula.

Membership interests in the LLC will be of two types: (1) units with interest payable and principal redeemable by the LLC out of profits, and (2) units which evidence the members' interest in the LLC. If the LLC needs up to \$2 million in cap:

required, [REDACTED] is required to fund 100% if [REDACTED] declines to contribute. Profits (after paying for interest and redemption

We, therefore, rely on 16 CFR §801.40 and 43 FR 33485 et seq. (1978) to support the conclusion that a pre-merger filing is not required under the Act. 16 CFR §801.40 makes clear that the filing requirements apply only to a joint venture in the corporate form. Since the LLC is not a corporation, the Act's premerger notification provisions should not be applicable to the transactions relating to its formation.

We note in particular the statements in the Commission's Statement of Basis and Purpose that:

"[s]ince the rule applies only to the formation of corporations, the formation of entities other than corporations is by virtue of this rule not brought within the coverage of the act and need not be preceded by compliance with the act's requirements" 43 FR at 33485 (1978), and

"[t]his approach obviates the need to decide whether an entity should be termed a joint venture, because the concept of 'corporation' is unambiguous."

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Id. at 33486. See also Premerger Notification Practice Manual, American Bar Association Section of Antitrust Law, 1991 ed. at Q&A 161.

B. Operation Of The New Entity

The LLC, together with [REDACTED] will form a liability company which will provide for sharing of profits and

vote. Assistance will be provided to the [REDACTED] by a [REDACTED]

The LLC and the [REDACTED] are expected to enter into separate contracts with [REDACTED] (the "Manage-

will be responsible for the operational network development,

Neither [REDACTED] nor [REDACTED] is currently engaged in the business of operating an [REDACTED] in [REDACTED] or its environs. It is not contemplated that the Venture will begin or grow by acquiring any existing business, although [REDACTED] had previously acquired several [REDACTED] including an entity functioning in [REDACTED]. That entity or certain of its assets will be contributed by [REDACTED] to the LLC as part of the LLC's formation.

The success of the venture will depend entirely on its ability to translate the commitment to the public of the venturers into a functioning operation which can serve the public well enough to attract customers in a competitive environment. There is no indication that the transaction creating the venture could have any implication for market power or power to exclude competition. The venture cannot impose any barriers to entry by competitors. The complementary expertise of [REDACTED] and [REDACTED] will permit the creation of a company which can serve the public and compete more effectively than either could if proceeding without the other. [REDACTED] has not formulated any plan to form an [REDACTED] in [REDACTED] absent the venture and [REDACTED] has

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not previously provided similar services to people outside the [REDACTED] Community. Both venturers have, however, agreed not to compete with the entity.

C. Conclusion

By this letter, we are not seeking to invoke the provisions of 16 CFR §803.30 for a formal interpretation of the Act's requirements to the transactions surrounding the formation of the joint venture entities, since the existing published

and the transaction is expected to proceed as stated above. Nevertheless, consistent with the desire to move expeditiously and to avoid any misunderstanding, we request the opportunity

possible date.

Very truly yours,

[REDACTED]

[REDACTED]