801.40
802.40

[redacted]

VIA FACSIMILE

Mr. Richard Smith
Premerger Notification Office
Federal Trade Commission
Washington, D.C.

Re: Application of Hart-Scott-Rodino Antitrust Improvements Act of 1976 [redacted]

Pursuant to our telephone conversation of February 7, I have been able to clarify the structure of the proposed formation of Newco, which I outlined in my letter of February 6 to you and Tom Hancock. The following is a revised description of the transaction. [illegible]

Company A and Company B. Company A and Company B are both not-for-profit corporations. They propose to form a not-for-profit corporate joint venture, Newco, which will own and [illegible] consummation date of the joint venture. On or about the consummation date, (i) Company B [illegible] purchase from Company A certain [redacted] which have a value of [illegible] have a 35% interest in Newco. Company A is a [redacted] and will have significant [redacted] outside of Newco. Company B is an [redacted] and will have significant [redacted] operations outside of the joint venture.

This transaction is essentially the formation of a not-for-profit joint venture corporation [illegible] operating assets and will receive a 65% membership interest in Newco and an equalization payment from Newco of $13.3 million and Company B will contribute $3.3 million in cash and will receive a 35% membership interest in Newco. The only reason that the parties have worded the deal documents to reflect a "purchase" by Newco of assets from Company A (as opposed to a contribution by Company A of those assets coupled with an equalization payment) is to assure a more favorable tax treatment under the tax-exempt bonds to be issued by Newco. It is not at all [redacted] payment and not as a purchase of assets by Newco from Company A. I believe that this [redacted]

I look forward to hearing from you regarding the Premerger Notification Office's position on this proposed transaction. Please contact me at [redacted] as soon as you have reached a position.

Very truly yours,

[redacted]

A/D

2/13/95

Called the writer and told him that we regard the transfer of the hospital from A to Newco as part of the formation [redacted]

a reportable purchase by Newco. [redacted] this appears to be the intent of [redacted]

the parties, and, second, the payment from Newco [redacted]

than the value of the [hospital]. This latter fact makes it easier to characterize this payment as an equalization payment. The purchase language in the deal documents is immaterial.

TFL