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FEDERAL TRADE
COMMISSION
PREMERGER NOTIFICATION
OFFICE

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August 9, 1996

Richard B. Smith, Esq.
Premerger Notification Office
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Mr. Smith:

Thank you for returning my call so promptly this morning. This will confirm our conversation concerning control of a corporation under the Hart-Scott-Rodino Act.

The fact situation I described is a corporation with three stockholders holding all of the voting securities. Stockholders X and Y each hold an equal

corporation.

There are five members of the corporate board of directors. Under the corporate bylaws, X designates two directors and Y designates two directors. The fifth director is the Chief Executive Officer of the corporation. The Chief Executive Officer is nominated jointly by the two directors designated by X and the two directors designated by Y, but neither the directors designated by X alone nor the directors designated by Y alone have the absolute power to nominate the fifth director.

You stated that since neither X nor Y has the absolute power to appoint the fifth director, neither X nor Y would be considered as controlling the corporation. Such control would exist only if one or the other has the absolute

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