[redacted]

WRITER'S TELEPHONE
[redacted]

February 19, 1998

**Via Facsimile Transmission**

Mr. Richard B. Smith
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
6th & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Mr. Smith:

The purpose of this correspondence is to follow up on our recent discussion concerning the question of whether a particular limited liability company ("LLC") structure, involving both voting interests and non-voting interests, should be given partnership treatment for purposes of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR"), with the result that the acquisition of 100 percent of the voting interests but none of the non-voting interests of the LLC would not be a reportable transaction under that statute. Since our discussion, I have obtained some additional information, all of which I believe supports such treatment.

Stated in summary form, the transaction is as follows. Our client, Company A, will form the LLC. Initially Company A will be the sole member and manager of the LLC. Company A will then [redacted] agreed upon cash amount and retain all of the non-voting interests. In connection with that sale, both the HSR size-of-person test and size-of-transaction test will be met. Also in connection with that sale, the LLC agreement will be amended so as to admit Company B as an additional member of the LLC and to provide that Company B shall be the sole manager of the LLC.

Thereafter, the LLC will be operated on the following basis:

- It will have two members, Company A and Company B.

[redacted]

- The current plans are for the LLC to have no membership board or similar such arrangement. (This was a fact which I was unsure about

manager which, as noted above, will be Company B.

- We understand from counsel for the ultimate parent of Company B, that the persons to be appointed by Company B to be the officer of the LLC will be a person who is also a manager of Company B. Indeed, the individual who is the ultimate parent of Company B and its manager will serve as the President and Chief Executive Officer of the LLC.

- Subject to certain special tax allocations, profits and losses are to be shared pro rata between the voting and non-voting interests.

- The LLC agreement will place restrictions on the ability of the LLC's manager to take certain extraordinary actions (such as sale of material assets of the LLC) without the approval of the "Super Majority in Interest," such quoted term to be defined to mean any combination of members which own at least 80 percent of the total voting interests

- In compliance with certain existing regulatory attribution rules, the LLC agreement will place various limitations on Company A and the

may not communicate with the LLC's manager on matters pertaining to the day-to-day operations of the LLC, nor may any of Company A's employees act as an employee of the LLC.

- At sometime in the future, if current regulatory constraints are removed insofar as Company A's ownership of the assets transferred to the LLC, Company A may wish to reacquire control of the LLC. Therefore, Company A has certain rights to acquire Company B's

office's prior interpretations, Company B will place only its own officers and employees on the board of the LLC. While we have now learned that a board structure is not contemplated, the structure is still such that the LLC will be member-managed because the [redacted]

[redacted] expressly provides that it is not to be considered a partnership or joint venture other than for tax purposes, we respectfully submit that for HSR purposes because of existence of both [redacted] of the voting interests in the LLC should be treated as analogous to the acquisition of less than a 100 percent partnership interest [redacted]

is in agreement with such conclusion. In that regard, I can be reached at [redacted] whether or not your office

Thank you very much for your assistance.

Sincerely yours,

[redacted]

cc: [redacted]

2/23/98 - Advised writer that B's purchase of the "voting" interest in the LLC should best be viewed as the formation of an LLC (since, before the transfer, A held 100% of the LLC interest). Since B's interest does not permit it to elect a [redacted] to the [redacted] a role comparable to that of a director of a corporation, no voting stock is [redacted] interest more like a partnership interest. The last "*" paragraph [redacted] to determine if A is agreeing to DI regardless event.

RDBSmith