

[REDACTED]

[REDACTED]

September 17, 1998
(Revised)

VIA FACSIMILE

Mr. Michael Verne
Federal Trade Commission
Sixth Street, Pennsylvania Avenue N.W., Room 301
Washington, D.C. 20580

Re: Application of Hart-Scott-Rodino Antitrust Improvements Act,
15 U.S.C. 18a (the "Act")

Dear Mr. Verne:

In accordance with our previous conversations, and at your direction, this letter is submitted to you to state the FTC's opinion respecting our client's potential acquisition of Foreign Issuer Securities to be issued pursuant to a Chapter 11 bankruptcy reorganization. Based upon our analysis of the Act and the applicable regulations, it is our belief that our client's acquisition will not meet the reporting requirements of the Act in that it (i) fails to meet the "Size of the Excess" test, which requires the acquisition to be in excess of \$15,000,000 or entitling it a 15% equity interest in the acquired person; and (ii) the acquisition is exempt pursuant to 15 U.S.C. 18(a)(9) in that it will be made for investment purposes only and will not involve the beneficial ownership of more than 10% of the

Applicable Parties

- "A Corp" - refers to our client which is a multi-national telecommunications service provider. A Corp's activities in the United States are directed through its UK and US subsidiaries. Pursuant to the reorganization plan and merger agreement of A Corp, A Corp's UK subsidiary will acquire entire ownership of W

market involving the transmission of data and the provision of private/dedicated lines.

AGALL, RELUCTANTLY WITH (i),
AND AGALL WITH (ii). SEE
NOTES ON P. 4-5.

LAW OFFICES OF [REDACTED]

- ▶ "D Corp" - is a reseller of voice transmission services in the United States. D Corp is presently a Debtor in a chapter 11 bankruptcy proceeding, pursuant to its plan of reorganization and merger agreement with W Corp D Corp's creditors, which includes A Corp, will receive restricted and partially contingent voting securities in W Corp.
- ▶ "W Corp" - is a U.S. based company engaged in the development, manufacture and marketing of telecommunications equipment. Its common shares are publically traded on the NASD National Market.

Summary of the Facts

[REDACTED]

period D Corp failed to pay its invoices and became indebted to A Corp in the approximate amount of \$32,900,000. Due to its distressed financial condition and substantial debt obligations,

[REDACTED]

management retaining control of the company. In its efforts to reorganize, D Corp's management has negotiated and structured a reorganization plan and merger agreement involving its acquisition by W Corp through the issuance of restricted and partially contingent shares of W Corp to D Corp's creditors.

One-third (1/3) of the W Corp shares will be issued to the creditors at the time of closing with the remaining two-thirds (2/3's) contingent upon D Corp achieving certain EBITDA earnings

creditor being entitled to vote those shares and receive dividends (however W Corp has indicated it has not and will not be issuing dividends). If the earnings contingencies are not met the

Estimated Stock Distribution To A Corp

- ▶ Closing Distribution - At closing A Corp will receive approximately 296,250 restricted W Corp common shares. The transferability of these shares will be restricted for a one year period.

LAW OFFICES OF [REDACTED]

- ▶ Year 1998 Contingent Shares - If D Corp meets the specified 1998 EBITDA earnings target A Corp will receive approximately 148,125 restricted W Corp common shares. The transferability of these shares will be restricted for six months from the date released by the disbursing agent
- ▶ Year 1999 Contingent Shares - If D Corp meets the specified 1999 EBITDA earnings target A Corp will receive approximately 222,187.5 restricted W Corp common shares. The transferability of these shares will be restricted for six months from the date released by the disbursing agent.
- ▶ Year 2000 Contingent Shares - If D Corp meets the specified 2000 EBITDA earnings target A Corp will receive approximately 222,187.5 restricted W Corp common shares. The transferability of these shares will be restricted for six months from the date released by the disbursing agent.

[REDACTED]

The shares issued to A Corp, whether issued at closing, or subsequently issued upon satisfaction

Accordingly, although W Corp's common shares are publicly traded we believe that the appropriate valuation method for these shares is that of fair market value pursuant to 16 CFR §801.10(a)(2)(ii)¹. Accordingly, due to the one year transfer restriction on the closing shares, and

shares it believes that due to the nature of the contingency and the subsequent transferability restrictions, they would be fairly valued at a discount of approximately 25% off the public market value.

Based upon our estimates at no time do we believe A Corp will obtain an equity interest in W Corp of greater than 10% of W Corp's outstanding shares.

The following is a summary of the estimated value of the shares to be issued to D Corp:

ESTIMATED MARKET VALUE ESTIMATED ACQUISITION VALUE

¹Additionally, it should be noted that in calculating the number of W Corp shares to be issued to the D Corp pursuant to the exchange for D Corp's acquisition, W Corp's value to Corp at 2000,000,000 and divided by \$32, W Corp's then market price per share, We do not believe that \$32 amounts to a "determined acquisition price" pursuant to 16 §CFR 801.10(a).

LAW OFFICES OF [REDACTED]

Closing Shares -	296,250 x 23 = \$6,813,750	\$6,813,750 x 75% = \$5,110,312
Year 1998 Contingent Shares	148,125x23 = \$3,406,875	\$3,406,875x15% = 511,031
Year 1999 Contingent Shares	222,187.5x23= \$5,110,312	\$5,110,312x15%= 766,547
Year 2000 Contingent Shares	222,187.5x23= \$5,110,312	\$5,110,312x15%= 766,547

This valuation analysis is based upon the good faith determination of a designer of the Board of Directors of A Corp. * (1)

Analysis - A Corp's Acquisition Does Not Meet the Size of the Transaction Test

Pursuant to Section 18(a)(3) of the Act, to qualify as an "Acquiring Person", A Corp must possess beneficial ownership of (a) 15% or more of the voting securities in W Corp, or (b) an aggregate total amount of voting securities in W Corp in excess of \$15.0M. As previously indicated, A Corp's acquisition of voting securities in W Corp, whether contingent or issued at closing, in aggregate, do not amount to a 15% equity interest in W Corp. Moreover, A Corp's acquisition does not meet the \$15.0M threshold requirement for the following reasons:

- At the time of closing A Corp will have beneficial ownership of 296,250 voting shares in W Corp which constitute less than a 10% equity interest in W Corp and which have a fair market value less than \$15.0M. Even at current publically [REDACTED]

- At the time of closing A Corp will not have "beneficial ownership" of the contingent shares for the following reasons: (i) The contingent shares will be held by W Corp's disbursing agent to be released to A Corp only if D Corp achieves the specified EBITDA levels; (ii) If the EBITDA levels are not satisfied the contingent shares will automatically be returned to W Corp without any compensation to A Corp; (iii) A Corp will not be entitled to transfer or dispose of the shares; (iv) A Corp will not benefit from the appreciation of these shares since they may automatically revert back to W Corp; (v) Voting rights granted will be

DISAGREE -
I THINK THAT
BY VIOLATION OF
VOTING RIGHTS |
RIGHTS TO DIVIDENDS

BEING TRANSFERRED
A CORP HAS TAKEN
BENEFICIAL OWNERSHIP OF THE "CONTINGENT" SHARES.
issue dividends and has indicated that it will continue to do so in the future.

Analysis - A Corp's Acquisition Is For Investment Purposes Only

Pursuant to §18(a)(c)(9) of the Act, A Corp's acquisition of W Corp shares is exempt as an acquisition solely for investment purposes. A Corp's proposed acquisition is one of necessity dictated by the terms of the reorganization plan and merger agreement prepared and negotiated

* (1) - ALTHOUGH THE DISCOUNTING OF THE CONTINGENT SHARES (15% OF CURRENT) MARKET VALUE SEEM A BIT EXTREMELY TO ME, IF IT CAN BE REASONABLY THAT THIS IS A GOOD FAITH DETERMINATION OF THE BOARD, I DON'T THINK WE CAN DISPUTE IT.

LAW OFFICES OF [REDACTED]

Corp's acquisition can only be characterized as that of a "passive investor". A Corp has no intention of participating in the formulation, determination or direction of the basic business [REDACTED] and A Corp cannot directly determine or influence the manner in which W Corp's shares were issued all of the contingent shares, its estimated equity interest in W Corp will approximate only 4%-7% of outstanding shares.

involves the resale of "voice" transmission services to telephone carriers and other entities. A Corp does not provide private/dedicated lines, and in fact could be a potential customer of A Corp with

moving rapidly away from. In fact, based upon annualized revenues from August 1998, A Corp's IP based operations will generate approximately \$35.0M in gross revenue. Of this

Sincerely,

Law Offices of [REDACTED]

AGREE THAT A Corp. can
AVAIL ITSELF OF THE
802.9 EXEMPTION IN THIS
SCENARIO -

[Signature]
9/28/98

(9/28/98)