802.9 ; 7A(c)(9)

[redacted]

May 5, 1999

VIA FACSIMILE

Richard B. Smith, Esq.
Federal Trade Commission
Premerger Notification Office
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Re: Application of Investment Purposes Only Exemption

Dear Dick:

This letter is a follow-up to our phone conversation of March 15, 1999, during [redacted] transaction. The facts outlined below are more detailed, but not materially different, than the facts of the hypothetical transaction that we previously discussed with you. We request confirmation that the FTC Premerger Office would not require an H-S-R filing for the hypothetical transaction described herein. If, after you have any questions or would like additional facts, please call me at your earliest convenience.

FACTS

Company A ("A") and Company B ("B") have entered into an agreement whereby a subsidiary of A ("Sub 1") will provide launch services for a satellite network that currently is being developed by B. [redacted] A will make an equity investment in B. We can assume that both the H-S-R size-of-person and size-of-transaction tests will be satisfied in the proposed equity transaction.

The terms of the equity investment are as follows: A will pay a total of $40 [redacted]

launch service contract between Sub 1 and B, rather than an attempt to influence the

following types of information:

- engineering-type analyses of the launch vehicles being developed by Sub 1
- status reports on the development of Sub 1's launch vehicles and B's satellites to ensure that both are meeting developmental milestones and will be ready for use as of the launch date;
- technical interchange about the launch vehicles being developed by Sub 1
- plans and discussions regarding the proposed schedule for launching the satellites in order to coordinate mutually agreeable launch dates;
- B will receive generic plans about how Sub 1 manages its launch program;
- B will provide Sub 1 with targeting and orbital information so that Sub 1 will know where B wants its satellites located in space.

The information exchanged between Sub 1 and B will relate to the launch services contract. Sub 1 must exchange this type of information with all of its launch customers in

A and B currently are not competitors; however, they may be in the future. One subsidiary of A ("Sub 2") is developing a product that potentially could compete with the satellite network that B is developing. Neither company expects to provide competing services until at least 2002.

In addition to the service agreement and the equity investment, A (or its

ANALYSIS

We believe that the proposed equity transaction is exempt from the requirements of the H-S-R Act under Section 802.9 of the H-S-R rules. Section 802.9 exempts acquisitions

According to Section 801.1(i)(1) of the Statement of Basis and Purpose, the phrase "solely for the purpose of investment" applies so long as a person does not intend to participate in the formulation of the basic business decisions of an issuer. The purpose of this definition is to limit the availability of the exemption to situations in which the acquiring person or holder has no intention of participating in the management of the issuer.

In the Statement of Basis and Purpose, the Commission clarified the phrase "solely

competitor of the issuer; or (b) doing any of the foregoing with respect to any entity directly or indirectly controlling the issuer. When such actions have been taken by a person claiming that voting securities are held or acquired solely for the purpose of investment, the facts and circumstances of each case will be evaluated by the Commission to determine if the exemption applies. The Commission also indicates that merely voting

As discussed above, A (including its subsidiaries) does not intend to [redacted] to propose corporate action for B requiring shareholder approval or to solicit proxies. A's only intention with respect to the shares is to vote them, which is within the realm of a passive investor.

[redacted] should not render the exemption inapplicable. As described above, the information [redacted] is not attempting to exercise control over B's business; rather, A is fulfilling its obligations [redacted]

Given that A and B currently are not competitors – because neither Sub 2 nor B sell the potentially competing product now, and given that A does not intend to be [redacted] equity transaction.

Although not addressed in the Statement of Basis and Purpose, we also would like to confirm that the existence of other business relationships between A and B does not render the investment [redacted] relationships between A and B.

CONCLUSION

Given the above facts, we believe that A's investment of $40 million in B, amounting to approximately 1.7 percent of the outstanding voting securities of B, is exempt as an investment made solely for the purpose of investment. While there may be a

[redacted]

Thank you for your consideration of this matter.

Sincerely yours,

[redacted]

5/10/99 - Advised atty that under present factual [redacted]

802.9 exemption. However, the Premerger Office is [illegible] that the last two paragraphs on page 4 are too broad. If A + B become competitors, then any future stock purchases by A of B may will not be able to qualify for 802.9 treatment (and the 1.7 would need to be counted in holdings of A.) Also, the last paragraph of pg 4 cannot be endorsed by the Premerger Office. [redacted] at the time of any future stock [illegible] 802.9 could