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[REDACTED]

August 17, 1999

VIA COURIER

CONFIDENTIAL TREATMENT

6<sup>th</sup> St. and Pennsylvania Ave., N.W.  
Room 303  
Washington, D.C. 20850

Re: HSR Hypothetical and Analysis

Dear Mr. Smith:

Per your suggestion, I am writing to confirm our multi-party telephone conversation of August 12 and the preliminary conclusion that a proposed acquisition of

non-voting preferred stock into voting common stock will not be reportable under the HSR Act based upon the facts we provided in such conversation. For ease of review, I will set forth the pertinent information as bullet points below.

- \* Company A would acquire between 15 and 20 percent of the aggregate outstanding shares of Company B.
- \* The acquired shares would be non-voting, preferred stock.
- \* The Certificate of Incorporation of Company B would be amended to stock in the event that Company B should complete an initial public offering ("the IPO") of such shares of common stock.
- \* It is the view of legal counsel that:
  1. The transformation of non-voting securities into voting securities is not a potentially reportable "conversion" or previously agreed upon triggering event which is not certain or virtually certain to occur and which may be prevented by circumstances outside of the holder's control.

[REDACTED]

and

2. The key facts for determining whether the potential transformation of this non-voting preferred stock into voting

\_\_\_\_\_ certainly that the IPO will, in fact, occur and (iii) whether the non-voting preferred stock is being issued to Company A because the IPO of shares of Company B's common stock is anticipated by the parties.

\_\_\_\_\_ to voting stock due to the failure to pay a dividend for a specified period of time. In other words, where such a transformation is triggered by an event \_\_\_\_\_ occurrence of which is not due to the holder's control (directly or otherwise), the transformation is not treated as a potentially reportable "conversion" or "acquisition."

\* In this case:

1. The proposed transaction, as described during our phone conversation, has been under discussion and negotiation in excess of seven months.
2. The determination by Company B to take steps initiating the IPO approval process was made within the last three months.

3. Company A played no role in Company B's determination to pursue the IPO.

4. \_\_\_\_\_ the SEC, but has yet to receive any comments on this

\_\_\_\_\_ how many shares of common stock Company B intends to

\_\_\_\_\_ conditions which are presently volatile and unfavorable for similarly situated companies.

5. The decision to issue non-voting preferred stock to Company A was based on a strong desire on Company B's part that Company A not have any ability to influence the corporate affairs of Company B. Company A will not have any right to appoint persons to the Board of Directors of Company B.
6. It is customary corporate finance practice to provide for the mandatory transformation of non-voting preferred stock into shares of voting common stock contemporaneously with the closing of the IPO of shares of common stock.

We would appreciate your further attention to this matter, including review by

\_\_\_\_\_ or this issue; it is sincerely appreciated.

Very truly yours,  
\_\_\_\_\_  
\_\_\_\_\_

*Stella P.O. ... advised that  
no filing was required. The IPO action by Company A  
in the context of items 1 - through 5 --, render this  
the points made on items 1 and 5 --, render this*