[redacted]

September 6, 1988

PRIVILEGED AND CONFIDENTIAL

Wayne Kaplan, Esquire
Premerger Notification Office
Room 315 Headquarters
Federal Trade Commission
Washington, D.C. 20580

Dear Mr. Kaplan:

The purpose of this letter is to determine whether the staff of the Federal Trade Commission concurs in the conclusion that the transaction described below does not generate a reporting obligation under the Hart-Scott Rodino Act (15 U.S.C. § 7A) ("the Act"). You and I discussed this matter on the telephone on Friday, September 2, 1988.

The transaction is essentially a partial leveraged buy-out by management of a subsidiary, the parent of which is receiving a cash dividend and a convertible debenture and is also retaining an equity interest in the firm. At the same time, another company is contributing technology to the firm in return for an equity interest.

Assume that Company A has $100 million or more in sales or assets; that Company B has $10 million or more in sales or assets; that Company C has approximately $1.5 million in cash and no other assets, and has no regularly prepared balance sheet; that Mr. X, the ultimate parent entity of Company C, has $10 million or more in sales or assets; and that Company D has more than $10 million in sales or assets. Company E is a wholly-owned subsidiary of Company-D, has had no sales, and its only asset is technology contributed by its parent, Company D.

The transaction can be summarized as follows: Company A owns 100% of Company B. Certain members of B's management ("the Management Group" or "Group") have signed a letter of intent with A under which they will receive approximately 65% of B's common stock through the merger of their company, Company C, with and into Company B. That merger will occur simultaneously with and conditional upon Company E's merger with and into B. (See below.) Through the merger, Mr. X, who controls C, will receive about 48% of B's common stock. The other 17% of B's common stock (48 + 17 = 65) will be owned in varying amounts by the other individual managers who are shareholders of C. The stock received by members of the Group will be newly issued stock of Company B.

Company D will contribute approximately $1 million worth of technology to its wholly-owned subsidiary, Company E, which will also merge with and into B simultaneously with and conditional upon C's merger with and into B. Company D will receive 32.5% of B's common stock. This stock will also be newly issued.

The Group (65%) and Company D (32.5%) will thus have a combined total of 97.5% of Company B's common stock.

Company A will retain the remaining 2.5% of B's common stock. Shortly before closing, Company A will also receive a $70 million dividend from Company B and a $110 million zero coupon convertible note (convertible into approximately 58% of the common stock of B).*/

There will be two classes of stock in Company B. The Management Group and Company D will hold Class A stock and Company A will hold Class B stock. Holders of Class A stock will have the power to elect 3 of Company B's 6 directors, and holders of Class B will have the power to elect the other 3. There will be 4,320 Class A Shares outstanding, 2880 of which will be held by the Group. Company D will hold the other 1440 shares of Class A Stock. Mr. X will hold 2088 of the 2880 shares held by The Group. Company A will hold all 100 Class B shares.

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*/ If Company A were to convert its debenture into Company B common stock, A would own 62.1%, the Group would own 25.3%, including 18.3% owned by Mr. X, and Company D would own 12.6% of Company B's stock.

By our calculations, under § 801.12 of the Act's regulations, the Group will have 33 1/3 % of Company B's voting securities, Mr. X will have 24.17%, Company C will have 16 2/3%, and Company A will have 50%. (See Attachment A). There are no agreements among the individual members of the Group as to how to vote their shares, nor any such agreement between or among them and Company D.

Under these circumstances, no person is acquiring assets or voting securities of $15 million or more, nor is any person acquiring control of an entity with $25 million or more in sales or assets. It would appear, therefore, that the transaction described above would not generate a reporting obligation on behalf of any person. If you have a contrary view, or any questions about the transaction, please call the undersigned as soon as possible. Thank you.

Very truly yours,

[redacted]

Attachment

Attachment A

Calculation of the Percentage of Voting Securities Held or to be Acquired Under Section 801.12 of the Hart-Scott-Rodino Antitrust Improvements Act

The percentage of voting securities held or to be acquired is determined by the following formula:

$$\frac{\text{The number of votes for directors of the issuer which the holder of a class of voting securities is presently entitled to cast, and as a result of the acquisition, will become entitled to cast}}{\text{The total number of votes for directors of the issuer which presently may be cast by that class, and which will be entitled to be cast by that class after the acquisition}} \times \frac{\text{the number of directors the class is entitled to elect}}{\text{the total number of directors}}$$

Applying the formula to the Management Group:

$$\frac{2880}{4320} \times \frac{3}{6} - \frac{1}{3} \text{ or } 33\ 1/3\%$$

Applying the formula to Mr. X only:

$$\frac{2088}{4320} \times \frac{3}{6} = 24.17\%$$

Applying the formula to Company D:

$$\frac{1440}{4320} \times \frac{3}{6} = \frac{1}{6} \text{ or } 16\ 2/3\%$$

Applying the formula to Company A:

$$\frac{100}{100} \times \frac{3}{6} = \frac{1}{2} \text{ or } 50\%$$