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A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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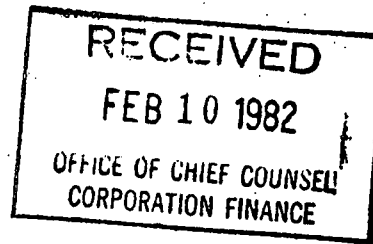
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Securities and Exchange Commission  
500 North Capital Street, N.W.  
Washington, D.C. 20549

ATTENTION: Office of the Chief Counsel  
Division of Corporate Finance

Re: Video, 1982  
Request for Interpretive Opinion

Gentlemen:

This letter is written on behalf of our client, Video, 1982 ("Video"), for the purpose of requesting an interpretive response from the Staff of the Securities and Exchange Commission regarding the compliance with the requirements of Rule 147 and specifically section (c)(2)(i) thereof by Video in a proposed offer and sale of its securities.

## BACKGROUND

Video is a limited partnership proposed to be formed under the California Uniform Limited Partnership Act. It is intended that the partnership will participate in the production and financing of feature-length motion pictures and various types of television programming. The business of the partnership will be conducted through a joint venture for the production and financing of motion pictures and television programming with The Comworld Group, a general partnership ("Comworld").

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Prospectively, limited partnership interests ("Units") will be offered in units of \$5,000, with a minimum required purchase by each investor of One Unit. Such units will be offered exclusively to California residents. The minimum number of units to be offered is 800 and the maximum is 2,000. The offer and sale of such units will be qualified by Permit with the California Commissioner of Corporations. Proceeds from the offering will be held in a bank trust account until the minimum amount is subscribed. If fewer than the minimum number of Units is sold, the offering will be terminated and all funds returned to subscribers. In the event the minimum amount of \$4,000,000 is raised, the Partnership will be formed, will commence operations and may continue to accept subscriptions until the maximum amount is subscribed or until one year after the date of issuance of the Commissioner's permit. It has been proposed that the Units be sold without registration, in reliance on the intrastate exemption contained in Section 3(a)(11) of the Act, and Rule 147 thereunder.

Video's reliance on the intrastate exemption would be based on the following facts:

(1) Video will be a California business entity, formed under the California Uniform Limited Partnership Act. Its principal place of business will be located in Orange, California and all of its books, records and administrative functions will be localized there.

(2) Video proposes to offer and sell solely to residents of the State of California limited partnership interests at \$5,000 per Unit. Substantially all of the proceeds from the sale of the Units will be used to finance the production and filming of motion pictures and television products. Less than 20% of the proceeds from the offering will be used for distribution.

(3) Video Associates, 1982, the general partner of Video, is a California general partnership. The two managing partners of Video Associates, 1982 are Dr. Barton Heuler and Dr. Thomas P. Johnson, both California residents.

(4) As noted above, Video will enter a joint venture agreement with Comworld for the production of the motion picture and television products. Comworld is a

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California general partnership with offices in Utah and California.

Production of films and video products will be centered at Comworld's Hollywood offices. The majority of all filming (with the exception of "location shooting") will occur within California. Actual production work, filming, and editing will be performed in California. Local personnel, both creative and technical, will be utilized wherever possible.

(5) It is contemplated that the joint venture will also enter into an agreement with an affiliate of Comworld for distribution of the films. The distribution affiliate has offices in Utah and Tennessee.

Although both (1) the activities of Video and (2) the actual production of the films will be in California, the films will be distributed nationwide pursuant to an agreement with an affiliate of Comworld. Thus it is possible that the majority of the revenues from the films will be from exhibitions outside of California. The purpose of this inquiry is to ascertain (1) whether the requirements of Rule 147(c)(2)(i) apply to a "new issuer" and (2) if applicable, whether Video will satisfy the revenue requirements even though it is likely that a substantial amount of the revenues may stem from exhibition of the films outside of California.

#### DISCUSSION

Section 3(a)(11) of the Act exempts from the registration requirements of the Act:

"(11) Any security which is a part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and doing business within, or, if a corporation, incorporated by and doing business within, such State or Territory."

Primarily because of the ambiguity of the phrases "persons resident" and "doing business within" the Commission adopted

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Rule 147, to provide "objective standards to facilitate compliance with Section 3(a)(11)." S.E.C. Release No. 33-5450, January 7, 1974. In promulgating the Rule, the Commission reiterated the intent of Congress in creating the exemption:

"Section 3(a)(11) was intended to allow issuers with localized operations to sell securities as part of a plan of local financing. Congress apparently believed that a company whose operations are restricted to one area should be able to raise money from investors in the immediate vicinity without having to register the securities with a federal agency. In theory, the investors would be protected both by their proximity to the issuer and by state regulation. Rule 147 reflects this Congressional intent and is limited in its application to transactions where state regulation will be most effective. The Commission has consistently taken the position that the exemption applies only to local financing provided by local investors for local companies." S.E.C. Release No. 33-5450, January 7, 1974.

The objective criteria for an issuer to be "doing business within" a state are contained in subparagraph (c)(2) of Rule 147. Our principal inquiry relates to subparagraph (c)(2)(i).

That subparagraph provides that:

"(2) The issuer shall be deemed to be doing business with a state or territory if:

(i) the issuer derived at least 80% of its gross revenues and those of its subsidiaries on a consolidated basis

(A) for its most recent fiscal year, if the first offer of any part of the issue is made

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during the first six months of the issuer's current fiscal year; or

(B) for the first six months of its current fiscal year or during the twelve month fiscal period ending with such six month period, if the first offer of any part of the issue is made during the last six months of the issuer's current fiscal year

from the operation of a business or of real property located in or from the rendering of services within such state or territory; provided, however, that this provision does not apply to any issuer which has not had gross revenues in excess of \$5,000 from the sale of products or services or other conduct of its business for its most recent twelve month fiscal period; . . ." (Emphasis added) 17 C.F.R. 230.147(c).

Initially, the question is whether Video will meet the doing business test, assuming compliance with (c)(2)(ii), (iii) and (iv), even though it may not derive 80% of its revenue from California because of the contemplated nationwide distribution of the films.

As indicated in prior interpretive letters, the revenue test contained in subsection (c)(2)(i) is not a mechanical and purely numeric exercise, and in considering compliance with the doing business requirement the staff has considered various other factors which demonstrate that the issuer's nexus to the state, in question, is substantial. Thus, where an issuer has been able to show substantial local activity from which out-of-state revenue was derived, the requirements of Rule 147(c)(2)(i) have been held satisfied. American Computer Communications Company, Inc., S.E.C. Interpretive Opinion, February 23, 1976. Northwest Medical Resources, Inc., S.E.C. Interpretive Opinion, February 23, 1976. Medix of Wisconsin, Inc., S.E.C. Interpretive Opinion,

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June 17, 1976. Eastern Leasing Corporation, S.E.C., Interpretive Opinion, July 12, 1979.

In American Computer, *supra*, the Commission opined that the requirements of Rule 147(c)(2) would be met, despite the fact that 100% of the issuer's gross revenues were from out-of-state purchasers. Both counsel's letter of inquiry and the Commission's reply focused on the substantial income producing activity within the state.

Similarly, in Northwest Medical, *supra*, the Commission again opined that Rule 147(c)(2)(i) could be met by an issuer who derived more than 20% of its revenue from out-of-state customers. In Northwest, a Washington supplier of medical and surgical supplies anticipated revenues from an Oregon sales office in excess of 20%. In evaluating the availability of the intrastate exemption, the Commission stated as follows:

"For purposes of determining whether at least 80 per cent of the issuer's gross revenues and those of its subsidiaries on a consolidated basis were derived from the operation of a business or property located in or rendering services in a state, it is our view that sales made by a branch operation located outside the issuer's state should be attributable to the state in which the operation generating the sales is located and not the state of residence of the purchaser or the state in which the sale was made."

(Emphasis added.)

This emphasis on the locus of production rather than that of distribution was reiterated in Eastern Leasing Corporation, S.E.C. Interpretive Opinion, April 20, 1979. Eastern was a Pennsylvania corporation engaged in the purchase and leasing of commercial refrigeration equipment. Although Eastern's sole place of business was in Pennsylvania, its customers were located throughout the U. S. and Canada. Eastern obtained customers through mass mailings to dealers throughout the U. S., who would in turn refer prospective lessees to Eastern. As a result of this marketing technique, approximately 64 percent of Eastern's outstanding leases and

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65 percent of its lease receivables were held by out-of-state customers. Eastern requested an interpretive opinion as to whether these revenues could qualify as revenues "derived from operation of a business" within the state. The Commission stated that the requirements of Rule 147 had been met, "since its assets appear to be the lease receivables and since its revenues are derived therefrom." Here again the Commission emphasized the originating, producing location from which revenues were derived, rather than the locus of the purchaser or of the sale.

This emphasis on the producing location rather than the marketing location was also noted in the Commission's Release No. 33-5450, announcing the adoption of Rule 147. In Example 1 thereof the Commission postulated an issuer with intrastate production and interstate distribution, as follows:

"Example 1. X corporation is incorporated in State A and has its only warehouse, only manufacturing plant and only office in that state. X's only business is selling products throughout the United States and Canada through mail order catalogs. X annually mails catalogs and order forms from its office to residents of most states and several provinces of Canada. All orders are filled at and products shipped from X's warehouse to customers throughout the United States and Canada. All the products shipped are manufactured by X at its plant in State A. These activities are X's sole source of revenues."

S.E.C. Release 33-5450, January 7, 1974.

In the instant case, Video having expended substantially all of the proceeds of the offering locally, resembles a manufacturer that uses proceeds to construct a plant, purchase equipment and hire local employees. The nexus with California is established.

It will be formed under California law and have its base of operations in that state. Motion pictures and television productions will, insofar as practicable, be

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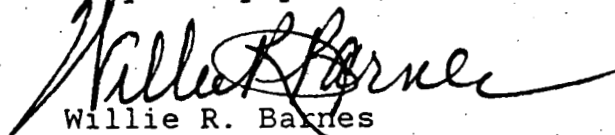
filmed in California. The actual technical and production work (i.e., editing) will occur in California. The films will be distributed by an affiliate of Comworld. In this respect, the interstate distribution of the films by a non-California affiliate of Comworld, is analogous to the sale of goods to non-resident wholesalers by a manufacturer who uses proceeds from an exempted intrastate offering to produce goods within its state boundaries.

Even if it were concluded that Video fails to comply with subsection (c)(2)(i), the facts still demonstrate that Video will satisfy the "doing business requirement." In this connection we request your interpretive response that the "80 revenue test" does not apply to this issuer. As set forth in the Rule, this provision "does not apply to any issuer which has not had gross revenues in excess of \$5,000 from the sale of products or services or other conduct of its business for its most recent twelve-month fiscal period." The literal language of the above referenced quoted portion of the Rule would preclude application of the "80% revenue" test to a new issuer. This interpretation appears consistent with prior Staff interpretations. There, where an issuer is new and has had no past operations, or where the issuer has not had gross revenues in excess of \$5,000, the provisions of subparagraph (c)(2)(i) would not apply. Film Fund Ore. Ltd. I, No Action Letter, March 4, 1977. This conclusion should not be affected by the fact that after Video has raised the minimum offering (\$4,000,000), it may continue to sell Units until it has raised the maximum (\$10,000,000). Such additional Units are part of the same offering.

From these facts and proposed method of conducting business, we are of the opinion that the requirements of subsection (c)(2)(i) are not applicable to Video, or if they were, that Video satisfies these requirements.

Should you require any additional information to respond to this request, please do not hesitate to contact the undersigned at (213) 556-5562, collect.

Very truly yours,



Willie R. Barnes  
of Manatt, Phelps,  
Rothenberg & Tunney