

802.4
802.5

Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, January 03, 2012 4:01 PM
To: Verne, B. Michael
Subject: RE: Exemption Pursuant to Rule 802.5

January 3, 2012

Mr. Michael Verne
Premerger Notification Office ("PNO")
Federal Trade Commission, Room 303
Washington, DC 20580

Dear Mr. Verne:

We are writing to confirm our telephone conversation concerning whether a premerger notification filing under the Hart-Scott-Rodino Act ("Act") would be necessary for a proposed transaction ("Transaction").

Pursuant to the Transaction, Buyer will acquire all of the outstanding equity interests of certain subsidiaries of Seller ("Target Subsidiaries"). The vast majority of the assets of the Target Subsidiaries are comprised of certain rights in ground leases ("Ground Leases") relating to real property ("Premises") that supports telecommunications towers or directly hosts telecommunications antennae. Specifically, pursuant to various agreements, each Ground Lease was sold and assigned to the Target Subsidiaries, subject to the obligation of the assigning landlord to continue to perform certain obligations with respect to the Premises. In essence, the rights and benefits of the Ground Leases (including the right to receive all rents and income and to enforce lessor's rights and remedies) ("Ground Lease Rights") were transferred to and are held by the Target Subsidiaries, while the obligations and burdens of the ground leases remain with the assigning landlord.

Pursuant to an informal interpretation dated July 28, 2011 the PNO staff indicates that a stock transaction to acquire a business whose assets consist of ground easements, ground leases and, in some cases, fee simple title to real estate (such as land, rooftops and other structures) that either supports telecommunications towers or directly hosts telecommunications antennae is exempt under Rule 802.5. The July 28, 2011 informal interpretation also indicates that the acquisition of ground easements and leases (as opposed to fee simple title) would be exempt under Rule 802.5 where a transfer of the real estate underlying those easements and leases would have been exempt under Rule 802.5.

Pursuant to the Ground Leases, the Premises are currently rented or held for rent to third parties. Following Buyer's acquisition of the Ground Lease Rights, the Premises will continue to be leased to third-party wireless providers or to third-party tower-operators who, in turn, will lease space on the towers to the wireless service providers. Consequently, since the Premises underlying the Ground Lease Rights are currently held for rent and will continue be rented out to third parties, we conclude that the Ground Lease Rights and the Transaction will be exempt under Rule 802.5.

As a result of the Transaction, Buyer would also acquire certain other assets of Target Subsidiaries which may or may not be exempt under the Act. The fair market value of such assets is expected to be less than \$66 million.

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