

Verne, B. Michael

802.5

From: [REDACTED]  
Sent: Thursday, April 02, 2009 12:54 PM  
To: Verne, B. Michael  
Subject: HSR question

Mike:

I have a question about the application of 802.5 to the acquisition of a Company that designs, builds, operates and manages what is known as a distributed antenna system (DAS). The Company attaches radio-frequency equipment to existing rights of way infrastructure, such as utility poles and street lights and then connects these sites by high capacity fiber optic cable to various wireless carrier networks. Wireless carriers enter into long term contracts with the Company to use the DAS sites. The Company has a legally enforceable right under the Telecommunications Act to attach fiber and equipment to DAS sites in a fair, reasonable, and non-discriminatory manner in over 30 states. The Company does not own real estate but its equipment is attached to structures is affixed to real property and the DAS sites are leased to third parties. I have not yet determined whether the Company is required to pay a lease or rental fee to the communities that own the rights of way on which the DAS sites are located.

The question is whether the exemption 802.5 applies. Investment rental property is defined a "real property that will not be rented to entities included within the acquiring person ..." The purchaser in this transaction is an owner and operator of communication towers and the space on these towers is leased to third party wireless carriers. The DAS system that the Acquired Company owns is leased to third parties and the acquiring person intends to continue to lease all of the DAS sites to third party wireless carriers. The question is whether the DAS assets qualify as real property for purposes of Sec. 802.5.

In interpretation 0505007, a somewhat similar question was asked regarding the application of 802.5 to in-building antennae systems and rooftop antennae. The writer indicated that the PNO had advised that in-building antennae systems qualified as real property because the business is similar in nature to the telecommunications tower business. The interpretation indicated that the PNO agreed with the writer's conclusions. In light of this interpretation, it does not seem like a stretch to conclude DAS sites that are affixed to infrastructure on existing rights of way qualify as real property for purposes of 802.5. Do you agree?

John

AGREE -  
BM  
4/2/09



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