

802.5

June 28, 2005

BY COURIER

Michael Verne, Esq.
Premerger Notification Office
Federal Trade Commission
Room H-314
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Exemption Applicable to the Acquisition of
Communications Towers Pursuant to Section 802.5

Dear Mike:

This letter confirms our telephone conversation on June 22, 2005 regarding the applicability of the exemption set out in Section 802.5, the acquisition of investment rental property assets, to the acquisition of communications towers and related real property. As we discussed, Company A, the acquiring person, currently owns and manages a number of communications towers. Company A is engaged primarily in the business of leasing access to its towers to unrelated third parties – primarily wireless communications providers. These unrelated third parties lease space as tenants on Company A's towers for the purpose of installing equipment to facilitate wireless communications, including cellular, paging, and wireless e-mail and data transmission. Reference to a lease is to a lease, license or substantially similar economic arrangement.

Company A is not a vertically integrated wireless communications provider. Substantially all of the space on the towers that can be used to mount communications equipment is leased or available for lease to third parties. Company B, the acquired entity, also is engaged primarily in the business of leasing access to its towers to unrelated third parties. Company A will purchase from Company B a number of communications towers and the related real property on which the towers are situated. Company A will acquire these assets from Company B with the intent to continue to manage the towers and lease the space on the towers to unrelated third parties.

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Rule 802.5 exempts acquisitions of investment rental property assets which "will not be rented to entities included within the acquiring person except for the sole purpose of maintaining, managing or supervising the operation of the real property, and will be held strictly for rental or investment purposes." You advised that the 802.5 exemption applies to the portions of the communications towers that are not used by the parties for their own use or business purposes. In this case, substantially all of the usable space on the Company A and Company B towers is either rented or available for rent to unrelated third parties. Furthermore, Company A intends to continue leasing the space on Company's B's towers to unrelated third parties after the transaction closes. You confirmed that the value of the tower assets, and related real estate, that is either rented or held available for rent to unrelated third parties is exempt under Section 802.5. Company A has confirmed that after exempting the value of those assets the total value of the transaction falls far below \$53.1 million. Thus, the transaction is not reportable under the HSR Act.

Thank you very much for your assistance with this matter. Please contact me as soon as possible in the event that your understanding of our telephone discussion varies in any way from mine.

Sincerely yours,

AGAVE-
B. Michael
6/28/05