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801.1(b)
802.30

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May 4, 2006

2006 MAY -4 AM 10:44
FEDERAL TRADE COMMISSION
PREMERGER NOTIFICATION

Via Telecopy – 202-326-2624

Federal Trade Commission
Premerger Notification Office
Bureau of Competition
(Attn: Mr. Michael Verne)
6th & Pennsylvania Avenue, N.W., Room 303
Washington, D.C. 20580

Re: Determination of the "Acquiring Person" in the transfer of assets to an Exchange Accommodation Titleholder

Dear Mr. Verne:

On behalf of a client of my law firm that plans to participate in a deferred exchange under Section 1031 of the Internal Revenue Code (the "Code"), we are writing to confirm that the staff of the Premerger Notification Office of the Federal Trade Commission ("FTC") concurs with our analysis regarding the determination of the "acquiring person" in the below-described transaction.

This letter pertains to the transaction that you and I discussed in our telephone call on Tuesday. The facts, as generally described during our telephone call but with some additional details, such as regarding size-of-person and the specific revenue procedure adopted by the Internal Revenue Service ("IRS"), are as follows:

Description of the Factual Circumstances

A. The Parties: The following parties are participating in the transaction:

"Company A" is an ultimate parent entity, owns several broadcasting stations licensed by the Federal Communications Commission (the "FCC") and has assets in excess of $113.4 million.

The "EAT" is a newly formed limited liability company, wholly owned by "Company B," which is in the business of serving as an "Exchange Accommodation Titleholder" under the IRS's rules and policies. Parent B," a natural person who is Company B's ultimate parent, has assets in excess of $11.3 million.

B. The Pending Transaction:

Company A has contracted to acquire a broadcasting station (the "Replacement Station") owned by a third party for a purchase price in excess of $56.7 million, which acquisition will be subject to premerger clearance. Company A wishes to effect a "like-kind exchange" in accordance with IRS rules and policies by first disposing of a currently owned station (the "Relinquished Station"), which has a value in excess of $56.7 million.

Section 1031 of the Code generally permits a taxpayer to defer tax on the disposition of, in this instance, the Relinquished Station if it thereafter acquires a Replacement Station of equal or greater value. If the taxpayer has entered into a contract to acquire the Replacement Station but has not yet contracted for the disposition of the Relinquished Station, the IRS will permit the taxpayer to transfer the Relinquished Station to an EAT to facilitate the like-kind exchange. The taxpayer then acquires the Replacement Station to complete the tax-deferred like-kind exchange. Thereafter, the taxpayer negotiates for the sale of the Relinquished Station by the EAT to an unrelated, independent third party.

If the relationship between the taxpayer and the EAT is structured pursuant to a safe harbor established by the Internal Revenue Service in IRS Revenue Procedure 2000-37, the EAT will be treated separately for federal income tax purposes, and the taxpayer will be permitted like-kind exchange treatment. This favorable treatment will apply even though the EAT may be the taxpayer's agent for accounting, regulatory, and state, local, or foreign tax purposes.

Summary of Transaction Steps

Set forth below is an outline of the steps Company A will take to complete the exchange, consistent with the rules and regulations of the IRS and the FCC.

1. Prior to the closing of the acquisition of the Replacement Station, Company A and the EAT will enter into an "EAT Sale Contract," providing for the transfer of title to the Relinquished Station by Company A to the EAT, subject to FCC consent to the assignment of the FCC licenses. The purchase price for the Relinquished Station will be set by Company A.

2. Company A and the EAT will also enter into an agency contract that will contain the following provisions:

   (a) Company A will loan the EAT the purchase price for the Relinquished Station on a nonrecourse basis other than against the assets of such station. The loan will be evidenced by a promissory note to be repaid by the EAT when the Relinquished Station is sold to a third party – with the amount due on the promissory note being adjusted to equal the net sales proceeds received by the EAT on such sale.

(b) Company A will undertake to find a buyer for the Relinquished Station and to negotiate an asset sale contract for its sale. The EAT will agree to sell the Relinquished Station pursuant to the terms of the asset sale contract.

(c) Until the Relinquished Station is sold, Company A will continue to operate the station and receive its revenues, pay its expenses, and bear the risk of loss. The EAT only receives a set fee for its services.

(d) If the Relinquished Station has not been sold to a third party within 180 days, then the EAT has the right to require Company A to repurchase the station, and Company A has the right to repurchase it. The price to be paid upon such repurchase will be the unpaid balance of the promissory note given by the EAT to Company A.

(e) The EAT will act as Company A's agent for all purposes other than federal income tax purposes. Company A will indemnify the EAT and hold it harmless against all losses that it may incur while it holds the Relinquished Station.

Application of the HSR Act

During our telephone conversation, we discussed the above transaction and how to determine the acquiring person for purposes of the application of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"). Based upon our discussion, the acquiring person of the Relinquished Assets would be determined in accordance with the following analysis:

Control. §801.1(b) of the FTC's rules provides in part that "The term control (as used in the terms control(s), controlling, controlled by and under common control with) means:

(1) Either. (i) Holding 50 percent or more of the outstanding voting securities of an issuer or

(ii) In the case of an unincorporated entity, having the right to 50 percent or more of the profits of the entity, or having the right in the event of dissolution to 50 percent or more of the assets of the entity; or ..."

The EAT is an unincorporated entity, the only asset of which will be the Relinquished Station. Throughout the duration of the EAT's agency, Company A shall be entitled to all of the cash flow and profits of the Relinquished Station, and bear all the risks with respect to the station's operations. Company B, as the EAT's owner, will only be entitled to a fee for the EAT's services as Company A's agent in connection with the transaction. In the event of any dissolution of the EAT (which would be in violation of the EAT's agency agreement with Company A), Company A would have recourse to the assets of the Relinquished Station in satisfaction of amounts due under the EAT's promissory note . Company B would not be entitled to the assets of the Relinquished Station.

Company A will (i) provide a loan to the EAT to acquire the Relinquished Station, (ii) retain the benefits and burdens of station operation throughout the duration of EAT's agency, and (iii) have the right to reacquire the Relinquished Station if it does not complete the negotiation of an asset sale contract for the sale of the Relinquished Station to a third party.

Based on the facts and the foregoing analysis, Company A would be both the "acquired person" and the "acquiring person" in its transfer of the Relinquished Station to the EAT. Furthermore, because under no event does Company B "control" the EAT as contemplated by §801.1(b)(1)(ii), neither Company B nor Parent B will be an acquiring person.

Intraperson Transaction. §802.30(a) of the FTC's rules provides in pertinent part that "An acquisition . . . in which the acquiring and at least one of the acquired persons are, the same person by reason of §801.1(b)(1) of this chapter . . . is exempt from the requirements of the Act. Consequently, the transfer of the Relinquished Station to the EAT, in which Company A would be both the "acquired person" and the "acquiring person," would be exempt.

As we discussed, in any sale by the EAT of the Relinquished Station to a third party, Company A would be the "acquired person." Consequently, its size of person (in excess of $113.4 million) would apply in the determination of filing requirements under the HSR Act.

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If this letter in any way misstates the substance of our conversation or the views of the Premerger Notification Office, please let me know at your earliest convenience. Unless I hear from you to the contrary, we, as counsel to Company A, will continue to advise our client that they may rely on the conclusions set forth herein. Thank you for your assistance in this matter.

Very truly yours,

[redacted]

AGREE -
B Michael
5/4/06