802.5

Verne, B. Michael

From: [redacted]
Sent: Thursday, July 28, 2011 11:23 AM
To: Verne, B. Michael
Cc: [redacted]
Subject: [redacted] 802.5 for Acquisitions of Investment Rental Property

Dear Mike:

This email is to confirm the conclusion of myself and [redacted] that a transaction to which our clients may be parties would not be reportable. The transaction is a stock deal, and you should assume that it exceeds the size-of-transaction and size-of-parties thresholds.

SUMMARY OF TRANSACTION

As a result of the transaction, the Buyer would acquire a business whose assets consist primarily of currently-existing 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. The Seller currently leases this real property to third parties -- either (i) telecommunications tower owners (which in turn lease space on the towers to wireless service providers such as AT&T, T-Mobile, Verizon Wireless, and others, for their antennae) or (ii) wireless service providers where no tower is involved (e.g., rooftops or other structures).

The Buyer owns and operates telecommunication towers. The Seller leases most of its tower sites to tower operators other than the Buyer. The Seller does, however, lease a small number of its tower sites to Buyer. Buyer, in turn, essentially re-leases the Seller's real property (space on the tower) to third-party wireless service providers. After the transaction, the Buyer will acquire rights to the underlying real property and likely will cancel the intermediate lease between itself and what would become its controlled entity, leaving in place the leases with the third-party wireless service providers.

GENERAL APPLICATION OF RULE 802.5

Rule 802.5 exempts from HSR reporting the acquisition of real property assets that 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 solely for rental or investment purposes. We understand that cell phone towers and the land beneath them are considered to be real property by the PNO for purposes of the Rule 802.5 exemption. See, e.g., Informal Staff Opinion 0904001 (dated Apr. 2, 2009) (towers); Informal Staff Opinion 0608007 (dated Aug. 10, 2006) (towers and underlying real estate); Informal Staff Opinion 9903010 (dated Mar. 19, 1999) (same, including ground equipment supporting tower operation). We also understand from prior conversations with PNO staff 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.

SPECIFIC APPLICATION OF RULE 802.5 TO THIS TRANSACTION (THROUGH RULE 802.4)

The real property being acquired by the Buyer in this transaction (ground easements, ground leases, and fee simple title) is currently rented or held for rent to third parties. The Buyer intends to lease the real estate either to third-party wireless service providers or to third-party tower operators who, in turn, will lease space on the towers to the wireless service providers. Consequently, since the real property assets to be acquired will be rented out to third parties not included within the Buyer, we concluded that the transaction would be exempt under Rule 802.5.

The fact that the Buyer currently leases tower sites from the Seller should not affect the applicability of the exemption. After the transaction, these leases will be between controlled entities of the Buyer and may be cancelled, leaving in place the leases with the third-party wireless service providers for space on the towers. As such, the real property to be acquired should qualify as investment rental property under Rule 802.5.

CERTAIN NON-EXEMPT ASSETS

As a result of the transaction, the Buyer would also acquire certain non-exempt assets. The Buyer's Board of Directors (or its designee) will do a fair market valuation of those non-exempt assets, but we expect that FMV to come in at less than $66 million.

Please let me know by return email if you agree with our analysis. We are happy to discuss the transaction with you by phone if you need more information.

Thank you in advance.

AGREE
7/28/11

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