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March 19, 1999

Richard B. Smith
Deputy Assistant Director
Federal Trade Commission
Premerger Notification Office
Bureau of Competition, Rm 303
600 Pennsylvania Ave., NW
Washington, DC 20580

Dear Mr. Smith:

Last week, we discussed the acquisition of wireless communications tower sites by a client of ours. Following acquisition, the client leases access to the towers to unrelated third parties. In our discussion, you advised me that such acquisitions are exempt from the pre-merger notification requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act"). I am writing to confirm our discussion.

Communications towers are primary infrastructure components for wireless communications services such as cellular, paging, personal communications services, Specialized Mobile Radio, wireless data transmission and radio and television broadcasting.

Wireless communications companies are tenants on communications towers. They require specialized wireless transmission networks in order to provide service to their customers. These tenant networks are configured with communications towers to meet the coverage requirements of the particular carrier and includes transmission equipment owned by the tenants such as antennae, transmitters and receivers placed at various locations throughout the covered area. Communications tower sites, are critical to the operation of wireless communications networks and include towers, rooftops, buildings and other structures upon which transmission equipment can be placed. The structures (towers, rooftops, etc.) are affixed to land.

A typical tower site consists of a compound enclosing the tower and an equipment shelter which houses a variety of tenant-owned transmitting, receiving and switching equipment. There are

three types of towers (all of which are affixed in some fashion to land): (1) guyed; (2) self-supporting lattice; and (3) self-supporting monopole. In addition, as noted, rooftops are used.

As an independent tower owner, our client rents tower space to many tower users, including wireless communications firms. Thus, a single tower may have space rented to several unrelated communications firms. Tower lessors focus on owning and managing towers with multiple lessees. Lessees are generally responsible for the installation of their own equipment and the incremental utility costs associated with that equipment. Our client does not have any ownership interest in the tower tenant's equipment. It only rents space on the tower to its tenants. Each tenant affixes its own transmission equipment to a tower for it's use during the lease term.

The client is qualified as a Real Estate Investment Trust ("REIT") under Sections 856-860 of the Internal Revenue Code, operates as a REIT and intends to do so for the foreseeable future.

You and I discussed whether acquisitions of communications tower sites (including the towers located thereon) by our client for rent to unrelated third parties are exempt from the requirements of the Act. Because communications towers are anchored or affixed to land, we agreed that they should be classified as real property. For this reason, they should not be treated as being acquired in a separate transaction from the land to which they are affixed.

We concluded that such acquisitions should be exempt as acquisitions of realty in the ordinary course of business. You pointed out that under the ordinary course of business exemption, notifications are not required for acquisitions of realty made by REITs . This is because REITs acquire real estate in the ordinary course of their business, the fiduciary nature of their investment activities and the restrictions imposed upon REITs by the IRS code.

A broader basis for exempting acquisitions by our client is Rule 802.5 which is not limited to REITs. Current Rule 802.5 exempts[1] 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

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[1] Such acquisitions in certain circumstances may also be exempt under Rule 802.2(a) (new facilities); Rule 802.2(b) (used facilities); or Rule 802.2(c) (unproductive real property).

strictly for rental or investment purposes." This rule does not require that the acquirer be a REIT provided it has the required rental or investment purpose in making the acquisition. Although our client is a REIT, it acquires and uses its properties solely for such rental or investment purposes. Thus, the Rule 802.5 exemption would be available to it even if it were not a REIT provided it has the required investment intent at the time of acquisition.

We would appreciate your confirming that so long as our client qualifies and operates as a REIT, its acquisition of communications towers qualifies as the acquisition of realty in the ordinary course of business. In addition, we would like your confirmation that its activities are exempt under Rule 802.5 whether it is a REIT or not. You may do so by signing and returning a copy of this letter as provided below.

We appreciate very much your taking time to discuss these issues with us and your attention to this letter.

Sincerely,

[redacted]

Richard B. Smith

March , 1999 3/25/99 Talked to writer. He had done research on 802.5. D advised that our reading of 802.5 required that the realty is rented or held for rent by the selling person. We don't require the intention of the buyer (which might change after purchase). [redacted] however, the SRP disposition in last two paragraphs before II. AGGREGATION RULES, makes clear that ~~it~~ SRP ~~is~~ notifications for REIT's purchase of realty (as here) are not required

RB Smith