

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Telephone Number:

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Date:

August 16, 2011

Legend

Taxpayer =

Operating Lessee =

Operating Business Lessee =

Owner =

Entity X =

Property =

Building =

Site A =

Site B =

State A =

State B =

State C =

Type W Entity =
Type X Entity =
Type Y Entity =
Appraiser =
Date 1 =
Date 2 =
v =
w =
x =
y =
z =
City =
Area =
Concession A =
Concession B =

Dear :

This is in response to your letters dated March 14, 2011 and July 29, 2011, regarding (i) the treatment of rental income that Taxpayer will receive from its taxable real estate investment trust subsidiary (“TRS”) for the lease of Property under section 856(d) of the Internal Revenue Code of 1986 (the “Code”); (ii) the treatment of amounts that Taxpayer will receive under license agreements with vendors who operate certain concession stands under section 856(d); and (iii) the treatment of amounts that Taxpayer will receive from third-party licensees for the use of space on a rooftop broadcasting tower under section 856(d).

FACTS

I. Description of Taxpayer

Taxpayer is a corporation organized under the laws of State B and will elect to be taxed as a real estate investment trust ("REIT") under section 856(d). Taxpayer will file Federal income tax returns and use an accrual method of accounting on a calendar year basis for Federal income tax purposes. Taxpayer will hold substantially all of its assets and conduct substantially all of its activities through an interest in a to-be-formed Type Y Entity ("Operating Partnership") organized under the laws of State C. Through and after a series of transactions expected to be undertaken to effect certain acquisitions, described below as the "Roll-Up Transaction," Operating Partnership will be treated as a Type X Entity.

Owner is a Type W Entity organized under the laws of State A that is treated as a Type X Entity for Federal income tax purposes. Operating Lessee is Type W Entity organized under the laws of State A that is treated as a Type X Entity for Federal income tax purposes. Operating Business Lessee is a State A Type W Entity which commenced business on Date 1. Operating Business Lessee is currently owned 99 percent by Operating Lessee and 1 percent by Entity X. Following the Roll-Up Transaction, Operating Business Lessee intends to elect to be treated as a corporation and to jointly elect with Taxpayer to be treated as a TRS of Taxpayer.

II. Description of Current Operations

Owner currently owns Building and the land thereunder. Building is a y-story Class A multi-tenant office property containing approximately w rentable square feet, located in Area. Owner subleases Building to Operating Lessee, which in turn subleases space in Building to various tenants. The tenants of Operating Lessee, other than Operating Business Lessee, are third parties that are unrelated to Operating Lessee or Owner for purposes of section 856(d)(2)(B).

A. Rental Income from the Lease

Property consists of Site A of Building, Site B, and interior space of Building. Operating Lessee currently leases "Leased Property Space," a portion of Property that excludes Vendor Space (defined below) to Operating Business Lessee under a lease entered into as of Date 1 (the "Lease"). Operating Lessee also licenses space to vendors who operate concession stands at Property ("Vendor Space"). Operating Business Lessee grants the general public entrance to Property for an admission fee.

The Lease has a term of x years. Under the Lease, Operating Business Lessee pays Operating Lessee an amount of fixed base rent per annum plus an allowance for

amortized improvements. In addition, Operating Business Lessee pays additional annual rent that is equal to certain percentages of Operating Business Lessee's gross receipts from the operation of Property ("percentage rent"). In subsequent years after the first Lease term, percentage rent will be increased by a specified cost-of-living percentage. The Lease requires Operating Business Lessee to pay its proportionate share of certain of Operating Lessee's operating expenses and real property taxes and to pay a charge for submetered electricity provided by Operating Lessee.

Under the Lease, Operating Business Lessee has the right to exclusive possession of Leased Property Space. Operating Business Lessee is responsible for the cost of the day-to-day maintenance of the Leased Property Space (excluding certain capital expenditures). Operating Business Lessee also bears other costs related to the operation of Property. As a result, Operating Business Lessee experiences the benefits and burdens of any decreases or increases in the cost of operating Property. Taxpayer represents that the fair market value of any personal property leased to Operating Business Lessee under the Lease constitutes less than 15 percent of the fair market value of all property leased to Operating Business Lessee under the Lease.

Site A and Site B, which form the principal parts of Property, are unique spaces within Building. Tenants of Building (other than Operating Business Lessee) generally use their leased space as office space. Taxpayer represents that Property is specially designed for its current use, and it would not be appropriate for use as an office.

. The location of Property in Building makes Property difficult to compare to other businesses either in the City metropolitan area or throughout the United States.

B. Concession License Income

Operating Lessee has entered into certain license agreements (the "Concession Licenses") with two unrelated third parties (the "Concession A Licensee" and the "Concession B Licensee," together, the "Concession Licensees") granting Concession Licensees the right to operate concession stands within Vendor Space. Concession Licensees operate shops on certain floors of Building and a Concession B business. Each Concession License also grants to Concession A Licensee use of certain storage spaces in other parts of Building.

Each Concession License has a term of at least \geq years. Under the Concession Licenses, Concession Licensees are required to operate their respective concessions in areas designated in their licenses. However, Operating Lessee has the right, in the case of Concession B Licensee, to relocate the concession areas in connection with renovating or refurbishing Property. Under the Concession Licenses, Concession

Licensees are required to pay Operating Lessee fixed annual license fees, plus additional license fees based upon gross sales by the Concession Licensee or the number of tickets sold to visitors to Property. Concession B Licensee is also a tenant of Building under a separate lease, under which it leases office space within Building from Operating Lessee.

C. Broadcast License Income

Building includes an antenna supporting structure erected on the top of Building (the "Tower"). The Tower is an extension of Building that is permanently attached to Building . Operating Lessee has entered into a number of license agreements (the "Tower Broadcast Licenses") granting tenants (the "Tower Broadcast Licensees") the use of the Tower to carry on broadcast transmitting and receiving activity for similar telecommunications and microwave communications activities.

. Operating Lessee generally enters into a Tower Broadcast License in connection with the lease of additional space within the Building, which the Tower Broadcast Licensees generally use as a transmitter room to transmit the signal that will be broadcast. The leases of the transmitter room space generally have the same terms as the leases of office space within Building. The Tower Broadcast Licensees are required to install in the transmitter rooms any broadcasting equipment that they require, and they retain ownership of any such equipment. The Tower Broadcast Licenses generally grant the Tower Broadcast Licensees the right to use the space on the Tower to erect antennae and similar equipment, generally for a term of y years. Under each Tower Broadcast License, the Tower Broadcast Licensee is required to install and remove its antennae equipment and to perform all related work. The Tower Broadcast Licenses similarly provide that the antennae and other equipment installed by the Tower Broadcast Licensee remain the property of the Tower Broadcast Licensee during and after the term of the expiration of the Tower Broadcast License (except as discussed below). The Tower Broadcast Licensees' equipment is subject to inspection by Operating Lessee and its agents. The Tower Broadcast Licenses generally specify the broadcasting channels that can be used by the Tower Broadcast Licensees, and the Tower Broadcast Licensees are also generally subject to certain restrictions relating to interference with other Tower Broadcast Licensees.

Under each Tower Broadcast License, the Tower Broadcast Licensee generally is required to pay fixed annual license fees for the right to use space on the Tower, increased by annual cost-of-living adjustments. Generally, Operating Lessee is responsible under the Tower Broadcast Licenses only for furnishing to the Tower Broadcast Licensees elevator services, trash removal, and similar customary services. Operating Lessee may also perform certain other activities, such as maintenance and repairs of the Tower. Operating Lessee also provides power to the Tower Broadcast Licensees on a submetered basis, and the Tower Broadcast Licensees are required to make additional payments for such power. Additionally, Operating Lessee has

established a monitoring system and certain other procedures to comply with Federal Communications Commission (“FCC”) regulations regarding radio frequency radiation (“RF Monitoring”). In connection with RF Monitoring, Operating Lessee has established a monitoring station that monitors the level of radio frequency radiation emitted by the antennae on the Tower and has designated areas of Building that maintain safe or unsafe levels of radio frequency radiation. Operating Lessee has also adopted a procedure under which its employees shut down antennae under certain circumstances. Operating Lessee maintains the RF Monitoring primarily for its own benefit, to comply with FCC regulations, and to maintain the safety of Property and other spaces in Building. The Tower Broadcast Licensees maintain similar radio frequency monitoring stations and procedures with respect to their respective antennae.

In addition to the Tower Broadcast Licenses, Operating Lessee has entered into certain additional licenses (the “Antennae Broadcast Licenses”) with respect to the Tower. The Antennae Broadcast Licenses are similar to the Tower Broadcast Licenses described above, except that, in addition to granting the licensees (the “Antennae Broadcast Licensees”) the right to use space on the Tower, each Antennae Broadcast License allows the Antennae Broadcast Licensee to use two master FM broadcasting antennae on the Tower and certain combiner equipment in a combiner room in Building (together, the “Antennae”). Several years ago, certain of the Antennae Broadcast Licensees entered into an agreement (the “Antennae Agreement”) with each other and with Operating Lessee to install the Antennae on Building. Operating Lessee, acting jointly with the Antennae Broadcast Licensees under the Antennae Agreement, hired engineers to build and install the Antennae. Under the Antennae Agreement, the Antennae Broadcast Licensees bore the cost of the acquisition and installation of the Antennae. New Antennae Broadcast Licensees are required to compensate other Antennae Broadcast Licensees for a portion of the cost. The Antennae Broadcast Licensees are required to install additional transmitting equipment and other equipment in order to broadcast over the Antennae. Such equipment will remain the property of the Antennae Broadcast Licensees.

Under the Antennae Agreement, Operating Lessee owns the Antennae, maintains insurance on the Antennae, and is responsible for maintaining the Antennae. Operating Lessee entered into the Antennae Agreement in order to accommodate the Antennae Broadcast Licensees’ desire to pool resources and share equipment. Operating Lessee preferred to hold title to the Antennae in order to maintain control over the parties that licensed the use of the Tower in connection with the Antennae. The license fees payable by the Antennae Broadcast Licensees under the Antennae Broadcast Licenses are primarily for the ability to broadcast from the Tower, rather than the use of the Antennae. The license fees payable under the Antennae Broadcast Licenses are generally comparable to the license fees payable by the Tower Broadcast Licensees for the use of comparable space on the Tower. The Antennae is old and may need to be replaced in the foreseeable future, and Operating Lessee does not intend to bear the cost of replacing the Antennae. Other than any differences described

above, the Antennae Broadcast Licenses have essentially the same terms as the Tower Broadcast Licenses.

Taxpayer represents that the fair market value of the use of any personal property licensed to the Tower Broadcast Licensees and the Antennae Broadcast Licensees (together, the "Broadcast Licensees") under each Tower Broadcast License and Antennae Broadcast License (together, "Broadcast Licenses"), including the Antennae licensed to the Antennae Broadcast Licensees under the Antennae Broadcast Licenses, constitutes, in each case, less than 15 percent of the fair market value of all property (including the right to space on the Tower) licensed to the relevant Broadcast Licensee under such Broadcast License within the meaning of section 856(d)(1)(C).

Certain of the Tower Broadcasting Licensees have entered into an agreement similar to the Antennae Agreement for the installation and maintenance of other shared antennae and shared combiner rooms and combiner equipment, although the antennae and equipment installed under these agreements remain the joint property of the Tower Broadcasting Licensees. Other Tower Broadcast Licensees install their own antennae and equipment and do not share the use of such property with any other parties. Under certain of the Tower Broadcasting Licenses, Operating Lessee has the right to obtain certain of the shared antennae and related equipment ("Additional Antennae") at the end of the term of the licenses or at certain other times, and it is intended that if Operating Lessee acquires the Additional Antennae, it will license use of it to the current owners of the Additional Antennae under an arrangement similar to the Antennae Agreement.

III. Description of the Transaction

As a result of the Roll-Up Transaction, Taxpayer contemplates that Operating Partnership will acquire (i) all of the assets of Owner and Operating Lessee; (ii) all of the membership interests in Operating Business Lessee; (iii) all of the assets of Taxpayer and certain affiliated entities; and (iv) several other real property assets located in and around City (the "Properties"). Following the Roll-Up Transaction, Operating Partnership (directly or through one or more entities that are disregarded as separate entities from Operating Partnership for Federal income tax purposes) will, for Federal income tax purposes, own title to Building, lease Building directly to the current lessees of Operating Lessee, and succeed to the Lease, the Concession Licenses, and the Broadcast Licenses. In connection with the Roll-Up Transaction, Taxpayer represents that it intends to make an initial public offering of its stock and to contribute the cash received in the offering to Operating Partnership in exchange for an interest in Operating Partnership. Following the Roll-Up Transaction and the initial public offering, Taxpayer represents that it intends to operate as a publicly-traded REIT.

Taxpayer contemplates the Roll-Up Transaction for a number of business reasons, including that (i) it will facilitate the initial public offering of Taxpayer while

reorganizing Owner, Operating Lessee, and the other entities holding the Properties so that the public can own interests in Building and the Properties through a REIT; (ii) Taxpayer believes that the Roll-Up Transaction is the best way for investors to achieve liquidity and maximize the value of their investment in the existing entities holding the Properties; (iii) Taxpayer believes that the Roll-Up Transaction will likely result in higher values for investors than if the Properties were sold individually and the proceeds distributed to investors because Taxpayer will have greater access to capital, greater risk diversification, operational economies of scale, and similar benefits compared to the existing entities holding the Properties; and (iv) the Roll-Up Transaction will facilitate future acquisitions by the Operating Partnership.

A. Rental Income from the Lease

Taxpayer contemplates that, following the Roll-Up Transaction, Operating Business Lessee will elect to be treated as a corporation for Federal income tax purposes and, effective as of the same date, will jointly elect with Taxpayer to be treated as a TRS of Taxpayer under section 856(l). Operating Partnership (directly or through one or more entities that are disregarded as separate entities from Operating Partnership for Federal income tax purposes) will lease the Leased Property Space to Operating Business Lessee under the Lease, and Operating Business Lessee will operate Property in a manner that is substantially similar to its current operation as described above.

Following the Roll-Up Transaction, Operating Partnership will rent more than 90 percent of the leased space in Building to persons, other than Operating Business Lessee, that are neither TRSs of Taxpayer nor persons related to Taxpayer (within the meaning of section 856(d)(2)(B)).

Operating Lessee and Operating Business Lessee determined the rental terms of the Lease by reference to an appraisal of the fair market value of Property (the "Appraisal") prepared by Appraiser, dated Date 2. In the opinion of Appraiser, the rental formula in the Lease (described above) reflects the fair market rental value of Property. To arrive at this conclusion, the Appraisal discusses the history, nature, and business performance of Property and a number of comparable businesses and assets. The Appraisal first discusses whether there could be any direct comparables to Property. The Appraisal concludes that there were no satisfactory direct comparables

. The Appraisal also discusses companies that managed hotels and senior living facilities, and it indicates that these companies would be useful comparables because these businesses involve the operation and management of real property that have a capacity to generate stable revenues without significant overhead, and they require limited expertise to operate. Thus, the Appraisal discusses that profit margins derived by certain hotel management and senior living facility management companies are comparable to what should be the expected profit of Operating Business Lessee under the Lease. Based on its analysis, the Appraisal concludes that the terms of the Lease reflect the fair market rental value of Property.

B. Concession License Income

Following the Roll-Up Transaction, Operating Partnership (directly through one or more entities that are disregarded as separate entities from Operating Partnership for Federal income tax purposes) will succeed to the Concession Licenses with the Concession Licensees. The terms of the Concession Licenses will be identical to those described above.

C. Broadcast License Income

Following the Roll-Up Transaction, Operating Partnership (directly through one or more entities that are disregarded as separate entities from Operating Partnership for Federal income tax purposes) will succeed to the Broadcast Licenses and will continue to license space on the Tower to the Broadcast Licensees for broadcasting and other telecommunication uses under substantially the same terms as the current Broadcast Licenses.

LAW AND ANALYSIS

Section 856(c) provides that to qualify as a REIT, a corporation must: (1) derive at least 95 percent of its gross income (excluding gross income from prohibited transactions) from sources listed in section 856(c)(2), which includes dividends, interest, rents from real property, and certain other items; and (2) derive at least 75 percent of its gross income (excluding gross income from prohibited transactions) from sources listed in section 856(c)(3), which includes rents from real property and certain other items.

Section 856(d)(1) provides that “rents from real property” (subject to exclusions under section 856(d)(2)) include (A) rents from interests in real property, (B) charges for

services customarily furnished or rendered in connection with the rental of real property, whether or not such charges are separately stated, and (C) rent attributable to certain leased personal property.

Section 1.856-4(a) of the Income Tax Regulations provides that subject to the exceptions in section 856(d) and section 1.856-4(b), the term, “rents from real property” means, generally, the gross amounts received for the use of, or the right to use, real property of the REIT. Section 1.856-4(b) provides that the term rents from real property includes charges for services customarily furnished or rendered in connection with the rental of real property, whether or not the charges are separately stated. Services furnished to tenants of a particular building will be considered as customary if, in the geographic market in which the building is located, tenants in buildings of similar class are customarily provided with the service. Where it is customary, in a particular geographic marketing area, to furnish electricity or other utilities to tenants in buildings of a particular class, the submetering of utilities to tenants in such buildings will be considered a customary service. The service must be furnished through an independent contractor from whom the REIT does not derive or receive any income.

Section 856(d)(1)(C) further provides that “rents from real property” include rent attributable to personal property which is leased under, or in connection with, a lease of real property, but only if the rent attributable to such personal property for the taxable year does not exceed 15 percent of the total rent for the taxable year attributable to both the real and personal property leased under, or in connection with, such lease. With respect to each lease of real property, rent attributable to personal property for the taxable year is that amount which bears the same ratio to total rent for the taxable year as the average of the fair market values of the personal property at the beginning and at the end of the taxable year bears to the average of the aggregate fair market values of both the real property and the personal property at the beginning and at the end of such taxable year.

Section 856(d)(2)(A) provides that the term “rents from real property” does not include any amount received or accrued, directly or indirectly, with respect to any real or personal property, if the determination of such amount depends in whole or in part on the income or profits derived by any person from such property (except that any amount so received or accrued shall not be excluded from the term “rents from real property” solely by reason of being based on a fixed percentage or percentages of receipts or sales).

Section 856(d)(2)(B) provides (except as provided for in section 856(d)(8)) that the term “rents from real property” does not include any amount received or accrued directly or indirectly from any person if the REIT owns, directly or indirectly (i) in the case of any person which is a corporation, stock of such person possessing 10 percent or more of the total combined voting power of all classes of stock entitled to vote, or 10 percent or more of the total value of shares of all classes of stock of such person; or (ii)

in the case of any person which is not a corporation, an interest of 10 percent or more in the assets or net profits of such person. Section 856(d)(5) provides that for purposes of section 856(d), the rules prescribed by section 318(a) apply for determining the ownership of stock, assets, or net profits of any person, except as modified by section 856(d)(5)(A) and (B).

Section 856(d)(8)(A) provides that amounts paid to a REIT by a TRS of the REIT shall not be excluded from rents from real property by reason of section 856(d)(2)(B) if at least 90 percent of the leased space of the property is rented to persons other than the TRSs of the REIT and other than related parties described in section 856(d)(2)(B), but only to the extent that the amounts paid to the REIT as rents from real property are substantially comparable to such rents paid by the other tenants of the REIT's property for comparable space.

Section 856(d)(2)(C) excludes from the term "rents from real property" any impermissible tenant service income. Section 856(d)(7)(A) provides that the term impermissible tenant service income includes, with respect to any real or personal property, any amount received or accrued directly or indirectly by the REIT for (i) services furnished or rendered by the trust to the tenants of such property, or (ii) managing or operating such property. Section 856(d)(7)(B) provides that de minimis amounts of impermissible tenant service income (i.e., amounts less than one percent of all amounts received or accrued by the REIT with respect to a particular property during the taxable year) will not prevent otherwise qualifying amounts from being treated as rents from real property. Section 856(d)(7)(C) excludes from the definition of impermissible tenant service income amounts received for services furnished or rendered, or management or operation provided, through an independent contractor from whom the trust itself does not derive or receive any income or through a TRS and excludes any amount which would be excluded from unrelated business taxable income under section 512(b)(3) if received by an organization described in section 511(a)(2).

Section 1.856-3(g) of the Income Tax Regulations provides that a REIT which is a partner in a partnership will be deemed to own its proportionate share of each of the assets of the partnership and will be deemed to be entitled to the income of the partnership attributable to such share. For purposes of section 856, the interest of a partner in the partnership's assets shall be determined in accordance with its capital interest in the partnership.

Section 1.512(b)-1(c)(5) provides that payments for the use or occupancy of rooms and other space where services are also rendered to the occupant do not constitute rent from real property. Generally, services are considered rendered to the occupant if they are primarily for his convenience and are other than those usually or customarily rendered in connection with the rental of rooms or other space for occupancy only. The supplying of maid service, for example, constitutes such service; whereas, the furnishing of heat and light, the cleaning of public entrances, exits,

stairways, and lobbies, and the collection of trash are not considered to be services rendered to the occupant. Payments for the use or occupancy of entire private residences or living quarters in duplex or multiple housing units, of offices in any office building, are generally rent from real property.

In order to meet the limited rental exception of section 856(d)(8)(A), amounts paid to a REIT as rents from real property must be substantially comparable to rents paid by the other tenants of the REIT's property for comparable space. In this case, there is no comparable space at Building, at any other property of Taxpayer, or at any other property in the geographic area as Building on which to base the comparable rent standard under section 856(d)(8)(A) for rent paid by Operating Business Lessee to Operating Partnership. The fair market value of Property has been determined by the Appraisal, and the value in the Appraisal reflects the unique features of Property. Provided that Operating Business Lessee pays an arm's length fair market value rental rate for the space leased by it, the rent is comparable to the rent paid by third-party tenants in Building, taking into account differences between Property and the space leased by third-party tenants. Therefore, in this case, such rent paid to Operating Partnership satisfies the comparable rent standard, if such rent reflects the fair market value of Property as determined by Appraiser.

The license fees received by Operating Partnership from the Concession Licenses are payments for the right to use designated space within Building. Concession Licenses primarily will grant Concession Licensees the right to use particular spaces within Building and within Property, as designated in schedules to the Concession Licenses. Despite Operating Partnership's right to relocate Concession B Licensee's area under certain circumstances, Operating Partnership is still required to allow Concession Licensees to use a portion of Property in accordance with the Concession Licenses. Therefore, the license fees received by Operating Business Lessee should be treated as "rents from real property" under section 856(d). Furthermore, Taxpayer has represented that the aggregate fair market value of the concession stands and other personal property licensed to the Concession Licensees under each Concession License is less than 15 percent of the aggregate fair market value of all property provided to the relevant Concession Licensee under each Concession License. Therefore, because less than 15 percent of the license fees should be treated as attributable to personal property under section 856(d)(1)(C), the entire license fee should be treated as "rents from real property" within the meaning of section 856(d).

The license fees received by Operating Partnership with respect to the Broadcast Licenses are payments for the right to use space on the Tower. The Broadcast Licensees are granted the right to use certain spaces on the Tower by installing the Broadcast Licensee's own antennae and other telecommunication equipment in the licensed space. Generally, Operating Partnership will be responsible under the Broadcast Licenses only for furnishing electricity, elevator services, trash removal, and

similar customary services to the Broadcast Licensees. Operating Partnership may perform certain activities, such as maintenance and repairs of the Tower and the RF Monitoring, which are not rendered primarily for the convenience of Broadcast Licensees under section 1.512-1(c)(5). Thus, the amounts received by Operating Partnership under the Broadcast Licenses for use of space on the Tower constitute “rents from real property” for purposes of section 856(c)(2).

The license fees payable under the Antennae Broadcast Licenses are generally comparable to the license fees payable by the Tower Broadcast Licensees for use of comparable space on the Tower. The Antennae Broadcast Licenses grant the Antennae Broadcast Licensees the ability to broadcast over the Antennae. The primary value that is provided to the Antennae Broadcast Licensees under the licenses is the ability to broadcast from the Tower and the use of space on the Tower, rather than the use of the Antennae. In the event that the Antennae is treated as personal property rather than real property, Taxpayer has represented that the fair market value of the right to use the Antennae and any other personal property conveyed under the Broadcast Licenses is less than 15 percent of the fair market value of all property rights conveyed under the Broadcast Licenses. Thus, the provision for use of the Antennae to the Antennae Broadcast Licensees will not prevent the license fees paid under the Antennae Broadcast Licenses from being treated as rents from real property for purposes of section 856(c)(2) and (c)(3).

In this case, the licenses granted by Operating Business Lessee to the Concession Licensees, the Tower Broadcast Licensees, and the Antennae Broadcast Licensees are equivalent to leaseholds. The licenses grant to each licensee the right to use specified real estate portions of Property. Like a leasehold, each licensee is required to make specified periodic payments to Operating Business Lessee in return for the rights granted with respect to the Property under each license. The periodic license payments are equivalent to rent payments that would be required under a lease.

CONCLUSION

On the basis of the facts presented and representations made, we conclude that (1) amounts received by Operating Partnership from Operating Business Lessee under the Lease for the rental of Leased Property Space that are allocated to Taxpayer under section 1.856-3(g) will qualify for the limited rental exception exclusion of section 856(d)(8)(A) as long as the rent paid by Operating Business Lessee reflects the fair market rental value of Property; (2) amounts received by Operating Partnership from the Concession Licensees under the Concession Licenses will constitute “rents from real property” for purposes of section 856(c)(2) and (c)(3); and (3) amounts received by Operating Partnership from Broadcast Licensees under Broadcast Licenses will constitute “rents from real property” for purposes of section 856(c)(2) and (c)(3).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed whether Taxpayer otherwise qualifies as a REIT under part II of subchapter M of Chapter 1 of the Code, and no opinion is expressed regarding the tax treatment of the Roll-Up Transaction.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Jonathan D. Silver
Jonathan D. Silver
Assistant to the Branch Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)