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April 8, 2010

Via Federal Express Overnight

Robert E. McGinness
Office of the General Counsel
Division of Capital Asset Management and Maintenance
One Ashburton Place, 15th Floor
Boston, Massachusetts 02108

Re: Lease Agreement Wireless-Telecommunications Facilities at Route 2 @ Exit 59 (Pleasant Street), Belmont, Massachusetts – Response to “Notice of Termination of Lease Agreement”

Dear Mr. McGinness:

I represent Bell Atlantic Mobile of Massachusetts Corporation, Ltd., d/b/a Verizon Wireless (“Tenant”), and write this letter in response to your correspondence dated March 10, 2010, whereby the Commonwealth of Massachusetts acting by and through its Division of Capital Asset Management and Maintenance (“Landlord”) provides notice that it is “...exercising Landlord’s right to terminate...” the Lease Agreement dated July 3, 2008 (“Lease”) for the referenced premises. For the reasons set forth below, Tenant disputes that the Landlord has authority to terminate the Lease.

For your reference, I direct your attention to the substitute provision for §7.5 of the Lease set forth in the Rider to Lease Agreement “Raw Law,” which provides the following:

If Tenant is unable to obtain all necessary Governmental Approvals by the date that is 18 months after the Lease Commencement Date¹ so that Tenant is unable to use the Premises for Tenant’s intended purposes, Tenant or Landlord has the right to terminate this Lease upon 30 days written notice, unless Tenant is actively pursuing an appeal of any zoning decision that is adverse to Tenant.

¹ The Rider to Lease Agreement “Raw Land” substitutes §4.1 of the Lease to provide that the Lease Commencement Date is actually not the date of execution, but rather the first day of the month that immediately follows the date noted before the Preamble of the Lease (i.e., August 1, 2008).

In your March 10, 2010 correspondence, the Landlord mischaracterizes the termination rights set forth in §7.5. The Lease does not provide that the “failure to secure all Governmental Approvals” within 18 months of the Lease Commencement Date gives Landlord the right to terminate the Lease. Rather, the Lease provides that Landlord or Tenant may terminate under §7.5, *only if* the Tenant is unable to obtain the approvals within an 18 month period *and* such inability results in Tenant being unable to use the referenced premises. The provision is further qualified to limit the termination if Tenant is actively pursuing an appeal of any adverse zoning decision, further evidencing that a continuing pursuit of Government Approvals would not trigger the right to terminate.

The Tenant has been and is continuing to diligently pursue all governmental approvals and permits. In fact, Verizon Wireless’ application before the Belmont Zoning Board of Appeals is currently being deliberated upon with a final decision to occur during the applicable statutory time frame. Based upon the current status of the pending review of the Tenant’s local zoning application, it is impossible to conclude whether the Tenant is unable to obtain the approvals or unable to use the Premises for its intended purpose.

To accept Landlord’s assertion that it currently has the right to terminate pursuant to §7.5 of the Lease, it would be necessary to completely disregard the clear and plain meaning of the provision, which requires the satisfaction of a condition precedent to the right of termination. The actual lease language of “unable to obtain,” “unable to use,” qualifies and conditions the right of either the Landlord or the Tenant to terminate the Lease. Notably, the construction of any provision of a lease must also be considered in the context of the entire document.

Pursuant to §7.2 of the Lease, the Landlord must cooperate with Tenant in the effort to obtain governmental approvals, and the Landlord must take no action that would adversely affect the status of the “Premises” with respect to Tenant’s proposed use. Under the current circumstances, where the Tenant is actively seeking governmental approvals, any effort to terminate under §7.5 would not only be inconsistent with the plain language of the provision but would certainly not be consistent with the duty placed upon both parties to act in good faith.

My client respectfully requests that the Landlord acknowledge receipt of this correspondence by suspending Landlord’s alleged assertion of Lease termination. My client believes it would then be beneficial for all concerned parties to schedule a meeting to discuss the issues outlined in this letter and other related matters. In that regard, please note that I and representatives of my client will make ourselves available for a meeting at a mutually convenient time.

It is my client's sincere hope that working cooperatively with the Landlord it will be possible to resolve this matter without the need to resort to further action. Thank you.

Very truly yours,

DUVAL, KLASNICK & PASTEL LLC

A handwritten signature in cursive script, appearing to read "Daniel D. Klasnick", written over a horizontal line.

By: Daniel D. Klasnick
Attorney at Law

cc: Massachusetts Highway Department
Right of Way Bureau
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Ten Park Plaza
Boston, Massachusetts 02116-3933