

DATE TWO =
 \$x =
 \$y =

Dear

This is in response to your request for a private letter ruling dated January 26, 2005, submitted by your authorized representatives as to the application of § 1031 of the Internal Revenue Code to the below transaction. Specifically, you have requested a ruling that the transfer to AA of certain radio frequency spectrum (“spectrum”) rights pursuant to the CCC and the receipt back of certain other spectrum rights from AA qualify as a like-kind exchange under § 1031 such that Taxpayer will recognize no gain or loss pursuant to the transaction.

The following facts are pertinent to your ruling request. Taxpayer is a State A corporation. Taxpayer is engaged in the business of providing Services. Taxpayer operates its business through an affiliated group of corporations, which files a consolidated federal income tax return. Taxpayer has certain operating companies, which are divided geographically. For financial and tax reporting purposes, Taxpayer and its affiliates¹ use the accrual method of accounting and an accounting period based on the calendar year which ends on December 31.

Taxpayer's business makes use of portions of the spectrum pursuant to licenses granted by the Federal Communications Commission (“FCC”). FCC licenses, including Taxpayer's licenses, are granted on a geographic basis, reflecting different economic markets. Pursuant to its FCC licenses and prior to the issuance of the CCC, Taxpayer held rights to certain megahertz of spectrum in the Ww band in numerous markets. Taxpayer also held rights to additional megahertz of spectrum in the Xx band and certain other megahertz of spectrum in the Zz band. Taxpayer used its spectrum rights in the Xx and Zz bands in its business to provide Services to its customers.² Taxpayer did not use its spectrum rights in the Ww band in its business, but instead held those spectrum rights for investment.

Pursuant to CCC, certain of Taxpayer transferred to AA rights to certain spectrum and received back from AA rights to certain other spectrum. Specifically, (i) Taxpayer transferred spectrum rights in the Ww and Xx bands (and incurred certain obligations to expend cash in connection with the transaction); and, in exchange, (ii) Taxpayer

For purposes of simplicity and with exceptions noted in the body of this letter ruling, the term “Taxpayer” will include both the Taxpayer itself and its affiliates. For example, statements in this letter such as “the Taxpayer transfers” will include transfers by the affiliates of the Taxpayer.

Taxpayer's Xx and Zz licenses have terms.

terms, and its Ww licenses have

received spectrum rights in the Xx band and spectrum rights in the Yy band. Those Taxpayer affiliates that will be transferring spectrum rights and receiving back spectrum rights in the exchange are the Exchange Affiliates listed in Exhibit A.

EE, certain of Taxpayer's operating companies, hold FCC licenses directly. FF, certain of Taxpayer's other operating companies, do not hold FCC licenses directly, but instead, their FCC licenses are held by affiliates and leased to FF. Taxpayer's Ww band spectrum licenses are held by a separate company. Certain Xx spectrum licenses are held for investment by BB.

The FCC was established by the Communications Act of 1934 (the "Communications Act"), 47 U.S.C. § 151 et seq., as amended, as an independent United States government agency to regulate television, radio, wire, satellite, telephony and cable services in the United States and all United States territories. The FCC has exclusive authority regarding the non-governmental use of spectrum, including authority to allocate spectrum, assign frequencies and grant licenses to operate on spectrum.

Pursuant to § 301 of the Communications Act,³ the FCC licenses at issue grant to the licensee the right to use and transmit radio frequency signals subject to specified rules and regulations applicable to the defined service category and other general terms and conditions imposed on the licensee by the FCC. Traditionally, the FCC licenses spectrum on an exclusive basis, giving licensees a right to operate on a given set of frequencies. FCC licensees are required to pay annual regulatory fees associated with their licenses and the use of designated frequencies. Spectrum rights can be obtained at auction or by assignment from another licensee. Any licensee seeking to transfer its license must apply to the FCC for prior written approval. The FCC also permits a licensee to lease certain spectrum rights to a third party. As long as a licensee adheres to the rules and regulations promulgated by the FCC and to the terms and conditions of its license, the licensee may assume that its license will be renewed by the FCC.

Previously, licensees in the Xx band were : licensees that

³Section 301 of the Communication Act confirms that the licenses themselves confer the rights held by licensees. Section 301 provides:

It is the purpose of this chapter, among other things, to maintain control of the United States over all the channels of radio transmission, and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such licenses shall be construed to create any right, beyond the terms, conditions, and periods of the license. 47 U.S.C. 301 (1995 & 1999 Supp.) (emphasis added).

. Licensees that use

Pursuant to the CCC, the

. The CCC

The CCC also

Pursuant to the CCC, all as of the CCC's DATE ONE.
The CCC requires the in the Xx band consistent
with the The CCC required Taxpayer to transfer its spectrum rights in the

band. In return, Taxpayer was spectrum rights in the
band. Taxpayer represented that all of the
spectrum rights received pursuant to the CCC are held for use in Taxpayer's Services
business or for investment.

Pursuant to the CCC, Taxpayer's transfer of spectrum rights in the band and
the Taxpayer of spectrum rights in the band
FCC

licenses. The CCC specified that all Xx licenses affected by the CCC,
DATE ONE. However, the CCC
conditioned the Taxpayer's licenses on Taxpayer's acceptance of certain
conditions and obligations in the CCC. Due to certain permissible delays, Taxpayer
was not required to accept these conditions and obligations by DATE ONE, and instead,
Taxpayer's acceptance occurred after, rather than before, the DATE ONE. Therefore,
the of Taxpayer's Xx licenses and its receipt of spectrum rights in the Yy
band occurred on the date Taxpayer did accept the conditions and obligations of the
CCC, which is DATE TWO.

Pursuant to the CCC, Taxpayer transferred to AA its spectrum rights in the Ww band.
Taxpayer's Ww band licenses were
spectrum rights in the Xx and Yy bands.

The CCC also requires Taxpayer to pay certain costs

To ensure that there are sufficient funds to pay such costs, the CCC required Taxpayer
to obtain a \$x letter of credit. If these costs exceed \$x, however, Taxpayer will be
required to pay the additional costs. The Taxpayer represents that the aggregate value
of the spectrum rights spectrum rights being received ("Replacement Property") in the
exchange exceeds the aggregate value of the spectrum rights being transferred

("Relinquished Property") by \$y. Moreover, each Exchange Affiliate transferring spectrum rights pursuant to the CCC

Pursuant to the CCC, Taxpayer is given credit for any amounts to be expended in paying the above costs. Upon completion of the transaction, Taxpayer is required to pay Entity the amount by which the value of spectrum rights received exceeds the value of spectrum rights transferred plus the amounts ultimately paid by Taxpayer in paying these costs.

Notwithstanding that Taxpayer received spectrum rights in the Yy band on the DATE TWO and that Taxpayer's Yy band licenses take effect on that date, Taxpayer's _____ is conditioned on the following actions taken by Taxpayer: (1) obtaining a letter of credit that provides assurance that \$x will be available for paying certain costs, notwithstanding the financial condition of Taxpayer; (2) identifying a _____; (3) providing an opinion from _____ containing a detailed legal analysis indicating that the _____ will not treat the letter of credit or proceeds thereof as property of Taxpayer _____; (4) providing a letter binding all of the Taxpayer affiliates to perform the obligations imposed on Taxpayer in the CCC; (5) obtaining AA approval of all documents submitted above; and (5) providing a letter acknowledging that Taxpayer is aware of the risks and possible delays related to the CCC and will not sue AA. In addition, Taxpayer's rights in the Yy band is further conditioned upon the _____ licensees in the Yy band in _____.

Moreover, notwithstanding that Taxpayer received its spectrum rights in the Yy band on the DATE TWO, Taxpayer may be required _____

_____ in the manner set forth in the CCC. Specifically, Taxpayer may be required _____ its spectrum rights if it does not complete the following: (i) the _____

and (ii) the _____

_____. In addition, failure to _____ and/or to meet any financial obligations set forth in the CCC can result in _____

_____. As a general matter, Taxpayer's failure to comply with any of the other conditions specified in the CCC may also lead to _____

It is also noted that the Other Affiliates, which are listed in Exhibit B attached, are not part of this private letter ruling request even though the Other Affiliates also transferred licenses for certain spectrum rights to AA. The Other Affiliates, however, did not receive licenses for spectrum rights (i.e., Replacement Property) from AA in the exchange. Instead, each of the Other Affiliates received intercompany receivables of the Taxpayer in the value of the spectrum rights transferred by that affiliate. The obligors of these _____

intercompany receivables are other affiliates of the Taxpayer. Consequently, no determination or ruling is being made concerning the federal income tax consequences of this exchange with respect to the Other Affiliates.

LAW AND ANALYSIS

As stated above, you have requested a ruling, on behalf of the Exchange Affiliates, that the transfer and receipt of spectrum rights pursuant to CCC qualify as a like-kind exchange under § 1031 such that no gain or loss is recognized pursuant to the transaction.

Section 1031(a)(1) provides generally that no gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind which is to be held either for productive use in a trade or business or for investment. Under § 1031(a)(3), any property received by the taxpayer shall be treated as property which is not like-kind property if such property is not identified as property to be received in the exchange on or before the day which is 45 days after the date on which the taxpayer transfers the property relinquished in the exchange, or such property is received after the earlier of the day which is 180 days after the date on which the taxpayer transfers the property relinquished in the exchange, or the due date (determined with regard to extension) for the transferor's return of the tax imposed by this chapter for the taxable year in which the transfer of the relinquished property occurs. See generally section 1.1031(a)-1 of the Income Tax Regulations.

Section 1.1031(a)-1(b) provides that "like kind" refers to the nature or character of the property and not to its grade or quality. One kind or class of property may not, under § 1031, be exchanged for property of a different kind or class. See also section 1.1031(a)-2(a).

Section 1.1031(a)-2(c)(1) provides generally that an exchange of intangible personal property or non-depreciable personal property qualifies for nonrecognition of gain or loss under § 1031 only if the exchanged properties are of a like kind. No like classes are provided for these properties. Whether intangible personal property is of a like kind to other intangible personal property generally depends on the nature or character of the rights involved (e.g., a patent or a copyright) and also on the nature or character of the underlying property to which the intangible personal property relates. For example, an exchange of a copyright on a novel for a copyright on a different novel is a like kind exchange, but an exchange of a copyright on a novel for a copyright on a song is not a like kind exchange. See section 1.1031(a)-2(c)(3).

We note that §1031(a)(1) requires that both the property being exchanged and the property being received in the exchange must be held for productive use in a trade or business or for investment. The Taxpayer represents that the licenses for the spectrum rights being transferred (Relinquished Property) and the licenses for the spectrum rights

being received (Replacement Property) have been, or will be, held for productive use in its trade or business of providing Services or held for investment. Accordingly, this statutory requirement is not in issue. Also, the reciprocal transfer of spectrum rights between Taxpayer and AA constitutes an “exchange,” which occurred on DATE TWO. We further note that, for purposes of satisfying the 45-day statutory period for the identification of replacement property and the 180-day statutory period for the receipt of the replacement property in §1031(a)(3), the transfer and receipt of the spectrum rights in issue occurred essentially on the same date. Consequently, the statutory identification and replacement requirements are not in issue either. The main issue for determination in this ruling request is whether, with respect to the exchange in this case, the spectrum rights being transferred and the spectrum rights being received are like-kind property for purposes of § 1031.

For purposes of the above regulations, the FCC licenses for the spectrum rights being exchanged in this case are intangible personal property. The determination of whether they are like kind will depend on (1) the nature or character of the rights involved; and (2) the nature or character of the underlying property to which the intangible personal property relates.

In determining whether the first prong in the above test is met, one example in the regulations addresses whether a copyright on a novel is like kind to a copyright on a different novel. See example (1) in section 1.1031(a)-2(c)(3). This example’s conclusion that the copyrights are like kind is based, in part, on a comparison of the nature and character of the rights involved with the copyrights. In the case of a copyright, federal law gives the holder of the copyright certain rights regarding the copyrighted material. Thus, as to the first inquiry, the nature or character of the rights involved, one copyright generally will be like kind to another.

In the instant case, the determination of whether the FCC licenses for spectrum rights being transferred to AA in this exchange are like kind to the FCC licenses for spectrum rights being received by the Taxpayer in this exchange depends, in part, on the nature or character of the rights involved with the licenses.

The nature or character of the rights involved here are determined by examining the substance of the specific rights granted in the FCC licenses. These rights are granted by the federal government, which, on behalf of the public, manages and controls the use of the electromagnetic spectrum. The government delegates authority to the FCC to issue licenses to users of the electromagnetic spectrum for certain broadcasting purposes. An FCC license enables the licensee to broadcast to the public over the electromagnetic spectrum for the duration of the license. One FCC license will differ from another regarding specific terms and conditions of operation. However, despite these differences, the nature or character of the rights conferred on each FCC licensee by the FCC license will basically be the same.

In a situation also addressing the exchange of FCC licenses, the Service in TAM 200035005 (May 11, 2000), concluded that the exchange of FCC radio licenses for an FCC television license qualified as a like kind exchange under § 1031. Concerning the first prong of the above test (*i.e.*, the nature or character of the rights involved with respect to the intangible personal properties being exchanged), an examination of the FCC licenses at issue in the TAM revealed that each of the FCC licenses conferred a right to use the referenced radio transmitting apparatus to broadcast on a designated channel and frequency range, at designated hours of operation, at designated geographic locations, at a maximum effective radiated power, and using antenna with certain antenna system specifications. This right was specifically enumerated in each FCC license, regardless of whether the license relates to a television station, an FM radio station, or an AM radio station. Other than the different labels, the only differences between the various FCC licenses were the specific operating parameters (such as frequency, operating hours, power, and antenna information) and geographic location. The TAM specifically found that these differences did not change the nature or character of the rights granted in the licenses, but were merely differences in grade or quality. Accordingly, the TAM concluded that differences in assigned frequencies were not differences in nature or character, but are merely differences in grade or quality.

Similarly, in this case, Taxpayer will transfer to AA spectrum rights in Ww and Xx bands and, in return, will receive back from AA spectrum rights in Xx and Yy bands. As in the case of TAM 20003005, the differences in spectrum rights in the different bands are the specific operating parameters (*i.e.*, frequency, power and antenna specifications) and geographic location. The spectrum rights comprising the Relinquished Property transferred by the Taxpayer to AA and the spectrum rights comprising the Replacement Property received by the Taxpayer from AA are all suitable for use by Taxpayer in its business of providing Services. Because any such differences in spectrum rights involved in the exchange do not involve the nature or character of these spectrum rights, but are merely differences in grade or quality of such rights, we conclude that the spectrum rights being transferred and the spectrum rights being received are like kind.

In this case, the determination of whether the FCC licenses for spectrum rights being transferred to AA in this exchange are like kind to the FCC licenses for spectrum rights being received by the Taxpayer in this exchange will also depend on the nature or character of the underlying property to which the intangible personal property relates, which is the second prong of the above test in section 1.1031(a)-2(c)(1) the regulations.

For instance, example (3) in section 1.1031(a)-2(c)(3) of the regulations states that a copyright on a novel is not like kind to a copyright on a song. In that example, a copyright for a novel would expressly reference the underlying novel and a copyright for a song would expressly reference the underlying song since these are the properties protected by the copyrights. It is the fact that a novel and a song are not like kind that causes these two intangible properties to be not like kind. Accordingly, in numerous situations the Service has examined whether the nature or character of the underlying

properties to which an exchange of intangibles relates are like kind in order to determine if the exchange of the intangibles is like kind.

The rights conferred upon holders of FCC licenses are described in the FCC licenses themselves. See § 301 of the Communications Act. Thus, the appropriate manner of identifying the underlying property to which the FCC license relates is to look to the license itself, which principally relates to the use of the transmitting apparatus. Specifically, FCC licenses contain the rights to use transmitting apparatus to broadcast over a portion of the electromagnetic spectrum at a certain power in a designated geographic area. Although an FCC license clearly regulates the manner in which the licensee may use its transmitting equipment, for purposes of § 1031, the assigned frequency of the electromagnetic spectrum referred to in each license is the underlying property to which the license relates.

Having identified the property underlying an FCC license as the assigned broadcast frequency of the electromagnetic spectrum, we must determine whether the differences between the assigned frequency of the electromagnetic spectrum transferred by the Taxpayer in the Ww and Xx bands and the assigned frequency of the electromagnetic spectrum received by the Taxpayer in the Xx band and spectrum rights in the Yy band are differences in nature or character or are merely differences in grade or quality.⁴

We note that the bandwidth of a particular frequency dictates the amount of information that the frequency can carry. In comparing the nature or character of the assigned frequency of the electromagnetic spectrum referred to in each FCC license, it is clear that the spectrum rights transferred by the Taxpayer have different bandwidths from the spectrum rights received by the Taxpayer. However, even the narrowest interpretation of the like kind standard does not require that one property be identical to another or that they be completely interchangeable. As stated earlier, the spectrum rights being transferred by the Taxpayer to AA and the spectrum rights being received by the Taxpayer from AA are all suitable for use in the Taxpayer's business of providing Services. Thus, we find that the bandwidth differences in the spectrum rights being transferred and being received in this exchange, which underlie these FCC licenses, are

⁴ Several courts have addressed the meaning of the like kind standard. See, e.g., Commissioner v. Crichton, 122 F.2d 181, 182 (5th Cir. 1941), aff'g 42 B.T.A. 490 (1940)("the distinction intended and made by the statute is the broad one between classes and characters of property, for instance, between real and personal property."), Koch v. Commissioner, 71 T.C. 54, 65 (1978), acq., 1979-1 C.B.1("[t]he comparison should be directed to ascertaining whether the taxpayer, in making the exchange, has used his property to acquire a new kind of asset or has merely exchanged it for an asset of like nature or character.").

not differences in nature or character, but are merely differences in grade or quality, and thus constitute like-kind property.⁵

Accordingly, we conclude that Taxpayer's exchange of FCC licenses for spectrum rights in the Ww and Xx bandwidths for FCC licenses for spectrum rights in the Xx bandwidth and the Yy bandwidth qualify as a like kind exchange under § 1031.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal income tax consequences of any other aspect of any transaction or item discussed or referenced in this letter. For instance, as noted above in the Facts, the Other Affiliates, which are listed in Exhibit B attached, are not part of this private letter ruling request even though the Other Affiliates also transferred licenses for certain spectrum rights to AA. The Other Affiliates, however, did not receive licenses for spectrum rights (*i.e.*, Replacement Property) from AA in the exchange. Instead, each of the Other Affiliates received intercompany receivables of the Taxpayer in the value of the spectrum rights transferred by that affiliate. The obligors of these intercompany receivables are other affiliates of the Taxpayer. We make no determination or ruling concerning the federal income tax consequences of this exchange with respect to the Other Affiliates.

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. A copy of this letter must be attached to any income tax return to which it is relevant.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely yours,

William A. Jackson
Branch Chief, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc:

Enclosure

⁵ This conclusion is consistent with TAM 200035005.

EXHIBIT A:

NAME OF AFFILIATE

EIN

PLR TECHMIS NO.

PLR-105263-05

PLR-105264-05

PLR-105265-05

PLR-105266-05

PLR-105267-05

PLR-105270-05

PLR-105269-05

EXHIBIT B:

NAME OF AFFILIATE

EIN