GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer and Regulatory Affairs

Office of the Director

OCT 5 2000

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321 Columbus Ave.
Boston, MA

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AMERICAN TOWER CORPORATION

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Dedhan, MA 02026

AMERICAN TOWER CORPORATION/MICRONET

20 Park Plaza, Suite 436
Boston, MA 02116

AMERICAN TOWER SYSTEMS
9300 Grant St., Suite 203
Manassas, VA 20110

MICRONET, INC.
P.O. Box 130
Vernon, N.J. 07462

AMERICAN TOWER
4623 41st St., N.W.
Washington, D.C.

CERTIFIED MAIL:
JOHN HOOD, Agent:
11403 Old Baltimore Pike
Beltsville, MD 20705

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Beltsville, MD 20705

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D.C. OFFICE OF ZONING
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MARCOR
REMEDIATION, INC.
3900 Vero Road
Baltimore, MD 21227

Judd & Detweiler, Inc.
1925 K Street, N.W.
Washington, D.C. 20006

MARCOR REMEDIATION, INC.
3900 Vero Road
Baltimore, MD 21227

Robert Clayton Cooper
Jackson and Campbell
1120 Twentieth Street,
N.W., South Tower
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John Hood, Agent:
11403 Old Baltimore Pike
Beltsville, MD 20705

BZA
Case No. 16990
Exhibit No. 5

Board of Zoning Adjustment
District of Columbia
CASE NO. 16990
EXHIBIT NO. 5

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NOTICE TO RESCIND AND CANCEL BUILDNG PERMIT NUMBERS B425271, B420358, B429362, B427534, B425352, B423438, B427157, B426691, AND B428792, AND PLUMBING PERMIT NUMBERS B412508 and B416480

Dear Sir or Madam:

You are hereby notified that the above-referenced permits are hereby rescinded and cancelled. This action is being taken based upon the following errors identified in the original permit review process that resulted in the erroneous issuance of these permits.

1. Side Yard Setback.

The permit application indicates that the proposed structure is to be located in a C-2-B (Commercial) district. Section 775 of the Zoning Regulations (11 DCMR) sets forth the amount of side yard setback that must be "provided for structures in a Commercial district." 11 DCMR 775.1. Because this structure is neither a hotel nor a detached or semi detached single family home, the provisions of 11 DCMR 775.5 apply. That provision reads:

> No side yard shall be required for any other building or structure; but if a side yard is provided, it shall be at least two inches (2 in.) wide for each foot of height of building, but not less than six feet (6 ft.).

The plans attached to the permit application ("plans") reveal that a side yard has been provided and that the proposed tower and antenna would reach a height of 756 feet. A side yard setback of 126 feet is required for a structure of 756 feet. However, the plans depict a side yard setback of far less than that. An area variance must therefore be sought from the District of Columbia Board of Zoning Adjustment (BZA).

2. Height in Excess of that Allowed by the Height Act.

The height of all buildings and structures in the District of Columbia is governed by An Act to Regulate the Height of Buildings in the District of Columbia (the Height Act) approved June 1, 1910, 36 Stat. 452 (D.C. Code § 5-401 et seq.). Section 602(a)(6) of the Home Rule Act, D.C. Code § 1-233(a)(6), expressly deprived the Council of the authority to "permit the building of any structure in the District of Columbia in excess of the height limitations contained in the Height Act. The Zoning Regulations also provide that:

> In addition to any controls established in this title relative to height of buildings or structures, all buildings or other structures shall comply with the provisions of the "Act to Regulate the Height of

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Buildings in the District of Columbia," 36 Stat. 452, approved June 1, 1910, as amended. 11 DCMR 2510.1.*

The 756-foot height indicated on the permit application for this structure is in excess of the Height Act's limitations. Section 5(8) of the Height Act, D.C. Code 5-405(b), authorized the Commissioners of the District of Columbia, now the Mayor, to approve a height for towers in excess of that allowed under the Height Act. Section 770.8 of the Zoning Regulations states that "Where required by the Act of June 1, 1910 (36 Stat. 452), a height in excess of that permitted shall be authorized by the Mayor."

The Mayor's authority to approve a height in excess of a Height Act limitation was delegated to the Director of this Department through Reorganization Plan No. 1 of 1982, effective July 3, 1982. However, there is no written order in the possession of the Department that subdelegated this responsibility. Nor is there written evidence that any Director of this Department approved the excess height of this structure. Therefore, this permit should not have been issued before the Director approved the height sought by the applicant.

3. Environmental Impact

On or about March 17, 1999, American Tower Systems (ATS) applied on for a construction permit for the premises known as 4623 41st St., N.W., but failed to file the Environmental Questionnaire with your application. On or about February 15, 2000, ATS filed the Environmental Questionnaire with the application. Item number one asked to indicate if the cost of the project exceeded one million dollars. ATS checked "yes". Item number one further instructed ATS to contact the Environmental Health Administration, the EIS Coordinator on (202) 645-6617. Review of Departmental Records revealed that this procedure was not followed. The application further indicates that the EIS Coordinator did not approve an exception or waiver for completion of the Environmental Impact Screening Form (EISF). A search in the Building and Land Regulation Administration ("BLRA") records reveals that an Environmental Impact Screening was not performed. The proposed antenna tower will have greater capacity and more density than the structure it replaces and, as noted above, does not comply with the Zoning regulations. No permit should have been issued in the absence of any analysis of the environmental impact of the proposed antenna tower.

4. Failure to Register as a Corporation

D.C. Code §29-399(a) reads as follows: "A foreign corporation shall procure a certificate of authority from the Mayor before it transact business in the District..." Each of the owners on their applications for the permits listed above identified themselves as being incorporated, except American Tower Systems and American Tower. However a search of the records of the Office of Tax and Revenue reveal the existence of an entity named American Towers System

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Corp. I will assume that this corporation is the same as the American Tower and American Tower System applicants and that both are corporations. The Corporations Division of DCRA has certified that none of these incorporated applicants were certified to transact business in the District of Columbia. Therefore, each of the above owners submitted an application for a construction permit for the premises known as 4617-23 41st St., N.W., Washington, D.C., first obtaining or having a valid a Certificate of Authority to transact business in the District of Columbia. None of the permits should therefore have been issued.

5. Failure to Register to Conduct Business

D.C. Code §47-1805.2.8 reads in pertinent part: "No person shall engage in or continue to engage in a trade, business or profession subject to taxes under the provisions of this Chapter without first registering to do so..." The records of the Office of Tax and Revenue reveal that none of the applicants for the building permits listed above, except for American Tower Systems, Corp, was so certified.

As a result of the foregoing I have concluded that the permits identified above were erroneously issued and are therefore void ab initio. My decision to cancel and rescind these invalid permits will become effective at 5 pm on Tuesday October 10, 2000, unless, prior to 12 noon that same day, I receive written statements, evidence, or documentation from you demonstrating that the errors I cited did not take place. If no such written materials are provided, or if the materials provided do not alter my conclusion that the permits are invalid, the cancellation and rescission shall become effective as stated, and you are to immediately stop all work and secure the site.

Carlynn Fuller, Acting Director

cc: Michael D. Johnson, Acting Administrator, BLRA
Robert Warren, General Counsel, DCRA
Theresa W. Lewis, Deputy Director of Operations
Alan Bergstein, OCC
Karen M. Edwards, Esq., Program Manager, OCOM/ENFD
Robert Rigsby, Corporation Counsel, OCC
Eric Price, Deputy Mayor for Planning and Economic Development

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