Montana Department of Revenue

Dan Bucks
Director

Brian Schweitzer
Governor

SENATE TAXATION
EXHIBIT NO. 3
DATE 3-7-07
BILL NO. Invitation

March 6, 2007

Senate Taxation Committee
State Capitol Building

Hand Delivered

Subject: Tour of Department of Revenue's Tax Processing Operations

Dear Senate Taxation Committee Members:

Please accept this invitation to tour our department's Processing & Retention Operations (PRO) Bureau. The process is quite interesting to observe.

The PRO Bureau is responsible for processing all incoming and outgoing department mail, taxpayer registration and updates, payment processing, and electronic returns and payments.

The tour details are below:

Date:	Thursday, March 8, 2007
Time:	9 a.m. to 10 a.m.
Location:	Assemble in the Director's Office, Room 455 of the Mitchell Building

The Director's Office is located on the fourth floor, in the east wing. As you enter through the west doors on N. Roberts Street, please proceed east down the long hallway toward the back of the building and use the elevator or stairs to your left to access the fourth floor.

I hope you are able to join us for the tour. The staff in the PRO Bureau is looking forward to showing you our tax processing operations

Sincerely,

Margaret Kauska

Margaret Kauska, Administrator
Information Technology and Processing Division

EPACT 2005 established a renewable fuel standard that can be met with the use of ethanol or bio-based diesel fuel. EPACT 2005 recognized the potential for a variety of sources to produce bio-based diesel, and it encourages the opportunity for other undiscovered sources to be developed. In September 2006, the U.S. Environmental Protection Agency (EPA) proposed regulations to implement the renewable fuels standard. The EPA proposal contains a two-part definition of bio-based diesel that includes both mono-alkyl esters which meet ASTM specification D-6751 (the most common meaning of the term "biodiesel") that have been registered with the EPA, as well as any non-esters that are intended for use in compression-ignition engines, derived from non-petroleum renewable resources, and registered with the EPA ("renewable" diesel).

State-level initiatives for bio-based diesel should be based on a broad definition of this fuel that is consistent with the two-part EPA definition. Such a definition would avoid stifling the development of new technologies that show promise. It would also avoid the creation of differing definitions that could hinder the fungible flow of fuels between states.

The EPA two-part definition is as follows:

1). Biodiesel (Mono-Alkyl Esters)
[T]he term "biodiesel (mono-alkyl esters)" means a motor vehicle fuel which: 1) meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 7545 of this title (Clean Air Act Section 211); 2) is a mono-alkyl ester; 3) meets ASTM specification D-6751-02a[1]; 4) is intended for use in engines that are designed to run on conventional, petroleum-derived diesel fuel, and 5) is derived from non-petroleum renewable resources including, but not limited to, animal wastes, including poultry fats and poultry wastes, and other waste materials, or municipal solid waste and sludges and oils derived from wastewater and the treatment of wastewater."

2). Non-Ester Renewable Diesel
"A motor vehicle fuel which: (1) Meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 7545 of this title (Clean Air Act Section 211); (2) is not a mono-alkyl ester; (3) is intended for use in engines that are designed to run on conventional, petroleum derived diesel fuel, and (4) is derived from nonpetroleum renewable resources including, but not limited to, animal wastes, including poultry fats and poultry wastes, and other waste materials, or municipal solid waste and sludges and oils derived from wastewater and the treatment of wastewater. Current examples of a non-ester renewable diesel include: "renewable diesel" produced by the Neste process, or diesel fuel produced by processing fats and oils through a refinery hydrotreating process."

[1] The latest version of this standard is D6751-06a. API commented to EPA on the proposed definition that the specific reference to the "02-a" version should be changed to "meets latest version of ASTM specification D6751."

Telephone Company Definitions

- State Summaries *(Presenter's interpretation)*:

- AL – Companies holding themselves out to be a telecommunications company per PSC and FCC guidelines. It shall be the duty of the Department of Revenue to assess for taxation all property of all...telephone and long distance telephone and all telegraph companies, person or persons doing an express, telephone or telegraph business...and the property of all public service or public utility corporations... . Telephone service – any communication service, including all telephone lines, facilities or systems used in the rendition of such service. Code of AL 40-21-1; Acts 1990, No. 90-134, p. 193, Section 1. (LEC, CLEC, LD, Fiber)
- AZ – Telecommunications company means any person that owns communications transmission facilities and that provides public telephone or telecommunications exchange or inter-exchange access for compensation to effect two-way communication to, from, through or within this state. A.R.S. 42-14401 (Approx. 1993) (LEC, CLEC, LD, Fiber, Wless)
- AR – For purpose of assessment and taxation, any person, firm...engaged in the business of: transmitting for hire within, to, from, or through this state, telephonic messages, shall be deemed to be a telephone company... . ACA 26-26-1601(13) (LEC, CLEC, LD, Fiber, Wireless, Cable TV)
- GA – Public utilities that are to be centrally assessed includes all express companies including...telephone, or telegraph business (except small telephone companies or persons operating a telephone business, the value of whose capital stock or property is less that $5,000). GA Code 48-1-2 (same since approx. 1933) (LEC, CLEC, LD, Fiber)

Telephone Company Definitions

- IN - The term "telephone, telegraph, or cable company" means a company which is principally engaged in the business of communicating by electrical transmission. IC 6-1.1-8-2 (1993) (LEC, CLEC, LD, Wless)
- KS – Public utility or public utilities shall mean every individual, company...that...operate a business of: transmitting to, from, through or in this state telephonic messages. K.S.A. 79-5A01 (1969) (LEC, CLEC, LD, Fiber)
- LA – "Telephone Company" means a company primarily engaged in the business of transmitting messages within, through, into, or from this state. R.S. 47:1851 (Approx. 1976) (LEC, CLEC, LD, Fiber)
- MI – Telephone companies are companies which: 1) Provide switching and/or routing of two-way information of the user's choosing that is transmitted over landlines and/or landline transmission of two-way information of the user's choosing that are voice and/or data and/or broadband, and, 2) Offer these services, either directly or indirectly, to the public in Michigan. (2003) (LEC, CLEC, LD, Fiber, ISP, VoIP)
- MS – State Tax Commission to assess railroads and other public service corporations, including the property telephone companies. Telephone or communication company is not specifically defined in statutes. 27-35-301 and 27-35-303 (LEC, CLEC, LD)
- MO – Statutes reference "telephone company", but do not provide a definition. RSMo 153.030 (LEC, CLEC, LD, Fiber)

Telephone Company Definitions

- MT – Properties centrally assessed: ...property owned by a corporation or other person operating a single and continuous property operated in more than one county or more than one state, including but not limited to telegraph, telephone, microwave... . "Telecommunications" for property tax purposes, means the transmission of information between or among points specified by the user. The transmission must be without change in the form or content as sent and received. The transmission includes all related services associated with providing the information by the telecommunication service provider. MCA 15-23-101(2); 42.22.101 ARM (2003) (LEC, CLEC, LD, Fiber, Cable TV)
- NE – *Statutes:* "Telephone" and all other similar or like entities. 77-801-01. *Administratively:* Provides two-way communications and has situs in NE. *PSC Regulation* – Telephone Company – any person, firm, cooperative...engaged in the business of furnishing telecommunications services. Telecommunications – the transmission between or among points specified by the subscriber, of information of the subscriber's choosing, without a change in the form or content of the information as sent or received. Telecommunications Common Carrier – a person holding a certificate issued by the Commission to offer telecommunications services within NE. Title 291, Ch. 5, 001.01OO; 001.01LL, 001.01MM. (Statute 1934, PSC Regulation 2000) (LEC, CLEC, LD, Fiber, Wless, VoIP)

Telephone Company Definitions

- NC – Telephone Company – A Company engaged in the business of transmitting telephone messages and conversations to, from, within, or through this state. G.S. 105-333(19) (Approx. 1971) (LEC, CLEC, LD)
- ND – "Telecommunications Carrier" means a company that is engaged in the business of furnishing telecommunications service within this state. The term includes a reseller of telecommunications service. ["Telecommunications service" means transmitting for consideration two-way communication by wire, cable, fiber optics, radio, lightwave, microwave, satellite, or other means.] ND Century Code 57-34 (1999) (LEC, CLEC, LD Fiber, Wless)
- OR – Assessment of Designated Utilities and Companies by Department of Revenue - "Communication" includes telephone communication, telegraph communication and data transmission services by whatever means provided. ORS 308.505(6) (1973) (LEC, CLEC, LD, Fiber, Wless, Tower Aggregators)
- TN – To reference property to be assessed by Comptroller, statute states: "Telephone, radio common carrier, cellular or wireless telecommunications and telecommunications tower companies." TCA 67-5-1301; also refer to 67-5-1310 (LEC, CLEC, LD, Fiber, Wless, VoIP, Tower Cos)

Telephone Company Definitions

- WA – "Telephone Company" means and includes any person owning, controlling, operating, or managing real or personal property, used or to be used for or in connection with or to facilitate the transmission of communications by telephone in this state through owned or controlled exchanges and/or switchboards, and engaged in the business of furnishing telephonic communications for consumption as owner, lessee or otherwise. RCW 84.12.200(6) (LEC, CLEC, LD, Fiber, Wless, ISP, VoIP)
- WV – Returns of Property to Board of Public Works: "by the owner or operator of every telegraph or telephone line, wholly or in part, within this state, except private lines not operated for compensation." WVC 11-6-1(a)(6) (LEC, CLEC, LD, Fiber, Wless)
- WI – "Telephone Company" means any person that provides to another person telecommunications services, including the resale of services provided by another company. ["Telecommunications services" means the transmission of voice, video, facsimile or data messages, including telegraph messages, except that "telecommunications services" does not include cable television, radio, one-way paging… .] 76.80(4) (1995) (LEC, CLEC, LD, Fiber, Wless)

Telephone Company Definitions

- WY – "Telecommunications companies" means any person engaged in the furnishing of telecommunications service. "Telecommunications service" means the offering of transmission for hire of telecommunications between or among points specified by the user, of information of the user's choosing without change in the content of the information as sent and received by means of telecommunications facilities, including switching facilities, using wire, cable, microwave, radio wave, light wave or a combination of those or similar media. The term shall include all types of telecommunications transmission such as telephone services, telegraph service, cellular, wireless, or satellite. The term shall not include assets used for television or radio programming broadcast over airwaves for public consumption, cable or satellite television offered for public consumption or telephone answering service and one-way paging or beeper services. WY Statutes 39-13-101(a)(vi)(vii) and 39-13-102(m)(vi) (Passed 2000 for 2001 implementation) (LEC, CLEC, LD, Fiber, Wless, Resellers)

- Format Information: Definition given by respondent; [Comments added by presenter]; Code, Statute, or Administrative Rules cite; (Year last updated); (Type of Companies Centrally Assessed)

Telephone Company Definitions

- Is there a universal definition? No. Definitions range from the basic to the more detailed. Some definitions put in place long before today's technologies were envisioned.

- Some definitions, for assessment purposes, have similarities with definitions found in Telecom Act

- Telecommunications Carrier – any provider of telecommunications services, except that such term does not include aggregators of telecommunications services… . A telecommunications carrier shall be treated as a common carrier…only to the extent that it is engaged in providing telecommunications services… . *(Telecom Act of '96)*
- Telecommunications Service – the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. *(Telecom Act of '96)*
- Telecommunications – means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. *(Telecom Act of '96)*

Assessment Jurisdiction

	LEC	CLEC	LD	Fiber	WLS	ISP	VoIP	CATV	DBS
AL	S	S	S	S	L	L	L	L	L
AZ	S	S	S	S	S	L	L	L	L
AR	S	S	S	S	S[1]	L		S[1]	L
CA	S	S	S	N/A	S	N/A	N/A	L	L
CO	S	S	S	S[2]	S	L	S	L	L
GA	S	S	S	S	L	L	L	L	L
IN	S	S	S	L	S	L	L	L	L

Assessment Jurisdiction

	LEC	CLEC	LD	Fiber	WLS	ISP	VoIP	CATV	DBS
KS	S	S	S	S	L	L		L	L
KY	S	S	S	S	S	L		S	L
LA	S	S	S	S	L	L	L	L	L
MI	S	S	S	S	L	S	S	L	L
MS	S[3]	S[3]	S[3]	L	L	L	L	L	L
MO	S	S	S	S[4]	L	L	L	L	L
MT	S	S	S	S	L	None[5]	None[5]	S	L

Assessment Jurisdiction

	LEC	CLEC	LD	Fiber	WLS	ISP	VoIP	CATV	DBS
NE	S	S	S	S	S	L	S[6]	L	L
NM	S	S	S	S	S	S	S	L	L
NC	S	S	S	L	L	L	L	L	L
ND	S	S	S	S	S	None[7]	None[7]	L	L
OK	S	S	S	S	S			L	L
OR	S	S	S	S	S	L	L	L	L

Assessment Jurisdiction

	ILEC	CLEC	LD	Fiber	WLS	ISP	VoIP	CATV	DBS
TN	S	S	S	S	S	L	S	L	L
TX	L	L	L	L	L	L	L	L	L
WA	S	S	S	S	S	S	S	L	L
WV	S	S	S	S	S	L	L	L	L
WI	S	S	S	S	S	L	L	L	L
WY	S	S	S	S	S	L	L	L	L

Assessment Jurisdiction

- Jurisdiction Notes:
  - [1]Definition interpreted in Southwestern Bell Mobile System v. Arkansas Public Service Commission, 73 Ark. App. 222, 40 S.W.3d. 838 (2001). Cable TV companies assessed via ACA 26-26-1801. (AR)
  - [2]Fiber companies are state assessed if they provide long distance service. (CO)
  - [3]LECs, CLECs, and LDs are state assessed if the company owns property in more than six Mississippi Counties. All others are locally assessed. (MS)
  - [4]Fiber Companies are state assessed if they own their own fiber and traverse more than one county. (MO)
  - [5]ISPs and VoIP Companies are not subject to property tax. (MT)
  - [6]VoIP Companies state assessed beginning in 2005. (NE)
  - [7]ISPs and VoIP Companies are not subject to property tax. (ND)

Assessment Jurisdiction

- Jurisdiction Synopsis
  - 16 of 26 respondents centrally assess Wireless Companies
  - 3 of 26 respondents centrally assess ISPs
  - 6 of 26 respondents centrally assess VoIP Companies
  - 3 of 26 respondents centrally assess Cable TV companies
  - No states reported centrally assessing Direct Broadcasting Companies
  - 5 respondents reported centrally assessing tower aggregators/companies (KY, NM, OR, TN, WI)

BEFORE THE UTAH STATE TAX COMMISSION

VERIZON WIRELESS, Petitioner, v. PROPERTY TAX DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION** Appeal No. 05-0829 Tax Type: Centrally Assessed
BEAVER COUNTY, et al., Petitioners, v. PROPERTY TAX DIVISION OF THE UTAH STATE TAX COMMISSION ex rel VERIZON WIRELESS, Respondents.	Appeal No. 05-0826 Tax Type: Centrally Assessed

Presiding: Pam Hendrickson, Commission Chair
R. Bruce Johnson, Commissioner
Marc Johnson, Commissioner
D'Arcy Dixon Pignanelli, Commissioner
Jane Phan, Administrative Law Judge

Appearances: For Petitioner Verizon Wireless: David J. Crapo, Attorney
For Petitioning Counties: Thomas W. Peters, Attorney
For Respondent: Timothy A. Bodily, Assistant Attorney General

STATEMENT OF CASE

This matter pertains to a Notice of Assessment issued by the Property Tax Division ("Division") of the Utah State Tax Commission ("Commission") to Cellco LP, dba Verizon Wireless (referred to as "Cellco" and "Verizon") on May 3, 2005, in which the Division asserted that the system value for Verizon's operating property was $18,276,900,000 as of January 1, 2005, and the allocated value of Verizon's Utah operating property was $169,975,170.[1]

On June 1, 2005, Verizon timely filed a Petition for Redetermination challenging the Division's assessed valuation against its operating property. Verizon's petition was assigned Appeal No. 05-0829.

On or about June 1, 2005, the Counties filed a Petition for Redetermination alleging that the Division's assessed valuation against Verizon's Utah operating property was less than the fair market value of such property and that the Division should have asserted a privilege tax against Verizon for its use of the government's electromagnetic spectrum in transmitting cellular telecommunication radio waves. The Counties' petition was assigned Appeal No. 05-0826. Verizon's and the Counties' appeals were consolidated before this Commission.

On March 31, 2006, Verizon filed a Motion for Partial Summary Judgment in these appeals requesting that the Commission determine as a matter of law that a privilege tax could not be levied against Verizon for its use of the electromagnetic spectrum.

The Commission heard oral arguments on the Motion for Partial Summary Judgment on May 25, 2006 and entered an Order on June 12, 2006, granting Verizon's motion. The Commission hereby incorporates its June 12, 2006 Order on the Motion for Partial Summary Judgment with this order. The valuation issues that were not addressed in the Motion for Partial Summary Judgment proceeded to the Formal Hearing before this Commission on August 21 through August 24, 2006.

Based upon the oral and written pleadings, as well as the evidence, testimony and

[1] See Formal Hearing Exhibit 4 (hereinafter all hearing exhibits admitted into the record at the Formal Hearing shall be referred to as "Exhibit").

exhibits presented at the Formal Hearing, the Commission[2] makes and enters its:

FINDINGS OF FACT

1. The tax type is ad valorem property tax.

2. The lien date is January 1, 2005.

3. The above captioned appeals relate primarily to Verizon's cellular telecommunications operating properties.

4. Cellular telecommunications properties operate in a frequency band of roughly 800 to 900 megahertz. This frequency is a UHF operation, which means the radio signals operate on a line of sight basis requiring cell towers to be situated so that a signal can be transmitted to and from a mobile cell phone with a minimum of interference.

5. Entities that operate cellular telecommunications properties are radio common carriers and thus are providers of radio communication services as described by Title 47 of the Code of Federal Regulations.

6. An entity is not allowed to operate cellular properties unless it also owns the cellular telecommunications license for the subject area of operation or has an agreement to use the license. Cellular telecommunications licenses are allocated and issued by the Federal Communications Commission ("FCC").[3]

7. FCC spectrum licenses are intangible assets that are frequently bought and sold by entities who are looking to acquire rights to service a particular geographic area.[4]

8. In order to provide cellular telecommunications services, Verizon has either

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[2] The Commission relies in part on Proposed Findings Submitted by the parties.
[3] See Exhibit 1, p. DIV271-272.
[4] See Formal Hearing Transcript ("Tr."), pp. 825-827, 852.

acquired or leased certain tangible and real properties used to transmit and receive cellular radio signals. The tangible and personal property owned by Verizon is primarily comprised of: radio frequency and control equipment, switching equipment, general purpose computers, antennas and towers, buildings, and certain other tangible and real properties.[5]

9. More than two-thirds of the historical cost for Verizon's tangible personal and real property is associated with radio frequency and control equipment, switching equipment and general purpose computers.[6]

10. The technology associated with the radio frequency and control equipment, switching equipment and general purpose computers has been rapidly changing.[7]

11. Due to the rapid technological change and competition in the telecommunications industry, the general purpose computers, switching equipment and radio frequency and control equipment are experiencing significant functional and economic obsolescence.[8]

12. Verizon is a general partnership, of which 55% is owned by indirect, wholly owned subsidiaries of Verizon Communications[9] and 45% is owned by indirect, wholly owned subsidiaries of Vodafone Group Plc.[10]

13. The highest and best use of this property is as a national telecommunications

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[5] Exhibit 2, p. 2-1.
[6] Exhibit 2, p. 2-1.
[7] Exhibit 1, p. DIV260, and Transcript, pp. 96, 400, 860.
[8] See Exhibit 6 and Transcript, pp. 466-467.
[9] See generally Exhibit 1. Verizon Communications is a publicly traded entity on the New York Stock Exchange under the symbols "VZ." Verizon Communications is one of the world's leading providers of communication and directory publication services. Verizon Communications has approximately 241,000 employees, and has a global presence in more than 40 countries.
[10] See generally Exhibit 1. Vodafone is a worldwide mobile phone operator with a presence in more than 28 countries across five continents. Vodafone is a publicly traded company and is traded on the New York Stock Exchange under the symbols "VOD."

network and Cellco is the appropriate unit to value under the unitary method.[11]

14. The Commission has issued earlier decisions related to Verizon Wireless.

a. Tax Commission Appeal Number 02-1010, Order on Motions for Summary Judgment, May 8, 2003. In that decision, the Commission issued an order holding that Verizon Wireless' Utah property was subject to central assessment and it was "part of a functional and economically integrated unit operating across county and state lines." Id. at pp. 6-7.

b. Tax Commission Appeal Number 02-1010, Final Decision, December 15, 2004. The Commission found that the "most appropriate unit for purposes of valuation of the Utah taxable property is the Verizon Wireless nationwide unit proposed by the [Division]." Id. At 40.

15. KPMG prepared an appraisal as of the lien date, which valued the spectrum licenses of Verizon Wireless ("KPMG Appraisal").[12] The indicated value for the licenses from the KPMG Appraisal was $69.5 billion to $74.5 billion.

16. The KPMG Appraisal valued the licenses under the following standard "the amount at which the assets (or liability) could be bought (or incurred) or sold (or settled) in current transactions between the willing parties, that is, other than in a forced or liquidation sale."[13]

17. Verizon did not incorporate the value conclusion of the KPMG Appraisal into its estimate of fair market value for taxable property.

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[11] Exhibits 5 & 10, Tr. 731.
[12] Exhibit 2.
[13] Ex. 2, p.1.

18. In determining its value KPMG considered the information and determined the following factors for an income approach valuation were relevant to the spectrum licenses. To determine the weighted average cost of capital KPMG determined that the appropriate cost of debt rate was 3.7%, the cost of equity was 11.1%. The capital structure determined was 25% debt and 75% equity, for a weighted average cost of capital ("WACC") of 9.3% for Verizon. KPMG added a premium to this rate since its appraisal was limited to the licenses. KPMG's cost of capital had been determined through a capital asset pricing model ("CAPM"), for which KPMG concluded the appropriate beta was 1.10 and the appropriate equity risk premium was 6%.[14]

19. The valuation positions of the parties presented at the hearing are summarized as follows:

	Division Exhibits 4 & 5	Verizon Wireless Exhibit 20	Counties Exhibit 10
HCLD Cost Model	$20,415,693,784	-----	$20,415,693,784
RCNLD Model	-----	$145,364,979*	-----
Income Model**	$13,286,429,039	$14,995,000,000	$20,615,536,108
Reconciled Value***	18,276,900,000	-----	20,600,000,000
Allocation	.93%	.86%	.93%
Utah Value	$169,975,170	$140,600,000	$191,580,000

* Utah property only.
**Value attributed to the tangible property without spectrum licenses or customer lists.
*** The Division placed 70% weight on the HCLD and 30% on the Income Model. Verizon applied the .86% allocation factor to its Income Model estimate and then placed 70% weight on its RCNLD Model and 30% weight on its Income Model. The Counties placed 100% weight on its Income Model.

[14] Exhibit 2, Prg. 5.3.6.1.

VALUATION EVIDENCE

1. Original Assessment and Division Evidence

20. The Division issued its original assessment for lien date, January 1, 2005, by valuing the Cellco or system wide property of Verizon Wireless at $18,276,900,000. This was based on a cost indicator that was given 70% weight and an income indicator given 30% weight. The Division allocated .93% of this system value to Utah, which resulted in an amount of $169,975,170.

21. The Division submitted an appraisal in this matter in support of its original assessment. The Division's appraisal relied upon the original assessment schedules and arrived at the same value. The Division's appraisal was signed by Sheldon Draper and William Kowalowski, both of whom are employees of the Property Tax Division and licensed appraisers by the State of Utah, Division of Real Estate.[15]

22. In both the appraisal and the original assessment the Division's income indicator was a yield capitalization method ("yield cap") and the Division's cost indicator was a historical cost less depreciation ("HCLD").

Division's Yield Cap Income Indicator CF/(k-g)

23. For its yield cap method the Division applied the formula CF/k-g, where "CF" is cash flow, "k" is the nominal risk adjusted rate and "g" is the growth rate.

24. Despite that Verizon's five-year history indicated substantial growth for revenue and net operating income, the Division concluded, based on a three year weighted average, that $3,600,000,000 was the appropriate factor for normalized net operating income ("NOI") for

purposes of its yield cap income indicator. The Division made some adjustments to its normalized NOI for deferred income taxes and normalized increase in working capital so that the income factor, or cash flow ("CF"), in the formula used by the Division was $3,602,666,667.[16]

25. Verizon's actual 2004 NOI was $4,296,923,200.[17]

26. Verizon showed substantial growth throughout a five-year history for revenues and net operating income.[18]

27. The Division concluded that it had insufficient information from Verizon Wireless to determine growth "g" and it applied the default rule of expected inflation rate for growth as required by Utah Administrative Code, R884-24P-62.E.2.(a)(3)(a). Based on this, the "g" in the Division's formula was 2%.[19]

28. The "k" in the yield cap formula represents the nominal, risk adjusted discount or yield rate. The Division's "k" was 10.76%. This was a weighted average cost of capital based on an industry structure of 30% debt and 70% equity. It was the Division's conclusion that for Verizon the debt rate was 5.82% and the common equity rate was 12.87%.[20]

29. The debt rate of 5.82% was determined based upon the Division's analysis that Verizon had a bond rating of A.[21]

30. The industry rate for common equity was determined by giving 75% weight to the

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[15] Exhibit 5.
[16] Exhibit 5, p. 5 & 6.
[17] Exhibit 5, p.6.
[18] Exhibit 5, p.6, Tr. 491-492.
[19] Exhibit 5, Tr. 697.
[20] Exhibit 5, p.9.
[21] Exhibit 5.

Capital Asset Pricing Model ("CAPM") and 25% weight to the dividend growth model.[22]

31. The Division's CAPM model resulted in a cost of equity of 13.20% using a beta of 1.15, market risk premium for the full Ibbotson period of 7.19% and a risk-free rate of 4.90%. The Division's dividend growth model determined a cost of equity at 11.89%. [23]

32. Verizon Communications, which owns 55% of Verizon Wireless, showed a Value Line beta of 1.0. [24]

33. The Division concluded that the appropriate beta to use in this matter was 1.15.[25]

34. The Division justified its selection of a beta based in part upon the facts that Verizon Communications had a beta of 1, Verizon comprised 36% of Verizon Communications and Verizon, for the same lien date, reported a beta of 1.10 in the KPMG Report.[26]

35. The Division's capital structure and beta were based upon the guideline companies consisting of the following, AT&T Corp., ALLTEL Corp., BellSouth Corp., CenturyTel, Inc., Citizens Communications, Nextel Communications, SBC Communications, Sprintcorp, US Cellular, Verizon Communications and Western Wireless.[27]

36. The Division reported that it applied these guideline companies to the wireless industry for the 2005 assessment year and to other telecommunications companies such as local exchange, long distance and integrated telecommunication companies.[28]

37. The Division utilized a broader group of telecommunication guideline companies

[22] Exhibit 5.
[23] Exhibit 5, Appendix.
[24] Exhibit 5, Appendix; Ex. 1, p. 54.
[25] Exhibit 5, Appendix.
[26] Exhibit 2, Tr. 758-760.
[27] Exhibit 5.
[28] Tr. 756.

for this lien year instead of creating a sub category for wireless as had been done in previous years. This departure occurred because of substantial consolidation in the wireless industry.[29]

38. The trend in the wireless industry is for the wireless carriers to be owned by diversified telecommunication companies. The largest wireless companies consisted of the flowing, as of the lien date, and were all owned by diversified telecommunication companies.[30]

1. Cingular- owned by SBC and BellSouth;
2. Verizon Wireless-owned by Verizon Communications and Vodafone;
3. Sprint Communications-owned by Sprint Corp (with a pre-lien announcement that it was acquiring Nextel); and
4. T-Mobile-owned by Deutsche Telkom.

39. Had the Division continued with a separate cost of capital category for wireless providers, it would have been left with two small regional providers, U.S. Cellular and Western Wireless, who serve a very small portion of the cellular market.[31]

40. Based on the yield cap method, using $3,602,666,667 for the income or "CF", 10.76% for the rate or "k" and 2% for the growth or "g," the Division determined an income indicator of $41,126,331,811.[32]

Division's Adjustment for Intangibles

41. The Division subtracted from its income indicator the amount of $27,839,902,772, representing an estimate for the value of exempt intangible property captured within the income indicator.[33] The result was an income indicator adjusted for intangibles of $13,286,429,039.

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[29] Tr. 756-758.
[30] Exhibit 7, p.4.
[31] Tr. 257.
[32] Exhibit 5.
[33] Exhibit 5.

42. The exempt intangible property consisted of customer lists and licenses. [34]

43. The estimated value for exempt intangible property captured within the Division's income indicator was based upon a ratio of the historic cost excluding exempt intangible property and the total cost including exempt intangible property.[35] This results in a ratio of 32.3% for tangible property and 67.7% for intangible property.

Division's Cost Indicator/Correlation/Allocation

44. The Division determined an historical cost less depreciation cost indicator ("HCLD"), which arrived at a system value of $20,415,693,784.[36]

45. The Division then correlated the income after adjustment for intangibles and the cost indicator to determine a system or unit value for Verizon. The Division's conclusion for the system value of $18,276,900,000 was based on a correlation of 30% to the Division's income indicator and 70% to the Division's cost indicator.[37]

46. The Division justified giving substantial weight to the cost indicator based upon concerns that the income indicator was not as reliable because of the substantial growth experienced by Verizon Wireless and the uncertainty in the substantial subtraction for exempt intangible property.[38]

47. The Division allocated to Utah .93% of the system value utilizing the following allocation method[39]:

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[34] Exhibit 5.
[35] Exhibit 5.
[36] Exhibit 5, p. 3.
[37] Exhibit 5, p.8.
[38] Tr. 725, 726.

Historical Cost	.90% weighted 75%
Gross Operating Revenue	.93% weighted 15%
Operating Income	1.08% weighted 10%

48. The Division applied this same method to all telecommunication companies for the 2005 assessment.[40]

49. The resulting value for Verizon's Utah taxable property was $169,975,170.

2. Verizon Wireless's Valuation Evidence

50. Verizon Wireless asserted three main errors against the Division's assessment: (1) the Division's HCLD cost model was not properly adjusted for functional and economic obsolescence, (2) the Division's income model was erroneous because the Division failed to properly estimate its cost of equity and the amount of income to be capitalized, and (3) the Division's Utah allocation factor was erroneous because it failed to consider a net book factor in its formula.

51. Verizon Wireless called three witnesses to address these alleged errors and present valuation evidence: Mr. Earl M. Robinson, a Certified Depreciation Professional and President and CEO of AUS Consultants,[41] Mr. Carl R.E. Hoemke, former Managing Director of Standard & Poors Corporate Value Consulting and current Managing Director of Duff & Phelps LLC,[42] and Mr. Michael J. Mupo, the Executive Director of Tax Valuation for Verizon.[43] None

[39] Exhibit 5.
[40] Tr. 703.
[41] Exhibit 12.
[42] Exhibit 13.
[43] Exhibit 19. All of the parties agreed that the valuations associated with this matter were unitary business appraisals and not real estate appraisals. See generally Transcript, p. 979. The Utah Supreme Court has previously ruled that work or testimony related to a unitary business valuation is not subject to the licensing requirements of § 61-2b-3 of the Real Estate Appraiser Licensing and Certification Act. Utah Ass'n of Counties v. Tax Comm'n ex rel. MCI Telecommunications Corp., 895 P.2d 825 (Utah 1995). Accordingly, the Commission may consider and weigh the testimony of the witnesses in this matter whether they are licensed as real estate appraisers or not.

of the witnesses offered by Verizon have any appraiser designations or appraiser licenses.[44] However, the Commission notes that the state certification for appraisal licenses applies only to real estate. Mr. Robinson has professional experience in personal property appraisal and Mr. Hoemke in business valuation. Their total experience in both of these fields is relevant to this proceeding.

Robinson's Cost Approach

52. Mr. Earl Robinson prepared a replacement cost new less depreciation cost model ("RCNLD") for Verizon' Utah property in which he concluded that the replacement cost new value for Verizon Wireless' operating property in the state of Utah was $145,364,979.[45] Mr. Robinson did not prepare an RCNLD for Verizon's national unit.

53. Mr. Robinson's RCNLD was essentially a summation approach where he summed the replacement cost less depreciation of the individual items of personal property. To determine the amount of depreciation he was required to classify property accurately and apply the various indices. Indices could vary widely for the same classification of property.

54. In preparing his RCNLD, Mr. Robinson did not value the land and did not include a specific calculation of opportunity costs that a buyer would consider in acquiring the nationwide unit recognizing that it would take several years to replace the network.

55. Maintaining a working network is critical for Verizon to maintain its licenses.[46]

56. Mr. Robinson did not reconcile his RCNLD with other indicators of value in

[44] Tr. 138, Tr. 159, Tr. 426.
[45] Exhibit 6.
[46] Exhibit 1, p.15.

determining a fair market value.[47]

Hoemke's Income Approach

57. Mr. Carl Hoemke prepared a cost of capital report for the telecommunications industry for the January 1, 2005 lien date. Mr. Hoemke determined that the weighted average cost of capital for the telecommunications industry should be approximately 12.99% prior to any adjustments for flotation.[48]

58. The cost of capital study prepared by Mr. Hoemke differed substantially from the weighted average cost of capital arrived at by KPMG, the Division and the Counties.[49]

59. Mr. Hoemke used AT&T Wireless, Nextel Communications, Inc., Nextel Partners, Inc., Leap Wireless International, US Cellular, and Western Wireless Corp., as his guideline companies to develop his cost of capital.[50]

60. As of the lien date, AT&T Wireless no longer existed.[51]

61. Value Line reported betas for only three of Mr. Hoemke's guideline companies, Nextel Communications, Untied States Cellular Corp. and Western Wireless Corp., because the other companies no longer existed or were too small to be tracked.[52]

62. Mr. Hoemke acknowledged that Verizon Wireless, prior to the Cingular acquisition of AT&T Wireless, was the largest wireless communications provider and that the other wireless providers based on order of size were Cingular Wireless, Sprint, AT&T Wireless

[47] Tr. 138.
[48] Exhibit 17.
[49] Exhibits 2, 5, 7, 10.
[50] Ex. 7, p. 3.
[51] Tr. 297.
[52] Tr. 284.

and T-Mobile USA.[53]

63. Mr. Hoemke's guideline companies failed to include the five largest wireless providers, with the exception of AT&T Wireless.[54]

64. Mr. Hoemke admitted that Verizon Wireless was substantially larger than Nextel Communications and the regional carriers Leap Wireless International, US Cellular and Western Wireless.[55]

65. Mr. Hoemke's cost of capital report concluded that the regional carriers were struggling to compete with the national carriers such as Verizon Wireless. Specifically, Mr. Hoemke stated, regarding US Cellular, that "US Cellular's business risk as a regional wireless provider has increased over the past year because of heightened competitor pressures by national players."[56]

66. Mr. Hoemke determined his cost of equity based upon a quadrant scheme giving 25% weight to a CAPM ex-post, 25% weight to a CAPM ex-ante, 25% weight to Standard and Poors CVC ex-post and 25% weight to Standard and Poors CVC ex-ante.[57]

67. Mr. Hoemke's CAPM ex-post and ex-ante models are primarily driven by his choice of beta. [58]

68. Mr. Hoemke revised his beta during the course of the hearing. See Exhibit 17 in which his corrected Bloomberg beta for his guideline companies resulted in a weighted average beta of 1.01 instead of 1.22.

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[53] Exhibit 7, Prg. 3.1.
[54] Exhibit 7, Prg. 3.3.1.
[55] Tr. 284-285.
[56] Exhibit 7, pp.22, 23.
[57] Exhibit 7, p. 40.

69. The corrected Value Line beta resulted in a weighted average beta of 1.57 instead of 1.39, based upon only three companies. Nextel commutations dominated the Value Line weighted average with 82% weight.[59]

70. Mr. Hoemke averaged the Value Line beta with the Bloomberg beta to arrive at a CAPM ex-post beta of 1.29. This beta is significantly higher than the Division's choice of 1.15 and the beta chosen by KPMG of 1.10. [60]

71. The overall CAPM ex-post beta arrived at by Mr. Hoemke effectively gave 41% weight to one company, Nextel, and Nextel had the highest reported beta of all betas analyzed by Mr. Hoemke.[61]

72. Utah Admin. Rule R884-24P-62 ("Rule 62") requires that 50% weight be given to CAPM ex-post method. Mr. Hoemke gave only 25% to the CAPM ex-post and while he gave another 25% weight to the CAPM ex-ante model, this does not meet the 50% requirement of Rule 62.

73. Mr. Hoemke's CAPM ex-ante model arrived at a market risk premium of 8.02%, which is higher than the 7.2% Ibbotson period required by Rule 62 and higher than the risk premium chosen by KPMG of 6%.[62]

74. Mr. Hoemke's final two cost of equity measurements relied on a size return study and risk return study. However, in these methods, Mr. Hoemke applied a median as opposed to a

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[58] Exhibit 17 "Exhibit 9, pp.1-32".
[59] Exhibit 17, "Exhibit 9, pp.2-3."
[60] Exhibit 17, 5, 2.
[61] Exhibit 17, "Exhibit 9, pp. 1-2".
[62] Exhibit 2, 7.

weighted average.[63]

75. The use of the median in the size return study caused AT&T Wireless' equity risk premium of 5.2% to be considered an outlier and ignored by Mr. Hoemke; whereas the median resulted in an equity risk premium of 8%, which was straddled by the small regional carriers, United States Cellular and Western Wireless.[64]

76. Mr. Hoemke also prepared three DCF analyses of the Cellco unit.[65]

77. Mr. Hoemke's first DCF valued the tangible assets for the Verizon national system based upon Mr. Hoemke's assumption of the revenue attributed to the tangible assets. In the first DCF he arrived at a value of $14,995,000,000.[66]

78. In his second DCF, Mr. Hoemke assumed full growth and determined a value for the combined tangible and intangible property. Then he subtracted the portion of the value he attributed to the intangible property. In this DCF, Mr. Hoemke concluded a terminal growth rate of 6% and derived a present value of cash flows of $81,319,000,000. [67]

79. From the value of $81,319,000,000 concluded in this second DCF, Mr. Hoemke subtracted the values he attributed to the spectrum licenses and customer lists. His value for the customer lists was $4,380,000,000, and for the spectrum licenses $61,854,000,000, which resulted in a system wide value of the tangible assets of $15,085,000,000.[68] His value for the customer lists was based on a metric of $100 per subscriber. He testified, "That tends to be the

[63] Exhibit 7, "Exhibit 11".
[64] Exhibit 7 "Exhibit 11", Tr. 380.
[65] Exhibit 8, Tr. 250-251.
[66] Exhibit 8, 17.
[67] Exhibit 8, 17.
[68] Exhibit 8, 17.

average value that I've seen other people use for customers."[69] For the licenses, Mr. Hoemke determined the value by taking a look at the original SEC license value when it was first put on the books, and then indexed that over time by change in subscribers. He did not provide source documents or evidence supporting these values. When asked if these were standard methodologies, Mr. Hoemke acknowledged that "you'd want to go through a much more detailed calculation in the FCC license in order to quantify what is the appropriate FCC license value."[70]

80. Mr. Hoemke's third DCF attempted to match the Division's Rule 62 limited growth yield cap method and arrived at a value of $42,587,000,000, with a terminal growth rate of 3.58%.[71]

81. Mr. Hoemke did not offer a reconciled fair market value of Verizon.[72] Nor did he prepare a formal appraisal report.

82. Mr. Hoemke attempted to support his DCF full growth model by referencing a 2006 offer by Verizon communications to acquire Vadafon's equity only interest in Cellco for $38.5 billion.[73]

83. Mr. Hoemke argued that this offer, after making certain present value assumptions, equated to a system value of $83 billion.[74]

84. However, on cross-examination, Mr. Hoemke admitted that this offer had been

[69] Tr. p. 224.
[70] Tr. p. 224.
[71] Exhibit 18.
[72] Tr. 156-351.
[73] Tr. 880.
[74] Tr. 883.

rejected by Vodafone which was seeking $50 billion or more for its 45% equity interest.[75]

Mupo's Reconciliation and Allocation

85. Mr. Mike Mupo testified as an employee of Verizon and not as a licensed or professional appraiser. Mr. Mupo stated Verizon believed that the Commission should utilize Mr. Robinson's RCNLD Utah only cost indicator and Mr. Hoemke's nationwide or Cellco system income indicator to derive the value of Verizon's property for the subject tax year.

86. Mr. Mupo applied an allocation factor to arrive at a Utah only income indicator of $129,584,950. He then reconciled this income indicator with Mr. Robinson's RCNLD Utah only indicator. Mr. Mupo gave 70% weight to Mr. Robinson's RCNLD and 30% weight to Mr. Hoemke's income indicator, to derive a recommended value for the subject tax year rounded to $140,600,000.[76]

87. Mr. Mupo also testified that he believed the Division's allocation factor should be changed from .93% to .86%.[77] The .86% was derived by taking the Division's allocation formula and placing 37.5% weight on the historic cost factor, 37.5% weight on a net book cost factor, 15% weight on a gross operating revenue factor, and 10% weight on a net operating income factor. [78]

88. It was Mr. Mupo's position that the Division's 75% weighting to historical cost in the interstate allocation was an error since he believed some of the fully depreciated Utah assets disproportionally remained on the books compared to the national system and were "ghost

[75] Tr. 902, Ex. 31.
[76] Exhibit 20.
[77] Exhibits 20 and 9.
[78] Exhibit 9.

assets."[79] However, he was unable to point to any specific assets that should have been written off and was unable to identify any "ghost assets."[80]

89. Mr. Mupo testified that some of Verizon Wireless' spectrum licenses may have been placed upon the books at a de minimis value because they were received through auction.[81]

90. Verizon's 10-K acknowledged that many of Verizon's licenses were valued for book purposes using a residual method.[82]

3. Evidence From Petitioning Counties

91. The Counties asserted two main errors against the Division's assessment: (1) the Division's HCLD cost model was a poor cost indicator to use for an unregulated entity like Verizon Wireless, and (2) the Division's income model was erroneous because it failed to properly estimate the amount of income to be capitalized, the proper capitalization rate, and the amount of deductible intangibles.

92. The Counties' only witness to address their alleged errors and present valuation evidence was Mr. Brent Eyre, a member of the American Society of Appraisers and Licensed Certified General Appraiser.[83]

93. Mr. Eyre prepared a review appraisal of the Division's assessment.[84] Mr. Eyre concluded that no weight should be placed on the HCLD approach, and that it should be considered a "very weak approach" for the subject property.[85]

[79] Tr. 418-421.
[80] Tr. 841.
[81] Tr. 826.
[82] Exhibit 1, pp.78-79.
[83] Exhibit 21.
[84] Exhibit 10.
[85] Exhibit 10, p. 25.

94. Mr. Eyre indicated that 100% of the weight should be placed on the income approach. However, it was Mr. Eyre's opinion that the Division had erred in its income approach in estimating the weighted average cost of capital, estimating the amount of normalized cash flow to capitalize and in both deducting and valuing the spectrum licenses.

95. Mr. Eyre testified that he believed the weighted average cost of capital should be approximately 11.14% based on a capitalization rate study which he prepared.[86] It was his conclusion that AT&T should be excluded as a guideline company. This resulted in a slightly lower cost of equity of 12.85%. He concluded that the cost of debt was 6%, slightly higher than the Division's. It was his opinion that the appropriate capital structure was 75% equity and 25% debt. These factors result in a weighted average cost of capital of 11.14%, slightly higher than the Division's weighted average cost of capital of 10.76%.

96. Mr. Eyre testified that he believed the best estimate of the normalized NOI was the most current completed year, 2004. He then increased this estimate by approximately 2%, and capitalized the resulting normalized cash flow of $4,382,861,664 by 9.14% (his weighted average cost of capital of 11.14% less 2% growth).

97. Based on these factors his system value from the income approach was $47,943,107,221. He then deducted $1,996,000,000 for the customer lists to reach a value of $45,947,107,221. Mr. Eyre valued the customer lists by first applying a ratio of his unadjusted income indicator to the "invested cost" (total historic cost before depreciation) of $82,411,000,000. This results in a "market value to invested cost ratio of 58.2%," which was

[86] Exhibit 10, p.20.

then applied to the original book cost of $3,430,000,000.[87]

98. Although it was his opinion that the spectrum licenses were subject to either property tax, and should not be subtracted from the value, or the privilege tax, he indicated if they were determined to be nontaxable, the division had not correctly calculated their value. Mr. Eyre determined the amount to subtract for licenses by preparing a full growth income model using a direct capitalization method ("direct cap"). He then determined a ratio between his yield cap income indicator and the direct cap income indicator of $80,567,310,000, which he applied to the book value of exempt property.[88] The ratio was 59.5%, which was applied to the original booked value of the customer lists and spectrum licenses to establish the "imputed carrying value of the exempt property," which calculates to be $27,070,715,000. Mr. Eyre then substitutes this amount into the denominator of the formula used by the division, resulting in a ratio of 43% for tangible property and 57% for intangible property. Based on this method it was Mr. Eyre's conclusion that the value that should be deducted for the spectrum license and other intangibles was $27,327,511,119, which resulted in an estimated system wide value under his income approach rounded to $20,600,000,000.[89]

99. It was Mr. Eyre's opinion that the Division's approach to determining a value for the spectrum licenses, which the Division then subtracted from its income approach, had been in error. The Division had used the ratio it developed from its cost indicator to remove spectrum licenses form the income indicator. Mr. Eyre opined that the growth expectations when the spectrum licenses were placed on Verizon's books were much different than the growth

[87] Ex. 10, p. 21.
[88] Ex. 10, Tr. 511-5144.
[89] Exhibit 10, Tr. 511-514.

expectations that were inherent in the Division's income indicator, creating a mismatch. Mr. Eyre indicated that the acquisition price of the spectrum licenses impounds not only Verizon's inflationary growth expectations but also the net present value of all future cash flows or real growth. The Division's income approach contains only the inflationary growth estimate prescribed by Rule 62. Mr. Eyre concluded that applying the ratio developed from the Division's cost approach to the Division's income approach is a mismatch resulting in an under valuation of the Division's income approach.[90]

100. Mr. Eyre gave 100% weight to his income indicator and arrived at a system value of $20,600,000,000.[91]

101. Mr. Eyre did not advocate a change in the Division's allocation formula, and by applying a .93% allocation to his system wide estimated income approach, derived a Utah value of $191,580,000.[92]

102. Mr. Eyre's report also determined a value of the Utah property assuming licenses were not exempt or that privilege tax could be imposed for the use of the spectrum and arrived at a Utah value of $427,800,000.

103. In addition, Mr. Eyre prepared a discounted cash flow based upon the forecasted numbers reported by Verizon Wireless in the KPMG Appraisal. The DCF resulted in a system value of $102,690,000,000, including exempt intangible property.[93]

104. Mr. Eyre testified that the DCF showed substantial value for Verizon Wireless

[90] Exhibit 10, Tr. 511-512, 552-553.
[91] Exhibit 10.
[92] Exhibit 10, p. 27.
[93] Exhibit 11, Tr. 520-523.

beyond the book value of the tangible assets and the value of exempt intangible property.[94]

105. Mr. Eyre states that the KPMG report reached a similar conclusion.[95] The KPMG report stated:

> As a test for reasonableness we compared the value of the spectrum licenses combined with estimates of value of all other underlying Verizon assets to estimated indications of business enterprise value. When the sum of spectrum license values along with the other assets was subtracted from the enterprise value estimate there was still excess asset value remaining. This indicated to us the presence of goodwill and other unidentified assets in the business and gave us some comfort that spectrum licenses were not overvalued.

(Ex. 2, Prg. 5.3.8 (Emphasis added).)

4. Tax Commission's Appraisal Conclusions

106. Regarding the discount or yield capitalization rate, each party provided the rationale for its rate. Much of the disparity was the result of reliance on differing groups of guideline companies. Verizon argued the weighted average cost of capital was 12.99% based on a cost of debt rate of 6.95% and cost of equity of 14.743%. The Counties argued that the WACC was 11.14% based on a cost of debt rate of 6% and a cost of equity of 12.85%. Although these parties made some credible arguments regarding their requested rates they did not prove to the Commission that their rates were clearly better or more accurate than that set by the Division. The Commission finds the Division's grouping of guidelines companies reasonable for Verizon and the Division's WACC of 10.76%, based on a cost of debt of 5.82% and a cost of equity 12.87% was appropriate. The Commission disagrees with some of Mr. Hoemke's conclusion's

[94] Tr. 522.
[95] Tr. 945-946.

regarding the guideline companies that he relied on, his selective weighting or averaging and the Commission notes that his rate is not in compliance with Rule 62.

107. The normalized net operating income used by the Division in its appraisal was clearly conservative. It was based on a consideration of several historic averages, apparently giving most weight to the most recent three-year average, resulting in $3,600,000,000, a number significantly lower than the NOI for the most recent year prior to the lien date, which was $4,296,923,200. As the Counties pointed out there was a clear trend of growth in the income stream over a five-year history. With the clear history of growth in revenues and net operating income for Verizon, the Commission would tend to agree with the Counties, and in fact as acknowledged by Verizon, that the Division's income factor was low. In reviewing and considering a higher estimate of NOI, such as that proposed by the Counties, the Commission recognized that a normalized cash flow and resulting income indicator of value before adjusting for intangibles would be higher than those estimated by the Division. However, given the Division's appraisal taken as a whole and the other evidence in this matter, the Commission declines to make a formal recalculation based on the higher income stream as this change would be offset by another change that the Commission would consider, which is the reconciliation as discussed below. The result would corroborate the assessed value determined by the Division and supported by the Division's appraisal.

108. In addition to the concerns with the discount rate, the Commission has other issues with the discounted cash flow analysis prepared in this matter by Mr. Hoemke. One of these is that the value conclusion was not presented as part of an integrated appraisal of the

subject property. Mr. Hoemke prepared a Cost of Capital Report and then made some discounted cash flow calculations and corrected calculations. One specific concern that the Commission has with his discounted cash flow calculations is that income is indicated as declining over time. Given the information presented the Commission would conclude that at the very least Verizon would expect a normalized steady cash flow from the assets currently in existence on the lien date with the assumption of capital expenditures for normal replacement assets. In reviewing Mr. Hoemke's DCF model that excludes intangibles, by simply using a "0" growth rate and leaving the terminal value the same the resulting value is within a reasonable range of the Counties' adjusted income indicator.

109. The County's income value started with a higher normalized net operating income than the Division's, with which the Commission does not necessarily disagree. However, the County than attributes a smaller portion of the resulting value, approximately 57%, to the intangible licenses, which results in an income value adjusted for intangibles that is higher than the assessed value for this property. Additionally the Counties asked that the value of the spectrum licenses be included as taxable property. Whether the spectrum licenses are subject to property tax is an issue that was fully addressed by the Commission previously in these appeals, by Order on Motion for Partial Summary Judgment, dated June 12, 2006, which order is incorporated into this proceeding. The Commission makes no modification to the Order.

110. The Commission recognizes that both Verizon and the County have provided a different approach for determining the value of the licenses, but does not find that either of their approaches are clearly better than the Division's. In considering the issue of the spectrum

licenses the Division's approach for determining the value was based on a ratio of the cost indicator excluding exempt intangibles and a cost indicator including exempt intangibles. The County argues that applying this value to the income indicator was a mismatch. The Commission concedes that it would prefer some appraisal or direct market determination of the value of the licenses. In this matter only Verizon proposed and submitted an estimated value for intangibles that used dollar amounts directly rather than ratios. The Commission realizes that using an allocation based on booked costs is not a standard appraisal method for valuing intangible property. At the same time, however, the Commission believes that a cost based allocation is not unreasonable, particularly given the complexities of valuing intangible property. Furthermore, Mr. Hoemke's dollar estimates were speculative and unsupported by source documentation or market analysis.

111. The Commission notes that the KPMG report did value the licenses based on a more comprehensive financial analysis. However, neither the report nor the underlying analysis and conclusions were incorporated into an appraisal. The Commission is not inclined to rely on this report in conjunction with the valuations submitted by the parties, and in the absence of any other analysis associated with the report. To this point, Mr. Eyre estimated the full value of Verizon to be $102,690,000,000 based on the KPMG data.[96] Deducting the highest value for intangibles estimated by KPMG of $74,200,000,000[97] leaves a system value of $28,490,000,000 for the tangible property and the customer lists. This is higher than, and only serves to corroborate, the income indicators submitted by the Counties and the Division.

[96] Exhibit 11.
[97] Exhibit 2 "Exhibit 4, Scenario 1," (ref. p.14.).

112. Although Mr. Eyre's methodology for valuing intangibles is ostensibly based on the same principle as the Division's the Commission has concerns here as well. To begin, he uses different methods in valuing only the customer lists, which he believes are intangible, and valuing both the lists and the licenses, which he does not. While it would not result in a material difference in this case the Commission is uncomfortable with inconsistent methods applied depending on an appraiser's personal opinion of whether the property is taxable or not. Furthermore, in the specific instance of the spectrum licenses, whereas the division utilized a simple "book to book" ratio, the County used a more complex approach. Mr. Eyre took a market adjusted cost, derived from an income indicator, for the intangible property, as part of the denominator, but left the book value of the tangible property in the numerator. The Commission finds this to be an unnecessary complication, and one not particularly helpful in trying to determine the relative value of intangible property attributable to an income indicator. A more appropriate approach, for example, would be to first establish the "imputed carrying value" (market value) of all the assets based on an independent indicator such as comparable sales, then derive a ratio.

113. The Division's allocation of 67.7% is a reasonable substitute in the absence of either a more direct value for the intangible property or a better method for determining a ratio. Neither Verizon, whose implied ratio for intangibles is 81.56%, nor the Counties, whose method resulted in a ratio of 57% for intangibles, have shown that their method is superior to the Division's method.

114. The Division prepared a cost approach using the HCLD model of the proper unit

and concluded that the system value was $20,415,693,784. The Counties did not disagree with the value calculated from this model but argued it should be given no weight. This was the only cost value for the proper unit. For purposes of comparison only, if multiplied by the Utah allocation factor of .93% this would indicate a cost value for the Utah assets of approximately $189,865,940. Verizon prepared a RCNLD based only on the Utah assets, rather than a system wide value. Verizon's conclusion was a cost approach value for the Utah assets of $145,363,979. Verizon argued that it was time consuming and costly to prepare an RCNLD of the entire system wide assets. The Commission has concerns that Verizon's cost approach is not reflective of the true unitary value of the property. However, it does lend some support to Verizon's contention that there is functional obsolescence due in part to the rapidly changing technology that may not be fully reflected in the HCLD factor. The Division's HCLD is, however, based on the proper unit. For this reason, if the Commission were to reappraise this property itself, it would consider increasing the cash flow in the income approach as discussed above and reducing the weight given to the HCLD to no more than fifty percent due to the obsolescence factor.

115. However, the Commission finds the Division's appraisal taken as a whole has arrived at a reasonable estimate of fair market value. Verizon has not submitted a consolidated appraisal report. The Commission does not find it appropriate to reconcile a system wide income approach with a Utah only cost approach. In addition, the Commission disagrees with the discount rate applied by Mr. Hoemke. The Counties submitted a review appraisal report that places all weight on an income approach. However, the Commission believes this places too

much weight on an approach where there is such difficulty in calculating the reduction to the value to be made for intangible licenses. Neither party has demonstrated error on the part of the Division or presented evidence supporting a different value. Upon review all of the evidence presented at the hearing the Commission may have preferred an income approach based on a more accurate income stream and placed increased weight on that approach, while taking some weight from the cost approach. The Division's income approach was conservative and it chose to place less weight on it. However, these changes roughly offset each other and the system wide value conclusion of $18,276,900,000 would remain substantially the same.

116. The Division, using a uniform formula applied to all like properties, calculated a Utah allocation of .93%. Using this allocation the value of the Utah taxable assets is $169,975,170. The Counties did not argue the Division's allocation was improper and Verizon simply did not provide compelling argument or evidence that it should be reduced to the allocation of .86% that Verizon requested.

APPLICABLE LAW

The Utah Constitution mandates that all tangible property in the state shall be taxed at a uniform and equal rate. Utah Const. Article XIII, Section 2(1) (2005) provides as follows:

> So that each person and corporation pays a tax in proportion to the fair market value of his, her, or its tangible property, all tangible property in the state that is not exempt under the laws of the United States or under this Constitution shall be:
>
> (a) assessed at a uniform and equal rate in proportion to its fair market value, to be ascertained as provided by law; and
>
> (b) taxed at a uniform and equal rate.

Consistent with the Constitutional provisions to tax all property at its fair market value, the Legislature enacted Utah Code Ann. § 59-2-103 (2005), which provides as follows:

> (1) All tangible property shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.

Utah Code Ann. § 59-2-201 (2005) describes which classes of property must be centrally assessed. The relevant parts of section 59-2-201 provide:

> (1) By May 1 of each year the following property . . . shall be assessed by the Commission at 100% of fair market value, as valued on January 1, in accordance with this chapter: (a) . . . all property which operates as a unit across county lines, if the values must be apportioned among more than one county or state; (b) all property of public utilities;

Utah Code Ann. § 59-2-102(12) (2005) defines "fair market value" in relevant part, as follows:

> (9) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. . . .

The Utah Constitution also provides that if intangible property is taxed as property it may not be subject to income tax. Utah Const. art. XIII, § 2(5) (2005) provides, in relevant part, as follows:

> (5) The Legislature may by statute determine the manner and extent of taxing or exempting intangible property, except that a property tax on intangible property may not exceed .005 of its fair market value. If any intangible property is taxed under the property tax, the income from that property may not also be taxed.

The Legislature has also created by statute an exemption for intangible property. Utah

Code Ann. § 59-2-1101 (2005) provides as follows:

(3) The following property is exempt from taxation . . . .(g) intangible property.

In Utah Code Ann. § 59-2-102(18) (2005), the Legislature has defined intangible property as follows:

"Intangible property" means:

(a) property that is capable of private ownership separate from tangible property, including:

(i) monies;

. . .

(iv) stocks;

(v) representative property;

(vi) franchises;

(vii) licenses;

(viii) trade names;

(ix) copyrights; and

(x) patents. . . .

The Commission has adopted Rule 62 for the valuation of state assessed properties. The relevant portions of that Utah Admin. Rule R884-24P-62 (2005) are:

E. Appraisal Methodologies.

1. Cost Approach. Cost is relevant to value under the principle of substitution, which states that no prudent investor would pay more for a property than the cost to construct a substitute property of equal desirability and utility without undue delay. A cost indicator may be developed under one or more of the following methods: replacement cost new less depreciation (RCNLD), reproduction cost less depreciation (reproduction cost), and historic cost less depreciation (HCLD).

a) "Depreciation" is the loss in value from any cause. Different professions recognize two distinct definitions or types of depreciation.

(1) Accounting. Depreciation, often called "book" or "accumulated" depreciation, is calculated according to generally accepted accounting principles or regulatory guidelines. It is the amount of capital investment written off on a firm's accounting records in order to allocate the original or historic cost of an asset over its life. Book depreciation is typically applied to historic cost to derive HCLD.

(2) Appraisal. Depreciation, sometimes referred to as "accrued" depreciation, is the difference between the market value of an improvement and its cost new. Depreciation is typically applied to

replacement or reproduction cost, but should be applied to historic cost if market conditions so indicate. There are three types of depreciation:

(a) Physical deterioration results from regular use and normal aging, which includes wear and tear, decay, and the impact of the elements.

(b) Functional obsolescence is caused by internal property characteristics or flaws in the structure, design, or materials that diminish the utility of an improvement.

(c) External, or economic, obsolescence is an impairment of an improvement due to negative influences from outside the boundaries of the property, and is generally incurable. These influences usually cannot be controlled by the property owner or user.

* * *

e) RCNLD may be impractical to implement; therefore the preferred cost indicator of value in a mass appraisal environment for unitary property is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value.

2. Income Capitalization Approach. Under the principle of anticipation, benefits from income in the future may be capitalized into an estimate of present value.

a) Yield Capitalization. The yield capitalization formula is CF/(k-g), where "CF" is a single year's normalized cash flow, "k" is the nominal, risk adjusted discount or yield rate, and "g" is the expected growth rate of the cash flow.

(1) Cash flow is restricted to the operating property in existence on the lien date, together with any replacements intended to maintain, but not expand or modify, existing capacity or function. Cash flow is calculated as net operating income (NOI) plus non-cash charges (e.g., depreciation and deferred income taxes), less capital expenditures and additions to working capital necessary to achieve the expected growth "g". Information necessary for the Division to calculate the cash flow shall be summarized and submitted to the Division by March 1 on a form provided by the Division.

* * *

(b) Capital expenditures should include only those necessary to replace or maintain existing plant and should not include any expenditure intended primarily for expansion or productivity and capacity enhancements.

* * *

> (2)(b) i) The CAPM is the preferred method to estimate the cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 50% in the correlation.
>
> * * *
>
> (3) The growth rate "g" is the expected future growth of the cash flow attributable to assets in place on the lien date, and any future replacement assets.
>
> * * *
>
> b) A discounted cash flow (DCF) method is impractical to implement in a mass appraisal environment, but may be used to value individual properties.

CONCLUSIONS OF LAW

1. When a taxpayer protests his property tax assessment, the Division "must present available evidence supporting the original valuation" and "once that is done the taxpayer . . . must meet its twofold burden of demonstrating "substantial error or impropriety in the [original] assessment;" and providing "a sound evidentiary basis upon which the Commission could adopt a lower valuation." Utah Railway Co. v. Utah State Tax Comm'n, 2000 UT 49 ¶ 10, 5 P.3d 652, 655, 656, quoting, Utah Power & Light Co. v. Tax Comm'n, 590 P.2d 332 (Utah 1979). As a general rule, the "original valuation is entitled to a 'presumption of correctness.'" Id. at ¶ 9. "This presumption does not arise, however, unless and until available evidence supporting the original property valuation is submitted to the Commission." Id. In the present matter, the Division did submit the original assessment worksheets into the record by stipulation of the parties.[98] This action, when combined with Mr. Kowalowski's testimony, was sufficient to create a presumption of correctness in the original assessment.

2. The spectrum licenses are intangible assets and are not subject to property tax as

more fully discussed in the Tax Commission's Order dated June 12, 2006, granting Verizon's Motion for Partial Summary Judgment on that issue.

3. "'[U]nitary appraisals' value the synergistic nature of a business's collective property." Salt Lake City Southern Railroad v. Utah State Tax Commission, 987 P.2d 594,599 (Utah 1999) (citations omitted).

4. "[U]nitary appraisals are utilized because '[t]he separate value of the parts in the aggregate would not necessarily approximate . . . any legitimate measure of the value of all the parts, viewed as one complete machine.'" Salt Lake City Southern Railroad at 600, quoting Washburn v. Washburn Waterworks Co., 98 N.W. 539,542 (1904).

5. The Utah Supreme Court has ruled that central assessment of property using the unitary method satisfies constitutional requirements. Beaver County v. WilTel, 995 P.2d 602,608 (Utah 2000).

6. The Utah Supreme Court rejected the argument that "simple replacement cost sets an upper limit on value because a purchaser would not pay more for an asset than the amount for which it could be built or bought elsewhere." WilTel at 611.

7. The Utah Supreme Court has recognized taxable enhanced value above cost. WilTel at 612. "If the legislature had desired to limit assessed value to the materials and installation costs of tangible assets, it could have easily done so. Since it did not do so, we conclude that the statutory and constitutional fair market value requirements recognize some element of value that is not attributable to either intangibles or simple cost and that this enhanced value is taxable." WilTel at 612.

[98] Exhibit 4.

8. The purpose of the allocation percentage is to determine Utah's share of the taxpayer's system value. WilTel at 612. Allocation is primarily a methodology of apportionment rather than fair market value. As the Court noted in WilTel, "We need only determine which allocation basis most states use, since uniformity among states would foster fairness to each." Id at 612.

9. "Use of net book value [in the allocation formula] can give rise to negative numbers in some locations making a rational allocation impossible." Id.

DISCUSSION

The Commission begins its analysis with the presumption of correctness in the original assessment. The Counties or Verizon have the burden to raise or lower the value from the assessment. They would need to show error in the assessment and provide a sound evidentiary basis to establish a new value.

In this matter both Verizon and the Counties provide credible experts offering varying appraisal theories that would result in a lower or higher value from that determined by the Division. The Division offers an appraisal and other credible theories that result in a value between that asked by the other parties. However, upon consideration of all the evidence presented, it is the Commission's conclusion that the Division's valuation is reasonable, follows the applicable statutes and Rule 62 in setting value for purposes of Utah property tax, applies appraisal methodologies that are appropriate and is uniform with other like property assessments. Additionally the Division's value enjoys the presumption of correctness. Although there may be differences as to expert opinion, no error has been shown on the part of the Division's value.

The Division valued the Cellco system wide unit under Utah Admin. Rule 884-24P-62 (Rule 62) by employing a yield cap income indicator and an HCLD cost indicator. The methodology and weighting between indicators of value essentially followed the methods employed by the Division for the 2002 appeal, which the Commission approved. The Division's resulting system value was $18,276,900,000, which is less than net book value.

Verizon did not offer a reconciled system value for the Cellco unit. It offered only an income indicator for the proper unit. Verizon's income indicator of $14,995,000,000 exceeded the income indicator of the Division. Verizon failed to offer a cost value for the Cellco unit or properly reconciled value for the unit because it reconciled a Cellco unit income indicator with a Utah only cost value.

The Counties did offer a system value for Cellco of $20,600,000,000. This value is based on the income indicator. Mr. Eyre's appraisal did raise valid concerns with the Division's income indicator regarding the normalized NOI. The Counties contend that the Division's three-year average to determine NOI results in a low estimate of NOI. The Counties suggest that a higher estimate of NOI is warranted given the substantial growth experienced by Verizon over the past years, including the 2004 NOI, which was higher than the NOI chosen by the Division.

The change suggested by the Counties that would have a material impact is the Counties' position that the Division's book ratio to remove exempt intangible property causes an overstated deduction. The Counties point out that this problem arises because the yield cap method has been accepted by the Commission in Rule 62 and the Utah Supreme Court because it tends to not capture intangible property to the same extent of other income indicators, such as the direct capitalization method. Based upon the foregoing, it is appropriate to question whether the Division subtracted too much for intangible property from its income indicator. Certainly the Division's growth assumptions do not match the growth assumptions that would be used to value licenses. This is evidenced by the growth assumptions that were made by both Mr. Hoemke and Mr. Eyre in their full growth DCF models and by KPMG in its valuation of licenses for the same lien date.

Notwithstanding this concern, the Counties proposed method of valuing spectrum by determining an initial ratio from the yield cap income approach and a direct cap income approach offers no more certainty than the Division's book ratio. There are multiple factors and assumptions to be made in calculating a value under either approach. Therefore, the difference in the value determinations under either method is not necessarily related to the actual value of the spectrum licenses, but rather to the mathematical process in making the calculations. The Commission concedes that there is uncertainty in Division's approach. The Commission would have preferred to see some direct market evidence of the value of the licenses, but none was offered by either the Division or the Counties in this matter. As such, the Commission finds that the Counties have failed to provide a 'sound evidentiary" basis for the Commission to adopt an alternative value. Although Verizon did offer specific dollar estimates of the market value of the customer lists and spectrum licenses, there was insufficient evidence to establish the reliability of the estimates.

This same conclusion regarding the failure to show error in the overall value applies to the other arguments of Verizon. As previously mentioned, Verizon did not offer a system value of the Cellco unit. Instead it offered a system income indicator that was allocated to Utah and then reconciled with a Utah only RCNLD. The Commission notes that Verizon's RCNLD did not value land. There was no attempt to account for opportunity costs that a buyer would consider in buying a network that could take seven years to be completed versus a network that is currently operating. As the 10-K of Verizon Wireless indicates, having an operating network is valuable in order to maintain the coverage requirements required by the FCC for Verizon to keep its licenses for spectrum. Similarly, the RCNLD makes no consideration of the fact that some out dated technology, such as analog, may remain a viable part of the unit as required by the FCC. The RCNLD position is not supported by Verizon's own DCF analysis, when corrected for cost of capital, which suggests an enhancement to the net book value for the tangible assets. This is supported by both the County's appraisal and data in the KPMG appraisal.

Since the RCNLD pertains to the incorrect unit it offers limited assistance to the Commission. But some concern has been raised as the Commission understands that this is an industry with rapidly changing technology that may result in some additional obsolesces which may or may not have been fully captured in an HCLD approach. However, a system wide cost approach, and particularly an HCLD approach is an appropriate valuation indicator. Because of the questions regarding obsolescence the Commission would in this instance give it less than 70% weight.

Regarding the DCF analysis provided by Mr. Hoemke, it requires substantial assumptions as to growth, revenue, expenses, customers and cost of capital. The Commission does not find all of Mr. Hoemke's assumptions to be accurate. The Commission disagrees with his choice of guideline companies, averaging and other conclusions in developing the cost of capital. The Commission also has concerns that his analysis is based on declining income streams. Additionally he did not place the weight required by Rule 62 on his CAPM ex-post methods. His CAPM ex-ante, S & P, CVC ex-post and S&P CVC ex-ante all reflect a higher risk premium than the Ibbotson period preferred by the Commission. As such, the Commission does not find Mr. Hoemke's DCF model to be a more accurate determination of market value than the one determined by the Division using Rule 62 methods.

Although it finds that the Counties' estimate of cash flow is preferable to the Division's, the Commission would consider giving less weight to the Division's cost approach if the income approach were to be revised. However, the resulting change in total value would be negligible. In conclusion the Commission finds that the totality of all the evidence and testimony submitted supports the Division's estimate of fair market value.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that the fair market value of the property subject to tax in Utah is $169,975,170 for the January 1, 2005 tax year. It is so ordered.

DATED this 2 day of February, 2007.

Jane Phan
Administrative Law Judge

Appeal Nos. 05-0826 & 05-0829

BY ORDER OF THE COMMISSION:

The Commission has reviewed this order and the undersigned concur in this decision.

DATED this 2 day of February, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

STATE TAX COMMISSION SEAL STATE OF UTAH

NOTICE: You have twenty (20) days after the date of this order to file a Request for Redetermination with the Commission pursuant to Utah Code Ann. § 63-46b-13. A Request for Redetermination must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Redetermination with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. § 59-1-601 et seq. and 63-46b-14 et seq.

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IN THE SUPREME COURT, STATE OF WYOMING

2003 WY 114

APRIL TERM, A.D. 2003

September 12, 2003

AIRTOUCH COMMUNICATIONS, INC.; WYOMING RSA #3 (CELLULAR INC., NETWORK CORP.); WYOMING RSA #2 (SHERIDAN LIMITED PARTNERSHIP); and WYOMING RSA #1 (PARK LIMITED PARTNERSHIP),	)	
Appellants (Petitioners),	)	
v.	)	**No. 02-129**
DEPARTMENT OF REVENUE, STATE OF WYOMING,	)	
Appellee (Respondent).	)	

W.R.A.P. 12.09(b) Certification from the District Court of Laramie County
The Honorable E. James Burke, Judge

Representing Appellants:
Richard G. Smith of Hawley Troxell Ennis & Hawley LLP, Boise, Idaho; and W. Perry Dray and Gregory C. Dyekman of Dray, Thomson & Dyekman, P.C., Cheyenne, Wyoming

Representing Appellee:
Hoke MacMillan, Attorney General; John W. Renneisen, Deputy Attorney General; Martin L. Hardsocg, Senior Assistant Attorney General; and Cathleen D. Parker, Assistant Attorney General

Before HILL, C.J., and GOLDEN, LEHMAN, KITE, and VOIGT, JJ.

KITE, Justice.

[¶1] Four cellular companies appealed from the Department of Revenue's (DOR) 1999 and 2000 valuations of their property contending they were not subject to state assessment as "telephone companies" and, in the alternative, the valuations were improper because the value of intangible property, exempt from taxation by statute, was not deducted. The State Board of Equalization (SBOE) affirmed the valuations finding cellular companies are "telephone companies" within the meaning of the statute and the companies failed to carry their burden of proving the value of their intangible property. We agree the companies are "telephone companies" under the statute. With respect to the valuation, we affirm in part, reverse in part, and remand for further consideration consistent with this opinion.

ISSUES

[¶2] The appellants present the following issues:

> I. Did the state board err in concluding that each appellant constitutes a "telephone company" subject to state assessment pursuant to W.S. § 39-13-102(m)(vi)?
>
> II. Did the board err in adopting erroneous criteria for the exclusion of intangible property, exempt under W.S. § 39-11-105(xxix) and § 39-111-101(a)(vii), and in its improper interpretation of the standards for exclusion of intangible property set forth in *RT Communications v. Board of Equalization*, 2000 WY 183, 11 P.3d 915?
>
> III. Did the board err in affirming the value of the tangible assets subject to valuation through the cost approach used by the department, and in affirming the "economic enhancement" adjustment utilized by the department to artificially and improperly increase the value of that tangible property?
>
> IV. Did the board err in refusing to allow an increase in the capitalization rate to reflect the "flotation" cost adjustment granted by the department to other taxpayers and to these taxpayers in an amended valuation?

Legislative Audit Division

State of Montana

Report to the Legislature

October 2006

Financial-Compliance Audit

For the Two Fiscal Years Ended June 30, 2006

Department of Revenue

This report contains seven recommendations to the department. Issues addressed in the report include:

- Financial Accountability
  - Reconciliation controls
  - Unrecorded revenue and expenditures
  - Debt collection program
- Improving tax compliance for:
  - Combined oil and gas severance taxes
  - Corporation license taxes
  - Individual income taxes
- Noncompliance with state statutes

Direct comments/inquiries to:
Legislative Audit Division
Room 160, State Capitol
PO Box 201705
Helena MT 59620-1705

06-14

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additional penalties only when it is very clear the taxpayer purposely failed to file a tax return or pay a tax when due. As a result, these units do not comply with the requirements of the additional penalties law.

Statutory Housekeeping

The following statutes affecting the department's operations are out of date.

Municipal Corporations

As discussed in our prior audit report, section 15-1-201(3), MCA, requires the department to collect information on expenditure of public funds for all purposes from officers of municipal corporations to assist the department in its work. Department personnel noted they no longer collect this information because it is not needed. We determined the department is in substantial compliance with section 15-1-201, MCA, but should seek legislation to amend this statute to reflect the current information needs of the department.

Statement of Coal Sales

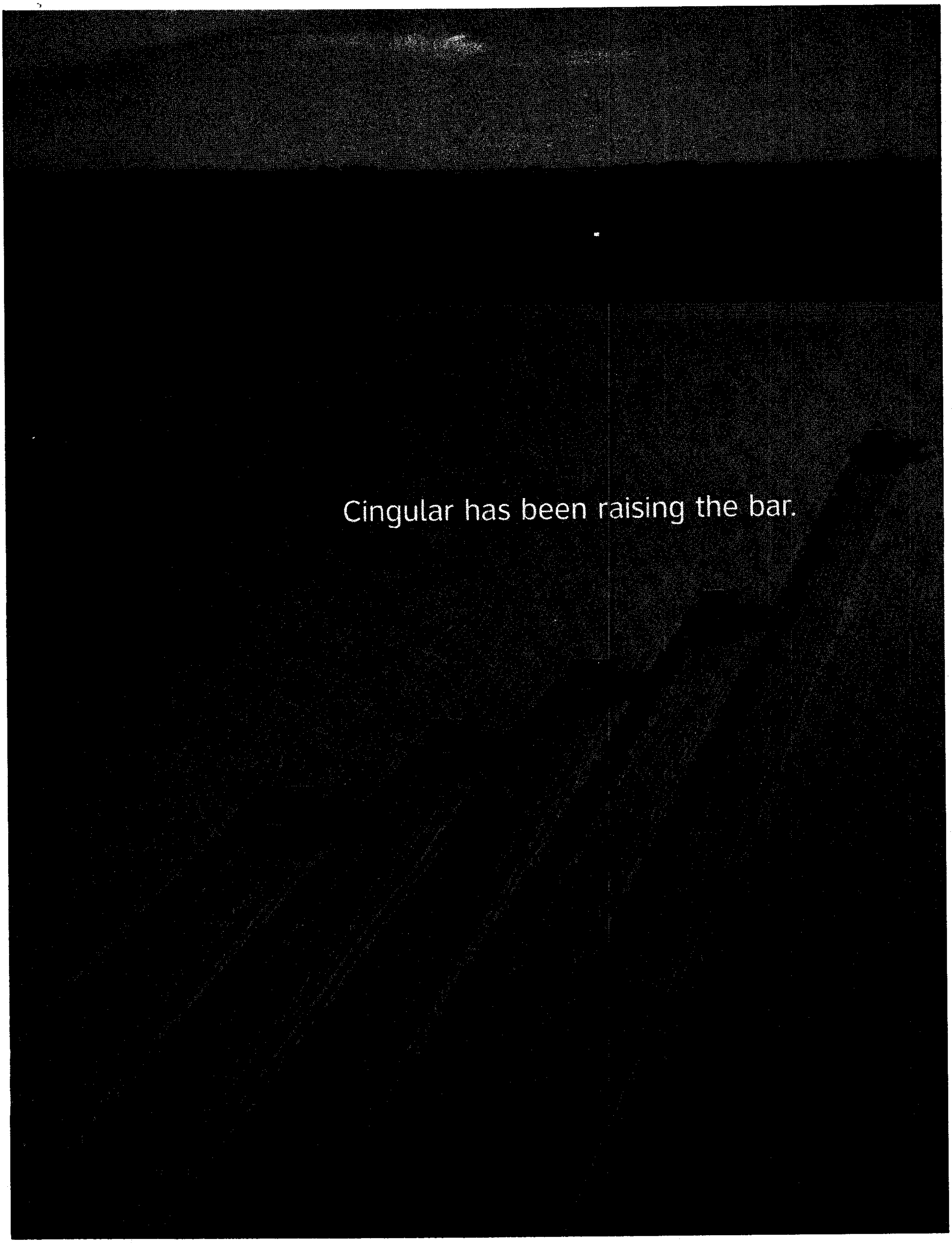
Section 15-35-104, MCA, requires each coal mine operator to provide a statement of the tons of coal sold to each purchaser for the quarter. The department has not required coal mine operators to provide this statement for several years, because the tax is no longer based on this information. Therefore the forms and instructions provided by the department for coal taxes do not contain this requirement. The department should seek legislation to amend this statute to reflect its current information needs.

Recommendation #7
We recommend the department:

A. Centrally assess cellular phone companies as required by section 15-23-101, MCA.

B. Implement procedures and administrative rules to provide consistency in assessing additional penalties for purposely failing to file or pay taxes when due, as required by sections 15-1-216(1)(b) and (1)(d), MCA.

C. Seek legislation to amend sections 15-1-201 and 15-35-104, MCA, to reflect the department's current information needs from municipal corporations and coal mine operators.


Cingular has been raising the bar.

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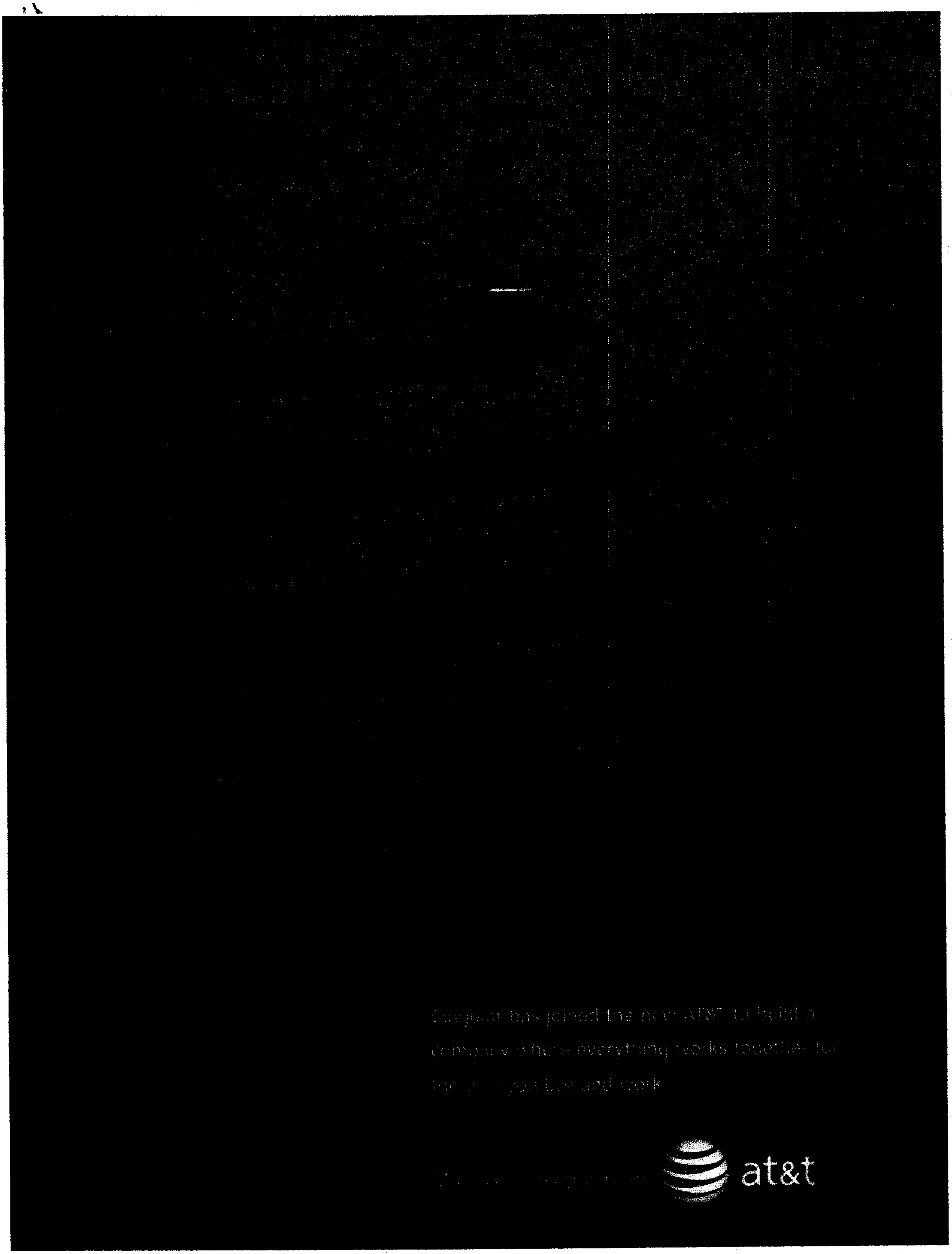
Cingular has joined the new AT&T to build a
company where everything works together for
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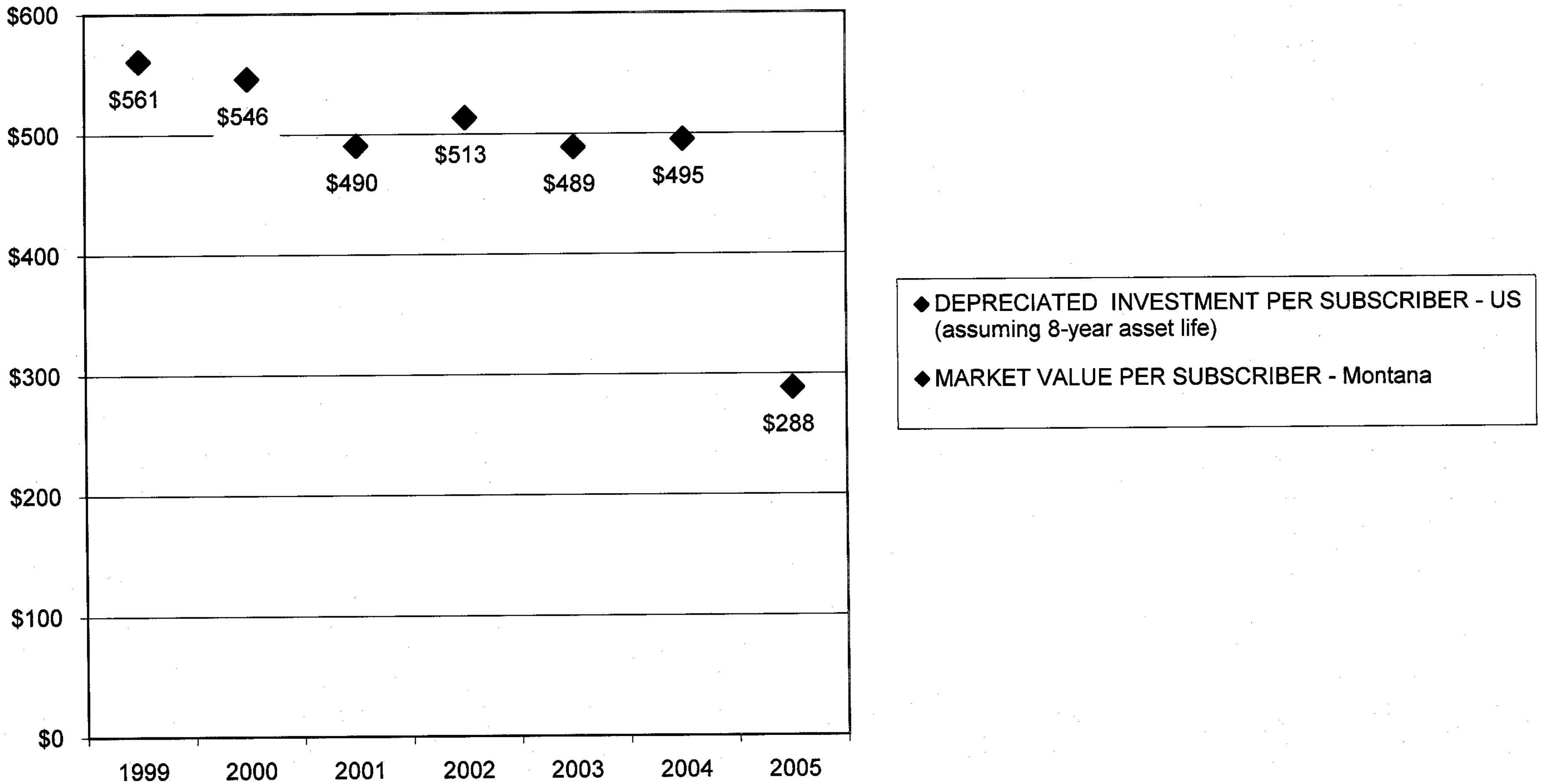
CELLULAR COMPANIES

DEPRECIATED CAPITAL INVESTMENT IN THE UNITED STATES and DEPTARTMENT of REVENUE APPRAISED MARKET VALUE IN MONTANA



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