13-1343 & 14-1241
13-1407 & 14-1243
TAX TYPE: CENTRALLY ASSESSED PROPERTY
TAX YEAR: 2013 & 2014
DATE SIGNED: 8-18-2016
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R.PERO, R ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. PROPERTY TAX DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION** Appeal Nos. 13-1343 & 14-1241 Tax Type: Centrally Assessed Property Tax Years: 2013 & 2014 Judge: Phan
AFFECTED COUNTIES, et al., Petitioners, v. PROPERTY TAX DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	Appeal Nos. 13-1407 & 14-1243 Tax Type: Centrally Assessed Property Tax Years: 2013 & 2014 Judge: Phan

Presiding:
Michael Cragun, Commissioner
Robert Pero, Commissioner
Rebecca Rockwell, Commissioner
Jane Phan, Administrative Law Judge

Participating in Closing Argument And Deliberation:
John Valentine, Commission Chair

Appearances:
For Petitioner TAXPAYER: REPRESENTATIVE-1 FOR TAXPAYER, Attorney at Law
REPRESENTATIVE-2 FOR TAXPAYER, Attorney at Law
For Petitioning Counties: REPRESENTATIVE-1 FOR AFFECTED COUNTIES, Attorney at Law

	REPRESENTATIVE-2 FOR AFFEDTED COUNTIES, Deputy County District Attorney
	REPRESENTATIVE-3 FOR AFFECTED COUNTIES, Deputy County District Attorney
For Respondent:	REPRESENTATIVE-1 FOR RESPONDENT, Assistant Attorney General
	REPRESENTATIVE-2 FOR RESPONDENT, Assistant Attorney General
	REPRESENTATIVE-2 FOR RESPONDENT, Assistant Attorney General

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on November 16, 2015 through November 20, 2015, in accordance with Utah Code §59-2-1007 and §63G-4-201 et seq. Based upon the evidence, testimony and legal argument presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT[1]

1. The issue before the Tax Commission at the Formal Hearing is the determination of the proper Utah assessed value for property tax purposes for PETITIONER'S ("PETITIONER") tangible taxable property as of the lien dates January 1, 2013 and January 1, 2014.

2. The PETITIONER property is centrally assessed by Respondent ("Division"). PETITIONER had timely filed an appeal of the assessments issued by the division under Utah Code Sec. 59-2-1007 for both tax years at issue.

3. Petitioners AFFECTED COUNTIES et al. ("Counties"),[2] had also timely filed appeals for both tax years under Utah Code Sec. 59-2-1007.

4. The lien dates at issue in this appeal are January 1 for each of the years 2013 and 2014.

5. At the hearing, the Division asked that its assessments be upheld for each of the tax years at issue. The Division had determined PETITIONER Utah taxable property value was $$$$$ for 2013 and $$$$$ for 2014.[3] A further, relatively small adjustment is made to these values for motor vehicles which are assessed when registered. The Division's assessed Utah values after this adjustment were $$$$$ for 2013 and $$$$$ for 2014. At the hearing, the Division submitted an appraisal for the 2014 tax year that had indicated a value higher than the assessment, but the Division did not request an increase to the appraisal value for that year. The Division's original Utah taxable property value, appraisal values of

[1] The parties submitted Proposed Findings of Fact and Conclusions of Law on March 18, 2016, which have been considered in the preparation of this decision.
[2] The Counties that are parties in this appeal are: AFFECTED COUNTIES.
[3] Exhibits 3 & 4.

the Utah taxable property as well as the Utah appraisal values of the taxable property that PETITIONER and the Counties offered at the hearing are as follows:[4]

	Division's Original UT Taxable Value	Division's Final Hearing Appraisals UT Taxable Value	Counties Hearing Appraisals UT Taxable Value	PETITIONER Final Hearing Appraisals UT Taxable Value
2013	$$$$$	$$$$$	$$$$$	$$$$$
2014	$$$$$	$$$$$	$$$$$	$$$$$

GENERAL INFORMATION ABOUT PETITIONER

6. It was in 1981 that the Federal Communication Commission set aside 40MHz of spectrum for cellular licensing. The FCC divided the U.S. into 734 geographic markets and divided the 40MHz of spectrum into Channel A and Channel B blocks which were issued for free, two licenses in every market. The B block spectrum was awarded to a local wire line carrier that provided landline telephone service in the market area. The A block spectrum was awarded to non-wire line carriers in the market area. COMPANY-A, COMPANY-B and COMPANY-C were all awarded FCC spectrum licenses ("FCC Licenses") with this initial issuance and had begun to build out their networks. COMPANY-A merged with COMPANY-B in 1996.[5]

7. PARENT COMPANY-A ("PARENT COMPANY-A") was formed by a merger between COMPANY-A and COMPANY-C around 1998. Each company brought to PARENT COMPANY-A spectrum licenses issued by the FCC in the original issuances. After the COMPANY-A/COMPANY-C merger was announced, but before it was finalized, COMPANY-A and COMPANY-D agreed to combine their WORDS REMOVED. PARENT COMPANY-A has subsequently merged with other wireless carriers, including, for example, COMPANY-E.[6]

8. PETITIONER (Petitioner) was formed in 2000 as WORDS REMOVED. This occurred nearly twenty years after the original FCC licenses were issued. On January 1, 2013 and January 1, 2014, PARENT COMPANY-A owned 55% of the partnership and COMPANY-D owned 45%.[7]

9. The years at issue in this appeal are more than thirty years after the original licenses were issued by the FCC. PETITIONER is now a wireless telecommunications provider of voice and data

[4] Exhibit 19.
[5] Ex. 6, pp. 008094-008097; Hearing Transcript (Tr.) 735.
[6] Ex. 6 (2014 Brownell Revised Appraisal), PTD 008095-96; Tr. pgs. 735-737.
[7] Ex. 6, PTD 008080; Ex. 7 (Weinert 2013 Appraisal), pg. 38.

services across the United States. According to a PETITIONER Proxy Statement,[8] PETITIONER SENTENCE REMOVED. PETITIONER's wireless network in the United States includes third-generation (3G) Evolution-Data Optimized (EV-DO) and fourth-generation (4G) Long Term Evolution technology.[9] By January 1, 2014, PETITIONER covered 97% of the U.S. Market with 4G LTE service.[10] PETITIONER is regarded as WORDS REMOVED.[11] PARENT COMPANY-A CEO, NAME-1, on September 3, 2013, described PETITIONER network as ". . .WORDS REMOVED."[12]

10. On September 2, 2013, PARENT COMPANY-A announced that it had reached an agreement with COMPANY-D to purchase COMPANY-D's 45% interest in PETITIONER for approximately $$$$$.[13] PARENT COMPANY-A completed the transaction on February 21, 2014, and acquired 100% ownership.[14] As noted in the APPRAISER-1 Appraisal, "The consideration paid was primarily comprised of cash, PETITIONER common stock, and small assumption of debt."[15]

11. FINANCIAL ADVISOR FIRM-1 and FINANCIAL ADVISOR FIRM-2 were hired by PARENT COMPANY-A to perform a fairness opinion on the transaction between PARENT COMPANY-A and COMPANY-D. Using discounted cash flow analysis, they concluded that the value of COMPANY-D's 45% equity interest was from $$$$$ to $$$$$ and the 100% equity value of PETITIONER was a range from $$$$$ to $$$$$.[16] PARENT COMPANY-A purchased COMPANY-D's 45% interest for approximately $$$$$, which was the low end of this range. The fairness opinion also considered other valuation methodologies and concluded that the $$$$$ was a price that was fair from a financial point of view to PARENT COMPANY-A.[17]

12. The wireless industry had begun with analog technology. That technology lasted until approximately 1996 when new digital equipment started to be used. The original digital equipment started to be replaced in about 2000, with the second generation or 2G equipment. This was phased out with 3G equipment and then 4G was put in place starting in 2010 or 2011. PETITIONER is now starting to test 5G equipment. The 1G, 2G and 3G equipment is now underutilized. NAME-2 testified, "So now I believe the

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[8] Ex. 144.
[9] Ex. 7, pg. 38; Ex. 13 (Eyre 2013 Appraisal), p. 7.
[10] Ex. 87, p. 5.
[11] Ex. 14, p. 7.
[12] Ex. 6, p. 7, citing: CNBC.com Video Transcript. SENTENCE REMOVED
[13] Ex. 144, pg 2.
[14] Ex. 6, PTD 008080; Ex. 7, pg. 38.
[15] Ex. 7, pg. 38.
[16] Exs. 75 & 76. These reports had been prepared with pseudonyms for the parties in the transaction. In these reports COMPANY-D is referred to as, NAME REMOVED PARENT COMPANY-A as NAME REMOVED and PETITIONER (Petitioner) as "NAME REMOVED." See Tr. 741-742: 24-4 for key to pseudonyms.
[17] Ex. 76, p. 0000034.

latest 4G calculation is that we have 70 percent of our data utilization is on 4G systems as we speak, and that number increases every year."[18]

13. NAME-2, Director of Property Tax for PETITIONER, described the tangible property of PETITIONER as follows: "The tangible property is made up of computerized equipment that's located in cell sites and switches and data centers around the country, as well as some structural assets at cell sites and switches, such as real estate, land, and towers."[19]

14. However, in its operations, PETITIONER also utilizes intangible property which is not subject to the ad valorem property tax, the majority of which is the FCC licenses. All the parties agree that at least 76% of the system wide unit value of PETITIONER is attributable to intangible property.[20] In addition to the FCC licenses, the intangible assets consist of customer relationships, service marks and other intangibles.[21]

15. The FCC licenses are valuable and a demand for these licenses is increasing as more data is transferred wirelessly. NAME-2 testified regarding the spectrum licenses that "due to the fact that the demand is increasing, the value is also increasing as well."[22]

16. Some of PETITIONER FCC licenses are not reflected in its book value or have been referred to as un-booked licenses. The original FCC licenses had been issued as early as 1981 and have no book value, yet many of these licenses come from very valuable areas. NAME-2 noted that these licenses owned by PETITIONER that have no book value are for areas in CITY-1, CITY-2, CITY-3, CITY-4, CITY-5 and CITY-6. NAME-2 testified that "if they were on the open market, they would be prime licenses that would get a very high value."[23] It was also NAME-2 testimony that PETITIONER was the only company that has unbooked licenses, because it was the only company that still had the original license issuance. According to NAME-2, other companies that had originally been issued these licenses had been acquired by other companies and so the licenses would then be booked through the purchase price accounting of these transactions.[24]

17. CONSULTANT FIRM had prepared an impairment study of PETITIONER for PETITIONER to use for financial reporting purposes with the effective date of December 15, 2012. CONSULTANT FIRM notes that it "has completed its valuation engagement to assist PETITIONER d/b/a PETITIONER Wireless . . . with the testing of goodwill impairment and testing for impairment of

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[18] Tr. 122: 3-6.
[19] Tr. 116:4-10 (NAME-2); Ex. 39 (Electronics Graphs); Ex 21 (Pictures of Wireless Equipment).
[20] Ex. 24.
[21] Ex. 7, p. 70; Ex. 13 p. 41; Ex. 16, pp. 8-16.
[22] Tr. 133: 3-4.
[23] Tr. 132-134 generally, quote Tr. 134:23-25.
[24] Tr. 135: 4-14.

Federal Communications Commission licenses ("FCC licenses") owned by PETITIONER Wireless in accordance with FASB Accounting Standards codification 350 . . ."[25] One of the conclusions of that study was, "the estimated time line to replicate the existing network to meet the current business plan's long-term projected level of connections is about seven years (i.e., the year 2019). This time period was reasonable and consistent with our valuation experience."[26] PETITIONER engineering team had provided information that was the source document used by CONSULTANT FIRM to make that analysis. As of January 1, 2013, PETITIONER had 116,399,000 connections and the engineers had projected that at year 2019 there would be ##### connections.[27] NAME-2 testified at the hearing that the CONSULTANT FIRM study was to rebuild the network to coincide with PETITIONER long-term business plan that had a much higher number of connections.[28] He stated it would take four and a half years to obtain ##### connections.[29] NAME-2 statement was somewhat contradicted by the CONSULTANT FIRM study which provided schedules of its assumptions and inputs that indicated starting with a "Greenfield Scenario" beginning year five there would be ##### connections and ending year five there would be ##### connections.[30] NAME-2 testified that as of January 1, 2013, PETITIONER had ##### cell sites. CONSULTANT FIRM projected it would take just over three years to set up ##### cell sites.[31] Other witnesses at this hearing testified that there were actually ##### cell sites as of the 2013 tax year.[32]

18. NAME-2 testified that every generation of wireless property has decreased in cost and increased in capabilities. He provided a photograph of two cell sites. One had the older 2.5G and 3G technology and the other 4G technology. It was his position that the 2.5G and 3G technology was obsolete as PETITIONER has transitioned to a 4G environment. The 4G equipment also was much smaller, more compact and had increased capabilities.[33] The new 4G Equipment was also less expensive. NAME-2 testified that at the time the 2.5G and the 3G equipment was installed at the cell sites it "would have cost between a million and $$$$$. The 4G equipment . . . cost about $$$$$ and does about twice the capacity as data transmission throughput from one technology to the other."[34] NAME-2 testified that costs have been decreasing. For example, a "radio carrier" which represented capacity at a cell site had cost over $$$$$ in 1996, but only $$$$$ by December 2014. Another example provided was that in the

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[25] Ex. 26, p. 001754.
[26] Ex. 26, p. 001779.
[27] Ex. 27.
[28] Tr. 137: 1-6.
[29] Tr. 138:14; Although at Tr. 138:8 NAME-2 testifies it is 3.5 years.
[30] Ex. 26, pp. 001799 & 001796.
[31] Ex. 26, p. 001802; Tr. 138:20.
[32] NAME-3, who prepared a cost indicator for PETITIONER's tangible property testified that PETITIONER had ##### sites in 2013, at Tr. 191: 12-14.
[33] Tr. 116:13-23; Ex. 21.
[34] Tr. 117:18-23.

mid-'90s the cost per Erlang was around $$$$$. By 2004, it had dropped to below $$$$$ and was less than $$$$$ by the end of 2013.[35] The 4G equipment was also more efficient in spectrum utilization. It was his contention that it was the spectrum utilization that was the key to success in the wireless industry.[36]

ASSESSMENT HISTORY

19. PETITIONER original Utah assessed values had been fairly steady for the years 2006 through 2012 but saw a significant increase in 2013 and 2014. The Utah original assessed values for each of the years, along with the Utah percentage of Net Book and Utah percentage of NOI[37] are as follows:

	Utah Original Assessed Values	Utah % of Net Book Value	Utah % of NOI
2006	$$$$$	$$$$$	$$$$$
2008	$$$$$	$$$$$	$$$$$
2009	$$$$$	$$$$$	$$$$$
2010	$$$$$	$$$$$	$$$$$
2011	$$$$$	$$$$$	$$$$$
2012	$$$$$	$$$$$	$$$$$
2013	$$$$$	$$$$$	$$$$$
2014	$$$$$	$$$$$	$$$$$

20. During PETITIONER early years, 2001 through 2005, the Division's cost indicator was substantially higher than its income indicator in its assessments for PETITIONER and the Division placed 70% of its weight on the cost indicator and 30% of its weight on the income indicator. For the years 2006 through 2011, the Division's income indicator and cost indicator were fairly close in amounts and for those years the Division placed 50% weight on each indicator. In 2012 through 2014, the Division's income indicator was higher than the Division's cost indicator and the Division placed 60% weight on the cost and 40% weight on the income indicator.[38]

ORIGINAL ASSESSMENTS FOR 2013 & 2014

21. At the hearing, the Division asked that the Commission uphold its original assessments for both tax years at issue. The Division had submitted an appraisal for the 2014 tax year that indicated a relatively small increase in value, but the Division had offered it as support for the original assessment and did not ask for an increase to the appraisal value. APPRAISOR-5, a Valuation Analyst for the Division, testified regarding the assessments issued by the Division for tax years 2013 and 2014, which are received into the record as Exhibits 4 & 5. The Division had used for the original assessments a yield

[35] Tr. 125-127; Ex. 25.
[36] Tr. 121: 1-6.
[37] Ex. 23.
[38] Ex. 23; Tr. 115:2-22 (Mupo).

capitalization income indicator and a historic cost less depreciation ("HCLD") cost indicator. These were weighted 60% to cost and 40% to income. The Division's assessments for each tax year are the following:

	2013	Weight	2014	Weight
HCLD Cost	$$$$$	60%	$$$$$	60%
Yield Cap Income	$$$$$		$$$$$	
Income w/out Intangibles	$$$$$	40%	$$$$$	40%
Reconciled System (Tangible)	$$$$$		$$$$$	
Utah Allocation	0.81%		0.81%	
Utah Value Tangible	$$$$$		$$$$$	
Minus Utah Adjustments	(#####)		(#####)	
Utah Assessed Value	$$$$$		$$$$$	

22. APPRAISOR-5 testified that the HCLD indicator is the preferred cost indicator pursuant to Utah Admin. Rule R884-24P-62 (Rule 62). He explained for this cost indicator he only looked at the tangible, taxable property, so intangibles are not included in this indicator. He explained the HCLD, "values assets at their historic cost less accounting or book depreciation." The historic cost is the "actual cost that PETITIONER purchased these assets in the open market." Further, that "book depreciation is calculated according to Generally Accepted Accounting Principles and regulatory guidelines."[39] He explained that the booked accounting depreciation schedules are based on the expected useful life of the asset and would account for functional depreciation. He pointed out that more technical assets have shorter expected useful lives and so the depreciation schedules for these assets are based on shorter lives.[40] Other than the accounting depreciation which is inherent in the HCLD approach, APPRAISOR-5 did not make any adjustment for obsolescence offering the opinion "there is no obsolescence inherent in the PETITIONER telecommunications network."[41]

23. APPRAISOR-5 opined that an HCLD cost indicator is more relevant for determining fair market value for newly acquired assets. The historic cost was the amount for which PETITIONER was purchasing the assets on the open market. He stated "when an asset is purchased on the open market at market value and placed on the books, at that point, that booked cost equals market value."[42] He indicated that it was therefore relevant to PETITIONER valuation because PETITIONER had spent nearly $$$$$ in each of the previous three years updating its network. He states, "As far as I understand, the subject

[39] Tr. 622: 2-17.
[40] Tr. 712-713.
[41] Tr. 714:10-12.
[42] Tr. 625: 17-20.

property . . . is composed entirely – or the vast majority of it has been upgraded, it's new, it represents cutting edge technology."[43] He points out that over the five year period from 2008 to 2012 PETITIONER had incurred $$$$$ in capital expenditures, which was an amount equal to 54.05% of PETITIONER total property, plant and equipment. Further, the five year capital expenditures totaled an amount higher than the Division's HCLD cost indicator of value, which was $$$$$ for the 2013 tax year.[44]

24. APPRAISOR-5 income indicator was a yield capitalization approach which he stated was the Rule 62 preferred income indicator.[45] APPRAISOR-5 used the formula cf/r-g. In this formula "cf" is cash flow, "r" is the rate and "g" is growth.

25. His cash flow or "cf" in the formula was $$$$$ for 2013 and $$$$$ for 2014. He testified that for the cash flow estimates, "there was a clear trend of increasing NOI from year to year."[46] He used a more forward looking projection to determine the net operating income.[47] To convert NOI to cash flow he added depreciation expenses and deferred income tax to the NOI. He subtracted out replacement capital expenditures and an amount for the increase in working capital.[48]

26. The capitalization rate used by APPRAISOR-5 in the assessments was a pretax weighted average cost of capital of 8.22% for tax year 2013 and 8.69% for tax year 2014. The weighted average cost of capital (WACC) is based on a formula that considers the cost of debt and cost of equity and weights them based on the percent of capital structure that is typically funded by debt and funded by equity in the industry.

27. In order to determine how capital is typically structured, the Division looked at guideline companies and how they structure their capital between debt and equity. For the wireless telecommunications industry the Division used the guideline companies GUIDELINE CO.-1., GUIDELINE CO.-2, GUIDELINE CO.-3, GUIDELINE CO.-4, GUIDELINE CO.-5, GUIDELINE CO.-6, and PARENT COMPANY-A. From these companies the Division concluded the typical industry structure was 30% debt and 70% equity for 2013.[49] The Division did a similar analysis for 2014 but concluded a 35% debt and 65% equity structure for that year.[50]

28. The Division determined that the appropriate debt rating for PETITIONER was an "A" credit rating for 2013 and a Baa for 2014. The Division explained that Merchant Bond Record had not rated any corporate bonds for PETITIONER, the Petitioner in this matter. , for the Division,

[43] Tr. 624: 9-16.
[44] Ex. 100, p. 008224.
[45] Tr. 626: 8-9.
[46] Tr. 615: 5-6.
[47] Ex. 3,4 ,5 & 100.
[48] Tr. 630: 21-25; Ex. 100 p. 008230.
[49] Ex. 3, pp. 00016-00021; Ex. 4 pp. 00097-00102.
[50] Ex. 4.

acknowledged that for 2013 he had instead considered the bond ratings for PARENT COMPANY-A and COMPANY-D which were A3 rated.[51] He also noted that moodys.com had assigned PETITIONER a credit rating of A2 as of the January 1, 2013 lien date.[52] He acknowledged that in ranking, an "A" bond rating was better than an "A2" rating and an "A2" rating was better than "A3". Just below "A3" was "Baa" rating. However, APPRAISOR-5 indicated that the Merchant Bond Record did not break out individual classes of the "A" bonds, so provided only a 3.98% rate for all "A" categories for the 2013 year. For the 2013 tax year in its assessment the Division's cost of debt had been 3.98%. The rate for "Baa" bonds for 2013 had been 4.63%, which was a more similar cost of debt to what was used by the two other appraisers who had submitted appraisals for the 2013 tax year. There was a difference for the 2014 year where the Division had used the Baa bond rating of 5.38% as the cost of debt in its assessment and that was similar to the cost of debt used by the three other appraisers who had submitted appraisals for the 2014 year.

29. The Division calculated its cost of equity using the capital asset pricing model ("CAPM") method, which is the preferred method set out in Rule 62. Rule 62 requires at least 50% weight be given to this method in the calculation of the cost of capital. The formula for calculating the CAPM is stated as K(e) = R(f) + (Beta x Risk Premium). In the formula R(f) is a risk free rate. The Division states that its risk free rate is based on Rule 62, which directs that the risk-free rate is the current market rate on 20-year Treasury Bonds. The Division's Beta came from data published in Value Line, which provided Betas for the Division's guideline companies. APPRAISOR-5 testified that Rule 62 requires that the risk premium be an arithmetic average of the spread between the return on stocks and the income return on long-term bonds for the entire historical period contained in the Ibbotson's yearbook published immediately following the lien date. He noted that the Ibbotson yearbook produces multiple risk premiums, but using the one specifically noted in Rule 62, which was 6.7%, his Rule 62 compliant CAPM was 9.98% for 2013.[53] APPRAISOR-5 testified further that the Division did look at other variations on the calculation of the CAPM as well as a dividend growth model method which indicated a cost of equity of 10.44%. Ultimately the Division gave a 50% weighting to the Rule 62 compliant CAPM which was 9.98%, and a 50% weighting to its dividend growth model which had been 10.44% and concluded that the cost of equity should be 10.04% for 2013 and 10.48% for 2014.[54]

[51] Exs. 120 & 121.
[52] Tr. 716. Ex. 121.
[53] Tr. 641-643.
[54] Tr. 645-647; Ex 100 pp. 008244-008248.

30. The Division did not add a flotation cost adjustment or a liquidity adjustment to the cost of capital in its assessments. APPRAISOR-5 testified that it was his "understanding that this Commission has never approved the use of a liquidity adjustment for this type of property."[55]

31. Giving his cost of equity 70% weight and his cost of debt 30% for tax year 2013, resulted in a pre-tax weighted average cost of capital of 8.22%. For 2014 the weighting had been 35% debt and 65% equity which resulted in an 8.69% pre-tax WACC.

32. Referring back to the yield capitalization formula cf/r-g (cash flow divided by rate minus growth), APPRAISOR-5 did subtract growth. He explained that Rule 62 says, "if insufficient information is available to the Division either from public sources or the taxpayer to determine the growth, the growth should be the expected inflationary rate in the gross domestic price deflator obtained in Value Line."[56] APPRAISOR-5 states that he went directly to this Value Line source which indicated a grown rate of 1.50% for 2013 and 1.80% for 2014. This is the growth rates used in the assessments.

33. The Division's HCLD indicator did not include a value for intangible property. A significant percentage of PETITIONER property is intangible, including the FCC licenses that had a book value of over $$$$$ in 2013. The Division's yield capitalization income indicator, did, however, capture intangibles to some extent. The Division removed intangibles from its income indicator by using a book ratio. APPRAISOR-5 testified that he looked at the book costs of the intangible assets which he listed as the amortizable intangibles, wireless licenses and goodwill. He added the net book value of this intangible property to the net book value of the tangible property to get the total property booked cost, and then divided the total by just the intangible property to come up with a ratio of intangible property to all property. He used this ratio to remove the value for intangibles from his yield capitalization income approach. For 2013 the tangible taxable property was 24.91% of the total and for 2014 the tangible property was 26.20% of the total.[57] He testified that this method was based on book values that are readily available and he used the actual book value which is not adjusted in any way, so that this was not a speculative method.[58]

34. The Division had weighed its HCLD cost indicator at 60% and its yield capitalization indicator after the removal of intangibles at 40%. One reason provided by the Division for giving so much weight to the cost indicator was that "no intangible value had been impounded in the HCLD cost

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[55] Tr. 671:21-23.
[56] Tr. 631:16-22.
[57] Tr. 632-633; Ex. 3, p. 006464; Ex. 4, p. 006472; Ex. 100 p. 008231.
[58] Tr. 664: 5-17.

approach."[59] This 60% / 40% weighting resulted in reconciled system values of $$$$$ for 2013 and $$$$$ for 2014.

35. The Division had calculated that the Utah allocation value was 0.81% of the total, which was not disputed by any of the parties. Applying this percentage the taxable value attributable to Utah was $$$$$ for 2013 and $$$$$ for 2014. One further adjustment was made to the Utah value which is for motor vehicles which are taxed when registered.[60]

36. APPRAISOR-5 testified that he did not prepare a replacement cost new less depreciation model to determine the cost value of the PETITIONER property because, "I don't have the expertise to prepare an RCNLD for this type of property, nor do I have the resources available to do so."[61] He also explained why the Division would not apply cost indexes provided by PETITIONER with its annual return. He stated, "Even though I had that study and the indexes, I didn't have the historical costs even to apply those indexes . . . In order to apply any sort of index to the property, I would need a lot more information. That would include the various classes of assets and their vintage."[62]

37. APPRAISOR-5 opined that for the 2012 year the subject property was "under-assessed" because the Division failed to fully implement the PETITIONER 2005 decision.[63] He explained, "The Commission decision states that they would have preferred to see a more forward-looking NOI estimate based upon a projection." He goes on, "It's my opinion that PETITIONER was under-assessed in 2012 . . . I know in 2012, the NOI was based upon an average of the historical net operating incomes, which produced an estimate that was below the current level of NOI."[64]

APPRAISAL EVIDENCE

38. Appraisals were submitted for each tax year by PETITIONER, the Counties and the Division. After the system wide value has been adjusted for the removal of intangibles and multiplied by the Utah allocation factor, the Utah value conclusion from each appraisal is as follows:[65]

Division's Final Hearing Appraisals UT Taxable	Counties' Hearing Appraisals UT Taxable	PETITIONER Final Hearing Appraisals UT Taxable

[59] Tr. 678:20-22.
[60] Tr. 654; Ex. 100 p. 008257.
[61] Tr. 662:12-15.
[62] Tr. 663:2-9.
[63] *Utah State Tax Commission Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 05-0829* ("PETITIONER 2005 Decision").
[64] Tr. 700-701: 12-3.
[65] Exs. 5-8, 13-14.

	Value	Value	Value
2013	$$$$$	$$$$$	$$$$$
2014	$$$$$	$$$$$	$$$$$

PETITIONER Appraisals

39. PETITIONER presented appraisals prepared by APPRAISER-1 for both tax years 2013 and 2014. For the 2013 tax year, APPRAISER-1 had submitted an original appraisal dated December 5, 2014,[66] a revised appraisal dated June 5, 2015,[67] and his final revised appraisal dated October 8, 2015.[68] For the 2014 tax year he had prepared an original appraisal[69] and a final revised appraisal dated October 8, 2015.[70] All references hereafter will be to APPRAISER-1 October 8, 2015 final revised appraisal for each year unless specifically stated otherwise. In his 2013 appraisal, APPRAISER-1 relied on a cost approach and an income approach, putting 60% weight on the cost and 40% weight on the income. He concluded a Utah value of $$$$$. For the 2014 appraisal, APPRAISER-1 relied on a cost approach, an income approach and a market approach, placing 50% weight on cost, 40% weight on income, and 10% weight on his market approach. His conclusion for the 2014 tax year was a value of $$$$$.[71] A summary of his appraisal conclusions are as follows:

	2013	Weight	2014	Weight
RCNLD Cost	$$$$$	60%	$$$$$	50%
Yield Cap Income	$$$$$		$$$$$	
DCF	$$$$$		$$$$$	
Reconciled Income	$$$$$		$$$$$	
Reconciled Income Tangible	$$$$$	40%	$$$$$	40%
Sales-COMPANY-D Transaction			$$$$$	
Sales-Tangible			$$$$$	10%
Reconciled System (Tangible)	$$$$$		$$$$$	
Utah Allocation		0.81%		0.81%
Utah Value Tangible	$$$$$		$$$$$	

PETITIONER Cost

40. APPRAISER-1 cost indicator was a replacement cost new less depreciation approach. He started with the original costs, converted those to reproduction costs by utilizing cost indexes prepared by

[66] Ex. 134.
[67] Ex. 133.
[68] Final Appraisal Ex. 7. His Utah value conclusions for 2013 from each appraisal: Original 12/5/2014 - $$$$$; Revised 6/5/2015 - $$$$$; Revised 10/8/2015 - $$$$$.
[69] Ex. 135.
[70] Final 2014 Appraisal Ex. 8. His Utah value conclusions for 2014 from each appraisal: Original - $$$$$; Revised 10/8/15 - $$$$$.
[71] Exs. 7 & 8.

his appraisal firm, APPRAISAL FIRM, and then converted reproduction costs to replacement costs by relying on a replacement cost new study conducted by APPRAISER-2 and APPRAISAL COMPANY to evaluate how much it would cost to replace PETITIONER network from the bottom up, or a "Greenfield" approach.[72]

41. A summary of APPRAISER-1 cost approach is as follows[73]:

	2013	2014
Original Cost	$$$$$	$$$$$
Reproduction Cost New	$$$$$	$$$$$$
Replacement Cost New	$$$$$$	$$$$$
Replacement Cost New Less Depreciation	$$$$$$	$$$$$$
Salvage Value	$$$$$$	$$$$$
Entrepreneurial Profit	$$$$$	$$$$$
Preliminary Cost Approach Indicator	$$$$$	$$$$$
Less: Software	$($$$$)	($$$$$)
Cost Approach Excluding Software	$$$$$	$$$$$

42. In his appraisal, APPRAISER-1 relied on a replacement cost new study prepared by APPRAISER-2, CEO of APPRAISAL COMPANY. APPRAISER-2 prepared a replacement cost new model to value most of the tangible assets of PETITIONER for both the 2013 and 2014 lien dates.[74] APPRAISER-2 is not a licensed appraiser and is not a licensed engineer.[75] APPRAISER-2 describes his valuation as "a bottoms-up Greenfield" approach.[76] In his cost study APPRAISER-2 describes that the goal of his approach "is to develop an estimate of the current cost to replace an asset/system with a new asset/system of equivalent utility. Equivalent utility means an asset/system yields the same functionality, albeit with new technology."[77]

43. APPRAISER-2 testified that PETITIONER had ##### cell sites around the Country in 2013, which he referred to as radio access network sites, or RAN sites. He noted that PETITIONER RAN sites communicated via either fiber or microwave links back to aggregate sites which he called PETITIONER Edge-Core sites. There were ##### of these intermediate BUSINESS sites in the United States, two in Utah. These sites aggregated the traffic and provided the switching functions. The Edge-Core sites would communicate with the national core sites. APPRAISER-2 testified that there were ##### national core sites in 2013. The national core sites provide the command and control of the entire network

[72] Ex. 7 pp. 51-60; Ex 8 pp. 56-64, 9 & 11.
[73] Ex. 7 p. 007726; Ex. 8 p. 001731.
[74] Exs. 9-12, 30-31 & 141.
[75] Tr. 250-251: 25-3; Ex. 29.
[76] TR. 188: 20-21.
[77] Ex. 9, p. 004228.

and they are live databases.[78] He determined the functions of each site and calculated a cost to construct and assemble each site and component for each tax year at issue in this appeal.

44. Although PETITIONER had about ##### cell sites, it owned only ##### of the towers at the sites and the others cell sites were located on towers owned by other entities. In developing his replacement cost model he considered that he would build ##### new sites with towers at those sites and the other ##### would be co-location sites.[79]

45. APPRAISER-2 testified that his firm determined the costs, "So each year that we conduct these studies, we will go out to our clients, we will go out to the third-party sources and look for material prices . . . and in this case, we asked [PETITIONER] for their new site builds."[80] APPRAISER-2 included in the costs, not just the costs of construction and equipment but the costs for installation of equipment and for engineering the sites. He added as the final step in his replacement cost development capitalized labor and capitalized interest during construction. He explained that in describing capitalized labor, "We look at that and what we've captured here is then that cost to engineer, design, and oversee the development and maintenance of that network. And that is what is brought in here. That labor is not necessarily out at the cell site, it's internal to the company, and that labor is typically capitalized. And we capitalize it in the same manner that PETITIONER capitalizes it on to their subject books."[81]

46. Capitalized interest was to capture the interest experienced during the time involved in construction. APPRAISER-2 noted that on average it took 18 months to construct and complete a new cell site and so he used 18 months as the interest during construction period. However, because many components are "back-waited" to the construction site, for instance the antennas don't need to come in until later, APPRAISER-2 weighted that interest during the construction period to the end.[82] It was APPRAISER-2 opinion that a provider could build out a network like PETITIONER in "under four years. Maybe three, three and a half years."[83] However, he explained that he only assumed interest during construction of 18 months because of the way carriers build out cell sites. They don't hold the one site in reserve until all the cell sites are finished. They build one and sign up customers as the market goes live and then they can use roaming agreements with other carries to fill in the gaps.[84]

47. APPRAISER-2 states that his modeling typically results in replacement cost new values that are less than book costs because his modeling removes assets that were retired but may still remain

[78] Tr. 195-196.
[79] Tr. 999-1000:22-2.
[80] Tr. 197 - 198:25-4.
[81] Ex. 9, p. 004247 and quote from Tr. 199: 16-23.
[82] Tr. 200.
[83] Tr. 201: 9-10.
[84] Tr. 201.

on the company's books, removes the impact of multigenerational technology upgrades, allows an overall optimization of the network, captures the costs of equipment and labor incurred today and allows the use of the optimal configuration of equipment, technology and spectrum.[85] He also acknowledges that his replacement cost model indicated a value near in amount to PETITIONER own capital expenditures during the years 2010 through 2012, but points out that capital expenditures include maintenance capital expenditures, repairs and remodeling costs.[86]

48. APPRAISER-2 acknowledged that in his replacement cost method he did not capture down sites or repeater sites. Repeater sites repeat a signal typically inside a building.[87] Other items he did not include in his replacement cost method included: alarm systems, trade-in-credits, reradiators, retail store displays, desktop PC equipment, DP equipment-POS Terminal, land, LH administration building leaseholds, office furniture/accessories, DP equipment-portable laptops, vehicles, MTSO-acquisition cost, MTSO-building, MTSO-dark fiber, network equipment scrap, or capital lease fiber.[88]

49. APPRAISER-2 disagreed with the CONSULTANT FIRM study that had indicated it would take sevenyears to build out the network. It was his position that it could be done in thirty-one months, noting that it took PETITIONER thirty-one months to replace its network from 3G to 4G.[89]

50. APPRAISER-1 then took the replacement cost new values concluded by APPRAISER-2 for each of the years and deducted depreciation to derive a replacement cost new less depreciation value. He made minor adjustments for salvage/removal costs to determine a preliminary cost approach. Then he added to the preliminary cost approach entrepreneurial profit in the amount of 10% of the preliminary cost value.[90] He tested this percentage by analyzing the potential opportunity costs associated with building a wireless network such as PETITIONER. APPRAISER-1 analysis yielded a result of around 7% of the replacement cost new.[91] Thus, he was comfortable with his 10% entrepreneurial profit adjustment.

51. APPRAISER-1 then subtracted the value on the books attributable to software that was booked in the property, plant and equipment accounts so it captured in the replacement cost value.[92] APPRAISER-1 software adjustments had been approximately $$$$$ for 2013 and $$$$$ for 2014. Regarding the software, in his testimony NAME-2 described this as, "a license to use software that gets installed and updated on the computer equipment." However, NAME-2 was not clear specifically on the

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[85] Ex. 9, p. 004250 & Ex. 11, p. 001073.
[86] Tr. 209.
[87] Tr. 239.
[88] Tr. 240:5-13; Ex. 32.
[89] Tr. 244; Ex. 34.
[90] Ex. 7 pp. 68-70, 96-97; Ex. 8 pp. 72-74, 101-102.
[91] Ex. 152.
[92] Ex. 44.

details regarding this software. He stated "software is software"[93] and "if it was capitalized on the books as software, then it should be removed as exempt."[94] When further questioned regarding this software and whether it is customized, NAME-2 acknowledged, "once we buy the stuff, the CONTRACTOR's come to our facilities and they actually program - - they do things with the program. I don't know exactly what they do, but they sit there in front of the computer and they plug in stuff. And all of the sudden, you know, a couple of days later, its working fine, I guess."[95]

52. APPRAISER-1 determined that there was no economic obsolescence present in the subject property. As noted by PETITIONER, a replacement cost new less depreciation approach essentially removes the need to adjust for functional obsolescence. Consequently APPRAISER-1 cost approach accounts for all forms of obsolescence.

53. APPRAISER-3, Senior Appraiser, Property Tax Division and Certified General Appraiser licensed with the State of Utah, who had prepared an appraisal for the Division submitted in this matter, provided the opinion that although a cost approach is generally not considered by the buyer and seller in making a decision about what a purchase price should be,[96] a replacement cost or reproduction cost approach is typically used in purchase price accounting to allocate the portion of the purchase price attributable to the property, plant and equipment, for financial reporting purposes.[97]

54. Even though an HCLD indicator is the preferred method under Rule 62, APPRAISER-3 acknowledged that most appraisers and appraisal textbooks indicate that the replacement cost new less depreciation method is a preferred cost approach.[98]

PETITIONER Income Approach

55. APPRAISER-1 performed a discounted cash flow ("DCF") and a yield capitalization income approach, and weighted each 50% to determine a final income approach value, then subtracted out his concluded value for the intangibles. A summary of his income approach conclusion is the following:[99]

			2013			2014
DCF	$$$$$	50%	$$$$$	$$$$$	50%	$$$$$
Yld C	$$$$$	50%	$$$$$	$$$$$	50%	$$$$$
			$$$$$			$$$$$

[93] Tr. 167:12-13.
[94] Tr. 167: 18-19.
[95] Tr. 984: 8-14.
[96] Tr. 865.
[97] Tr. 856-857, 888:1-3; Ex. 156.
[98] Tr. 862:15-19.
[99] Ex. 7 pp. 007734 & 007740; Ex. 8 pp. 001739 & 001747.

- Intangibles	($$$$$)	($$$$$)
System wide Tangible	$$$$$	$$$$$

56. For his DCF income indicator, APPRAISER-1 forecasted out for seven years revenues, expenses and depreciation to arrive at after-tax operating income. He then added back the interest expense to get to a debt-free net income, added back the depreciation and subtracted off replacement capital expenditures to arrive at net cash flow. He determined the present worth of that net cash flow using a discounted rate adjusted for growth of 8.35% for 2013 and 8.39% for 2014.[100]

57. For his yield capitalization indicator, APPRAISER-1 considered income from operations over the period from 2006 to 2012 to determine his “near term” income to capitalize. APPRAISER-1 used the same formula cf/k-g, where cf is cash flow, k is the pre-tax capitalization rate and g is growth. APPRAISER-1 cash flow was within the range of that used in the other appraisals submitted for 2013 and higher than that used in the other appraisals submitted for 2014 and was not in dispute. Although he used a higher growth rate in his initial appraisals, in his final appraisals he used the same growth rate as the other appraisers so this was also not at issue. The primary difference that was disputed was APPRAISER-1 capitalization rate.

58. APPRAISER-1 capitalization rate used in his DCF and yield capitalization approaches was the highest rate compared to the other appraisers and the appropriateness of his rate was at issue. As noted previously, the weighted average cost of capital has a cost of debt component and a cost of equity component which are weighted based on the capital structure of guideline companies. APPRAISER-1 cost of debt component was in line with that of the other appraisers. The difference was APPRAISER-1 cost of equity and his capital structure. For the 2013 year, his rate was comprised of a cost of debt of 4.56%, a total cost of equity of 12.43% and a capital structure weighting 27.7% for debt and 72.30% for equity. This resulted in a pre tax weighted average cost of capital of 10.25%. APPRAISER-1 then subtracted 1.50% for growth which resulted in his pre-tax capitalization rate of 8.75%. For 2014, APPRAISER-1 cost of debt was 5.23%, his cost of equity was 13.29% and his weighting 31.80% debt and 68.20% equity. His after tax weighted average cost of capital was 10.19% and his growth rate was 1.80%. This resulted in his pre-tax capitalization rate of 8.92%.[101]

59. A significant factor in the higher cost of equity and higher weighting of equity was due to the guideline companies that APPRAISER-1 relied on in his appraisal. The guideline companies affect both capital structure and the beta which is used to calculate the cost of equity. It was also pointed out

[100] Ex. 7 pp. 007728 – 007732; Ex. 8 pp. 001733 – 001737; Trs. 358 - 359.
[101] Exs. 58, 45-47.

during the hearing that APPRAISER-1 used a different set of guideline companies to determine his capital structure than he used to determine his beta in the 2013 appraisal. For his beta he had used a group that included several small regional companies, which resulted in a high beta of 1.21 for 2013 and 1.10 for 2014. His was the highest beta of the appraisals submitted. The higher the beta, the lower the market value. However, for capital structure in the 2013 appraisal he had used fewer cellular companies, and they were the ones that were larger, national, companies. Had APPRAISER-1 used the same guideline companies for his beta as he had for his capital structure, the beta would have been 0.91 in 2013, instead of 1.21.[102] APPRAISER-1 explained with respect to adding the additional guideline companies in determining his beta, "the other thing that the broader list provides me with is it has several of those companies in my list that are wireless only. And obviously, what we're appraising here is PETITIONER only."[103]

60. Another factor that was at issue with APPRAISER-1 cost of equity was that he had added a liquidity adjustment. This amount was significant, being 1.39% for 2013 and 1.44% for 2014. His explanation for this adjustment was, "the idea of the liquidity adjustment is that the analysis that we use to arrive at cost of equity, whether it be the beta or even the risk premium, are all factors that are derived from an active and relatively liquid market, stock market, the adjustment for liquidity is attempting to adjust the capital asset pricing model that we use for the fact that what we have here in terms of this valuation is of relatively a liquid asset, all of PETITIONER Wireless. It would take some time for somebody to purchase PETITIONER, and their assets are not liquid like the stock market assets are liquid."[104] A smaller factor that was also at issue was a flotation cost adjustment. APPRAISER-1 had added to his cost of equity 0.39% for 2013 and 0.44% for 2014 for flotation costs. The appraisers for the Division and Counties argued that both the liquidity and flotation adjustments were improper.

61. In his final revised appraisal for the 2014 tax year, in addition to the cost and income approaches, APPRAISER-1 also prepared a market approach based on the COMPANY-D transaction and placed 10% weight on the approach for that year. APPRAISER-1 concluded that PETITIONER had purchased COMPANY-D's 45% partnership interest for a total compensation of $$$$$ which included cash, stock, debt and assumption of liability. He did acknowledge at the hearing that the correct total compensation could be "slightly" higher due to missing some long term debt.[105] He stated this would indicate a value for 100% of PETITIONER of $$$$$, which includes intangibles.

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[102] Ex. 56.
[103] Tr. 363: 12-16.
[104] Tr. 365-366: 22-8.
[105] Tr. 382: 12-15.

62. However, APPRAISER-1 reduced that amount by subtracting 28.7% as a control premium, on the assumption that PETITIONER had paid more than market value to obtain 100% control of the company. He testified that he had made the control premium based on a page in the Appendix from the Fairness Analysis prepared by FINANCIAL ADVISOR FIRM-1/FINANCIAL ADVISOR FIRM-2. The page he relied on was titled Minority Buy-In Premium Precedents.[106] APPRAISER-1, who had not prepared the study or done his own independent verification of the study, testified regarding the study, "what we know is . . . there was a premium paid for all of these companies to go from somewhat more than 50 percent ownership to acquire the rest of the ownership of their target company . . ." The study listed fifteen minority buy-in deals that were over $$$$$ since 2005 and were publicly traded companies. It looked at the stock of the acquired companies one day prior to the announcement to purchase, a one month average and a 52 week high. In addition to this study, APPRAISER-1 testified that PETITIONER was originally intending "to purchase it (COMPANY-D's interest) for significantly less than the $$$$$, but got dragged up to the $$$$$."[107]

63. In regards to the page relied on by APPRAISER-1, APPRAISER-1 acknowledged it was in the appendix from a larger report analyzing the value of the interest acquired by PARENT COMPANY-A from COMPANY-D, and regarding the larger report he acknowledged that he "didn't review it in a detailed fashion."[108] The one page on which APPRAISER-1 had relied stated in the title caption "For Reference Only, Not Relied Upon For Valuation Purposes."[109]

64. It was APPRAISER-1 conclusion from his market approach for the 2014 tax year that PETITIONER system wide value was $$$$$ which included intangibles.

Deduction for Intangibles

65. Because both his income and sales approaches captured a system wide value including value attributable to intangibles, APPRAISER-1 made an adjustment for intangibles to both of these approaches. His method for removing intangibles was different than that of the Division or appraiser for the Counties. The Division and Counties used a ratio based on the booked values. APPRAISER-1 instead prepared appraisals and attempted to determine a fair market value for the three main classes of intangibles, FCC licenses, customer relationships and service marks. APPRAISER-1 used both an income and a market approach to value the FCC licenses and income approaches on the customer/customer relationships and service marks. He also removed the cost value of the software that had been booked as

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[106] The entire FINANCIAL ADVISOR FIRM-1/FINANCIAL ADVISOR FIRM-2 report was received as Exhibit 76. The study relied on by APPRAISER-1 was at page 000055.
[107] Tr. 369: 6-9.
[108] Tr. 385-386: 25-1.
[109] Ex. 76, p. 000055; Tr. 384:2-5; See also Ex. 75 p. 000023.

part of the property, plant and equipment account. His was a direct method for valuing the intangibles and unlike the Division and Counties resulted in a dollar value for the intangibles for each year, rather than a ratio. He subtracted the dollar value from his income and sales approaches. APPRAISER-1 value conclusions for these intangible assets are:[110]

	2013	2014
FCC Licenses	$$$$$	$$$$$
Customer Relationships	$$$$$	$$$$$
Service Marks	$$$$$	$$$$$
Software	$$$$$	$$$$$
Monetary Assets		$$$$$
Total	$$$$$	$$$$$

66. Once the taxable tangible value of the unit was determined for each year, the Utah allocation factor was applied to determine the value taxable in Utah. The parties were in agreement that the Utah interstate allocation factor was 0.81% for both tax years. In his final appraisals for each year, APPRAISER-1 Utah taxable value was $$$$$ for 2013 and $$$$$ for 2014.[111]

Counties' Appraisals

67. The Counties offered appraisals prepared by APPRAISER-4 for both tax years 2013 and 2014. APPRAISER-4 is a licensed Certified General Appraiser with the States of Utah and CITY-6. He holds a dual accreditation with the American Society of Appraisers in Machinery and Technical Specialty Properties as well as Public Utilities. APPRAISER-4 appraisals were performed as a unit appraisal of the subject property, he made an adjustment for intangibles, and then he allocated the unit value back to the state of Utah. He explains that the subject of this proceeding was to determine the fair market value of the unit. He explained "unitary value" is "the value of these operating assets functioning as a going concern, as one thing, without reference to the independent value of the component parts of the unit."[112]

68. APPRAISER-4 had also submitted at the hearing a Review Appraisal of APPRAISER-1 appraisal.[113]

69. In his direct appraisal for 2013, APPRAISER-4 prepared an HCLD cost approach and both a yield capitalization income approach and a discounted cash flow income approach.[114] For the 2014

[110] Ex. 7, p. 007655-007674; Ex. 8, p. 001675 & 001680.
[111] Ex. 7 & 8.
[112] Tr. 472: 2-7.
[113] Exs. 13, 14 & 17.
[114] Ex. 13.

year, APPRAISER-4 prepared an HCLD cost approach, a yield capitalization income approach, a discounted cash flow approach and a sales comparison approach based on the COMPANY-D transaction.[115] A summary of APPRAISER-4 appraisal conclusions and the weight given each approach is as follows:

	2013	Weight	2014	Weight
HCLD Cost	$$$$$	10%	$$$$$	10%
Yield Cap Income	$$$$$		$$$$$	
Yield Cap-Tangible	$$$$$	90%	$$$$$	80%
DCF	$$$$$		$$$$$	
DCF-Tangible	$$$$$		$$$$$	
Sales-COMPANY-D Transaction			$$$$$	
Sales-Tangible			$$$$$	10%
Reconciled System (Tangible)	$$$$$		$$$$$	
Utah Allocation	0.81%		0.81%	
Utah Value Tangible	$$$$$		$$$$$	
Minus Utah Adjustments	(#####)		(#####)	
Utah Assessed Value	$$$$$		$$$$$$	

70. APPRAISER-4 gave little weight to the cost approach for both years as it was his conclusion that a willing buyer and seller would not rely upon a cost approach to arrive at a purchase price for the subject property.[116] For his cost indicator, he had relied on the same historic cost less deprecation approach as had been used by the Division and had a similar result to the Division's assessment for each year. For tax year 2013, the Division's HCLD indicator had been $$$$$, while APPRAISER-4 conclusion was $$$$$ for that year. For tax year 2014, the Division's HCLD indicator had been $$$$$, while APPRAISER-4 had been $$$$$.[117]

Counties' Income Approach

71. APPRAISER-4 utilized a Rule 62 compliant yield capitalization indicator. APPRAISER-4 cash flow for both years was lower than any of the other appraisers' estimates. The primary difference between APPRAISER-4 yield capitalization approach and the other appraisers, however, was the capitalization rate. For the 2013 year, the capitalization rate used by the Division in its assessment had been 6.72% and APPRAISER-4 was 6.54%. For the 2014 assessment the Division's capitalization rate had been 6.89% in its assessment and APPRAISER-4 was 6.40%.[118]

[115] Ex. 14.
[116] Tr. 546: 1-9.
[117] Exs. 3, 4, 13 & 14.
[118] Exs. 3, 4, 13 & 14.

72. In determining his capitalization rate, APPRAISER-4 stated that he complied with Rule 62. He indicates in his appraisal, "the preferred income approach outlined by USTC Rule 62 is a constant growth yield capitalization model." [119]

73. All appraisers were fairly close on the debt portion of the cost of capital for 2014 so that was not at issue for that tax year. However, for 2013 the Division was an outlier and lower than APPRAISER-4 and APPRAISER-1. The Division's 2013 cost of debt was 3.98%, APPRAISER-4 4.63% and APPRAISER-14.56%.[120]

74. In determining the equity component of the weighted average cost of capital ("WACC"), Rule 62 requires giving at least 50% weight to Rule 62's preferred capital asset pricing model ("CAPM") model, which APPRAISER-4 complied with in his appraisal. He gave the remaining weight to a CAPM – Ibbotson Supply Side model and to a dividend growth model ("DGM").

75. The guideline companies chosen by APPRAISER-4 to determine his capital structure, beta and other components of his cost of equity models were limited for the 2013 tax year to GUIDELINE CO.-1, GUIDELINE CO.-4, GUIDELINE CO.-5 , GUIDELINE CO.-6 and PARENT COMPANY-A. For the 2014 tax year, the guideline companies were GUIDELINE CO.-1, GUIDELINE CO.-5., GUIDELINE CO.-6, PARENT COMPANY-A and GUIDELINE CO.-7. It was his opinion that these companies were the most similar to PETITIONER for each of the respective years.[121] It was his conclusion from these companies that capital structure was 70% equity and 30% debt for the 2013 year and 63% equity 27% debt for the 2014 tax year. This structure was the same as the Division's assessment for the 2013 year and fairly similar to the Division's for the 2014 year. The betas APPRAISER-4 concluded from an analysis of these guideline companies had been 1.00 for the 2013 year and 0.85 for the 2014 year.[122] These betas were lower than those used by the Division in its original assessments as well as by APPRAISER-1 in his appraisals.

76. In his yield capitalization income approach, APPRAISER-4 had used the same growth rate or "g" as had the other appraisers in their final reports for both years. For 2013 the inflationary growth rate was 1.80% and for 2014 the inflationary growth rate was 1.5%.

77. APPRAISER-4 yield capitalization income conclusion for the system wide value including intangibles was $$$$$ for 2013 and $$$$$ for 2014. It was APPRAISER-4 contention that the Rule 62 Yield Cap method already excludes some intangibles. He explained, "If you've done a Rule 62 income approach, which already restricted the income stream that you're going to capitalize and the

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[119] Exs. 13 pp. 21-22; 14 pp. 21-22
[120] Exs. 3, 5, 7 & 13.
[121] Ex. 13, p. 28; Ex. 14, p. 28.
[122] Exs. 13 & 14.

growth rate that you're going to assume, then you have already eliminated a certain extent of this property." APPRAISER-4 then used a market to book ratio to eliminate any specifically identifiable intangibles based on their contributory value.[123] Based on his market to book ratio his Rule 62 Yield Capitalization value without intangibles was $$$$$ for 2013 and $$$$$ for 2014. APPRAISER-4 conclusion without intangibles was lower than the Division's original assessment for 2013 and higher than the Division's original assessment for 2014, but within a fairly close range to the yield capitalization indicators used in the Division's assessments for both years.

78. In his appraisal, APPRAISER-4 also prepared a discounted cash flow (DCF) income approach for each year using internal forecasts developed by PETITIONER. He did not place any weight on his DCF conclusions for either year and noted that the DCF conclusions were significantly higher than his valuations obtained under the Rule 62 yield capitalization approaches. He concludes that this illustrated that the Rule 62 yield capitalization method, by its assumptions, is restrictive in nature and results in a lower value.[124] APPRAISER-4 DCF values including the intangibles were $$$$$ for 2013 and $$$$$ for 2014. APPRAISER-4 points out that his DCF conclusion for the 2014 year was within the range of the conclusions reached by FINANCIAL ADVISOR FIRM-1 & FINANCIAL FIRM-2 in their Fairness Opinion.[125]

79. For the 2013 tax year, the largest contributor to the difference in the system wide reconciled value conclusion between APPRAISER-4 appraisal and the Division's assessment was that APPRAISER-4 put most of the weight (90%) on his yield cap income indicator and only 10% on the cost approach. Both the Division and APPRAISER-4 income indicators were significantly higher than their cost indicators. APPRAISER-4 reconciled system value with intangibles removed was $$$$$, while the Division's was $$$$$. The Division had put 60% of its weight on the cost approach and 40% on the yield capitalization approach.

80. For the 2014 tax year, in addition to the HCLD cost approach, the yield capitalization and DCF income approaches, APPRAISER-4 prepared a sales comparison calculation based on the COMPANY-D transaction. He gave this indicator 10% weight for the 2014 year. It was APPRAISER-4 conclusion that the COMPANY-D purchase price indicated a system wide value for PETITIONER of $$$$$. Then, to remove the contributory value of the intangibles, he used the same market-to-book ratio method that he had used with his income approach. It was his conclusion that of the $$$$$ purchase price,

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[123] Tr. 530: 8-15.
[124] Exs. 13 & 14; Tr. 534-535.
[125] Tr. 534-535; Exs. 13, 14, & 76.

$$$$$ was the contributory value of the exempt intangibles and only $$$$$ was attributable to the value of the tangible property.[126]

81. For the 2014 year, APPRAISER-4 gave 80% of his weighting to his Rule 62 yield cap indicator and 10% weight each to his HCLD cost and his sales comparison indicator. Placing more weight on the income indicator, which was substantially higher than his HCLD cost and giving some weight to his sales comparison indicator, which was higher than his income indicator resulted in a value higher than the Division's system value of the tangible property for 2014 by about $$$$$.

82. APPRAISER-4 used the same Utah allocation percentage of 0.81% as had both the Division and APPRAISER-1 to determine the Utah taxable value.[127]

Division's Appraisals

83. The Division did submit a narrative appraisal for the 2013 tax year which had been prepared by APPRAISOR-5.[128] However, the assumptions and conclusions in the appraisal are the same as APPRAISOR-5 had used in the original assessment for the 2013 year and are discussed in detail above.

84. For the 2014 tax year, the Division had submitted an appraisal prepared by APPRAISER-3, Senior Appraiser, Property Tax Division and Certified General Appraiser licensed with the State of Utah. This appraisal was submitted to support the Division's original assessment for 2014 and the Division did not request the value be raised to APPRAISOR-3's appraisal value. APPRAISER-3 had submitted an original appraisal in which he had concluded the Utah value was $$$$$ and a revised appraisal dated October 29, 2015 in which he concluded that the Utah value was $$$$$.[129] All references to APPRAISOR-3's appraisal going forward will be to the revised 2014 appraisal dated October 29, 2015, unless specifically noted. In his appraisal, APPRAISER-3 had prepared sales comparison indicators in addition to the yield capitalization income indicator and HCLD cost indicator. He had weighted his income indicator at 50% and his market multiple sales indicator at 50%. He placed no weight on his cost indicator. A summary of his revised appraisal conclusions are the following:

	2014	
HCLD Cost	$$$$$	0%
Yield Cap Income w/intangibles	$$$$$	
Income w/out Intangibles	$$$$$	50%
Sales: COMPANY-D Transaction	$$$$$	
Sales: Market Multiple w/intangibles	$$$$$	

[126] Ex. 14, pp. 47-48.
[127] Ex. 14, pp 49-52.
[128] Ex. 5.
[129] Ex. 6.

Sales: Market Multiple w/out intangibles	$$$$$	50%
Reconciled System (Tangible)	$$$$$	
Utah Allocation	0.81%	
Utah Value Tangible	$$$$$	
Minus Utah Adjustments	(#####)	
Utah Assessed Value	$$$$$	

85. APPRAISOR-3's HCLD cost indicator conclusion was prepared in a similar manner and nearly identical to the indicator that APPRAISOR-5 had prepared for the assessment. He testified that an advantage of the HCLD in this case was the fact that independent auditors had verified the numbers.[130]

86. APPRAISER-3 had reached a different conclusion than the Division in his 2014 appraisal yield capitalization income indicator. He explained that he had used the same formula as had APPRAISOR-5. APPRAISER-3 had concluded the appropriate cash flow to capitalize was $$$$$, which was slightly higher than APPRAISOR-5 at $$$$$. His capital structure was based on 40% debt and 60% equity, compared to APPRAISOR-535% / 65% respectively. The difference he explained resulted from his incorporating the concept that operating leases were part of the debt financing and also, he had used different guideline companies which resulted in a different cost of equity. APPRAISER-3 concluded that the only appropriate guideline companies to represent PETITIONER cost of capital structure were the four largest wireless carriers. Therefore, he limited his guideline companies to PARENT COMPANY-A, GUIDELINE CO.-1, GUIDELINE CO.-5, and GUIDELINE CO.-7.[131] He had a lower beta at 0.73 than had APPRAISOR-5 at 0.97 because APPRAISER-3 used a weighted average beta which placed the most weight on PARENT COMPANY-A and GUIDELINE CO.-1. These two companies had a lower beta than the others but were the most comparable.[132] These factors led to APPRAISOR-3'slower cost of equity. While APPRAISOR-5 cost of equity was 10.48% for the 2014 tax year, APPRAISOR-3's was 9.18%. APPRAISOR-3's lower cost of equity results in a higher yield capitalization value of $$$$$ prior to an adjustment for intangibles compared to APPRAISOR-5 value of $$$$$.

87. APPRAISER-3 testified that the Rule 62 Yield Capitalization income indicator was designed to minimize intangible values.[133]

88. Instead of a book ratio like the Counties and Division or a direct valuation like PETITIONER, APPRAISER-3 used a purchase price allocation method to determine the amount to adjust

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[130] Tr: 746-747; Ex. 6.
[131] Ex. 6, p. 008106.
[132] Tr. 760-761; Ex. 6.
[133] Tr. 884: 1-7.

for intangibles. This resulted in a larger adjustment for intangibles than made by any of the other appraisers. Therefore, although his yield capitalization system wide value including intangibles was higher than any of the other appraisers, his value adjusted for intangibles was lower than the Division's income indicator in the assessment or APPRAISER-4 conclusion in his appraisal. APPRAISOR-3's 2014 income value adjusted for intangibles was $$$$$while the Division's had been $$$$$ and the Counties' $$$$$.[134] APPRAISER-3 developed his adjustment by looking at accounting purchase price allocations as reported publicly in Security and Exchange Commission filings for nine different purchase transactions involving wireless telecommunication providers. He explained that when a merger or acquisition occurs, the purchasing company reports how the purchase price has been allocated between the acquired company's assets in its 10K filings. These transactions had occurred between 2009 and 2013. He concluded from these transactions that 83% to 85% of the purchase price was allocated to the intangibles. From that he concluded 16% of the value was due to the tangible property. Therefore, he used the 16% adjustment on his yield capitalization income value. He also made this same adjustment to his sales comparison value.[135]

89. APPRAISER-3 also responded to a criticism that he should have added "other assets" to the denominator or intangible assets, that the "other assets" generated "other income" which other income is shown below the line and not capitalized. APPRAISER-3 stated "I've excluded the value of other assets because I've excluded other income." It was his opinion that he had appropriately accounted for the other assets.[136]

90. A significant difference between APPRAISOR-3's appraisal and the Division's assessment was that APPRAISER-3 had weighted by 50% a sales comparison approach. APPRAISER-3 prepared two different sales approaches. One approach was based on the COMPANY-D transaction like had been done by APPRAISER-4 and APPRAISER-1. APPRAISOR-3's second sales approach was a market multiple approach based on projected earnings before taxes, depreciation and amortization or the EBITDA method. It was the market multiple approach to which he gave 50% of the weight. He gave no weight to the other sales approach. It was APPRAISOR-3's opinion that the market multiple method was "considered very relevant in estimating the value of wireless telecommunications properties." He cited to statements from financial advisors FINANCIAL ADVISOR FIRM-1, FINANCIAL ADVISOR FIRM-3 and others that indicated the market multiple was a method relied on by the financial advisors.[137]

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[134] Ex. 6, 4 & Ex. 14.
[135] Ex. 6 pp. 008132 – 008136. Tr. 761-764.
[136] Tr. 770: 1-16.
[137] Ex. 6, p. 008137.

91. The information APPRAISER-3 considered to develop his market multiple value had come from a PARENT COMPANY-A Proxy Statement soliciting support for the proposed acquisition of COMPANY-D's interest in PETITIONER. The information showed transactions between wireless providers in the over $$$$$ range. From this group the mean and median of the EBITDA multiples was 8.3. These large transactions included a 2004 transaction where COMPANY had acquired COMPANY, a 2012 transaction where COMPANY acquired COMPANY, a 2008 transaction where PETITIONER acquired COMPANY-E, a 2007 transaction where COMPANY, COMPANY acquired COMPANY-E and the proposed COMPANY acquisition of COMPANY in 2011, which transaction was later terminated.[138]

92. APPRAISER-3 used a projected 2014 ACCOUNTING of $$$$$ which had been a conclusion of the September 2, 2013 fairness opinion presentation from the investment advisors to PARENT COMPANY-A's Board of Directors.[139] Multiplying this ACCOUNTING by 8.3 indicated a total enterprise value for PETITIONER of $$$$$$. He then removed intangibles from his $$$$$ using the same 84% / 16% ratio used in his income approach and concluded that his sales income multiples conclusion was $$$$$ for the system wide value.[140]

93. APPRAISER-3 did consider the actual transaction whereby PARENT COMPANY-A bought COMPANY-D's interest as a "sanity check" to see how reasonable his other indicators of value had been. Like APPRAISER-4, APPRAISER-3 concluded that the actual purchase price indicated $$$$$ for the entire company including intangibles, which was roughly in line with his market multiple sales indicator and yield capitalization income indicator.[141]

94. Unlike the appraiser for PETITIONER, APPRAISER-3 did not subtract a control premium from this sales transaction. He pointed out that in order to get a fee simple interest, the buyer would have to offer a premium or these types of transactions would not take place.[142] It was his position that the property tax assessment is based on a fee simple interest, not a minority interest. A typical minority shareholder would not have the right to sell the company, lease the property of the company, mortgage the company or take other action that a fee simple owner could take.[143]

95. In his reconciliation of his different value approaches, APPRAISER-3 gave no weight to his cost indicator of value. He explained "the most important factor in determining how much you rely on an indicator is does it affect market participants? Does it affect the decision of buyers and sellers?" APPRAISER-3 concluded that the cost indicator is not considered when buyers or sellers look at

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[138] Ex. 6, p. 008138.
[139] Ex. 76, p. 000038.
[140] Ex. 6, pp. 008142-008144; Tr. 766-769.
[141] Ex. 6, pp. 008149-008150; Tr. 774-775.
[142] Tr. 776-777.
[143] Ex. 17, p. 008026.

acquiring wireless property. He states, "A cost approach is never mentioned in any of the proxy statements I've looked at and I've looked at a fair number of them."[144] He concluded that both the yield capitalization indicator and his market multiple sales indicator are used to determine a purchase price for these types of assets and he felt these two indicators were reliable in his appraisal so he gave them each 50% weight. This resulted in a system value for the tangible property of $$$$$ after deductions for intangibles.[145]

96. APPRAISER-3 used the same Utah allocation of 0.81% as had the other appraisers in this matter to get to the Utah value.

VALUATION CONCLUSIONS

97. APPRAISER-7, Certified General Appraiser, APPRAISER-8 PhD, Professor of Finance, and APPRAISER-6, ASA, CDP, PE, who is both a licensed appraiser and engineer did provide expert rebuttal information at this hearing. Although they provided criticisms of the appraisals offered at the hearing they did not offer their own appraisals or an opinion of value. None had prepared a cost approach of their own, an income approach or calculated their own WACC.[146]

COST

98. The historic cost less depreciation or HCLD indicator is the preferred cost indicator pursuant to Utah Admin. Rule R884-24P-62 (Rule 62). For PETITIONER, the HCLD method was based on audited financial statements which provided the booked cost which is either the actual original cost or the first cost recorded on a firm's accounting records.[147] Depreciation is based on accounting schedules.

99. One of the arguments made by PETITIONER was that a further reduction should be made to the Division's HCLD indicator for functional obsolescence. PETITIONER acknowledged there was no economic obsolescence in these assets at this time but argued there was functional obsolescence. PETITIONER witness, NAME-2, testified how quickly each generation of technology became obsolete and also how each new generation had both increased capabilities and decreased costs.[148] However, this evidence does not support a further adjustment to the Division's HCLD indicator for the short useful lives of much of PETITIONER technology.[149] The book depreciation subtracted in the HCLD approach is calculated according to Generally Accepted Accounting Principles and regulatory guidelines."[150] It is based on the expected useful life of the asset. The quickly advancing technology described by

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[144] Tr. 834:1-3.
[145] Tr. 771-772.
[146] Tr. 1043-1044 & 1070.
[147] Ex. 63.
[148] See Finding of Fact (FOF) #18.
[149] Tr. 714:10-12; FOF # 9.
[150] Tr. 622: 2-17.

PETITIONER would be reflected in a shorter useful life and accounted for in these depreciation schedules.[151]

100. PETITIONER does not point to any specific items of equipment and attempt to argue that the corresponding accounting depreciation schedule does not reasonably correspond with the actual useful life of that item. Instead, PETITIONER argues that its replacement cost new less deprecation approach, which results in a much lower value than the Division's HCLD, would support that an obsolescence adjustment to the HCLD is needed. For the 2013 year, for example, the Division's HCLD cost approach was $$$$$, while PETITIONER replacement cost new less depreciation indicator was $$$$$. PETITIONER argued, if the Commission did not accept an obsolescence adjustment to the Division's HCLD indicator, in the alternative, the Commission should rely on PETITIONER replacement cost indicator.

101. PETITIONER requests are not supported by the evidence submitted at the hearing because the evidence raised concerns that PETITIONER replacement cost approach undervalued the actual costs of the tangible assets and called into question the reliability of the cost approach as a valuation method in this matter.[152] Because of these concerns, PETITIONER cost approach, which is based on theoretical costs of building a network from the ground up, is not a better alternative to the Division's HCLD cost approach, which is based on the actual costs PETITIONER had spent in building this network minus accounting depreciation.

102. An explanation as to why a cost approach might be relevant to determine fair market value, was provided by APPRAISER-6, ASA, CDP, PE, who is both a licensed appraiser and engineer. He had prepared a rebuttal report on APPRAISER-1 cost approach which was received into the record[153] and some of his deposition was read into the record in this matter. It was his explanation that the only reason to prepare a Greenfield RCN in an appraisal was "the principle of substitution, which basically what that says is that if there's an alternative in the marketplace, that a buyer can go buy—instead of buying the subject property, that that alternative . . . is going to influence the selling price . . ."[154] He explained the first question when considering if a Greenfield approach is appropriate "is it a viable alternative to purchasing the subject property?"[155]

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[151] Tr. 712-713.
[152] Ex. 17, 18, & 154.
[153] Ex. 154.
[154] Tr. 898: 3-11. In his Report, APPRAISER-6 refers to the definition of the "principle of substitution" from *The Appraisal of Real Estate*, 11th Edition, Appraisal Institute, 1996, pp. 336, which provides, "The principle of substitution holds that a prudent buyer would not pay more for a property than the cost to acquire a similar substitute property of equivalent desirability and utility without undue delay."
[155] Tr: 899: 7-8.

103. From the expert testimony and evidence, APPRAISER-1 did not given reasonable consideration to the amount of time it would take to rebuild the subject network and then adequately account for the costs associated from that in his Greenfield replacement cost approach. APPRAISER-3 testified that in his opinion the PETITIONER network could not be rebuilt in seven years, if at all. He pointed out, "The last company that was successful even in creating a national nationwide carrier was COMPANY. It's taken them about 20 years and they are still less than half the size of PETITIONER, so I don't believe it's practical. I actually don't believe it's possible, given the current competitive market."[156] APPRAISER-3 explains that it was his understanding APPRAISER-1 Greenfield approach basically says in seven years[157] the new company would come up to a cash flow comparable to the existing PETITIONER.[158] To do so, he notes by the end of the first year the new company would have to have ##### customers and by the end of the second year, ##### customers. By the end of year three the assumption was the addition of ##### customers for a total of #####. APPRAISER-3 argues this would be remarkable growth. It was his conclusion that this type of growth was not realistic.[159] Additionally, APPRAISER-3 points out that the present value of the income lost during the build out period was a difference of $$$$$, even using APPRAISER-1 capitalization rate which APPRAISER-3 felt was too high. He pointed out when using an appropriate capitalization rate, the difference would be larger. APPRAISER-3 opined, "A cost approach is only valid if you have a viable substitute, something that will present to you equal utility without an undue delay. I would say $$$$$ lacking is not a viable substitute."[160]

104. It was APPRAISER-6's opinion that APPRAISER-1 cost approach violated the principle of substitution because it: "(i) is not physically or economically feasible; (ii) is not available within a reasonable timeframe after the appraisal date; (iii) does not include all costs, including, but not limited to, lost opportunity costs and financing costs; (iv) fails to include all required functionality of the subject property; and (v) does not represent the most economical design alternative as of the appraisal date." He concludes, "As a result, a prudent and knowledgeable buyer (and seller) would give little, if any, weight to the replacement cost of APPRAISER-1 substitute property."[161]

105. There were also technical errors in APPRAISER-1 cost indicator. It was pointed out by APPRAISER-4 at the hearing, and acknowledged by APPRAISER-1, that APPRAISER-1 had used the

[156] Tr. 785:2-8.
[157] APPRAISER-1 clarified that it was his assumption in his Greenfield approach that it would only be three years to build out ##### cell sites.
[158] Tr. 789-790.
[159] Tr. 875: 3-23; also referring to Ex. 7, pg. 007715.
[160] Tr. 833: 5-9; Ex. 155 p. 008299.
[161] Ex. 154, p. 3.

wrong spot index from the Bureau of Labor Statistics in his 2014 appraisal. He had used 160 for the 2014 year. At the hearing, APPRAISER-1 acknowledged that this was an error in his appraisal and it should have been 168 for the 2014 tax year.[162]

106. It was APPRAISER-4 opinion as an appraiser that APPRAISER-1 had made another technical appraisal error dealing with entrepreneurial profit. APPRAISER-1 had added a 10% entrepreneurial profit adjustment in his cost approach, but had applied his percentage to the replacement cost new less deprecation amount, not the replacement cost amount. APPRAISER-4 stated that appraisal books say that the entrepreneurial profit adjustment, if it is a percentage adjustment, should be made to the replacement cost. APPRAISER-1 application reduced the amount of his entrepreneurial profit adjustment from what it should have been according to APPRAISER-4.[163]

107. Appraisal expert, APPRAISER-7, criticized the use of the Division's HCLD method noting that although an HCLD is preferred in the mass appraisal environment because of its simplicity, "in the valuation world, HCLD is not a recognized method to arrive at fair market value, replacement cost is."[164]

108. It is clear that a replacement cost new less depreciation method may be a viable technique in appraising some centrally assessed properties. However, in this case with the complexity of PETITIONER network there are sufficient concerns with PETITIONER replacement cost method and the manner in which it was developed which preclude it from being a more reliable alternative than the Division's HCLD cost method. The advantage of the HCLD method is that it is the net book value of the tangible assets as determined from accounting records and is a method that can be applied objectively and uniformly across the industry. The simplicity of the method makes it easy for both the Division and property owners generally to calculate the value. The historic cost is the actual cost at which PETITIONER had purchased the assets in the open market.

109. After review of the evidence presented in this matter, the cost indicator of value should remain as concluded by the Division. For tax year 2013, the Division's HCLD indicator was $$$$$ and for 2014 the indicator was $$$$$.

INCOME

110. The major issue in dispute between the parties and their income approaches was the capitalization rate. After reviewing the evidence submitted, PETITIONER had significantly overstated its cost of equity for both years at issue. PETITIONER overstated capitalization rate results in a lower yield capitalization value and a lower discounted cash flow value. In addition to the capitalization rates

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[162] Tr. 935-936; Tr. 961:12-17.
[163] Tr. 937; Ex. 18, p. 25.
[164] Tr. 1029-1030.

developed by the parties, PETITIONER own Treasury Department develops a capitalization rate for its own business and investment purposes. PETITIONER internal WACC is SENTENCES REMOVED. The comparison of the different components and the pre tax WACC that were submitted in this matter are as follows:[165]

2013	Division	APPRAISER-1	APPRAISER-4	PETITIONER Internal
Cost of Debt	3.98%	4.63%	4.56%	4.59%
Cost of Equity	10.04%	9.50%	12.43%	9.22%
WACC	8.22%	8.04%	10.25%	7.83%

2014	Division	APPRAISER-3	APPRAISER-4	APPRAISER-1	PETITIONER Internal
Cost of Debt	5.38%	5.38%	5.38%	5.23%	%%%
Cost of Equity	10.48%	9.18%	9.85%	13.29%	%%%
WACC	8.69%	7.66%	8.20%	10.72%	%%%

111. One significant factor that contributed to APPRAISER-1 higher WACC was his utilization of guideline companies that were not comparable to the subject. The guideline companies are the basis for determining the appropriate capital structure as well as the beta. After review of the evidence and testimony in this matter, APPRAISER-1 guideline companies were not appropriate and, therefore, his cost of equity was both too high and he placed too much weight on his cost of equity in his capital structure. In addition to the companies the other appraisers had used, like GUIDELINE CO.-1 GUIDELINE CO.-5, and, GUIDELINE CO.-7, APPRAISER-1 used companies that were very dissimilar and contributed to a higher cost of capital than resulted from guideline companies that were more comparable to the subject. APPRAISER-1 had included, for example, GUIDELINE CO.-8, which APPRAISER-3 stated was a poor guideline company because it operated primarily in LOCATION. APPRAISER-1 had included GUIDELINE CO.-9, which operates satellite phone service. This service is very expensive and for a different market segment. Further, GUIDELINE CO.-9 is significantly smaller, less than $$$$$ in equity, while PETITIONER is nearly $$$$$ in equity.[166] APPRAISER-4 opined that to include GUIDELINE CO.-9 as a

[165] Ex. 53; Ex. 4.
[166] Ex. 17 pp. 008000-008010.

guideline company is an appraisal error.[167] APPRAISER-1 had included GUIDELINE CO.-3, which had been a tiny fraction of the size of PETITIONER and had never made a profit. APPRAISER-3 testified that GUIDELINE CO.-3 had gone bankrupt and has now been swallowed up by GUIDELINE CO.-1. APPRAISER-1 had used CO-10, which APPRAISER-3 stated was a fraction of the size of PETITIONER and all of its operations are in LOCATION. Another guideline company APPRAISER-1 had used was NTELOS, which APPRAISER-3 also felt was not comparable because it was only operating in seven eastern states and is not a national carrier. APPRAISER-3 points out that for the 2014 year reducing the list to just the wireless companies that operated within the United States reduced the beta average as reported by Value Line to .88.[168] The higher the beta, the higher the cost of capital and then the lower the value. APPRAISER-1 concluded betas had been 1.21 for the 2013 tax year and 1.10 for the 2014 tax year. The Division had concluded betas of 1.11 for the 2013 tax year and 0.97 for the 2014 tax year. APPRAISOR-3's beta for the 2014 tax year was 0.73. [169] PETITIONER own treasury department had estimated PETITIONER beta to be ##### for the fourth quarter of 2013.[170]

112. Despite the major differences between PETITIONER and some of APPRAISER-1 guideline companies, for example GUIDELINE CO.-9, APPRAISER-1 does a straight average of the betas, rather than a weighted average that would give more weight to the companies that dominate the industry. In direct conflict to this, APPRAISER-1 then used a weighted average for his capital structure, which led to more weight on the equity financing than a straight average, raising the cost of capital which leads to a lower value.

113. For the 2013 tax year, APPRAISER-1 had used different guideline companies to determine the capital structure than the guideline companies he used to determine the beta. APPRAISER-4 provided the opinion that this went beyond appraisal judgment, that it was an error in his appraisal.[171]

114. If GUIDELINE CO.-9 alone was removed from the guideline companies used by APPRAISER-1 to calculate the beta for the 2014 tax year, that one change would increase his yield capitalization unit value from $$$$$ to $$$$$.

115. In addition to the issues with the improper guideline companies that resulted in a higher cost of capital, APPRAISER-1 made two other adjustments to his rate that further increased his weighted

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[167] Tr. 916:6-16.
[168] Ex. 17, p. 008006.
[169] Ex. 17, pp. 008000-008007.
[170] Ex. 17, pp. 008007-008008.
[171] Tr. 908-909.

average cost of capital. APPRAISER-1 added both flotation and liquidity adjustments. Several sources were provided to indicate that flotation costs do not affect the cost of capital and should not increase the required rate of return. Neither the Division nor the Counties added flotation to the cost of capital. APPRAISER-4 also opined that flotation was not an element of the weighted average cost of capital.[172] The Division's witnesses also pointed out that the Utah State Tax Commission has rejected the addition of flotation to the cost of capital in previous decisions.[173]

116. Regarding the liquidity adjustment that APPRAISER-1 had made to his cost of capital, APPRAISER-3 offered the opinion that it should not have been added stating, "Securities markets have shown that such upward adjustments to the capitalization rates are not warranted or present when the entire company changes hands."[174] APPRAISER-4 also echoed APPRAISOR-3's position and stated that liquidity is not appropriate for unit valuations on a group of assets functioning as a going concern because when going concerns are bought and sold, "they are bought and sold by the sale or exchange of stock and the assumption of debt."[175] APPRAISER-1 liquidity adjustment was a significant amount. He added to his cost of equity 1.39% for 2013 and 1.44% for 2014. APPRAISER-4 points out that the details of the COMPANY-D transaction "demonstrate anything but illiquidity of these assets."[176]

117. If, as discussed above, GUIDELINE CO.-9 was removed from the guideline companies for the purpose of calculating the beta and just the liquidity adjustment made by APPRAISER-1 was eliminated, the increase to the yield capitalization income indicator unit value would be from $$$$$ to $$$$$, which is higher than both the Division's and APPRAISER-4 yield capitalization income indicator.[177] It would similarly affect APPRAISER-1 DCF value.

118. The Commission has not adopted the inclusion of flotation or liquidity adjustments in the weighted average cost of capital in past decisions. The arguments for or against these additions, the result of which is lower values, would apply equally to multiple categories of centrally assessed properties in the state, resulting in lower values for these properties and shifting tax burdens. There was not sufficient evidence at this hearing to change the Commission's past position.[178]

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[172] Tr. 912:15-23.
[173] Ex. 17, pp. 008015-008016.
[174] Tr. 815: 22-25.
[175] Tr. 913-914; Quote 914:19-21.
[176] Tr. 539-540.
[177] Ex. 60; Tr. 916-917
[178] The evidence presented by APPRAISER-1 illustrates the difficulty in arriving at constitutional fair market value when a party seeks to include flotation or liquidity adjustments to the weighted average cost of capital. The aberrations caused by the inclusion of these two factors in this case support the Commission's past reluctance to adopt these adjustments in calculating the capital cost.

119. It is clear that APPRAISER-1 WACC was too high and, if corrected, would result in an income value higher than that concluded by the Division or Counties. However, in reviewing the information, it does appear that the Division has made a small error in its 2013 assessment adopting a cost of debt that is too low, thereby overstating the value. In the original assessment for the 2013 tax year, APPRAISOR-5 relied on a cost of debt in his WACC calculation that was lower than the cost of debt considered in the other appraisals offered at this hearing. APPRAISOR-5 cost of debt was 3.98%, APPRAISER-4 was 4.63% and APPRAISER-1 4.56%. APPRAISER-8 pointed out that it was an error in the assessment to use both the lower debt rate, which indicates a higher credit rating, and the higher capital structure of 30% debt which would result in a lower credit rating. APPRAISER-8 pointed out that PARENT COMPANY-A had an A3 rating, but only 25% debt. He offered the opinion that if it had 30% debt the credit rating would be lower.[179] Based on the information presented, APPRAISOR-5 cost of debt rate was low in the original assessment for 2013 and the cost of debt rate used by APPRAISER-4 is appropriate given a 30% debt and 70% equity capital structure.

120. If APPRAISOR-5 WACC is recalculated using a 4.63% pre tax cost of debt, his pre-tax WACC would increase from 8.22% to 8.42%.[180]

121. APPRAISER-1 had prepared in his appraisal both a yield capitalization indicator and a discounted cash flow indicator. He actually combined the value from these two income indicators for his income approach conclusion and was the only appraiser to place any weight on his DCF conclusion. The DCF method uses the WACC, but it is converted to an after tax terminal discount rate. Therefore, the same issues noted above that resulted in too high of a WACC also affect the DCF indicator. APPRAISER-4 recalculated APPRAISER-1 DCF indicator using all of APPRAISER-1 other factors and only changing to the appropriate discount rate. This change alone increases APPRAISER-1 DCF from $$$$$ to above $$$$$ for 2013 and from $$$$$ to $$$$$ for 2014.[181]

122. Although the discount rate was a primary factor resulting in an understated DCF value, other factors in APPRAISER-1 DCF method resulted in a lower value and were called into question. One criticism of APPRAISER-1 discounted cash flow was that he had overstated his projections for replacement only capital expenditures. This was supported by comparing APPRAISER-1 projections to PETITIONER investment advisors FINANCIAL ADVISOR FIRM-1's and FINANCIAL ADVISOR FIRM-2 projections for total capital expenditures in their Fairness Analysis. APPRAISER-1 estimates, which were supposed to be limited to only replacement capital expenditures, were significantly higher than the investment advisors' estimates for "total" capital expenditures which would encompass both

[179] Tr. 1062-1063.
[180] Ex. 17, p. 008021; Ex. 75; Ex 155, p. 008301.
[181] Tr. 921-922; Ex. 18, p. Appendix Exhibits 1 & 1a.

replacement and expansionary capital expenditures. APPRAISER-1 high replacement capital expenditures significantly impact his discounted cash flow value.[182]

123. In addition to overstating projected capital expenditures compared to PARENT COMPANY-A' investment advisors, APPRAISER-1 had significantly lower projections for operating income and net cash flow than had the investment advisors. This would also result in a lower value.[183]

124. APPRAISER-3 had prepared an appraisal for 2014 and one difference in his appraisal was that he had concluded a somewhat lower weighted average cost of capital than had APPRAISOR-5 and APPRAISER-4. While APPRAISOR-3's 2014 pre tax WACC had been 7.66%, APPRAISOR-5 2014 pre tax WACC had been 8.69% and APPRAISER-4 8.20%. One difference was that APPRAISER-3 gave more weight to the cost of debt than had these other appraisers. While APPRAISER-3 had given 40% weight to the cost of debt, APPRAISOR-5 weighting to debt had been 35% and APPRAISER-4 37%. This difference in weighting resulted from APPRAISER-3 characterizing operating leases as debt in his determination of the capital structure. APPRAISER-8, PhD, who is a professor of finance, testified at the hearing that operating leases are not considered financing leases by the accounting profession. APPRAISER-8 also provides the opinion, "The operating leases represent ownership by the lessor of the property, and the lessor pays property taxes on this property." He goes on to note that if operating leases are included in the capital structure "it will include value on property whose property tax is being paid by some [one] else."[184] He also opined if PETITIONER actually owned this property outright, it would likely be owned with the same percentage of equity and debt as it owned the other property. However, the Division did not ask the Commission to raise the value from the original assessed value to the value concluded by APPRAISER-3 in his appraisal.

125. APPRAISER-1 income indicators understate the system wide unit value of PETITIONER based on the errors noted above. Even if just the correct WACC was used in the income indicators, it would result in values higher than those set by the Division for both years at issue. The Division's yield capitalization income indicator presents a reasonable and reliable system wide unit value for the 2014 tax year of $$$$$. A small correction to the Division's 2013 cost of debt is appropriate, however. Using the cost of debt of 4.63% for 2013, the pre tax weighted average cost of capital is 8.42%. With 1.5% subtracted for growth the rate is 6.92%. This results in a reduction of the 2013 system wide unit value from $$$$$ to $$$$$.

<u>REMOVAL OF INTANGIBLES</u>

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[182] Ex. 155, pp. 008290-008291; Tr. 824-825; Ex. 75.
[183] Ex. 155, pp. 008296-008297; Ex. 75.
[184] Tr. 1055:10-16; Ex. 15, p. 12.

126. Once a system wide unit value is determined from an income indicator, a further adjustment was made by all the parties to remove identifiable intangibles. All parties were in agreement that a significant portion of the value was attributed to the FCC Licenses, which are intangibles. A further difference between the appraisers' Utah taxable value conclusions resulted from different methodologies used to adjust for intangibles. Intangibles were also captured in the sales comparison approach and were removed by the appraisers who had considered that approach in their 2014 appraisals. It is not necessary in the cost indicator to adjust for intangibles because that indicator presented a value for only the tangible property.

127. APPRAISER-4 opined that it is "the *contributory value* of intangible personal property that needs to be eliminated from any indicator of value that includes intangible property (emphasis in original)."[185] APPRAISER-4 cautioned the appraiser needs, "to ensure that the methods used to value the property that's going to be excluded should be similar to the methods used to determine the unit value. Otherwise, you've got an apple to oranges problem."[186] He further opined that a Rule 62 yield capitalization income indicator already excluded some of the intangibles because it restricts the income stream and growth rate.[187]

128. Both the Division and APPRAISER-4 used a similar method to remove intangibles based on a book ratio. The Division had added the net book value of the intangible property to the net book value of the tangible property to get the total property book cost, and then divided the total by just the intangible property which results in a ratio of the intangible property compared to the total property.[188] APPRAISER-4 used a market-to-book-ratio where the book value of the exempt intangible items is multiplied by the market-to-book-ratio of the entire unit, and that value is eliminated from the unit value.[189]

129. Regarding the book ratio method, APPRAISER-7 provided the opinion that, "The taxable tangible assets are what they are on the books, but the identified intangible assets are not, because you may have wireless licenses you've held for 20 years that are worth substantially more today than they were at the time they were acquired." It was APPRAISER-7's opinion that the result of this ratio gives more value to the tangible assets than should be given. APPRAISER-7 points out that APPRAISOR-5 and APPRAISER-4 had concluded from this approach that about 27% of the value was attributed to the

[185] Ex. 18, p. 44.
[186] Tr. 948: 17-21.
[187] FOF #77.
[188] FOF #33.
[189] This is the method recommended by the *Western States Association of Tax Administrators (WSATA)* in their *Appraisal Handbook-Unit Valuation of Centrally Assessed Properties*. This same method is also outlined in Utah State Tax Commission Rule 884-24P-60 for the elimination of non-taxable motor vehicles from centrally assessed appraisals.

tangible assets. APPRAISER-8 also testified that the book value of the intangibles was understated. It was his contention that the market value of the spectrum has been increasing over time, not decreasing, and an important intangible, customer relations, is mostly on the books at zero.[190] Although these criticisms might be valid, it should be noted that the Division's and Counties' adjustment for intangibles resulted in a higher dollar amount for intangibles than the deduction made by APPRAISER-1, and neither APPRAISER-7 nor APPRAISER-8 had prepared an appraisal in this matter or provided their own intangible adjustment.

130. APPRAISER-3 had used a different method for intangibles than the Division's book ratio method used in the original assessment. APPRAISER-3 looked at the purchase price accounting from publicly available information on the comparable sales transactions he had used for his market multiple sales approach. After the sales transactions, the purchase price would be allocated to tangible and intangible property on the acquiring companies' books. APPRAISER-3 concluded that about 16% of the purchase price was attributable to the tangible property.

131. APPRAISER-7 argues that APPRAISER-3 improperly included current assets in the denominator, but excluded them from the numerator. There was an issue that APPRAISER-3 had included as taxable "Other Assets" which are not part of the unit. APPRAISER-7 opines that with these corrections the value of the intangibles would be 89% and only 11% attributed to the tangible taxable property.[191] APPRAISER-3 disagreed to some extent with this criticism. Although this purchase price accounting information was available on these other sales acquisitions, it was not available on the COMPANY-D transaction.[192] APPRAISOR-3's approach to determine the amount to remove for intangibles is related conceptually to a sales comparison indicator that is designed to capture full market value; it is less applicable to a yield capitalization indicator which already is reduced as a way to eliminate some intangible property. Also, it should be noted that although APPRAISER-3 had used this method to remove intangibles from his yield capitalization indicator, APPRAISER-3 had made some different assumptions in that indicator than had the Division, so that his concluded yield capitalization unit value was significantly higher than the Division's. Therefore, his purchase price accounting method is not an appropriate alternative to apply to the Division's yield capitalization indicator which already excluded some of the unit value.

132. APPRAISER-1 used a direct method to remove intangible property from his income and sales comparison approach. In this method APPRAISER-1 basically appraised each major category of

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[190] Tr. 1065-1066.
[191] Ex. 16, pp 18-21.
[192] Tr. 980:12-13.

intangible asset and derived a market value for each.[193] This method should address the criticisms of APPRAISER-7 and APPRAISER-8 , that net book values of the FCC licenses or other intangibles were understated and the values of property, plant and equipment overstated on the books, because APPRAISER-1 determined a market value for all the FCC Licenses and other intangibles. APPRAISER-4 criticized APPRAISER-1 method pointing out that APPRAISER-1 performed separate appraisals of each class of intangible property, some using an income approach, some a market approach and some a cost approach and that APPRAISER-1 had "paid no attention to how the intangible property value got into each indicator of value."[194]

133. APPRAISER-1 subtracted his market value for the intangible assets from both his income approach and his sales approach. As noted by APPRAISER-4, it does need to be considered that if the deduction for intangibles is based on the fair market value of the intangibles, then it should be subtracted only from indicators designed to result in full fair market value in the first place, like the discounted cash flow indicator properly calculated, or a sales indicator properly calculated. He points out that the Rule 62 yield capitalization indicator is already restricted and results in a lower unit value.

134. When determining a value to deduct for intangibles, the best valuation method is the one that relates to the manner in which the intangibles are captured in the value in the first place. It becomes more difficult to appropriately determine the contributory value of the intangibles in the income approach and the parties have not presented a clear way to separate the portion of the income and the effect on the cost of capital that is attributed by the intangible property verses the tangible property. The Division has chosen the method that is not only less complicated, it is also objectively verifiable based on publicly reported accounting numbers and, therefore, less easy to manipulate for property tax purposes. PETITIONER has chosen the more difficult method by appraising individual categories of intangible assets and concluding a set value for the intangibles of $$$$$ for the 2013 tax year and $$$$$ for 2014. Neither method is consistently related to how the income approach was determined in the first place. Ultimately, if the Commission did apply APPRAISER-1 method for removing intangibles to either APPRAISER-1 corrected DCF income and correct sales indicators, or even to the Division's yield capitalization indicator, which would be a mismatch, the result would be values higher than the Division's assessment because regardless of the argument that the licenses were undervalued on PETITIONER accounting books, the Division subtracted a larger amount for intangibles than the amount that APPRAISER-1 has concluded in his appraisal. PETITIONER method is a direct valuation. Therefore, if

[193] FOF #65.
[194] Ex. 18, p. 45.

the conclusion is that PETITIONER income approach value is too low, as is concluded herein, the value for intangibles remains the same and the increase in value is attributed solely to the tangible property.

135. One additional issue regarding intangibles that was argued at the hearing was computer software that had been booked in PETITIONER property, plant and equipment accounts rather than as intangible licenses. APPRAISER-1 had subtracted from his cost approach as an intangible the depreciated cost of this computer software. For the 2013 tax year, the amount of this deduction was $$$$$ and for the 2014 tax year, $$$$$.[195] This software was not accounted for separately on PETITIONER books with an accounting life apart from the equipment that the software controls. APPRAISER-4 opined that under Utah law this property is taxable because it is a component part of the tangible property, plant and equipment and the tangible property would not function without this software. It was APPRAISER-4 contention that this software is considered "canned" software and is not considered exempt intangible property. PETITIONER witness did not provide sufficient evidence to establish what specifically this software was, how it was owned or licensed and how it was configured or modified.[196] No contracts or licensing agreements were provided. PETITIONER has the burden of proof on this issue and has not met that burden.

136. In conclusion, the Division has removed intangibles from its yield capitalization indicator based on a book ratio method. As noted above, the Division's yield capitalization indicator should be accepted with the small modification to the debt rate for 2013. Although other methods were presented by the parties to remove intangibles, none would be more appropriate for use with the Division's yield capitalization than the method used by the Division.

SALES APPROACH

137. APPRAISER-1, APPRAISER-3 and APPRAISER-4 had all prepared a sales comparison valuation approach based on the actual COMPANY-D transaction. APPRAISER-3 gave this analysis no weight, but considered it a "sanity check." APPRAISER-3 did, however, prepare a market multiple sales indicator based on a different sales methodology than the other appraisers, which he gave 50% weight. APPRAISER-1 and APPRAISER-4 both gave their COMPANY-D transaction sales comparison valuation 10% weight. APPRAISER-4's and APPRAISER-3's system wide unit value conclusions from the COMPANY-D transaction were identical at $$$$$. APPRAISER-1 came to a significantly lower conclusion of $$$$$.

138. The major difference in APPRAISER-1 sales indicator was that he had made a significant adjustment as a control premium. He had concluded that the amount paid to COMPANY-D for the 45%

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[195] FOF #51 & 65.
[196] FOF #51.

interest would indicate a value of $$$$$ for a 100% interest. However, from this amount, he subtracted $$$$$, which he represented was a 28.7% control premium.

139. APPRAISER-3 argued instead of taking the 28.7% off of the $$$$$, "in order to find out what the number was originally to represent a 28% percent premium, you divide by #####." This results in a value of approximately $$$$$. However, APPRAISER-3 strongly disagreed that any control premium adjustment should have been made in the first place.[197] APPRAISER-4 agreed with APPRAISER-3 that a control premium was not warranted. He points out the purchase price for the COMPANY-D interest was "on the low end of the range that FINANCIAL ADVISOR FIRM-1 determined." In the Fairness Analysis FINANCIAL ADVISOR FIRM-1 and FINANCIAL ADVISOR FIRM-2 concluded there was no indication that PARENT COMPANY-A would overpay or pay more than market value, because the purchase price was on the low end of the market value range.[198] APPRAISER-4 points out that PARENT COMPANY-A has a fiduciary responsibility to its shareholders to not overpay and notes that PARENT COMPANY-A had hired the investment banking firms to determine the market value.[199] APPRAISER-4 also offered the opinion that a control premium is usually associated with companies trying to purchase a controlling interest. In this case PARENT COMPANY-A already had a 55% controlling interest and was the designated operating company. COMPANY-D's interest was a minority interest.[200]

140. The major difference in APPRAISER-1 system wide unit value conclusion from the COMPANY-D sales indicator is the control premium noted above. However, there was another small difference proportionally to the conclusion of the value. While APPRAISER-3 and APPRAISER-4 have started at $$$$$, APPRAISER-1 conclusion was that the purchase price indicated $$$$$ prior to his control premium deduction. This small difference was due to APPRAISER-1 analysis of the debt which appears to be an error on APPRAISER-1 part.[201]

141. After reviewing the information presented, the control premium adjustment made by APPRAISER-1 is not appropriate and he failed to add the small amount of debt listed above. Therefore, his sales indicator is not given weight in this decision.

142. APPRAISER-3 also had prepared a market multiple sales indicator and had given that indicator 50% of his weighting. His conclusion from the market multiple sales indicator for the system wide unit value was $$$$$, which was proportionally near APPRAISER-4 COMPANY-D transaction

[197] Tr. 829-830:24-1; Ex 17, pp. 008024-008027.
[198] Tr. 542-543.
[199] Tr. 944.
[200] Tr. 946.
[201] Tr. 942-943.

value of $$$$$. However, after the deduction for intangibles, APPRAISOR-3's system wide tangible value was $$$$$ and APPRAISER-4 $$$$$.

143. There was a significant difference between the three appraisers who prepared sales approaches on the values they had removed for intangibles from their sales approaches. They each individually had used the same method to remove intangibles from their own sales approach as they had from their own income approach. APPRAISOR-3's approach was developed from purchase price accounting of the sales he had considered in his market multiple method and this indicated a much higher amount for intangibles than either of the other appraisers. It does appear that APPRAISOR-3's method for removing intangibles was related to his sales approach and an appropriate adjustment within his sales approach, which was designed to get to a full fair market value conclusion.

RECONCILIATION

144. The Division gave the most weight to its cost indicator, giving that indicator 60% weight and the income indicator 40% weight for both tax years. The Division's HCLD cost indicator did result in lower value than its income indicator for both years at issue so this weighting is conservative. For 2013, APPRAISER-1 also gave his cost indicator 60% of the weight and his income indicator 40%. With the COMPANY-D transaction, this changed for 2014 and APPRAISER-1 gave his cost indicator 50% weight, his income 40% weight and his sales indicator 10% weight. APPRAISER-4 gave most of his weight to his Rule 62 yield capitalization income indicator. For 2013, he gave 90% to the income indicator and 10% to the cost indicator. For 2014, it was 80% to the income indicator and 10% each to the cost and sales indicator. APPRAISER-3 had submitted an appraisal for only tax year 2014 and he gave no weight to the cost indicator. Instead, he gave 50% weight to his income indicator and 50% to his market multiple sales indicator.

145. Both APPRAISER-3 and APPRAISER-4 gave the opinion that little weight should be given to the cost indicator because a willing buyer and willing seller would not rely on the cost approach to arrive at a purchase price.[202] This contention was supported by the methods used by FINANCIAL ADVISOR FIRM-1 and FINANCIAL ADVISOR FIRM-2 to determine a market value in the Fairness Analysis that has been discussed herein.[203]

146. APPRAISER-7 provided the opinion that the cost approach should be given significant weighting in this matter. It was APPRAISER-7's position that the appraisal assignment in this matter was to determine the value for the taxable operating property and exclude the value of the intangible

[202] FOF #70 & 95.
[203] FOF #11.

property.[204] It was APPRAISER-7's position that in this case the cost approach is the most applicable because it is the only approach that "is remotely close to the property rights that are supposed to be captured in this case . . ."[205] He argues that as the most applicable approach it should be given weight reflecting that status.

147. After reviewing the opinions offered at the hearing, the Division's conservative weighting of 60% to the cost approach is appropriate in this matter. Both FINANCIAL ADVISOR FIRM-1 and FINANCIAL ADVISOR FIRM-2 have a valid point that in the real world of buyers and sellers, very little consideration would be given to a cost approach in determining the purchase price of a full unit. The purchase price would represent the full fair market value of all the assets, tangible and intangible. However, for purposes of the property tax assessment, the intangibles are exempt from tax.

148. As noted by the various criticisms to the various methods to remove intangibles, it is very difficult to do so from the income approach. The Rule 62 yield capitalization method is designed to result in a lower value so it excludes some intangible value, but a further adjustment is required. The cost approaches offered herein did not include intangibles. The result of the Division's weighting is a reasonable and appropriate method for determining a unitary value of the tangible, taxable, property at issue and should be upheld.

149. The Division offered APPRAISOR-3's appraisal as support for its original assessment for 2014. The Commission notes that APPRAISOR-3's appraisal used very different methodologies than had been used by the Division, but ultimately reached a similar value conclusion. The Commission concludes that it will not adopt or place any weight on any of the specific indicators in that appraisal, but considers it supportive of the ultimate value conclusions herein.

150. The value should be based on a 60% weighting each year to the Division's HCLD cost approach and 40% weighting to the Division's income approach, with the one correction to the cost of debt noted for the 2013 tax year. For the 2013 tax year this is a reconciled system value of the tangible property of $$$$$.[206] Allocating this to Utah with the 0.81% factor results in a Utah value of $$$$$. From this, $$$$$ for Utah vehicle adjustments is subtracted resulting in a Utah assessed value of $$$$$. For the 2014 tax year the reconciled system value of the tangible property is $$$$$. The Utah value is $$$$$ and with the vehicle adjustment of $$$$$ subtracted, the Utah assessed value is $$$$$.

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[204] Ex. 16, p. 67.

[205] Tr. 1041:1-3.

[206] The unit value from the income calculation with the corrected cost of debt is $$$$$. After adjusting for intangibles using the Division's book ratio of 24.91% (See Ex. 3 p. 006464) this results in an income value for the tangible property of $$$$$. Weighting this 40% and the Division's HCLD approach 60% indicates a value for the tangible system wide assets of $$$$$.

APPLICABLE LAW

Article XIII, Section 2(1) of the Utah Constitution provides as follows:

> (1) 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 . . . assessed at a uniform and equal rate in proportion to its fair market value, to be ascertained as provided by law;

Utah Code § 59-2-102(12)[207] provides as follows:
As used in this chapter and title:
* * *
(12) "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."
* * *
(16)(a) "Goodwill" means:
(i) acquired goodwill that is reported as goodwill on the books and records:
(A) of a taxpayer; and
(B) that are maintained for financial reporting purposes; or
(ii) the ability of a business to:
(A) generate income:
(I) that exceeds a normal rate of return on assets; and
(II) resulting from a factor described in subsection (16)(b);
or
(B) obtain an economic or competitive advantage resulting from a factor described in Subjection (16)(b).
(b) the following factors apply to Subsection (16)(a)(ii):
(i) superior management skills;
(ii) reputation;
(iii) customer relationships;
(iv) patronage; or
(v) a factor similar to Subsections (16)(b)(i) through (iv).
(c) goodwill does not include:

* * *
(iv) the enhancement or assemblage value specifically attributable to the interrelation of the existing tangible property in place working together as a unit.
* * *

(20) "Intangible property" means:
(a) property that is capable of private ownership separate from tangible property, including:
(i) money;
(ii) credits;

[207] All citations to the Utah Code and the Utah Administrative Code are to the versions in effect in 2014, which had no substantive changes unless otherwise noted.

(iii) bonds;
(iv) stocks;
(v) representative property;
(vi) franchises;
(vii) licenses;
(viii) trade names;
(ix) copyrights; and
(x) patents;
(b) a low-income housing tax credit;
(c) goodwill;

* * *

(30) "Real estate" or "real property" includes:
(a) the possession of, claim to, ownership of, or right to the possession of land;
(b) all mines, minerals, and quarries in and under the land, all timber belonging to individuals or corporations growing or being on the lands of this state or the United States, and all rights and privileges appertaining to these; and
(c) improvements.

Utah Code §59-2-201 provides as follows:

(1)(a) By May 1 of each year the following property, unless otherwise exempt under the Utah Constitution or under Part 11, Exemptions, Deferrals, and Abatements, shall be assessed by the commission at 100% of fair market value, as valued on January 1, in accordance with this chapter:
(i) . . . all property which operates as a unit across county lines, if the values must be apportioned among more than one county or state;

Utah Code §59-2-1101(3)(a) provides as follows:

The following property is exempt from taxation: . . . (vii) intangible property;

Utah Admin. Rule R884-24P-62 provides:

(1) Purpose. The purpose of this rule is to:
(a) specify consistent mass appraisal methodologies to be used by the Property Tax Division (Division) in the valuation of tangible property assessable by the Commission; and
(b) identify preferred valuation methodologies to be considered by any party making an appraisal of an individual unitary property.
(2) Definitions:
(a) "Cost regulated utility" means any public utility assessable by the Commission whose allowed revenues are determined by a rate of return applied to a rate base set by a state or federal regulatory commission.
(b) "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. Fair market value reflects the value of property at its highest and best use, subject to regulatory constraints.

(c) "Rate base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.
(d) "Unitary property" means operating property that is assessed by the Commission pursuant to Section 59-2-201(1)(a) through (c).
(i) Unitary properties include:
(A) all property that operates as a unit across county lines, if the values must be apportioned among more than one county or state; and
(B) all property of public utilities as defined in Section 59-2-102.
(ii) These properties, some of which may be cost regulated utilities, are defined under one of the following categories.
(A) "Telecommunication properties" include the operating property of local exchange carriers, local access providers, long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers, and other similar properties.

* * *

(3) All tangible operating property owned, leased, or used by unitary companies is subject to assessment and taxation according to its fair market value as of January 1, and as provided in Utah Constitution Article XIII, Section 2. Intangible property as defined under Section 59-2-102 is not subject to assessment and taxation.

* * *

(4) General Valuation Principles. Unitary properties shall be assessed at fair market value based on generally accepted appraisal theory as provided under this rule.
(a) The assemblage or enhanced value attributable to the tangible property should be included in the assessed value. See COUNTY-1 v. WilTel, Inc., 995 P.2d 602 (Utah 2000). The value attributable to intangible property must, when possible, be identified and removed from value when using any valuation method and before that value is used in the reconciliation process.
(b) The preferred methods to determine fair market value are the cost approach and a yield capitalization income indicator as set forth in Subsection (5).
(i) Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are necessary to more accurately estimate fair market value.
(ii) Direct capitalization and the stock and debt method typically capture the value of intangible property at higher levels than other methods. To the extent intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the reconciliation process, as set forth in Subsection (5)(d).
(iii) Preferred valuation methods as set forth in this rule are, unless otherwise stated, rebuttable presumptions, established for purposes of consistency in mass appraisal. Any party challenging a preferred valuation method must demonstrate, by a preponderance of evidence, that the proposed alternative establishes a more accurate estimate of fair market value.
(c) Non-operating Property. Property that is not necessary to the operation of unitary properties and is assessed by a local county assessor, and property separately assessed by the Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

(5) Appraisal Methodologies.
(a) 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).
(i) "Depreciation" is the loss in value from any cause. Different professions recognize two distinct definitions or types of depreciation.
(A) 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.
(B) 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:
(I) Physical deterioration results from regular use and normal aging, which includes wear and tear, decay, and the impact of the elements.
(II) Functional obsolescence is caused by internal property characteristics or flaws in the structure, design, or materials that diminish the utility of an improvement.
(III) 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.
(ii) Replacement cost is the estimated cost to construct, at current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout. The use of replacement cost instead of reproduction cost eliminates the need to estimate some forms of functional obsolescence.
(iii) Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards, design, layout and quality of workmanship, and embodying any functional obsolescence.
(iv) Historic cost is the original construction or acquisition cost as recorded on a firm's accounting records. Depending upon the industry, it may be appropriate to trend HCLD to current costs. Only trending indexes commonly recognized by the specific industry may be used to adjust HCLD.
(v) 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.
(b) Income Capitalization Approach. Under the principle of anticipation, benefits from income in the future may be capitalized into an estimate of present value.
(i) 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.

(A) 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.

(I) NOI is defined as net income plus interest.

(II) 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.

(III) Cash flow is to be projected for the year immediately following the lien date, and may be estimated by reviewing historic cash flows, forecasting future cash flows, or a combination of both.

(Aa) If cash flows for a subsidiary company are not available or are not allocated on the parent company's cash flow statements, a method of allocating total cash flows must be developed based on sales, fixed assets, or other reasonable criteria. The subsidiary's total is divided by the parent's total to derive the allocation percentage to estimate the subsidiary's cash flow.

(Bb) If the subject company does not provide the Commission with its most recent cash flow statements by March 1 of the assessment year, the Division may estimate cash flow using the best information available.

(B) The discount rate (k) shall be based upon a weighted average cost of capital (WACC) considering current market debt rates and equity yields. WACC should reflect a typical capital structure for comparable companies within the industry.

(I) The cost of debt should reflect the current market rate (yield to maturity) of debt with the same credit rating as the subject company.

(II) The cost of equity is estimated using standard methods such as the capital asset pricing model (CAPM), the Risk Premium and Dividend Growth models, or other recognized models.

(Aa) 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.

(Bb) The CAPM formula is k(e) = R(f) + (Beta x Risk Premium), where k(e) is the cost of equity and R(f) is the risk free rate.

(Cc) The risk free rate shall be the current market rate on 20-year Treasury bonds.

(Dd) The beta should reflect an average or value-weighted average of comparable companies and should be drawn consistently from Value Line or an equivalent source. The beta of the specific assessed property should also be considered.

(Ee) The risk premium shall be the arithmetic average of the spread between the return on stocks and the income return on long term bonds for the entire historical period contained in the Ibbotson Yearbook published immediately following the lien date.

(C) 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.

(I) If insufficient information is available to the Division, either from public sources or from the taxpayer, to determine a rate, "g" will be the expected inflationary rate in the Gross Domestic Product Price Deflator obtained in Value

Line. The growth rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

(ii) A discounted cash flow (DCF) method may be impractical to implement in a mass appraisal environment, but may be used when reliable cash flow estimates can be established.

(A) A DCF model should incorporate for the terminal year, and to the extent possible for the holding period, growth and discount rate assumptions that would be used in the yield capitalization method defined under Subsection (5)(b)(i).

(B) Forecasted growth may be used where unusual income patterns are attributed to:

(I) unused capacity;

(II) economic conditions; or

(III) similar circumstances.

(C) Growth may not be attributed to assets not in place as of the lien date.

(iii) Direct Capitalization is an income technique that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by a capitalization rate or by multiplying the normalized income estimate by an income factor.

(c) Market or Sales Comparison Approach. The market value of property is directly related to the prices of comparable, competitive properties. The market approach is estimated by comparing the subject property to similar properties that have recently sold.
(I) Sales of comparable property must, to the extent possible, be adjusted for elements of comparison, including market conditions, financing, location, physical characteristics, and economic characteristics. When considering the sales of stock, business enterprises, or other properties that include intangible assets, adjustments must be made for those intangibles.
(II) Because sales of unitary properties are infrequent, a stock and debt indicator may be viewed as a surrogate for the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liabilities plus shareholder's equity.

(d) Reconciliation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, quantity, and quality of data, as well as the strength and weaknesses of each value indicator. Weighting percentages used to correlate the value approaches will generally vary by industry, and may vary by company if evidence exists to support a different weighting. The Division must disclose in writing the weighting percentages used in the reconciliation for the final assessment. Any departure from the prior year's weighting must be explained in writing.

* * *

Utah Code §59-2-1007 provides that a property owner or county may appeal a property assessment as follows:

(1)(a) If the owner of any property assessed by the commission, or any county upon a showing of reasonable cause, objects to the assessment, the owner or the county may, on or before the later of June 1 or a day within 30 days of the date the notice of assessment is

> mailed by the commission pursuant to Section 59-2-201, apply to the commission for a hearing.
> (b) The commission shall allow the following to be a party at a hearing under this section: (i) the owner; and (ii) the county upon a showing of reasonable cause.
> * * *
> (7) At the hearing on the application, the commission may increase, lower, or sustain the assessment if: (a) the commission finds an error in the assessment; or (b) the commission determines that increasing, lowering, or sustaining the assessment is necessary to equalize the assessment with other similarly assessed property.

DISCUSSION

As noted by the Division in its closing argument, "The main issue here and the principal issue we've been wrestling with is . . . capturing taxable enhancement value as recognized by *WilTel*[208] while excluding intangible property. I think all parties recognize that's a difficult and imprecise task."[209] In its assessments in this matter, the Division has attempted to balance the concepts of taxable enhancement value with the exclusion of intangible property. To accomplish this, the Division relies primarily, with 60% weight, on the historic cost less depreciation indicator, which does not capture intangible value, but also may not capture the "enhancement value" of assets operating as a unit. The Division does balance this somewhat by giving 40% weight to an income indicator which captures some of this enhancement value. The Division uses the preferred Rule 62 yield capitalization income indicator, which captures intangible value, but arguably at a lower level than other income indicators. The Division and County witnesses have testified that this Rule 62 yield capitalization indicator was adopted as a preferred method under Rule 62 because it was designed to capture less value than other income approaches, thereby, in essence capturing a lower amount for intangibles.

In addition to using this conservative income indicator, the Division made a further adjustment for intangibles by removing intangible property based on PETITIONER book ratio of tangible to total property. The Division acknowledges it is an imprecise method and certainly the witnesses for PETITIONER have provided some valid concerns, but none of the appraisals provided a more reliable or more precise method to apply to the preferred Rule 62 yield capitalization indicator.

PETITIONER approach to determining the intangible deduction was to appraise each group of intangible assets to determine a current market value for those assets. The appraiser for PETITIONER, APPRAISER-1, looked at the FCC licenses and other intangibles and made a determination of their market value for each assessment year. This should address the criticism that the book value of the FCC licenses were below market. APPRAISER-1 also considered customer relationships, service marks and software to find a total current market value for the intangible property to be $$$$$ for tax year 2013 and

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[208] Referring to *Beaver County v. WilTel, Inc*., 995 P.2d 602 (UT 2000).
[209] Tr. 1086: 13-18.

$$$$$ for tax year 2014. Then APPRAISER-1 deducted this amount from his income and sales approaches. Because this was a market value approach, it is not appropriate to deduct this amount from a yield capitalization indicator. It may be more appropriate as a method applied to a correct discounted cash flow indicator or sales indicator. However, regardless, APPRAISER-1 intangible adjustments were lower in value than the adjustments made by the Division. This negates the argument that the Division's book ratio adjustment was insufficient.

After reviewing the information presented in this case, the Division has assessed this property in a manner that is conservative and appropriate. The HCLD indicator is a reliable indicator because it is based on accounting book values that are generally available to the owners of these types of property and often in audited formats. These numbers are not something that can be manipulated for property tax purposes generally. In this specific case, the HCLD book values are based on data from PETITIONER audited financial statements. They represent the actual cost that PETITIONER incurred to build its network. Although the accounting depreciation in the HCLD may not match all actual depreciation, it is designed to follow the useful life of the asset.

Instead of the preferred HCLD cost approach, PETITIONER appraiser used a replacement cost new less depreciation method, which in some circumstances may be a valid cost approach, but that was not shown to be the case for this property. The replacement cost less depreciation method may be a workable and reliable approach for a unitary property that can be duplicated within a reasonable period of time, like a power plant that is built at one location. The Division expresses concern that it is not able to prepare or verify replacement costs without more training and resources and the replacement cost is "just simply a black box that we have no way of verifying."[210] Although the ease of verifying information is not expressly a primary concern in valuation, the manner in which PETITIONER cost approach and work papers were presented were not particularly self explanatory. PETITIONER replacement cost new purports to build a perfect network in an unreasonably short period of time and does not include all the necessary costs that would be incurred. The parties did present several concerns and criticisms with PETITIONER cost approach. The reliability of the conclusion was called into question and ultimately no weight given to this approach.

An argument made by PETITIONER in this matter is that if the Commission were to rely on the Division's HCLD cost indicator, a further adjustment should be made for obsolescence. PETITIONER points to a prior Tax Commission decision issued for PETITIONER ("2005 PETITIONER Decision").[211] However, as acknowledged by PETITIONER in the subject hearing, unlike as occurred in the 2005

[210] Tr. 1102: 17-19.
[211] Utah State Tax Commission, *Findings of Fact, Conclusions of Law and Final Decision, Appeal Nos. 05-0829, 05-0826* (2007).

PETITIONER Decision, there is clearly no economic obsolescence with these assets. In the 2005 PETITIONER decision, the cost approach was indicating a value higher than the income approach. The situation has now changed with both income and sales indicators supporting values higher than the cost indicator.

CONCLUSIONS OF LAW

1. A presumption of correctness attaches to the original assessment, unless the Division abandons such original assessment. *Utah Railway Co. v. Utah State Tax Comm'n* 2000 UT 49, 5 P.3d 652. Thus, a party requesting a change to the original assessment has the burden to "show substantial error or impropriety in the assessment," and "provide a sound evidentiary basis upon which the Commission could adopt a [different] valuation." *Utah Power & Light Co. v. Utah State Tax Comm'n*, 590 P.2d 332, 335 (Utah 1979). In this matter, the Division is standing by its assessments; therefore, the Division's assessment for both 2013 and 2014 are presumed correct. Thus, in order for PETITIONER or the Counties to prevail, they must meet the two-fold burden of proof.

2. In addition to the two-fold burden of proof outlined in *Utah Power & Light*, the valuation methodologies set out in Utah Admin. Rule R884-24P-62 are presumed correct and must be rebutted by a preponderance of the evidence. See Utah Admin. Rule R884-24P-62(4)(b)(ii).

3. Utah Const. art. XIII, §2(1) provides that, "all tangible property in the state that is not exempt under the laws of 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." Utah Code §59-2-103(1) provides, "All tangible taxable property located within the state 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." It is the Property Tax Division's responsibility to assess at 100% of fair market value "all property which operates as a unit across county lines, if the values must be apportioned among more than one county or state." Utah Code §59-2-201(1)(a)(i). However, intangible property is not assessed. Utah Code Subsection 59-2-102(2) provides a definition of intangible. In this matter, the Division has issued an assessment on PETITIONER tangible property for the lien dates January 1, 2013 and January 1, 2014.

4. The Tax Commission has adopted Utah Admin. Rule R884-24P-62 (Rule 62) to provide guidance in unitary valuations and to "specify consistent mass appraisal methodologies to be used by the Property Tax Division . . . in the valuation of tangible property" and to "identify preferred valuation methodologies to be considered by any party making an appraisal of an individual unitary property." See Rule 62(1). Under Rule 62(4)(b), "[t]he preferred methods to determine fair market value are the cost

approach and yield capitalization income indicator[.]" The Division in its assessments and the Counties in their appraisals, sought to comply with Rule 62.

5. Although Rule 62 does provide that the cost indicator may be developed using a replacement cost new less depreciation or reproduction cost method, the preferred cost approach under the rule is the historic cost less depreciation method or HCLD. The Division and Counties' cost indicators were both prepared using this preferred HCLD method. Under Rule 62(5)(a)(v) a "party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value." PETITIONER has used a form of replacement cost to develop its cost indicator, but was not able to establish that its indicator was a more accurate cost estimate of value. PETITIONER did not meet the two-fold burden of proof outlined in *Utah Power & Light*, and did not meet the more specific challenge set in Rule 62(5)(a)(v) regarding the Division's HCLD cost approach.

6. Rule 62 acknowledges three generally accepted methods for developing an income indicator of value which are the yield capitalization method, discounted cash flow (DCF) method and a direct capitalization method. However, the yield capitalization method is the preferred method under Rule 62(4)(b). The yield capitalization formula provided by the rule is value=CF/(k-g); where "CF" is the normalized annual cash flow expected from the assets in place on the lien date, "k" is the nominal risk-adjusted discount or yield rate, and "g" is the expected annual growth rate of the cash flow going forward into perpetuity. See Rule 62(5)(b)(i). Rule 62(5)(b)(i) provides a number of specific criteria for its yield capitalization method. At Rule 62(5)(b)(i)(B) are requirements that, "The discount rate (k) shall be based upon a weighted average cost of capital (WACC) considering current market debt rates and equity yields." It also specifies that the "WACC should reflect a typical capital structure for comparable companies within the industry." Further, it specifies that current market debt rates "should reflect the current market rate . . . of debt with the same credit rating as the subject company." It provides that the capital asset pricing model (CAPM) is the preferred method to estimate the cost of equity. One component of the CAPM method is the beta. See Rule 62(b)(i)(B)(II)(Bb). The primary differences with the parties' unit value conclusions using the income indicator were due to differences in the cost of capital. It was the conclusions in the Findings of Fact that APPRAISER-1 erred in overstating his WACC which understated the value.

7. Both APPRAISER-4 and APPRAISER-1 had also calculated a DCF indicator. APPRAISER-4 placed no weight on his DCF indicator but pointed out that it highlighted the conservative nature of the preferred Rule 62 yield capitalization method. For the 2013 year, APPRAISER-4 Rule 66 yield capitalization method had indicated a system wide unit value of $$$$$ and his DCF was considerably higher at $$$$$. There was a similar difference in his 2014 appraisal.

8. The Commission has previously rejected adjusting the WACC for flotation costs. The Division cites to Utah State Tax Commission, *Findings of Fact, Conclusions of Law and Final Decision Appeal Nos. 06-0773 & 06-0767* and *Appeal Nos. 06-0722 and 06-0760 (2008).* The Division has not added in its assessments the flotation or liquidity adjustments urged by PETITIONER. As noted previously in this decision, the arguments for and against allowing these apply equally among many categories of centrally assessed properties. If the Commission concluded it was appropriate to add these adjustments, it would result in reduced taxes for some centrally assessed properties and shifted tax burdens, but may not achieve the requisite constitutional finding of fair market value for these properties.

9. Both Article XIII, Section 2 of the Utah Constitution and Utah Code 59-2-103 expressly limit property tax assessment to "tangible" property. The Division has appropriately removed intangible value from its yield capitalization indicator using a ratio for intangible property to the entire value. The Division's Rule 62 HCLD does not include any intangible property. Reconciling the HCLD indicator with 60% of the weight, using the Rule 62 yield capitalization income indicator which captures less value and then making an additional adjustment for intangibles based on the book ratio appropriately captures some of the enhancement or unitary value of PETITIONER property while appropriately removing non-taxable intangible property.

For the 2013 tax year, the value should be reduced to a reconciled system value of the tangible property of $$$$$. Allocating this to Utah with the 0.81% factor will result in a Utah value of $$$$$. After Utah vehicle adjustments, the Utah assessed value is $$$$$. For the 2014 tax year, the Division's Utah assessed value should be sustained.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission reduces the Utah assessed value for the 2013 tax year to $$$$$. The Division's assessment for the 2014 tax year is sustained. It is so ordered.

DATED this ___________day of __________________, 2016.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration 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 §63G-4-401 et seq.