

THE CENTRAL ASSESSMENT OF CABLE COMPANIES

BY TIMOTHY A. BODILY, DEPUTY DISTRICT ATTORNEY

BEFORE THE COMMISSIONERS OF THE UTAH STATE TAX COMMISSION

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Cable Companies Should Be Centrally Assessed

Should the operating property of cable companies be centrally assessed?

- YES, the Utah constitutional standards of fair market value and uniformity require it.

Does Utah law permit the central assessment of the operating property of cable companies?

- YES, the Utah constitutional standards of fair market value and uniformity require it.

Applicable Law

Utah Const. art. XIII, § (2)(1)

- Property must be assessed at fair market value
- At a uniform and equal rate

Statutes and Rules that assign assessment jurisdiction to the Commission must be interpreted and applied consistent with the constitutional standards of fair market value and uniformity.

Applicable Law

Questions that address the constitutional standards include:

- To reach fair market value for the property, should the property be assessed as a unit using unitary valuation principles?
- Can local assessors uniformly value the property at fair market value?
- Unless the property is centrally assessed, will it be subject to multiple audits and inconsistent valuations?

Applicable Law

Utah Code § 59-2-201(1)(a): requires the Commission to assess:

- (i) all property which operates as a unit across county lines, if the value must be apportioned among more than one county or state
- (ii) all property of public utilities

The operating property of most cable companies meets both definitions

Applicable Law

Cross county lines. The 2008 Rule Making Order found that “Comcast’s business-the VoIP Service-is being conducted across county lines.”

Public utility. Based upon a plain reading of applicable statutes and rules, the operating property of a cable company providing VoIP services and internet services would also be a “public utility.”

- “Public utility includes ”
 - “Telephone corporation”;
 - “Companies serving the public generally;” or
 - Regulated company defined in Section 54-2-1. See Utah Code § 59-2-102(31).

Applicable Law

Regulated Public Utility. A telephone corporation includes a provider of a “public telecommunications service.” which is defined as the “two-way transmission of signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, lights waves or other electromagnetic means offered to the public generally.” See Utah Code § 54-8b-2(16) .

- Does not include internet or wireless.

Applicable Law

Since much of the same property used to provide voice, internet and video, fair market value principles require that all of the property used to provide these services be subject to central assessment.

WilTel affirmed the central assessment statute as not being impermissibly vague where fair market value requires central assessment.

Rule 884-24P-62

“Telecommunication properties” include the operating property of local exchange carriers, local access providers, long-distance carriers, cellular telephone or personal communication services (PCS) providers, pages and other similar properties.”

There should be little doubt that cable companies are “similar properties.”

BACKGROUND ON CABLE COMPANIES

Evolved from analog paid TV providers to full service digital data providers, including VoIP, internet, and paid TV.

Convergence

- Phase 1: 1950 - 1975 essentially transmitting over the air broadcasts through coaxial
 - Coaxial cable has always been capable of sending and receiving data
- Phase 2: 1975 HBO launched
- Phase 3: 1995~ migration from analog to digital
 - On demand
 - VoIP
 - Broad band internet

Professor Patrick Parksons, *Comcast Corp. v. Dep't Rev.* 337 P.2d 768, 788 (Or. 2014)

Data is Data Regardless of the Form

“[W]ith digital transmission of content, the content is all the same—it is all digital data, encoded by specialized equipment at one end for high-speed transmission, and decoded by specialized equipment at the other end so that it is in useful form. Professor Think Nguyen, an engineering and computer science expert who testified at trial for the department, explained that, in a digital system, all data is a collection of "bits"—that is, zeros and ones—regardless of whether it is video, voice, or some other original content.”

Comcast Corp. v. Dep’t Rev. 337 P.2d
768, 788 (Or. 2014)

Example

The following slides use Comcast as one example

Comcast is not the sole provider in Utah

Comcast Cable Communications Segment

Year ended December 31 (in millions)	2015	2014	2013
Revenue			
Residential:			
Video	\$ 21,526	\$ 20,783	\$ 20,535
High-speed Internet	12,471	11,321	10,334
Voice	3,608	3,671	3,657
Business services	4,742	3,951	3,241
Advertising	2,318	2,393	2,147
Other	2,214	2,021	1,922
Total revenue	46,879	44,140	41,836
Operating costs and expenses			
Programming	10,516	9,819	9,107
Technical and product support	5,904	5,547	5,373
Customer service	2,377	2,205	2,097
Franchise and other regulatory fees	1,382	1,296	1,246
Advertising, marketing and promotion	3,340	3,083	2,905
Other	4,240	4,078	3,903
Total operating costs and expenses	27,759	26,028	24,631
Operating income before depreciation and amortization	\$ 19,120	\$ 18,112	\$ 17,205

Comcast 2015 10-K

Comcast's Cable Segment

January 8, 2008:

- Cable Customers: 24.2 Million
- Internet Customers: 12.9 Million
- Voice (phone) Customers: 4.1 Million

March 11, 2009:

- Cable Customers: 24.2 Million
- Internet Customers: 14.9 Million
- Voice (phone) Customers: 6.5 Million

As of December 31, 2015:

- Cable Customers: 22.3 Million
- Internet Customers: 23.3 Million
- Voice (phone) Customers: 11.5 Million

As of December 31, 2015, 20.6% of the homes and businesses in the areas we serve subscribed to our voice services, compared to 20.5% and 19.9% as of December 31, 2014 and 2013, respectively.

Century Link Strategic Services

High-speed Internet. Our high-speed Internet services allow customers to connect to the Internet through their existing telephone lines or fiber-optic cables at high speeds. Substantially all of our high-speed Internet subscribers are located within the local service area of our wireline telephone operations;

Video. Our video services include our facilities-based video, marketed as CenturyLink Prism TV, which is a premium entertainment service that allows our customers to watch hundreds of television or cable channels and record up to four shows on one home digital video recorder. We also offer satellite digital television under an arrangement with DIRECTV that allows us to market, sell and bill for its services under its brand name;

VoIP. Voice over Internet Protocol, or VoIP, is a real-time, two-way voice communication service (similar to our traditional voice services) that originates over a broadband connection and often terminates on the PSTN;

Century Link

Competition with cable.

- “For example, many of our business segment customers are substituting cable, wireless and VoIP services for traditional voice telecommunications services, resulting in continued access revenue loss.”
- “Demand for our private line services (including special access) continues to decline due to our customers' optimization of their networks, industry consolidation and technological migration to higher-speed services. Additionally, we face competition in Ethernet based services in the wholesale market from cable companies and fiber based CLEC providers.”

- Century Link 2015 10-k p. 51-52

Recommendation

Division should start assessing the operating property of cable providers – starting January 1, 2017

Rule 884-24-62 does not need to be amended

- “other similar property” includes cable providers because of the recent factual changes to the way cable companies operate

No statutory change is required