

**Minutes of the Utah State Tax Commission
Administrative Rule Meeting**

Tuesday, August 12, 2008 • 8:00 a.m.
Commission Hearing Room 1025 • Tax Commission Building
210 North 1950 West • Salt Lake City, Utah

Participating:

D'Arcy Dixon Pignanelli – Commissioner, Chair Administrative Rules
Pam Hendrickson – Commission Chair
R. Bruce Johnson - Commissioner

Excused:

Marc B. Johnson – Commissioner

Commission Staff Present:

Cheryl Lee, Commission Executive Secretary

Note: A list of others present, a copy of related materials and an audio recording of the meeting can be obtained from the Office of the Commission at 297-3900.

1. Commission Business

1.1 Call to Order

Commissioner Dixon called the meeting to order at 8:00 a.m.

Commissioner Dixon welcomed everyone and offered her gratitude for all the thoughtful condolences extended to her on the passing of her mother Katie L. Dixon.

She excused Commissioner Marc Johnson who had fallen ill and wished him the best.

In terms of the Petition before the Commission on Rule R884-24P-62, Commissioner Dixon declared a conflict of interest and stated she would not be voting on the issue and had also requested fellow Commissioner and Commission Chair Pam Hendrickson run the meeting.

1.2 Proceedings for meeting

Commissioner Hendrickson explained the purpose of the meeting, outlined how the meeting would proceed, and read summaries of several comments into the record.

2 Preliminary public input on petition to amend Rule R884-24-62 Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann. Section 52-2-201 by Qwest

2.1 Presentation by Petitioner, Qwest

COMMENT: Mr. David Crapo, of Wood and Crapo, on behalf of his client and the Petitioner, Qwest, did a power point presentation on the petition for rulemaking. The presentation discussed the Utah Constitution, the powers given to the Tax Commission, Utah Supreme Court rulings; and displayed pages from the Comcast website. He stated the Tax Commission is a separate constitutional body with the power to adopt rules and with the responsibility to assess property at 100% of value if it crosses county lines.

COMMISSION QUESTION: Commissioner B. Johnson stated the Utah Constitution gives the Commission the right to value utilities, but the Legislature gives the Commission the ability to value property that crosses county lines. He asked Mr. Crapo if he was arguing that cable is a utility?

COMMENT: Mr. Crapo said he was not arguing that is was, but his client believed that to be true.

2.2 Presentation by Cable Industry (20 minutes)

COMMENT: Doug Foxley, of Foxley Pignanelli, on behalf of the Utah Cable TV Association, outlined who would speak on behalf of the cable industry.

COMMENT: Jerry Oldroyd from Ballard Spahr presented on behalf of the Cable Industry.

Mr. Oldroyd asked the petition be dismissed. Mr. Oldroyd stated Qwest had not substantiated harm or how it was being disadvantaged because it was being assessed centrally, and the cable industry was not.

COMMISSION QUESTION: Commissioner B. Johnson asked why Qwest had the burden?

COMMENT: Mr. Oldroyd answered it was one competitor asking for rulemaking against an industry. Under the act of rulemaking they must show that they are adversely impacted.

Mr. Oldroyd continued with his presentation. He stated cable is a luxury not a necessity, which is why it is not defined as a utility. Each network is set to the local community with separate franchise agreements with terms, conditions and requirements. Cities and Counties have the right to say “no” to a franchise agreement. The operational authority is very localized.

COMMISSION QUESTION: Commissioner Hendrickson said the Commission had a similar hearing in 1996, and it became evident most cable franchises were confined to a local area, but there were franchises that crossed over county lines. Even in those franchises, can they function on their own or do they need a network for two-way calls?

COMMENT: Mr. Oldroyd responded that that was not cable or a communication, but a data, Internet service. That is a federal ruling and a policy issue being decided by the Federal Communications Commission (FCC).

COMMISSION QUESTION: Commissioner B. Johnson asked if that issue was in Mr. Oldroyd's written material?

COMMENT: Mr. Oldroyd stated he would submit in a future communication if allowed.

COMMISSION COMMENT: Commissioner B. Johnson stated he would like to see that.

COMMENT: Mr. Douglas Mo of Thomson Reuters in Oakland, California said he represented the interests of Comcast and Time Warner Cable. Mr. Mo held this issue should be reserved for the Legislature because there are broad tax policies, which need to be considered.

COMMISSION COMMENT: Commissioner B. Johnson said the Commission has a very strong equalization clause; however, the Commission does not have a way to balance other taxes against the property tax.

COMMENT: Mr. Mo responded there are social policy issues involved. In 1984 there was a conscious decision made not to tax cable because the goal was to broaden access to the Internet. He asserted the Legislature was most qualified to make these social policy decisions.

COMMENT: Steve Proper, of Comcast, stated he was available to answer questions if needed.

2.3 County Assessors and Counties

COMMENT: Mr. Lee Gardner, Salt Lake County Assessor spoke on behalf of the Utah Association of Counties. He stated the Tax Commission does have a role; however, there may be unintended consequences of centrally assessing cable and urged the Commission to expand its analysis to include all companies who may or may not be affected by a Commission decision to centrally assess cable.

COMMISSION QUESTION:

Commissioner B. Johnson asked if they were in support of the petition?

Commissioner Hendrickson asked for an example of their concern?

COMMENT: Mr. Gardner said it does appear cable crosses county lines and offered distribution centers in different sites that operate as a unit, as an example of what might be affected by this issue.

COMMISSION COMMENT: Commission B. Johnson said the Cable Industry appears to be arguing they are analogous to a traditional retailer with stores in various locations that are administered and supplied from a central location.

2.3 Property Tax Division, State Tax Commission

COMMENT: Mr. John McCarrey, Assistant Attorney General with the Utah Attorney General's Office spoke on behalf of the Property Tax Division. He stated the Division supports the petition and asks the Commission adopt the proposed amendments. He submitted the current Rule 62 includes "other personal communication services" and that cable companies are communication and do operate across county lines. He further entered the State has the expertise to assess that does not exist in counties and the State is in a better position to assure consistency and uniformity across county lines.

COMMISSION QUESTION: Commissioner B. Johnson asked if cable should be assessed using the same methodology as other service providers?

COMMENT: Mr. McCarrey responded, "Yes".

COMMISSION QUESTION: Commissioner Hendrickson asked if the Division was suggesting different wording and if so what terms?

COMMENT: Mr. McCarrey asked the Commission to keep the focus narrowly to cable companies and be careful as to its intention so that doors are not opened. He asked the Commission use the phrase on telecommunication properties straight out of Rule 62.

2.4 Other public input

COMMENT: Mr. Roger Tew, from the Utah League of Cities and Towns, spoke to franchise agreements, which he said were independent, business arrangements with cities, and a city has a right to control access to its city. He stated the Commission decision could diminish the value of those contract arrangements. He concluded in saying the definitions and issues need to be addressed at the Utah and Nation's Capitol.

COMMENT: Mr. Steve Proper of Comcast stated he was available to answer questions.

2.5 Response by Petitioner, Qwest

COMMENT: Mr. Crapo summed up the position of the Petitioner Qwest and referred to several public comments. He stated that Qwest holds cable companies are not being assessed at a fair market value. On behalf of his client he asked for consistency, uniformity, expertise and reduction of administrative burden. He concluded by asking the Commission to proceed with rulemaking and adopt the proposed rule amendment submitted with the Petition.

2.6 Final Questions from Commission

COMMISSION QUESTION: Commissioner Hendrickson asked Mr. Crapo if in two-way distribution of sound and data are the cable companies providing public telecommunications?

COMMENT: Mr. Crapo responded that the issue is it crosses county lines. Mr. Crapo asked to review the material Commissioner B. Johnson requested from Mr. Oldroyd and for an opportunity to provide a written response.

COMMISSION COMMENT: Commissioners Hendrickson and B. Johnson agreed.

COMMISSION QUESTION: Commissioner B. Johnson asked Mr. Crapo if it were just a traditional cable TV, would Qwest have raised the issue?

COMMENT: Mr. Crapo responded that if it was just legacy TV of 12 years ago, “no”, but now it is data, Internet, and voice that interconnects two ways, across county lines, so now it is appropriate.

COMMISSION QUESTION: Commissioner B. Johnson asked if AOL had its headquarter in Virginia, would it have to be centrally assessed? Also, if Microsoft had a server farm would the Tax Commission have to centrally assess Microsoft?

COMMENT: Mr. Crapo responded to the first question by saying if it’s just a building “no”, but if it had cable “yes”. To the second question Mr. Crapo responded “potentially.”

3 Other Items / Adjourn

COMMISSION COMMENT: Commissioner Hendrickson stated the Commission would look for written material from Mr. Oldroyd and would allow Mr. Crapo to respond. Commissioner Hendrickson returned the meeting Commissioner Dixon.

MOTION: Commissioner Dixon asked for a motion to adjourn. Commissioner B. Johnson so moved. The meeting was adjourned at 9:40 a.m.