OHIO BOARD OF TAX APPEALS

Cincinnati Bell Telephone Company,	)	CASE NOS. 2003-K-765
	)	2003-K-1612
Appellant,	)	
	)	(PUBLIC UTILITY PERSONAL
vs.	)	PROPERTY TAX)
	)	
Thomas M. Zaino, Tax Commissioner of	)	DECISION AND ORDER
Ohio,	)	
	)	
Appellee.	)	

APPEARANCES:

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Entered June 10, 2005

Ms. Margulies, Mr. Eberhart, and Mr. Dunlap concur.

Through separate appeals filed with this board on June 19 and October 31, 2003, appellant, Cincinnati Bell Telephone Company, challenges two final determinations issued by the Tax Commissioner on April 23 and September 4, 2003, respectively. In these determinations, the commissioner denied appellant's petitions for reassessment and affirmed public utility personal property tax assessments previously issued to appellant for tax years 2000, 2001 and 2002. We now proceed to consider this matter upon appellant's notices of

appeal, the statutory transcripts ("S.T.") certified by the Tax Commissioner pursuant to R.C. 5717.02, the evidence presented at a hearing convened before this board,[1] and the post-hearing briefs of counsel.

Appellant constitutes a "telephone company" as defined by Ohio statute[2] and for each of the tax years in issue filed annual reports with the Ohio Department of Taxation in which it listed the value of its personal property. Subsequently, the Tax Commissioner issued assessments for each of the years, reflecting increases in the taxable values of appellant's property in the amounts of $218,442,010, $211,183,300, and $203,878,000, respectively. Appellant then filed petitions for reassessment through which it requested that the commissioner reassess and reduce the taxable values of its property. Through final determinations dated April 23, and September 4, 2003, appellant's petitions were denied and the assessments were affirmed as originally issued.

Appellant has appealed to this board,[3] specifying the following as error:

> "2. The determination of taxable values by the Commissioner denies CBT equal protection under the law in violation of the United States Constitution and the Ohio Constitution. Under current Ohio Revised Code §5727.111, CBT is required to compute the 'true value' of property acquired prior to 1994 at

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[1] In addition to the documentary evidence offered at hearing by the parties, appellant presented the testimony of several witnesses: Donald V. Daniels, appellant's vice president of marketing; Dennis P. Hinkel, senior vice president of appellant's network and operations organization; Lawrence K. Vanston, president of Technology Futures, Inc. ("TFI"); Ray L. Hodges, a senior consultant with TFI; Randy Hartman, senior manager in the tax department of Cincinnati Bell, Inc., appellant's parent company; and Richard K. Ellsworth, a director in the valuation group of Deloitte & Touche.

[2] R.C. 5727.01(D)(2) defines a "telephone company" as any person "primarily engaged in the business of providing local exchange telephone service, excluding cellular radio service, in this state[.]"

[3] Appellant's notices of appeal are substantially similar, with pertinent differences being noted. Because they set forth general background information and do not, in and of themselves, claim error in the commissioner's determinations, we have not quoted paragraphs one, three, and eight of appellant's notice of appeal in BTA No. 2003-K-765, and paragraphs one, three, and nine of appellant's notice of appeal in BTA No. 2003-K-1612.

88% of its net taxable cost. In contrast, certain companies which may acquire similar or even identical equipment in constructing and/or operating a telecommunications network are taxed at 25 percent of their net taxable cost. This represents a disparity of listing percentages between similarly situated taxpayers. The discriminatory treatment afforded in assessing CBT's public utility property value violates the Equal Protection Clauses of both the Ohio and the United States Constitutions and is therefore unconstitutional. All of CBT's property should be assessed at the 25% rate afforded its similarly situated competitors.

"***

"4. The Commissioner's determination of value for CBT's general plant property does not represent the true value of such property. The Commissioner valued CBT's general plant property by utilizing a 7.5-year class life. The Commissioner defines general plant property as property used in the general operations including such assets as garage work equipment, furniture, office equipment, general purpose computers, and more. For CBT, the majority of the taxable property in this category is general purpose computers, such as personal computers. The Commissioner's determination to value these assets utilizing a 7.5-year class life and 15% residual value is erroneous because such depreciation schedule fails to consider the rapid decline in value inherent in such property. In order to accurately reflect the true value of its general plant assets, CBT should be entitled to utilize a Class I true value schedule with a 15% residual value.[4]

"5. The Commissioner's determination that CBT must use a 7.5-year class life and 15% residual value while general business taxpayers are entitled to value identical property under the Class II life schedule violates the equal protection requirements of the United States Constitution and the Ohio Constitution. It is unlawful for the Commissioner to value

[4] In its notice of appeal in BTA No. 2003-K-1612, appellant modified its claim, asserting that: "In order to accurately reflect the true value of its general plant assets, CBT should be entitled to utilize the new valuation schedule for Stand-Alone computers as specified in the Ohio Department of Taxation news release dated 2-14-03." Id. at paragraph 5. However, no evidence or arguments specific to this claim has been pursued by appellant.

identical property (e.g. personal computers) differently solely by the overall activities of the business.

"6. The Commissioner erred in determining the valuation of CBT's central office and information plant assets by utilizing a 7.5-year class life and 15% residual value. The majority of CBT's assets within these categories consist of digital switching equipment and circuit equipment. The Commissioner's determination fails to take into account the functional obsolescence inherent in such property due to the rapid technological advances occurring with respect to such telecommunications equipment. The true value of this property is correctly reflected through the use of the Class I true value schedule with a 15% residual value.[5]

"7. The Commissioner erred in determining the valuation of CBT's cable and wire facilities by using a 15-year class life true value schedule. The majority of CBT's assets within this category consists of aerial, underground, and buried cable. This cable consists of both copper twisted pairs and fiber optic cable. The Commissioner's determination fails to take into account the functional obsolescence with respect to both the copper and fiber optic cabling. Rapid technological advances with respect to such cabling results in a decline in the true value of CBT's property at a much faster rate than reflected in the Commissioner's calculation of true value. The true value of this property is accurately reflected through the use of the Class III true value schedule with a 15% residual value.[6]

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"9. The Commissioner erred in issuing a preliminary assessment certificate for 2000 and 2001 [and 2002] with respect to various items of equipment permanently mounted to

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[5] In its notice of appeal in BTA No. 2003-K-1612, appellant also included the following: "The Commissioner also errors [sic] in failing to take into consideration the declining value of equipment based upon competition in the telecommunication industry. The true value of this property is correctly reflected through the use of an Average Remaining Life of 4 years and 5 years for Circuit Equipment and Switching Equipment, respectively." Id. at paragraph 7.

[6] Again, appellant's notice of appeal in BTA No. 2003-K-1612 varied slightly, citing increased industry competition as a factor negatively impacting the value of its property and further that: "The true value of this property is accurately reflected through the use of an Average Remaining Life of 4.1 years for metallic cable, and 7.8 years for non-metallic cable." Id. at paragraph 8.

> CBT's vehicles. CBT's vehicles contain various items of equipment that are permanently mounted. R.C. 4503.04 provides that taxes at the rates set forth in that section are in lieu of all taxes on or with respect to the ownership of such motor vehicles. In computing the vehicle weight for purposes of assessing a license tax under R.C. 4503.02, the additional equipment added to the vehicle is included in the computation, and therefore an assessment is levied on this equipment as a motor vehicle. Imposing tax with respect to equipment added to motor vehicles under R.C. 5701, of which the same equipment is used in determining the taxable weight of vehicles for computation of the license tax under R.C. 4503.04 or R.C. 4503.042 results in double taxation of the same property. This directly conflicts with the provisions of R.C. 4503.04 which states that 'taxes at such rates provided in this section are in lieu of all taxes on or with respect to the ownership of such motor vehicles.' Thus, it is unlawful for the Commissioner to assess any additional tax with respect to such property, and CBT objects to the inclusion of motor vehicle equipment its [sic] its personal property tax assessment."

Additionally, in BTA No. 2003-K-1612, appellant included the following specifications of error[7]:

> "4. The Commissioner's determination of value for CBT's equipment does not represent the true value of such property. The Commissioner valued CBT's equipment as equal to [the] cost of such property less annual allowances as prescribed by the Commissioner. The Commissioner's valuation fails to take into account the technological nature of the equipment used in connection with CBT's business and the rapid decline inherent in such property. CBT has provided a property valuation study prepared by Technology Futures, Inc. and Deloitte & Touche (Valuation Study). The Valuation Study sets forth competent evidence of probative value regarding the true value of the equipment, which takes into account the specific information regarding the taxpayer's industry, including, the technological changes and advances occurring in that industry and the impact those changes have on the true value of CBT's equipment.

[7] In its post-hearing brief, appellant advised this board of its intention to withdraw paragraph twelve of its specifications of error in BTA No. 2003-K-1612. Id. at 37.

> "***
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> "11. CBT owns and utilizes certain telecommunications switching equipment in connection with its business. The switching equipment is specifically designed and used to hold and process telecommunications signals in connection with CBT's business."

Consistent with its notices of appeal and its post-hearing briefs, appellant's arguments may generally be separated into three distinct categories. First, appellant asserts that the rate at which its personal property is taxed is disproportionate to that of its competition, thereby resulting in violations of the Equal Protection Clauses of the Ohio and United States Constitutions. Second, appellant argues that the method typically applied by the Tax Commissioner in determining the value of depreciable business property reported by telephone companies does not accurately reflect the value of appellant's property due to increased market competition, dramatic technological advances, and an absence of a resale market. Finally, appellant claims that the commissioner erred in taxing certain equipment attached to its motor vehicles which are used by appellant in delivering telecommunications services to the public.

We first address appellant's challenge regarding the constitutionality of the assessment rates made applicable to it by virtue of R.C. 5727.111(B). Appellant asserts that the rate at which its property is taxed results in a violation of constitutional rights guaranteed it because its property is taxed at a higher rate than that applicable to similar, or even identical, property reported by other taxpayers, including those with which appellant

operates in direct competition.[8] However, this board is without jurisdiction to rule upon the merits of appellant's constitutional claims.

In *MCI Telecommunications Corp. v. Limbach* (1994), 68 Ohio St.3d 195, the Supreme Court of Ohio commented upon the limited nature of the board's role involving constitutional challenges:

> "The BTA understood its role to be a receiver of evidence for constitutional challenges. Accordingly, it did so, giving the parties wide latitude in presenting the evidence. The BTA determined no facts on the constitutional questions. The commissioner, however, in her Proposition of Law No. IV, contends that the BTA not only receives evidence in this type of case, but must weigh the evidence and determine the facts necessary for the court's review of the constitutional questions. Since the BTA did not make findings of fact, the commissioner asserts that we should remand the case for the BTA to comply.
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> "In *Cleveland Gear Co. v. Limbach* (1988), 35 Ohio St. 3d 229, *** paragraph three of the syllabus, we held:
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> "'The question of whether a tax statute is unconstitutional when applied to a particular state of facts must be raised in the notice of appeal to the Board of Tax Appeals, and the Board of Tax Appeals must receive evidence concerning this question if presented, even though the Board of Tax Appeals may not declare the statute unconstitutional. (*Bd. of Edn. of South-Western City Schools v. Kinney* [1986], 24 Ohio St.3d 184, *** construed.)'
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> "We explained the process, 35 Ohio St.3d at 232 ***:

[8] Former R.C. 5727.111(B) provided that telephone companies' taxable property which first became subject to tax in Ohio in 1995 and thereafter would be assessed at a rate of twenty-five percent of true value, while property first subject to taxation prior to 1995 would continue to be assessed at eighty-eight percent of true value. It is the latter property to which appellant's constitutional claims relate. Although not in issue for the years involved in the present appeals, it is noted that the taxable rates applicable to this category of property, as a result of amendments effected by Am.Sub.H.B. 95, effective September 26, 2003, continues to decrease on an annual basis for tax years 2005, 2006, and 2007 until the last year when such property, regardless of when it first became taxable, is assessed at a rate of twenty-five percent of true value.

> "'When a statute is challenged on the basis that it is unconstitutional in its application, this court needs a record, and the proponent of the constitutionality of the statute needs notice and an opportunity to offer testimony supporting his or her view.
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> "'To accommodate this court's need for extrinsic facts and to provide a forum where such evidence may be received and all parties are apprised of the undertaking, it is reasonable that the BTA be that forum. The BTA is statutorily created to receive evidence in its role as factfinder.'
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> "Under *Cleveland Gear*, the BTA need only receive evidence for us to make the constitutional finding. This is because the BTA accepts facts but cannot rule on the question. On the other hand, we can decide the constitutional questions but have a limited ability to receive evidence. Thus, the BTA receives evidence at its hearing, but we determine the facts necessary to resolve the constitutional question." Id. at 197-198. (Parallel citations omitted.)

See, also, *GTE North, Inc. v. Zaino*, 96 Ohio St.3d 9, 2002-Ohio-2984.

While the parties were accorded an opportunity to develop the evidentiary record necessary for further appellate review of appellant's constitutional claims and have presented arguments relating to such claims, given our inability to grant the relief requested, we must overrule the arguments which appellant has advanced.

As we proceed to review the remainder of appellant's arguments, we note the applicable standard by which such review is to be conducted. In *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121, the Supreme Court held:

> "Absent a demonstration that the commissioner's findings are clearly unreasonable or unlawful, they are presumptively valid. Furthermore, it is error for the BTA to reverse the commissioner's determination when no competent and probative evidence is presented to show that the commissioner's

> determination is factually incorrect. ***" Id. at 124. (Citation omitted.)

It is therefore the burden of a taxpayer challenging a finding of the commissioner to rebut this presumption by establishing a clear right to the relief requested. It must further demonstrate in what manner and to what extent the Tax Commissioner's determination is in error. *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138; *Ohio Fast Freight, Inc. v. Porterfield* (1968), 29 Ohio St.2d 69; *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213.

Appellant maintains that the assessments issued by the commissioner for the years in issue result in an overvaluation of its property. In this context, appellant identified several factors negatively impacting the value of its property and offered evidence in support of the reduced values claimed. Among the factors cited by appellant is the increased competition which it has experienced since 1996 following congressional passage of the federal Telecommunications Act of 1996.[9] Due to its existence in the local telephone market

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[9] In *AT&T Communications of Ohio, Inc. v. Pub. Util. Comm.* (2000), 88 Ohio St.3d 549, the court succinctly described the purpose and effect of the Telecommunications Act of 1996:

> "In 1996, Congress passed the Telecommunications Act of 1996, Pub.L. No. 104-104, 110 Stat. 56, 61, which was designed, in part, to erode the monopolistic nature of the local telephone service industry by obligating the current providers of local phone service to facilitate the entry of competing companies into local telephone service markets across the country. Specifically, the 1996 Act forces an incumbent LEC (1) to permit a requesting new entrant in the incumbent LEC's local market to interconnect with the incumbent LEC's existing local network and thereby use the incumbent LEC's network to compete with the incumbent LEC in providing local telephone services (interconnection); (2) to provide its competing telecommunications carriers with access to individual elements of the incumbent LEC's own network on an unbundled basis (unbundled access); and (3) to sell to its competing telecommunications carriers, at wholesale rates, any telecommunications service that the incumbent LEC provides to its customers at retail rates in order to allow the competing carriers to resell

at the time of congressional passage of the Telecommunications Act of 1996, it is considered an incumbent local exchange carrier ("ILEC"), as opposed to a competitive local exchange carrier ("CLEC"). According to appellant, inherent in its designation as an ILEC are certain service obligations not imposed upon new entrants to its market, which has an overall effect of placing it at a competitive disadvantage.

Appellant continues, noting that it has experienced direct competition in several aspects of its operations. For example, it directly competes with both "resale" companies, which purchase telephone access at wholesale rates and then resell such services to end consumers, and "facilities-based" companies, which have built their own telephone service facilities within appellant's market. Exemplifying the competitive disadvantage in which it finds itself, appellant's senior vice president of network and operations organization elaborated upon the distinction between appellant and facilities-based companies. He indicated that appellant is still required, by existing governmental regulations, to make telephone service access available to all potential customers within its market. However, newer entrants to the telephone service market are not subject to such regulations. In doing so, such providers can be more selective in the deployment of a network and build facilities in a more efficient manner, targeting specific high density users within smaller geographic areas.

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> the service. Sections 251(c)(2), (3), and (4), Title 47, U.S. Code. The Ohio General Assembly expressly sanctioned the commission's exercise of authority under the 1996 Act. See R.C. 4905.04(B)." Id. at 551-552, fn. 6.

See, also, *Cincinnati Bell Tel. Co. v. Pub. Util. Comm.* (2001), 92 Ohio St.3d 177, 178.

Appellant also cites technological advancements as having dramatically impacted the value of its property. As background, appellant first explained the origins of its operations and the nature of its equipment. Although it now offers voice and data access, including Internet access and high speed broadband, appellant's network was originally constructed to provide traditional voice-only communication services to residential and business customers located in the Cincinnati metropolitan area. With regard to the "traditional" telephone services appellant offers, the "intelligence" behind appellant's network remains the circuit switches which are used to provide a variety of voice-type services to its customers. These switches contain the information and logic necessary for call origination, routing, termination, and custom calling features such as call-waiting, caller ID, and voice messaging. When a call is made, circuit switches recognize the digits dialed and route the call over the network, using a dedicated path between the caller and the recipient. That portion of appellant's network that interconnects its circuit switches is referred to as its inner office network, while the connection from a circuit switch to the end user is considered the outside plant network. Appellant's outside plant network is comprised of a feeder network and a distribution network, the former being located closest to the circuit switch, such as in a neighborhood or business park locale, and the latter providing the connection feeder to the end user.

Originally, all telephone calls were transmitted over twisted pairs of copper wire. However, beginning in the 1980s, appellant began deploying fiber optic cable within its network, which allowed for increased capacity. By 1997, all of appellant's central offices, or main switches, were connected to the network by fiber optic cable, and within two

years after that, approximately twenty-five percent of the access lines between appellant's central offices and distribution lines were similarly wired. While it continues to extend fiber optic cabling closer to the end user, particularly due to increased customer demand for data transmission in addition to voice communications, appellant still installs copper wire pairs into residential neighborhoods. Although appellant believes it installs more wire pairs than will be needed in the future, because such pairs are part of a larger, buried cable, any wire pairs determined to be unnecessary are simply abandoned in place due to the excess costs which would be incurred to effect their removal.

Appellant proceeded to then compare the "foundation" of its network system to those providers with which it competes that have more recently entered the telecommunications industry. In doing so, appellant noted the recent shift from the use of circuit switching technologies to "packet-based" technologies. Unlike traditional circuit switches, which were designed to provide reliable voice communications and involved a dedicated line for transmissions, packet-based technologies are designed to transmit "packets" of data, which results in expanded capacity. In addition, packet switches are less costly to install, replace, and upgrade than circuit switches. As a result, appellant has experienced a decline in market prices for circuit switches, with its used switches essentially being sold for scrap value.

Alternate types of technologies used in the industry have likewise impacted appellant's business operatiosn. During the "infancy" of widespread consumer demand for Internet access, appellant experienced a significant growth in secondary telephone access lines since customers accessing the Internet were required to commit their telephone lines for

the length of their connection. However, newer technologies, e.g., cable access, not only offered significantly increased connection speeds, but do not utilize a voice channel on existing telephone lines. As a result, primary telephone lines become available for use regardless of a customer's connection to the Internet, resulting in a decline in the number of secondary lines.

Cable providers have also begun a "crossover" process, emerging as telephone service competitors. In doing so, they offer telephone access services comparable to those provided by appellant via cable by virtue of "Voice Over Internet Protocol" ("VOIP"), or IP telephony. Through this technology, telephone calls are transmitted over a data network such as the Internet. Also affecting both secondary and primary telephone line acquisitions are customer shifts to wireless telephone service. Due to the increased reliability of the service and the mobility which results, appellant anticipates more consumers will consider using wireless telephone service exclusively.

In an effort to demonstrate the extent to which its property has been overvalued by the Tax Commissioner, appellant presented the testimony of and valuation study prepared by Ray L. Hodges, a senior consultant with Technology Futures, Inc. ("TFI"). According to its president, Lawrence Vanston, TFI is a research and consulting firm which specializes in technology forecasting. TFI's efforts are typically aimed at attempting to forecast the nature of the impact new technology will have upon a particular industry and how quickly such technology will be adopted, allowing market participants, as well as governmental entities, to engage in effective strategic planning.

In the TFI study, Hodges reviewed specific categories of appellant's plant and equipment, i.e., switching equipment, circuit equipment, aerial and buried metallic cable, and non-metallic cable,[10] and concluded that they should be depreciated at faster rates with lower floor values than applicable under the rates prescribed by the commissioner. Applying the resulting rates to the net cost of assets within these categories, the TFI study ultimately expressed values for each category for each of the years in issue.

Before addressing the sufficiency of the evidence offered by appellant in support of its claim, it is first appropriate to review the method generally applicable in determining the value of public utility property. Pursuant to R.C. 5727.08, public utilities are required to annually file reports with the Tax Commissioner which will enable him to "make any assessment or apportionment required under this chapter." R.C. 5727.10 imposes a duty upon the commissioner to annually determine the "true value in money" of all such property required to be assessed.[11] In determining the value of a public utility's property, the

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[10] The TFI study discloses that: "This report develops Percent Good Tables and provides an opinion of and value for major categories of telecommunications plant for Cincinnati Bell Telephone (CBT). CBT has over $1.8 billion in telecommunications plant in service. The major network categories, the subject of this report, comprise 58% of this investment. These categories are switching (19%), circuit equipment (17%), and cable (22%) [the latter being subdivided into aerial metallic cable, buried metallic cable and non-metallic, i.e., fiber optic, cable]." Ex. A at 1. The "percent good tables" set forth the percentages to be applied against the original costs of assets in order to reflect the depreciated values of such assets.

[11] Pertinent in this instance, the property which is to be assessed by the commissioner pursuant to R.C. 5727.10 is identified in R.C. 5727.06 as follows:

> "(A) Except as otherwise provided by law, the following constitutes the taxable property of a public utility or interexchange telecommunications company that shall be assessed by the tax commissioner:
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> "***
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> "(3) In the case of all other public utilities and interexchange telecommunications companies, all tangible personal property that on the thirty-first day of December of the preceding year was both located in this state and:

commissioner is guided not only by the information contained within the utility's annual report, but also by "such other evidence and rules as will enable him to make these determinations." Id.

R.C. 5727.11 prescribes the specific method to be employed by the commissioner in valuing public utility property, providing in relevant part:

> "(A) Except as otherwise provided in this section, the true value of all taxable property required by division (A)(2) or (3) of section 5727.06 of the Revised Code to be assessed by the tax commissioner shall be determined by a method of valuation using cost as capitalized on the public utility's books and records less composite annual allowances as prescribed by the commissioner. If the commissioner finds that application of this method will not result in the determination of true value of the public utility's taxable property, the commissioner may use another method of valuation."

In furtherance of the preceding mandate, the commissioner has published instructions for use by public utilities in filing their annual tax reports, entitled "Guidelines for Filing Ohio Public Utility Tax Reports," which details the valuation procedures and assessment methods to be employed. See Ex. 4. Consistent with R.C. 5727.11(A), these guidelines reiterate the legislative mandate that unless it is found that true value will not result, the commissioner is to determine the value of public utility property utilizing the statutorily prescribed cost-based method of valuation.

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> "(a) Owned by the public utility or interexchange telecommunications company; or
> "(b) Leased by the public utility or interexchange telecommunications company under a sale and leaseback transaction."

The standard process as described by the Tax Commissioner in the referenced publication is as follows:

> "**The valuation method applicable to most taxable property** of a public utility or interexchange telecommunications company is set forth in Section 5727.11(B).[12] It is similar to the '302 computation' used by general taxpayers in determining the true value of their taxable property. Under this method, the true value is determined by taking the cost of the property less composite annual allowances prescribed by the Tax Commissioner. If application of this method does not result in the determination of true value of the taxable property, the Tax Commissioner may use another method of valuation.
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> "A table of ten useful lives ranging from five to fifty years and the composite annual allowances for each is included in this publication. A letter and number has been assigned to each useful life: Class C-5 for a five-year useful life, Class C-10 for a ten-year useful life, etc. The annual allowances are expressed as percents good and decrease with the age of the property. The minimum percent good for taxable property in any class is 15%. The true value is determined by multiplying the cost of taxable property for each year by the applicable percent good.
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> "One or more property groups have been established for each public utility and interexchange telecommunications class. Each property group contains properties that have integrated functions. The Tax Commissioner has assigned a class life to each property group. The class life represents a composite of the various useful lives of properties in the group. **In general, segregation of short-lived property for the purpose of using a different class life is not permitted.** A listing of the property groups for each class of public utility and interexchange telecommunications company together with a description of the properties in each group and the class life is included in this publication.

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[12] Pursuant to Am.Sub.S.B. 3, 148 Ohio Laws, Part IV, 8083, the portion of former R.C. 5727.11(B) previously quoted within this decision was relettered and reflected in paragraph (A) of that statute.

> "The property groups and class life assigned to each group as set forth in this publication reflect conclusions developed by the Department of Taxation in which public utilities and interexchange telecommunications companies from each class participated." Id. at 2. (Emphasis sic.)

The valuation of property owned by telephone companies is broken down into four major categories and valued as follows:

Central Office & Information Plant[13]	Class C-10 – 10 years[14]
Cable & Wire Plant[15]	Class C-20 – 20 years[16]
General Plant[17]	Class C-10 – 10 years
Other Taxable Property	Cost or net book value

In each instance, the floor, or lowest "percent good," reflected for property which continues to be used in business at and beyond the last year for the particular class of property is fifteen percent. Id. at 8.

As indicated within the introductory portion of the instructions, the composite annual allowances prescribed by the commissioner for use by public utilities in valuing their taxable property is similar in purpose and effect to the "302 computation" used by general business taxpayers. See, generally, R.C. 5711.18. In the context of the 302 computation, the

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[13] The commissioner's guidelines, which rely upon account references contained within the Code of Federal Regulations, Telecommunications, Title 47, Parts 20 to 39, offer the following examples of items included within central office and information plant accounts: central office, analog electronic, digital electronic, electromechanical switching equipment, operating systems, central office transmission equipment, station apparatus, customer premises wiring, large private branch exchanges, public telephone terminal equipment, and other terminal equipment. Id. at 15.

[14] Class C-10 indicates that such property has a useful life expectancy of at least 7.5 but less than 12.5 years. Id. at 8.

[15] Cable and wire plant account examples include cable and wire facilities, poles, aerial cable, underground cable, buried cable, submarine cable, deep sea cable, intrabuilding network cable, aerial wire, and conduit systems. Id. at 15.

[16] Class C-20 indicates that such property has a useful life expectancy of at least 17.5 but less than 22.5 years. Id. at 8.

Supreme Court in *Snider v. Limbach* (1989), 44 Ohio St. 3d 200, 201, recognized that "it is impractical for the commissioner to personally value all personal property in Ohio; thus, she may resort to a predetermined formula to ascertain value." Thus, the purpose of utilizing a "predetermined formula" for valuation is "to promote industry-wide uniformity in determining the true value of depreciable property used in business." *Monsanto Co. v. Lindley* (1978), 56 Ohio St. 2d 59, 62. In *PPG Industries v. Kosydar* (1981), 65 Ohio St. 2d 80, the court elaborated, stating that "[t]his directive [i.e., the 302 computation] has been approved by this court as a practical, reasonable and lawful method and device to achieve uniform valuation of plant equipment in Ohio by prescribing annual depreciation rates in lieu of book depreciation for Ohio personal property tax purposes."

In *Wheeling Steel Corp. v. Evatt* (1944), 143 Ohio St. 71, the Supreme Court accepted the 302 computation as a prima facie means by which to determine true value. While recognizing that the 302 computation provides a generally effective means for determining value, the court has repeatedly held that a valuation directive issued by the commissioner should not be applied where it is affirmatively demonstrated by a taxpayer that the true value will not result due to the existence of "special or unusual circumstances" or because rigid application would be inappropriate. See, also, *W.L. Harper Co. v. Peck* (1954), 161 Ohio St. 300; *Monsanto*, supra; *Towmotor Corp. v. Lindley* (1981), 66 Ohio St.2d 53; *Campbell Soup Co. v. Tracy* (2000), 88 Ohio St.3d 473; *RPS, Inc. v. Tracy* (Oct.

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[17] The general plant examples offered include motor vehicles, aircraft, special purpose vehicles, garage work equipment, buildings classified as personal property, furniture, office equipment, general purpose computers, amortizable tangible assets, capital leases, leasehold improvements, and intangibles. Id. at 15.

30, 1998), BTA No. 1996-M-1209, unreported, at 15 ("To successfully challenge the values assessed by the Commissioner, the appellant must bring forth competent and probative evidence of the value of its listed property. *** There are three acceptable methods of meeting this burden. [An appellant] may offer direct evidence of the personalty's true value. *** Alternatively, [an appellant] may prove the special circumstances exist or that the use of the 302 computation produces an unjust or unreasonable result. ***").

The preceding reasoning appears equally applicable, in large measure, when determining the value of public utility property. Recognizing the difficulty inherent in requiring the commissioner to personally value all public utility property within Ohio, it is reasonable that a predetermined formula be developed and applied. However, as with the 302 computation, a statutorily authorized method of valuation should not be applied when true value will not result.

In *Texas E. Transm. Corp. v. Tracy* (1997), 78 Ohio St.3d 83, the court concluded that the appellant, a natural gas pipeline transmission company, could rely upon an appraisal in order to prove the value of its property. In doing so, the court expressly held that a statutorily prescribed method of valuation should not be used to the exclusion of evidence which demonstrates that another method will more accurately result in true value:

> "Although R.C. 5727.11 identifies the cost-based method of valuation as a means of assessing true value, the General Assembly has not restricted the commissioner's use of alternate valuation methods. In fact, in these statutes, the General Assembly specifically states that the commissioner may use 'another method of valuation' and that he may consider 'other

> evidence' to determine true value.[18] Contrary to the commissioner's assertion, in deciding true value, the BTA need not adhere to the cost-based statutory method of valuation.
>
> "***
>
> "The ultimate goal imposed by R.C. 5727.10 clearly is to determine the *true value* of the property taxed. *R.H. Macy Co., Inc. v. Schneider* (1964), 176 Ohio St. 94, 97 ***. If the statutory method does not yield true value, then another method of valuation may be used, whether or not there are special or unusual circumstances. Although a statute may provide a prima facie estimate or presumption of value, where rigid application of the statute would be inappropriate, the presumption of value must yield to other competent evidence reflecting true value. *Monsanto Co. v. Lindley* (1978), 56 Ohio St.2d 59, 61, 10 O.O.3d 113, 114 ***; *W.L. Harper Co. v. Peck* (1954), 161 Ohio St. 300 ***." Id. at 85-86. (Emphasis sic and parallel citations omitted.)

See, also, *MCI Telecommunications Corp. v. Limbach* (Sept. 20, 1990), Franklin App. No. 89AP-870, unreported ("[T]here are two ways in which the taxpayer may contest the

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[18] In *Texas E. Transm.*, the taxpayer's appraiser employed a "unit-appraisal method," in which he used commonly accepted appraisal techniques to express an opinion of value for the property in issue. In this regard, the court succinctly described the analysis and results as follows:

> "Under this method, the value of the unit is first determined. Then, the value of the properties being appraised is determined by measuring their contribution to the unit. Since TET's interstate pipeline systems operate as an integrated group of properties that work together to provide a service, Tegarden testified that the unit-appraisal method is the proper valuation procedure to be applied. He explained that due to the very nature of a natural gasline property, it is more appropriate to value the property as a unit rather than to value the individual components separately. In addition, he pointed out that TET's rates, earnings and accounting methods are regulated as a unit by the Federal Energy Regulatory Commission.
>
> "Using the unit-appraisal method, Tegarden first valued the entire transmission system as a whole by using a cost-approach analysis, an income-approach analysis, and a stock-and-debt-approach analysis. In giving greatest weight to the income approach, Tegarden arrived at a total system value of $1,425,000,000. Next, Tegarden apportioned 8.14 percent

commissioner's valuation. The taxpayer may either offer direct evidence of the property's true value or the taxpayer may offer evidence that the applicable rate of depreciation does not accurately measure the property's true value, either because special or unusual circumstances exist or because a rigid application of the directive will create an unjust or unreasonable result.").

Initially, the parties express disagreement as to whether or not appellant is first obligated to prove the existence of "special and unusual circumstances." In this context, reference is made to the following language in *Texas E. Transm.*:

> "The commissioner also argues that in order to apply alternate valuation methods, there must be a showing of 'special or unusual circumstances.' The commissioner's reference to 'special or unusual circumstances' stems from language found in his '302' directive for determination of depreciation rates for general personal property. However, the words 'special or unusual circumstances' do not appear in R.C. 5727.11 and are not a prerequisite for using an alternate valuation method where appellees are contesting true value rather than depreciation rates." Id. at 86.

The commissioner concedes that where "direct evidence" of value is offered, such as an appraisal like that relied upon in *Texas E. Transm.*, a public utility need not demonstrate the existence of special and unusual circumstances in order to deviate from booked costs less prescribed allowances. However, the commissioner argues that the TFI study offered is not an "alternate valuation method" for valuing appellant's property, but instead merely proposes accelerated depreciation rates compared to those prescribed by the

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> of the unit value to Ohio, which resulted in a valuation of $115,995,000 for TET's Ohio property." Id. at 84.

commissioner. Therefore, the commissioner insists that appellant is not relieved of its obligation to prove special and unusual circumstances exist. In response, appellant asserts that the commissioner's position overemphasizes the labeling of its evidence. It maintains that regardless of the name attributed to the analysis set forth in the TFI study, the result is the same in that it demonstrates that the true value of appellant's property is other than that which results from strict application of the cost-based valuation method less the commissioner's prescribed allowances.

Upon review of appellant's valuation study, we agree with the commissioner that it is not an alternate method of valuing property as was presented in *Texas E. Transm.* The valuation evidence presented in that case was an appraisal which had been prepared by an individual holding the designations of Member of the Appraisal Institute and Certified Assessment Evaluator from the International Assessing Officers. In order to derive the opinion of value which he ultimately expressed for the property in his unit-appraisal, he employed approaches often considered in the appraisal of property, i.e., a cost approach, an income approach, and a stock and debt analysis. In this instance, the TFI study is not an alternate valuation method, e.g., an appraisal, but is instead an effort to demonstrate that the depreciation schedules generally applicable to appellant's property fail to adequately account for the competitive and technological changes which are currently impacting the telecommunications industry. Given the nature of appellant's evidence, we consider it appropriate to proceed to address whether appellant has demonstrated the existence of special and unusual circumstances.

Initially, the commissioner posits that the evidence upon which appellant relies itself demonstrates that appellant is in the same position, with its property subject to the same rates, as other telephone companies in Ohio. Referring to the testimony of appellant's witnesses and the valuation study which is based upon national trends experienced within the telecommunications industry as a whole, the commissioner maintains special and unusual circumstances cannot be found to exist.

Although appellant argues it should not be required to show it is different from the remainder of its industry,[19] such is the fundamental nature of proving the existence of "special and unusual circumstances." As previously noted, the purpose of the commissioner's prescribed allowances is to promote industry-wide uniformity in determining the true value of depreciable property used in business. Cf. *Monsanto*, supra; *Jacob B. Sweeney Equipment Trust v. Limbach* (1991), 74 Ohio App.3d 82, 86; *Mid-Ohio Chemical Co., Inc. v. Limbach* (Feb. 17, 1987), Fayette App. No. CA86-04-002, unreported ("The general goal of Ohio's personal property tax scheme is to tax personal property located in this state which is used in business at established rates based on its true value. Since such property is subject to deterioration, depreciation is allowed. However, depreciation rates chosen by individual taxpayers may vary, even within a single industry. In order to promote industry-wide uniformity in determining the true value of depreciable property used in

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[19] Appellant also suggests that the commissioner's prescribed depreciation rates should be considered questionable given the fact that several other telecommunications companies currently have appeals pending through which similar challenges are being made. However, we are not persuaded that merely because other taxpayers may be challenging the applicability of the commissioner's prescribed rates to their property, a blanket rejection of the industry-wide depreciation rates developed by the commissioner is justified. Instead, consistent with our rejection of a similar argument advanced in *Philips Electronics North Am. Corp. v. Tracy*

business, the tax commissioner established composite annual allowances in what is commonly known as his '302' directive.").

Special and unusual circumstances have been found to exist when a taxpayer clearly demonstrates its property is subject to conditions atypical within the industry, often exemplified by unusual or unanticipated operating environments, extreme use, obsolescence, unusually high disposal rates, poor production flows, or excess manpower. See, e.g., *Defiance Precision Products, Inc. v. Tracy* (Apr. 3, 1998), BTA No. 1995-T-564, unreported (equipment operated at abnormally high speeds for extended periods of time not common within the industry); *Philips Electronics North American Corp. v. Tracy* (June 28, 1996), BTA No. 1993-K-825, unreported (the taxpayer, which was the only remaining entity within the television tube manufacturing industry still using a dry phosphorus application process, demonstrated its equipment was used in an area of poor ventilation and subjected to continuous use, extreme heat and product weight, and caustic chemicals); *Dayton Walther Corp. v. Limbach* (Aug. 24, 1990), BTA No. 1988-J-190, unreported (equipment operated almost continuously and subjected to extreme product weights, high speeds, and corrosive substances); *AmeriData Control Corp. v. Limbach* (Jun. 29, 1990), BTA No. 1987-A-1102, unreported (televisions supplied to hospitals received heavy use and were disposed of in unusually shorter time periods); *Sun Chemical Corp. v. Limbach* (Apr. 21, 1989), BTA Nos. 1986-A-157, et seq., unreported (equipment subjected to caustic chemicals and continuous

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(June 28, 1996), BTA No. 1993-K-825, unreported, at 16-17, fn. 2, we find it appropriate to review each case in the context of the particular evidence presented.

operations, with evidence demonstrating such use was different from other chemical plants in Ohio).

While several of the preceding cases highlight the hostile conditions under which manufacturing equipment may be operated, they stand for the general proposition that "special and unusual circumstances" constitute conditions not generally experienced by others within the industry. As this board recently noted in *Aloca, Inc. v. Zaino* (Oct. 22, 2004), BTA No. 1999-G-1401, unreported, at 17, appeal pending Sup. Ct. No. 04-1953:

> "Alcoa must prove that the special or unusual circumstances surrounding the use of its equipment are not experienced generally throughout the industry or that its equipment was subjected to conditions not planned for when the equipment was originally purchased. Alcoa has not presented sufficient evidence to establish that the experience of Alcoa at Cleveland Works, in its forgings for the aerospace business, was special or unusual when compared to the rest of the industry. Indeed, the appellant acknowledges that other large forgers experienced the same decline and left the aerospace industry."). Id. at 17.

A review of appellant's evidence reveals that it has not demonstrated that special and unusual circumstances exist. Indeed, as asserted by the commissioner, the evidence offered by appellant suggests that the factors impacting the value of its property similarly affect others within its industry. While the providers with whom appellant competes may be unique to its market, appellant's evidence demonstrates that it is far from alone regarding the competitive forces with which it must deal and the impact technological progress is generally having upon participants in the telecommunications industry.

However, as the court emphasized in *Texas E. Transm.*, and in numerous cases involving challenges to the applicability of the 302 computation, where a party demonstrates

through competent and probative evidence that application of the commissioner's prescribed rates creates an unjust or unreasonable result, reliance upon the statutory method is inappropriate and must give way to more reliable evidence of value. See, e.g., *Centerior Fuel Corp. v. Tracy* (2001), 90 Ohio St.3d 540; *PPG Industries*, supra; *Towmotor*, supra.

In *W.L. Harper*, supra, the court rejected the notion that the existence of special and unusual circumstances is the only basis which would justify deviation from the commissioner's valuation directives:

> "In other words, the thesis of the Department of Taxation is that its directive must be applied regardless of any evidence as to what the actual life of equipment is, that the directive is, like the law of the Medes and the Persians, rigid and undeviating, and that any evidence as to realities is without probative force unless it shows 'special or unusual circumstances or conditions of use.'
>
> "It is our opinion that such an application of the directive is in many cases and in the present ones unreasonable.
>
> "We are fully in accord with the use of a directive in the ascertainment of the true value of personal property, but in our opinion the Board of Tax Appeals is required to ascertain from the evidence before it whether in a particular case the application of such a directive will produce an unreasonable result.
>
> "In the present cases the evidence of appellants presented a question whether the application of a 10 per cent depreciation rate is reasonable, and the Board of Tax Appeals must consider the evidence before it and, in making a determination, attempt to arrive at the truth rather than to rigidly apply the directive in spite of any evidence.
>
> "Our conclusion is that it is proper to ascertain the true value of construction equipment by the use of proper directives, but that such directives must be applied so that they are subject to adjustment not only in the case of special or unusual

> circumstances or conditions of use, as provided in the directive under consideration herein, but also to adjustment in all cases where the evidence shows that a rigid application will result in injustice." Id. at 304-306.

With this in mind, we now consider the probative value of appellant's evidence. The TFI study finds that appellant's property has been, and will continue to be, impacted significantly by increased competitive forces arising from several sources, rapid technological change occurring within the telecommunications industry, the growth of the Internet, and, in some instances, anticipated mortality factors. With respect to each category of property reviewed, the nature and extent of these factors was elaborated upon.[20]

In estimating the rates at which appellant's property would effectively be displaced, the TFI study indicated that various other publications, studies, and models had been relied upon. Among those apparently most heavily relied upon was a recent publication in a series of forecasting studies undertaken by TFI for incumbents within the telecommunications industry entitled "Transforming the Local Exchange Network." Apparently periodically updated, this study forecasts the impact new technology and increased competition has upon existing businesses and technology. Reliance is also placed upon the Fisher-Pry and Gompertz models, the former apparently used to predict the rate at which businesses engage in technology substitution while the latter is apparently used to predict the rate at which consumers begin adopting newer technologies.

[20] Appellant also called as a witness Richard Ellsworth, a director of the valuation group at Deloitte & Touche, who indicated that the approach utilized in the TFI study was the preferred method for valuing assets like those in issue in the present appeals.

Ultimately, based upon its review of the telecommunications industry, the market in which appellant operates, and expectations regarding the changes likely to impact both, the TFI study recommends percent good schedules similar in style to those prescribed by the commissioner. Different, however, is the fact that these proposed schedules address individual assets within the composite groups reflected within the commissioner's prescribed allowances and the rates and time periods at which such assets should be depreciated. With respect to switching and circuit equipment, for all three years, the TFI study recommends a ten-year life span with a five percent floor being reached in the last year, while underground metallic cable, aerial metallic cable, buried metallic cable, and non-metallic cable are ascribed a fifteen-year life span with a floor value at or near zero.

As noted throughout our decision, the thrust of the TFI study is that, for the specific assets considered, increased competition, technological advancements, and consumer expectations and demands warrant a faster rate of depreciation than that provided for by the commissioner. In reviewing appellant's evidence, we are persuaded that the telecommunications industry, as a whole, is undergoing continuing and dynamic change. Clearly, since 1996, appellant and other ILECs, and indeed all market participants, have experienced increased and varied competition. Similarly, as is the case in most industries, technological advancements have resulted in the elimination, modification, or enhancement of many preexisting forms of technology.

However, we are not convinced that the manner by which appellant attempts to account for the impact of such factors results in an accurate and reliable representation of true value or, for that matter, that application of the rates prescribed by the commissioner

will necessarily create an unjust or unreasonable result. Although the TFI study references certain historical and market data unique to appellant, it is heavily weighted to account for events anticipated to occur generally within the telecommunications industry in the future. Because it is premised upon conjecture regarding future events, its conclusions are incapable of objective verification. Where, as here, there exists little or no historical data to effectively test the validity of the numerous assumptions made, errors can easily occur regarding the timing and impact the cited factors may have upon the value of appellant's property.

For example, much of the replacement technology to which reference is made was newly emerging near the years in question and continues, even today, to be at a stage of relative infancy. In the absence of historical data, the actual impact of newer technology upon the value of appellant's property, which it continues to use and, in many instances, deploy within its network, is difficult to measure. Equally unpredictable, despite representations otherwise, are consumer demands and transitions among technologies. While TFI represents that the Fisher-Pry model can be an effective device for making such evaluations, it still requires supposition not immediately capable of confirmation. Along similar lines, we question TFI's ability to effectively predict the extent to which increased competition will impact the value of appellant's property. Suggested by the numerous acquisitions and failures which have occurred within the telecommunications industry during the past several years, even market participants experience difficulty accurately anticipating the effects of competition. Accordingly, while the forecasting studies and models relied upon within the TFI study may be useful to appellant in the development of its long-range

business plans, we do not find it a reliable means by which to determine the value of appellant's property for the specific tax listing dates in issues in these appeals.

We also find unsupported and unreasonable the suggestion that appellant's assets would be rendered valueless after a certain number of years despite their continued use with appellant's network. In *Wheeling Steel*, supra, the court considered a manufacturer's claim that once certain assets reached twenty years of age, despite the fact such assets continued to be used in its production line, they should be accorded no value. Expressly rejecting such a position, the court held that "[w]here personal property is still used in the business of manufacturing it must be returned at its true value in money even though 100 percent depreciation is claimed by the taxpayer as depreciated book value or otherwise." Id. at paragraph four of the syllabus. Although personal property may have a limited resale value, until scrapped or abandoned, it retains value in the hands of the taxpayer who continues to benefit from its use. See, e.g., *BOC Group, Inc. v. Limbach* (June 30, 1989), BTA No. 1985-G-679, unreported; *Col - X Corp. v. Lindley* (Dec. 16, 1982), BTA No. 1980-B-236, unreported; *AMF Tuboscope, Inc. v. Lindley* (July 1, 1982), BTA No. 1980-A-383, unreported; *Westinghouse Electric Corp. v. Lindley* (Feb. 8, 1980), BTA Nos. F-953, et seq., unreported, affirmed (1980), 64 Ohio St.2d 31. Although appellant's salvage data was apparently reviewed and found to be an inappropriate means by which to measure residual value, see *Campbell Soup*, supra, it appears the projected floor values were again the result of reliance upon the previously referenced forecasting studies and models. Further, the property which the TFI study would deem valueless involves assets which appellant continues to deploy in its network.

This board is accorded wide discretion in weighing the evidence and judging the credibility of the witnesses brought before us. *Zukowski v. Franklin Cty. Bd. of Revision* (1994), 70 Ohio St.3d 503, 504. Further, we are not required to accept the opinion of valuation fixed by any expert or witness. *Cardinal Federal S. & L. Assn. v. Bd. of Revision* (1975), 44 Ohio St.2d 13, paragraph two of the syllabus. In considering the evidence before us, we are unable to conclude that appellant has met its burden of proving, with competent and probative evidence, that application of the commissioner's prescribed rates will result in its property be valued at other than true value.

Finally, we address appellant's argument that personal property tax was erroneously assessed on items which it claims are permanently mounted on its motor vehicles used to deliver telecommunications services to its customers.[21] Although Ohio imposes a personal property tax on tangible personal property located and used in business in this state, R.C. 5709.01, there exist limited statutory exceptions and exemptions which exclude certain property from taxation. Among the property expressly excluded from the definition of taxable property is that set forth in R.C. 5701.03(A): "'Personal property' does not include *** motor vehicles registered by the owner thereof ***."

In *Parisi Transportation Co. v. Wilkins*, 102 Ohio St.3d 278, 2004-Ohio-2952, the Supreme Court held that refrigeration units built into the taxpayer's semitrailers were an

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[21] Appellant maintains that its vehicles, as well as the equipment attached thereto, are already subject to tax as a result of the annual licensure fee it pays on its individual commercial vehicles. R.C. 4503.02 ("An annual license tax is hereby levied upon the operation of motor vehicles on the public roads or highways ***."). Pursuant to R.C. 4503.042, the amount of the annual license tax is based upon "gross vehicle weight," defined by R.C. 4501.01(JJ) as "the unladen weight of the vehicle fully equipped plus the maximum weight of the load to be carried on the vehicle." Since no distinction is made within the preceding definition as to whether or not

inherent part of the vehicle for which no personal property tax was owed. In reaching this conclusion, the court was guided by a test employed by the Montgomery County Court of Appeals in *State ex rel. Tejan v. Lutz* (1934), 31 Ohio N.P. (N.S.) 473[22]:

> "First, does the apparatus become an integral[23] part of the truck and form an addition to its structure so that it may be regarded as a part of the truck, itself?
>
> "Second, whether permanent or detachable, is it *per se* truck equipment?
>
> "Third, does its use indicate it to be functioning as part of the truck for truck uses, or as machinery, in itself, for its special use and results?
>
> "Fourth, does it carry the truck load, or assist in doing so, or does it merely become an object transported?" Id. at 512.

In *Parisi*, the court elaborated upon these questions, adapted them to more accurately reflect the inquiry necessary for the particular items the taxability of which was in issue, and reviewed the evidentiary record which had been developed in order make its ultimate determination. However, in the instant appeals, the record is substantially inferior to that developed in *Parisi*. The only information regarding the equipment in issue, beyond

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the equipment attached to appellant's vehicles is considered separate personal property or inherently part of the vehicle, as discussed above, the license tax paid on such vehicles was necessarily paid on such equipment.

[22] In *Tejan*, supra, after reviewing the legislative history regarding the motor vehicle registration and the determination of the annual license tax, the court considered whether certain equipment, apparatus, and machinery which was placed on motor vehicles was part of the taxable truck weight for purposes of registration and assessment of the license tax under former G.C. 6293.

[23] The court relied upon the dictionary to define what is meant by the term "integral": "1a: of , relating to, or serving to form a whole : essential to completeness : organically joined or linked." Id. at 281, quoting Webster's Third New International Dictionary (1986) 1173.

the assertions made by appellant through written argument,[24] consists of the following findings made by the commissioner in his final determinations:

> "The petitioner owns a fleet of trucks that it utilizes in its business. These trucks are 'commercial cars' as that term is defined in R.C. 4501.01(J),[25] and are required to be licensed pursuant to R.C. 4503.02. The petitioner is required to pay a license tax on each vehicle. However, mounted on the petitioner's trucks are various items of equipment such as generators (providing ventilation and heat, compressed air, low pressure humidity-free air, and power), power ladders, aerial lifts, earth boring machines, digger derricks, trenchers, specialized racks and storage units." BTA No. 2003-K-765, S.T. at 3; BTA No. 2003-K-1612, S.T. at 5.

Although accorded an opportunity to do so, appellant elected to present no additional evidence regarding its motor vehicles and the equipment claimed to have become inherently part of such vehicles following attachment. See H.R. Vol. II, at 175-176. Mere assertions made by counsel do not rise to the level of evidence upon which this board can rely. See, e.g., *Exchange Bldgs. IV & V, L.P. v. Franklin Cty. Bd. of Revision* (1998), 82 Ohio St.3d 297, 299; *Rite Aid of Ohio, Inc. v. Cuyahoga Cty. Bd. of Revision* (Jan. 15, 1999), BTA No. 1997-K-1253, unreported. Given the absence of evidence regarding such

[24] By way of post-hearing brief, appellant asserts that: (a) the equipment in issue is permanently installed into its vehicles before the vehicles are put into service; (b) the equipment is specially designed to be used only with its vehicles and could not be used in a stand-alone fashion; and (c) the sole purpose for such equipment is to allow appellant to maintain and repair its plant and equipment. However, no evidence was presented which would support these claims. Although appellant makes reference to a portion of the statutory transcript, see BTA No. 2003-K-765, S.T. at 31, the document identified is simply a memorandum which appellant filed in support of its petition for reassessment. Likewise, the schedule attached thereto is of no evidentiary value as it merely ascribes dollar values to aspects of appellant's claim.

[25] R.C. 4501.02(J) provides: "'Commercial car' or 'truck' means any motor vehicle that has motor power and is designed and used for carrying merchandise or freight, or that is used as a commercial tractor."

equipment, we cannot conclude that appellant has met its burden of proof. Accordingly, we reject appellant's arguments relating to this issue.

Based upon the foregoing, appellant's specifications of error are not well taken and they are therefore overruled. It is the order of this board that the final determinations of the Tax Commissioner must be, and hereby are, affirmed.

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