

Property Tax Treatment of Telecommunication Companies

Report to the House and Senate Ways and Means Chairs and Ranking Members

August 1, 2015

Background

During the 2013 legislative session, the Iowa General Assembly passed and the Governor signed Senate File 295, which included property tax relief for commercial properties. The bill also included property tax relief for “telephone and telegraph companies” (Telcos) regulated under Iowa Code chapter 433. In conjunction with that relief, the legislature directed the Iowa Department of Revenue (IDR) to form a committee to study the property assessment process for telecommunication companies and recommend changes, “... including potential methods to provide equivalent property tax treatment for all companies providing telecommunication services in Iowa and recommendations for apportioning the property tax revenues back to local taxing authorities.” This report represents the product of that legislative directive. The report will provide a brief history of recent legislative proposals and case law, as well as a snapshot view of the property tax treatment of Telcos nationwide. Finally, this report will identify key property tax reforms recommended by the Telcos themselves.

Property Tax Treatment by Company Type

Iowa has a total of 219 Telcos of various types. Under chapter 433, IDR must centrally assess telephone and telegraph company property. IDR does this by determining a total unit value of the entire company and then apportioning that value among the taxing jurisdictions according to the number of “line miles” the company has in the state. Below is a summary of Iowa’s property tax treatment of the telecommunication industry by company type.

- **Local Exchange Carriers.** Local exchange carriers are assessed on the unit value of the company, which includes all assets that are part of the operating plant. This includes personal property, equipment, outside plant, land, and buildings.
- **Competitive Long Distance Carriers.** This sub-group of telecommunication companies consists of long distance telephone companies that do not provide local service. These companies are assessed on cost and do not pay property tax on personal property, including switching equipment or computers, purchased after January 1, 1996. For these companies, the exclusion of personal property tends to result in a significant decrease in the value of the company.
- **Cable Companies.** Cable television companies are locally assessed on outside plant, land and buildings, and some equipment. Generally their assessments are cost-based. Cable companies are not assessed property tax on personal property. In the event that the cable company uses Voice over Internet Protocol (VoIP) to provide telephone service, their telephony is subject to central assessment by IDR in the same manner as the local exchange carriers.
- **Cellular (Wireless) Telephone Companies.** Cell phone companies are not centrally assessed by IDR; rather, they are assessed for property tax purposes at the local level. The towers, antennae, and cabling are assessed but the equipment is not. The assessments are cost-based and focus on fixed assets.

Multistate Survey

Appendix A is a multistate survey prepared by IDR that provides a brief overview of selected states' property tax treatment of telecommunication company property. The Council on State Taxation (COST) also provided two helpful documents, including a property tax "scorecard," which, while not specific to telecommunication companies, provides useful information about state practices. Iowa's overall grade is a C-, with the worst grades being given for "procedural fairness." The second document provided by COST is an addendum that provides more detailed information about property tax for each state. Because those two documents are quite lengthy, copies are not included as part of this report. However, we encourage interested parties to access both documents at the following links:

Scorecard: <http://www.cost.org/WorkArea/DownloadAsset.aspx?id=88125>

Addendum: <http://www.cost.org/WorkArea/DownloadAsset.aspx?id=88127>

Recent Legislative Activity

The technology explosion has changed the way Telcos do business. However, Iowa's property tax laws have not been revised to reflect those changes. As a result, local exchange carriers in particular, began to perceive disparities amongst the property tax treatment of their competitors. Although historically, Telcos often appealed their valuations, 2010 showed a marked uptick in the number of appeals. The 2010 legislative session, then, brought the first proposed reform in recent years, with Senate File 2386 being voted out of the Senate.

In 2011, two sets of bills were introduced in the in both the House and the Senate. Two of the bills were perceived to be more favorable to "Small Telcos." The other two were thought to be more favorable to "Big Telcos." The common theme of all four bills was to eventually assess Telcos like commercial property. In addition, an omnibus tax reform bill that addressed Telco property tax was introduced in the House. All three House Files were passed by the House but ultimately died in the Senate.

2012 brought dueling property tax reform bills that essentially were precursors for the landmark 2013 legislation. The Telco portion of these bills focused on an exemption for personal property, as well as a phased-in partial or complete exemption for outside plant. Once again, neither bill was able to move forward.

In the fall of 2012 the Department began working with Small Telcos to develop some type of reform proposal. The idea was to try and find a common denominator upon which all providers of telecommunication services could be valued equitably in a framework that would support future changes and growth in technology. Concurrently, IDR was asked to begin working with the Legislature to provide more information about the current system and the implications of change.

In the 2013 Session, the landmark property tax reform bill proved to be the ultimate vehicle for Telco property tax reform.

2013 Iowa Acts Senate File 295 created a tiered exemption from the taxable value of a Telco based upon its total value. The resultant exemption structure was as follows:

| Total Assessed Value | \$0 - 20M Assessed Value | \$20M - \$55M Assessed Value | \$55 - \$500M Assessed Value | >\$500M Assessed Value |
|--------------------------|--------------------------|------------------------------|------------------------------|------------------------|
| 2013 Exemption % | 20.00% | 17.50% | 12.50% | 10.00% |
| 2014 Forward Exemption % | 40.00% | 35.00% | 25.00% | 20.00% |

The first year of the exemption resulted in a cumulative 11.89% reduction in value and an estimated \$6.85 million reduction in taxes. The second year of the exemption resulted in an additional 17.26% reduction in value and an estimated tax reduction of \$8.75 million for an estimated total of \$15.60 million in taxes exempted for all 219 Iowa Telcos.¹

Since the initial legislation in 2010, one emerging theme has become clear: it’s not just about telephone service anymore; it’s about data and bandwidth. A variety of traditional and not-so-traditional telecommunication providers now offer multiple services through multiple media, including landlines, coaxial cable, fiber optic networks, and wireless signals. The rise of available technology and the public’s increasing dependence upon that technology has recently overshadowed, somewhat, the need for property tax reform.

In 2014, Governor Branstad introduced his “Connect Everyone Iowan” initiative, which aimed to provide broadband internet connectivity to all Iowans by creating a system of central coordination, a streamlined process for cell tower permitting, STEM education incentives, and property tax incentives for broadband providers. While the legislation had broad bipartisan support, it ultimately failed to pass the House of Representatives.

In 2015, Governor Branstad again pushed for increased access to broadband for Iowans with many of the same components and incentives present in the 2014 incentive. Industry, the Governor’s staff, and both chambers of the Legislature worked to develop what became House File 655, which was ultimately passed by the Legislature and signed by Governor Branstad on June 22, 2015. Among other things, House File 655 allows companies that add broadband infrastructure in order to deliver broadband service at the required upload and download speeds into targeted service areas to receive a 100% property tax exemption for the value added by the new broadband infrastructure. The process was designed to accommodate both traditional telecommunication companies and companies that may offer broadband service without voice service.

¹ Assumes a 3.5% effective tax rate.

Recent Iowa Case Law

While tax issues were being addressed in the Iowa Legislature, the Iowa Supreme Court decided two cases that impact property taxation in the telecommunication industry.

Qwest

Qwest Corp. v. Iowa State Bd. of Tax Rev., 829 N.W.2d 550 (2013) arose from an equal protection violation claim initially brought by Qwest (nka CenturyLink) against the Iowa Department of Revenue. Qwest's position was that they were similarly situated to competitive long distance companies (CLDCs) and wireless companies yet did not receive the more favorable property tax treatment that those companies receive. Qwest also argued that not only were they similarly situated, but also that there was no rational basis for the disparate property tax treatment. On April 12, 2013, the Iowa Supreme Court upheld the Proposed Decision of the Administrative Law Judge (ALJ) as adopted by the Iowa State Board of Tax Review, which found that the different tax treatment between Qwest, CLDCs, and wireless carriers did not constitute an equal protection violation of the Iowa Constitution. Because of that finding, The Court did not reach the issue of whether the companies were similarly situated. Instead, the Court performed a traditional analysis to determine if the Legislature had a rational basis for instituting differing tax treatments for these groups. The State's evidence established that Qwest was still the dominate provider of local exchange service in its market territory; that wireless telephone service served a different market; and that wireless telephone service was not a substitute for wireline telephone service. These facts led the Court to conclude that the Legislature had a rational basis for assessing Qwest and other Incumbent Local Exchange Carriers (ILECs) at a different level. Additional facts supporting the rational basis were the difference in market competition (the wireless telephone service market is highly competitive, unlike the market for ILECs) and favorable treatment to CLDCs as a means of encouraging deployment of new infrastructure. Despite the Court's findings, many telephone service providers continue to view Iowa's telecommunication company property tax treatment as discriminatory.

Cable One

Cable One is a cable television provider that began offering customers VoIP service to customers in the Sioux City Area in 2006. In November of 2008, IDR issued a Notice of Assessment to Cable One based upon its authority to tax telephone property under Iowa Code chapter 433. Cable One appealed the Notice of Assessment arguing that it was not a telephone company subject to taxation under chapter 433 because VoIP service is not comparable to telephone service. The 2008 assessment and a subsequent 2009 assessment were appealed to the State Board of Tax Review (the Board). The Board combined the appeals and transferred them to an ALJ for a contested case hearing. Both parties moved for Summary Judgment and in June of 2011, the ALJ issued a proposed decision recommending judgment in favor of Cable One. The ALJ argued that Cable One did "not fit the historical context of a 'telephone company'" and that it was not accessing a Public Switched Telephone Network (PSTN), but rather, a third party contractor, Level Three, accessed the PTSN and was therefore the entity providing telephone service that should be assessed under chapter 433. The ALJ found that Cable One was not a telephone company, and therefore not subject to tax under chapter 433.

IDR appealed the proposed decision back to the Board, which affirmed the ALJ decision, stating that the "...language of § 433 is too narrowly written to impose a tax on [Cable One's] VoIP service."

IDR petitioned the Polk County District Court for judicial review and in a May 2013 ruling, the Court affirmed the Board's decision, indicating that the legislative intent of chapter 433 was clear; that the Legislature clearly intended the chapter to apply only to companies that own or operate a telephone line in the state. The Court found that the provision of VoIP occurred through a cable broadband network that was completely independent of a PSTN, evidenced by the fact that Cable One had to contract with a third party to access the PSTN.

IDR filed a timely appeal and the Iowa Supreme Court retained the case. The Supreme Court issued its ruling in October of 2014 and unanimously reversed the District Court ruling. The Court's decision described several flaws in the rulings of the ALJ, the Board, and the District Court. First, the decision held that a statute can encompass technologies not in existence at the time of its promulgation. See *Bruce Transfer Co. v. Johnston*, 227 Iowa 50, 52-53, 287 N.W. 278, 280 (1939) ("[L]egislative enactments in general and comprehensive terms, prospective in operation, apply alike to all persons, subjects, and businesses within their general purview and scope coming into existence subsequent to their passage." (Internal quotation marks omitted.)). While Cable One conceded that it provides telephone service it disputed that it owns or operates a telephone line. The Court found that "...chapter 433 does not require that the company operate a specific type of telephone line or use any particular technology. Nor does it require that the telephone line have been built originally for that purpose." Giving the words in chapter 433 their ordinary and commonly understood meaning, the Court found that a cable or wire used for telephone service does in fact constitute a telephone line.

The Court went on to say that while the Board decision states that chapter 433 is too narrowly written to impose a tax on VoIP service, it never articulates *why*. And while the District Court found that VoIP was provided through a cable or broadband network completely independent of a PSTN, the Supreme Court did not find that fact in and of itself to be dispositive to the issue because sections 433.1 and 433.12 apply to *any* telephone line, not merely the PSTN.

Cable One had also argued that even if its VoIP service qualified as a telephone line, it should not be centrally assessed by IDR because it primarily uses its hybrid fiber-coaxial network to provide cable television service, not to provide VoIP. The Supreme Court also rejected the use of a primary use test because it was not provided for in the statute and also because a primary use test had previously been rejected by the court in an early predecessor of chapter 433. *Chi. Burlington and Quincy R.R. v. Rhein*, 135 Iowa 404, 404-05, 112 N.W. 823, 824 (1907).

Comments and Conclusions

As part of this report, IDR asked Telcos to provide "at least one conclusion you've reached about the property tax treatment of telecommunication companies as well as at least one recommendation for the Legislature to consider." We received comments from five entities:

- The Iowa Communications Alliance;

- AT & T;
- Verizon;
- The Council on State Taxation (COST); and
- CenturyLink.

Complete comments are available in Appendix B of this report, but IDR has attempted to distill those comments into a few brief statements, below:

- The telecommunications industry has changed dramatically in recent decades.
- Property taxes continue to be a significant ongoing expense for telecommunications companies that play a major role in investment decisions.
- Iowa's telecommunication company property taxes are inequitably distributed because unlike for other businesses, Iowa picks up the value of personal property of telecommunications companies as part of its valuation process.
- The State of Iowa should continue to look for ways to modernize current property tax assessment mechanisms to account for the "communications convergence" that has shifted the competitive landscape for telecommunication companies.

IDR recognizes and shares industry concerns that the booming telecommunications industry may have outgrown existing Iowa law. We believe that both the Legislature and Governor Branstad recognize the issues. This recognition is best evidenced by the specific exemption for telecommunication companies that was enacted in 2013 as part of property tax reform as well as by the Connect Every Acre legislation embodied in 2015 Iowa Acts House File 655 that grants a valuable property tax exemption for companies installing new broadband infrastructure.

IDR remains committed to assisting the Iowa Legislature in proposing changes that lead to tax equity, competitive neutrality, and administrative simplification.

With submission of this report, IDR hereby discharges its reporting obligation as charged in 2013 Iowa Acts Senate File 295, section 36.

APPENDIX A – MULTISTATE SURVEY

Iowa:

- Chapter 433 Iowa Code – Telegraph and Telephone Companies Tax
 - Every telegraph and telephone company operating a line in this state shall, on or before the first day of May in each year, furnish to the director of revenue a statement showing...
 - See Iowa Code 433.1
- Centrally assessed as a unit by the Department of Revenue.
- Tiered Property Tax Exemption for Specified Portions of Value of the Company’s Property.

| Total Assessed Value | \$0 – \$20M Assessed Value | \$20M - \$55M Assessed Value | \$55M - \$500M Assessed Value | >\$500M Assessed Value |
|----------------------|----------------------------|------------------------------|-------------------------------|------------------------|
| 2013 Exemption % | 20.00% | 17.50% | 12.50% | 10.00% |
| 2014 Exemption % | 40.00% | 35.00% | 25.00% | 20.00% |

Alabama

- § 40-21-1
 - it shall be the duty of the department of revenue to assess for taxation all property of all . . . telephone and long distance telephone and all telegraph companies . . .
- § 40-21-3
 - Every firm whose property is required by this title to be assessed for taxation shall make reports to the department of revenue on or before March 1 of each year of all its property of every nature and character whatsoever . . .
- § 40-21-8
 - Make under oath to the Department of Revenue a return, in such reasonable detail as may be prescribed by such department, on all the property belonging to such company in this state and connected with the business, specifying the several counties in which such property is situated and the items of property situated in each of such counties, towns, and school districts
- §40-21-9
 - Every electric power, hydroelectric power, every telegraph, telephone, or long distance telephone company shall include in each return made by it the following particulars:
 - (1) The number of miles of right-of-way in the state belonging to such company and the number of miles of right-of-way along public roads or on government land or on or along the streets of incorporated cities and towns used by such company, showing the number of miles of each class separately and by what authority such use is granted;
 - (2) The total length of all transmission lines or telephone or telegraph lines, stated by the number of miles of poles and the number of miles of towers, whether poles are treated or untreated, and description of towers as to size and height, the number of miles of wire, of each material constructed, stated according to the number of miles of each class and size of wire, the number of miles of conduit or of cable, stated according to the number of pairs of wire or other capacity, and the voltage capacity of each electric transmission line shall be stated;

- (3) The total length of all lines of said company, whether within or outside of the state; and
 - (4) The total length of so much of said lines as are within this state and the length of its lines in each of the counties, cities, towns, school districts, or other tax districts of this state into or through which its lines extend, stated according to the number of miles of towers, the number of miles of poles, the number of miles of each class of wire, and the number of miles of each size of conduit or cable. Electric transmission lines shall, in addition to the foregoing state their mileage according to the voltage capacity of each line.
- §40-21-17
 - The department shall proceed forthwith to examine the returns made by all persons, firms, and corporations required by law to make the same and also such information as the department may have obtained in addition thereto, shall determine the valuation of the different items of property required to be returned to it and shall assess such property for taxation at 30 percent of its reasonable value; and, in case no return has been made by or on behalf of such person, firm, or corporation on or before March 1 in each year, the department may add to the assessment which it makes against such person, firm, or corporation a penalty not exceeding 10 percent of the assessment as made therefor. The assessment herein required to be made shall be completed on or before July 1, or as soon thereafter as practicable, and reported to the tax assessor of every county in which any part of said tangible personal property is taxable under the provisions of this title. The report to the tax assessor shall contain a description of all property included in the assessment, the assessed value thereof, and an apportionment of the assessed value of such property to the county, to each municipality, to each special school district, and other districts levying a district tax within said county, with the name and residence or place of business of the owner thereof and all other information necessary to enable the tax assessor to set up such tax assessment upon the assessment books.

Arizona:

- ARS § 42-14401 – definition of telecommunications company
 - “Telecommunications company” means any person that owns communications transmission facilities and that provides public telephone or telecommunication exchange or interexchange access for compensation to effect two-way communication to, from, through, or within this state.
- ARS § 42-14402 – Annual statement
 - Each telecommunications company must file a statement with the department containing information including: a detailed schedule of the real property the company owns in the state including location and valuation, total length of its lines in the state, including lines that are controlled or used under lease or otherwise and the number of miles of lines in each county, and a complete and correct inventory of all other personal property it owned in this state on the preceding January 1, where the property was located and its value.
- ARS § 42-14404(B)
 - The counties, municipalities and district shall tax the company as railroad companies are taxed under article 8 of this chapter

Arkansas:

- Ad Valorem Assessments for property tax purposes on public utilities and carries (including telecommunications providers)
- Arkansas Code § 26-24-101 – Tax Division of the Arkansas Public Service Commission has the responsibility of performing all functions and duties regarding assessment and equalization of properties of public utilities and public carriers
- The Division values utilities and carriers using the unitary appraisal method, where the firm is valued as a complete operating system, with the value of Arkansas assets allocated by ratio. Depending on the type of company assessed, assessments are either certified to county assessors for extension and collection of taxes at the local level or certified to the Department of Finance and Administration for billing and collection. The Tax Division does not bill or collect any property taxes
 - <http://www.apscservices.info/taxdivision.asp>

Colorado:

- Valuation of public utilities - § 39-4-102 – The administrator shall determine the actual value of the operating property and plant of each public utility as a unit

Florida:

- General business property is locally assessed
 - Railroad and private carline operating property are the only property types that are centrally assessed

Georgia:

- The CEO of each public utility is required to make an annual return to the Revenue Commissioner on or before March 1 for the current January 1 preceding on all property located in this State. The assessment of all properties owned by public utility companies and airlines companies are proposed by the State Board of Equalization and then assessed by each county's board of tax assessors.
- At least once a year, the Revenue Commissioner makes a report to the county board of tax assessors in each county of the public utility property located in each county. This report is a distribution as determined by the Revenue Commissioner based upon:
 - The location of the various classes of property;
 - The gross or net investment in the property;
 - Any other factor reflecting the public utility's investment in property;
 - Significant business factors that reflect how the property is used;
 - Pertinent mileage factors; and
 - Any other factors which in the Revenue Commissioner's judgment are reasonably calculated to distribute fairly and equitably the property between the various tax jurisdictions.

Idaho:

- Operating property, also known as centrally assessed property, generally includes all property operated in connection with any public utility, railroad, or private railcar fleet, located wholly or partially in Idaho. Complete definition: Idaho Code section 63-201(16)

- the following industry types are classified as operating property:
 - electricity generation, transmission, and distribution; regulated telecommunications; water transportation and distribution . . .
- Appraisal – Idaho Code section 63-405

Illinois:

- Illinois Statutes 635/10 Definitions
 - b) “telecommunications”
- 35 ILCS 635/15 – State telecommunications infrastructure maintenance fees
 - a) A State infrastructure maintenance fee is hereby imposed upon telecommunications retailers as a replacement for the personal property tax in an amount specific in subsection (b)
 - b) The amount of the State infrastructure maintenance fee imposed upon a telecommunications retailer under this Section shall be equal to 0.5% of all gross charges charged by the telecommunications retailer to service addresses in this State for telecommunications, other than wireless telecommunications, originating or received in this State. However, the State infrastructure maintenance fee is not imposed in any case in which the imposition of the fee would violate the Constitution or statutes of the United States
- 35 ILCS 6235/5 – Legislative Intent
 - a) The General Assembly imposed a tax on invested capital of utilities to partially replace the personal property tax that was abolished by the Illinois Constitution of 1970. Since that tax was imposed, telecommunications retailers have evolved from utility status into an increasingly competitive industry serving the public.

Indiana:

- Indiana Code 6-1.1-8-1
 - The property owned or used by a public utility company shall be taxed in the manner prescribed in this chapter. Property used by a public utility company consists of property which the company uses under an agreement whereby the company exercises the beneficial rights of ownership for the major part of a year.
- 6-1.1-8-15 – Telephone, telegraph, or cable companies
 - a) the fixed property of a telephone, telegraph, or cable company consists of real property which is not part of the company’s rights-of-way or distribution system
 - b) a telephone, telegraph, or cable company’s property which is not described under subsection (a) is indefinite-situs distributable property. The department of local government finance shall apportion and distribute the assessed valuation of this property among the taxing districts in which the company’s lines or cables, including laterals, are located. The amount which the department of local government finance shall distribute to a taxing district equals the product of (1) the total assessed valuation of the telephone, telegraph, or cable company’s indefinite-situs distributable property, multiplied by (2) a fraction, the numerator of which is the length of the company’s lines and cables, including laterals, which are located in the taxing district, and the denominator of which is the length of the company’s lines and cable, including laterals, which are located in this state.
- 6-1.1-8-34 –rate of tax

- . . . the various taxing units shall tax public utility company property assessed for a particular year at the same tax rates at which tangible property assessed for that same year is taxed. The public utility companies shall pay the taxes in the year following the year of assessment at the same time that taxes on tangible property are due under Indiana Code 6-1.1-22-9.

Kansas:

- Kansas Statutes 79-224. Same; certain telecommunications machinery and equipment and railroad machinery and equipment
 - a) It is the purpose of this section to promote, stimulate, foster, and encourage new investments in telecommunications machinery and equipment and railroad machinery and equipment in the state of Kansas, to recognize the dramatic changes within the telecommunications industry, to contribute to the economic recovery of the state, to enhance business opportunities in the state, to encourage the location of new businesses and industries in the state as well as the retention and expansion of existing businesses and industries and to promote the economic stability of the state by maintaining and providing employment opportunities, thereby contributing to the general welfare of the citizens of the state, by exempting from property taxation certain newly purchased or leased telecommunications machinery and equipment and railroad machinery and equipment, including all such machinery and equipment transferred into this state for the purpose of expanding an existing business or for the creation of a new business
 - b) the follow described property, to the extent specified by this section, shall be and is hereby exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:
 - *First.* Telecommunications machinery and equipment and railroad machinery and equipment acquired by qualified purchase or lease made or entered into after June 30, 2006, as the result of a bona fide transaction not consummated for the purpose of avoiding taxation.
 - *Second.* Telecommunications machinery and equipment and railroad machinery and equipment transported into this state after June 30, 2006, for the purpose of expanding an existing business or creation of a new business.
 - c) as used in this section:
 - 2) “qualified lease” means a lease of telecommunications machinery and equipment or railroad machinery and equipment for not less than 30 days for fair and valuable consideration where such machinery and equipment is physically transferred to the lessee to be used in the lessee’s business or trade;
 - 3) “qualified purchase” means a purchase of telecommunications machinery and equipment or railroad machinery and equipment for fair and valuable consideration where such machinery and equipment is physically transferred to the purchaser to be used in the purchaser’s business or trade;
 - 5) “telecommunications machinery and equipment” means network administrative assets; central office equipment; information, station and customer equipment; and outside plant equipment of a telecommunication company
- **Telecommunications Machinery and Equipment**
 - All telecommunications machinery and equipment acquired by qualified purchase or lease made or entered into after June 30, 2006 shall be exempt from property tax. All telecommunications machinery and equipment transported into this state after June 30, 2006 for the purpose of

expanding an existing business or the creation of a new business shall be exempt from property tax.

- **Qualifications**

- A property tax exemption exists for all telecommunications machinery and equipment that is acquired or leased, or transported into the state of Kansas after June 30, 2006. Telecommunications machinery and equipment shall mean network administrative assets; central office equipment; information, station and customer equipment; and outside plant equipment of a telecommunication company. K.S.A. 79-224

- **Procedures for Obtaining an Exemption**

- An exemption from property tax is presumed. However, if the county appraiser is in doubt as to whether certain property qualifies for exemption, the county appraiser presumes in favor of taxation. The taxpayer may then file an application for exemption with the county appraiser pursuant to KSA 79-213, in order to have BOTA review the matter.

Michigan:

- Real and tangible personal property, and unlicensed vehicles – General business property, telecommunications, distribution personal property, and assets for electric, wind turbines, and gas utilities are locally assessed. Personal property of railroads, telephone and telegraph, and fast freight companies are centrally assessed. Certain property of public service companies is centrally assessed
- State Board of Assessors; Assessment of Property of Certain Public Utilities Michigan Compiled Laws Annotated 207.4
 - (1) The state board of assessors shall annually determine the true cash value and taxable value of property having a situs in this state of all of the following:
 - (c) telegraph companies
 - (d) telephone companies
 - (2) For tax years that begin after December 31, 2005, the state board of assessors shall annually determine the true cash value and taxable value of property having a situs in this state of telegraph companies and telephone companies in the same manners as property assessed under the general property tax act.
 - (3) The property of a telegraph and telephone company with gross receipts within this state for a year ending December 31 of not more than \$1,000 is exempt from taxation under this act
 - (4) All telegraph and telephone companies doing business in this state shall make the report required under section 6

Minnesota:

- Minnesota Statutes § 272.01
 - (1) All real and personal property in this state is taxable, except Indian lands and such other property as is by law exempt from taxation
 - (3) Exceptions. The provisions of subdivision 2 shall not apply to:
 - (b) Real estate exempt from ad valorem taxes and taxes in lieu thereof which is leased, loaned, or otherwise made available to telephone companies or electric, light and power companies upon which personal property consisting of transmission and

distribution lines is situated and assessed pursuant to sections 272.37, 273.38, 273.40, and 273.41, or upon which are situated the communication lines of express, railway, or telephone companies, or pipelines used for the transmission and distribution of petroleum products, or the equipment items of a cable communications company subject to section 238.35 to 238.42.

- Minnesota Statutes § 273.40
 - Cooperative associations organized under the provisions of Laws 1923, chapter 326, and laws amendatory thereof and law supplemental thereto, and engaged in electrical heat, light, or power business upon a mutual, nonprofit, and cooperative plan in rural areas, as hereinafter defined, are hereby recognized as quasi-public in their nature and purposes; but such cooperative associations, which operate within the corporate limits of any city shall have a tax capacity of the market value of that portion of its property located within the corporate limits of any city as provided for in section 273.13, subdivisions 24 and 31
- Minnesota Statutes § 273.371 – reports of utility companies
 - Every electric light, power, gas, water express, stage, and transportation company and pipeline doing business

Missouri:

- Utilities, pipelines, telecommunications, airlines, and railroads are centrally assessed.
- Missouri Statutes 153.030
 - . . . All property, real and tangible personal, owned, used, leased or otherwise controlled by telegraph, telephone, electric power and light companies, electric transmission lines, pipelines companies and express companies shall be subject to taxation for state, county, municipal and other local purposes to the same extent as the property of private persons
- Determine market value—the assessor calculates a percentage of the value to arrive at the assessed value. The percentage is based on the classification, determined by the type of property and how it is used. After the assessed value is calculated, the tax levies are applied
- State Tax Commission

Nebraska:

- Nebraska Statutes 77-801 (recently revised) in 2015 Nebraska Laws L.B. 259
 - 1) All public service entities shall, on or before April 15 of each year, furnish a statement specifying such information as may be required by the Property Tax Administrator on forms prescribed by the Tax Commissioner to determine and distribute the entity's total taxable value including the franchise value. . .
 - 2) The returns of public service entities shall not be held to be conclusive as to the taxable value of the property, but the Property Tax Administrator shall, from all the information which he or she is able to obtain, find the taxable value of all such property, including tangible property and franchises, and shall assess such property on the same basis as other property is required to be assessed
 - 3) The county assessor shall assess all nonoperating property of any public service entity. A public service entity operating within the State of Nebraska shall, on or before January 1 of each year report to the county assessor of each county in which it has situs all nonoperating property

belonging to such entity which is not subject to assessment and assessed by the Property Tax Administrator under section 77-802.

- 4) The Property Tax Administrator shall multiply the value of the tangible personal property of each public service entity by the compensating exemption factor calculated in section 2 of this act.
- Section 2 of 2015 Nebraska Laws L.B. 259
- Sec.2. (1) Every person who is required to list his or her taxable tangible personal property as defined in section 77-105, as required under section 77-1229, shall receive an exemption from taxation for the first ten thousand dollars of valuation of his or her tangible personal property in each tax district as defined in section 77-127 in which a personal property return is required to be filed. Failure to report tangible personal property on the personal property return required by section 77-1229 shall result in a forfeiture of the exemption for any tangible personal property not timely reported for that year.
- (2) The Property Tax Administrator shall reduce the value of the tangible personal property owned by each railroad, carline company, public service entity, and air carrier by a compensating exemption factor to reflect the exemption allowed in subsection (1) of this section for all other personal property taxpayers. The compensating exemption factor is calculated by multiplying the value of the tangible personal property of the railroad, car line company, public service, entity, and air carrier by a fraction, the numerator of which is the total amount of locally assessed tangible personal property that is actually subject to property tax after the exemption allowed in subsection (1) of this section, and the denominator of which is the net book value of locally assessed tangible personal property prior to the exemptions allowed in subsection (1) of this section.
- Nebraska Statutes § 77-801.01
- Public service entity means any person as defined in section 49-801 or entity, organized under the laws of this state or any other state or government and engaged in the business of waterworks, electrical power, gas works, natural gas, telecommunications, [etc]...

North Dakota:

- Telecommunications companies that provide two-way communications pay a 2.5% gross receipts tax in lieu of property tax on all property used in two-way communications service
- North Dakota Code § 57-34-11 – Taxes in lieu of property taxes
 - The taxes imposed by this chapter are taxes upon the privilege of doing business in this state and are in lieu of all real and personal property taxes levied by the state or any of its political subdivisions upon real or personal property to the extent the property is directly used by the telecommunications carrier in its telecommunications operations

South Dakota:

- For property tax purposes, the South Dakota DOR has separated the industry into 3 separate categories: Local Exchange Companies, Long Distance Companies, & Wireless Companies
 - Local Exchange Telephone Companies (SDCL 10-33-21 thru 10-33-26)
 - Local exchange telephone companies are subject to a gross receipts tax instead of the property tax
 - Long Distance Companies (SDCL 10-33)
 - SD DOR is responsible for assessing the property of companies that provide long distance service in South Dakota

- Property is assessed by the Department in July and the taxable value is then certified and sent to the counties in August. The counties determine and collect the tax at the same rates and at the same time as locally assessed property
- Wireless Companies (SDCL 10-33A)
 - Wireless companies pay a 4% gross receipts tax on revenue from the sale at retail of intrastate and interstate telecommunications services to customers with a primary place of use in SD. Gross receipts include the revenue of sale at retail of intrastate and interstate telecommunications services.
 - Any real and personal property owned by a telecom company that is used or intended for use in furnishing and providing telecommunication services is exempt from real and personal property tax.

Wisconsin:

- Telephone companies are assessed as ad valorem property tax. Tax revenue collected from telephone companies goes to the state's general fund.
- Effect of local property taxes
 - Telecom property is exempt from local property tax administered under Chapter 70 of the Wisconsin Statutes
 - Non-telecom property that changes its use to telecommunications is shifted from local property tax to the state telecommunications property tax and vice-versa
- Taxable Telecom Property
 - Real estate and personal property
 - Personal property includes outside plant (cable, wire, and poles), central office (circuit and switch) equipment, administrative office furniture and equipment, towers, antennae and supplies
- Non-taxable Telecom Property
 - Administrative computers and intangibles such as goodwill
- How is property assessed and tax rate calculated?
 - Assessed in the same manner as manufacturing property
 - Telecom companies must file annual self-reporting form for its property and WI DOR audits the property every five year
 - Tax rate for telecom property is the sum of the net property tax rates (after credits) from the prior year in the taxing jurisdictions where the property is located

APPENDIX B – PARTICIPANT COMMENTS

Daniels, Victoria [IDR]

From: Dave Duncan <dduncan@IACommunicationsAll.com>
Sent: Tuesday, July 14, 2015 2:08 PM
To: Daniels, Victoria [IDR]
Cc: Todd Thorson (tthorson@kiesling.com); 'Craig Bieber (bieber@corp.Lcom.net)'; Kevin Condon
Subject: RE: Committee Report

Victoria, thank you for the opportunity to provide input. I have talked with Craig Bieber and Todd Thorson (both of whom attended the initial discussion) and here is our combined response:

The Alliance represents more than 125 local exchange carriers subject to centralized assessment of telecom property. As you know, many of our members provide a variety of communications services in direct competition with other communications providers. These include not only voice telephone service (either via TDM or VoIP or wireless) but also video services, broadband services (both fixed wireless and wireline and mobile wireless). Each of these modes of communication may be subject to different property tax assessment mechanisms, and we believe that the State should examine ways to modernize current property tax assessment mechanisms to account for the "communications convergence" and competitive nature of providing these services.

We appreciate your interest in seeking our input on ways the State might accomplish this, and we hope that the Department's Report to the Legislature marks a continuation of these discussions or efforts, not a "closing of the book" and the cessation of discussion. Simply because industry failed to reach consensus during one meeting in 2013 does not mean that areas of agreement might not be found if real conversations were had or facilitated.

We would be happy to continue to engage in discussions on how this might be accomplished.

Dave Duncan
CEO



THE VOICE FOR
CONNECTIVITY

2987 100th Street
Urbandale, IA 50322
515.867.2091

From: Daniels, Victoria [IDR] [mailto:Victoria.Daniels@iowa.gov]
Sent: Tuesday, June 30, 2015 11:20 AM
To: SiouxCity [IA County Assessor]; Craig Bieber; Dave Duncan; Dave Magill; Dean Throm; Dustin Miller; Fred Nicely; Greg

Daniels, Victoria [IDR]

From: FASL, ROBERT J <rf4695@att.com>
Sent: Wednesday, July 15, 2015 7:30 AM
To: Daniels, Victoria [IDR]
Cc: BIERBAUM, DEBORAH R
Subject: RE: Committee Report
Attachments: AT&T comments Iowa Property Tax Study.doc

Victoria-

Please find attached the comments of AT&T with respect to the Iowa Property Tax Study Committee including a cover letter from Deborah Bierbaum (cc'd).

Thank you,

Robert J (Bob) Fasl
Director – External Tax Policy
909 Chestnut Street
Room 36-T-08
St. Louis, MO 63101
Office: (314) 206-2440
Fax: (314) 235-7996
Robert.Fasl@att.com



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From: Daniels, Victoria [IDR] [mailto:Victoria.Daniels@iowa.gov]
Sent: Tuesday, June 30, 2015 11:20 AM
To: SiouxCity [IA County Assessor]; Craig Bieber; Dave Duncan; Dave Magill; Dean Throm; Dustin Miller; Fred Nicely; Greg Kucaj; Hal Holmquist; Kevin Condon; Nancy Riedel; Robert Fasl; Roisen, Julie [IDR]; Scott Van Eldik; Simmons, Roland [IDR]; Toby Reese; Todd Lard; Todd Thorson
Cc: Decker, Courtney [IDR]; Miller, James [AG]; Berkenpas, Mark [IDR]; Severson, Jane [IDR]
Subject: Committee Report

Good morning.

As some of you may recall, in 2013 the Department was tasked with pulling together a committee to study the current property assessment process for telecommunication companies and recommend changes, "... including potential methods to provide equivalent property tax treatment for all companies providing telecommunications services in Iowa and recommendations for apportioning the property tax revenues back to local taxing authorities."



Deborah Bierbaum
Executive Director
External Tax Policy

AT&T
One AT&T Way
Suite 2B118A
Bedminster, NJ 07960

T: 908.234.8323
F: 281.664.4200
M: 201.738.1998
bierbaum@att.com
www.att.com

July 15, 2015

Victoria L. Daniels
Policy & Communications Division Administrator – Iowa Department of Revenue
Hoover State Office Building
1305 East Walnut Street
Des Moines, IA 50319

Dear Victoria,

Thank you for allowing AT&T to participate as a stakeholder and submit comments associated with the Iowa Telecommunications Property Tax Committee Study. AT&T is a diverse communications company helping people mobilize their worlds - with advanced mobile services, next-generation TV and high-speed Internet services, and smart solutions for businesses. AT&T serves nearly all of the Fortune 1000, as well as neighborhood businesses around the country. We offer solutions like highly secure mobile cloud and corporate network management that helps businesses in every industry serve their customers better.

AT&T and the telecommunications industry has changed dramatically over recent decades. In 1995, Iowa recognized this and made positive reforms that went a long way in eliminating much of the discriminatory property tax regime faced by competitive telecommunications providers. Since that time the changes in AT&T and the industry have been more dramatic and the industry is increasingly competitive and diverse in offerings. No longer is competition limited to other companies traditionally thought of as communications companies and now involves competition with providers of cloud services and a host of internet and digital based services. Accordingly, AT&T commends Iowa for conducting the Study to fully evaluate the Iowa Property Tax System in order to adopt changes reflecting today's competitive landscape.

AT&T recommends that Iowa continue to move forward and eliminate the remaining discriminatory property tax treatment of competitive communications providers and not reverse course. The study recommendations should also include reforms that would allow all payers of property tax in the State realize administrative simplifications making the overall system fairer and easier to comply with. Please find attached more detailed comments.

In the event you have any questions, please feel free to call me or Robert Fasl at 314-206-2440 or Robert.Fasl@ATT.com

Sincerely,

Deborah Bierbaum
Executive Director External Tax Policy

AT&T Comments to Iowa Property Tax Study Committee

In 1995 Iowa enacted HF 518 that changed the property tax rules for Competitive Long Distance Telephone Companies. Going forward it exempted switches, computers and other equipment and personal property as is the case with other general businesses in the State. Competitive Long Distance Companies are only taxed on personal property acquired prior to January 1, 1996. Iowa also discontinued use of the unit valuation approach that inherently taxes intangible property. A valuation method born of a rate regulated monopoly era that no longer makes sense in today's economy. Iowa should continue the reforms started in 1995 by eliminating the remaining discriminatory property taxation of communications providers and should not extend the discrimination to newer industry participants.

The Changing Face of Competition

As technologies change the types and diverse nature of the services that providers are selling makes the traditional view that the competition for wireline is wireless or cable programming is outdated. Today's competitors include a variety of nontraditional carriers. The likes of Google, Amazon, Microsoft, and Hulu are market participants that compete with the traditional carriers to a greater extent as we go forward. Reports are showing that customers are increasingly cutting the cord for telecommunications and video services and they are using more over the top services such as VoIP, streaming video and online chatting. Business services are migrating to the cloud with a proliferation of services. These include software as a service, infrastructure as a service, platform as a service and business intelligence as a service. In addition, data centers are being offered by a wide range of competitors including traditional communications providers. Iowa needs to look at the diverse set of new competitors for traditional communications providers who are not subject to discriminatory property taxes.

The following are a few examples of newer types of competition:

- Bloomberg reports that Apple is working on the construction of a high-speed data network in a bid to better compete with rivals Amazon, Google and Microsoft. (June 9, 2015)
- Gartner reported on Google's ambitious plans for Internet of Things (IoT) that encompasses an OS, a communication protocol and wearable technologies. (June 3, 2015)
- A Juniper Research report states that the over-the-top TV service subscriber base will grow from the 92.1 million in 2014 to 332.2 million by 2019 with the most subscribers located in North America and the Far East, Connected TVs will rise as the primary screen for OTT TV consumers, the report shows. (May 18, 2015)
- Cablevision will launch its nationwide "Freewheel" Wireless Service during 2015 with a WiFi service offering. (January 26, 2015)
- ABC News reports that Google could offer discounted wireless data service plans (using access on the Sprint and T-Mobile networks) that would pressure other major carriers to offer better deals and services or risk losing customers. (January 22, 2015)

AT&T recommends that Iowa eliminate the last vestiges of the discriminatory property taxes on competitive providers recognizing the new competition and diversity of industries involved. Following are examples of how a few states phased-out discriminatory property taxes:

Arkansas enacted 2015 legislation (SB 683, Act 1118) which excludes intangible property acquired after January 1, 2015 from the determination of the property tax valuation which effectively phases-out the taxation of intangibles acquired from 2014 forward. The new law applies to broadband communication entities including the providers of commercial mobile radio service, telecommunication and video service, and cable television systems.

Delaware legislation enacted in 2012 provides for an Income Tax Credit for "wire and transmitter property taxes paid only by local exchange telephone companies, coupled with a multi-year phase-out of the tax altogether. This reform will eventually fully repeal the 1914 law that was created to tax every corporation engaged in telephonic business in Delaware, which prior to the phase-out applied to only one company.

Ohio's 126th General Assembly (2005-2006) provided for the phase-out of the tangible personal property tax imposed upon general business, telephone and telecommunications, and railroad properties starting in tax year 2006 and ending in tax year 2010. Although the tax was phased-out for most taxpayers during 2009, it continued to apply to telephone companies and interexchange telecommunications companies through tax year 2010. Starting with the 2007 tax year, telecom companies were defined as general business taxpayers (instead of public utilities) and their listing percentages phased-out as follows: 20% during 2007, 15% during 2008, 10% during 2009, 5% during 2010, and 0% during 2011 and thereafter.

Maine enacted legislation during 2000 that reduced the rate for telecommunications tangible property from 27 mills to 20 mills over the period of 2003 through 2009. The 6 year phase-out of the higher rates on telecommunications property resulted in rates that are approximately the same as the statewide average for other types of locally assessed property.

Property Tax Administration

The Council on State Taxation (COST) released a *Scorecard on State Property Tax Administrative Practices* (dated September 11, 2014). The Report provides national and state tax policymakers with best practices and a comparative measure of the fairness and efficiency of Property Tax administrative practices. The Scorecard was developed to evaluate and grade each of the 50 states regarding property tax administrative practices. The Scorecard evaluates the characteristics of property tax systems of each state based upon the categories of Transparency, Simplicity & Consistency and Procedural Fairness.

Based upon the foregoing, Iowa was given an overall grade of **C-** in property tax administration. With respect to the categories of Transparency, Simplicity & Consistency and Procedural Fairness the grades were, respectively: **C**, **C** and **D**. AT&T recommends that Iowa adopt changes to its administrative practices that will then bring a future overall grade of **A** in the COST Property Tax Scorecard.

Iowa ~ Overall Grade: C-**Transparency: C**

Property Tax laws/regulations on a centralized website – F
No.

Property Tax forms on a centralized website – C
Site has limited forms.
<http://www.iowa.gov/tax/forms/prop.html>

Internet document explaining Property Tax System – A
Yes,
<http://www.iowa.gov/tax/educate/78573.html>

Property Taxpayers receive valuation notice – B
Yes, no later than Apr. 15. *Iowa Code § 441.28.*

Valuation of property available via a website – B
Yes, at the local level, and general statistical information is available on the state agency's website.

Simplicity & Consistency: C

Central oversight – C
The Iowa Department of Revenue oversees local Property Tax procedures and has general supervisory over operations. Assessors can equalize properties with 5% or more variation in actual value in similar, closely adjacent properties. *Iowa Code § 441.21.*

Standardized forms – C
No, the state prepares some forms, but they are not mandatory.

Consistent due dates – B
No, reports vary slightly by type. *Iowa Code § § 432A.8, 437A.21, 441.19.* Payments are due in two installments, Sep. 30 and Mar. 31.

De minimis exclusion – C
Yes, if less than \$2.00.

Equal assessment – D
Yes, ratios are 100% of market value except for agricultural real estate, which is 100% of productivity and net earning capacity value. *Iowa Code § 441.21.* There is a 4% cap on residential, agricultural, commercial, railroads and industrial assessments. Central assessments are capped at 8%. *SF 295* limits increases in assessments for residential and agricultural properties (from 4% to 3%).

Appraisal cycle – B
Every two years for real property; annually for railroads and public utilities. *Iowa Code § 428.4.*

Treatment of intangible property – F
Intangible property is taxable.

Procedural Fairness: D

Equal interest rate – F
No, interest on underpayments is 1.5% monthly. There is no interest on overpayments. *Iowa Code § 445.39.*

60-Day appeal – D
No, 30 days for centrally assessed property, and 20 days for locally assessed property. *Iowa Code § 441.37.*

Burden of proof – D
On taxpayer attacking such valuation as excessive, inadequate, inequitable, or capricious. *Iowa Code § 441.21(3).*

De novo appeal – C
Yes, at Property Assessment Appeals Board. PAAB decisions appealed to district court on are *de novo* of evidence.

Escrow/Defer payment on disputed tax – F
No ability to not pay or escrow.

Daniels, Victoria [IDR]

From: Riedel, Nancy <Nancy.Riedel@VerizonWireless.com>
Sent: Wednesday, July 15, 2015 2:51 PM
To: Daniels, Victoria [IDR]
Cc: McDermott, Michael; Mahida, Devendra C (David)
Subject: RE: Committee Report
Attachments: IA property tax study 7 15 15 Verizon.pdf

Ms. Daniels,

Thank you for the opportunity to provide comments in connection with your study of property tax assessments on the telecommunications industry in Iowa. Please see attached for the remarks being submitted by Verizon. Please do not hesitate to contact me if you have any questions or would like to discuss in more detail.

Regards,
Nancy

Nancy Riedel
Director-State Tax Policy

Verizon
8350 E. Crescent Parkway, Suite 200
Greenwood Village, Colorado 80111
T: 303.694.5558
C: 303.909.7062
nancy.riedel@verizon.com

From: Daniels, Victoria [IDR] [<mailto:Victoria.Daniels@iowa.gov>]
Sent: Tuesday, June 30, 2015 10:20 AM
To: SiouxCity [IA County Assessor]; Craig Bieber; Dave Duncan; Dave Magill; Dean Throm; Dustin Miller; Fred Nicely; Greg Kucaj; Hal Holmquist; Kevin Condon; Nancy Riedel; Robert Fasl; Roisen, Julie [IDR]; Scott Van Eldik; Simmons, Roland [IDR]; Toby Reese; Todd Lard; Todd Thorson
Cc: Decker, Courtney [IDR]; Miller, James [AG]; Berkenpas, Mark [IDR]; Severson, Jane [IDR]
Subject: Committee Report

Good morning.

As some of you may recall, in 2013 the Department was tasked with pulling together a committee to study the current property assessment process for telecommunication companies and recommend changes, "... including potential methods to provide equivalent property tax treatment for all companies providing telecommunications services in Iowa and recommendations for apportioning the property tax revenues back to local taxing authorities."

The Department is to file the report with the Chairpersons and Ranking Members of the Ways and Means Committees of the Senate and the House of Representatives and with the Legislative Services Agency by August 1, 2015.



July 15, 2015

Ms. Victoria Daniels
Division Administrator, Policy & Communications
Iowa Department of Revenue

Sent via email

Dear Ms. Daniels,

Thank you for the opportunity to provide comments on the Department of Revenue's study of the system of assessing property tax on companies that provide telecommunications services in Iowa. It is Verizon's assertion that telecommunications providers should be subject to the same property tax treatment as other competitive businesses operating in Iowa. The communications industry is one of the largest private sector investors in the Iowa economy, expanding and improving communications networks that Iowa businesses, governments, and residents rely on to conduct commerce and stay connected. As such, property taxes are a significant ongoing expense for the industry and one that plays a significant role in investment decisions. In order to encourage continued investment in communications networks, discriminatory tax burdens on communications providers should be addressed and new burdens should not be expanded or imposed on the industry.

The National Conference of State Legislatures' Task Force on State and Local Taxation is expected to soon publish a 50-state study examining property taxes on communications providers. The results of this study may help inform the discussion about potential property tax reforms in Iowa.

Sincerely,

A handwritten signature in cursive script that reads "Nancy Riedel".

Nancy Riedel
Director, State Tax Policy

Daniels, Victoria [IDR]

From: Aziza Farooki <AFarooki@cost.org>
Sent: Wednesday, July 15, 2015 3:50 PM
To: Daniels, Victoria [IDR]
Cc: Fred Nicely
Subject: COST Comments Regarding Iowa's Property Tax Treatment of Telecommunications Companies
Attachments: 071515 COST Iowa Telecom Property Tax Letter.pdf; Prop Tax Scorecard.pdf; Prop Tax Addendum.pdf
Importance: High

Dear Ms. Daniels,

The Council On State Taxation (COST) respectfully submits the attached comments about Iowa's property tax treatment of telecommunications companies. Also, please find attached a copy of the International Property Tax Administration Scorecard COST issued jointly with the International Property Tax Institute in September, 2014, as well as a comprehensive addendum to the Scorecard – both are referenced in the letter.

If you have any questions, please don't hesitate to contact me.

Thank you.

Sincerely,

Aziza Farooki

Aziza Farooki
Senior Manager, Policy & Administration
Council On State Taxation (COST)
122 C Street, N.W., Suite 330
Washington, DC 20001
Tel: (202) 484-5210; Fax: (202) 484-5229





Fredrick J. Nicely
Senior Tax Counsel
(202) 484-5213
fnicely@cost.org

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U.S. Bancorp

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Insurance Co.*

Frank Yanover
GE Capital Americas

July 15, 2015

Victoria Daniels, Division Administrator Policy & Communications
Iowa Department of Revenue
Hoover State Office Building
1305 East Walnut Street
Des Moines, IA 50319

Re: Comments Regarding Iowa's Telecommunications Property Tax Study

Dear Ms. Daniels,

Per your e-mail request on June 30, 2015, the Council On State Taxation ("COST") appreciates the opportunity to provide comments about Iowa's property tax treatment of telecommunications companies. Jointly with the International Property Tax Institute ("IPTI"), COST issued an International Property Tax Administration Scorecard in September, 2014.¹ COST's comments are primarily focused on two of three categories of that Scorecard – Simplicity & Consistency and Procedural Fairness² – and it also reflects COST's policy statement on property taxes. This letter highlights where Iowa could improve its administrative property tax practices for all taxpayers, and specifically addresses issues confronted by the telecommunications industry.

About COST

COST is a nonprofit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of nearly 600 major corporations engaged in interstate and international business. COST's objective is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities. Many COST members conduct business in Iowa and are impacted by changes to Iowa's property tax structure.

¹ Fredrick Nicely, Catherine Oryl, *et al.*, *The Best and Worst of International Property Tax Administration – COST-IPTI Scorecard on State and International Property Tax Administrative Practices* COST/IPTI (Sept. 2014), available at: <http://www.cost.org/WorkArea/DownloadAsset.aspx?id=88125>. There is also a comprehensive addendum to the Scorecard, available at: <http://www.cost.org/WorkArea/DownloadAsset.aspx?id=88127>.

² The other category is Transparency, which has limited relevance to Iowa's Telecommunications Property Tax Study.

COST Property Tax Policy Statement

The COST Board of Directors has adopted a formal policy statement on fair and equitable property tax systems. COST's policy position is:

State and local property tax systems must be fairly administered and tax burdens equitably distributed among taxpayers. A property tax system that is inefficient or that disproportionately falls upon business is not equitable and will negatively impact a state's business tax climate.³

COST's concern with Iowa's telecommunications property tax system is that the tax burdens are not equitably distributed. While Iowa's property tax law exempts personal property from taxation, it inequitably picks up many business "personal property" items as "real property," such as computers, manufacturing equipment, and all property centrally assessed by the Iowa Department of Revenue (e.g., wired telecommunications companies).⁴

This inequity often leads to litigation – and, Iowa has certainly faced such litigation. Specifically related to the telecommunications industry, the Supreme Court of Iowa denied a wire-line telecommunications company an equal protection challenge on competing wireless telecommunications companies not being subject to central assessment, see *Qwest Corp. v. Iowa State Bd. of Tax Rev.*, 829 N.W.2d 550 (2013). Additionally, that Court recently held cable companies providing Voice over Internet Protocol (VoIP) services met the definition of a telephone company and, thus, were subject to central assessment, see *Kay-Decker v. Iowa State Bd. of Tax Rev.*, 857 N.W.2d 216 (2014). This litigation is sending a clear signal that Iowa's Legislature needs to bring equity to its property tax system and eliminate the discriminatory property taxes it imposes on some businesses. Thus, no telecommunications company should be disadvantaged by the State taxing its "personal property" as a component of "real property." COST also cautions the Iowa Legislature on how it solves this problem. Merely switching tax burdens from one business sector to another, or swapping one tax for another, without making Iowa a better place for businesses to conduct their operations, will not improve Iowa's overall business environment.

Iowa's Simplicity & Consistency Scorecard Grade

Iowa's overall grade on the Property Tax Administrative Scorecard was a "C-." The State's overall grade in the simplicity & consistency category was a "C." Of the seven criteria reviewed in that category, the two areas where Iowa had poor grades are: (1) equal assessment ("D" grade) and (2) treatment of intangible property ("F" grade).⁵ Iowa has a "D" grade on equal assessment because it still imposes its real property tax on select businesses' personal

³ COST policy statement on taxation on fair and equitable property tax systems is available at: http://www.cost.org/uploadedFiles/About_COST/Policy_Statement/Fair%20and%20Equitable%20Property%20Tax%20Systems.pdf.

⁴ See Code of Iowa § 427A.1(1). This also includes property leased to a company subject to central assessment.

⁵ The other areas evaluated in the Simplicity & Consistency category were: central oversight ("C" grade), standardized forms ("C" grade), consistent due dates ("B" grade), *de minimis* exclusion ("C" grade), and appraisal cycle ("B" grade).

property (discussed above); additionally, Iowa has valuation caps favoring residential property over commercial and industrial property. The valuation cap on residential and agricultural property is now 3% in Iowa, while centrally assessed entities are capped at 8%.⁶ If Iowa is going to use valuation caps, the same cap should apply to all property, including telecommunications property.⁷ Iowa received an "F" grade for intangible property because the valuation mechanism used for centrally assessed properties in Iowa, including telephone company property, does not require the Department of Revenue to exclude intangible values from the assessed value.

Iowa's Procedural Fairness Scorecard Grade

Iowa's overall grade in the procedural fairness category was a "D." Of the five criteria reviewed in that category, the four areas where Iowa had poor grades are: (1) equal interest rate ("F" grade), (2) 60-day appeal period ("D" grade), (3) burden of proof ("D" grade), and (4) escrow/defer payment on disputed tax ("F" grade).⁸ While Iowa imposes an equal interest rate on tax underpayments and overpayments for corporate income tax and sales/use tax, interest is only imposed on property tax underpayments at 1.5%. This inequity is troubling because Iowa's tax law requires property taxpayers to pay the tax on the disputed portion of a property valuation.⁹ Interest should not be a penalty; it should only reflect the time value of money.

COST understands providing a 60-day appeal period can impose some timing problems for tax officials to complete the property tax rolls. Currently, centrally assessed taxpayers have 30 days and locally assessed taxpayers have 20 days to appeal a disputed valuation in Iowa. Any increase in time would help minimize the number of rushed appeals filed by taxpayers merely because they had insufficient time to determine whether their property is overvalued. Regarding the burden of proof, property valuation is one area where the assessor, and not the taxpayer, may have more information.¹⁰ However, in Iowa, unless the property owner obtains evidence from at least two disinterested witnesses that the market value of the property is lower than the assessor's, the burden of proof is on the property owner to show the valuation was excessive, inadequate, inequitable, or capricious.¹¹ At a maximum, the standard should not be beyond the preponderance of evidence.

The last issue on the Property Tax Administration Scorecard, *and one which some businesses that have faced negative press from successfully litigating a property tax dispute would say is most important*, is not having to pay the tax on the disputed value of a property tax assessment. Property tax revenue distributed to the beneficiaries of the tax is often spent and, making matters worse, those beneficiaries often have no reserve to deal with property tax refunds. That puts taxpayers, including telecommunications companies, in a negative spotlight when they are blamed for obtaining refunds on property taxes they were required to pay before

⁶ See Code of Iowa § 441.21.

⁷ COST's preference is for states to use automatic tax rate reductions to counter growth in property valuations.

⁸ The other area evaluated in the Procedural Fairness category was the state allowing a de novo appeal. Iowa had a "C" grade.

⁹ See Code of Iowa § 445.39.

¹⁰ For example, assessors likely have better access to the trends of properties being sold within their jurisdictions.

¹¹ See Code of Iowa § 441.21(3).

disputing the assessment. Iowa needs to eliminate this practice and either allow taxpayers to only pay on the undisputed valuation of a property tax assessment and/or require any disputed tax to be placed in an escrow fund. This mitigates the beneficiaries of the tax from having to find a way to return funds already spent.

Conclusion

COST appreciates the opportunity to provide comments to Iowa's Telecommunications Property Tax Study. COST encourages the Iowa Department of Revenue to issue a report to the Iowa Legislature indicating that the Legislature should address the disparate property tax imposed on some industries in Iowa, *e.g.*, telephone companies, and make improvements to Iowa's overall property tax administrative practices.

Sincerely



Fredrick Nicely

cc: Douglas Lindholm, COST President & Executive Director
COST Board of Directors

Daniels, Victoria [IDR]

From: Holmquist, Hal L <Hal.Holmquist@centurylink.com>
Sent: Tuesday, July 21, 2015 2:33 PM
To: Daniels, Victoria [IDR]
Cc: Simmons, Roland [IDR]
Subject: Centurylink Response for Committee Report

Victoria,

Sorry about the delay, but wanted to get you the basic concern of Centurylink regarding the property tax laws of communication companies in Iowa. By way of background, my group is responsible for administration of the property tax function for all Centurylink entities.

Centurylink is an integrated communications company providing services to residential, business, governmental and wholesale customers both in Iowa and roughly 40 other states. The communication services we provide, include local and long distance, video, broadband, private line service, data integration services, managed cloud hosting services, data collocation, Ethernet, and wireless.

As you can imagine, there are many different property tax laws and methods for communication property around the United States, but few that are as discriminatory as in Iowa. The primary reason for the discrimination, is the exemption of tangible personal property for our competitors that are locally assessed, versus the taxation of similar property which we own and is assessed by the Department of Revenue. We compete for customers and revenue with wireless and cable companies, as well as companies such as Google, Amazon, Face book and many other companies that provide a vast array of data services in the world today. This is not just Plain Old Telephone Service any more ! !

It is imperative that the Legislature deals with the inequity that exists within the communication property tax arena and pass legislation that would exempt all state assessed communications personal property, in a similar manner to that of other locally valued communication companies. We do feel that the recently passed House File 655 is a movement in the right direction, however, it is important to note that it only deals with new property and not the embedded base of obsolete equipment.

Centurylink has lost approximately 33% of its customer access lines in Iowa since 2006. This is due to fierce competition and many times their lower prices, due in part to a higher cost structure of our assets, versus our competitors. We strongly urge the DOR to recommend that all communication property (whether local or state assessed) should be exempt and thus treating them in a similar manner, so as to not penalize state assessed companies, such as Centurylink.

Thank you for the opportunity to submit comments.
Hal

Hal L. Holmquist Director-Property Tax
CenturyLink
PH: 913.353-7100 Cell: 913.269.9876
Internet: Hal.Holmquist@CenturyLink.com

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From: Daniels, Victoria [IDR] [<mailto:Victoria.Daniels@iowa.gov>]
Sent: Tuesday, June 30, 2015 11:20 AM
To: SiouxCity [IA County Assessor]; Craig Bieber; Dave Duncan; Dave Magill; Dean Throm; Dustin Miller; Fred Nicely;