

Massachusetts Department of Revenue Division of Local Services

Amy Pitter, Commissioner Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs



TO: Boards of Assessors
FROM: Marilyn H. Browne, Chief, Bureau of Local Assessment
DATE: May 15, 2012
TOPIC: CERTIFIED TELEPHONE & TELEGRAPH VALUATIONS
FISCAL YEAR 2013

The Commissioner of Revenue has determined and hereby certifies the full and fair cash valuation of taxable telephone and telegraph machinery, poles, wires and underground conduits, wires and pipes of the centrally valued telephone and telegraph companies, as of January 1, 2012. These valuations are certified for fiscal year 2013 under Massachusetts General Laws Chapter 59, Section 39. The property owner or the board of assessors desiring to do so must appeal the valuations to the Appellate Tax Board (ATB) on or before June 15, 2012.

Centrally Valued Property

The Commissioner values only those designated telephone and telegraph assets that are taxable under the General Laws. With respect to machinery, telephone and telegraph companies doing business as corporations are subject to central valuation for only electric generating machinery under M.G.L. c. 59, § 18, Second and M.G.L. c. 59, § 5, cl. 16(1) (machinery used in manufacture); Assessors of Springfield v. Commissioner of Corporation and Taxation, 321 Mass. 186 (1947). Telephone and telegraph companies doing business as partnerships, trusts or limited liability companies (LLCs) are subject to central valuation on all machinery used to provide telephone service, including switching and routing machinery. M.G.L. c. 59, § 39; M.G.L. c. 59 § 18, First and Sixth; RCN-BecoCom, LLC v. Commissioner of Revenue, 443 Mass. 198 (2005).

All telephone and telegraph companies, whether doing business as corporations, partnerships, trusts or LLCs, are subject to central valuation for poles, wires, underground conduits, wires and pipes over public and private property. M.G.L. c. 59, § 39; M.G.L. c. 59, § 5, cl. 16(1); M.G.L. c. 59, § 18, First, Fifth and Sixth. They are also subject to central valuation for taxable telephone personal property that is construction work in progress (CWIP) or owned but not necessarily in service. Verizon New England, Inc. v. City of Boston, 81 Mass. App. Ct. 444 (2012).

In addition, partnerships, trusts and LLCs are subject to local valuation on all other non-telephone personal property. Therefore, those companies must file a Form of List with the assessors in all communities where such other personal property is located. (See the posted list of FY2013 Centrally Valued Telephone Company Addresses to identify these companies.)

Overlay Account Provisions – FY2013

On March 19, 2012, the Appeals Court ruled in the appeal of the Verizon New England Consolidated Valuation cases, ATB 2009-851 Docket No. C273560 (October 1, 2009). Verizon New England, Inc. v. City of Boston, 81 Mass. App. Ct. 444 (2012). That appeal challenged the ATB's decision that Verizon, a corporation, was taxable for its (1) poles and wires over public ways before FY2010 and (2) CWIP.

The Appeals Court overruled the ATB's decision that poles and wires owned by a telephone corporation and located over public ways were subject to tax before FY2010. As you know, beginning in FY2010, M.G.L. c. 59, § 18 has expressly provided that those poles and wires are taxable. On May 3, 2012, the Supreme Judicial Court denied the further appellate review sought by the municipal parties on that issue.

The Appeals Court also decided that the statute does not require the company's property to be "in service" before it becomes taxable. It remanded the matter to the ATB to determine whether and what extent the valuation of the

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company's CWIP consisted of only those types of property taxable to the company. The Commissioner began centrally valuing telephone company CWIP in FY2009. Under the Court's decision, any portion of a corporation's CWIP attributable to poles and wires over public ways would not be taxable for FY2009, but would be taxable in subsequent years. No party in the case sought further appellate review on the CWIP ruling.

As a result of the Verizon decision, assessors do not need to set aside additional amounts in the FY2013 overlay to cover the valuation of CWIP, but they should ensure that it is sufficient to cover any company appeals of the Commissioner's valuations. With respect the overlays of prior years, we anticipate the ATB will schedule status conferences in order to determine future proceedings on outstanding valuation and taxable property issues in the CWIP remand and other pending central valuation appeals. Assessors should consult with municipal counsel about the course of action available with respect to the appeals involving their community. In the meantime, they should expect to have abatement exposure for taxes assessed on poles and wires over public ways in FY2009 and some portion of CWIP beginning in FY2009.

CWIP and New Growth

As indicated earlier, the Bureau values CWIP. However, to avoid double counting last year's CWIP as new growth in the current year and to be as accurate as possible given the companies' reporting limitations, we subtract the prior year's CWIP number from the total new growth identified by companies for each community in the current year. In the event that a company reports a larger amount of CWIP in the prior year than new growth in the current year, we net the community's new growth only to zero, never a negative number. In the majority of instances we believe that growth from items placed in service is higher than the prior year's CWIP due to the addition of indirect costs.

New growth will remain a completely separate calculation so as not to affect the DOR's mass appraisal valuation model.

Company Local Filing Requirements

With respect to **local filing requirements**, telephone and telegraph companies organized as partnerships, trusts, LLCs or other unincorporated legal entities are not entitled to any corporate property tax exemptions. M.G.L. c. 59, § 5, cl. 16; M.G.L. c. 63, §§ 30(1), 30(2), 39, 52A and 68C. Except for the centrally valued telephone and telegraph property, they are subject to local valuation and assessment on all other personal property situated in the community. This may include dedicated cable TV and Internet access machinery of bundled carriers, but all property used for both telephone service and cable TV or Internet access should have been reported centrally and valued as part of this certification.

Telephone and Telegraph Company Issues

The following describes significant changes from the prior valuation year:

1. PAETEC Communications, Inc. was purchased by Windstream Communications.
2. Qwest Communications Corporation was purchased by Centurylink.
3. Choice One Communications of Massachusetts, Inc.; Conversent Communications of Massachusetts, Inc., and CTC Communications Corporation, all doing business as One Communications, were purchased by Earthlink.
4. CRC Communications and Granby Telephone and Telegraph, Inc. are both doing business as OTT Communications LLC and both were changed to LLC's.
5. Global Crossing North American Networks, Inc. was merged into Global Crossing Telecommunications, Inc., after both companies were purchased by Level 3 Communications.
6. XO Communications Services, Inc. was changed to XO Communications Services, LLC.

DOR Categorical Listing of Data by Federal Communications Commission Codes (FCC)

On May 15, 2012, the Department posted to our [website](#) the *Additional Landline Telephone and Telegraph Personalty by FCC Code* by community for each of the centrally valued telephone and telegraph companies by any of 23 applicable (FCC) categories we use, plus categories for CWIP and spares by community. The additional data is available on our website in a second pivot table. That table is for informational purposes only and the numbers are not rounded. The data provided on the *FY2013 Centrally Valued Telephone and Telegraph Company Values* also issued on May 15, 2012 should be used for billing purposes and completing the LA4 (Assessment Classification Report) for tax rate setting purposes.

Company Lists and Addresses

Centrally valued telephone and telegraph company billing names and addresses as reported by the companies are posted on our [website](#) for your convenience. Also, we have provided a list of companies that filed state returns but were not centrally valued. Those companies and all others that did not file central returns should be valued locally.

Questions regarding valuations may be directed to John Gillet at 617-626-3605.