



To: Boards of Assessors

FROM: Marilyn H. Browne, Chief, Bureau of Local Assessment

DATE: May 16, 2005

TOPIC: CERTIFIED TELEPHONE & TELEGRAPH VALUATIONS FOR FISCAL YEAR 2006

The Commissioner of Revenue has determined and does hereby certify the full and fair cash valuation of the machinery, poles, wires and underground conduits, wires and pipes of the centrally valued telephone and telegraph companies, as of January 1, 2005. These valuations are certified for fiscal year 2006 under the authority of G. L. c. 59 §39. The property owner or the board of assessors must make appeal of the valuations to the Appellate Tax Board on or before June 15, 2005.

The valuation procedure of the Department of Revenue for FY2006 significantly changed as a result of the Supreme Judicial Court decision in the case of the RCN-BecoCom, LLC v. Commissioner of Revenue, 443 Mass. 198 (2005) (RCN). In that case the SJC ruled that a bundled communications carrier that provided cable TV, Internet access and telephone service over its broadband system provided substantial telephone service, and as a result qualified as a telephone company for central valuation purposes. It also ruled that a limited liability company did not qualify for the utility corporation exemptions provided in G.L. c. 59, clause 16(1). (For more detailed information concerning the affect of the case see [TIR 05-4](#).) As a result of that case *RCN-BecoCom, LLC* is being centrally valued for the first time this year.

Also based on RCN, telephone and telegraph **corporations** have been valued only on poles and wires over private property, underground conduits, wires and pipes in public or private property, and electric generators. G.L. c. 59, §39; G.L. c. 59, §5, cl. 16(1); & G.L. c. 59, §18(5). **Partnerships, trusts and LLCs** have been valued by the Commissioner on all poles, wires, underground conduits, wires and pipes situated in the Commonwealth (including poles and wires over public ways), and all machinery used to provide telephone or telegraph service (including switching and routing equipment). G.L. c. 59, §39; G.L. c. 59, §18, First and Sixth & G.L. c. 59, §5, cl. 16(2). Additionally, these entities are subject to valuation and assessment locally on all other taxable personal property. Therefore, a Form of List (State Tax Form 2) must be filed in all communities where such other personal property is located. (See the posted list of *Centrally Valued* telephone companies to identify these companies.)

With respect to **local filing requirements**, telephone and telegraph companies organized as LLCs that elect to be treated as corporations for federal income tax purposes, and single member LLCs that elect to be treated as disregarded entities for federal income tax purposes, whose single members are S corporations, are treated as business corporations. As such, except for the centrally valued telephone and telegraph property, they are taxable only on machinery used in the conduct of business. This may include dedicated cable TV and Internet access machinery of bundled carriers, but all property used for telephone service and also for cable TV and/or Internet access should have been reported centrally and valued as part of this certification. For other LLCs, partnerships and trusts, all non-telephone machinery, as well as furniture and effects, equipment and other non-machinery items will be subject to valuation and assessment locally.

This year communities will continue to see decreases in taxable telephone personalty of several companies due to changes in legal status from an LLC to a corporation, transfers of previously taxable telephone machinery to leasing companies, corporations that erroneously reported poles and wires over public ways in previous years and lower reporting by companies based on their own internal reviews of

assets. There are a couple of companies that increased in value as a result of either RCN or a Securities Exchange Commission directive. In the list that follows we have described the changes to companies we believe to be significant.

1. *AT&T Communications of New England, Inc., AT&T Corporation (Interstate Division) and Teleport Communications Group, Inc.* are related corporations, but report separately. This year these companies advised that all electric generators of *AT&T Communications of New England, Inc.* and the majority of generators from *Teleport Communications Group, Inc.* were transferred to *AT&T Corporation (Interstate Division)*. However, based upon the filings the total reported by *AT&T Corporation (Interstate Division)*, when added to the remainder reported by *Teleport Communications Group, Inc.* were less than the totals of all three from the previous year. Valuations were made on the reported property.

In addition, *Teleport Communications Group, Inc.* notified us that it had erroneously reported aerial fiber over public ways in previous years and has reported no such fiber for FY2006. This has been corrected for FY2006 and decreases will be seen in that category of personal property.

2. *Conversent Communications of Massachusetts, LLC* was treated as a utility corporation for FY2005. As a result of RCN, *Conversent* is being treated as a business corporation for FY2006 and its taxable personal property has therefore increased. *Conversent* reorganized on April 12, 2005 as a Massachusetts corporation and initially claimed to be entitled to the corporate exemptions. This is the same issue raised by *Bell Atlantic Mobile* in FY2004, and a case is currently pending at the Appellate Tax Board on the issue of the exemption qualifying date for that company.
3. *MCI Metro Access Transmission Services, LLC* changed its corporate structure and is now reporting as a corporation, *MCI Metro Access Services of Massachusetts, Inc.*
4. *New Cingular Wireless PCS, LLC* is a new reporting company for FY2006, the result of a merger of *AT&T Wireless Services of Massachusetts, Inc. (formerly reporting as AT&T Wireless PCS, LLC in FY2004)* and *Southwestern Bell Mobile Systems, LLC* in calendar 2004. *New Cingular Wireless PCS, LLC* filed its return on the taxable personal property of the former companies. The new company indicates that for FY2005 *AT&T Wireless PCS, LLC* was succeeded by two companies, *AT&T Wireless Services of Massachusetts, Inc.* and *AT&T Wireless Services Purchasing of Massachusetts, Inc.*, a leasing company. In FY2005 *AT&T Wireless Services of Massachusetts, Inc.* was centrally valued on property based on the utility corporation exemptions. The property of *AT&T Wireless Services Purchasing of Massachusetts, Inc. (now New Cingular Wireless Services Purchasing of Massachusetts, Inc.)* was not reported or valued because as a leasing company it was not a telephone company subject to central valuation.

New Cingular Wireless PCS, LLC reported original cost on its property in an amount less than the cost reported for FY2004 by *AT&T Wireless PCS, LLC* plus the FY2005 cost reported by *Southwestern Bell Mobile Systems, LLC*, representing a comparable filing to the FY2006 return. The new company explains a large portion of the discrepancy by reason of the ownership of a portion of the property by its new leasing company, *New Cingular Wireless Services Purchasing of Massachusetts, Inc.*, which is not subject to

central valuation,¹ and due to the frequent transfer of equipment from site to site. We have valued the company based on the reported property.

5. *Qwest Communications Corporation* has reported higher original cost as directed by the Securities & Exchange Commission.
6. *RCN-BecoCom, LLC* is valued centrally for the first time this year as a result of RCN. It elected to be treated as a corporation for federal tax purposes and is valued as a business corporation for FY2006. The values include aerial plant over public and private property, telephone switching and routing machinery and machinery used to provide telephone service along with cable TV and/or Internet service. Its machinery used for cable TV and Internet service that is not also used to provide telephone service should be reported and valued locally.
7. *Sprint Spectrum, LP* has transferred additional assets to MASSPCSCO, a leasing company².
8. *Verizon New England, Inc.* notified us that it had erroneously reported some of its poles and wires over public ways in previous years. This has been corrected for FY06 and decreases will be seen in that category of personal property.

Centrally valued telephone company billing names and addresses as reported by the companies are posted on this website for your convenience. Also, we have provided a list of companies that filed state returns but were not centrally valued. These companies and all others not centrally valued should file and be valued locally. Questions regarding valuations may be directed to Walter Sandoval Dusza at 617 626-4087 or John Gillet at 617-626-3605.

¹ See footnote 2 below concerning the possible valuation and assessment of such leasing company property at the local level under the rationale of the Brown, Rudnick case. *New Cingular Wireless Services Purchasing of Massachusetts, Inc.* appears in the FY2006 corporations' list.

² MASSPCSCO is a Delaware Statutory Trust, which is legally treated as a foreign corporation for Massachusetts corporate excise purposes. See LR 91-2. Last year we were advised that this company leased property transferred to them from the Sprint telephone companies back to the companies that previously owned them, Sprint Spectrum, LP and Sprint Communications Company, LP. Last year we suggested that the new company may not be a "business corporation" under the case of Brown, Rudnick, Freed & Gesmer v. Board of Assessors of Boston, 389 Mass. 298 (1983) and therefore not entitled to the corporate exemptions provided for stock-in-trade of business corporations under GL c. 59, §5, cl. 16(2). In that case the Supreme Judicial Court concluded that in order for a corporation to be in business and qualify for the exemption, it had to be engaged in "an activity which occupies the time, attention and labor of men for the purpose of livelihood, profit or gain." Id at 303, citing Whipple v. Commissioner of Corps. & Taxation, 263 Mass. 476, 485-486 (1928). A partnership owning taxable personal property had transferred the property to a corporation solely for the purpose of leasing the property back to the partnership. The corporation employed no labor and sought no profit, and had been formed solely for the purpose of avoiding local property tax on personal property formerly owned by the partnership. The partnership was the only stockholder of the corporation and had no leasing contracts with any other entity. The court ruled it was not entitled to the business corporation exemptions. Id at 305. MASSPCSCO does not appear in the corporations' list for FY2006.