

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 SUMMARY DECISION UNDER REVENUE AND TAXATION CODE SECTION 40

3
4 In the Matter of the Petition for)
Reassessment of the 2018 Unitary Value for:)

5
6 **CROWN CASTLE NG WEST, LLC**)
(7982))

7 Petitioner)

Appeal No.: SAU 18-013

Case ID No.: 1056698

Nonappearance Hearing Date:
December 12, 2018¹

10
11 Representing the Parties:

12 For the Petitioner: Peter Michaels, Attorney
Peter Kotschedoff, Versatax Consulting, Inc.

14 For the Respondent: Sonya Yim, Tax Counsel III
Attorney for the State-Assessed Properties Division

16 Samuel Wang, Principal Property Appraiser
State-Assessed Properties Division

18 Appeals Attorney: Susan Galbraith, Tax Counsel

19 **VALUES AT ISSUE**

	Value	Penalty	Total
21 2018 Board-adopted Unitary Value	\$325,900,000	\$0	\$325,900,000
22 Petitioner's Requested Unitary Value	\$204,900,000	\$0	\$204,900,000
23 Respondent's Appeal Recommendation	\$325,900,000	\$0	\$325,900,000
24 Respondent's Revised Appeal Recommendation	\$306,000,000	\$0	\$306,000,000

28 ¹ The Board voted unanimously to grant the petition for reassessment, in part, and reduce the 2018 Board-adopted unitary value to \$306,000,000.

1 **Factual Background**

2 Crown Castle NG West, LLC (petitioner) is a provider of distributed antenna systems to wireless
3 communication carriers. Petitioner is a subsidiary of Crown Castle International Corp. (Crown Castle)
4 and acquired the assets of NextG Networks of California, Inc. (NextG), a former state-assessee, in April
5 2012. The 2018 Board-adopted unitary value of \$325,900,000 is based on 100 percent reliance on the
6 Replacement Cost New less Depreciation (ReplCLD) value indicator.

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8 **Legal Issue 1: Whether petitioner has shown that respondent failed to properly assess petitioner's**
9 **outside plant property.**

10 **Findings of Fact and Related Contentions**

11 Petitioner contends that its valuation study for the outside plant assets, which was based on a
12 Replacement Cost New (RCN) computed by CostQuest Associates (CostQuest), is more reliable than
13 petitioner's actual financial records and property statement filed with the Board, upon which respondent
14 based its calculations, because CostQuest's RCN reflects the removal of "functional obsolescence that
15 accumulates in the books from duplicate/triplicate cost[s] of engineering, planning, permitting, etc. of
16 building short routes, replacement routes, and re-enforcement routes in the existing network over time."
17 (CostQuest RCN Study (August 2018), p. 11.). Petitioner's outside plant property includes long life
18 assets such as fiber optic cables, conduit and poles. (CostQuest RCN study, p.7.)

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20 In its reply, petitioner renews its contention that respondent used a reproduction cost approach
21 rather than a replacement cost approach to assess petitioner's property as of the 2018 lien date since
22 respondent applied trend factors to the historical acquisition cost of petitioner's property, but that under
23 Rule 6, petitioner was required to use a replacement cost model. On the other hand, CostQuest
24 calculates RCN by looking at current market costs to construct an outside plant comparable to
25 petitioner's plant. Additionally, petitioner asserts that building outside plant *incrementally* over a period
26 of 12 years is significantly less efficient, and therefore more costly, than building new outside plant
27 over one to three years since many costs can be avoided when building new, and that this is an
28 economies of scale issue.

1 Petitioner also contends that applying a 46 percent allocation factor to the historical cost to
2 calculate RCN is reasonable considering the higher cost to build incrementally as compared to the
3 much lower cost to build outside plant property all at once. Petitioner further states that the CostQuest
4 study correctly considers multiple sources for cost information rather than relying solely on its own
5 cost information to measure typical market costs for comparable network builds. Moreover, petitioner
6 argues that although its network was built over a 12 year period, it would take only one to three years to
7 build a replacement network of comparable size and capacity, and that costs for “undue delay” and
8 “opportunity costs” do not generally relate to replacement cost new construction of outside plant.

9 Finally, petitioner asserts that it is incumbent upon respondent to show that the purchase price
10 allocation for the subject property in 2012 remains a current and accurate measure of assessed value in
11 2018, and renews its contention that a “reliance restricted” purchase price allocation does not reflect
12 replacement cost new for property tax valuation purposes.

13 Respondent states that the calculation of the ReplCLD indicator is a two step process: the
14 replacement cost new (RCN) is calculated by applying a trend factor to the historical acquisition cost of
15 the property, segregated by year of acquisition, which is then adjusted for depreciation by applying a
16 percent good factor to the RCN. (SAPD’s Analysis for Appeals Attorney, p. 1.)

17 Respondent asserts that its 2018 unitary appraisal for petitioner was based on Schedules B, B-1,
18 and C of the property statement petitioner filed with the Board; that respondent applied trend factors
19 specific to each asset category to arrive at the replacement cost new (RCN) and then applied percent
20 good factors to the RCN for the specific asset categories to arrive at the ReplCLD value indicator.
21 Respondent asserts that its valuation is consistent with Property Tax Rule 6. (SAPD’s Analysis for
22 Appeals Attorney, p.2.)

23 Additionally, since both petitioner and respondent valued petitioner’s outside plant account
24 based on a 20-year life depreciation curve, respondent asserts that the appropriateness and
25 reasonableness of CostQuest’s RCN is at issue and is unacceptable for several reasons.

26 **First**, respondent asserts that CostQuest’s RCN for its entire outside plant account was \$119
27 million indicating that CostQuest believes petitioner’s entire fiber network can be rebuilt for \$119
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1 million as of lien date 2018, but petitioner’s own financial records show that petitioner spent more than
2 \$78 million on outside plant properties in 2017 alone. (CostQuest study, p. 9; SAPD’s Analysis for
3 Appeals Attorney, p.2 .) Additionally, during the last 3 calendar years, petitioner’s total outside plant
4 expenditure was \$122 million, almost \$3 million more than what CostQuest claims to be the cost to
5 rebuild petitioner’s entire network. (*Ibid.*) This means that, according to the CostQuest study, petitioner
6 could rebuild its entire fiber network for less than the cost of performing upgrades and expansions to its
7 existing network in three years. Respondent argues that the CostQuest study reveals a significant
8 discrepancy between what petitioner actually spends on its outside plant properties and what CostQuest
9 estimates is the cost of a new network , and therefore CostQuest’s RCN is not appropriate or reasonable.

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11 **Second**, respondent asserts that although CostQuest states that its RCN removed the
12 “duplicate/triplicate cost of engineering, planning, permitting, etc. of building short routes, replacement
13 routes, and re-enforcement routes in the existing network over time” (CostQuest RCN study, p. 11),
14 petitioner failed to provide any documentation to support its claim that duplicate or triplicate costs were
15 included in respondent’s appraisal. Respondent states that it is well settled that petitioner has the burden
16 of proof in contesting the validity of an assessment (*ITT World Communications, Inc. v. Santa Clara*
17 *County* (1980) 202 Cal.App.3d 246) and petitioner has not met its burden. (SAPD’s Analysis for
18 Appeals Attorney, p. 3.)

19 **Third**, respondent asserts that when CostQuest allocated its total RCN of petitioner’s outside
20 plant account to different acquisition years for depreciation purposes, CostQuest applied a 46 percent
21 allocation factor to the historical cost for each acquisition year from 2006 to 2017, which was based on
22 the ratio of total RCN to total historical cost (total RCN/total historical cost). This means it would cost
23 only 46 percent of the actual price petitioner paid to purchase the properties to *replace* the properties
24 acquired each year from 2006 to 2017. Respondent asserts that this methodology is not supported by
25 Revenue and Taxation Code ² section 110, which defines Fair Market Value (FMV) as
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² All further statutory references are to the Revenue & Taxation Code unless otherwise indicated.

1 the amount of cash or its equivalent that property would bring if exposed for sale in the
2 open market under conditions in which neither buyer nor seller could take advantage of the
3 exigencies of the other, and both the buyer and seller have knowledge of all the uses and
4 purposes to which the property is adapted and for which it is capable of being used, and of
5 the enforceable restrictions upon those uses and purposes.

6 Here, petitioner purchased the outside plant properties for \$78 million in 2017 (CostQuest study,
7 p. 9; SAPD's Analysis for Appeals Attorney, p.3), which is the FMV of these properties unless
8 petitioner establishes that the purchase price was not the FMV of the property on the date of purchase.
9 Since petitioner failed to provide any documentation or evidence to indicate the price of any outside
10 plant properties bought prior to the 2018 lien date did *not* meet the definition of FMV at the time of
11 purchase, respondent was required to assume that the FMV of the outside plant properties was the same
12 as the purchase price, or \$78 million in 2017. Respondent asserts that since the purchase in 2017 was
13 within one year of lien date 2018, it is likely that it would cost about \$78 million to replace the same
14 properties purchased in 2017, and that the FMV as of lien date 2018 for the properties purchased in 2017
15 should be close to \$78 million. The expectation for the 2016 and 2015 purchases would be similar since
16 the outside plant asset category has an average life of at least 20 years. However, according to the
17 CostQuest RCN study, petitioner could replace the entire \$78 million outside plant properties purchased
18 in 2017 for \$36 million as of January 1, 2018, and could replace the entire \$21 million outside plant
19 assets purchased in 2015 for \$9 million. (CostQuest study, p. 9; SAPD's Analysis for Appeals Attorney,
20 p.4.) Respondent argues that petitioner failed to explain these significant discrepancies by providing
21 supporting documentation, and asserts that CostQuest's RCN is not appropriate or reasonable.

22 **Fourth**, respondent asserts that CostQuest's RCN was based on the average cost per unit from
23 three data sources: other network providers, Freedom Telecom, and petitioner's own cost information
24 (petitioner's own cost information was the highest cost per unit). Respondent asserts that it is
25 inappropriate for CostQuest to take an average of the three different costs sources when petitioner's own
26 cost information is available and that it is unreasonable for respondent to consider outside cost sources
27 to be more reliable or relevant than petitioner's own cost information. (SAPD's Analysis for Appeals
28 Attorney, p. 4.)

1 **Finally**, respondent asserts it took petitioner 12 years to build out its current fiber network and
2 that it would be reasonable to assume that the time needed to rebuild petitioner’s network would also be
3 lengthy. Respondent cites Assessor’s Handbook Section 501, *Basic Appraisal* (January 2002), p. 57),
4 which provides that “[w]hen there is a significant delay in acquiring [a] substitute, the cost of the delay
5 must be taken into consideration; a significant delay, in effect, raises the cost.” However, CostQuest’s
6 RCN made no reference to the time required to rebuild a hypothetical new network and did not include
7 an appropriate cost for the estimated length of time it would take to rebuild its fiber network. (SAPD’s
8 Analysis for Appeals Attorney, p. 5.) For these reasons, respondent asserts that reliance on CostQuest’s
9 RCN is inappropriate and unreasonable in determining petitioner’s ReplCLD value indicator for 2018.

10 In a revised analysis, respondent states that after the appeals conference, petitioner provided
11 respondent with additional information related to changes in petitioner’s fiber construction costs
12 between 2012 and 2018 based on its own financial data. As a result, respondent determined that
13 adjustments to respondent’s trend factors for the outside plant account are warranted. As discussed
14 above, trend factors are applied to historical costs to arrive at the estimated RCN. By making
15 adjustments to respondent’s trend factors, and applying the adjusted trend factors for the outside plant
16 account to the historical costs, respondent reduced the ReplCLD value indicator for petitioner’s
17 property by \$19,900,000.

Applicable Law and Appraisal Principles

Burden of Proof

20 Assessing officers are presumed to have properly performed their duties. (Evid. Code,
21 § 664.) Therefore, Petitioner has the burden of showing that the assessment is incorrect or illegal. (*ITT*
22 *World Communications v. Santa Clara* (1980) 101 Cal.App.3d 246; see also Cal. Code Regs., tit. 18,
23 § 5541, subd. (a).)

Value Standard

25 Property Tax Rule 2, subdivision (a) states that “in addition to the meaning ascribed to them in
26 the Revenue and Taxation Code, the words “full value”, “full cash value”, “cash value”, “actual value”
27 and “fair market value” mean the price at which a property, if exposed for sale in the open market with
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1 a reasonable time for the seller to find a purchaser, would transfer for cash or its equivalent under
2 prevailing market conditions between parties who have knowledge of the uses to which the property
3 may be put, both seeking to maximize their gains and neither being a position to take advantage of the
4 exigencies of the other.”

5 **Replacement Cost Approach to Value (ReplCLD Value Indicator)**

6 Property Tax Rule 6, subdivision (a) provides, in part: “The reproduction or replacement cost
7 approach to value . . . is preferred when neither reliable sales data . . . nor reliable income data are
8 available . . .” In general, the ReplCLD valuation methodology is estimated by applying trend factors -
9 price level changes, including the application of “current prices to the labor and material components of
10 a substitute property capable of yielding the same services and amenities, with appropriate additions as
11 specified . . .” (Property Tax Rule 6, subd. (d).) Then, the resulting adjusted cost amount is “reduced
12 by the amount that such cost is estimated to exceed the current value of the reproducible property by
13 reason of physical deterioration, misplacement, over- or under-improvement, and other forms of
14 depreciation or obsolescence. The percentage that the remainder represents of the reproduction or
15 replacement cost is the property’s percent good.” (Property Tax Rule 6, subd. (e); State Board of
16 Equalization, *Unitary Valuation Methods* (March 2003), pp. 23-24.)

17 **Analysis and Disposition**

18 The Appeals Attorney recommends that the Board grant the petition for reassessment as to Issue
19 1. As noted above, after the appeals conference on October 4, 2018, petitioner provided respondent
20 with additional information related to changes in petitioner’s fiber construction costs between 2012 and
21 2018 based on its own financial data. As a result, respondent determined that adjustments to
22 respondent’s trend factors for the outside plant account were warranted. After making adjustments to
23 respondent’s trend factors, and applying the adjusted trend factors for the outside plant account to the
24 historical costs, respondent reduced the 2018 Board-adopted unitary value by \$19,900,000. Petitioner
25 has not presented any evidence or argument to show error in respondent’s adjustment and the reduction
26 is presumed correct.

1 **Legal Issue 2: Whether petitioner has shown that respondent’s appraisal, based on petitioner’s**
2 **reported costs which included petitioner’s 2012 PPA, is inappropriate for property tax purposes.**

3 Petitioner contends that its 2012 PPA prepared by Ernst & Young was performed for financial
4 reporting purposes and that “when assessing property as of January 1, 2018 ... a January 1, 2018 RCN
5 study is a better indicator of fair market value than a 2012 PPA”; the PPA is “a reliance restricted report
6 utilized for financial reporting and not [for] property tax purposes” and that each page of the PPA states
7 that it is “reliance restricted”; the PPA does not cite the California Revenue and Taxation Code section
8 110, which defines fair market value for property tax purposes; the PPA does not mention Property Tax
9 Rule 6 regarding the reproduction and replacement cost approaches to value; and the PPA is
10 “completely silent on valuation authorities and legal precedents governing the assessment of State-
11 assessed unitary property in California.” (Petition, pp. 1-2.)

12 Petitioner further asserts that the PPA does not distinguish between reproduction cost new and
13 replacement cost new since the PPA defines cost as being either replacement cost or reproduction cost.
14 Petitioner states that the reproduction cost has limited usefulness as a basis for determining value
15 because it is often not possible or desirable to duplicate an existing property, citing Assessors’
16 Handbook Section 504, *Assessment of Personal Property and Fixtures*, (October 2002), p. 51.

17 In its reply brief, petitioner states that the PPA is outdated since the transaction took place more
18 than five years before, and that the Board does not have unbridled discretion. Additionally, petitioner
19 asserts that the Board must show that the 2012 PPA remains a current and accurate measure of assessed
20 value in 2018. Petitioner further asserts that PPAs are prepared for financial reporting purposes, and
21 that the PPA is completely silent on legal and valuation authorities, never once citing the California
22 Revenue and Taxation Code section 110 or Property Tax Rule 6. Petitioner also states that a reliance
23 restricted PPA does not properly reflect replacement cost new for property tax valuation purposes but
24 that “The CostQuest report conforms to California’s formal guidelines on determining a replacement
25 cost new under Rule 6(d) by ‘applying current prices to the labor and material components of a
26 substitute property capable of yielding the same services and amenities, with appropriate additions as
27 specified.’” (Petitioner’s Reply, p. 9.) Finally, petitioner states that, as a matter of fact and law, the PPA
28 “does not come close to representing RCNLD, as of the 2018 lien date.” (Petitioner’s Reply, p. 9.)

1 Respondent contends that its appraisal was based on petitioner's reported costs which included
2 the 2012 PPA prepared by Ernst & Young. The PPA was based on the actual sale price of the property
3 and represented the fair market value of the property as of the PPA date, April 10, 2012. Additionally,
4 respondent asserts that the PPA was included in petitioner's own financial records, and became part of
5 Crown Castle's audited financial statements and Form 10-K filed with the Securities and Exchange
6 Commission; that the audited financial statements and Form 10-K were certified and validated by
7 independent auditors as well as the President, CEO and/or CFO of Crown Castle; and that investors, the
8 financial industry, and government regulators all rely on the audited financial statements and Form 10-
9 K for information. (SAPD's Analysis for Appeals Attorney, pp. 5-6.) Therefore, respondent considers
10 the PPA to be a reliable data source for property tax valuation purposes.

11 Respondent also states that although petitioner claims respondent must rely on the CostQuest
12 RCN, the CostQuest RCN study was not certified or validated by independent auditors, the President,
13 CEO or CFO of Crown Castle, nor was it included in the audited financial statements or Form 10-K, or
14 available for review by investors, government regulators, or the general public, and therefore
15 respondent considers the PPA to be a more reliable source of information than CostQuest's RCN in
16 determining the ReplCLD value indicator. (SAPD's Analysis for Appeals Attorney, p. 6.)

17 Respondent disagrees that labeling every page of the PPA report as "Reliance Restricted" and
18 failing to mention "property tax" or section 110 makes the PPA inappropriate for property tax purposes.
19 Respondent asserts that petitioner has failed to provide any documentation, cite any property tax
20 authorities, or explain any legal restrictions to support petitioner's assertions that the PPA is
21 inappropriate or unreliable for property tax assessment purposes. (SAPD's Analysis for Appeals
22 Attorney, p. 6.) Since the burden of proof in contesting the validity of an assessment is on the
23 petitioner, and petitioner has failed to support its claim that the PPA is not appropriate for property tax
24 valuation purposes, respondent asserts that its reliance on the audited, validated, and reported costs
25 which include the PPA for property tax valuation purposes is appropriate.

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Applicable Law and Appraisal Principles

Burden of Proof

Assessing officers are presumed to have properly performed their duties. (Evid. Code, § 664.) Therefore, petitioner has the burden of showing that the assessment is incorrect or illegal. (*ITT World Communications v. Santa Clara* (1980) 101 Cal.App.3d 246; see also Cal. Code Regs., tit. 18, § 5541, subd. (a).)

Value Standard

Property Tax Rule 2, subdivision (a) states that “in addition to the meaning ascribed to them in the Revenue and Taxation Code, the words “full value”, “full cash value”, “cash value”, “actual value” and “fair market value” mean the price at which a property, if exposed for sale in the open market with a reasonable time for the seller to find a purchaser, would transfer for cash or its equivalent under prevailing market conditions between parties who have knowledge of the uses to which the property may be put, both seeking to maximize their gains and neither being in a position to take advantage of the exigencies of the other.”

Replacement Cost Approach to Value (ReplCLD Value Indicator)

Property Tax Rule 6, subdivision (a) provides, in part: “The reproduction or replacement cost approach to value . . . is preferred when neither reliable sales data . . . nor reliable income data are available . . .” In general, the ReplCLD valuation methodology is estimated by applying trend factors - price level changes, including the application of “current prices to the labor and material components of a substitute property capable of yielding the same services and amenities, with appropriate additions as specified . . .” (Property Tax Rule 6, subd. (d).) Then, the resulting adjusted cost amount is “reduced by the amount that such cost is estimated to exceed the current value of the reproducible property by reason of physical deterioration, misplacement, over- or under-improvement, and other forms of depreciation or obsolescence. The percentage that the remainder represents of the reproduction or replacement cost is the property’s percent good.” (Property Tax Rule 6, subd. (e); State Board of Equalization, *Unitary Valuation Methods* (March 2003), pp. 23-24.)

1 **Analysis and Disposition**

2 The Appeals Attorney recommends that the Board deny the petition for reassessment as to Issue
3 2. Respondent is presumed to have correctly determined the value of the property at issue, and
4 petitioner bears the burden of proving otherwise. Here, the appraisal was based on petitioner’s reported
5 costs which included the 2012 PPA, which was based on the actual sale price of the property. The PPA
6 was also included in petitioner’s financial records and became part of petitioner’s audited financial
7 statements and Form 10-K filed with the Security and Exchange Commission and were certified and
8 validated by independent auditors and the President and CEO or CFO of Crown Castle and were relied
9 upon by investors, the financial industry, and government regulators. However, the CostQuest RCN
10 study was *not* subject to the same audits, certifications, validations or review, nor was the CostQuest
11 RCN relied upon by investors, financial institutions, or government regulators. Finally, petitioner
12 provides no authority for its assertion that labeling each page of the PPA as “reliance restricted” or
13 failing to mention “property tax” or section 110 makes the PPA inappropriate or unreliable for property
14 tax purposes.

15 **Decision**

16 Accordingly, the petition for reassessment is granted, in part, reducing the 2018 Board-adopted
17 unitary value to \$306,000,000.*

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19 George Runner _____, Chairman

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21 Diane L. Harkey _____, Member

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23 Jerome Horton _____, Member

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26 * The decision was rendered in Sacramento, California on December 12, 2018. This summary decision
27 document was approved on February 26, 2019, in Sacramento, California.

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