

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 2016 Unitary Value for:)

5
6 **Verizon California, Inc. (0201)**)

Appeal No.: SAU 16-016

Case ID No.: 962203

7
8 Petitioner)

Nonappearance Hearing Date:

December 14, 2016¹

9
10 Representing the Parties:

11 For the Petitioner:

Richard Jankun, Verizon California, Inc.

12 For the Respondent:

Leslie Ang, Tax Counsel

Attorney for State-Assessed Properties Division

13
14 Richard Reisinger, Business Taxes Administrator III
State-Assessed Properties Division

15
16 Counsel for Appeals Division:

Louis A. Ambrose, Tax Counsel IV

17 VALUES AT ISSUE

	Value	Penalty	Total
19 2016 Board-Adopted Unitary Value	\$2,611,300,000	\$0	\$2,611,300,000
20 Petitioner's Requested Unitary Value	\$1,232,385,797	\$0	\$1,232,385,797
21 Respondent's Recommendation On Appeal	\$2,611,300,000	\$0	\$2,611,300,000

22
23 LEGAL ISSUE 1

24 Whether petitioner has established that the valuation methodology used to determine the 2016 Board-
25 adopted unitary value fails to reflect current fair market value.

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27 FINDINGS OF FACT AND RELATED CONTENTIONS

1 Verizon California, Inc. (petitioner) is the second largest incumbent local exchange carrier in
2 the State of California. Petitioner is a wholly owned subsidiary of Verizon Communications Inc.
3 Petitioner is regulated by the California Public Utilities Commission (CPUC) and, like other
4 state-assessed incumbent local telephone companies, is designated as a telephone service provider of
5 last resort (POLR). Prior to the Board's adoption of the 2016 unitary value, petitioner submitted a
6 report by Deloitte Advisory Services, titled *Analysis of the Fair Market Value of Certain Tangible*
7 *Assets of Verizon California, Inc. as of January 1, 2016* (Deloitte Study) in collaboration with
8 CostQuest Associates (CostQuest). The 2016 Board-adopted unitary value of \$2,611,300,000 was
9 based on 100-percent reliance on the Replacement Cost Less Depreciation (ReplCLD) value indicator.

10 Petitioner maintains that the Board used a different appraisal methodology in 2016 than in prior
11 years to determine the Replacement Cost New (RCN) which resulted in an overstatement of the 2016
12 unitary value. Petitioner contends that the Deloitte Study correctly values petitioner's property as of
13 the 2016 valuation date and does not reflect events that occurred after the valuation date. Petitioner
14 further contends that as of the January 1, 2016 valuation date the proposed sale of petitioner and other
15 non-California operations was not complete so the sale may not be relied upon to determine the 2016
16 fair market value of petitioner's unitary property. In addition, petitioner asserts that the \$10.54 billion
17 purchase price was not solely for petitioner or its California operations and included non-California
18 property and nontaxable intangible assets. Petitioner asserts that respondent's analysis relies on the
19 preliminary purchase price allocation (PPA) but is based on unsupported assumptions with respect to
20 the preliminary PPA which, as noted on the Form 8-K, may differ significantly from the actual
21 allocation.

22 Respondent notes that the Deloitte Study uses a fiber to the premises (FTTP)/fixed wireless
23 hybrid model as the replacement network model for petitioner's copper line networks located in remote
24 areas but respondent believes a FTTP replacement cost study, which petitioner submitted in prior years,
25 to be a more reasonable replacement model for petitioner's entire network and, for that reason,
26 respondent used petitioner's full FTTP replacement cost study as the starting point and made appropriate
27

28 ¹ The Board voted unanimously to deny the petition for reassessment and affirm the 2016 Board-adopted unitary value of \$2,611,300,000.

1 adjustments to determine the recommended unitary value. Petitioner did not provide a full FTTP
2 replacement cost study or purchase price information regarding the sale from Verizon to Frontier.

3 Respondent states that it utilized the best available information by using historical costs reported
4 by petitioner which respondent trended and adjusted for depreciation and for economic obsolescence
5 using the same methodology used for similarly-situated large incumbent local exchange carriers in
6 California. Respondent states that the Form 8-K, *Current Report*, filed with the United States Securities
7 and Exchange Commission dated August 1, 2016 (SEC Form 8-K), shows preliminary PPA amounts for
8 the acquisition of petitioner's property, plant and equipment accounts in California, Texas, and Florida
9 was \$7,693,000,000. Considering the fact that the California market is larger than either the Texas or
10 Florida markets, respondent argues that the preliminary PPA amount supports the 2016 Board-adopted
11 unitary value of \$2,611,300,000.

12 APPLICABLE LAW

13 Burden of Proof

14 Assessing officers are presumed to have properly performed their duties. (Evid. Code, § 664.)
15 The Board has promulgated the Rules for Tax Appeals (RTA) to govern the administrative and
16 appellate review processes for all of the tax and fee programs administered by the Board. (Cal. Code
17 Regs., tit. 18, § 5000.) Of relevance here, RTA 5541, subdivision (a), places the burden of proof upon
18 the taxpayer as to all issues of fact except as otherwise specifically provided by law. Courts have long
19 presumed that the Board assesses all property correctly, placing on the taxpayer the burden of proving
20 that an assessment is incorrect. (*Trailer Train Co. v. State Bd. of Equalization* (1986) 180 Cal.App.3d
21 565, 584.) Therefore, petitioner bears the burden of showing that the assessment is illegal.
22 (*ITT World Communications v. Santa Clara County* (1980) 101 Cal.App.3d 246.)

23 ANALYSIS AND DISPOSITION

24 The Deloitte Study is based on the assumption that a fixed wireless network is a satisfactory
25 substitute for the existing copper network, provides the same or better utility and functionality, and is
26 more cost effective in terms of capital construction costs and maintenance expenses. However, as
27 explained in Issue 2 below, we find that petitioner has not demonstrated that those networks provide the
28 same or better utility and functionality than a copper wireline network. Thus, the study is not a valid

1 starting point for a reliable fair market value determination. Consequently, petitioner has not met its
2 burden of proving error in respondent's value determination based on petitioner's reported historical
3 costs with appropriate adjustments.

4 LEGAL ISSUE 2

5 Whether petitioner has established that a fixed wireless network is the most probable replacement
6 model for rural service areas.

7 FINDINGS OF FACT AND RELATED CONTENTIONS

8 Petitioner states that respondent rejected the premise that fixed wireless architecture is the most
9 probable replacement network and questioned whether petitioner could legally or practically replace all
10 or a portion of its wireline network with a fixed wireless architecture, and whether petitioner intends to
11 offer fixed wireless services to its customers. Petitioner contends that respondent erroneously assumed
12 FTTP architecture for all of petitioner's service areas which resulted in an excessive 2016 Board-
13 adopted unitary value.

14 Petitioner asserts that currently in rural areas where fiber is not deployed, cable providers and
15 independent wireless Internet service providers are using fixed terrestrial wireless networks to offer
16 Internet, video, and voice services, including advanced services like Voice over Internet Protocol
17 (VoIP) and bandwidth-heavy applications. Petitioner further asserts that, as of the 2016 lien date, fixed
18 wireless providers offered a compelling service alternative to Fiber-to-the-digital (FTTD) loop
19 architecture. Petitioner maintains that fixed wireless provides cost advantages over copper wires,
20 particularly in lower density regions where large amounts of copper miles are required to reach
21 potential customers, which results in higher capital network construction costs and maintenance
22 expenses. Petitioner also maintains that fixed wireless network architecture provides the same or better
23 utility and functionality than a copper based network, but with significantly lower combined capital and
24 operational expenses.

25 Petitioner contends that it is not legally restricted by the California Public Utilities Commission
26 (CPUC) or by any other regulator from serving its wireline customers through the most effective
27 means, including appropriate fixed wireless alternatives. Petitioner notes that, prior to the 2015 lien
28 date, the CPUC adopted an updated definition of "basic telephone service" that is designed to allow

1 telecommunications providers to service their customers on a technology-neutral basis using all forms
2 of communications technology, including, but not limited to, wireline, wireless, VoIP, and any other
3 future technology that may be used in the provision of telephone service. Petitioner further notes that
4 the CPUC specifically acknowledged, as long as the specified elements are met, “[a]ny carrier may use
5 any technology to satisfy any obligation to provide basic service.” Thus, petitioner contends that a
6 “key fact” asserted by respondent is inaccurate.

7 Petitioner further asserts that for two decades the CPUC has encouraged the deployment of
8 alternative technology by POLRs. Petitioner states that, in 1993, the CPUC issued a report entitled
9 “Enhancing California’s Competitive Strength: A Strategy for Telecommunications Infrastructure”
10 (Infrastructure Report), which recommended including the promotion of “a technology-neutral
11 infrastructure policy to the maximum extent possible.” Petitioner notes that the Infrastructure Report
12 stated that telecommunications providers in California, including local exchange carriers, should be
13 allowed to make their own investment decisions, including the type of technology employed. Petitioner
14 also states that, in Decision 94-08-029, the CPUC affirmed that POLRs should be free to choose
15 technologies to bring advanced telecommunications to California.

16 Petitioner further contends that federal law provides support for a “technology-neutral
17 infrastructure policy” and cites the Telecommunications Act of 1996 which provides that “each state
18 with regulatory jurisdiction over telecommunications services shall encourage deployment of advanced
19 telecommunications capability on a reasonable and timely basis.” Petitioner also cites Decision
20 97-06-090 in which the CPUC held that “[t]he pursuit of a technology-neutral policy finds support in
21 the Telecommunications Act of 1996.” Petitioner concludes that the CPUC specifically approved the
22 use of wireless technologies through its recognition that “[a]dvancements in technology have also
23 affected the telephone industry” and that “wireless technology offers providers an alternative to placing
24 wires or cables into the ground.” Petitioner asserts that the CPUC reaffirmed its commitment toward a
25 technology-neutral telecommunications infrastructure policy as expressed in the Infrastructure Report,
26 which allows “the telecommunications providers to make their own investment decisions, including the
27 type of technology they employ.” Finally, petitioner states that fixed wireless service is already
28 available in California by several providers and that petitioner plans to utilize fixed wireless in “areas

1 that are more rural and sparsely populated, where LTE [Long-Term Evolution] wireless will provide
2 services instead of copper.”

3 Respondent states that the Deloitte Study proposes a fixed wireless network as a replacement
4 model for petitioner’s current legacy copper networks located in remote areas. Respondent contends
5 that a hypothetical fixed wireless network is not an appropriate replacement network model because it
6 does not meet the criteria of the Board’s *Guidelines for Substantiating Additional Obsolescence for*
7 *State-Assessed Telecommunications Properties* (Guidelines), which provide that “[i]n developing a
8 replacement cost, the substitution with technologically superior property must be more than a
9 theoretical exercise; the proposed replacement must be available, implementation should follow a
10 realistic time frame, and include all associated costs.” With regard to petitioner’s assertion that there
11 are no legal restrictions preventing it from employing fixed wireless networks, respondent contends that
12 the issue is not whether petitioner can establish fixed wireless networks, but whether petitioner may
13 legally provide only fixed wireless structures in rural or remote areas as a POLR. Respondent further
14 notes that CPUC Decision No. 12-12-038 specifically states that “while [statistics from the Federal
15 Communication Commission’s report on wireless markets and the CPUC Staff Report of Affordability
16 of Telephone Service] indicate a growing use of wireless, current wireless service plans -- without
17 wireline at least as a backup -- are still not exclusively meeting most consumers’ basic service needs.”
18 (Cal. P.U.C. Dec. No. 12-12-038 at p. 25.)

19 Respondent states that in 2014, AT&T provided documentation in support of an application to
20 the Federal Communications Commission (FCC), in which AT&T expressly admitted that impediments
21 to deploying fixed wireless to date included “high deployment costs,” the fact that fixed wireless service
22 was “a relatively untested technology,” and that its success in the marketplace was “unproven.”
23 Respondent asserts that the FCC, in a Memorandum Opinion and Order dated July 28, 2015, expressed
24 suspicion regarding the technological and economic feasibility of fixed wireless service and found
25 limited support for fixed wireless coverage and performance because it is “uncommon and is not
26 generally in use.”

27 Respondent contends that petitioner has provided no evidence that it is currently providing fixed
28 wireless service to its California customers, or that it plans to provide fixed wireless service to its

1 California customers in the near future. Respondent states that petitioner has attempted to offer
2 wireless networks as a replacement for copper line networks to POLR customers outside of California
3 but, upon being met with complaints related to wireless service, decided to implement a fiber-optic-
4 based service instead.

5 APPLICABLE LAW AND APPRAISAL PRINCIPLES

6 ReplCLD Value Indicator

7 Property Tax Rule 6,² subdivision (a) provides, in pertinent part, that: “The reproduction or
8 replacement cost approach to value . . . is preferred when neither reliable sales data . . . nor reliable
9 income data are available . . .” In general, the ReplCLD valuation methodology is estimated by
10 applying the appropriate trend factors, including the application of “current prices to the labor and
11 material components of a substitute property capable of yielding the same services and amenities, with
12 appropriate additions . . .” (Property Tax Rule 6, subd. (d).) The resulting adjusted cost amount is
13 “reduced by the amount that such cost is estimated to exceed the current value of the reproducible
14 property by reason of physical deterioration, misplacement, over- or underimprovement, and other
15 forms of depreciation or obsolescence. The percentage that the remainder represents of the
16 reproduction or replacement cost is the property’s percent good.” (Property Tax Rule 6, subd. (e).)

17 Replacement Cost New

18 The replacement cost new (RCN) is an estimate of the current cost to replace a property with a
19 new property *of equivalent utility*, which should include all economic costs necessary to put the
20 property to productive and beneficial use. The RCN is calculated by applying an index factor, which is
21 acquired from industry data, to the historical acquisition cost of the unitary property of the assessee,
22 segregated by year of acquisition. The use of index factors applied to historical cost data is the
23 preferred method of calculating the RCN for mass appraisal purposes. The historical cost of property is
24 adjusted (in the aggregate or by groups) for replacement cost level changes by multiplying the cost
25 incurred in a given year by the appropriate replacement cost index factor. RCN should reflect the
26 current cost a knowledgeable person or company would pay if it were necessary to replace the subject
27

28 ² All references to Property Tax Rules are to sections of title 18 of the California Code of Regulations.

1 property with a new property of equivalent utility. RCN is considered an excellent starting point for
2 estimating the value of newer property that is not regulated for rate of return because the property
3 owner has the freedom, with competitive constraints, to adjust revenues to current costs based on
4 market factors. (UVM, p. 23.)

5 Development of RCN Trend Factors

6 With respect to RCN trend factors that are the bases for converting the historical cost of
7 property into current replacement cost levels, the UVM, at page 28, further provides:

8 These factors measure the current cost of replacing the existing property with a substitute
9 property having *equivalent utility*.

10 In developing replacement cost index factors, staff currently relies on two sources:
11 (1) studies submitted by industry participants and (2) studies performed by the Policy
12 Planning and Standards Division (PPSD) of the Property Taxes Department. The PPSD
13 studies at present pertain only to general purpose computer equipment and peripherals.

13 Economic Principle of Substitution

14 The rationale for the use of the cost approach is based on the economic principle of substitution,
15 which holds that a rational person will pay no more for a property than the cost of acquiring a
16 satisfactory substitute, assuming no costly delay. If the condition of no costly delay is not satisfied, the
17 cost of the delay must be added to the cost of a substitute property. If the delay in acquiring a substitute
18 is too costly so that it would not be worthwhile to replace the property, then the cost of replacement
19 cannot be said to represent the property's market value. (AH 502, p. 12.)

20 ANALYSIS AND DISPOSITION

21 The Board is presumed to have correctly determined the value of the property at issue, and
22 petitioner bears the burden of proving otherwise. (Cal. Code Regs., tit. 18, § 5541, subd. (a).)
23 Petitioner's RCN model assumes that a fixed wireless network is a satisfactory substitute for the
24 existing copper network based on petitioner's assertion that fixed wireless networks: (1) are in use by
25 cable providers and Internet service providers; (2) provide the same or better utility and functionality;
26 and (3) are more cost effective in terms of capital construction costs and maintenance expenses.
27 Petitioner also asserts that there are no legal restrictions on the deployment of a fixed wireless network
28 to provide local exchange service in view of the fact that the CPUC's definition of "basic telephone

1 service” allows petitioner to use such technology, subject to certain requirements, to satisfy its
2 obligation to provide basic service.

3 While petitioner correctly states that fixed wireless networks are in use by other cable and
4 Internet providers, petitioner has not demonstrated that those networks provide the same or better utility
5 and functionality than a copper wireline network. In fact, as described by respondent, the administrative
6 record in the AT&T proceeding pointed out the functional impediments and limited support for
7 deployment of fixed wireless coverage and performance. In addition, petitioner has not presented any
8 evidence of an intention to deploy a fixed wireless network in rural and remote areas of California. For
9 the foregoing reasons, petitioner has not met its burden of proof on this issue.

10 LEGAL ISSUE 3

11 Whether petitioner has shown that its RCN estimates include all necessary costs to construct
12 replacement property.

13 FINDINGS OF FACT AND RELATED CONTENTIONS

14 Petitioner asserts that the RCN analysis completed by CostQuest for the Deloitte Study includes
15 all necessary costs to construct replacement property. Petitioner states that in the development of the
16 RCN CostQuest includes “the material cost for electronics and the material and labor costs for outside
17 plant (e.g., fiber).” Petitioner argues that RCN costs account for a fully functioning up-to-date network
18 that captures the utility of the subject plant as well as current and some future Construction Work in
19 Progress (CWIP) and includes a growth factor to account for CWIP driven by growth in the scale of the
20 network. Petitioner asserts that those RCN estimates should be accepted because petitioner has built out
21 its FiOS network within California which provides “readily applicable practical empirical data” to
22 support petitioner’s RCN assumptions. Petitioner further asserts that its competitors, such as AT&T and
23 Google Fiber, have also constructed large-scale FTTP networks which also support petitioner’s RCN
24 assumptions.

25 Respondent expresses no opinion regarding the CostQuest RCN estimate’s inclusion of
26 necessary costs. Respondent states that, as explained for Issues 1 and 2 above, respondent did not base
27 its appraisal on the Deloitte Study because it was based on an FTTP/fixed wireless hybrid model, which
28 respondent does not believe is either reasonable or feasible.

1 ///

2 APPLICABLE LAW AND APPRAISAL PRINCIPLES

3 Burden of Proof

4 Assessing officers are presumed to have properly performed their duties. (Evid. Code, § 664.)
5 The Board has promulgated the Rules for Tax Appeals (RTA) to govern the administrative and
6 appellate review processes for all of the tax and fee programs administered by the Board. (Cal. Code
7 Regs., tit. 18, § 5000.) Of relevance here, RTA 5541, subdivision (a), places the burden of proof upon
8 the taxpayer as to all issues of fact except as otherwise specifically provided by law. Courts have long
9 presumed that the Board assesses all property correctly, placing on the taxpayer the burden of proving
10 that an assessment is incorrect. (*Trailer Train Co. v. State Bd. of Equalization* (1986) 180 Cal.App.3d
11 565, 584.) Therefore, petitioner bears the burden of showing that the assessment is illegal.
12 (*ITT World Communications v. Santa Clara County* (1980) 101 Cal.App.3d 246.)

13 ANALYSIS AND DISPOSITION

14 As explained in Issue 2 above, the replacement cost model proposed by the Deloitte Study is not
15 credible as petitioner has not demonstrated that a FTTP/fixed wireless hybrid network provides the same
16 or better utility and functionality than a copper wireline network. Thus, the CostQuest RCN estimates
17 incorporated by the Deloitte Study are not reliable and it is irrelevant whether those RCN estimates
18 included all necessary costs to construct the hybrid network.

19 LEGAL ISSUE 4

20 Whether petitioner has shown that the 2016 Board-adopted unitary value is excessive because it relies
21 on inappropriate percent good factors.

22 FINDINGS OF FACT AND RELATED CONTENTIONS

23 Petitioner maintains that the “depreciation estimates” used in the Deloitte Study are reliable and
24 that this Board has not disclosed the factual or methodological bases, or the assumptions and
25 calculations of the percent good factors upon which the 2016 Board-adopted unitary value is based.
26 Petitioner further asserts that the Board has not disclosed the factual or methodological bases, or the
27 assumptions and calculations upon which the Deloitte Study depreciation estimates were rejected.
28

1 Respondent states that petitioner's claims misconstrue the burden of proof in that it is well-
2 established that the burden of proof in contesting the validity of an assessment is on the petitioner.
3 Respondent contends that petitioner has not provided any evidence to show that the percent good
4 factors used by respondent are invalid and that petitioner has not requested that respondent explain or
5 clarify the percent good factors used to determine the Board-adopted unitary value.

6 APPLICABLE LAW AND APPRAISAL PRINCIPLES

7 Percent Good Factors

8 Percent-good factors are the basis for adjusting the replacement cost new (RCN) into an
9 indicator of fair market value. The factors are complements of physical deterioration and functional
10 obsolescence and are used to determine the remaining value of a property. The factors used for a given
11 property type are derived from the expected economic life of that property type and are based on
12 service life studies that help determine the applicable percent-good factors. Service life studies survey
13 industry participants that own specific types of property and can measure some, but not all, economic
14 obsolescence. Examples of economic obsolescence include: increased competition, unexpected
15 technological innovation, legal limitations on use, and environmental factors. (*Unitary Valuation*
16 *Methods* (March 2003) (UVM), p. 30.)

17 In addition to economic life, there are four other variables that have an effect on percent-good
18 factors. These are: the rate of return, the method of calculation, the survivor curve, and the presence of
19 an income adjustment factor. Respondent determines these variables as follows: rate of return
20 annually established by the Property Tax Department; single-life calculation method; R-3 survivor
21 curve; and the use of an income adjustment factor reflecting a 10-percent decline over average life.
22 Petitioner has the burden of establishing the existence of any additional or extraordinary obsolescence.
23 (See Property Tax Rule 6, subds. (d) & (e); Assessors' Handbook section 502, *Advanced Appraisal*
24 (December 1998) (AH 502), pp. 20-21; UVM, p. 30.)

25 Burden of Proof

26 Assessing officers are presumed to have properly performed their duties. (Evid. Code, § 664.)
27 The Board has promulgated the Rules for Tax Appeals (RTA) to govern the administrative and
28 appellate review processes for all of the tax and fee programs administered by the Board. (Cal. Code

1 Regs., tit. 18, § 5000.) Of relevance here, RTA 5541, subdivision (a), places the burden of proof upon
2 the taxpayer as to all issues of fact except as otherwise specifically provided by law. Courts have long
3 presumed that the Board assesses all property correctly, placing on the taxpayer the burden of proving
4 that an assessment is incorrect. (*Trailer Train Co. v. State Bd. of Equalization* (1986) 180 Cal.App.3d
5 565, 584.) Therefore, petitioner bears the burden of showing that the assessment is illegal.
6 (*ITT World Communications v. Santa Clara County* (1980) 101 Cal.App.3d 246.)

7 ANALYSIS AND DISPOSITION

8 Petitioner does not provide any evidence or argument and merely states that it believes the
9 percent good factors utilized by the Deloitte Study are appropriate. Thus, petitioner has not met its
10 burden of proof to overcome the presumption that respondent properly relied on its percent good
11 factors.

12 LEGAL ISSUE 5

13 Whether petitioner has shown that the 2016 Board-adopted unitary value is excessive because it relies
14 on inappropriate trend factors.

15 FINDINGS OF FACT AND RELATED CONTENTIONS

16 Petitioner maintains that the trend factors used in the Deloitte Study are reliable and that this
17 Board has not disclosed the factual or methodological bases, or the assumptions and calculations of the
18 trend factors upon which the 2016 Board-adopted unitary value is based. Petitioner further asserts that
19 the Board has not disclosed the factual or methodological bases, or the assumptions and calculations
20 upon which the Deloitte Study trend factors were rejected.

21 Respondent states that petitioner's claims misconstrue the burden of proof in that it is well-
22 established that the burden of proof in contesting the validity of an assessment is on the petitioner.
23 Respondent contends that petitioner has not provided any evidence to show that the trend factors used
24 by respondent are invalid and that petitioner has not requested that respondent explain or clarify the
25 trend factors used to determine the Board-adopted unitary value.

26 APPLICABLE LAW AND APPRAISAL PRINCIPLES

27 Burden of Proof

28 Assessing officers are presumed to have properly performed their duties. (Evid. Code, § 664.)

1 The Board has promulgated the Rules for Tax Appeals (RTA) to govern the administrative and
2 appellate review processes for all of the tax and fee programs administered by the Board. (Cal. Code
3 Regs., tit. 18, § 5000.) Of relevance here, RTA 5541, subdivision (a), places the burden of proof upon
4 the taxpayer as to all issues of fact except as otherwise specifically provided by law. Courts have long
5 presumed that the Board assesses all property correctly, placing on the taxpayer the burden of proving
6 that an assessment is incorrect. (*Trailer Train Co. v. State Bd. of Equalization* (1986) 180 Cal.App.3d
7 565, 584.) Therefore, petitioner bears the burden of showing that the assessment is illegal.
8 (*ITT World Communications v. Santa Clara County* (1980) 101 Cal.App.3d 246.)

9 ANALYSIS AND DISPOSITION

10 The Deloitte Study states the RCN was estimated for buildings “owned” by petitioner and that
11 Deloitte analyzed the primary use of “all the owned buildings” to determine the use categories for
12 purposes determining a cost per square foot. There is no evidence that the Deloitte Study performed an
13 RCN analysis or use determination for leased buildings completely occupied by petitioner. Therefore,
14 petitioner has failed to meet its burden of proving error in respondent’s determination to add value for
15 leased buildings fully occupied by petitioner.

16 LEGAL ISSUE 6

17 Whether petitioner has shown that the 2016 Board-adopted unitary value is excessive because it
18 understates costs for pole removal and aerial cable removal.

19 FINDINGS OF FACT AND RELATED CONTENTIONS

20 Petitioner contends that respondent has not provided any support for its RCN estimate of costs
21 per pole and did not disclose component costs for materials, labor, and installation.” Petitioner states
22 that its 100-percent-owned poles are “primarily 30 foot poles” and that petitioner typically incurred a
23 cost of \$988.40 per pole. Petitioner itemizes the RCN by material and labor, pole anchor material and
24 labor, and loading costs and contends that respondent’s “per-pole RCN grossly overstates typical pole
25 investment costs incurred by petitioner in California.

26 Respondent asserts it did not use the Deloitte Study’s pole and aerial cable removal costs
27 because the Deloitte Study reduced the discount rate for the removal costs by an income tax component
28 which inflates those costs and is not supported by any generally accepted appraisal theories or

1 practices. Respondent further asserts that pole and aerial cable removal costs have remained relatively
2 consistent from year to year; thus, as the best information available, respondent used the pole and aerial
3 cable removal costs from the 2015 valuation study provided by petitioner, which did not reduce the
4 discount rate.

5 APPLICABLE LAW

6 Burden of Proof

7 Assessing officers are presumed to have properly performed their duties. (Evid. Code, § 664.)
8 The Board has promulgated the Rules for Tax Appeals (RTA) to govern the administrative and
9 appellate review processes for all of the tax and fee programs administered by the Board. (Cal. Code
10 Regs., tit. 18, § 5000.) Of relevance here, RTA 5541, subdivision (a), places the burden of proof upon
11 the taxpayer as to all issues of fact except as otherwise specifically provided by law. Courts have long
12 presumed that the Board assesses all property correctly, placing on the taxpayer the burden of proving
13 that an assessment is incorrect. (*Trailer Train Co. v. State Bd. of Equalization* (1986) 180 Cal.App.3d
14 565, 584.) Therefore, petitioner bears the burden of showing that the assessment is illegal.
15 (*ITT World Communications v. Santa Clara County* (1980) 101 Cal.App.3d 246.)

16 ANALYSIS AND DISPOSITION

17 Petitioner has not presented any argument or evidence to support its reduction in the discount
18 rate by an income tax component. Thus, petitioner has not met its burden of proof to overcome the
19 presumption that respondent properly relied on the 2015 valuation study to determine the removal
20 costs.

21 LEGAL ISSUE 7

22 Whether petitioner has shown that the 2016 Board-adopted unitary value is excessive because it fails to
23 account for all obsolescence.

24 FINDINGS OF FACT AND RELATED CONTENTIONS

25 Petitioner contends that this Board based its economic obsolescence calculation on incorrect
26 inputs which do not accurately reflect underutilized fiber and copper plant. Petitioner contends that
27 access line counts are a more accurate measure of fiber and copper cable utilization, as each access line
28 represents a direct connection between the central office and the end user. Petitioner asserts that

1 Deloitte’s economic obsolescence calculation is based on working access lines versus total access lines
2 in California. Furthermore, petitioner contends that the Board’s economic obsolescence calculation is
3 based on an incorrect scale factor of 0.387, “further minimizing” the recognition of economic
4 obsolescence. Petitioner states that the Deloitte Study uses scale factors from the CostQuest analysis of
5 0.422 for the FiOS and 0.294 for the replacement network that is replacing the copper in the non-FiOS
6 areas. Petitioner further contends that the Board failed to recognize the economic obsolescence
7 resulting from excess building space due to inutility. Petitioner asserts that the Deloitte Study correctly
8 took into account an obsolescence penalty for the excess building space based on a building
9 replacement cost study performed by CostQuest and Board’s failure to do so results in an overvaluation
10 of such assets. Petitioner also asserts that the Board failed to recognize functional obsolescence
11 applicable to aerial and buried fiber optic cable and that the Board’s pole removal cost component
12 significantly understates the actual service costs petitioner will incur and fails to account for service
13 costs of aerial cable removal.

14 Respondent asserts that obsolescence adjustments and measurement standards, both economic
15 and functional, will vary significantly depending upon the appraisal methodology utilized. Respondent
16 states that, as discussed above, the Deloitte Study was not used in respondent’s value determination due
17 to its unsupported premise of the abandonment of its copper wireline system and replacement with a
18 hybrid FTTP/fixed wireless technology. For that reason, respondent asserts that most, if not all, of the
19 data used in the Deloitte Study’s obsolescence calculations are not applicable because they are
20 mismatched with respondent’s replacement cost system and it is inappropriate to compare specific data
21 points from two separate appraisals using different methodologies and different assumptions.
22 Respondent contends that, based upon the best available information, economic and functional
23 obsolescence were accounted for in its appraisal based on the same percent-good factors, trend factors,
24 and economic life calculations that respondent used for other similarly-situated large incumbent local
25 exchange carriers in California. Respondent maintains that petitioner failed to demonstrate that
26 respondent’s obsolescence measures were inadequate.

27 APPLICABLE LAW

28 Burden of Proof

1 Assessing officers are presumed to have properly performed their duties. (Evid. Code, § 664.)
2 The Board has promulgated the Rules for Tax Appeals (RTA) to govern the administrative and
3 appellate review processes for all of the tax and fee programs administered by the Board. (Cal. Code
4 Regs., tit. 18, § 5000.) Of relevance here, RTA 5541, subdivision (a), places the burden of proof upon
5 the taxpayer as to all issues of fact except as otherwise specifically provided by law. Courts have long
6 presumed that the Board assesses all property correctly, placing on the taxpayer the burden of proving
7 that an assessment is incorrect. (*Trailer Train Co. v. State Bd. of Equalization* (1986) 180 Cal.App.3d
8 565, 584.) Therefore, petitioner bears the burden of showing that the assessment is illegal.
9 (*ITT World Communications v. Santa Clara County* (1980) 101 Cal.App.3d 246.)

10 Depreciation and the Replacement Cost Approach

11 In general, the ReplCLD value indicator recognizes three types of depreciation: physical
12 deterioration, functional obsolescence, and external, or economic, obsolescence, through application of
13 the Board's replacement cost new trend factors and "percent" good factors. Obsolescence may occur
14 when property is outmoded (functional obsolescence) or when some event has substantially diminished
15 the future earning power of the property (economic obsolescence). (*See Assessors' Handbook* section
16 501, *Basic Appraisal* (January 2002), pp. 81-83.) Functional obsolescence is the loss of value in a
17 property caused by the property's loss of capacity to perform the function for which it was intended.
18 (*Id.* at p. 81.) Economic obsolescence is the diminished utility of a property due to adverse factors
19 external to the property being appraised and is incurable by the property owner. (*Id.* at p. 82.)

20 ANALYSIS AND DISPOSITION

21 As discussed above, the Deloitte Study is not considered a reliable basis for a replacement cost
22 valuation approach because it assumes the abandonment of petitioner's copper wireline system and
23 replacement with a hybrid FTTP/fixed wireless technology. Respondent accounted for economic and
24 functional obsolescence in its RepCLD indicator based on the same percent-good factors, trend factors,
25 and economic life calculations that respondent used for other similarly-situated large incumbent local
26 exchange carriers in California. Petitioner failed to provide any evidence to demonstrate that
27 respondent's obsolescence adjustments were inadequate. Moreover, petitioner has not provided any
28 evidence to support its claim that respondent's scaling factor minimizes economic obsolescence.

1 LEGAL ISSUE 8

2 Whether petitioner has shown that the 2016 Board-adopted unitary value is excessive because it fails to
3 account for exempt software costs.

4 FINDINGS OF FACT AND RELATED CONTENTIONS

5 Petitioner contends that the 2016 Board-adopted unitary value includes the value of nontaxable
6 custom application software. Petitioner asserts that the costs associated with bundled software,
7 purchased together with computer hardware components and subcomponents, were not segregated from
8 the digital circuit equipment, analog circuit equipment, digital switching equipment, packet switching
9 equipment and operator systems. Petitioner requests a reduction in the 2016 Board-adopted unitary
10 value to account for the nontaxable application software.

11 Respondent asserts that embedded software costs were removed by applying a percentage of
12 software to circuit, switch, and operating system asset categories, which was previously agreed upon by
13 respondent and petitioner. Respondent further asserts that petitioner has not provided any evidence to
14 demonstrate that the value of exempt application software was included in the 2016 Board-adopted
15 unitary value.

16 APPLICABLE LAW AND APPRAISAL PRINCIPLES

17 Burden of Proof

18 Assessing officers are presumed to have properly performed their duties. (Evid. Code, § 664.)
19 The Board has promulgated the Rules for Tax Appeals (RTA) to govern the administrative and
20 appellate review processes for all of the tax and fee programs administered by the Board. (Cal. Code
21 Regs., tit. 18, § 5000.) Of relevance here, RTA 5541, subdivision (a), places the burden of proof upon
22 the taxpayer as to all issues of fact except as otherwise specifically provided by law. Courts have long
23 presumed that the Board assesses all property correctly, placing on the taxpayer the burden of proving
24 that an assessment is incorrect. (*Trailer Train Co. v. State Bd. of Equalization* (1986) 180 Cal.App.3d
25 565, 584.) Therefore, petitioner bears the burden of showing that the assessment is illegal.
26 (*ITT World Communications v. Santa Clara County* (1980) 101 Cal.App.3d 246.)

27 ANALYSIS AND DISPOSITION

28 Petitioner makes bare assertions that the Board-adopted unitary value fails to properly exclude

1 the value of nontaxable custom application software. Respondent states that the entire amount of
2 nontaxable application software identified in the Deloitte Study has been removed from the value of
3 petitioner's unitary property. Because petitioner has presented no evidence to support any further
4 adjustment, petitioner has not met its burden of proof on this issue.

5 LEGAL ISSUE 9

6 Whether petitioner has shown that the 2016 Board-adopted unitary value is excessive because it fails to
7 account for legal restrictions on alternate uses of petitioner's fee-owned land interests.

8 FINDINGS OF FACT AND RELATED CONTENTIONS

9 Petitioner contends that the Board-adopted unitary value fails to account for land use
10 restrictions in accordance with R&TC section 402.1 and obsolescence due to the superadequacy of fee-
11 owned land interests that are no longer necessary for petitioner's operations. Petitioner argues that the
12 land use restrictions prevent petitioner from putting its fee-owned land interests to their highest and
13 best use. Petitioner asserts that the Board-adopted unitary value fails to recognize the effect on the
14 value of enforceable restrictions imposed by the CPUC that prohibit petitioner from disposing of or
15 making alternate uses of its fee-owned land interests. As a result, petitioner maintains that legal and
16 regulatory restrictions reduce the value of those land interests and should be reflected in the Board-
17 adopted unitary value. Petitioner argues that it would be able to provide the same services to its
18 customers without its "extensive land holdings" and could significantly reduce those holdings or move
19 its central offices to less expensive locations but regulatory restrictions prevent petitioner from
20 exercising those options. Petitioner contends that respondent should make an adjustment for this form
21 of obsolescence.

22 Respondent states that petitioner maintains that the 2016 Board-adopted unitary value fails to
23 recognize economic obsolescence arising from strict limitations placed on petitioner's ability to dispose
24 of or authorize alternative uses of its land interests. Respondent contends that petitioner does not
25 identify any legal restrictions that affect its land and does not explain how such alleged land restrictions
26 prevent it from putting its land to its highest and best use. Respondent also argues that petitioner has not
27 provided information sufficient to demonstrate obsolescence due to superadequacy of its land.
28 Moreover, respondent argues that superadequacy may exist in the floor space of buildings but petitioner

1 has provided no documentation demonstrating superadequacy in the land on which the buildings are
2 located. Respondent also states that petitioner has also not provided detailed descriptions of its owned
3 or leased land that it believes has suffered economic obsolescence in addition to the amount allowed by
4 respondent and has not provided any evidence to suggest that the land it owns or leases was not assessed
5 at its fair market value.

6 APPLICABLE LAW AND APPRAISAL PRINCIPLES

7 Public Utilities Code section 851

8 Section 851 provides, in relevant part, that a public utility (other than a common carrier by
9 railroad) must secure approval from the CPUC before it may sell or otherwise dispose of “property
10 necessary or useful in the performance of its duties to the public.” However, section 851 further
11 provides that:

12 Nothing in this section shall prevent the sale, lease, encumbrance, or other disposition by
13 any public utility of property that is not necessary or useful in the performance of its
14 duties to the public, and any disposition of property by a public utility shall be
15 conclusively presumed to be of property that is not useful or necessary in the
16 performance of its duties to the public, as to any purchaser, lessee, or encumbrancer
17 dealing with that property in good faith for value

17 ANALYSIS AND DISPOSITION

18 The Board is presumed to have correctly determined the value of the property at issue, and
19 petitioner bears the burden of proving otherwise. (Cal. Code Regs., tit. 18, § 5541, subd. (a).)
20 Petitioner asserts that it is subject to CPUC legal restrictions on the disposal of or alternative use of its
21 fee-owned land interests that are no longer necessary for petitioner’s operations. According to
22 petitioner, such restrictions reduce the value of those land interests and an appropriate obsolescence
23 adjustment should be made to the Board-adopted unitary value. However, section 851 expressly
24 provides that the CPUC approval process is required for “property necessary or useful in the
25 performance of its duties to the public”; and if, as petitioner alleges, the fee-owned land interests for
26 which petitioner seeks an adjustment are superadequate, then they do not meet this requirement.
27 Moreover, once fee-owned land interests are disposed of, they are not subject to such restrictions in the
28 hands of a good faith purchaser, lessee, or encumbrancer for value. Finally, petitioner has presented no

1 evidence of superadequacy in any of its fee-owned land interests and, therefore, has not met its
2 evidentiary burden on this issue.

3 LEGAL ISSUE 10

4 Whether petitioner has shown that the 2016 Board-adopted unitary value improperly includes value
5 attributable to embedded warranty costs.

6 FINDINGS OF FACT AND RELATED CONTENTIONS

7 Petitioner asserts that the replacement cost indicator on which the 2016 Board-adopted value is
8 based improperly includes value attributable to non-assessable, intangible warranty costs “embedded”
9 in petitioner’s purchase price for certain telecommunications equipment. Petitioner states that it
10 requests the exclusion only for costs of extended warranties that provide coverage in addition to base
11 standard warranties.

12 Respondent states that petitioner characterizes the non-assessable, intangible warranty costs as
13 synonymous with extended warranties, but fails to provide documentation to support the existence of
14 separate warranty costs. Respondent notes that petitioner’s 2016 property statement was used to derive
15 the RCN and if any costs related to extended warranties are included in the 2015 Board-adopted unitary
16 value, such costs are attributable to petitioner’s inclusion of those costs in the property statement.
17 However, respondent believes that no extended warranty costs are included in the 2015 Board-adopted
18 value and quotes Property Tax Rule 10, subdivision (b), which defines “full economic cost” for
19 purposes of the replacement cost approach to value and provides that full economic cost “does not
20 include extended service plans or extended warranties, supplies or other assets or business services that
21 may have been included in a purchase contract.” Respondent asserts that the exclusion of extended
22 service plans and extended warranties, which are marketing devices used by manufacturers to
23 encourage the sale of their products, from “full economic cost” clearly implies that the cost or value of
24 standard or express warranties is included in “full economic cost.” Respondent further states that the
25 cost or value of a standard or express warranty is usually not able to be excluded, subtracted, or
26 negotiated away when the product is purchased. Thus, respondent concludes that an express or
27 standard warranty is part of the “cost of bringing the property to a finished state” consistent with the
28 requirements for determining full economic cost under Rule 10, subdivision (b).

1 Respondent agrees that any value attributable to such extended warranties should be excluded
2 from petitioner's assessed unitary value but contends that petitioner has not submitted evidence to
3 verify the existence of extended warranty costs nor provided documentation to quantify the costs.
4 Respondent asserts that petitioner's characterization of the costs as "embedded" in the purchase price
5 supports respondent's understanding that these are standard or express warranties that do not require a
6 separate charge or negotiation. For those reasons, respondent recommends no adjustment be made for
7 this issue.

8 APPLICABLE LAW AND APPRAISAL PRINCIPLES

9 Burden of Proof

10 Assessing officers are presumed to have properly performed their duties. (Evid. Code, § 664.)
11 The Board has promulgated the Rules for Tax Appeals (RTA) to govern the administrative and
12 appellate review processes for all of the tax and fee programs administered by the Board. (Cal. Code
13 Regs., tit. 18, § 5000.) Of relevance here, RTA 5541, subdivision (a), places the burden of proof upon
14 the taxpayer as to all issues of fact except as otherwise specifically provided by law. Courts have long
15 presumed that the Board assesses all property correctly, placing on the taxpayer the burden of proving
16 that an assessment is incorrect. (*Trailer Train Co. v. State Bd. of Equalization* (1986) 180 Cal.App.3d
17 565, 584.) Therefore, petitioner bears the burden of showing that the assessment is illegal.
18 (*ITT World Communications v. Santa Clara County* (1980) 101 Cal.App.3d 246.)

19 Full Economic Cost

20 Property Tax Rule 10, subdivision (b) provides, in relevant part, that:

21 Full economic cost does not include extended service plans or extended warranties,
22 supplies or other assets or business services that may have been included in a purchase
23 contract.

24 ANALYSIS AND DISPOSITION

25 Petitioner has not presented any evidence to show that it purchased optional extended
26 warranties, nor has petitioner provided any documentation to support or quantify the cost of such
27 warranties. In addition, petitioner makes a representation that those costs are "embedded" in the
28 purchase price of its property, but petitioner fails to identify the specific property for which those

1 extended warranties provide coverage. For the foregoing reasons, petitioner has failed to meet its
2 burden of proof on this issue.

3 LEGAL ISSUE 11

4 Whether petitioner has shown that the 2016 Board-adopted unitary value improperly includes value for
5 non-taxable intangible assets and rights.

6 FINDINGS OF FACT AND RELATED CONTENTIONS

7 Petitioner contends that the 2016 Board-adopted unitary value includes value attributable to
8 petitioner's nontaxable assets and rights because respondent reliance on its percent good factors and the
9 rejection of CostQuest's RCN estimates resulted in the illegal assessment of petitioner's intangible
10 assets and rights.

11 Respondent contends that petitioner fails to specify which intangible assets and rights were
12 illegally assessed, how these alleged intangible assets and rights were included in the Board-adopted
13 unitary value, and the portion of the Board-adopted value attributable to improperly assessed intangible
14 rights and assets. Thus, respondent recommends no adjustment be made for this issue.

15 ANALYSIS AND DISPOSITION

16 Petitioner has not presented any evidence to show that the value of any intangible assets and
17 rights were included in the 2016 Board-adopted unitary value. Therefore, petitioner has failed to meet
18 its burden of proof on this issue.

19 LEGAL ISSUE 12

20 Whether Petitioner's unspecified "other contested elements" should be preserved.

21 FINDINGS OF FACT AND RELATED CONTENTIONS

22 Petitioner contends that it did not have "the ability or opportunity exhaustively to review and
23 fully analyze" the components of the appraisal methodology used to determine the 2016 Board-adopted
24 unitary value in view of the Board's change in methodology from prior years. Petitioner states that
25 there may be additional contested elements and reserves its right to supplement its petition if it becomes
26 aware of such issues.

27 Respondent states that pursuant to the Rules for Tax Appeals (RTA) a valid and complete
28 petition must state "the precise elements of the Board's valuation or penalty that petitioner is

1 contesting.” Thus, respondent asserts that petitioner’s stated lack of “ability or opportunity to
2 exhaustively review and fully analyze all methodological components of the Board’s 2016 valuation”
3 does not make valid or complete petitioner’s vague claim that “there may be additional contested
4 elements, presently unknown and unknowable, of the Board’s excessive, illegal, and erroneous 2016
5 assessment.”

6 ANALYSIS AND DISPOSITION

7 RTA section 5323.4, subdivision (b)(1) requires that a valid and complete petition must state
8 “the precise elements of the Board’s valuation or penalty that petitioner is contesting.” Because
9 petitioner has not stated a valid valuation or legal issue, there is no basis for the Board’s consideration
10 of this contention.

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DECISION

Accordingly, the petition for reassessment is denied and the 2016 Board-adopted unitary value of \$2,611,300,000 is affirmed.*

Fiona Ma _____, Chairwoman

George Runner _____, Member

Jerome E. Horton _____, Member

Diane L. Harkey _____, Member

* The decision was rendered in Sacramento, California on December 14, 2016. This summary decision document was approved on February 22, 2017, in Culver City, California.