Mr. Gene Mayer   March 19, 1986

Eric F. Eisenlauer

Supplemental Assessment Roll

In your memo to Richard Ochsner dated February 11, 1986, you have requested that we advise you whether you should instruct San Bernardino County to cancel two supplemental assessments under the following facts.

1. On March 15, 1984, James W. and Frieda E. Collins (Landlord) leased a parcel of vacant land in San Bernardino County to MCI Telecommunications Corporation (Tenant). The essential provisions of the lease for purposes of this memo are as follows:

a. The lease is for a term of five years and commenced July 1, 1984.

b. Rent is $6,000 per year payable in advance on July 1 each year.

c. Tenant has the option to renew for eight successive periods of five years each.

d. Landlord is to pay all property taxes on the land except for increases over and above the 1983-1984 property taxes which are to be paid by Tenant.

e. All buildings, fixtures, towers, improvements and equipment erected, located, placed or constructed on the site by Tenant or its assigns are to remain the personal property of Tenant or its assigns regardless of the means of attachment and are to be removed by Tenant or its assigns no later than 60 days after the lease terminates. Landlord expressly waives any lien or claim of lien on all improvements.

f. Tenant has a right of first refusal to purchase the land from Landlord.

2. On May 1, 1985, MCI completed construction
of improvements on the site.

3. On October 12, 1985, the San Bernardino County
Assessor mailed a Notice of Supplemental Assessment to the
Landlord as a result of the completion of new construction.
Apparently, the Assessor was unaware of the lease or its
terms since no supplemental assessment was made pursuant
to Revenue and Taxation Code Section 61(c) as a result of
"[t]he creation of a leasehold interest in taxable real property
for a term of 35 years of more (including renewal options)...."

4. On December 23, 1985, the San Bernardino County
Treasurer-Tax Collector sent two supplemental tax bills to
Landlord.

Revenue and Taxation Code Section 75.14 provides
that "[a] supplemental assessment...shall not be made for
any property not subject to the assessment limitations of
Article XIIIA of the California Constitution...." Recently,
the California Supreme Court held that Article XIIIA applies
only to locally assessed property and not to public utility
property which is state assessed pursuant to Article XIII,
Section 19 of the California Constitution (ITT World Communications,
Inc. v. City and County of San Francisco, (1985) 37 Cal.3d 859).

Article XIII, Section 19 of the California Constitution
provides in relevant part that "[t]he Board shall annually
assess...property, except franchises, owned or used by regulated...
telephone companies,...."

Under the terms of the lease, MCI, a regulated
telephone company, had the right to use the land subject
to the lease commencing July 1, 1984 and in fact did use
the land by erecting or causing to be erected on the land
the improvements which were completed on May 1, 1985 and
subjected to supplemental assessment. Accordingly, it is
our opinion that since the land was used by MCI commencing
July 1, 1984, that property became subject to Board assessment
jurisdiction as of that time and thus was no longer subject
to the assessment limitations of Article XIIIA of the California
Constitution. The same is true with respect to the improvements
because not only are they used by MCI, they are owned by
MCI under the terms of the lease.

Therefore, since the improvements were not and
are not subject to the assessment limitations of Article XIIIA

of the California Constitution, the supplemental assessments
based on the completion of new construction were contrary
to Revenue and Taxation Code Section 75.14 and thus were
illegally made. It follows that the supplemental assessments
should be cancelled.

EFE:fr

cc: Mr. Dave Huber w/att.
      Mr. Gordon P. Adelman
      Mr. Robert H. Gustafson
      Mr. Gene DuPaul
      Mr. Jay Hubert