



# Bulletin

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2008-03B

## Assessment of Poles and Wires on Public Ways

TO: Assessors, Mayors, Selectmen, City/Town Managers and Finance Directors  
FROM: Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs  
DATE: March 2008  
SUBJECT: March 3, 2008 Appellate Tax Board Order in the Case of *Verizon New England, Inc.*  
Consolidated Central Valuation Appeals, ATB Docket No. C273560 et al

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This *Bulletin* explains the effect of a March 3, 2008 Appellate Tax Board (ATB) order in the consolidated *Verizon New England, Inc.* cases on the taxation of poles and wires of incorporated telephone and telegraph, cable television, Internet, data service and other telecommunications companies situated on public ways. The ATB held that Verizon is subject to local taxation on its poles and wires over public ways.

### History of the Case

The consolidated cases involve the valuation of the taxable machinery, poles, wires, underground conduits, wires and pipes of Verizon New England, Inc., formerly New England Telephone and Telegraph Company. Verizon brought overvaluation appeals against the Department and numerous cities and towns for FY2005-2008, challenging the values established by the Department and certified to the boards of assessors of those communities under G.L. c. 59, §§ 39-42 (central valuation of telephone companies). The city of Newton sought its own appeals challenging the Department's valuations and the historical exclusion from tax that Verizon has received for poles and wires situated on public ways, for fiscal years 2003-2008. See *Assessors of Springfield v. Commissioner of Corporations and Taxation*, 321 Mass. 186 (1947); *Warner Amex Cable Communications, Inc. v. Assessors of Everett*, 396 Mass. 239 (1985). Several other cities and towns also brought appeals on those grounds for various years between FY2003-2008. The ATB consolidated the Verizon appeals with those of the cities and towns and bifurcated the case. The order released on March 3, 2008 decided three preliminary issues before the hearing on the valuation portion of the case. The ATB has scheduled a pre-trial conference on the remaining part of the case for Thursday, March 27, 2008.

### ATB Order

The ATB ruled that Verizon is taxable on all of its poles and wires erected on public ways under G.L. c. 59, § 2 and G.L. c. 59, § 18, First, relying on *RCN BecoCom LLC v. Commissioner of Revenue*, 443 Mass. 198 (2005). The Department of Revenue will implement this ruling for FY2009, and does not intend to appeal this ruling in any subsequent proceedings. It has, therefore, requested that all telephone companies supplement their returns by March 29, 2008 with a list, by community, of any company poles and wires situated on public ways so that those assets may be included in the central valuations of telephone companies to be issued on May 15, 2008.

Assessors are advised that the legal rationale for the order is also applicable to incorporated cable television and other telecommunications networks with poles and wires on public ways that are locally valued. Therefore, assessors may implement the ATB's ruling in this *Verizon* order with respect to these locally valued corporations for FY2009. Assessors who plan to do so should request an updated return from companies that have already filed a form of list, or request the additional information from companies that have not yet filed.

The ATB also ruled that only those cities and towns that filed petitions challenging the Department's valuations in earlier years may seek to establish that the value of Verizon's properties was substantially higher than the value certified by the Commissioner for those years. Finally, it ruled that its decision applies to all years at issue in the petitions, variously including FY2003 through 2008, and cannot, as Verizon argued, be applied prospectively only.

### Future Proceedings; Overlay Reserves

Because Verizon may ultimately appeal the ATB's rulings in this order, until any appeal process is complete or foreclosed, the Department will require as part of the tax rate setting process that cities and towns place sufficient amounts in their overlay accounts to cover any potential abatements or refunds that may result in the event the ATB's ruling is not upheld. This includes potential abatements or refunds to corporations subject to central valuation and if the assessors elect to implement the decision locally, to corporations valued locally.

Municipal officials should consult with their counsel to determine the best way to proceed pending the outcome of the appeals process.

If you have questions about the legal aspects of this Bulletin, please contact the Bureau of Municipal Finance Law at 617-626-2400. Questions about valuation or administration should be directed to John Gillet in the Bureau of Local Assessment at 617-626-3605.