

ARIZONA TAX COURT

TX 1998-000716 (CONSOL.)

03/15/2006

HONORABLE MARK W. ARMSTRONG

CLERK OF THE COURT  
C. Danos  
Deputy

FILED: \_\_\_\_\_

CITIZENS TELECOMMUNICATIONS CO. OF  
THE WHITE MOUNTAINS, INC., ET AL.

PAUL J MOONEY

v.

ARIZONA DEPARTMENT OF REVENUE, ET  
AL.

JAY C JACOBSON

FRANK BOUCEK III

**UNDER ADVISEMENT RULING**

This Court, following the remand from the Court of Appeals, is to consider the evidence in light of the opinion in *Citizens Telecommunications Co. of the White Mountains v. ADOR*, 206 Ariz. 33, 36, 75 P.3d 123, 126 (App. 2003) *review denied* (hereafter "*Citizens*"). The Court is further instructed, with emphasis, that the weight of the analysis must be based upon the functional equivalency factor. *Id.* at 41-42, 75 P. 3d at 131-132. This Court has expressly noted this requirement in its prior ruling on the parties' cross-motions for summary judgment.

The issue before the Court is whether or not the Department's application of A.R.S. §§ 42-793 and 42-793.01 to Taxpayers' Class 3 telecommunications property in the 1997, 1998, and 1999 tax years result in unconstitutional discrimination against the Taxpayers. Based on the following Findings of Fact and Conclusions of Law, the Court finds, by a preponderance of evidence, that the Defendant's application of the applicable statutes was discriminatory and

resulted in full cash values set by the Department that are excessive for each of the tax years at issue.

### **FINDINGS OF FACT**

#### **The Subject Property at Issue Before the Court.**

1. Several Incumbent Local Exchange Carriers (“ILEC”) including Citizens-Navajo, Citizens-White Mountains, Arizona Telephone Company, Southwestern Telephone Company, Copper Valley Telephone Company and Valley Telephone Cooperative, Inc., filed complaints, or answers to complaints filed by ADOR, challenging the methods used to value class three telecommunications property owned by each LEC in Arizona for tax years 1997, 1998 and/or 1999. *See* Taxpayers’ January 18, 2005 Statement of Facts in Support of their Motion for Summary Judgment (Following Remand), ¶ 17 (hereinafter, “TSOF, ¶ \_\_\_”).

2. Taxpayers are plaintiffs and defendants in the various consolidated cases herein. “Taxpayers” herein are: Citizens Telecommunications of the White Mountains, Inc., Citizens Navajo Communications Co., Arizona Telephone Company, Copper Valley Telephone, Inc., Southwestern Telephone Co., Inc., and Valley Telephone Cooperative, Inc.

3. The Subject Property is Taxpayers’ Class 3 telecommunications property (the “Subject Property”).

4. ADOR annually values the taxable property of telecommunications companies in Arizona. It allocates these valuations among the states’ fifteen counties, which then levy and collect property taxes. ADOR assesses the valuations for these companies based upon their class 2 Arizona property (real and personal property) and their class 3 Arizona property (commercial property) as required by A.R.S. §§ 42-793 and -793.01. *Citizens*, at 36, 75 P.3d at 126.

5. The Department’s valuation of the Subject Property for the 1997, 1998 and/or

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1999 tax years is at issue.

6. Taxpayers are not challenging: (i) their Class 2 (“basic local service”) property valuations; (ii) the Department’s apportionment of their values between Class 2 property and Class 3 property; or (iii) the Department’s authority to value Class 2 property differently than Class 3 property.

7. The Department determined the apportionment of Taxpayers’ property that was classified as Class 3 telecommunications property; the Department’s apportionment of the property is not in dispute.

8. During the 1996-1998 time period (1996-1999 tax years), assets used by local exchange carriers to provide services that were classified as “non-basic local exchange” services were taxed differently, and higher, than assets owned and used by other telecommunications companies, including wireless, long distance and competitive access providers, to provide “non-basic local exchange” services. (TSOF, ¶ 18).

**Taxpayers Were Direct Competitors, in the Same Industry and in the Same Geographic Location as the Favorably Treated Comparison Property.**

9. In Arizona, non-local telecommunications firms, including long distance, wireless, and competitive access providers (among others), provided head-to-head competition with a wide variety of services offered by local exchange carriers during the 1996-1998 time period. (TSOF, ¶ 19; *Citizens* at 40, P. 75 P.2d at 130).

10. The telecommunications industry includes a vast array of services offered by numerous firms using a range of technologies. Convergence is the term often used to describe the trend of increasing service competition across disparate technologies. This trend and the Telecommunications Act of 1996 (TA96) have opened all telecommunications services in the United States to competition. (TSOF, ¶ 20; *Citizens* at 40, P. 75 P.2d at 130).

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11. For a competitive service, competitors face similar risks and rewards with respect to the assets used to provide the service. That is, the assets used by all firms to provide a competitive service are similarly situated. For many services, competition was well underway in the 1996–1998 time period, and increased competition for these services was expected. If, for example, firms make investments in wireless or wireline assets with the expectation that the services produced by these assets will compete with each other, then these wireless and wireline assets are similarly situated from the perspective of how they are valued. Differential treatment of assets used by firms to compete with each other is contrary to the development of efficient competition. (TSOF, ¶¶ 21 and 25).

12. Within the telecommunications industry there are numerous “product markets.” A product market comprises services (products) that consumers consider as reasonable substitutes. Services in the same product market compete with each other, and consumers can choose from among them for the services that best suit their needs. (TSOF, ¶ 22).

a) To be considered substitutes, it is not necessary that services are identical, functionally equivalent, or even of equal quality. For example, advertisements in daily newspapers do not constitute their own product market because door-to-door delivery, direct mail and the weekly papers are viable substitutes. There are numerous other examples of products that are not functionally identical or equivalent and yet have been found by the courts to be sufficiently substitutable to exert competitive pressure on one another. (*Id.*)

b) It is not necessary for all customers to view the services in the same product market as “reasonably interchangeable.” What is critical in determining whether services are competitive substitutes is whether they “have the ability-actual—or potential—to take significant amounts of business away from each other.” (*Id.*)

c) For example, private branch exchange (PBX) equipment and service are in the same product market as voice features sold by ILECs. Many businesses self-supply voice features by installing a PBX and perhaps purchasing a service contract for this equipment. (*Id.*)

13. As technologies converge and regulatory barriers come down, distinctions among some services have blurred. Convergence is redefining and expanding telecommunications product markets. (TSOF, ¶ 23).

a) At one time, only the ILECs provided local services and there were clear distinctions between local calls, intraLATA toll calls, and interLATA toll calls. ILECs provided almost all local and intraLATA toll calls, and interexchange carriers (IXCs) provided interLATA toll calls. (*Id.*)

b) Now, competitive local exchange carriers (CLECs), some of which are also IXCs, and wireless firms provide a full range of services, including calls of any distance. (*Id.*)

14. TA96 made all telecommunications assets subject to competition:

a) TA96 mandates a process designed to make all telecommunications markets competitive. This is recognized even in the long title of the Act: “An Act to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.” (TSOF, ¶ 24).

b) The FCC explains that the goal of TA96 is to allow anyone entry to any communications business, and thus to allow any communications business to compete in any market. (*Id.*)

15. The primary non-basic local (i.e., Class 3) Telecommunications Services are:

a) IntraLATA toll. An intraLATA toll call terminates outside of the caller’s local calling area but originates and terminates within the same Local Access and Transport Area (LATA). (TSOF, ¶ 26).

b) Calling features. Features help customers manage their telephone service. Features include such services as call waiting, three-way calling, caller ID, and call forwarding. (*Id.*)

c) Access services. Access services involve connections that enable end users to originate calls on one public telecommunications network and terminate the calls on another network. Until the early-1990s, the predominant form of access service was a per minute or dedicated wireline connection between long distance carriers and customers of local service providers. During the 1990s, other forms of access to IXCs, such as access over mobile wireless, cable networks or via competitive access providers (CAPs), gained prominence. (*Id.*)

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d) Nonregulated and Miscellaneous Services. “Nonregulated” services are primarily voice messaging, and inside wiring and maintenance; and miscellaneous services include carrier billing and collections, directory listings, directory assistance, and operator services. (*Id.*)

16. Competition was developing prior to 1996, and has continued to grow and strengthen in the years after 1998. (TSOF, ¶ 27).

17. With the passage of TA 96 in February 1996 and the implementation of unbundling and resale in Arizona, all of the ILEC’s services, including basic local service, were open to competition. (TSOF, ¶ 28).

18. In addition to competition from wireline telecommunications carriers, ILECs faced the prospect of ever increasing competition from mobile wireless carriers. (TSOF, ¶ 29).

19. A strong growth trend in the number of wireless subscribers created the strong expectation of increasing competition between wireless and wireline services. For example, in 1997 industry analysts projected that the number of mobile wireless subscribers in the US would reach 85 to 95 million by year-end 2000. In fact, subscriber growth exceeded these projections. At year-end 2000, there were over 101 million subscribers nationwide, and 1.8 million subscribers in Arizona, nearly as many mobile wireless subscribers as households (1.9 million). Declining wireless price trends have also continued as projected. For example, Sprint PCS offers a mobile wireless package with voicemail, call waiting, caller ID, three-way calling, and paging plus 200 anytime minutes and 1800 night and weekend minutes for \$34.99. Even if no value is attributed to the provision of monthly service and features, and assuming only half of the minutes are used, the average price per minute is only 3.5¢. With this package, and similar packages offered by other mobile wireless companies, customers have a strong incentive to make their toll calls on their wireless phones. (TSOF, ¶ 30).

20. Features, such as call waiting, are provided as a result of investments in switching. For most business customers with significant amounts of telecommunications usage,

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features are typically self-supplied with investments in business communications systems. Competitive local exchange carriers with switching investments can also provide features. Wireless service for residential and business customers often comes with features at little or no extra price. (TSOF, ¶ 31).

21. The majority of telecommunications features for business customers are provided by business communications systems (BCSs) – PBXs and Key Systems. BCSs are essentially small central office switches that enable companies to self-supply local exchange service, including voice features. For example, BCSs can handle “intercom” (local calls to other stations within the company) and offer many enhanced services such as station-to-station calling, voicemail capability, message waiting, call forwarding, call hold, call waiting, last number redial, and speed dialing. (TSOF, ¶ 32).

22. Mobile wireless services also compete for features. Since before 1995, cellular telephone providers offered features including voicemail, call waiting, call forwarding, and three-way calling. In late 1995, as PCS mobile wireless providers began rolling out service, all mobile wireless providers began bundling features into the basic monthly price. The first PCS provider to turn up its network in Arizona was AT&T Wireless, which began offering service in June 1997. In 1997, features commonly included in the monthly service price were call waiting, call forwarding, and three-way calling. In addition, several carriers included voicemail in the monthly service price. (TSOF, ¶ 33).

23. Access includes switched and special (dedicated) connections between local customers and long distance networks. Networks built by competitive access providers (CAPs) are used to create dedicated connections between local customers and long distance providers, thereby completely bypassing ILEC provided access. CAP networks compete directly with ILEC special access services, and, by putting downward pressure on ILEC prices for special

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access, competition from CAPs extends to switched access service competition. Because callers using mobile wireless and cable telephony networks can originate or terminate long distance calls over these networks, mobile wireless and cable carriers also provide long distance access that, in effect, competes with ILEC switched access service. Another source of access competition comes from complete bypass of the public switched network. Calls made on private networks or over the Internet bypass all ILEC (and IXC) services, including access. (TSOF, ¶ 34).

24. CAPs were actively selling and winning customers for their services as early as 1994. (TSOF, ¶ 35).

25. With the Arizona Competition Order in June 1995 and the passage of the Telecom Act in February 1996, CAPs expanded their range of services to include local exchange services and transformed themselves into competitive local exchange carriers (CLECs). CLECs provide access to IXCs over their own networks and by leasing unbundled loops from local exchange carriers. Also, in the provision of local exchange services, CLECs provide access to local networks. (TSOF, ¶ 36).

26. Because mobile wireless providers have direct connections to IXCs, some customers who make long distance calls on their mobile phones bypass Taxpayers' access services. The rapid growth of wireless has reduced ILEC switched access calling volumes. The national one-rate calling plans introduced in 1998 further encouraged end users to use mobile wireless service for long distance access. (TSOF, ¶¶ 1, 4, 7, 8, 10-15, 37).

27. Many large businesses and government organizations self-supply portions of their telecommunications services through private networks. Long distance calls made on private networks bypass access services. For example, very small aperture terminal (VSAT) satellite systems are used by businesses to transmit data among company locations. The use of VSAT

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has grown at about 15 percent per year through the 1990s. Businesses operating in Arizona that use VSAT systems include: Best Western, Enterprise Rent-a-car, Ford, the US Postal Service and WalMart. (TSOF, ¶ 38).

28. Mr. Derron of the ADOR was asked the following questions during his 2002 deposition and he gave the following answers:

Q. The definition that's in subsection two of that statute defines telecommunications company; correct?

A. Correct.

Q. That definition includes all telecommunications companies; doesn't it?

A. Correct.

\* \* \*

Q. So the definition in subsection two includes long distance companies, local exchange companies, wireless companies, access providers, anybody providing telecommunications services; correct?

A. Anyone that provides – that falls under telecommunication company that provides – that falls under that definition.

Q. **That definition includes exchange and interexchange carriers; correct?**

A. **All telecommunication companies.**

(TSOF, ¶ 39).

29. The Department's expert witness, Mr. Roy Weinstein, stated in his report that:

14. For purposes of our analysis, the relevant market is the market for "local telecommunications service." The definition of local telecommunications service used by the Arizona Revised Statutes is consistent with the meaning employed by the telecommunications industry and the FCC. Local telecommunications service is all communication traffic that travels through one switch in the local exchange to or from local access lines. Local telecommunications service comprises intra-LATA communications but excludes access service, intra-LATA toll service (also known as "local toll" or "local long

distance” service), wireless, cable, satellite, and PBX telecommunications services.

(TSOF, ¶ 40).

**The Taxpayers’ Class 3 Telecommunications Property is Functionally Equivalent to the Favorably Treated Comparison Group.**

30. Taxpayers are all ILECs which provide or are authorized to provide local telephone services in their designated exchanges, intraLATA long distance services and access services to IXCs. In addition, Taxpayers have no legal restrictions placed on their ability to provide interLATA long distance service.

31. Cell phone service towers do not have to exist within an ILEC’s service area in order to provide coverage in that area. (TSOF, ¶ 10).

32. Satellite phone service was available in Arizona during 1996 and 1997. (TSOF, ¶ 11).

**ARIZONA TELEPHONE AND SOUTHWESTERN TELEPHONE**

33. During the 1996-1999 timeframe, wireless telephone services were available in both Arizona Telephone and Southwestern Telephone’s Arizona service areas. (TSOF, ¶ 1)

34. When a wireless telephone customer made an intraLATA toll call or an interLATA call on a wireless phone while in either Arizona Telephone or Southwestern Telephone service area, the customer was able to make the call without Arizona Telephone or Southwestern Telephone receiving any access fees for the call. If, however, the customer used a landline phone to make the same call, using the same (or any other) long-distance carrier, Arizona Telephone or Southwestern Telephone would receive an access fee for the call. (TSOF, ¶ 2).

35. When making a landline call from Supai to Phoenix (intraLATA toll) or Supai to

Tucson to (interLATA toll) an access charge was paid to Arizona Telephone to make the call; when the customer made the same call using a wireless service, however, Arizona Telephone received no access fees for the call. Similarly, when making a landline call from Quartzsite to Phoenix (intraLATA toll) or Quartzsite to Tucson (interLATA toll) an access charge was paid to Southwestern Telephone to make the call; when the customer made the same call using a wireless service, however, Southwestern Telephone received no access fees for the call. (TSOF, ¶ 3).

36. Wireless services were available in Arizona Telephone's service area during 1996-1997, even though no cell phone towers existed in its service area. If a person made a call on a traditional "landline" phone interLATA or intraLATA call to someone in Arizona Telephone's service area, Arizona Telephone received compensation by way of a "switched access" fee from the caller's carrier. When a cell phone user made a call to a landline phone, however, Arizona's Telephone's revenue's were decreased in several ways. If the cell carrier did not connect the call by way of an interexchange carrier, Valley received no compensation at all for the call. Further, because there were no cell towers in Arizona's service area, if a cell user made a call to a landline outside Arizona Telephone's service area, again, Arizona Telephone received no compensation for the call. Whenever a cell phone user placed a call to another cell phone user, Arizona Telephone, again received no compensation for the call. (TSOF, ¶ 15).

### **COPPER VALLEY AND VALLEY TELEPHONE**

37. During the 1996-1999 timeframe, wireless telephone services were available in both Copper Valley and Valley Telephone's Arizona service areas. (TSOF, ¶ 4).

38. When a wireless telephone customer made an intraLATA toll call or an interLATA call on a wireless phone while in either Copper Valley or Valley Telephone's service

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area, the customer was able to make the call without Copper Valley or Valley Telephone receiving any access fees for the call. If, however, the customer used a landline phone to make the same call, using the same (or any other) long-distance carrier, Copper Valley or Valley Telephone would receive an access fee for the call. (TSOF, ¶ 5).

39. When making a landline call from Clifton to Tucson (intraLATA toll) or Clifton to Phoenix (interLATA toll) an access charge was paid to Copper Valley to make the call; when the customer made the same call using a wireless service, however, Copper Valley received no access fees for the call. Similarly, when making a landline call from Pearce to Tucson (intraLATA toll) or Pearce to Phoenix (interLATA toll) an access charge was paid to Valley Telephone to make the call; when the customer made the same call using a wireless service, however, Valley Telephone received no access fees for the call. (TSOF, ¶ 6).

40. Wireless services were available in Valley Telephone's service area during 1996-1999. Indeed, there were two cell phone sites in its service area during the relevant timeframe. If a person made a call on a traditional "landline" phone interLATA or intraLATA call to someone in Valley Telephone's service area, Valley Telephone would receive compensation by way of a "switched access" fee from the caller's carrier. When a cell phone user made a call to a landline phone, however, Valley Telephone's revenue's were decreased in two ways: (1) if the cell service connected the call via an interexchange carrier, and the interexchange carrier used the cell tower serviced by Valley Telephone, then Valley Telephone received a much reduced "special access fee" rather than the "switched access" compensation; and (2), in some cases, if the cell carrier did not connect the call by way of an interexchange carrier, Valley received no compensation at all for the call. Most significantly, however, whenever a cell phone user placed a call to another cell phone user, Valley Telephone received no compensation for the call. In the same manner, both Copper Valley and Southwestern Telephone's revenue's declined and were

impacted by competition from the cellular service providers. (TSOF, ¶ 16).

**CITIZENS OF THE WHITE MOUNTAINS AND CITIZENS NAVAJO**

41. During 1997 - 1999, wireless telephone services were available in both the Citizens of the White Mountains and Citizens Navajo service areas. (TSOF, ¶ 7).

42. When a wireless telephone customer made an intraLATA toll call or an interLATA call on a wireless phone while in either the Citizens of the White Mountains or Citizens Navajo service area, the customer was able to make the call without Citizens of the White Mountains or Citizens Navajo receiving any access fees for the call. If, however, the customer used a landline phone to make the same call, using the same (or any other) long-distance carrier, Citizens of the White Mountains or Citizens Navajo would receive an access fee for the call. (TSOF, ¶ 8).

43. When making a landline call from Pinetop to Phoenix (intraLATA toll) or Pinetop to Tucson (interLATA toll) an access charge to Citizens of the White Mountains was paid to make the call; when the customer made the same call using a wireless service, however, Citizens of the White Mountains received no access fees for the call. Similarly, when making a landline call from Window Rock to Tuba City (intraLATA toll) or Window Rock to Tucson (interLATA toll) an access charge to Citizens Navajo was paid to make the call; when the customer made the same call using a wireless service, however, Citizens Navajo received no access fees for the call. (TSOF, ¶ 9).

44. Smith Bagley (dba as Cell One), Verizon, and Alltel were all doing business and providing telephone services in the Citizens service areas. (TSOF, ¶ 12).

45. As to Citizens Navajo – six cell towers existed in its service area. Of these, four

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were connected to the landline system via a Citizens' Navajo T1 line and two were not serviced in any manner by Citizens Navajo. When calls were completed on the "non-Citizens" towers, Citizens Navajo received no compensation for the wireless call. When using the four towers serviced by Citizens' Navajo lines, or the six towers serviced by Citizens – White Mountains, Citizens received a special access fee for calls made by one of the three wireless providers only – Cell One; it received no compensation for calls completed by Alltel and Verizon customers. (TSOF, ¶ 13).

46. If a cell phone user was using either of the two "non-Citizens" towers, Citizens received no fees for the call made either into/out of its service area. If the cell call was completed on one of the remaining towers, Citizens only received compensation from one of the service providers, Cell One – it received no compensation from either Alltel or Verizon for the call. (TSOF, ¶ 14).

47. Additionally, both Navajo and Citizens White Mountains provided intraLATA toll service for the relevant years, as did AT & T and MCI. Thus, as this Court has already found, these Taxpayers and their competitors used functionally identical property for functionally identical purposes. *Citizens*, 206 Ariz. at 41-42, 75 P.3d at 131-32.

**The Subject Property's Value is Undisputed.**

48. It is undisputed that Taxpayers' Class 3 property is not valued and taxed in the same manner as other Class 3 telecommunications property owned by companies that do not also own Class 2 property. As a result, Taxpayers all paid more property taxes than they would have if their Class 3 telecommunications property had been taxed the same as that owned by AT&T, Sprint, MCI, numerous wireless telephone companies and many others including Qwest. *Citizens*, 206 Ariz. 33, 75 P.3d 123; (TSOF, ¶ 41).

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49. Mr. Derron of ADOR provided calculations of the effect of the various possible statutory interpretations as related to the Taxpayers in these cases. Mr. Derron confirmed that a comparison of the numbers in the spreadsheets provided behind Tabs 3 and 4 of his calculation workbook (Exhibits 4 and 5 to his 2002 Deposition) would show the difference between the valuation of the Class 3 properties of the Taxpayers using standard appraisal methods versus the statutory formula. (TSOF, ¶ 41). These values are not in dispute and are as follows:

<b>Tax Year</b>	<b>Taxpayer</b>	<b>Class 3 Values as Calculated by ADOR</b>	<b>Class 3 Values Under Favorable Class 3 Formula</b>	<b>Difference in Full Cash Value</b>
1997-98	Copper Valley Tel.	\$ 9,110,699	\$ 6,185,686	\$ 2,925,013
1997-98	Valley Telephone	\$ 10,664,400	\$ 6,807,379	\$ 3,857,021
1997-98	Southwestern Tel.	\$ 4,855,200	\$ 3,749,459	\$ 1,105,741
1997-98	Arizona Telephone	\$ 7,523,040	\$ 5,382,738	\$ 2,140,302
1999	Citizens Tel. Co.	\$ 58,547,940	\$ 33,017,382	\$ 25,530,558
1999	Arizona Telephone	\$ 8,042,930	\$ 5,477,720	\$ 2,565,210
1999	Valley Telephone	\$ 10,015,530	\$ 7,251,405	\$ 2,764,125
1999	Southwestern Tel.	\$ 6,189,425	\$ 5,234,576	\$ 954,849
1999	Copper Valley Tel.	\$ 9,684,889	\$ 6,047,701	\$ 3,637,188
1999	Citizens Navajo	\$ 22,364,347	\$ 20,771,650	\$ 1,592,697

(Id.)

**The Department’s Evidence.**

50. The Department relied in substantial part upon the testimony of one of its expert witnesses, William Dunkel, to support its position.

51. As to “functional equivalency,” Mr. Dunkel conceded on multiple occasions that though he had tried to determine the meaning of “functional equivalency” he was unable to do so. (See e.g., November 30, 2004 Deposition of William Dunkel, at 24, 35-37, 56-57 attached as

Exhibit A to Taxpayer's February 9, 2005 Controverting Statement of Facts.) Indeed, he had drafted a definition of functional equivalency for use in his report, but based on the advice of counsel he removed it from his report. (*Id.* at 35) Further, when Mr. Dunkel was questioned regarding the Opinion's discussion of functional equivalency, the Department's counsel objected on the grounds of foundation. (*Id.* at 63)

52. When asked to determine what property is classified as Class 3, Mr. Dunkel noted that as to vertical services (undisputedly Class 3 property), he was "not perfectly clear on vertical services to be real honest." (*Id.* at 51)

53. Additionally, Mr. Dunkel did not consider CAPs or CLECs in his 2004 report. (*Id.* at 84-85; 96-97) This despite the fact that such entities clearly are "other telecommunications companies" pursuant to A.R.S. § 42-791.

54. Mr. Dunkel also conceded that at least as to the Citizens taxpayers, ILECs were both customers of and providers of access service. (*Id.* at 76-77) He also admitted access services can readily be provided by entities (such as CAPs) other than ILECs. (*Id.* at 103)

55. Mr. Dunkel admitted that when completing a cell phone call, the caller only needs to be within reach of a signal from any tower, regardless of whether the tower is in the ILEC's service area or not. (*Id.* at 105-107) This clearly supports Taxpayers' testimony that they not only were competing with the wireless providers, but also not receiving compensation from wireless providers.

### **CONCLUSIONS OF LAW**

56. Taxpayers must prove their claims herein by a preponderance of the evidence. *Aileen H. Char Life Interest v. Maricopa County*, 208 Ariz. 286, 291, 93. P.3d 486, 291 (2004).

57. According to the Uniformity Clause of the Arizona Constitution, Article 9, Section 1, "all taxes shall be uniform upon the same class of property."

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58. In this case, Taxpayers challenge ADOR's use of the "market value" method under A.R.S. §§ 42-793(A)(1) and -793.01 for valuing their Class 3 property, which includes intraLATA toll calls, vertical services including such features as caller ID and call waiting, and access services between telecommunications networks. This method, which is different from the "historical cost less depreciation" method applied to other telecommunications companies pursuant to A.R.S. § 42-793(A)(2), results in Taxpayers receiving higher valuations. *Citizens*, 206 Ariz. at 39, 75 P.3d at 129.

59. To determine whether a classification violates the Uniformity Clause, the Court must consider whether Taxpayers and the comparison taxpayers are (1) direct competitors, (2) using the same equipment type(s), (3) providing "functionally equivalent" services, (4) to the same customer base. *Citizens*, 206 Ariz. at 39, 75 P.3d at 129. (*citations omitted*). Additional factors include the property's physical attributes, productivity, use, and purpose. (*Id.*) Although all factors are to be considered, the paramount concern is whether the Taxpayers' property and the comparison taxpayers are functionally equivalent. (*Id.*) That is, the weight of the analysis must be based on the functional equivalency factor. *Id.* at 41-42, 75 P.3d at 131-132.

60. In this case, discrimination exists because Taxpayers' products are functionally similar to those of their relevant competitors. These Taxpayers and their competitors used functionally identical property for functionally identical purposes. *Citizens*, 206 Ariz. at 41-42, 75 P.3d at 131. As with the *America West* parties, Taxpayers and their competitors are using functionally identical property for functionally identical uses. Yet, as in *America West*, Taxpayers' Class 3 property has received unequal treatment because Taxpayers also own Class 2 property.

61. The full cash values of the Subject Property for tax years 1997, 1998, and/or 1999, as determined by the Department are excessive and discriminatory. Accordingly, the

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Subject Property's full cash values should be set based on the undisputed testimony of the Department's witness as follows:

<b>Tax Year</b>	<b>Taxpayer</b>	<b>Class 3 Values Under Favorable Class 3 Formula</b>
1997-98	Copper Valley Tel.	\$ 6,185,686
1997-98	Valley Telephone	\$ 6,807,379
1997-98	Southwestern Tel.	\$ 3,749,459
1997-98	Arizona Telephone	\$ 5,382,738
1999	Citizens Tel. Co.	\$ 33,017,382
1999	Arizona Telephone	\$ 5,477,720
1999	Valley Telephone	\$ 7,251,405
1999	Southwestern Tel.	\$ 5,234,576
1999	Copper Valley Tel.	\$ 6,047,701
1999	Citizens Navajo	\$ 20,771,650