BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

QWEST CORPORATION,	)	STAB No. SPT-2008-2
Appellant,	)	
V.	)	FINDINGS OF FACT, & PRINCIPLES OF LAW, CONCLUSIONS OF LAW & BOARD DISCUSSION, ORDER, & OPPORTUNITY FOR FOR JUDICIAL REVIEW
DEPARTMENT OF REVENUE OF THE STATE OF MONTANA, Respondent.	)	

This matter came before the Montana State Tax Appeal Board (the "Board") for formal hearing on February 23 through March 6, 2009. Attorneys Richard G. Smith, Eugene Ritti and Dennis Lopach represented Qwest. Attorneys Peter Crossett, Keith Jones and Brent Coleman represented the Department of Revenue ("DOR" or "Department").

Testimony was presented, exhibits were received, and post-hearing briefs were submitted. The Board having fully considered the testimony, exhibits, and submissions, hereby finds and concludes as follows.

ISSUES

The main issue presented in this matter is whether the DOR properly determined a taxable value for Qwest's telecommunication operating property as of January 1, 2007. In order to decide this matter, the Board considered four separate issues.

1. Has the Department of Revenue properly valued Qwest's telecommunication operating property on a system unit basis as of January 1, 2007?

2. Did the Department of Revenue consider adequate obsolescence when valuing Qwest's property?

3. Are the intangible values identified by Kane Reece properly deductible from the system unit value?

4. Does Qwest have a valid Constitutional discrimination claim?

FINDINGS OF FACT AND PRINCIPLES OF LAW

1. The issue involved in this matter is the 2007 valuation of the telecommunications operating property owned by Qwest, a telecommunications corporation, for purposes of *ad valorem* taxation in the state of Montana.

2. The DOR is required to assess all taxable property at 100 percent of its market value and may not adopt a lower or different standard of value from market value except as otherwise provided. (Section 15-8-111, MCA).

3. Market value is defined as "the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts." (Section 15-8-111 (2)(a), MCA).

4. Qwest is subject to central assessment by the Department of Revenue on January 1 of each year pursuant to §15-23-101, MCA.

5. All centrally assessed taxpayers in Montana, including Qwest, are required to file a report with the DOR by March 31st of each year, to provide the DOR with the financial information needed to prepare the assessment. (Sections 15-23-103, 301 and 303, MCA).

6. Qwest Corporation is a Colorado corporation that was incorporated in 1911. Qwest Corporation is the major subsidiary of Qwest Communications International, Inc. (QCII). (Qwest's post-trial memorandum, p.6). Qwest Corp. comprises over 80% of QCII. (Exh. 30, pp. Q07-DOR3943-3944; 3969, Hofland, Tr. pp. 1058-1059; Exh. 7, Q07-DOR 3684).

7. Qwest is an Incumbent Local Exchange Carrier (ILEC) that operates in a 14-state region comprised of Idaho, Utah, Washington, Oregon, Montana, Minnesota, Iowa, North Dakota, South Dakota, Nebraska, Wyoming, Colorado, New Mexico and Arizona. (Qwest's post-trial memorandum, p.6).

8. Qwest is regulated by the Federal Communications Commission (FCC) with respect to its interstate operations. The FCC regulates the pricing of all interstate retail and wholesale services, such as interstate switched access and interstate special access. (Qwest's post-trial memorandum, p.7).

9. Qwest is also subject to regulation of its intrastate retail and wholesale services by the individual public utility commissions of the states in which it operates. State commissions may regulate prices, service quality and other aspects of its business. (Qwest's post-trial memorandum, pp. 7 & 8).

10. Qwest is regulated by Montana Public Service Commission (PSC). (Brigham, Tr. 36, 43-46; Ott, Tr. 403, 480-481; Buckalew, Tr., 1259-1260).

11. While the PSC regulates the amount of revenue directly generated by Qwest's rate-regulated property, PSC regulation also provides Qwest access to monies from the federally regulated Universal Service Fund. (Buckalew Tr., 1260-1261; Brigham Tr., 1745).

12. Qwest's ability to access Universal Service Fund monies resulted in $29 million in supplemental income in 2006, of which over $16 million was federally sourced. These funds are not available to unregulated competitors. (Exh. 73, Q07-DOR 006221; Brigham Tr. 1746; Buckalew Tr. 1261).

13. Qwest faces competition from many sources. In 1996, Congress passed federal legislation in the form of the Telecommunication Act of 1996, which eliminated the exclusive local exchange monopoly franchises held by the Incumbent Local Exchange Companies (ILECs). (Qwest's post-trial memorandum, p.8).

14. The competitive local exchange carriers (CLEC) now compete with Qwest by building their own facilities or purchasing facility access from Qwest. CLECs may use certain parts of Qwest's networking under an arrangement similar to a lease and combine these elements with their own facilities, known as Unbundled Network Elements (UNEs). (Qwest's post-trial memorandum, pp. 8 & 9).

15. CLECs, including Bresnan Cable Co., have access and may utilize Qwest's facilities at rates set by the local Commission (Montana PSC). (Exh. 41; Brigham Tr., pp. 53-54; Buckalew Tr., pp. 1270-1271).

16. On January 1, 2001, Qwest had about 26 million access lines. By January 1, 2007 there were about 28.9 million available lines because the company continued to build for new customers. However, assigned customer lines

decreased from 18.5 million to 14.9 million during the same period. (Qwest's post-trial memorandum, p.11).

17. Bresnan Communications is Qwest's major competition in Montana. Bresnan offers local phone service in 76 percent of Qwest's wire centers. (Exh. 41; Brigham Tr., pp. 57-58).

18. The DOR centrally assesses the Bresnan Telephony Co. and the Bresnan microwave portion of Bresnan Co. There is also indication that certain Bresnan property is locally assessed and classified as Class 4 and 8. (Exh. 43, Hofland Tr., 193, 195). No information was provided to the Board regarding class 4 and class 8 Bresnan property.

The Department's Assessment

19. Kory Hofland, Unit Manager, prepared the 2007 DOR appraisal. (Exh. 7, p. Q07-DOR 003671).

20. Hofland, an employee of the Montana Department of Revenue since 1993, began appraising centrally assessed companies in 1998. (Tr. pp. 961 & 962)

21. Hofland used Qwest specific data, as well as certain industry derived data to calculate a unit value. (Hofland, Tr. pp. 980, 1049).

22. Qwest filed its required return on March 30, 2007, but did not include all requested information such as the company's projected cash flows or a completed expensed intangible personal property form other than listing booked intangible personal property. (Exh. 24; Hofland, Tr. pp. 1048-1050).

23. The Department centrally assessed Qwest's property utilizing a unit approach to valuation. The unit method of valuation involves appraising, as a going concern and as a single entity, the entire company, wherever located. (Rule 42.22.101(30), ARM). The valuation thus determined is intended to capture all the operating assets of the company, both tangible and intangible. (ARM 42.22.101(31)).

24. Intangible personal property is exempt from taxation in Montana. (Section 15-6-218(1), MCA).

25. By rule, the DOR assumes that 15 percent of the value produced by any of the methods of valuation is exempt as intangible personal property for telecommunication companies. This percentage was implemented in 2000 after negotiated rulemaking with industry representatives. (Exh. 68; Hofland, Tr. pp. 203-206, 212-213; Walborn, Tr. pp. 1083-1089).

26. After the unit value of Qwest was identified and the default percentage (15 percent) for intangible personal property was removed pursuant to § 15-6-218, MCA, and ARM 42.22.110(1)(a)(ui), the DOR allocated to Montana a proportionate share of the unit value. (Exh. 7, p. Q07-DOR 003676; ARM 42.22.121).

27. The Department arrived at a 2007 correlated unit value for Qwest of $21.5 billion before a deduction for intangible personal property and $18.3 billion after the deduction for intangible personal property (Exh. 7, p. Q07-DOR 003676).

28. To reach the unit value, DOR calculated seven indicators of value: original cost less depreciation (OCLD), direct capitalization of net operating income (NOI), direct capitalization of gross cash flow, yield capitalization of future

cash flows, and three stock and debt approaches. (Exh. 7, p. Q07-DOR 003676).

29. The cost approach to value, using an OCLD method, was calculated using Qwest's 10-K filings and annual report. The Department maintained that all forms of obsolescence were included in the book depreciation figure listed in the Montana annual report filed each year with the Department. (Hofland, Tr. pp. 1069 & 1070).

30. The direct capitalization approach is used to convert a single year's income into a value indication in one direct step through the use of a direct capitalization rate. Typically, the capitalization rate used in this approach is drawn from sales of comparable properties. The Department, however, uses a direct capitalization rate study for specific industries, including telecommunications. Thus, in this matter, the Department used a capitalization rate derived from earnings to price (E/P) ratios in place of data from sales of comparable properties. (Exh. 7 pp. Q07-DOR 003678, 004187; Hofland, Tr. p. 1025).

31. Although the Department developed a direct capitalization of gross cash flow indicator and a yield capitalization of free cash flow indicator, those indicators were not used for valuation purposes. (Exh. 7, p. Q07-DOR 003676).

32. The DOR developed three stock and debt approaches to value. The Department used the stock and debt approach as a surrogate for a sales comparison approach. (Exh. 7, pp. Q07-DOR 003684- 003686; Hofland, Tr. p. 1047). The Department subsequently used only one of those stock and debt approaches. (Hofland, Tr. pp. 1061 & 1062).

33. The 2007 DOR value indicators are:

Value Indicators	Before IPP*	After IPP*
Original Cost Less Depreciation	$14,666,670,548	$12,466,669,966
Direct Capitalization of Net Operating Income	25,568,891,879	21,733,558,097
Direct Capitalization of Gross Cash Flow	27,003,905,141	22,953,319,370
Yield Capitalization of Free Cash Flows	26,000,000,000	22,100,000,000
Stock & Debt Approach 1	26,326,567,633	22,377,582,488
Stock & Debt Approach 2	31,840,805,373	27,064,684,567
Stock & Debt Approach 3	17,103,711,736	14,538,154,976

*Intangible Personal Property (15 percent Exemption) (Exh. 7, p. Q07-DOR 003676)

34. The Department considered three of the seven indicators in determining a correlated unit value for Qwest. The DOR gave 40 percent weight to the OCLD indicator, 25 percent weight to the direct capitalization of NOI and 35 percent weight to the stock and debt Approach 1. (Exh. 7, p. Q07-DOR 003676).

35. The Department derived an allocation factor to identify the Montana portion of Qwest's property. The factor derived was 2.2942 percent. (Exh. 7, p. Q07-DOR 003676).

36. While Qwest initially challenged the allocation percentage, Qwest subsequently dropped its allocation challenge prior to the hearing. (Smith, Tr. p. 4).

37. The DOR's 2007 Montana allocated value, after deducting the 15 percent for intangible personal property, was $419,836,902. (Exh. 7, p. Q07-DOR 003676).

Intangible Personal Property

38. If the telecommunication taxpayer believes that the value of its intangible personal property exceeds the default 15 percent, the taxpayer may present

such information to the Department during the appraisal process. Rule 42.22.110 (1) (a) (2), ARM.

39. In initial filing with the DOR, Qwest indicated $435,520,431 of booked intangible personal property and no expensed intangibles, which is less than 15 percent of the total value set by the Department of Revenue. (Exh. 24, Q07-DOR 2779-2780; Hofland, Tr. pp. 202-204).

40. Qwest requested an informal review of its valuation. At that time, Qwest brought additional material to the Department regarding intangible personal property. The material included summary claims for other telecommunication companies of intangible value that significantly exceeded 15 percent. (Exh. 9, p. Q07-DOR 003733).

41. The materials also claimed additional intangible value[1] for Qwest. Conflicting claims indicated a stock and debt indicator of value in excess of $21 billion which included $12.1 billion of intangible value, a cost approach that stated intangible personal property of $2 billion in value, and an income approach using a yield capitalization method with $3 billion of intangible personal property. (Exh. 9, p. Q07-DOR 003736-3737).

42. In a written request to the office of dispute resolution, Qwest did not provide a value for intangible personal property but merely noted "the Department failed to allow sufficient value of exempt property." (Exh. 8, p. Q07-DOR 3665).

43. The Department's appraiser did not believe Qwest provided sufficient evidence of intangible personal property greater than 15 percent and thus

[1] Qwest often claims a large amount of tax-exempt intangible value. The Board notes that intangible value is not the same as "intangible personal property" as defined by 15-6-218, MCA.

consistently removed 15 percent of value to represent intangible personal property in each indicator of value. (Hofland, Tr. pp. 201-204).

Review of DOR Appraisal

44. The overall valuation in 2007 was substantially higher than in 2006. The Department's value for 2006 was $15.7 billion after a 15 percent deduction for intangible personal property, in comparison to $18.3 billion after the intangible deduction for 2007. (Exh. 6 & 7).

45. Montana's allocated values increased from $370,974,000 in 2006 to $417,652,000 in 2007. (Exh. 6, p. Q07-DOR 002313; Exh. 7, p. Q07-DOR 003676).

46. Qwest's parent QCII stock price increased 27 precent in 2005 and gained an additional 48 percent in 2006. (Exh. 11, p. QMT 01787 & 0178).

47. The increase in the valuation appears to be derived from a significantly higher stock and debt approach to value, as well as a lower cost value for the Qwest assets in the 2006 appraisal. (Exh. 6, pp. Q07-DOR 002313 & 002314; Exh. 11, p. QMT01787 & 01788). For example, the comparable stock and debt value for 2007 was $5.9 billion higher than 2006, and the cost indicator was $1.2 billion lower in 2007. (Exhs. 6 & 7).

48. During the hearing, Eugene Walborn, DOR Division Administrator; Stephen Barreca, ASA, CDP, PE; Brent Eyre, ASA; and James Ifflander, PhD, CFA, testified as experts in support of the Department's values. (DOR's Notice of Filing Expert Witness Reports and Tr. generally).

49. The DOR retained Brent Eyre, Accredited Senior Appraiser (ASA), to perform a review of the Qwest appraisals. Eyre is a qualified appraiser with

extensive experience in the appraisal field. Eyre was accepted as an appraisal expert in this matter without objection. (Exh. 30; Eyre, Tr. p. 1409).

50. In the course of reviewing the DOR and Qwest appraisal, Eyre developed his own independent opinion of the value of Qwest. (Exh. 30; Eyre, Tr. p. 1409).

51. In his appraisal, Eyre's opinion of market value was rounded to $19,200,000,000 after the standard 15 percent deduction for intangible personal property. By applying the Department's allocation factor to this unit value, the Montana allocated value was $440,000,000. (Exh. 30, pp. Q07-DOR 003948-003950).

52. Qwest contends the Department's stock and debt method lacks validity because the Qwest stock is not publicly traded. (Qwest's post-trial memorandum, p. 27). Thus, Qwest claims the Department cannot accurately determine Qwest's equity value from using parent company QCII stock prices and using stock prices from comparable companies' P/E multiples to distill the proper P/E ratio. (Exh. 22, pp. 13-14; Reilly, Tr. pp. 1806-09).

53. Qwest argues the Department did not analyze the comparable companies to ensure that the companies are indeed comparable or properly adjust the value for use in a direct capitalization method. (Exh. 22, pp. 13-14; Reilly, Tr. pp. 1806-09).

54. Qwest contends that while the Department's use of the historical cost less depreciation (HCLD)[2] method properly excluded most of the intangibles, it

[2] HCLD and OCLD were used synonymously in this hearing.

did not account for sufficient obsolescence. (Qwest's post-trial memorandum, p. 27).

Qwest's Appraisal

55. Qwest requested an informal appeal, provided certain additional information (see FOF 40), and timely filed in protest of the Department's unit valuation. (FOF 42) (Exhs. 8 & 9).

56. For the hearing, Qwest retained Kane Reece Associates, Inc. (KR) to prepare a separate appraisal of the fair market value of the business enterprise and assets of Qwest as of January 1, 2007 for state property tax reporting purposes. (Exh. 11).

57. Testimony and exhibits indicated that a "Property Reduction Project" was implemented to demonstrate that Qwest was overvalued for tax purposes. (Exhs. 60 & 61; Cuddihy, Tr. pp. 627, 698-700, 753).

58. KR discussed with Qwest network employees that they anticipated the system was overvalued for property tax purposes and considered whether it could be rebuilt for a lower cost. (Cuddihy, Tr. pp. 627-628).

59. KR calculated Qwest's taxable fair market value (FMV) at $9,607,000,000; more than $8 billion dollars lower than the Department's taxable unit value of $18,300,000,000. (Exh. 11, QMT01746; Exh. 7, Q07-DOR 003676).

60. John E. Kane of Kane Reese (KR) signed the Qwest appraisal report as the principle. Robert Ott, James W. Cuddihy and Davis K. Bivins, also with KR, signed the appraisal certificate. (Exh. 11, QMT01839- QMT01841). Ott, Cuddihy and Bivins are not certified appraisers and hold no appraisal designations, although the testimony clearly demonstrated that they

performed all of the work within the appraisal. (Ott, Tr. p. 526; Cuddihy, Tr. pp. 621-623, 695-696).

61. The KR appraisal relied solely on a discounted cash flow method (DCF) to reach its conclusion for the business enterprise value (BEV)[3]. (Exh. 11, p. QMT01746).

62. A discounted cash flow (DCF) model is the process of discounting the anticipated future cash flows derived from the asset to find a current market price. (Kane, Tr. pp. 276 & 277; Appraisal Institute, The Appraisal of Real Estate, 12th ed., p. 569(2001)).

63. KR developed the discount rate by employing the capital asset pricing model (CAPM) for the cost of equity. (Ott, Tr. p. 461).

64. As part of calculating a discount rate, KR used a company-specific risk[4] premium, which was not used by the Department. (Exh. 11, p. 1844; Kane Tr. pp. 278-283)

65. KR relied solely on the income approach, and Eyre also gave the most weight to this approach, yet their valuations differ by approximately $11 billion. (Exh. 11, p. QMT01746; Exh. 30, p. Q07-DOR003946).

66. The primary reason for the valuation differences between the parties relates to a differing discount rate used in the income approach. The addition of a company-specific risk premium by KR brings the discount rate up, and thus drives the KR value down. (Exh. 11, pp. QMT01843-1850).

[3] The terms business enterprise value (BEV) and unitary value are synonymous. *See* Kane, Tr. p. 260.
[4] The terms company-specific risk and unsystematic risk are used synonymously. *See* Kane, Tr. pp. 311-312

67. Eyre disagrees with KR's discount rate. Eyre believes company-specific risk should not be accounted for in the cost of equity, but rather should be accounted for in the forecast of expected cash flows. (Exh. 30, pp. Q07-DOR 003927-3928).

Asset Valuation

68. After setting an overall business enterprise value, KR attempted to separate the tangible value and intangible value in an effort to determine an intangible value that might be exempt from taxation. (Exh. 11, QMT01746-1748).

Intangibles	(000,000)	**Tangibles**	(000,000)
Business Customer Relationships	$ 443	Land	$ 354
SBG Customer Relationships	$ 59	Building CO only	$ 1,942
Consumer Customer Relationships	$ 290	Building Other	$ 608
Wholesale/ Other Customer Relationships	$ 154	Leasehold Improvements	$ 65
Wholesale/ Affiliate Customer Contracts Relationships	$ 3,199	Support Assets	$ 154
Software	$ 2,892	Central Office Equipment	$ 2,155
IP	$ 300	Outside Plant	$ 4,329
Tradename/Trademarks	$ 920		
Other Intangibles/Marketing Rights	$ 553		
Goodwill	$ 583		
Total Intangibles Assets	**$ 9,393**	**Total FMV**	**$ 9,607**
Qwest BEV	**$ 19,000**		

- Information for creation of this table was derived from Exh. 11, QMT01753.

Tangible Asset Valuation

69. KR valued Qwest's tangible assets by determining the replacement cost new less depreciation (RCNLD) of six select Qwest wire centers (of 1200 wire centers). By examining a select number of wire centers, KR calculated a level of obsolescence for Qwest's entire network. (Exh. 11, p. Q07-DOR 001746).

70. KR performed a replacement cost new valuation methodology for each of these selected wire centers and also performed a reproduction cost new valuation methodology for each of those same wire centers. (Exh. 11, pp. QMT01807-QMT01815). KR used a capacity analysis planning tool (CAPT) to develop the replacement cost information. CAPT is a patented system developed by Qwest to assess the operational capacity of its wire centers, (Cuddihy, Tr. pp. 630-631). The CAPT system is not available to anyone outside of Qwest. (Cuddihy, Tr. p. 704).

71. "Reproduction cost new" generated a much higher value in this case. (Exh. 11, p. QMT01811). This is due, in part, to aging equipment used by Qwest, as well as rapid changes in telecommunications equipment. (Kane Tr., pp. 265-269).

72. Ott and Cuddihy testified that the difference between replacement cost new and the reproduction cost new is the best measure of obsolescence. (Exh. 11, p. QMT01808; Kane, Tr. pp. 267 & 268; Ott, Tr. p. 412; Cuddihy, Tr. pp. 645-651).

73. By applying a replacement versus reproduction methodology, KR estimated that Qwest's central office equipment and outside plant obsolescence was 37 percent and 68 percent respectively. (Exh. 11, p. Q07-DOR 001746).

74. KR also determined Qwest's central office building unused space translated to an obsolescence factor of 18 percent. (Exh 11, pp. QMT01813-QMT01814, QMT02031-QMT02033).

Intangible Asset Valuation

75. KR calculated a value of the intangible assets (within the business enterprise value) at $9,393,000,000. This value was calculated by individually valuing certain "intangibles" such as business and consumer customer relationships. (Exh. 11, pp. QMT01816-1838).

76. KR included a value for the computer software and trademarks/tradenames separately valued by Willamette and discussed below. *(FOF 83)* (Exh. 11, p. Q07-DOR 001747 & 001748).

77. KR added the tangible values and the "intangible values," (including residual goodwill) to equal their business enterprise value. (Exh. 11, QMT1837).

Willamette Intangible Appraisal

78. Qwest presented a report signed by Robert F. Reilly on behalf of Willamette Management Associates (WMA) developed for the purpose of determining the fair market value of 563 computer software programs developed primarily by Qwest. (Exh. 14). This report was integrated into the Kane Reese appraisal.

79. Robert Reilly is the managing director of WMA. He has a Master of Business Administration and a Bachelor of Arts in Economics. Reilly has several professional affiliations ranging from Certified Public Accountant to several appraisal certifications. (Exh. 14, pp. 98-99).

80. Reilly developed valuations for Qwest's software based on a synthesis of the constructive cost method (COCOMO) and the KnowledgePLAN (KPLAN) model. (Exh 14, p. 31).

81. The COCOMO and KPLAN are considered "empirical" cost models. That is, the development time and development cost of the subject software (Qwest) is estimated by reference to a large database of actual software development projects where the actual development times were carefully monitored. (Exh. 14, p. 31) Based on questionnaires related to subject software, Reilly estimated the system development costs based on the number of person-months necessary to complete the software project. (Exh. 14, pp. 3-4).

82. Based on the valuation synthesis, WMA concluded the component fair market value, as of January 1, 2007, of the Qwest software was $2,892,000,000. (Exh. 14, pp. 40-41).

83. WMA also produced a report analyzing the fair market value of trademarks related to Qwest business. (Exh. 15). This report was also integrated into the Kane Reese appraisal. (Exh. 11).

84. Qwest counsel provided WMA with a cost of capital for the purpose of the trademark report. (Reilly, Tr. p. 857).

85. WMA used a market approach called a "relief from royalty method" to estimate the component fair market value of Qwest's subject trademarks. (Exh. 15, p. 16).

86. The relief from royalty method is based on the principle that the intellectual property owner would be willing to license the intellectual property for a reasonable royalty rate. (Exh. 15, p. 16).

87. WMA estimated the license royalty rate from an analysis of market-derived data with respect to licenses of comparative intellectual property. (Exh 15, p. 16).

88. WMA calculated the avoided royalty payments by multiplying the operating revenue associated with the trademarks by the selected royalty rate. This after-tax avoided royalty payment was capitalized with a direct capitalization rate of 14.1 percent provided to WMA by Qwest management. (Exh. 15, pp.17-18).

89. Based on the relief from royalty method, WMA's opinion of the component fair market value, as of January 1, 2007, of the subject trademarks was $920,000,000. (Exh 15, p. 18).

Criticism of Kane Reese and Willamette Reports

90. The KR appraisal was the first Regional Bell Operating Company (RBOC) appraisal done by the firm. (Kane, Tr. p. 318).

91. During cross examination, it became clear that Kane, the signer of the appraisal, did not perform the actual appraisal work. Ott was the principle drafter of the appraisal report with Cuddihy being primarily responsible for the development of the tangible asset values. (Kane, Tr. p. 309-379).

92. Eyre, as the Department's expert, criticized KR's RCLND cost approach for being dependent on a sample size of just 6 wire centers out of more than 1200 total wire centers. (Exh. 30, p. Q07-DOR 003920-3921).

93. Dr. Ifflander criticized Qwest's use of a company-specific risk premium in part because company-specific risk is alreadyconsidered in the risk of a company's stock relative to the market as a whole. By adding a company-

specific risk premium, Qwest would be doubling, or double-counting, the risk factor. (Ifflander, Tr. p. 1307-1308; 1362-63).

94. In addition, Dr. Ifflander testified the use of a company-specific premium is inconsistent with the portfolio theory of finance and would allegedly reward investors for being "foolish" in making non-diversified investments. (Ifflander, Tr. pp, 1326-27.)

95. Despite Qwest's demand that obsolescence be recognized, Qwest's own expert Reilly stated that there is no economic obsolescence if goodwill is on the books. (Reilly, Tr. pp. 922-924).

96. Eyre claimed many of the identified KR intangibles do not meet the criteria of "constituting intangible personal property" and should not be deducted. For example, KR valued customer relationships, customer contractual relationships, other intangible/marketing, and assembled workforce as intangibles, but Eyre claimed those items are not intangible personal property within the meaning of Montana statute. (Exh. 30, p. Q07-DOR 003912).

97. The methodology employed by KR has the effect of lowering the taxable value of the tangible assets while raising the value of the intangible assets. This, in effect, creates an extremely low taxable value. (*For example, see* Eyre, Tr. pp. 1434-1435).

98. Eyre concluded the KR appraisal does not rely on a unit appraisal of Qwest. Rather, the value conclusion represents KR's opinion of the replacement cost new less depreciation of the tangible property of Qwest. (Exh. 30, pp. Q07-DOR 003905-3908).

CONCLUSIONS OF LAW and BOARD DISCUSSION

Summary

We conclude that the Department of Revenue properly determined the taxable value of Qwest's Montana property for tax year 2007. The Department of Revenue set a market value of approximately $21.5 billion and a taxable value of approximately $18.3 billion. In calculating Qwest's taxable value, the Department deducted 15 percent for intangible personal property from the market value. The Department then allocated a portion for Montana, for a resulting Montana allocated value of $419,836,902. FOF 37. Qwest argues that the market value is too high and the deduction for intangible personal property is too low.

In this instance, the Department of Revenue calculated a valuation for Qwest according to law and current practice. There is no indication of any major error in the Department's calculations, and the methodologies employed by the Department are standard. We have previously supported the Department's use of a stock and debt approach, a capitalization rate determined using an E/P ratio, and an OCLD calculation for a cost approach for centrally-assessed properties. *See, e.g. Yellowstone Pipeline,* 138 Mont. 603, 358 P.2d 55(1960); *Pacificorp v. DOR,* CT 2005-3 (2007), *Puget v. DOR,* CT 2007-5 (2009).

Qwest failed to demonstrate error on the part of the Department. Merely demonstrating different methodology is not sufficient to require a change in valuation. We uphold the Department's value.

Standard of Review

The Board has jurisdiction over this matter pursuant to §15-2-302, MCA. It is the Board's function and duty to find the facts in this matter and "settle disputes over the appropriate valuation of a given piece of property." *Montana Department of Revenue v. PPL*, 2007 MT 310, ¶ 45; 340 Mont. 124, 135, 172 P.3d 1241, 1249(2007)(*citing Dept. of Revenue v. Grouse Mt. Development*, 218 Mont. 353, 355, 707 P.2d 1113, 1115 (1985)). *See also* §15-2-201(d), MCA; *DOR v. Paxson*, 205 Mont. 194; 666 P.2d 768 (1983).

As a general rule, the appraisal of the Department of Revenue is presumed to be correct and the taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. *Farmers Union Cent. Exch. v. Department of Revenue*, 272 Mont. 471, 474, 901 P.2d 561, 563 (1995); *Western Airlines, Inc., v. Michunovich et al.*, 149 Mont. 347, 353, 428, P.2d, 3, 7 (1967), *cert. denied* 389 U.S. 952, 19 L. Ed. 2d 363, 88 S. Ct. 336 (1967).

Analysis

Specifically, Qwest focused its arguments on four areas. First, Qwest attacks the Department's use of unit valuation. Second, Qwest claims that it suffers from obsolescence not recognized by the Department. Third, Qwest claims that substantial intangible personal property is improperly taxed. Finally, Qwest argues that it suffers from discriminatory tax treatment in violation of its Constitutional rights. We now address the specifics of Qwest's claims.

Unit Valuation

The Department of Revenue is charged with assessing property at 100 percent of market value, unless otherwise prohibited by law. *See* §15-8-111, MCA. The DOR may not adopt a lower standard of value than market value unless authorized by law. Section 15-8-111(3), MCA. By rule, the Department generally uses a unit valuation methodology for valuing centrally assessed properties such as Qwest. *See* §15-6-156, MCA, §15-23-101, MCA, Rule 42.22.111(1), ARM. In this matter, the Department determined that valuing the entire corporate unit and allocating value to the Montana portion would be proper.

Qwest argues that the cost approach should be used to value the tangible assets for Qwest, a centrally assessed company, and using the cost approach for valuation is more appropriate than the unit approach.

The Department is granted some discretion in determining which approaches to value should be used "to secure a fair, just, and equitable valuation of all taxable property." *Montana National Bank of Roundup v. Department of Revenue ,* 167 Mont. 429, 431, 539 P.2d 722, 734 (1975)(*partially overruled on other grounds by Turner v. Mountain Engineering* & *Construction, 276 Mont. 55,* 915 P.2d 799, 803 (1996)). The goal of unit valuation is to come to an appropriate valuation of a business enterprise. The concept of unitary assessment for appraising interstate properties has been approved by the Montana Supreme Court for over 50 years. *See, e.g.*, *Yellowstone Pipeline v. State Board of Equalization*, 138 Mont. 603; *Western Airlines* 171 Mont. at 350-351; *DOR v. Pacific Power and Light Co.,* 171 Mont. 334, 338-9; 558 P.2d 454, 457 (1977), and recently re-affirmed in *DOR v. PPL Mont., Inc.,* 2007 MT 310, 172 P.3d 1241.

It is, in fact, the communications companies that were some of the earliest companies subject to unit value taxations. *See Western Union Tel. Co. v. State Board of Equalization,* 91 Mont. 310, 7 P.2d 551 (1932). The unit method values an entire operating system as a going concern, an integrated, organized whole without functional or geographic division of the whole into its component parts. The unit approach relies on the proposition that each part of an organization is indispensable to the existence of the whole and contributes, proportionally, to its principal earnings. *See PPL,* ¶ *31; Northwestern Corp. v. DOR, SPT 2006-1; State Railroad Tax Cases,* 92 U.S. 575 (1875).

Further, the Montana Supreme Court discounted Qwest's specific argument over 30 years ago in *DOR* v. *Pacific Power and Light,* 171 Mont. 334; 558 P.2d 454, 458 (1976). The Court held the actual cost of the physical plant within Montana alone does not equal the value of the allocated portion of a utility company. The unitary method determines not only the appropriate share of the entire enterprise which may be taxed by each state but also determines the "enhanced value" attributable to the equipment used by virtue of its being a component *part* of the system. The unitary method assumes the value of the entire system, as a going concern, is somewhat greater than the total fair market value of its equipment. *Id. at* 340.

Qwest provides no additional legal arguments that persuade us the unitary system is inappropriate, only that using the cost method saves them money. Merely arguing for a lower taxable value is insufficient to overcome long-standing legal structure.

Obsolescence in the Cost Approach

As part of its attempt to lower its property taxes, Qwest argues the company suffers from significant obsolescence not recognized by the Department in its cost approach.

Qwest contends the decline in the physical size of plant and revenues indicated obsolescence not recognized by the Department. The reduction of revenue appears directly related to the loss of customers. Qwest's revenue-producing access lines fell 5.74 percent from 2006 to 2007. *See* Qwest's pre-trial memorandum, p.1.

The evidence does not support any indication of additional obsolescence not recognized by the Department. The DOR's system value increased from $18.5 to $21.5 billion from 2006 to 2007 and Montana's allocated value increased from $370,974,000 to $419,836,902 in the same time frame. FOF 45. The stock prices indicate that Qwest's overall value did increase substantially from 2006 to 2007. FOF 46. For example, the stock indicator of value used in 2006 was $16,475,079,527 while it increased to $22,377,582,488 in 2007. During 2006, QCII stock price increased 48 percent. FOF 46. At the same time, the cost indicator of value decreased, which leads to a net income increase. Thus, the income indicators are much higher for 2007 than 2006. There is no indication in the record that those figures have serious errors.

In addition, while the physical size of the plant and the customers declined, Qwest continues to increase the number of access lines. FOF 16. Qwest's own witnesses indicate that the company does not suffer from economic obsolescence. *See* Reilly, Tr. pp. 922-924; Torrence, Tr. pp. 177.

Finally, there is no indication that the Department failed to examine Qwest's own data provided to the Department. The Department uses audited financial reports, such as 10-K filings and annual reports to calculate its cost approach. We have previously held that there "is an increased reliability" in a cost approach valuation for a rate-regulated entity when the figures used are derived from rate regulation filings. *See Pacificorp v. DOR, CT-2005-3.* Thus, we find no evidence that indicate additional obsolescence not recognized by the Department.

Intangible Personal Property

At issue is whether DOR properly deducted intangible personal property from Qwest's market value. At the hearing, Qwest argued for a $9 billion reduction in taxable value for intangible personal property and made several general arguments relating to deducting significant intangible personal property from taxable value in this matter.

Intangible personal property is "personal property that is not tangible personal property and that: (a) has no intrinsic value but is the representative or evidence of value, including but not limited to certificates of stock, bonds, promissory notes, licenses, copyrights, patents, trademarks, contracts, software, and franchises or (b) lacks physical existence, including but not limited to goodwill." Section 15-6-218(2), MCA. Intangible personal property is exempt from taxation in Montana. Section 15-6-218(1), MCA.

Unit Valuation and Intangible Personal Property

As a preliminary argument, Qwest argues that using only the cost approach for valuation would eliminate many of its concerns with improperly taxing intangible personal property but Qwest fails to prove intangible property is taxed under the unitary approach.

Because Montana is a unit value state, there is an enhancement value or unit value above the tangible and intangible property. The unit valuation captures the enhanced value of both tangible assets and also the enhanced value of intangible assets. For telecommunications companies, connectivity is the essence of the business and it is the interconnectedness of the company that creates value. Thus, in this case, solely using the cost approach to value will not capture all property value required for *ad valorem* taxation. *See* § 15-8-111, MCA, § 15-23-101, MCA.

Qwest's arguments regarding use of the cost approach alone are not in harmony with Montana's existing statutory tax system. Montana has a unit value system as set out in statute and case law, and previously discussed. The statute excluding intangible personal property from taxation has a specific statutory definition which works in concert with well-developed tax policy and is not in conflict with it.

Process for Reporting Intangible Personal Property

Qwest initially brought a claim of $435 million of non-taxable intangible personal property to the Department during the appraisal process. Subsequently, Qwest argued to this Board it had over $9 billion of tax-exempt intangible personal property. The Department of Revenue claims Qwest may not present evidence of intangible personal property if it was not brought to the Department during the appraisal process as required by Department of Revenue rule.

During the appraisal process, Qwest initially provided a declaration of $435,520,531 of booked intangible personal property, and no expensed intangible personal property value was provided. FOF 39. The stated intangible personal property was significantly below the standard 15 percent deduction for intangible personal property. There was no indication Qwest planned to provide additional information regarding intangible personal property.

Qwest provided some additional contradictory information to the Department during the informal review process. Within those documents, Qwest summarily claimed their stock and debt indicator of value was in excess of $21 billion, with $12.1 billion of intangible value[5]. FOF 41. The documents also provided a cost approach valuation that stated intangible personal property of $2 billion in value. Elsewhere, they used an income approach using a yield capitalization method which indicated $3 billion of intangible personal

[5] In their yield capitalization model, Qwest subtracted $3 billion customer base, but did not subtract any goodwill from the value, which provided a $13.3 billion value indicator. Exh. 9, 3738.

property. FOF 41. Qwest also provided summary statements and portions of 10-K's for other telecommunication companies indicating between 40 and 55 percent intangibles. FOF 40. Qwest provided no information other than summary statements regarding these claims. The Department did not allow for any deduction above the standard 15 percent that is set forth in administrative rule. FOF 43.

We now examine whether Qwest is required to bring evidence of intangible personal property to the Department in advance of the hearing to receive a substantial exemption from taxation.

By administrative rule, the Department makes a standard reduction in value to account for intangible personal property. Rule 42.22.110(1), ARM. For centrally assessed telecommunication companies, the standard is a 15 percent reduction for each indicator of value. A taxpayer may propose alternative methodology or information to argue the amount of intangible personal property is greater than fifteen percent "during the appraisal process." *See* Rule 42.22.110(2), ARM.

In reviewing an administrative rule, the state tax appeal board "shall give an administrative rule full effect unless the board finds the rule arbitrary, capricious, or otherwise unlawful." Section 15-2-301, MCA. *See also,* § 2-4-305, MCA. The Supreme Court has also stated that an administrative agency's interpretation of a statute under its domain is presumed to be controlling. *Christenot v. Department of Commerce*, 272 Mont. 396, 398, 901 P.2d 545,548, *citing Norfolk Holdings v. Dept. of Revenue,* 249 Mont. 40-44, 813 P.2d 460, 462 (1991). In fact, the construction of a statute by the agency responsible for its execution should be followed unless there are compelling indications that the construction is wrong. *Christenot at 399, 548 (citing Red Lion Broadcasting Co. v. F.C.C., 395 U.S. 367, 381, 89 S. Ct. 1794, 1802, 23 L.Ed.2d 371, 384 (1969)).*

See also § 15-1-201, MCA (giving general rulemaking authority to DOR).

There is no mechanism or methodology for the Department to determine a specific value of intangible personal property without input from the taxpayer. Because the Department cannot accurately assess Qwest without information from the company, it is incumbent upon the taxpayer to provide accurate and timely information to the Department for valuation purposes during the appraisal process, and in advance of litigation, if the company can demonstrate more than a 15 percent intangible personal property value. Thus, it is not arbitrary, capricious or otherwise unlawful for the DOR to require Qwest provide evidence during the appraisal process that it is entitled to more than a 15 percent deduction for intangible personal property. *See §* 15-2-301, MCA. *See also Gannett v. State,* 2007 Mont. Dist. LEXIS 517, ¶ 14; *State ex Rel. Anderson v. State Board of Equalization*, 133 Mont 8, 13, 319 P.2d 221 (1957), *State Ex. Rel Whitrock v. State Board of Equalization*, 100 Mont, 72, 45 P.2d 684 (1935).

Failure to provide information to the Department during the appraisal process is the same concept as the failure to exhaust administrative remedies. It does not benefit the taxpayer, the Department, or the Courts to go through a protracted litigation process when it would be more appropriate to bring the information before the agency in a timely manner and allow for a proper review. In the interest of both judicial economy and agency efficiency, an exhaustion of administrative remedies allows "a governmental entity to make a factual record and to correct its own errors within its specific expertise before a court interferes." *Bitterroot River Protection Ass'n v. Bitterroot Conservation Dist.*, 2002 MT 66, P22, 309 Mont. 207, ¶ 22, 45 P.3d 24, ¶ 22. *See also Shoemaker v. Denke*, 2004 MT 11, ¶ 18, 319 Mont. 238, 84 P.3d 4.

In addition, the presumption of correctness is in favor of the Department's assessment, and the law does not favor overturning the

Department's administrative rule. For all of the forgoing reasons, we conclude that the rule is in harmony with the statute and does not add requirements which are contrary to the statutory language or engraft additional provisions not envisioned by the legislature. *See Bell v. Dep't of Licensing*, 182 Mont. 21, 23; 594 P.2d 331, 333 (1979); *Christenot v. State Dept. of Commerce,* 272 Mont. 396, 400; 901 P.2d 545, 548 (1995) *(citing Board of Barbers v. Big Sky College*, 192 Mont. 159, 161; 626 P.2d 1269, 1270-71 (1981)). In this instance, the Board shall give the rule full effect.

Qwest failed to provide timely material to the Department of Revenue, and thus their claims at hearing are untimely.

The Evidence of Intangible Personal Property is in Conflict and Not Persuasive to the Board

The question of what may qualify as intangible personal property has not been addressed in telecommunication valuation cases. This is a relatively new area of law and, in fact, has not yet been addressed by this Board and the Montana Courts. We believe that it is proper to allow Qwest its opportunity to make a claim and build a record in this matter. In this instance, while we have held that Qwest is untimely in bringing evidence of intangible personal property, we will address the evidence brought to the Board.

In addition to failing to be timely, the evidence brought to us by Qwest during the hearing is not persuasive. The material presented in the hearing is in direct contrast to Qwest's own valuation provided during the appraisal process.

There was no evidence at the hearing that Qwest attempted to prove the industry as a whole has more than 15 percent intangible personal property. Qwest also failed to build its own record for more than a 15 percent intangible personal property deduction. First, Qwest showed a mere $435 million worth of intangible personal property during their initial filings with the Department.

After receiving the initial Department appraisal, Qwest submitted additional summary material to the Department indicating a range of $2 billion to $13 billion of intangible personal property within the market value. FOF 40. During the hearing, Qwest changed its claim once again to show $9,393,000,000 in intangible assets. FOF 75.

Qwest's claimed "intangible personal property" grew from $435 million to $9 billion through the appeal process. There is no credible claim Qwest "discovered" over $9 billion in intangible personal property after filing an appeal. In addition to the indicators that the company and the appraisers were looking to lower their property taxes, we cannot find their claims persuasive. FOF 57 & 58.

Further, intangible assets listed by Qwest are not the same as "intangible personal property." By statute, "intangible personal property" is not the equivalent of intangibles that exist above and beyond the tangible value developed by the cost methodology. FOF 96.

Intangible personal property indicates property which can be sold or an ownership interest that can be transferred. The term personal property indicates items that may be the subject of private ownership (real, personal, and mixed); that is, items such as money, goods, chattels, things in action and evidences of debt. *See, e.g.* § § 15-1-101(n); 15-1-101(p); 1-1-205, MCA. The majority of the Montana cases previously addressing intangible personal property did not address its definition. *See, e.g., Lewis v. Puget Sound Power & Light Co.*, 2001 MT 145, 29 P.3d 1028.

By current statutory definition, "intangible personal property" includes certificate of stocks, bonds, promissory notes, licenses, copyrights, patents, trademarks, contracts, software, franchises and goodwill. The intangible personal property statute does not include the terms customer relationships, intellectual property or marketing rights. While not prohibited by statute from included, there is no evidence which demonstrates those items should be properly included as intangible personal property. There is no indication those items have been properly valued as personal property, with any indication of an ownership interest, or that they may be valued for sale purposes as required for valuation purposes. FOF 96. There is also no indication those items are not already included in a valuation of goodwill.

The general terms customer relationships, intellectual property, and marketing rights are too nebulous in this instance to be properly considered personal property that can be exempted from unit valuation. Qwest failed to provide the Department or this Board with credible data that would support such wide-ranging claims for deduction of intangible personal property.

In addition to the failure to demonstrate a strong argument for deducting significant intangible personal property, the Board does not find the Kane Reese appraisal to be persuasive.

We do not agree it is proper to use a company-specific risk premium in determining a business enterprise value in this instance. There is little doubt there may be a variety of willing buyers for this company. This company had cash flow, rate regulation and access to federal financial support such as the Universal Service Fund, as well as rising stock prices in 2007. FOF 12, 64, 67, 93 & 94. Merely because the company may be subject to significant competition, or may be worth less in the future, does not make it a non-saleable company or indicate a need for a company-specific risk premium.

Further, we question the value of Willamette's appraisal values when Willamette accepted the cost of capital, a critical component of valuation, directly from Qwest. FOF 84 & 88. Thus, we cannot consider the value of the software or trademarks as persuasive. Finally, the correlated unit value uses an odd hybrid of the cost approach and a discounted cash flow method in a way that provides a tax benefit for each set of assets, yet it is conceptually incompatible with unit valuation. It appears as if all of Qwest's valuations look for the most-tax advantaged value for each asset of the company without regard for the fundamental fair market value. This is, of course, likely due to the efforts to look for lower taxable value. FOF 57 & 58. For this and other reasons stated, we question the KR methodology and we discount the valuation set in the appraisal.

Constitutional Claims

Qwest's complaint contends that discriminatory taxation occurred that violates the guarantee of equal protection in the Montana State Constitution, specifically referencing Article II, sec. 4 and Article VIII, sec. 1 and 3. Qwest argues that Bresnan Cable Company provides telephony services in competition with Qwest, and is assessed at a lower tax rate on substantial parts of its plant that provide telephony and internet services as well as cable television services. Qwest argues that it should not be treated any differently than cable companies with respect to "joint use" properties that provide telephony services. Qwest claims that disparate treatment results in a competitive disadvantage which amounts to constitutional violations of equal protection and equalization.

The Montana Constitution requires that "persons similarly situated with respect to a legitimate governmental purpose of the law must receive like treatment." *DOR v. PPL,* 172 P.3d 1241, 1247. While it is true that this Board lacks authority to decide "purely legal, constitutional questions" as set out in *Shoemaker v. Denke*, 319 Mont. 238, 246; 84P.3d 4, 9 (2004), this Board is the court of record, and hears evidence and sets the record when claims require factual determinations. *See, e.g., Shoemaker v. Denke,* at 246; *Great Falls Tribune v.*

Montana PSC, 319 Mont. 38; 82 P.3d 876 (2003).

As the Montana Supreme Court has stated, the first prerequisite for a meritorious equal protection claim is a showing that the state has adopted a classification that affects two similarly situated groups in an unequal manner. The mere existence of a different classification is not sufficient, as governments are frequently required to make classifications in the administration of programs. *Mont. Dept. of Rev. v. PPL Montana,* at 133; 1247.

The Montana Supreme Court will uphold a tax classification if there is a rational basis for it, that is: (1) the tax classification is reasonable, not arbitrary; and (2) the statute applies equally to all who fall within the same classification. Further, a classification is reasonable if any reasonably conceivable set of facts provides a rational basis for it. A classification is not reasonable if it "confers particular privileges or imposes peculiar disabilities upon [a] class of persons arbitrarily selected from a larger number of persons, all of whom stand in the same relation to privileges conferred or disabilities imposed." *Kottel v. State*, 2002 MT 278, ¶ 5, 312 Mont 387, 60 P.3d 403. The *Kottel* court further stated the "question of whether property appraisals are 'equalized' is another approach to the question of whether an appraisal system violates equal protection." *Id.* at 414. Thus, the tests are the same for both constitutional sections.

Qwest's complaint, in summary, is that the Montana Legislature has set up a different tax structure for cable companies and telephone carriers. The Legislature set forth a specific statutory classification system for different types of property in the tax assessment process. Class eight property includes cable television systems, including the majority of Bresnan property and is taxed at 3 percent of its market value. *See* §15-6-138, MCA, FOF 18. Class thirteen property includes allocations of centrally assessed telecommunications services companies, including Qwest, and is taxed at 6 percent of its market value. *See*

§15-6-156, MCA.

While Qwest argues Bresnan is a tax advantaged entity because it is taxed in a more favorable manner, Qwest did not provide the specific evidence to demonstrate that the difference rises to the level of a Constitutional violation. Qwest argues cable and related outside plant is not properly reported as Class 13 property, but presents no specific tax filings, market value indicators, or other information so we can verify the companies are similarly situated. Thus, Qwest fails to meet the threshold factual requirement.

The Montana Supreme Court has adopted six criteria which must be shown to establish disparate taxation. *Mont. Dept. of Rev. v. St. Tax App. Bd.,* 188 Mont. 244, 250; 613 P.2d 691, 695*(1980).* The taxpayer must show (1) there are several other properties within a reasonable area similar and comparable to the subject property; (2) the amount of assessments on these properties; (3) the actual values of the comparable properties; (4) the actual value of the taxpayer's property; (5) the assessment complained of; and (6) by a comparison the taxpayer's property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and actual valuations of the similar and comparable properties. While this test focuses on disparate valuation rather than classification, it makes clear the burden of producing the specific and detailed information showing similarly situated property enjoys favorable tax treatment rests with the taxpayer. The mere allegation of competition from a company classified differently is not sufficient to show unconstitutional treatment.

Qwest did not present evidence detailing or quantifying the alleged disparate treatment or showing the companies are similar and comparable. Qwest is a local exchange carrier and regulated by the Montana Public Service Commission. FOF 10. The PSC regulates the amount of revenue that may be generated by Qwest's regulated property, in essence guaranteeing Qwest a rate of return on at least part of its investment. The PSC also provides Qwest with access to Universal Service Funds, subsidies from the federal and state governments. These advantages are not available to unregulated competitors. FOF 12. There is no indication in the record Bresnan is subject to PSC regulation or is a public utility.

We find the taxpayer has failed to present facts which raise a constitutional issue for the Courts to consider.

Conclusion

In the Board's opinion, the Department has come to an appraisal within the reasonable range for valuation of this entity. Qwest failed to bring forward sufficient evidence, in a timely manner, to show the Department's appraisal was unsupported. Thus, we determine that the Department has properly determined a taxable value for the subject property for 2007.

ORDER

IT IS THEREFORE ORDERED the Department's 2007 appraisal of Qwest is upheld.

DATED this 30th day of November, 2009.

BY ORDER OF THE
STATE TAX APPEAL BOARD

/s/________________________________
KAREN E. POWELL, Chairwoman

/s/________________________________
DOUGLAS A. KAERCHER, Member

Notice: You are entitled to judicial review of this Order in accordance with §15-2- 303, MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

I certify on this 30th day of November, 2009, a true and correct copy of the foregoing Order was served by placing same in the United States Mail, postage prepaid, and addressed as follows:

Dennis Lopach
GOUGH, SHANAHAN, JOHNSON & WATERMAN
33 South Last Chance Gulch
P.O. Box 1715
Helena, MT 59624

Richard G. Smith, ISB No. 2500
Eugene A. Ritti, ISB No. 2156
HAWLEY TROXELL ENNIS & HAWLEY LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617

Keith A. Jones
Brent Coleman
Special Assistant Attorneys General
MONTANA DEPARTMENT OF REVENUE
Legal Services Office
125 N. Roberts St.
P.O. Box 7701
Helena, Montana 59604-7701

Peter J. Crossett
HISCOCK & BARCLAY, LLP
One Park Place
300 South State Street
Syracuse, New York 13202

/s/______________________
Donna Eubank
Paralegal