

VALUES AT ISSUE

	<u>Value</u>	<u>Penalty</u>	<u>Total</u>
2009 Board-Adopted Unitary Value	\$1,567,600,000	\$ 0	\$1,567,600,000
Petitioner's Requested Unitary Value	1,109,200,046	0	1,109,200,046
Respondent's Recommendation On Appeal	1,567,600,000	0	1,567,600,000
Respondent's Revised Recommendation on Appeal	\$1,459,200,000	0	\$1,459,200,000

ISSUES

- 1. Whether petitioner has shown that the Replacement Cost New (RCN) factors utilized in calculating respondent State-Assessed Property Division's (respondent) Replacement Cost New Less Depreciation (ReplCLD) value indicator were less reliable than petitioner's RCN factors.**
- 2. Whether petitioner has shown that the depreciation and obsolescence factors used in determining respondent's ReplCLD value indicator were less reliable than petitioner's factors.**
- 3. Whether respondent should have considered a capitalized earnings approach (CEA) value indicator in the determination of petitioner's 2009 unitary value.**
- 4. Whether respondent's ReplCLD value indicator for the 2009 Board-adopted unitary value for AT&T Mobility LLC (Mobility) which is based on a write-down of a portion of Mobility's property, plant and equipment (PP&E) costs denies petitioner equal protection of the laws and demonstrates that respondent's valuation methodology does not fully reflect depreciation.**
- 5. Whether respondent's ReplCLD value indicator includes exempt intangible property value.**

BACKGROUND INFORMATION

Sprint PCS (Petitioner) is a global communications company offering a comprehensive range of wireless and wireline communications products and services. Petitioner competes primarily with three other major national wireless service providers and in many markets it also competes with regional carriers. In California, petitioner offers a variety of wireless mobile voice and data transmission services

1 on networks that utilize CDMA (Code Division Multiple Access) and iDEN (Integrated Digital
2 Enhanced Network) technologies. Petitioner operates the CDMA and iDEN networks separately.

3 Petitioner's 2009 Board-adopted unitary value of \$1,567,600 was determined by placing 100
4 percent reliance on the Replacement Cost New Less Depreciation (ReplCLD) value indicator. In the
5 petition, petitioner requests a reduction of \$458,399,954 for a total unitary value of \$1,109,200,046.

6 After the briefing was completed, respondent performed an analysis to quantify the economic
7 obsolescence for petitioner's iDEN system. The analysis found additional economic obsolescence of 32
8 percent which was determined by comparing general system performance measurements and applying it
9 to the California iDEN property. The performance measurement compared is the discounted cash flow
10 (DCF) value that was calculated by petitioner's AUS Consultants' appraisal (AUS appraisal) based on a
11 best case scenario and an alternative scenario developed respondent which starts with petitioner's
12 projections and adjusts them to reflect what respondent considers to be more realistic expectation of the
13 future operations of the iDEN system. Applying the 32 percent obsolescence adjustment to the iDEN
14 ReplCLD value results in a reduction of \$108,400,000 to the 2009 Board-adopted unitary value for a
15 revised recommended value of \$1,459,200,000.

16 **Appeals Division's Recommendation**¹

17 The Appeals Division recommends that the Board grant the petition, in part, by adopting the
18 reduction of \$108,400,000 for obsolescence proposed by respondent. In all other respects, the Appeals
19 Division recommends that the Board deny the petition.

20 **Issue No. 1**

21 **Whether petitioner has shown that the RCN factors utilized in calculating respondent's ReplCLD**
22 **value indicator were less reliable than petitioner's RCN factors.**

23 **Petitioner's Contentions**

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27 ¹ Unless the Board otherwise holds, the Board shall take official notice of: the property statement filed with the Board,
28 together with any attachments, including without limitation any reports to regulatory agencies such as the U.S. Securities and
Exchange Commission and the California Public Utilities Commission, and any annual reports to shareholders; the Appraisal
Data Report (ADR) prepared by the State-Assessed Properties Division (SAPD) together with any workpapers; the Notice of
Unitary Value; and any correspondence between SAPD and petitioner.

1 Petitioner contends that respondent improperly applied its RCN factors when more appropriate
2 RCN factors or “Cost Translators” were developed for the AUS appraisal which determined the value of
3 the company on a national basis and the value of petitioner’s California CDMA and iDEN wireless
4 business units operating in this state. Petitioner asserts that respondent’s RCN factors are invalid
5 because they are based upon incorrect assumptions relating to cost trends and respondent misapplies
6 these “ubiquitous” RCN factors despite reliable evidence that the RCN factors specific to petitioner’s
7 property are different.

8 According to petitioner, the Cost Translators for petitioner’s facilities were developed based on a
9 study of petitioner’s actual cost experience since their construction and the cost trends from this study
10 have been consistent with those of other wireless service providers’ cost experience. Petitioner states
11 that the Cost Translators were developed based on Telephone Plant indexes, Broadband indexes, and
12 general cost trends from the U.S. Bureau of Labor Statistics. In addition, the AUS appraisal included an
13 appropriate adjustment for the declining network utilization of petitioner’s iDEN network due to
14 customer attrition. Specifically, petitioner states that as of June 2006, it had 18.624 million iDEN
15 customers and as of January 1, 2009, the number had declined to 9.609 million of 51.6 percent
16 utilization. As a result, the AUS appraisal adjusted the iDEN Cost of Replacement (COR) by 51.6
17 percent to reflect that decline in utilization but respondent did not make such an adjustment to its RCN.
18 (Petition, pp. 1-2.)

19 Petitioner also contends that respondent’s RCN factors are inaccurate and invalid when applied
20 to petitioner’s assets because respondent’s factors are based upon incorrect assumptions. To
21 demonstrate this, petitioner requested from respondent an explanation of its methodology and copies of
22 supporting studies and the assumptions used when computing respondent’s RCN factors. Petitioner
23 claims that respondent only provided a general narrative explanation of its calculation. Petitioner
24 contends that respondent’s failure to provide materials responsive to its request is a denial of its right to
25 due process. (Pet. Response, p. 3.)

26 **Respondent’s Contentions**

27 Respondent states that it develops its RCN factors annually for cellular site electronics and
28 switching equipment based on information submitted by industry sources and from factors derived from

1 information obtained from independent sources. Industry-specific information is based on data that
2 reflects a significant portion of the wireless market. Consequently, respondent contends that this
3 information is representative of the pricing and technology trends in the industry because other wireless
4 companies use similar equipment and purchase it from the same manufacturers. Respondent further
5 states that it weights industry factors because the costs reported by assesseees for the accounts that
6 respondent values comprise a combination of costs that the pure industry factors do not address. Finally,
7 respondent asserts that its factors take into account most forms of normal obsolescence. (Resp. Analysis,
8 pp. 2-3.)

9 Respondent rejects petitioner's proposition that the Cost Translators are more reliable factors
10 because, just as petitioner presented last year, the AUS appraisal is presented at a national level and the
11 relevant cost factors are derived from regional (i.e., California, Oregon, and Washington) costs and
12 trends. Thus, respondent asserts that petitioner has not clearly identified the California-specific factors
13 that it contends are applicable to its property and has not demonstrated that respondent's factors are
14 invalid. Furthermore, respondent believes that petitioner is unable to determine its actual California
15 income, productivity or profitability and, for that reason, the California property and income may be
16 subsidizing other system-wide properties. (Resp. Analysis, p.3.)

17 With respect to petitioner's request for a reduction for additional obsolescence in its iDEN
18 network, respondent notes that petitioner's iDEN equipment is valued at only approximately 6.5 percent
19 of its historical cost. Furthermore, respondent disagrees with petitioner's 51.6 percent inutility
20 adjustment because there is not a linear relationship between the amount of property in service and the
21 number of customers using the network. In other words, petitioner must operate a certain minimum
22 amount of equipment in service at cell sites to service any customers in that area. In addition,
23 respondent does not believe that petitioner has shown that the iDEN network's equipment is the cause of
24 the underutilization rather than other factors. (Resp. Analysis, pp. 3-4.)

25 Respondent also disagrees with petitioner's request for an additional adjustment to the COR for
26 depreciation (CORLD) and obsolescence because a reasonable investor would have already considered
27 any obsolescence when valuing the COR and further adjustments would be duplicative. Respondent
28 states that petitioner has requested that the CORLD be adjusted based on an evaluation of whether the

1 property returns sufficient earnings to warrant an investment at the preliminary CORLD in a series of
2 discounted cash flows (DCF). Respondent states that the difference in those amounts, according to
3 petitioner, represents economic obsolescence. In respondent's view, this analysis is improper as the cost
4 approach and the DCF will always be equal because the cost approach is 100 percent influenced by the
5 DCF. Respondent contends that a correctly prepared cost approach analysis should not depend upon or
6 be driven by an income approach. (Resp. Analysis, p.4.)

7 **Petitioner's Reply**

8 Petitioner contends that the Cost Translators are "more granular and specific" to petitioner's
9 property than respondent's "highly generalized" RCN trend factors. As an example, petitioner states
10 that respondent uses one set of RCN trend factors for each of the eight categories of property that it
11 identifies while the AUS appraisal used at least 49 sets of Cost Translators for petitioner's 174
12 categories of property. Petitioner states that although respondent has been "secretive and vague" as to
13 the sources of its trend factor studies, respondent, nonetheless, concludes that its trend factors represent
14 petitioner's cost experience. By contrast, petitioner asserts that its Cost Translators are based on
15 petitioner's actual cost history. (Pet. Reply, pp. 2-3.)

16 Petitioner further contends that most equipment is sold for the same price regardless of the
17 region and that respondent's Cost Translators account for geographically variable costs such as labor.
18 Moreover, petitioner contends, respondent cannot prove that its RCN factors are based exclusively on
19 California costs. Finally, petitioner contends that the AUS appraisal's national approach and
20 apportionment of value to California is consistent with the principle of unit valuation, whereas
21 respondent's "purported California-only approach" violates Revenue and Taxation Code (R&TC)
22 section 723 and the principle of unit valuation. Petitioner asserts that respondent makes an unsupported
23 claim that petitioner's California property and income may be subsidizing property in other states. In
24 this regard, petitioner contends that respondent's method of apportioning system unit values by gross,
25 unadjusted, historical costs is "almost completely unrelated to finding the actual value" of the California
26 portion of the system. (Pet. Reply, p.3.)

27 Petitioner contends that, although respondent asserts that its RCN factors address "most forms of
28 normal obsolescence", it is not clear what is included as "normal" or how the trend factors reflect such

1 normal obsolescence. Petitioner states that any functional obsolescence is more appropriately addressed
2 in the depreciation portion of the ReplCLD calculation. Petitioner further states that if normal
3 obsolescence is intended to reflect underutilization, then “it is self-evident that [respondent’s] RCN
4 trend factors are not designed to address the highly unusual circumstances faced by petitioner, in which
5 a substantial amount of the appraised property would never be replaced because it is no longer needed to
6 serve petitioner’s substantially diminished customer base.” (Pet. Reply, pp. 3-4.)

7 With respect to respondent’s criticism of petitioner’s underutilization adjustment, petitioner
8 contends that its underutilization adjustment calculation is consistent with the Guidelines for
9 Substantiating Additional Obsolescence for State-Assessed Telecommunication Properties (Guidelines).
10 Petitioner quotes the Guidelines as follows: “In estimating inutility, the study must determine the actual
11 or predicted use (the numerator of the fraction) and the rated or expected capacity (the denominator of
12 the fraction) of the property”. Petitioner states that it applied the Guidelines calculation by using the
13 current number of iDEN customers (9,609,000) for the numerator over the number of customers using
14 the network as of June 30, 2006 (18,624,000) as the denominator resulting in a ratio, expressed as a
15 percentage, of 51.6 percent. Petitioner adds that as of June 30, 2006, the iDEN network was likely
16 engineered to serve those 18,624,000 customers with limited dropped calls and also to serve perhaps an
17 additional 2 to 4 million new customers anticipated during the following three to six months. (Pet.
18 Reply, p.4.)

19 Petitioner further asserts that respondent is incorrect in its assumption that petitioner’s inutility
20 method assumes a linear relationship because “the traffic associated with those customers declines at a
21 higher rate than a linear function as the larger customers are the ones most likely to leave first.” Thus,
22 according to petitioner, any scaling would have resulted in an underutilization percentage much lower
23 than 51.6 percent. For that reason, petitioner used a linear relationship as a reasonable approximation of
24 the non-linear underutilization of the iDEN network. Petitioner also disputes respondent’s comment that
25 the underutilization must result from the equipment rather than other factors. Petitioner asserts that there
26 is no evidence that customers will return to the iDEN network and thus it is anticipated that the
27 underutilized property will not be replaced. (Pet. Reply, pp. 5-6.)
28

1 applying trend factors—price level changes, including the application of “current prices to the labor and
2 material components of a substitute property capable of yielding the same services and amenities, with
3 appropriate additions as specified” (Property Tax Rule 6, subd. (d).) Then, the resulting adjusted
4 cost amount is “reduced by the amount that such cost is estimated to exceed the current value of the
5 reproducible property by reason of physical deterioration, misplacement, over- or underimprovement,
6 and other forms of depreciation or obsolescence. The percentage that the remainder represents of the
7 reproduction or replacement cost is the property’s percent good.” (Property Tax Rule 6, subd. (e).)

8 **Replacement Cost New** The replacement cost new (RCN) is an estimate of the current cost to replace a
9 property with a new property of *equivalent utility*, which should include all economic costs necessary to
10 put the property to productive and beneficial use. The RCN is calculated by applying an index factor,
11 which is acquired from industry data, to the historical acquisition cost of the unitary property of the
12 assessee, segregated by year of acquisition. The use of index factors applied to historical cost data is the
13 preferred method of calculating the RCN for mass appraisal purposes. The historical cost of property is
14 adjusted (in the aggregate or by groups) for replacement cost level changes by multiplying the cost
15 incurred in a given year by the appropriate replacement cost index factor. RCN should reflect the
16 current cost a knowledgeable person or company would pay if it were necessary to replace the subject
17 property with a new property of equivalent utility. RCN is considered an excellent starting point for
18 estimating the value of newer property that is not regulated for rate of return, because the property
19 owner has the freedom, with competitive constraints, to adjust revenues to current costs based on market
20 factors. (*Unitary Valuation Methods* (March 2003), p. 23.)

21 **Development of RCN Trend Factors** With respect to RCN trend factors that are the bases for
22 converting the historical cost of property into current replacement cost levels. The Unitary Value
23 Methods (March 2003) (UVM) at page 28 further provides:

24 These factors measure the current cost of replacing the existing property with a substitute
25 property having *equivalent utility*. In developing replacement cost index factors, staff currently
26 relies on two sources: (1) studies submitted by industry participants and (2) studies performed by
27 the Policy Planning and Standards Division (PPSD) of the Property Taxes Department. The
28 PPSD studies at present pertain only to general purpose computer equipment and peripherals.

Appeals Division's Analysis and Conclusion

1 Petitioner has the burden of establishing that respondent has not applied proper RCN index factors
2 to the historical costs of petitioner's property to develop the ReplCLD indicator. Petitioner asserts that its
3 AUS appraisal Cost Translators are more reliable because they are based upon a study of petitioner's
4 actual costs and on Telephone Plant indexes, Broadband indexes, and general cost trends from the U.S.
5 Bureau of Labor Statistics. Petitioner further asserts that the AUS appraisal also included an appropriate
6 adjustment for the declining network utilization of petitioner's iDEN network due to customer attrition.

7 However, the Appeals Division notes that respondent relies on the experience of industry
8 participants and independent sources of cost information in accordance with the guidelines set forth in
9 the Board-adopted UVM. Petitioner does not dispute that respondent has followed the UVM guidelines
10 and does not dispute respondent's claim that petitioner has not clearly identified California-specific
11 factors. Instead, petitioner contends that respondent's method violates R&TC section 723 and the
12 principle of unit valuation and that respondent's method of apportioning system unit values by gross,
13 unadjusted, historical costs is "almost completely unrelated to finding the actual value" of the California
14 portion of the system.

15 As stated in the preface to the UVM, the UVM was prepared by respondent to document the
16 Board staff' valuation models based on meetings with interested parties at which most of the conflicts
17 regarding the issues in the UVM were resolved. With respect to the unresolved issues, the Board held a
18 public hearing at which the Board took testimony from interested parties and Board staff. The Board
19 then decided those issues and, thus, the UVM sets forth the Board's formal position with respect to the
20 proper application of appraisal methodology. In view of the extensive examination and discussion that
21 have preceded the publication of the UVM, the Appeals Division is not persuaded by petitioner's
22 argument that the methods therein violate R&TC section 723 and the principle of unit valuation. Rather,
23 the Appeals Division believes that the UVM should be presumed to be entirely consistent with
24 California law and generally recognized appraisal principles. Thus, the Appeals Division finds that
25 petitioner has not met its burden of proving that respondent's methods for developing the RCN index
26 factors are incorrect.

27 At the hearing, petitioner should be prepared to discuss in detail why its Cost Translators are
28 more reliable than respondent's RCN index factors.

1 At the hearing, respondent should be prepared to respond to petitioner's contention that
2 respondent's approach violates R&TC section 723 and the principle of unit valuation. Respondent
3 should also be prepared to explain or reconcile its contention that a correctly prepared cost approach
4 analysis should not depend upon or be driven by an income approach in view of its adjustment for
5 additional obsolescence to petitioner's iDEN system based on a performance measurement reflected by
6 the DCF value.

7 With respect to the petitioner's remarks to the effect that it has not been provided with a detailed
8 explanation of respondent's methodology and copies of the supporting studies and assumptions used to
9 compute respondent's RCN factors, please see the discussion of the confidentiality legal requirements
10 under Issue No. 2 below.

11 Issue No. 2

12 **Whether petitioner has shown that the depreciation and obsolescence factors used in determining**
13 **respondent's ReplCLD value indicator were less reliable than petitioner's factors.**

14 Petitioner's Contentions

15 Petitioner contends that the depreciation and obsolescence factors used by respondent in
16 determining the ReplCLD value indicator are inappropriate and that respondent should instead rely upon
17 more precise factors in petitioner's AUS appraisal. Petitioner asserts that respondent's factors are based
18 upon incorrect assumptions relating to the physical deterioration and functional and economic
19 obsolescence of petitioner's property while petitioner's factors are fully documented and supported by
20 verifiable evidence. Petitioner further asserts that the AUS appraisal's Depreciation and Obsolescence
21 Factors for petitioner's property reflect service lives that were developed based upon a study of
22 petitioner's experience, industry trends, and an analysis performed by Technology Futures, Inc. (TFI).
23 Petitioner states that its factors also reflect functional and economic obsolescence. (Petition, p. 3.)

24 Respondent's Contentions

25 Respondent asserts that it computed depreciation for most of petitioner's property by using
26 Board-approved depreciation tables which are based upon services lives derived from periodic service
27 life studies and input from industry sources. Respondent further asserts that the resulting ReplCLD
28 value indicator accounts for the normal obsolescence existing in the wireless industry. Respondent

1 explains that it separated petitioner's supply costs into iDEN and CDMA equipment. For the iDEN
2 equipment, respondent shortened the service lives to reflect the age when placed into service in 2005,
3 consistent with the purchase price allocation (PPA) that occurred when petitioner acquired it. For the
4 CDMA equipment, respondent adjusted site acquisition and spare parts lives. However, respondent
5 states, petitioner operates competitively in California, its equipment is as good as its competitors, its
6 customers would not be able to obtain faster service from a competitor, petitioner has not shown more
7 than ordinary obsolescence in the network and petitioner has not shown that it is losing customers due to
8 network technology or other features of the network. For those reasons, respondent has not made further
9 adjustments. (Resp. Analysis, p.5.)

10 **Petitioner's Reply**

11 Petitioner suggests that respondent has put petitioner in the position of showing how
12 respondent's "secretly developed factors" are inappropriate or that actual service lives are shorter while
13 ignoring petitioner's service life evidence which is based on petitioner's experience, industry trends, and
14 the TFI analysis. Petitioner asserts that respondent's argument that "additional" obsolescence can only
15 be recognized if petitioner proves the loss of customers was due to network technology or its features
16 "only obscures the relevant inquiry into the value apportionable to the taxable property in the context of
17 a unit valuation." (Pet. Reply, pp. 6-7.)

18 **Applicable Law and Appraisal Principles**

19 **Burden of Proof.** Assessing officers are presumed to have properly performed their duties. (Evid.
20 Code, § 664.) Therefore, petitioner has the burden of showing that the assessment is incorrect or illegal.
21 (*ITT World Communications v. Santa Clara* (1980) 101 Cal.App.3d 246; see also Cal. Code Regs., tit.
22 18, § 5541, subd. (a).)

23 **Depreciation and the Replacement Cost Approach** In general, the ReplCLD value indicator
24 recognizes three types of depreciation: physical deterioration, functional obsolescence, and external, or
25 economic, obsolescence, through application of the Board's replacement cost new trend factors and
26 "percent" good factors. Obsolescence may occur when property is outmoded (functional obsolescence)
27 or when some event has substantially diminished the future earning power of the property (economic
28 obsolescence). (See Assessors' Handbook section 501, *Basic Appraisal* (January 2002), pp. 81-83.)

1 Functional obsolescence is the loss of value in a property caused by the property's loss of capacity to
2 perform the function for which it was intended. (*Id.* at p. 81.) Economic obsolescence is the diminished
3 utility of a property due to adverse factors external to the property being appraised and is incurable by
4 the property owner. (*Id.* at p. 82.)

5 The percent good factors, the basis for adjusting the RCN into an indicator of fair market value,
6 are used to determine the remaining value of a property and are complements of physical deterioration
7 and functional obsolescence. The factors used for a given property type are based on the expected
8 economic life of that property type which is based on a service life study that surveys industry
9 participants who own that type of property. (UVM, p. 30.)

10 In addition to economic life, there are four other variables that have an effect on percent good
11 factors. These are: the rate of return, the method of calculation, the survivor curve, and the presence of
12 an income adjustment factor. In the Valuation Division these variables are determined as follows: rate of
13 return annually established by Property Tax Department, single-life calculation method, R3 survivor
14 curve and the use of an income adjustment factor reflecting a 10% decline over average life. Petitioner
15 has the burden of establishing the existence of any additional or extraordinary obsolescence. (*See*
16 Property Tax Rule 6, subd. (d) & (e); Cal. Bd. of Equalization, Assessors' Handbook § 502, *Advanced*
17 *Appraisal* (December 1998) (AH 502), p. 20-21; UVM, p. 30.)

18 **Confidentiality Legal Requirements**

19 Subdivision (a) of section 833 of the Revenue and Taxation Code provides that:

20 Except as provided herein, all information required by the board or furnished in the property
21 statement shall be held secret by the board and by any person or entity acquiring this information
22 pursuant to subdivision (c). Information and records in the board's office which are not required
23 to be kept or prepared by the board are not public documents and are not open to public
24 inspection.

25 Government Code section 15619 prohibits both the Board and Board staff from disclosing "any
26 information, other than the assessment and the amount of taxes levied, obtained . . . from any company .
27 . . ."

28 The California Public Records Act (Government Code section 6250 et seq.) states that the
Legislature finds and declares that "access to information concerning the conduct of the people's
business is a fundamental and necessary right of every person in this state." (Gov. Code, § 6250.)

1 Notwithstanding that general declaration of legislative intent, the Act further provides that nothing in the
2 Act shall be construed “to require disclosure of records the disclosure of which is exempted or
3 prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code
4 relating to privilege.” (Gov. Code, § 6254, subd. (k).)

5 In *Trailer Train Co. v. State Bd. of Equalization* (1986) 180 Cal. App. 3d 565, the court of appeal
6 held that a taxpayer was not denied the right of cross-examination with respect to a witness’ testimony,
7 where the taxpayer sought disclosure of the documentary information of other taxpayers whose property
8 was valued by a different method because R&TC section 11655, required that all such records be held
9 secret by the Board. R&TC section 11655 provides for confidentiality of private railroad car
10 information similar to the confidentiality provisions of R&TC section 833 applicable to state assessee
11 information. Moreover, the Public Records Act (*Gov. Code, § 6250 et seq.*) provides for nondisclosure
12 of information under R&TC section 833. Therefore, the Appeals Division believes that the same
13 rationale should apply to the case at hand and the third-party taxpayer information must be kept
14 confidential.

15 **Appeals Division’s Analysis and Recommendation**

16 Petitioner has the burden of establishing that respondent’s depreciation factors are based on
17 incorrect assumptions or are otherwise erroneous. While petitioner asserts that respondent’s factors are
18 based upon incorrect assumptions relating to physical deterioration and functional and economic
19 obsolescence, it does not appear to the Appeals Division that petitioner has presented evidence to
20 support that contention. In addition, petitioner suggests that its factors are more reliable because they
21 are fully supported by verifiable evidence while respondent uses “secretly developed factors” for which
22 it is unwilling to provide supporting documentation.

23 The Appeals Division assumes that respondent developed the percent good factors in accordance
24 with UVM and petitioner has not shown that the UVM guidelines are erroneous. As we indicate above,
25 the Appeals Division believes that respondent’s determination of a ReplCLD value indicator based
26 percent good factors developed pursuant to the UVM should be presumed correct and petitioner bears
27 the burden of proving the existence of extraordinary obsolescence. Here, petitioner has asserted but not
28 presented evidence to show that respondent’s factors are based upon incorrect assumptions relating to

1 the physical deterioration and functional and economic obsolescence. Moreover, petitioner has not
2 provided evidence of extraordinary obsolescence as required by the UVM. Thus, the Appeals Division
3 finds that petitioner has not met its burden of proof on this issue.

4 The Appeals Division notes that respondent declined to provide a detailed explanation of its
5 methodology and copies of the supporting studies and assumptions used to compute respondent's RCN
6 factors and depreciation factors based on confidentiality rules prohibiting disclosure. In order to provide
7 such information to petitioner, the other taxpayers must agree to waive their right to confidentiality and
8 it is the understanding of the Appeals Division that they have not done so.

9 At the hearing,

- 10 • Petitioner should be prepared to explain and to present evidence to support its contention that
- 11 respondent's factors are based on incorrect assumptions.
- 12 • Respondent should be prepared to explain how its factors account for all depreciation and
- 13 obsolescence and why its factors are more reliable than petitioner's factors.
- 14 • Both parties should be prepared to discuss respondent's position that its determination not to
- 15 allow additional obsolescence was based, in part, on petitioner's failure to prove that the loss of
- 16 customers was due to network technology or its features.

17 **Issue No. 3**

18 **Whether respondent should have considered a CEA value indicator in the determination of**
19 **petitioner's 2009 unitary value.**

20 **Petitioner's Contentions**

21 Petitioner contends that respondent's failure to calculate a CEA value indicator invalidates
22 respondent's ReplCLD value indicator and is a misapplication of the CEA approach to value. Petitioner
23 contends that a CEA value indicator would have exposed the inadequacy of any provision for inutility
24 and obsolescence in respondent's ReplCLD value indicator. (Petition, pp. 3-4.)

25 **Respondent's Contentions**

26 Respondent states that it determined that the income approach methodology is an inappropriate
27 indicator of value because Property Tax Rule 8 requires an established income stream or the ability to
28 attribute a real or hypothetical income stream by comparison with other properties. However, respondent

1 contends, petitioner has a history of inconsistent earnings and current negative income and when reliable
2 income data are unavailable, Property Tax Rule 6 provides that the cost approach is the preferred valuation
3 methodology. (Resp. Analysis, p. 6.)

4 **Petitioner's Reply**

5 Petitioner states that respondent fails to acknowledge the strong significance that a prospective
6 purchaser would attach to petitioner's history of inconsistent earnings and current negative income even
7 though respondent calculated a CEA indicator last year and cited that value indicator to support its 2008
8 value recommendation. Petitioner contends that respondent misapplies Property Tax Rule 8 by ignoring
9 petitioner's "established income stream" and by arguing that "reliable income data" is unavailable.

10 Petitioner contends that, as a business enterprise, it would be purchased in anticipation of money income
11 although a prospective purchaser would pay substantially less than the "normal" ReplCLD value
12 indicator because petitioner's reliable data establishes its income as "inconsistent" or "negative".

13 Petitioner also contends that respondent's position that the Board-adopted value is only 36 percent of
14 historical cost and the iDEN property is valued at approximately 6.5 percent of its historical cost is not
15 relevant to the valuation of petitioner's property and that such a comparison is not a valid consideration
16 under appraisal theory or the Board's Property Tax Rules. (Pet. Reply, p. 8.)

17 **Applicable Law and Appraisal Principles**

18 **Income Approach to Value** The three premises of the income approach to value are that: "(1) investors
19 purchase property for its anticipated income; (2) investors estimate the duration and quality (i.e., risk) of
20 this income; and (3) future income is less valuable than present income." It is not appropriate to use the
21 income approach if the characteristics of the subject property do not conform to these premises.

22 (Assessors' Handbook section 501, *Basic Appraisal* (Jan. 2002) (AH 501) p. 109.) Property Tax Rule 8,
23 subdivision (a) provides in relevant part that "[t]he income approach to value is used in conjunction with
24 other approaches when the property under appraisal is typically purchased in anticipation of a money
25 income and either has an established income stream or can be attributed a real or hypothetical income
26 stream by comparison with other properties."

1 **Appeals Division's Analysis and Recommendation**

2 The Appeals Division finds that since petitioner has had a negative operating income for the last
3 5 years, it is difficult to anticipate what its future income will be. Additionally, it is generally
4 recognized that intense competition and current technological and regulatory forces in the
5 telecommunications market make it difficult to determine a reliable income stream. Finally, it is unclear
6 whether the unitary property of the guideline companies used by petitioner to estimate petitioner's ROA
7 are similar or comparable to petitioner's unitary property. For the foregoing reasons, the Appeals
8 Division recommends that no weight should be given to the CEA value indicator.

9 At the hearing, petitioner should be prepared to present evidence and supporting appraisal
10 authority for its contention that an "inconsistent" or "negative" income history constitutes "an
11 established income stream" for purposes of an income approach value indicator.

12 **Issue No. 4**

13 **Whether respondent's ReplCLD value indicator for the 2009 Board-adopted unitary value for**
14 **Mobility which is based on a write-down of a portion of Mobility's PP&E costs denies petitioner**
15 **equal protection of the laws and demonstrates that respondent's valuation methodology does not**
16 **fully reflect depreciation.**

17 **Petitioner's Contentions**

18 Petitioner states that when property is subject to a PPA or an impairment in value is recognized,
19 respondent replaces the "old" cost and vintage year with the new value and vintage year, applies the
20 trending factors to the new value and computes depreciation over shorter remaining lives. When the
21 new value is substantially lower than the ReplCLD, there is a strong indication that the ReplCLD
22 indicator would have overvalued the property without the adjustment. Petitioner contends that
23 respondent's failure to make a similar adjustment to the ReplCLD indicator for similar properties of
24 other similarly situated assessees results in disparate treatment that "irrationally ignores the valuation
25 realities underlying the adjustment and denies the assessee without an accounting adjustment equal
26 protection of the laws." Petitioner references the reduction in the 2007 Board-adopted unitary value of
27 Mobility based on Mobility's PPA adjustment to a substantial portion of its PP&E at the end of 2006.
28 The PPA resulted from the acquisition by AT&T, Inc., which already held a 60 percent interest in

1 Mobility, of the remaining 40 percent interest in Mobility. About \$10 billion of PP&E, the 40 percent
2 that AT&T, Inc. acquired, was written down to its fair market value of \$5 billion using a “Greenfield
3 approach”. Petitioner states that it presumes that respondent used the California portion of the fair
4 market value in its ReplCLD indicator for Mobility. Thus, petitioner surmises that the write-down
5 accounted for the fact that Mobility’s 2007 Board-adopted unitary value was \$500 million lower than
6 petitioner’s 2007 Board-adopted unitary value despite the fact that petitioner had 15 percent fewer
7 subscribers than Mobility. (Petition, p. 5.)

8 Petitioner adds that the divergence in value with Mobility increased in 2008 when the Board
9 adopted a unitary value for petitioner which was almost \$750 million higher than Mobility even though
10 petitioner had 35 percent fewer customers than Mobility. Petitioner further states that its 2009 Board-
11 adopted unitary value was still \$200 million higher than Mobility’s. Petitioner again attributes
12 Mobility’s lower values to respondent’s recognition of the California portion of Mobility’s \$5 billion
13 write-down of PP&E during 2006, without providing a corresponding adjustment to petitioner’s
14 ReplCLD indicator calculation. Petitioner contends that respondent has no rational basis for the
15 disparity in the calculation and application of the ReplCLD value indicator to the comparable property
16 of Mobility, petitioner’s much larger competitor. Petitioner concludes that the foregoing is evidence that
17 respondent’s ReplCLD indicator for petitioner’s unitary property is invalid and that respondent’s
18 methodology denies petitioner of the constitutional right to equal protection of the laws. (Petition, pp. 5-
19 6.)

20 **Respondent’s Contentions**

21 Respondent states that the Equal Protection Clause of the U.S. Constitution requires that persons
22 under like circumstances be subject to similar taxes and penalties. Respondent further states that while a
23 certain valuation method may be appropriate for one company, differing circumstances may make the
24 method less reliable for other companies that are in the same business and own and operate the same
25 types of property. Respondent asserts that petitioner has failed to meet the three tests required to
26 establish a denial of equal protection: (1) that petitioner’s unitary property was similarly situated to
27 Mobility’s, (2) that its unitary property was undervalued and (3) that such undervaluation was
28 intentional and systematic. In this regard, respondent contends that there has been no showing that

1 Mobility's property was intentionally and systematically undervalued or that Mobility operates an iDEN
2 network like petitioner. (Resp. Analysis, pp. 6-7.)

3 **Petitioner's Reply**

4 Petitioner presumes that respondent uses the same RCN factors and the same service lives for
5 petitioner's post-PPA iDEN and CDMA purchases and for Mobility's GSM purchases. For that reason,
6 petitioner asserts that its property is subject to the same economic obsolescence as Mobility's property
7 although respondent has denied petitioner a substantial write-down of costs for those same types of
8 property utilized in the same industry. Respondent attributes Mobility's disproportionately lower value
9 to the fact that petitioner owned 100 percent of its property and could not write down its costs while
10 AT&T owned only 60 percent of Mobility and when it acquired the remaining 40 percent was permitted
11 to use PPA write down the acquired amount. Petitioner contends that such treatment is irrationally
12 discriminatory and contrary to respondent's position that a write down is not a prerequisite to
13 recognizing additional obsolescence. (Pet. Reply, pp. 8-9.)

14 Petitioner distinguishes one of the cases cited by respondent, *Los Angeles SMSA Ltd. Partnership*
15 *v. State Board of Equalization* (1992) 11 Cal.App.4th 768 (*Los Angeles SMSA*), in which the court held
16 that the value disparity resulting from the Board's unitary property assessment of one cellular telephone
17 company based on a cost approach and the unitary property assessment of another cellular telephone
18 company based on an income approach was "appropriate, isolated and temporary" because the former
19 company, unlike the latter, was not fully operational and had no historical net income for the assessment
20 year. Petitioner maintains that *Los Angeles SMSA* is distinguishable in the following respects:

- 21
- Respondent's assessment resulted in an inappropriate disparity based on "unwritten down" costs
22 of petitioner's similarly situated property.
 - The disparity is intentional and systematic because respondent "can resolve the disparity with the
23 stroke of a pen but chooses not to do so."
24

25 Even though the case involved a complaint from one taxpayer who alleged that another taxpayer's
26 property was undervalued, petitioner contends that it has been denied its right to equal protection
27 because its similarly situated property has been intentionally and systematically overvalued.
28 (Pet. Reply, pp. 9-10.)

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2 **Applicable Law and Appraisal Principles**

3 **Burden of Proof.** Assessing officers are presumed to have properly performed their duties. (Evid.
4 Code, § 664.) Therefore, petitioner has the burden of showing that the assessment is incorrect or illegal.
5 (*ITT World Communications v. Santa Clara* (1980) 101 Cal.App.3d 246; see also Cal. Code Regs., tit.
6 18, § 5541, subd. (a).)

7 **Property Taxation and Equal Protection** The California courts have long held that with respect to the
8 constitutional guarantee of equal protection “the States have large leeway in making classifications and
9 drawing lines which in their judgment produce reasonable systems of taxation.” (*Amador Valley Joint*
10 *Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal. 3d 208, 233-234.) Thus, the courts
11 have upheld a system of taxation where a rational basis for that system was shown despite the fact that
12 two taxpayers might have been taxed differently on substantially identical property. (*Id.* at pp. 235-236.)
13 To establish a violation of equal protection, a taxpayer must show the “intentional, systematic
14 undervaluation of property similarly situated with other property assessed at its full value” (*Id.* at p.
15 234.)

16 **Appeals Division’s Analysis and Conclusion**

17 In the view of the Appeals Division, the fact that petitioner’s unitary value is higher than
18 Mobility’s does not prove that respondent intentionally and systematically overvalued petitioner’s
19 unitary property. Consistent with the case law, respondent’s methods do not necessarily violate equal
20 protection merely because one assessee’s property is valued higher than another assessee’s similar
21 property. As stated above, respondent valued petitioner’s unitary property in accordance with the UVM
22 and other Board valuation guidance. Thus, to support a claim of an equal protection violation, the
23 Appeals Division believes that there must be a showing that the application of the Board’s guidance
24 itself produces an intentional, systematic undervaluation. Because petitioner has not made such a
25 showing, it is the view of the Appeals Division that petitioner has not proven that respondent’s denial of
26 petitioner’s substantial write down of costs constituted disparate treatment and a violation of equal
27 protection.
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Issue No. 5

Whether respondent's ReplCLD value indicator includes exempt intangible property value.

Petitioner raised this issue in its petition but did not include any argument or supporting evidence. Respondent denies that the ReplCLD value indicator included the value of exempt intangible property. Because petitioner has not presented any supporting evidence, the Appeals Division concludes that petitioner has not met its burden of proof on this issue.