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Jerome E. Horton
Chairman, State Board of Equalization
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0064

Re: April 22-23 Board Meeting, Rule 21(d) Proposed LTA Comments

Dear Board Chairman Horton,

I am writing on behalf of Time Warner Cable ("TWC") to express strong support for the clarification of the law governing appraisal of possessory interests ("PIs") in the proposed Letter to Assessors ("LTA").

TWC's 21st century infrastructure makes it possible for Californians in over 150 communities to receive video, voice and broadband services. TWC's infrastructure occupies public land pursuant to video franchises, including state franchises granted pursuant to the Digital Infrastructure and Video Competition Act. In 2013 alone, TWC invested over $437 million to upgrade its equipment and technology. Those sums are in addition to billions of dollars TWC has invested over the past decade. TWC's investments have built a state-of-the-art communications network. More than two million Californians subscribe to TWC's broadband service, and more than 1.5 million Californians subscribe to TWC's video service.

The benefit to the California economy reaches far beyond TWC's investment. For example, TWC employs over 8,500 Californians and spent more than $400 million contracting with California businesses in 2013. This activity generates over $245 million in state and local taxes and fees paid by TWC, including property taxes on TWC's PIs, which are subject to local assessment in seven counties.

As you noted at the March 25 hearing, the decision in *California Teachers' Retirement System v. County of Los Angeles* (2013) 216 Cal.App.4th 41 ("*CalSTRS*") is the most current articulation by the courts of the property right that can be appraised in valuing a PI. *CalSTRS* describes the finite property right in a PI can be valued so that fair market value will be appraised consistent with Article XIII, section 1 of the Constitution. This is significant in terms of: (1) the real property right that can be appraised under Rule 21(b); (2) determination of the reasonably anticipated term of possession under Rule 21(d); and, (3) the requirement that an assessor decline the term of possession throughout the reasonably anticipated term of possession to determine on each lien date if fair market value has fallen below adjusted base year value.

Consistent with the proposed LTA and your comments at the March 25 hearing, the opinion in *CalSTRS* explains the "general principles" governing taxation of possessory interests and the deference owed by county assessors, assessment appeals boards ("AABs") and courts to Rule 21 and the Assessors' Handbook Section 510, Assessment of Taxable Possessory Interests ("AH 510" or "Handbook"). *See*, *CalSTRS* 216 Cal.App.4th at 54-57 and 61-65.

The court analyzes Rule 21(b)(1) and ties the Board's Rule to the Constitution:

> The BOE's regulation pertaining to the valuation of a taxable possessory interest in publicly owned real property, Property Tax Rule 21, also covers the point. The regulation states in pertinent part, "the fair market value of a taxable possessory interest is the fair market value of the fee simple absolute interest *reduced only by the value of the property rights, if any, granted by the public owner to other persons and by the value of the property rights retained by the public owner*.... " (18 Cal.Code Regs., § 21(b)(1), italics added.) The BOE's valuation method, applicable to possessory interests generally, prevents the lessee from being taxed on the value of the reversionary interest retained by the public lessor, and therefore comports with California Constitution, article XIII, section 3(a).

Id. at 62.

The court excerpts at length several portions of AH 510, the Board's interpretation of how Rule 21 must be applied. For example:

> "With a taxable possessory interest, since the underlying fee simple interest held by the public owner is almost always tax exempt, it is necessary to separately value the possessory interest held by the private possessor." (Handbook, *supra*, at p. 1.) The Handbook explains: "The valuation approaches for taxable possessory interests are similar to the conventional approaches to value—the comparative sales approach, the income approach, and the cost approach—that are generally accepted and used in the valuation of the fee simple interest. *However, the conventional approaches must be modified to accommodate the finite duration of a taxable possessory interest and the corresponding fact that a portion of the fee simple interest in those rights, the reversionary interest, is retained by the public owner and is nontaxable.*" (Handbook, *supra*, at p. 23, italics added.)

Id.

The *CalSTRS* decision defers to the Board's articulation in AH 510 of the risk of taxation in excess of the limit in the Constitution of fair market value caused if Rule 21(b)(1) is not adhered to:

> Perhaps "the cardinal feature of a taxable possessory interest is that it is an interest of finite duration. At some future date, the interest of the private possessor will terminate, and possession of the property will revert to the public owner." (Handbook, *supra,* at p. 21.) Therefore, "[w]hen valuing a taxable possessory interest, the appraiser must determine a term of possession for the interest.... The term of possession also affects the value of a taxable possessory interest. All else being equal, the longer the term of possession, the higher the value of the possessory interest." (*Ibid*.)

Id. at 57.

Thus, the proposed LTA is consistent with *CalSTRS*, the plain language of Rule 21 and the Board's interpretation of its Rule in AH 510.

The proposed LTA is also consistent with the Board's intention in adopting Rule 21. As the LTA points out, the Board adopted Rule 21 to implement the holding in *American Airlines, Inc. v. County of Los Angeles* (1976) 65 Cal.App.3d 325 ("*American Airlines"*). The proposed LTA ties these cases together in its analysis of the property right that can be appraised in a PI:

> *American Airlines* established that only the taxable real property in a possessory interest is measured by the term of possession created by the public owner and private possessor. Consistent with *American Airlines*, *CalSTRS* established that the appraised value of the TPI may not include the public owner's reversionary interest in the property because it is not taxable.

Finally, *CalSTRS* found the body of law governing appraisal of PIs developed by the Board is entitled to deference. *See*, *Id*. at 54-55 citing *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7,8,12 and 14, and *Id*. at 62 citing *Carlson v. Assessment Appeals Bd. 1* (1985) 167 Cal.App.3d 1004, 1013. In this context, adoption of the LTA would be the Board's "interpretation of a self-promulgated regulation."

Under Government Code section 15608, the Legislature requires that, "The board shall instruct, advise, and direct assessors as to their duties under the laws." The proposed LTA complies with that mandate. The proposed LTA precisely rearticulates the legal requirements for appraisal of a PI consistent with the *CalSTRS* decision. Proper implementation of Rule 21, AH 510 and the proposed LTA by assessors and AABs is a critical element to ensure that PI valuations are legal throughout the reasonably anticipated term of possession and equalized within and throughout the counties.

TWC urges the Board to adopt and issue the interpretation of Rule 21 and AH 510 as proposed in the LTA.

Very truly yours,

Jeffrey Sinsheimer

cc:

Boardmember Betty Yee
Senator George Runner
Boardmember Michelle Steel
Controller John Chiang
Ms. Marcie Jo Mandel
Cynthia Bridges
Randy Ferris
David Gau