

BOARD ORDER: MGB 099/99

IN THE MATTER OF THE "Municipal Government Act" being Chapter M-26.1 of the Statutes of Alberta 1994 (the Act)

AND IN THE MATTER OF A COMPLAINT about certain 1996 Linear Property Assessments prepared by the Assessor designated by the Minister of Municipal Affairs.

BETWEEN:

TELUS Corporation on behalf of TELUS Communications Inc. and TELUS Communications (Edmonton) Inc.- Complainants

- a n d -

The Crown in the Right of the Province of Alberta as represented by the Minister of Municipal Affairs - Respondent

BEFORE:

V. Chatten, Presiding Officer
J. Church, Member
R. Scotnicki, Member
N. Dennis, Member
J. Willson, Member

Upon notice being given to the affected parties, a hearing was held in the City of Edmonton, in the Province of Alberta on October 13, 14, 15, 16 and 22, 1998.

This is a complaint about 1996 assessments for linear property prepared by the assessor designated by the Minister of Municipal Affairs filed by TELUS Corporation on behalf of TELUS Communications Inc. and TELUS Communications (Edmonton) Inc. with respect to linear assessments entered in the rolls of municipalities in accordance with Appendix "A" attached hereto.

Appendix "A" lists 282 municipalities, Improvement Districts, Indian Reserves and Metis Settlements having a total assessment of \$418,764,469 assigned to switching equipment. The assessment of the switching equipment includes hardware and software costs.

BACKGROUND

TELUS Corporation, through its subsidiaries TELUS Communications Inc. and TELUS Communications (Edmonton) Inc. referred to collectively as "TELUS", provide telecommunication services in Alberta.

BOARD ORDER: MGB 099/99

Agreed Facts (As Filed By Complainant and Respondent)

Telus Corporation, representing TELUS Communications Inc. and TELUS Communications (Edmonton) Inc., and the Crown in the right of the Province of Alberta as represented by the Minister of Municipal Affairs (Assessment Services Branch) agree to the following facts:

- (a) The emission, transmission and reception of telecommunication signals required station equipment such as a telephone or a computer. When the telephone is off-hook, there is a signal (or command) to the network that a connection is desired to the effect that the station equipment is ready to do something. Signals (dial tones, voice computer signals, dialing pulses etc.) travel along a paired wire. One end of the wire is connected to the station equipment, the other end to a protection device and eventually to the central office. The central office houses the telephone equipment that provides several functions related to local telephone service such as dial tone, ringing tone and busy tone, as well as, interconnection to other central offices.
- (b) Telecommunication traffic must be “routed” to ensure that the intended transmission reaches its intended destination. In the early days of telephony, telephone operators at a switchboard performed this function. Eventually, mechanical switches replaced the telephone operator and were in widespread use prior to 1989. Subsequent to 1989, TELUS has employed computer technology to provide, among other things, the routing function. These computers are known as digital switches and are located in the central offices. Virtually all the switches in the network are manufactured by Northern Telecom Canada Limited (“Northern Telecom”) and are known as Digital Multiplex Systems (“DMS”) switches. The introduction of the DMS switches was revolutionary in that it provided the technology which allowed TELUS to offer its customers new optional services in addition to providing basic telephone service.
- (c) The DMS switches, like other computers require a set of instructions to perform various functions. These instructions come in the form of computer software.
- (d) Based on customer demand or on TELUS regulatory (or other) requirement, TELUS can “activate” a particular feature in any exchange (that is, the service area identified by the first three digits of a telephone number). The DMS switch in an area would have the application software that permits all features, but only certain features would be activated. In other words, though available, those features that are not activated would remain dormant. A particular feature can be activated in any switch provided that TELUS pays to Northern Telecom a “one time” license fee in respect of the feature. In limited circumstances, TELUS is obligated to pay additional fees on some application (or feature) packages based on customer usage. In addition TELUS pays additional fees for software updates as they are made available and are purchased by TELUS (i.e. for new software loads obtained periodically).

BOARD ORDER: MGB 099/99

- (e) The software is not owned by TELUS; it is licensed from Northern Telecom. This license conveys to TELUS no rights of property; rather it merely permits TELUS to use the software. TELUS has no ability to transfer the software for which it has licenses.
- (f) TELUS' linear property assessment of switching machinery and equipment includes an amount in respect of the licensing fee paid for the DMS software. TELUS does not include in the linear property assessment fees for upgrades for the DMS application software.

General

The parties before the Board, in reference to the computer software, used the terms basic and operational interchangeably, and feature and application interchangeably in relation to the two different aspects of software. For the purpose of this Order, the Board will use only the terms "basic" and "feature" when referencing the two aspects of software.

The computer software utilized in the DMS switches consists of basic software and feature software. The basic software is a set of instructions to enable the computer to function and interpret necessary instructions, including the routing functions to ensure the proper routing of the signals. Feature software consists of approximately 250 separate feature packages which can be activated in whole or part. Approximately 5% of these features are used in the basic telephone service while the remaining 95% provide the computer with specific instructions which are required to perform a number of additional features. Examples of additional features include providing optional services such as call waiting and call display.

The linear property assessment of switching machinery and equipment includes an amount in respect of the licensing fee paid for the DMS software, both basic and feature, but does not include fees for upgrades for the DMS feature software. The appeal, as argued by the Complainant, relates solely to the assessment of feature software as linear property.

The linear assessment of the DMS switches was prepared in accordance with the Act and Alberta Regulation 74/91. The assessment is based on the typical costs as reported by TELUS, which included the hardware as well as the costs for both the basic and feature software. To arrive at typical cost, TELUS averaged the total cost, both hardware and software, of five switches located in the City of Calgary. This typical cost was adjusted by Alberta Municipal Affairs to a 1983 level of value by applying the appropriate conversion factors. The 1983 level of value was then adjusted by Alberta Municipal Affairs to the base year for each municipality by applying the appropriate base year indices. This results in a typical cost in the base year for the DMS switches in the municipalities in which the switches are located. A depreciation factor was then applied to the base year costs, which results in the assessment amount for a particular DMS switch.

BOARD ORDER: MGB 099/99

Assessment History

The assessment of DMS switches and other property of TELUS relates to the transition of TELUS from being a Crown corporation until 1992. As a Crown corporation, AGT Limited “self assessed” for all its property and made grants in lieu of taxes to each of the municipalities. The change of AGT to TELUS, as publicly owned corporation, and the change in legislation to the Act occurred about the same time (1994/95). Throughout, TELUS continues to provide information as to nature, cost and location of all equipment for assessment purposes to Alberta Municipal Affairs.

TELUS first questioned the assessment of switch software in 1994 but when this was not resolved in 1994 or 1995, filed an appeal for the 1996 assessment.

The witnesses of the Complainant and the Respondent provided details of how the assessment was done, the purpose and operation of DMS switches, as well as opinions of whether feature software is assessable. The latter opinions were provided by R. Gagne, former Assistant Deputy Minister, Alberta Municipal Affairs, and K. Shaw, former Director, Linear Property Assessment, Alberta Municipal Affairs. The only substantial difference between the evidence of Mr. Gagne and Mr. Shaw is their different conclusion on the same history and legislation. Mr. Gagne’s opinion is that everything was assessable and that to some extent, negotiations were used to determine what is assessable and for how much. Mr. Shaw’s opinion is that feature software is not assessable primarily because of the analogy to major plants where only control software is assessable and that generally personal property is not assessable as linear property.

At the hearing the Complainant and Respondent agreed that the quantum of assessment is not an issue and that both parties agree the issue is whether or not feature software is assessable.

During the course of the hearing, the Board heard from six witnesses and received 27 exhibits which included substantial case law relating to both the issues of assessment of computer software, fairness and equity and statutory interpretation. The party positions within this Board Order are intended to be a brief summary of the evidence and argument of the parties. In addition, any reference to case law is not intended to be inclusive, but only for reference. An in-depth review of this case requires reading of all of the material and the transcript of the hearing.

ISSUES

Whether or not the feature software used in the switching gear of the telecommunication industry is assessable as linear property; and,

If assessable, whether the inclusion of the feature software in linear property is fair and equitable in relation to similar property?

LEGISLATION

Municipal Government Act

1(1) In this Act,

- (u) “owner means
 - (iii) in respect of any property other than land, the person in lawful possession of it;

284(1) In this Part and Parts 10, 11, and 12

- (a) “assessed person” means a person who is named on an assessment roll in accordance with section 304;
- (b) “assessed property” means property in respect of which an assessment has been prepared or adopted;
- (c) “assessment” means a value of property determined in accordance with this Part and the regulations;
- (k) “linear property” means
 - (ii) telecommunications systems, including
 - (A) cables, amplifiers, antennae and drop lines, and
 - (B) structures, installations, materials, devices, fittings, apparatus, appliances and machinery and equipment,
intended for or used in the communications systems of cable distribution undertakings and telecommunication carriers that are owned or operated by a company as defined in Part 3 of the Telecommunications Act or that are subject to the regulatory authority of the Canadian Radio-television and Telecommunications Commission or any successor of the Commission, but not including
 - (C) cables, structures, amplifiers, antennae or drop lines installed in and owned by the owner of a building to which telecommunications services are being supplied,
- (l) “machinery and equipment” has the meaning given to it in the regulations;
- (p) “operator”, in respect of linear property, means
 - (i) the owner of the linear property,
- (r) “property” means
 - (ii) an improvement,
- (w) “telecommunication system” means a system intended for or used in the transmission, emission or reception of cable television or telecommunications, but not including radio communications intended for direct reception by the general public;

292(1) Assessments for linear property must be prepared by the assessor designated by the Minister.

(2) Each assessment must reflect the valuation standard set out in the regulations for linear property.

BOARD ORDER: MGB 099/99

- (3) Each assessment must be based on a report provided by December 31 to the Minister by the operator of the linear property, showing
- (a) the specifications and characteristics of the linear property on October 31 of the year prior to the year in which the tax is imposed under Part 10 in respect of linear property,
 - (b) the legal descriptions of the parcels of land occupied by the linear property, where appropriate,
 - (c) the address to which assessments notices may be sent, and
 - (d) any other information requested by the Minister.
- (4) If an operator of linear property does not provide the report required by subsection (3), the assessor must prepare the assessment using whatever information is available about the linear property.

304(1) The name of the person described in column 2 must be recorded on the assessment roll as the person in respect of the assessed property described in column 1.

| Column 1 | Column 2 |
|---------------------|---|
| Assessed property | Assessed person |
| (i) linear property | (i) the operator of the linear property |

- 492(1) A complaint about an assessment for linear property may be about any of the following matters, as shown on the assessment notice:
- (a) the description of any linear property;
 - (b) the name and mailing address of an assessed person;
 - (c) an assessment;
 - (d) the type of improvement;
 - (e) school support;
 - (f) whether the linear property is assessable;
 - (g) whether the linear property is exempt from taxation under Part 10.

- 499(1) On concluding a hearing, the Board may make any of the following decisions:
- (b) make a change with respect to any matter referred to in section 492(1), if the hearing relates to a complaint about an assessment for linear property;

Standards of Assessment Regulation 365/94

1 In this Regulation

- (g) machinery and equipment means materials, devices, fittings, installations, appliances, apparatus and tanks other than tanks used exclusively for storage, including supporting foundations and footings and any other thing prescribed by the Minister that forms an integral part of an operational unit intended for or used in
- (v) a telecommunications system,

BOARD ORDER: MGB 099/99

6(1) The valuation standard for linear property is that calculated in accordance with the procedures referred to in subsection (2).

(2) In preparing an assessment for linear property, the assessor must follow the procedures set out in the Alberta Linear Property Assessment Ministers Guidelines established and maintained by the Department of Municipal Affairs, as amended from time to time.

(At the time of the assessment year under appeal, the Alberta Linear Property Assessment Ministers Guidelines were not adopted.)

Electric Power and Pipe Line Assessment Act

1. In this Act

- (g) “works and transmission lines” means
 - (ii) cables, structures, amplifiers and drop lines designed and used for the purpose of transmitting cable television for commercial sale or resale to the public, except those cables, structures, amplifiers and drop lines installed within and owned by the owner of the building, and
 - (iii) the installations, materials, devices, fittings, apparatus, appliances, equipment, machinery, ways and easements and structures used in the transmission or sale of telecommunications services,but does not include physical land or buildings.

5(3) The Provincial Assessor shall determine the assessment in accordance with standards and methods prescribed by the regulations.

Interpretation Act

32(1) If an enactment is repealed and a new enactment is substituted for it,

- (e) all regulations made under the repealed enactment remain in force and shall be deemed to have been made under the new enactment, in so far as they are not inconsistent with the new enactment;

Works and Transmission Lines Assessment Regulation 74/91

4(1) In subsection (2)(c),

- (a) base year means
 - (i) the year preceding the year of a general assessment under the Municipal Taxation Act, if the assessment of the works and transmission lines is made in the year of that general assessment, or

BOARD ORDER: MGB 099/99

(ii) the year preceding the year of the last general assessment under the Municipal Taxation Act, if the assessment of the works and transmission lines is made in a year other than the year of that general assessment;

(b) steel base year modifier, with respect to a base year, means the steel base year modifier for that base year as prescribed in Division 4 of Schedule 1 of the Assessment Standards Regulation, 1979 (Alta. Reg. 394/79).

(2) In a municipality where improvements are assessed in accordance with the Assessment Standards Regulation, 1979 (Alta. Reg. 394/79), the assessment of works and transmission lines shall be determined by

- (a) determining the basic cost in accordance with Schedule 6, 7 or 8,
- (b) determining the depreciated basic cost in accordance with subsection (3),
- (c) multiplying the amount calculated under clause (b) by the steel base year modifier for the base year, and
- (d) multiplying the amount calculated under clause (c) by a factor of 0.65.

(3) The following rules apply with respect to determining the depreciated basic cost referred to in subsection (2)(b):

- (a) if Schedule 6 applies to the works and transmission lines, multiply the amount calculated under subsection (2)(a) by a fixed and immediate depreciation factor of 0.75;
- (b) if Schedule 7 applies to the works and transmission lines,
 - (i) multiply the amount calculated under subsection (2)(a) by a fixed and immediate depreciation factor of 0.75, or
 - (ii) the case of works and transmission lines situated in an urban community, multiply the amount calculated under subsection (2)(a) by a fixed and immediate depreciation factor determined in accordance with Schedule 9;
- (c) if Schedule 8 applies to the works and transmission lines, multiply the amount calculated under subsection (2)(a) by a factor attributable to depreciation.

(4) Schedule 10 shall be used as a guide in determining the factor referred to in subsection (3)(c).

5(1) This section applies in a municipality when the assessment of property is determined in accordance with

- (a) the Fair Actual Value Regulation (Alta. Reg. 397/85), or
 - (b) the Fair Actual Value Indexing Regulation (Alta. Reg. 398/85),
- under the Municipal Taxation Act.

(1.1) Notwithstanding subsection (1), this section applies to the assessment of works and transmission lines in Edmonton and Calgary.

BOARD ORDER: MGB 099/99

- (2) In this section,
- (a) base year means the base year of the general assessment as defined in section 1 of the Fair Actual Value Regulation (Alta. Reg. 397/85);
 - (b) steel base year modifier means the base year modifier for steel, in the base year, determined in accordance with section 1.180.050 of Schedule 1 of the Fair Actual Value Regulation (Alta. Reg. 397/85).
- (3) The assessment of works and transmission lines described in Schedule 11, 12, or 13 shall be determined by
- (a) determining the 1983 replacement cost new,
 - (b) multiplying the 1983 replacement cost new by the steel base year modifier to determine the base year replacement cost new,
 - (c) reducing, in accordance with subsection (4), the base year replacement cost new by the amount that is attributable to depreciation, and
 - (d) multiplying the amount determined under clause (c)
 - (i) in the case of a municipality whose assessment has been prepared in accordance with section 3(2) of the Percentage of Fair Actual Value Regulation (Alta. Reg. 364/88), by a factor of 1.00, or
 - (ii) in any other case, by a factor of 0.65.
- (4) For the purpose of subsection (3)(c), the amount that is attributable to depreciation shall be determined by,
- (a) if Schedule 11 applies, multiplying the base year replacement cost new by a factor of 0.75,
 - (b) if Schedule 12 applies,
 - (i) subject to subclause (ii), multiplying the base year replacement cost new by a factor of 0.75, or
 - (ii) in an urban community, multiplying the base year replacement cost new by a factor determined in accordance with Schedule 9,
- and
- (c) if Schedule 13 applies, multiplying the base year replacement cost new by an appropriate depreciation factor determined using Schedule 10.

SCHEDULE 7

CABLE TELEVISION SYSTEMS BASIC COST RATES

Basic cost rates to be used for the assessment of works and transmission lines as defined in section 1(g)(ii) of the Act.

SCHEDULE 11

GENERAL BASIC COST RATES

(a) Electric Distribution Systems

| Size of Service | Basic Cost per Service |
|-----------------|------------------------|
| 1 - 76 kW | \$720 |
| 77 - 120 kW | 7,310 |
| 121 - 180 kW | 9,590 |
| 181 - 270 kW | 13,420 |
| 271 - 360 kW | 15,430 |
| 361 - 540 kW | 20,300 |
| 541 - 720 kW | 27,030 |
| 721 - 900 kW | 34,300 |
| 901 - 1200 kW | 40,380 |
| 1201 - 1800 kW | 48,480 |
| 1801 - 2400 kW | 53,950 |
| 2401 - 3600 kW | 61,350 |

Cost includes:

- poles and fixtures
- conductors
- transformers
- meters
- installation

(b) Street Lighting

| Size/Type | Basic Cost per Unit |
|--------------------------------|---------------------|
| 175 Watt Sentinel | \$395 |
| 150-300 Watt Radial | 395 |
| 300-600 Watt Radial | 430 |
| 125 Watt Mercury Vapour | 445 |
| 175 Watt Mercury Vapour | 650 |
| 250 Watt Mercury Vapour | 670 |
| 400 Watt Mercury Vapour | 770 |
| 1000 Watt Mercury Vapour | 1,050 |
| 400 Watt High Pressure Sodium | 1,060 |
| 1000 Watt High Pressure Sodium | 1,410 |

BOARD ORDER: MGB 099/99

Cost includes:
- installation

(c) Oil and Gas Field Services

Basic Cost per service \$7,720

Cost includes:
- poles and fixtures
- conductors
- transformers
- meters
- lighting and related appurtenances
- installation

(d) Electric Transmission Lines

(i) Basic Cost Rate Per 3 Phase kilometre

| | Wood Pole 23-36 kV | Wood Pole 37-75 kV | Wood Pole 138-144 kV | Steel Tower 138-240kV | Guyed Steel 138-240 kV | Guyed Alum. 138-240 kV |
|-----|-----------------------|-----------------------|-------------------------|--------------------------|---------------------------|---------------------------|
| #6 | \$7,100 | \$- | \$- | \$- | \$- | \$- |
| #5 | 7,200 | - | - | - | - | - |
| #4 | 7,350 | 12,850 | - | - | - | - |
| #3 | 7,510 | 13,020 | - | - | - | - |
| #2 | 7,850 | 13,370 | - | - | - | - |
| #1 | 8,000 | 13,500 | - | - | - | - |
| 1/0 | 8,390 | 13,910 | - | - | - | - |
| 2/0 | 8,730 | 14,350 | - | - | - | - |
| 3/0 | 9,350 | 14,860 | 22,840 | 38,590 | 34,470 | 40,010 |
| 4/0 | 10,050 | 15,560 | 23,540 | 39,290 | 35,170 | 40,710 |
| 266 | - | 16,810 | 24,790 | 40,550 | 36,420 | 41,960 |
| 300 | - | 17,060 | 25,020 | 40,770 | 36,670 | 42,210 |
| 336 | - | 17,640 | 25,610 | 41,360 | 37,240 | 42,790 |
| 397 | - | 18,780 | 26,760 | 42,520 | 38,360 | 43,930 |
| 477 | - | - | 28,070 | 43,840 | 39,700 | 45,250 |
| 500 | - | - | 28,750 | 44,500 | 40,370 | 45,920 |
| 556 | - | - | 29,880 | 27,550 | 25,020 | 28,420 |
| 636 | - | - | 30,400 | 46,150 | 42,030 | 47,570 |
| 666 | - | - | 30,560 | 46,330 | 42,190 | 47,750 |
| 715 | - | - | 31,650 | 47,420 | 43,300 | 48,840 |

BOARD ORDER: MGB 099/99

| | Wood Pole 23-36 kV | Wood Pole 37-75 kV | Wood Pole 138-144 kV | Steel Tower 138-240kV | Guyed Steel 138-240 kV | Guyed Alum. 138-240 kV |
|-------|-----------------------|-----------------------|-------------------------|--------------------------|---------------------------|---------------------------|
| 795 | - | - | 32,940 | 48,690 | 44,550 | 50,110 |
| 954 | - | - | 35,060 | 50,810 | 46,690 | 52,230 |
| 1,033 | - | - | 36,290 | 52,050 | 47,930 | 53,460 |
| 1,510 | - | - | 43,750 | 59,510 | 55,390 | 60,920 |
| 1,590 | - | - | 44,990 | 60,750 | 56,620 | 62,160 |
| 1,780 | - | - | 46,510 | 62,260 | 58,120 | 63,680 |

(ii) Double Circuit Basic Cost Rate Per 3 Phase Kilometre

| | Wood Pole 23-36 kV | Wood Pole 37-75 kV | Wood Pole 138-144 kV | Steel Tower 138-240kV | Guyed Steel 138-240 kV | Guyed Alum. 138-240 kV |
|-------|-----------------------|-----------------------|-------------------------|--------------------------|---------------------------|---------------------------|
| #6 | \$3,230 | \$- | \$- | \$- | \$- | \$- |
| #5 | 3,320 | - | - | - | - | - |
| #4 | 3,470 | 6,140 | - | - | - | - |
| #3 | 3,630 | 6,300 | - | - | - | - |
| #2 | 3,990 | 6,660 | - | - | - | - |
| #1 | 4,120 | 6,790 | - | - | - | - |
| 1/0 | 4,530 | 7,200 | - | - | - | - |
| 2/0 | 4,970 | 7,640 | - | - | - | - |
| 3/0 | 5,470 | 8,150 | 10,020 | 15,480 | 14,300 | 15,360 |
| 4/0 | 6,170 | 8,850 | 10,720 | 16,180 | 14,990 | 16,600 |
| 266 | - | 10,100 | 11,970 | 17,430 | 16,260 | 17,590 |
| 300 | - | 10,340 | 12,220 | 17,670 | 16,490 | 18,100 |
| 336 | - | 10,930 | 12,800 | 18,260 | 17,070 | 18,680 |
| 397 | - | 12,070 | 13,940 | 19,400 | 18,230 | 19,820 |
| 477 | - | - | 15,260 | 20,720 | 19,530 | 21,130 |
| 500 | - | - | 15,930 | 21,390 | 20,200 | 21,810 |
| 556 | - | - | 16,310 | 21,780 | 20,590 | 22,190 |
| 636 | - | - | 17,580 | 23,050 | 21,840 | 23,460 |
| 666 | - | - | 17,760 | 23,210 | 22,020 | 23,640 |
| 715 | - | - | 18,850 | 24,300 | 23,120 | 24,730 |
| 795 | - | - | 20,120 | 25,580 | 24,390 | 26,000 |
| 954 | - | - | 22,240 | 27,690 | 26,520 | 28,130 |
| 1 033 | - | - | 23,470 | 28,930 | 27,760 | 29,350 |
| 1 510 | - | - | 30,930 | 36,390 | 35,200 | 36,820 |
| 1 590 | - | - | 32,170 | 37,630 | 36,440 | 38,050 |
| 1 780 | - | - | 33,690 | 39,140 | 37,960 | 39,570 |

BOARD ORDER: MGB 099/99

(iii) Bundled Basic Cost Rate per 3 Phase Kilometre

| | Wood Pole 138-144 kV | Steel Tower 138-240 kV | Guyed Steel 138-240 kV | Guyed Alum. 138-240 kV |
|---------|-------------------------|---------------------------|---------------------------|---------------------------|
| 266 MCM | \$29,340 | \$45,090 | \$40,970 | \$46,510 |
| 300 MCM | 29,810 | 45,560 | 41,440 | 46,980 |
| 336 MCM | - | 46,700 | 42,580 | 48,140 |
| 397 MCM | - | 48,870 | 44,810 | 50,380 |
| 477 MCM | - | 51,570 | 47,440 | 52,990 |

SCHEDULE 12

CABLE TELEVISION SYSTEMS BASIC COST RATES

Basic cost rates to be used for the assessment of works and transmission lines as defined in section 1(g)(ii) of the Act.

| A | Trunk Line Size | Basic Cost Rate Per Metre |
|---|--|---------------------------|
| | 25 mm (1") | \$8.56 |
| | 19 mm (3/4") | 9.14 |
| | 13 mm (1/2") | 8.19 |
| B | Joint Trunk Line | |
| | Size | |
| | Joint 19 mm Trunk Line with 13 mm Distribution Line | \$11.89 |
| | Joint 13 mm Trunk Line with 13 mm Distribution Line | 11.34 |
| | Additional 25 mm Trunk Line to existing Trunk Line | 4.83 |
| | Additional 19 mm Trunk Line to existing Trunk Line | 4.05 |

BOARD ORDER: MGB 099/99

| | | |
|---|--|---------|
| | Additional 13 mm Trunk Line to existing Trunk Line | 3.28 |
| C | Distribution Line | |
| | 13 mm (½") | \$7.62 |
| | 10 mm (.412") | 6.65 |
| D | Service Drop | |
| | per live drop | \$30.55 |
| E | For each service installation within a building not owned by the owner of the building, add: | |
| | per live customer unit | \$20.54 |

Cost includes:
- installation

SCHEDULE 13

REPLACEMENT COST NEW OF OTHER WORKS AND TRANSMISSION LINES

The 1983 replacement cost new of works and transmission lines not described in Schedule 11 or 12 shall be determined in a manner that is fair and equitable with the replacement cost new of works and transmission lines determined under Schedule 11 or 12.

Special Property Assessment Guide

Introduction

It is stressed that the Special Property Assessment Guide is a guide only with no legislative sanction. For certainty of interpretation, the Municipal Taxation Act, other related Acts and Regulations should be consulted.

Section II - Assessable Costs

10 Computer Costs

Costs for hardware and software, either owned or leased which are used to monitor or control Machinery and Equipment that forms an integral part of an operational unit.

BOARD ORDER: MGB 099/99

Section III - Non-Assessable Costs

6 Royalty and Patent Fees

The fee paid for the right to use a particular process.

14 Personal Property

Personal property is specifically exempt from assessment in accordance with Section 14(1)(a) (sic) of the Municipal Taxation Act.

Personal property includes such items as: furnishing, office equipment, typewriters, desks, lockers.

15 Computer Costs

Computer costs incurred exclusively for accounting, business or other functions that are not part of the manufacturing or processing operation.

SUMMARY OF COMPLAINANT'S POSITION

The Complainant argued four reasons why feature software should not be assessed as linear property: statutory interpretation, fairness and equity, assessment of business value and whether a licensing agreement is assessable and taxable.

Statutory Interpretation

It is the Complainant's position that the provisions of the Act defining linear property and a telecommunications system do not lend themselves to the plain meaning approach of statutory interpretation. The definitions of linear property and telecommunications systems are broad and ambiguous, therefore the teleological approach should apply. The Complainant contended the Legislature never intended to levy a tax on application software. Further, if the clear intent of the Legislature cannot be ascertained, there is still a residual presumption in the Complainant's favour. In order to assess application software, it must be shown that the Legislature explicitly intended to assess application software.

Historically, the basic rule in statutory interpretation of tax statutes was that of strict construction. The doctrine of strict construction was applied on the basis that tax legislation imposed a burden on individuals. Therefore, the courts held that no one should be deprived of their common law rights without a specific taxing statute which explicitly does so. The rules of strict construction have now yielded to the rules of ordinary statutory interpretation, that is the words of the Act are to be read in their entire context in their grammatical and ordinary sense harmoniously with the scheme of the Act. This approach is described as "teleological" and is favoured when the statute's meaning is unclear or ambiguous. Applied to these circumstance, the Statute and Regulations do not expressly or by inference define feature software as linear property.

BOARD ORDER: MGB 099/99

Fairness and Equity

In addressing the issue of fairness and equity, the Complainant referenced the two principles set out in Bramalea Ltd. v. British Columbia. They are a right to an assessment which is not in excess of that which can be regarded as equitable and a right not to be assessed in excess of actual value. In regard to these two principles, the Complainant argued the definition of linear property is broad and there is no reference to computer software. It is unique to the telecommunications industry and it is not clear whether or not it is assessed on a consistent basis. Therefore, if application software is held to be linear property, the assessment procedures are inequitable.

In support of this contention, the Complainant contended other telecommunication companies, who provide telephone services, utilize application software which makes services, such as calling card and zero plus service, available to their customers, utilize application software, but the cost is not included in their linear assessments. Further, application software in the cable television industry is not assessed, therefore, application software in the telecommunication industry is not being treated equitably with similar property.

Linear Property vs. Business Value

The Complainant argued computer software is more a concept than a thing. The essence of software is information or intellectual property contained on a physical medium that is transferred to the purchaser or user along with manuals and varying degrees of post purchase support and service. Computer software is protected under the Copyright Act which defines literary work as including computer program and is defined as a set of instructions or statements expressed, fixed, embodied or stored in any manner, that is to be used directly or indirectly in a computer in order to bring about a specific result. It can be characterized as intellectual property.

Every computer program is nothing but a set of instructions which directs the computer to perform various tasks. There are two basic types of computer components: software and hardware. Software can be sub-classified into operating software and application software. Operating software is the basic set of instructions in the computer system which are essential and fundamental to all processing functions. Application software allows the user to do specific tasks or perform certain functions. This type of software is user driven and user specific and not considered essential to the computer's fundamental operations.

The DMS switches are equipped with operating software which connects the caller to the intended recipient. The application software permits TELUS to provide optional services for its customers and is activated in the market areas which have an adequate demand to justify its costs. The features activated vary in every DMS switch and this is clear evidence that it is not fundamental for the system to operate. The telecommunication system can still transmit, receive and emit telephone calls without the application software.

BOARD ORDER: MGB 099/99

The Complainant submitted that one might understand linear property to mean property which is in the nature of a line. This is an apt description of telecommunication facilities, as well as electrical and pipeline facilities, but not a term having much of an ordinary meaning. To understand what the Legislature intended, one must reference the words used in the statute.

Property is defined as land, improvements or both and when considering the definition of linear property, the definition should only consider those assets that can be considered property under the Act. The Complainant then referenced the definition of improvement and submitted that linear property is intended to include only those elements of a telecommunication system that have the character of realty.

With reference to the definition of linear property, the Complainant submitted that while a software program is installed, it cannot be construed to mean an installation within the meaning of the Act. The word “installation” must be limited to meaning consistent with the characteristics of the terms forming part of the same definition. These terms, in the definition of linear property, are all affixed to real property.

Further, the inclusion of computer software in the definition of linear property must be dismissed when the legislation is considered as a whole. Section 284 of the Act defines linear property as a telecommunications system and includes a list of terms. It is appropriate to interpret a list of items following “including” as words of clarity. The Complainant submitted that the intent is to clarify by including certain items that, although not real property or improvements, belong in this category. Based on the maxim that a grouping of words should be reviewed and common feature found among them, all the terms have one characteristic in common, tangibility, and more specifically, these items can be affixed to real property. The Complainant contended that application software is intangible and should not be included in the definition of real property.

Given the uncertainty, the Complainant concluded by referencing a then proposed change to the Act which would have specifically excluded computer software from all property taxation. The proposed amendments would have excluded all personal property from taxation as the proposed definition of personal property included software and intangible property.

The Complainant submitted that the Legislature did not intend that the entirety of a telecommunication system be assessable. If the Legislature had such an intention, it would have stated linear property means a telecommunication system, but by using the qualifications it intended to set limitations on the aspects of a telecommunication system which ought to be subject to assessment.

Licensing Agreements

The Complainant submitted that the property interests held by TELUS with respect to application software is not subject to assessment. The software is licensed to TELUS by Northern Telecom

BOARD ORDER: MGB 099/99

pursuant to the DMS Purchasing Agreement and confers no right of ownership. The license agreements are contractual which changes the common law rights of the parties. At common law, a license could be revoked at any time, but a contractual license prevents the licensor from revoking the license for a specified term. With this in mind, the provisions of the Act must be interpreted using the plain meaning approach. The Act refers to “operator” as the assessed person and further defines “operator” as the owner being the person in lawful possession of property.

In order for TELUS to be assessed on its linear property, it must be the owner of linear property which is defined as being in lawful possession. The Complainant submitted that TELUS is not in lawful possession of the application software. To be in lawful possession one must look to the legal concept which requires two distinct elements: 1) physical control or holding; and, 2) the intent to appropriate or exercise dominion over the thing. The Complainant submitted that TELUS cannot exercise physical control over the license as it is an intangible, in that intangible property cannot be controlled. Alternatively, TELUS cannot exercise dominion over the application software given its limited rights under the DMS Agreement. To exercise dominion over an object entails the right to exclude others from enjoyment, use and possession. The DMS Agreement gives TELUS only the right to use, not a legal right to exclude others from using the application software. Therefore, the Complainant submitted TELUS is not in legal possession of the application software and should not be required to include its value in the assessment for linear property.

The Complainant further submitted that the Special Property Assessment Guide excludes fees paid to use a particular process. The licensing fees paid by TELUS represent amounts paid to use a process in the telecommunications business. The Complainant contended licensing fees are simply amounts paid to use a process and the payments should not form a part of the assessment.

The Complainant concluded by requesting the assessments under appeal be reduced by that amount representing the cost of the application software.

SUMMARY OF RESPONDENT'S POSITION

In response to the Complainant’s arguments, the Respondent countered as follows:

Statutory Interpretation

The Respondent submitted that taxing statutes must be interpreted in the same manner as other statutes. The principal rule of statutory interpretation is that words used in a statute must be taken in their plain ordinary meaning. It is only when there is an ambiguity or some other difficulty that some other rules of statutory interpretation are applied.

The Respondent submitted that TELUS is a company as defined in the Telecommunication Act and is subject to the regulatory authority of the CRTC. Therefore, all linear property used by

BOARD ORDER: MGB 099/99

TELUS in the operation of its telecommunication system is assessable. The Respondent further argued that DMS switches, including the software costs for the switches, constitute linear property.

Section 284(1)(w) of the Act defines a telecommunication system as a system intended for or used for the transmission, emission or reception of telecommunications. DMS switches, including software, are used for this purpose and the switches cannot operate without the appropriate software. The software, including the application software, enables signals to be routed so that the telephone system functions properly. The routing of signals involves the transmission, emission or reception of telecommunications and for this reason the switches come within the definition of linear property as set forth in section 284(1)(k)(ii) of the Act. This states that telecommunication systems are linear property. This subsection specifies a number of items which are included within linear property and the DMS switches falls within several of the terms listed. The switches fall within the terms “structures”, “installations”, “devices”, “apparatus”, “appliances” and “machinery and equipment”.

Since the literal interpretation of statutes is the first approach, the Respondent submitted dictionary definitions are useful in determining the meaning of a statutory provision. The Respondent referenced the Shorter Oxford English Dictionary, Webster’s Universal College Dictionary and Black’s Law Dictionary to address the various terms, other than machinery and equipment, used to capture DMS switches. The Respondent did note that many of the terms used are very broad and general, but this is intentional because linear property is intended to include all aspects of the property which make up a telecommunication system.

With regard to “machinery and equipment”, the Respondent again referenced the three dictionaries and submitted that in order for installations, devices and apparatus to qualify as machinery and equipment, those items must form an integral part of an operational unit. It is the Respondent’s contention that DMS switches, including the software, are integral to the operation of the telephone system.

The Respondent submitted that a piece of equipment is integral to an operation if it is used by the operator as an essential part of its operations. The question then becomes whether the DMS switches and software are being used by TELUS in a way that is essential to its operations and one must look at the overall operation to determine what is essential as that operation has been established. It is the Respondent’s contention that all of the software used by TELUS in the DMS switches are an integral part of the operational unit. The DMS switches, including the software, clearly form part of the telecommunications operations as established by TELUS and in that sense, the switches, including software, are clearly essential to the entire operation.

BOARD ORDER: MGB 099/99

Personal Property or Real Property

The Respondent argued that whether the application software is personal property or real property is not relevant, because certain types of personal property have always been assessable. One only has to look at the definition of linear property to determine that many items of personal property are assessable as linear property. Such things as structures, installations, materials, devices, fittings, apparatus, appliances and machinery and equipment will frequently, or always, be personal property. The Respondent stated it is unclear whether DMS switches themselves are real property or personal property, but the software is essential to the operation of the switches and therefore the costs of the software are assessable costs as part of the DMS switches.

The Respondent submitted the legislation provides that property is to be assessed as linear property if it is intended for or used in telecommunication systems. Therefore, the question of assessability turns on whether or not the property is used or intended to be used in a telecommunication system. The fact is that both operating and application software are used as part of the telecommunication system. No reasonable distinction can be made between the operating and application software, therefore the cost of both software must be included in the assessment of the DMS switches.

Licensing

The Respondent argued that whether TELUS owns or licenses the software is not relevant. If the software is used by TELUS, the costs of the software are assessable costs, regardless of ownership. Section 304(1)(i) of the Act provides that the “operator” of linear property is the assessed person for that property. Further, TELUS has acknowledged that the costs of the operating software are property included in the assessment of DMS switches. The operating software is used by TELUS under license and is not owned by TELUS.

Fairness and Equity

The Respondent submitted that the inclusion of application software costs in the assessment of DMS switches is consistent with the assessment of other property, both improvements and linear. In respect of improvements, computer equipment, including software costs, are required to be assessed under the present legislation. One example is the assessment of machinery and equipment as an improvement. With respect to the assessment of linear property, the legislation requires the assessment of computer equipment used in the operation of linear property.

The Respondent further submitted that even if the assessment of similar computer equipment was missed, it does not follow that TELUS is entitled to equitable relief. The equitable principles involved merely dictate that where two similar properties are assessed, that equitable methods of assessment be used. If an assessor missed some assets in the assessment of a particular property, that would not entitle the owner of similar property to assessment relief.

BOARD ORDER: MGB 099/99

The Respondent concluded by requesting that the appeals be dismissed and the assessments confirmed.

INTERVENORS' POSTION

Of the 282 municipalities, Improvement Districts, Indian Reserves and Metis Settlements which would be affected by the issues to be addressed in this Board Order and were notified of the hearings and invited to participate , nine parties actually intervened and had representatives appear at the hearings. City of Edmonton, City of Calgary, County of St. Paul, M.D. of Bonnyville, M.D. of Brazeau, M.D. of Greenview, Lakeland County, M.D. of Lessor Slave River and M.D. of Northern Lights (the "Intervenors"), signified their intention to appear and in fact, availed themselves of the opportunity to have representatives at the hearings.

Through the course of the hearings the Board invited the Intervenors to present any witnesses or evidence relevant to the issues before the Board, but the Intervenors throughout declined all opportunities to present evidence. Instead, the Intervenors indicated support for the position enunciated by the Respondent at the hearings. In some cases the Intervenors clarified for the Board the potential impact of a decision in this matter and presented argument and rebuttal on the issues before the Board.

FINDINGS

Upon hearing and considering the representations and the evidence of the parties shown on Appendix B and upon having read and considered the documents shown on Appendix C attached hereto, the Board makes the following findings:

1. DMS switches are an operational unit.
2. The cost of computer software is part of the cost of an operational unit, if required to make the unit operational.
3. For the purpose of assessing a telecommunication system, Schedule 13 of Regulation 74/91 applies.
4. Software is not identifiable as assessable under Schedules 11, 12 or 13 of Regulation 74/91.
5. Costing of an operational unit only includes those costs that make a unit operational.

In consideration of the above and having regard to the provisions of the Municipal Government Act, the Board makes the following decision, for the reasons set out below.

BOARD ORDER: MGB 099/99

DECISION

The complaint about the 1996 linear property assessment is allowed and the parties to the appeal are to jointly provide to the Board within 60 days of the date of this Order, the revised linear assessments, by municipalities, Indian Reserves and Metis Settlements, excluding the cost of feature software. Upon provision of the agreed revised linear property assessments, this Board, subject to review, will issue an Order setting the assessments.

It is so ordered.

REASONS

While addressing the issue of personal property, business value, licensing and fairness and equity, the primary focus of the Board in this matter is statutory interpretation.

LEGISLATION

Legislative History and Analysis

Linear property was never defined prior to the introduction of the Act, but it was a term used by the assessment community to refer to the assessment of certain property. The assessment was dealt with by the Electric Power and Pipeline Assessment Act (EPPL). It contained definitions of “works and transmission lines, and “pipelines”. The definition of “works and transmission lines” had three components which were:

- (a) the installations, structures, materials, devices, fittings, apparatus, appliances, equipment, plant machinery, ways and easements, constructed or acquired transmission, distribution, delivery or sale of electricity by a person whose rates are controlled or set by the Public Utilities Board or by a municipality,
- (b) cables, structures, amplifiers and drop lines designed and used for the purpose of transmitting cable television for commercial sale or resale to the public, except those cables, structures, amplifiers and drop lines installed within and owned by the owner of the building, and
- (c) the installation, materials, devices, fittings apparatus, appliances, equipment, machinery, ways and easements and structures used in the transmission or sale of telecommunication services, but does not include physical land or buildings.

The Board is satisfied there is a close but not an exact correlation between what is defined in the EPPL as works and transmission lines and pipelines, and what is now defined in the Act as linear property.

BOARD ORDER: MGB 099/99

The Board is not dealing with “pipelines” in this matter, so this will be covered first. In the Act, part of the definition of linear property is as follows:

pipelines, including (six specific inclusions) but not including (two specific exclusions).

It is noteworthy that there is no definition of pipelines in the Act. In the EPPL, “pipeline” was defined to mean certain things. The inclusions following the word “pipelines” in section 284(1)(k)(iii) of the Act are virtually identical to the meaning of pipeline in the EPPL (with some minor variations). So, although one does not know precisely what “pipelines” means by looking at the Act, the Board must assume that its meaning is broader than the meaning in the EPPL, since it includes at least everything in the EPPL definition.

The Act does include definitions of “electric power systems” and “telecommunication systems”. These definitions are new. They have no counterpart in the EPPL. They are both quite general, unlike the definitions of works and transmission lines in the EPPL, which contained long lists of components. It is noted, however, that each “component” part is a fairly general term, such as “material” or installation”.

Although the old definitions of works and transmission lines are not found in the new definitions of electric power systems and telecommunication systems, they do resurface in the definition of linear property. This strikes the Board as an odd place to find them. The Board would have thought that if they were to be used, they would have been found in the definitions of the terms themselves. Why define a term and then add to or illustrate examples of the term somewhere else?

For example, with respect to telecommunication systems, instead of saying that linear property means “telecommunication systems”, the provision in 284(1)(k)(ii) of the Act is

linear property means...

(ii) telecommunications systems, including

(A) cables, amplifiers, antennae and drop lines and

(B) structures installations, materials, devices, fittings, apparatus, appliances and machinery and equipment,

intended for or used in the communication systems of cable distribution undertakings and telecommunication carriers that are owned or operated by a company as defined in Part 3 of the Telecommunications Act or that are subject to the regulatory authority of the Canadian Radio-television and Telecommunications Commission or any successor of the Commission, but not including

BOARD ORDER: MGB 099/99

- (C) cables, structures, amplifiers, antennae or drop lines installed in and owned by the owner of a building to which telecommunication services are being supplied, or
- (D) land or buildings.

Assuming a legislative intent, there must be a purpose served by adding substantially all of parts (ii) and (iii) of the old definition of works and transmission lines in the new definition of linear property.

The only possibility is to emphasize that what is covered by “telecommunication systems” in the Act is broader than what was covered by parts (ii) and (iii) of works and transmission lines in the EPPL. In other words, in moving from the EPPL to the Act, a major change in policy occurred and was intended. This certainly goes against the correspondence entered into evidence and the testimony of two then senior departmental officials that certain provisions of the Act was only a consolidation of the EPPL assessment provisions and there was “no intent to change anything”. However this does not explain why those parts of the old definition were not included in the definition of “telecommunication systems”.

In the case of each of “electrical power systems”, “telecommunication systems”, and “pipelines”, the definition of linear property contains the old definitions for the EPPL (slightly modified) as “inclusions” and “meanings”. One may conclude, without the testimony, that linear property in the Act was intended to include more than works and transmission lines and pipelines did in the EPPL.

If this is the case, how much more is included?

Referring to 284(1)(w) of the Act “telecommunications system” means a system intended for or used in the transmission, emission or reception of cable television or telecommunications, but not including radio communications intended for direct reception by the general public.

“Telecommunication” is not defined in the Act. It is, however, defined in the Telecommunications Act at section 1(1)(f) as:

“Telecommunication” means any transmission, emission or reception of signs, signals, writings, images, sounds, data, message or intelligence of any nature by wire, radiocommunication, cable, waves or any electronic, electromagnetic or optical means but does not include the transmission, emission or reception of broadcasting that is a radiocommunication in which the transmissions are intended for direct reception by the general public.”

BOARD ORDER: MGB 099/99

There are three elements to a “telecommunication” according to the definition. They are any

- (a) transmission, emission or reception, of
- (b) intelligence, by
- (c) certain media

but does not include public radiocommunications.

Although this definition is not in the Act, its subject matter is the telecommunications system that was operating in Alberta. At first blush, one would think that it would be applicable to the term “telecommunications” as found in the Act. However, there are some anomalies.

Firstly, the definition of “telecommunication system” refers to the transmission, emission or reception of telecommunications. But, as we have just seen, a telecommunication is itself a transmission, emission or reception. How do you transmit a transmission? A telecommunication is not the intelligence itself. It is not the media. It is what happens when you send or receive intelligence through certain media.

Secondly, if the definition of telecommunication already excludes public radiocommunications, why does that exception have to be repeated in the definition of telecommunication system? If one was using the same definition of telecommunication, one would end up excluding it twice.

The legislative intent appears that “telecommunication” does not itself include the transmission, emission or reception of anything, but that it does include public radiocommunications. However, a telecommunications system means a system used in the transmission, emission or reception of whatever a telecommunication is.

In the Board’s view, there is doubt as to whether the legislature actually intended to broaden the definition of what was commonly known as linear property prior to the Act. The intent is obscured, especially given the testimony of two senior departmental officials that no change was intended.

Notwithstanding the length of the definition of linear property, which encompasses telecommunications systems, it is possible to conclude that anything that is part of a telecommunications systems, except the specific exclusions in subparagraphs (C) and (D) is included in the definition of linear property on a plain reading of the statute. The convoluted “inclusion clause” does nothing to limit the definition of telecommunications systems, and in fact would be more properly placed in the definition of telecommunications system rather than where it is.

BOARD ORDER: MGB 099/99

If one would determine that the feature software is part of TELUS' telecommunication system then, as set out above, it would be linear property. If it is not part of the system, then one would conclude it is not linear property.

There are two ways, as demonstrated by the parties, of looking at the issue:

1. TELUS has a system that deals with telecommunications. Everything that is used in that system is part of its telecommunication system.
2. Only if a particular piece of property is used directly in the transmission, emission or reception of intelligence by certain media is it part of TELUS' telecommunication system.

In the first situation, one looks for the system that TELUS is actually using for telecommunications. Whatever that is, is TELUS' telecommunication system. In the second, one looks for the elements that are used in telecommunications. They make up the telecommunication system. TELUS may have other "things" that it uses which are part of a bigger system. Therefore, the TELUS telecommunication system is a subset of a larger system that includes things not used in telecommunications.

"System" is not defined in the Act. There is, however, a definition in the Telecommunication Act as follows:

- (e) "system" means a telecommunication system and includes all land, plant, supplies, buildings, works, rights, franchises, easements, assets and property of every kind owned, held, required or used for the purpose of, or in connection with, or for the operation of the telecommunication system.

This definition is very broad. It says that a system means a telecommunication system and that is a defined term in the Act. If the legislature had wanted to use that definition, it could have repeated it in the Act instead of using other words. Further, this broad definition would include everything, but evidence and testimony indicates that the Department generally follows the Special Property Assessment Guide as to what is and what is not included.

As to the actual assessment of linear property, section 292(2) of the Act provides that each assessment must reflect the valuation standards set out in the regulations for linear property.

Section 6(1) of the Standards of Assessment Regulation 365/94 stated that the valuation standard for linear property is "depreciated replacement cost". By Regulation 313/96, that wording was changed from "depreciated replacement cost" to "that calculated in accordance with the procedures set out in subsection (2)". That amendment occurred on December 17, 1996. It made section 6(1) correspond exactly with section 7(1), which dealt with machinery and equipment.

BOARD ORDER: MGB 099/99

The date by which each operator of linear property is to provide a report thereon is December 31 in each year (section 292(3) of the Act). Thus, the amendment would have been in force for the 1997 taxation year, and therefore not for the subject appeal.

Section 6(2) of Regulation 365/94 stated that the assessor must follow the procedure set out in the Alberta Linear Property Assessment Minister's Guidelines established and maintained by the Department of Municipal Affairs. As of December 1996, the valuation standard for linear property was to be whatever resulted from following the guidelines. This is all well and good, but for the fact that no such guidelines existed at the time.

Prior to the Act, the type of linear property in this case was assessed under the EPPL. The applicable regulation was Regulation 74/91. That regulation has not been repealed and is continued in force pursuant to Section 32 of the Interpretation Act.

Regulation 74/91 does not refer to linear property. It deals with works and transmission lines which, as discussed, is a narrow term. Since the EPPL has been repealed, there is no longer in existence any definition of works and transmission lines. The Board is left with a strange situation in which:

- (a) The valuation standard for the assessment of linear property is whatever calculation results from using a non-existent set of guidelines;
- (b) the only "guidelines" that existed in December 1996, was Regulation 74/91;
- (c) Regulation 74/91 does not refer to linear property, but only to works and transmission lines;
- (d) works and transmission lines was defined term in the EPPL, which was repealed on December 31, 1994; and,
- (e) therefore, the existing "guidelines" deal with concepts that no longer exist, and there were no guidelines in existence to deal with the new concept of linear property.

It is remarkable that Regulation 365/94 was amended in December 1996, to delete the reference to "depreciated replacement cost", which at least meant something, and replaced it with the wording referring to calculations based on guidelines that still had not been developed.

There are two ways of looking at this situation:

- (a) No 1996 linear property assessment was valid because there was no existing method of calculating it, or

BOARD ORDER: MGB 099/99

- (b) without any statutory or regulatory directions to do so, one is supposed to infer that Regulation 74/91 would continue to apply in some fashion, perhaps for the fact that it still existed and the guidelines had not yet come into existence.

Assuming that Regulation 74/91 applies, there are still some problems. Regulation 74/91 does not deal with linear property, but with works and transmission lines. Works and transmission lines no longer has a definition. This problem also presents alternatives:

- (a) One may only assess works and transmission lines, not linear property; or
- (b) one may read “linear property” for “works and transmission lines” wherever it occurs in Regulation 74/91.

If one would choose the first alternative, one could not assess anything that did not fall under the definition of works and transmission lines, even if it was linear property under the Act. It appears that feature software would not have fallen under the definition of works and transmission lines in the EPPL, which relates to tangibles.

If one chooses the second alternative, one could assess linear property subject, however to anything else in Regulation 74/91. This Regulation puts certain types of works and transmission lines in various schedules and refers to Schedules 11, 12 and 13. Schedule 12 has a list of cable television systems’ basic cost rates and it is assumed that these rates represent 1983 replacement cost new, although it is not made explicit. Schedule 13 is a catch all for all works and transmission lines not described in Schedules 11 and 12. Schedule 13 states that the 1983 replacement costs new is to be determined in a manner that is fair and equitable with the cost of works and transmission lines determined in Schedules 11 and 12.

It is not self-evident whether Schedules are intended to exhaustively describe what types of works and transmission lines dealing with electric power systems and cable television systems are to be assessed or whether they are simply descriptive of certain parts of works and transmission lines. It appears at first reading that since Schedule 11 dealt with works and transmission lines defined in section 1(g)(i) of the EPPL, and Schedule 12 dealt with works and transmission lines defined by section 1(g)(ii) of the EPPL, that Schedule 13 would deal with works and transmission lines defined by section 1(g)(iii) of the EPPL. The title of Schedule 13, “Replacement cost new of other works and transmission lines” is ambiguous. Does it mean telecommunications, or does it mean telecommunications and those parts of electric power systems and the cable television systems that are not described in Schedules 11 and 12?

BOARD ORDER: MGB 099/99

If there were parts of electric power systems and cable television systems that were assessable, but were not listed in Schedules 11 or 12, then Schedule 13 could not be limited to telecommunications. It would appear from the definitions that there may be parts not included in those Schedules. However, Schedule 11 does include many different components in an inclusive basic cost.

If the Board assumes that Schedule 13 only deals with telecommunications, and that Schedules 11 and 12 indicate not only how but what works and transmission lines are to be assessed, then nothing analogous to feature software is assessed as other works and transmission lines, it would not be fair and equitable to do so only for telecommunications. But, if Schedule 13 deals with any part of electric power systems or cable television systems not specifically found in Schedules 11 and 12, then we do not know whether there is anything analogous to feature software in other categories of linear property. If there is and it is assessed, then it would be fair and equitable to assess feature software.

The Board heard evidence that the Special Properties Assessment Guide forms the basis for what is assessed and what is not. Clearly, in reference to computer hardware and one would assume its associated software, the Special Properties Assessment Guide limits assessable property to the “costs for hardware and software, either owned or leased which are used to monitor and control Machinery and Equipment that forms an integral part of an operational unit”. As the Special Properties Assessment Guide forms the basis of what is assessed, the use of Regulation 74/91 and the Schedules thereto is directly related to only that deemed assessable by the Guide.

Conclusion

The Board undertook the above extensive analysis of the legislative history to understand the relationship between the previous legislation and new legislation. As is apparent from both what was and what is and the evidence before the Board, the intent is unclear regarding the assessment of a telecommunications systems.

Under the rules of statutory interpretation, a statute is to be read in its entire context and in its grammatical and ordinary sense harmoniously with the scheme of the Act, with attention to the object of the Act and intentions of the Legislature, unless the provision is unclear or ambiguous. In this specific instance, the legislation defines linear property as...telecommunications systems with clarification as to what is included and excluded. The legislation then proceeds to define a telecommunications system.

TELUS clearly is a telecommunications system within the meaning of the Act and as such is assessable as linear property subject to the exclusions. The issue then becomes one of determining what is the telecommunications system for the purpose of linear assessment. The list of items included in a telecommunications system are there for the purpose of giving examples of what forms part of the system. While the list, at first glance, does not appear to be all inclusive within

BOARD ORDER: MGB 099/99

the context of labeling each specific item forming a telecommunications system, it is inclusive if read in the context of generally describing a telecommunications system and for the purpose of linear assessments, as the sum of the equipment and cable which makes it function.

To further clarify what a telecommunications system is for the purpose of linear assessment, the Board looked at the inclusions as a whole and found a common thread. The inclusions are all physical property. The Board then looked to each of the items on the list to determine further legislative clarification and found that only machinery and equipment is defined. The facts agreed to by the Complainant and Respondent clearly state that the DMS switch is machinery and equipment, and machinery and equipment in the Standards of Assessment Regulation 365/94, means “materials, devices, fittings, installations, appliances, foundations and footings and any other things prescribed by the Minister that forms an integral part of an operational unit intended for or used in...a telecommunications system”. The Board, having determined that the Minister has not broadened the definition, noted that the list of items included in a telecommunication system, aside from cables etc., are the same as those used to define machinery and equipment. The Board also referenced the meaning of the word “integral” which is defined in Webster’s Ninth New Collegiate Dictionary, aside from its mathematical meaning, as “essential to completeness; formed as a unit with another; lacking nothing essential”. A telecommunications system, for the purpose of linear assessment, is to be the sum of the physical parts integral to its function as an operational telecommunication system. While “integral” is only used to define machinery and equipment, it is used in the Special Properties Assessment Guide to define what computer costs are to be included in the assessment.

The Complainant and Respondent would agree a DMS switch is physical, is necessary for Telus to function as a telecommunications system and either is an operational unit within or part of the operational unit that is the telecommunications system. The question of whether or not software is assessable as linear property becomes irrelevant within the context of integral to an operational unit. The operational unit is assessable and if software is essential to make the unit operational, it is one of the component costs used to value the unit. While this answers the general question regarding the assessability of software, it does not address the issue of feature software.

Without a doubt, basic software is a cost used in valuing a DMS switch for the purpose of linear assessments. This is because it is an essential component of an operational DMS switch within an operational telecommunications system. Feature software, on the other hand, is not an essential component of either an operational DMS switch or an operational telecommunication system. This is emphasized by the fact that DMS switches are fully operational without feature software and that each switch has varying degrees of feature software presently activated. Feature software is only activated when the marketing efforts of TELUS are sufficiently successful to warrant activation of specific features of a specific switch. Therefore, until such time as feature software or any portion thereof becomes an essential component of an operational telecommunications system, it cannot be a component cost for linear assessment purposes of the telecommunications system.

BOARD ORDER: MGB 099/99

Therefore, application software represents a component of the business interests of TELUS and does not form an integral part of the operational telecommunications system and is not a component cost of either a switch or the system.

With regard to the Special Property Assessment Guide, the Board notes that it carries no legislative weight and was only prepared by the Department to assist in the costing of special property and more specifically, heavy industrial plants. Firstly, it is difficult to place much weight on an assessment document that is not sanctioned by the legislature and secondly, on a document prepared for a type of property not related to a telecommunication system. For these reasons, it can only be viewed as an indicator of the treatment of software in other situations. The Board would note again that only software used to monitor and control machinery and equipment that forms an integral part of an operational unit is assessable. This does lend some weight to the Board's interpretation that the key to assessment of telecommunications systems is that required to make the system operational.

With respect to the arguments of the Complainant and Respondent relating to license agreements, the Board found it is the operational unit that is valued for linear assessment purposes and if software is required to make a unit operational, then the cost of the required software is to be included. It becomes irrelevant who owns the software because the software is not being assessed, it is only one of the costs that make up the value of the switch or telecommunications system, which is being assessed.

As for the issue of fairness and equity, the Board having determined that feature software is not a cost component of a DMS switch, it need not be addressed. Although, the Board did have some evidence that head end equipment in the cable industry included basic software in the assessment, there was very little evidence to indicate whether feature software is or had been assessed in the cable or power industry.

Clearly the argument that all parts of a telecommunications system or that part determined by the Department is now assessable is a departure from past practices. One would assume that major shifts in policies would require specific legislative direction. It is odd that for the year under appeal, feature software evolving from new technology became assessable when the guidance flowed from an old regulation and a special properties guide developed under the old legislation. At best, it is an ad hoc method of assessing property. One would assume that new guidelines would form the basis for new assessment rules, but they had not been adopted for the year under appeal. This would indicate that in 1995, linear assessment of the telecommunications system was an ad hoc affair, which unfortunately, would lead one to conclude that neither the interpretation or direction of the Department was on a firm footing.

BOARD ORDER: MGB 099/99

Regardless, the Board was left with interpreting the legislation existing at the time of the assessment, and given the agreed fact that DMS switches are machinery and equipment which was defined, the Board concluded that only those parts of machinery and equipment integral to a telecommunication system are assessable.

No costs to either party.

Dated at the City of Edmonton, in the Province of Alberta, this 3rd day of May, 1999.

MUNICIPAL GOVERNMENT BOARD

V. Chatten, Presiding Officer

APPENDIX "A"

TELUS Communications Inc.

| Municipality | 1996 Gross Assessment |
|---------------------------|-----------------------|
| City of Airdrie | 2,588,451 |
| City of Calgary | 134,821,355 |
| City of Camrose | 2,758,341 |
| City of Drumheller | 2,258,331 |
| City of Edmonton | 14,817,716 |
| City of Fort Saskatchewan | 2,462,556 |
| City of Grande Prairie | 4,198,206 |
| City of Leduc | 3,743,285 |
| City of Lethbridge | 8,492,475 |
| City of Lloydminster | 2,581,626 |
| City of Medicine Hat | 5,120,609 |
| City of Red Deer | 8,695,587 |
| City of Spruce Grove | 2,660,376 |
| City of St. Albert | 4,605,145 |
| City of Wetaskiwin | 2,562,726 |
| Town of Athabasca | 497,578 |
| Town of Barrhead | 502,222 |
| Town of Bashaw | 263,744 |
| Town of Bassano | 274,236 |
| Town of Beaumont | 415,362 |
| Town of Beaverlodge | 323,342 |
| Town of Blackfalds | 324,202 |
| Town of Bon Accord | 283,954 |
| Town of Bonnyville | 2,258,751 |
| Town of Bow Island | 292,124 |
| Town of Bowden | 270,022 |
| Town of Brooks | 3,302,555 |
| Town of Bruderheim | 256,778 |
| Town of Calmar | 304,164 |
| Town of Canmore | 908,038 |
| Town of Cardston | 386,896 |
| Town of Carstairs | 310,098 |
| Town of Castor | 263,572 |
| Town of Claresholm | 396,270 |
| Town of Coaldale | 447,784 |
| Town of Cochrane | 904,254 |

BOARD ORDER: MGB 099/99

| Municipality | 1996 Gross Assessment |
|------------------------|-----------------------|
| Town of Cold Lake | 1,129,814 |
| Town of Coronation | 297,456 |
| Town of Daysland | 243,448 |
| Town of Devon | 462,232 |
| Town of Didsbury | 403,580 |
| Town of Drayton Valley | 869,080 |
| Town of Eckville | 307,776 |
| Town of Edson | 2,585,705 |
| Town of Elk Point | 297,112 |
| Town of Fairview | 410,288 |
| Town of Falher | 277,848 |
| Town of Fort Macleod | 380,876 |
| Town of Fox Creek | 308,292 |
| Town of Gibbons | 298,918 |
| Town of Gleichen | 303,046 |
| Town of Grande Cache | 387,412 |
| Town of Granum | 222,636 |
| Town of Grimshaw | 336,070 |
| Town of Hanna | 389,046 |
| Town of Hardisty | 256,692 |
| Town of High Level | 2,008,956 |
| Town of High Prairie | 400,656 |
| Town of High River | 828,660 |
| Town of Hinton | 2,358,186 |
| Town of Innisfail | 748,594 |
| Town of Irvine | 213,864 |
| Town of Killam | 261,250 |
| Town of Lac La Biche | 471,262 |
| Town of Lacombe | 1,012,759 |
| Town of Lamont | 281,030 |
| Town of Magrath | 286,620 |
| Town of Manning | 317,666 |
| Town of Mayerthorpe | 305,368 |
| Town of McLennan | 243,620 |
| Town of Milk River | 258,412 |
| Town of Millet | 323,514 |
| Town of Morinville | 730,792 |
| Town of Mundare | 243,706 |
| Town of Nanton | 306,486 |
| Town of Okotoks | 897,202 |

BOARD ORDER: MGB 099/99

| Municipality | 1996 Gross Assessment |
|------------------------------|-----------------------|
| Town of Olds | 773,448 |
| Town of Oyen | 274,064 |
| Town of Peace River | 2,474,445 |
| Town of Penhold | 336,328 |
| Town of Picture Butte | 286,534 |
| Town of Pincher Creek | 437,206 |
| Town of Ponoka | 775,168 |
| Town of Provost | 373,996 |
| Town of Rainbow Lake | 268,044 |
| Town of Raymond | 325,062 |
| Town of Redcliff | 375,114 |
| Town of Redwater | 343,466 |
| Town of Rimbey | 388,014 |
| Town of Rocky Mountain House | 826,854 |
| Town of Sedgewick | 261,852 |
| Town of Sexsmith | 309,238 |
| Town of Slake Lake | 2,187,246 |
| Town of Smoky Lake | 283,868 |
| Town of Spirit River | 278,536 |
| Town of St. Paul | 507,726 |
| Town of Stavely | 223,066 |
| Town of Stettler | 2,251,191 |
| Town of Stony Plain | 3,651,599 |
| Town of Strathmore | 711,098 |
| Town of Sundre | 386,380 |
| Town of Swan Hills | 297,370 |
| Town of Sylvan Lake | 502,566 |
| Town of Taber | 821,952 |
| Town of Three Hills | 359,892 |
| Town of Tofield | 378,124 |
| Town of Trochu | 266,152 |
| Town of Turner Valley | 361,526 |
| Town of Two Hills | 270,882 |
| Town of Valleyview | 381,994 |
| Town of Vauxhall | 277,590 |
| Town of Vegreville | 2,122,356 |
| Town of Vermilion | 647,630 |
| Town of Viking | 283,954 |
| Town of Vulcan | 303,992 |
| Town of Wainwright | 2,133,381 |

BOARD ORDER: MGB 099/99

| Municipality | 1996 Gross Assessment |
|------------------------|-----------------------|
| Town of Wembley | 268,646 |
| Town of Westlock | 2,093,645 |
| Town of Whitecourt | 633,630 |
| Town of Chestermere | 311,216 |
| Town of Coalhurst | 261,508 |
| Town of Crowsnest Pass | 916,620 |
| Town of Banff | 2,454,786 |
| Village of Acme | 288,684 |
| Village of Alix | 245,512 |
| Village of Alliance | 218,336 |
| Village of Andrew | 227,624 |
| Village of Arrowwood | 215,756 |
| Village of Barons | 216,788 |
| Village of Bawlf | 217,648 |
| Village of Beiseker | 241,212 |
| Village of Bentley | 324,890 |
| Village of Berwyn | 230,118 |
| Village of Big Valley | 223,668 |
| Village of Blackie | 224,184 |
| Village of Boyle | 297,714 |
| Village of Breton | 245,082 |
| Village of Burdett | 212,230 |
| Village of Carbon | 226,334 |
| Village of Carmangay | 211,112 |
| Village of Caroline | 270,538 |
| Village of Cereal | 212,660 |
| Village of Champion | 223,238 |
| Village of Chauvin | 229,946 |
| Village of Chipman | 218,336 |
| Village of Clive | 234,934 |
| Village of Clyde | 231,838 |
| Village of Consort | 269,162 |
| Village of Coutts | 228,140 |
| Village of Cowley | 233,386 |
| Village of Cremona | 257,380 |
| Village of Czar | 222,378 |
| Village of Delburne | 250,156 |
| Village of Delia | 218,250 |
| Village of Derwent | 206,382 |
| Village of Donalda | 226,592 |

BOARD ORDER: MGB 099/99

| Municipality | 1996 Gross Assessment |
|------------------------|-----------------------|
| Village of Donnelly | 223,840 |
| Village of Duchess | 261,336 |
| Village of Edgerton | 222,120 |
| Village of Elnora | 217,304 |
| Village of Empress | 212,230 |
| Village of Evansburg | 287,480 |
| Village of Ferintosh | 248,092 |
| Village of Foremost | 236,740 |
| Village of Forestburg | 248,264 |
| Village of Gadsby | 206,124 |
| Village of Galahad | 211,886 |
| Village of Girouxville | 221,518 |
| Village of Glendon | 247,662 |
| Village of Glenwood | 227,366 |
| Village of Halkirk | 210,424 |
| Village of Hay Lakes | 221,260 |
| Village of Heisler | 208,102 |
| Village of Hines Creek | 226,850 |
| Village of Holden | 232,268 |
| Village of Hughenden | 226,592 |
| Village of Hussar | 215,756 |
| Village of Hythe | 262,282 |
| Village of Innisfree | 216,186 |
| Village of Irma | 226,592 |
| Village of Irricana | 244,910 |
| Village of Kinuso | 224,270 |
| Village of Kitscoty | 234,332 |
| Village of Lavoy | 213,434 |
| Village of Legal | 279,224 |
| Village of Lomond | 222,378 |
| Village of Longview | 228,742 |
| Village of Loughheed | 215,240 |
| Village of Mannville | 240,438 |
| Village of Marwayne | 248,092 |
| Village of Milo | 212,574 |
| Village of Minburn | 203,802 |
| Village of Mirror | 230,462 |
| Village of Morrin | 215,756 |
| Village of Myrnam | 220,314 |
| Village of Nampa | 227,022 |

BOARD ORDER: MGB 099/99

| Municipality | 1996 Gross Assessment |
|--|-----------------------|
| Village of New Norway | 218,250 |
| Village of New Sarepta | 229,172 |
| Village of Nobleford | 227,882 |
| Village of Onoway | 425,252 |
| Village of Paradise Valley | 216,960 |
| Village of Plamondon | 234,160 |
| Village of Radway | 216,358 |
| Village of Rockyford | 220,830 |
| Village of Rosalind | 210,768 |
| Village of Rycroft | 241,384 |
| Village of Ryley | 226,678 |
| Village of Sangudo | 260,648 |
| Village of Standard | 222,464 |
| Village of Stirling | 228,914 |
| Village of Strome | 211,112 |
| Village of Thorhild | 239,578 |
| Village of Thorsby | 261,680 |
| Village of Tilley | 225,732 |
| Village of Torrington | 217,132 |
| Village of Veteran | 220,572 |
| Village of Vilna | 253,940 |
| Village of Wanham | 215,842 |
| Village of Warburg | 245,340 |
| Village of Warner | 224,614 |
| Village of Warspite | 204,748 |
| Village of Waskatenau | 216,874 |
| Village of Willingdon | 219,798 |
| Village of Youngstown | 215,068 |
| Village of Wabamun | 330,652 |
| Summer Village of Alberta Beach | 278,278 |
| Summer Village of Ma Me O Beach | 280,170 |
| Summer Village of Seba Beach | 283,008 |
| Municipal District of Acadia No. 34 | 209,908 |
| County of Athabasca No. 12 | 657,846 |
| Municipal District of Fairview No. 136 | 208,188 |
| Municipal District of Foothills No. 31 | 544,000 |
| County of Forty Mile No. 8 | 415,258 |
| County of Grande Prairie No. 1 | 241,900 |
| County of Lamont No. 30 | 202,340 |
| County of Leduc No. 25 | 734,834 |

BOARD ORDER: MGB 099/99

| Municipality | 1996 Gross Assessment |
|--|-----------------------|
| County of Lethbridge No. 26 | 219,970 |
| County of Newell No. 4 | 212,058 |
| Parkland County | 674,788 |
| Municipal District of Peace No. 135 | 209,564 |
| County of Red Deer No. 23 | 237,170 |
| Municipal District of Rocky View No. 44 | 923,500 |
| County of St. Paul No. 19 | 501,086 |
| Municipal District of Starland No. 47 | 410,700 |
| County of Settler No. 6 | 206,210 |
| Municipal District of Sturgeon No. 90 | 371,932 |
| Municipal District of Taber No. 14 | 636,518 |
| County of Thorhild No. 7 | 225,216 |
| County of Two Hills No. 21 | 202,770 |
| County of Vermilion River No. 24 | 209,650 |
| County of Warner No. 5 | 408,206 |
| Municipal District of Westlock No. 92 | 236,568 |
| County of Wetaskiwin No. 10 | 748,920 |
| Wheatland County | 436,242 |
| Municipal District of Cypress No. 1 | 1,290,236 |
| Municipal District of Clearwater No. 99 | 674,874 |
| Municipal District of Bighorn No. 8 | 241,298 |
| Municipal District of Brazeau No. 77 | 223,410 |
| Municipal District of Badlands No. 7 | 210,940 |
| Municipal District of Woodlands No. 15 | 447,852 |
| Municipal District of Greenview No. 16 | 228,398 |
| Municipal District of Yellowhead No. 94 | 1,523,622 |
| Municipal District of East Peace No. 131 | 219,884 |
| Municipal District of Birch Hill No. 19 | 214,896 |
| Municipal District of Saddle Hills No. 20 | 626,370 |
| Municipal District of Clear Hills No. 21 | 422,052 |
| Municipal District of Mackenzie No. 23 | 977,490 |
| Municipal District of Big Lakes No. 125 | 652,686 |
| Municipal District of Lesser Salve River No. 124 | 667,306 |
| Municipal District of Opportunity No. 17 | 1,159,620 |
| Improvement District No. 4 (Waterton) | 228,226 |
| Improvement District No. 9 (Banff) | 277,418 |
| Kananaskis Improvement District | 241,298 |
| Jasper Improvement District | 481,066 |
| Municipal District of Northern Lights No. 22 | 423,772 |
| Special Areas No. 2, 3, 4 | 1,037,242 |

BOARD ORDER: MGB 099/99

| Municipality | 1996 Gross Assessment |
|------------------------------|-----------------------|
| Strathcona County | 14,951,370 |
| Improvement District No. 143 | 894,844 |
| City of Fort McMurray | 4,106,558 |
| Metis Settlement Gift Lake | 223,152 |
| Indian Band Peigan | 221,518 |
| Indian Band Stoney | 245,340 |
| Total | 341,979,026 |

TELUS Communications (Edmonton) Inc.

City of Edmonton 76,785,443

APPENDIX "B"

APPEARANCES

| NAME | CAPACITY |
|-------------------|---------------------|
| A. Friend | For the Complainant |
| G. Johnson | For the Complainant |
| M. Cosentino-Fast | For the Complainant |
| K. Shaw | For the Complainant |
| R. Defleming | For the Complainant |
| T. McGillicuddy | For the Complainant |
| L. Burgess | For the Respondent |
| J. Husar | For the Respondent |
| R. Gagne | For the Respondent |
| G. Clark | For the Respondent |
| H. Schmidt | For the Respondent |
| D. Driscoll | For the Respondent |
| I. Johnson | City of Edmonton |
| P. Tolley | City of Calgary |
| L. Meyer | City of Calgary |
| P. Cross | City of Calgary |

BOARD ORDER: MGB 099/99

R. Affolder
County of St. Paul
Municipal District of Bonnyville
Municipal District of Brazeau
Municipal District of Greenview
Lakeland County
Municipal District of Lesser Slave River
Municipal District of Northern Lights

APPENDIX "C"

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE BOARD:

| NO. | ITEM |
|------------|--|
| 1. | Agreed Statement of Facts. |
| 2. | Fact, Issues and Witnesses dated August 14, 1998. |
| 3. | Submission dated September 4, 1998. |
| 4. | Complainant's Submission dated September 18, 1998. |
| 5. | Complainant's Exhibit Book. |
| 5A. | Resume of Maria Cosentino-Fast. |
| 6. | Letter to the Minister. |
| 5E. | Examples of Optional Service. |
| 7. | Letter dated October 7, 1998, addressed to Maria Cosentino-Fast. |
| 5C. | Resume of Rich Defleming. |
| 8. | Photographs. |
| 5D. | Extract from the agreement between TELUS and Northern Telecom. |
| 9. | Diagram. |
| 10. | Letter dated October 31, 1996, addressed to Maria Cosentino-Fast. |
| 11. | Complainant's Authorities, Volume 1 and 2. |
| 12. | Complainant's Rebuttal. |
| 13. | Municipal Assessments. |
| 14. | Submission of Respondent. |
| 15. | Letter dated September 4, 1998, addressed to Jeanne Byron and Report prepared by Rene Gagne. |
| 16. | Submission of the Respondent. |
| 17. | Rebuttal of the Respondent. |
| 18. | Proposed Amendments for 1998 to the Municipal Government Act. |
| 19. | Municipal and Provincial Properties Valuation Act. |
| 20. | Submission of the City of Edmonton. |
| 21. | Rebuttal of the City of Edmonton. |
| 22. | Submission of the City of Calgary. |

BOARD ORDER: MGB 099/99

23. Extract from Black's Law Dictionary.
24. Extract from the Interpretation Act.
25. Extract from the Principles of Property Law, Second Edition.
26. Ontario Reports, 1970, Vol. 2, Re: Attorney-General for Ontario and Royal Bank.
27. Unreported, Alberta Court of Queen's Bench, Johannesson v. Mendal.