

BOARD ORDER: MGB 124/04

IN THE MATTER OF THE *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

AND IN THE MATTER OF complaints about linear property assessments by Telus Communications Inc. for the years of 1999, 2000, 2001 and 2002.

BETWEEN

Telus Communications Inc. represented by Telus Corporation and Bennett Jones LLP -
Complainant

- a n d -

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

BEFORE

Members

D. Thomas, Presiding Officer
S. Cook, Member
N. Dennis, Member
J. Schmidt, Member
R. Scotnicki, Member

Secretariat

B. Fenske

Upon notice being given to the affected parties, a hearing was held in the City of Edmonton, in the Province of Alberta, commencing November 3, 2003.

There were complaints filed by Telus Communications Inc. (Telus) about the linear assessment for the years of 1999, 2000, 2001 and 2002, and entered on the assessment rolls for the municipalities referenced in Appendix "C".

OVERVIEW

The linear property complaints before the MGB relate to one of the computer software components of a Digital Multiplex System (DMS) switch used in the telecommunication industry. In a very general way, the DMS switch has operating or basic software and application or feature software. It is suggested that the application/feature software component does not fall

BOARD ORDER: MGB 124/04

to the definition of linear property and therefore is not an assessable component cost of linear property. The basis for this argument is that it is only the operating or basic software that enables the DMS switch to function while the application or feature software is only there to provide the add-on services, if and when, activated by Telus and is not integral to the operation of the switch. In addition, for all the years under complaint, there has been a change in each of the years' Linear Property Assessment Guidelines regarding the inclusion of feature software in the definition of "machinery and equipment", which the Complainant contends is an improper delegation of authority and therefore has no force in law. The Complainant argues that a previous MGB decision on the issue of assessability of software has weight with respect to the subject complaints. The Complainant also contends that if feature software is found to be assessable, other telecommunication systems; specifically cablevisions systems, are not being assessed for their software, which creates an inequity.

In this Board Order application software will be referred throughout as feature software. As well, telecommunication carriers (e.g. telephone systems) will be referred to as telecom and cablevision providers will be referred to as cablecom.

BACKGROUND

Physical Characteristics

Telus operates a telecommunication system. Generally speaking, this system includes all those things associated with a telecom system such as telephones, wires, cable, and switches. When a telephone receiver is activated there is a signal - whether it is a dial tone, computer signal, dialling pulse etc., - to effect a connection and then the receiver is ready to do something. These signals travel along a paired wire with one end connected to the station equipment and one end to a protection device and to the central office. The central office houses the telephone equipment that provides the functions related to local telephone service and interconnection to other central offices, including long distance calling.

Telecommunication traffic must be routed to ensure that the transmission is received at its intended destination. Initially, telephone operators routed calls. Mechanical switches replaced operators and performed this function until about 1989. After 1989, Telus employed computer technology to route calls. This technology is based on digital switches located in the central office. The majority of the switches used in the Telus telecom network are manufactured by Nortel and are known as DMS switches. With the advent of the DMS switch, providers of telecom services are able to provide new optional services in addition to the basic telephone service.

As the DMS switch is a computer, it utilizes software to provide two types of services. The first is the basic operating system that allows for the performance of the basic function of routing calls and what is referred to as "plain old telephone service" (POTS). Examples of POTS include the dial tone, access to operator assistance, repair service and long distance calling. By direction

BOARD ORDER: MGB 124/04

of the Canadian Radio-television and Telecommunications Commission (CRTC), this has expanded to include emergency 911 service. The second type of service relates to optional aspects such as call waiting and call display. The switches are purchased loaded with the software to enable both types of services. However any particular feature of the second type can only be activated once Telus pays a “one time” licence fee for that feature to the provider of the switch. In some limited circumstances Telus also pays an additional fee based on customer usage. Also Telus has to pay another fee to buy software updates.

Assessment Methodology

Telus is required to report to the Designated Linear Assessor (DLA) the base cost of the assessable linear property in accordance to a Reporting Information Handbook issued by the DLA. The DLA issues different Handbooks for each of the different types of linear property. In the case of Telus, the Handbook for the year 1999 and 2000 is specific to telecom systems with a separate Handbook issued for cablecom systems. For the years 2001 and 2002, the Handbooks for telecom systems and cablecom systems were combined into one Handbook. The Handbook for each of the years under complaint provided instructions as to the type of information to be reported and the adjustments to be made: examples being application of a base year modifier and a depreciation schedule if applicable. In addition, the DLA provides the linear property owners with a cost guide to assist with their reporting. In the years 2001 and 2002 the document was referred to as the Alberta Construction Cost Reporting Guide (CCRG) and in the years 1999 and 2000 it was referred to as the Special Property Assessment Guide (SPAG).

The reporting of Telus is based on a five-step process. This first step is undertaken periodically and was suggested as taking place once every five years. Telus reviews all the studies of various projects and, based on this study, determines what is to be used in developing an assessed value. With changes to the system in each year equipment is added or removed from the base study. The constructed cost of the new equipment is factored back to the base year of the study and then the base year modifier is applied to make the construction cost current. The next four steps are undertaken annually. The second step is to extract information based on the appropriate location identifier. An example would be the identifier for the City of Edmonton. This would insure that all equipment located in the City of Edmonton would be assessed to the City of Edmonton. Step three is to insure that all municipal boundary changes are noted and the equipment identifier is properly changed. Step 4 is to apply the base year modifier to the equipment and then apply the appropriate depreciation.

The depreciation that is applied for each year is defined in the Alberta Linear Property Assessment Manual as 25% fixed and immediate. This is to say that the construction cost of the linear property is depreciated by 25% in the first year and this 25% is applied in each year thereafter. While not referred to as depreciation, Telus does make an adjustment to certain equipment based on usage. An example would be equipment that is not used to full capacity, somewhat similar to the regulated penetration rate used for cablecom systems.

Board Order MGB 099/99 (1996 Complaint)

In 1997, Telus filed its 1996 linear property assessment complaint about the inclusion of the cost of application software in the value of a DMS switch. This complaint was heard in 1998 and decided in Board Order MGB 099/99. The MGB decided, for that year, that the feature software was not an integral component of a DMS switch and not linear property. The result of the decision was, for the year under complaint, to reduce the linear assessment for DMS switches by an amount equal to the value of the feature software.

Following that decision, The Crown in the Right of the Province of Alberta as represented by the Designated Linear Assessor applied to the Alberta Court of Queen's Bench for judicial review. The reviewing Judge held the standard of review to be reasonableness *simpliciter* and found the decision to be unreasonable. Telus appealed this decision to the Alberta Court of Appeal. The Alberta Court of Appeal found the reviewing Judge had reached the wrong conclusion as to the appropriate standard of review. The Court of Appeal held that the proper standard of review was patent unreasonableness and, in finding the MGB decision to be reasonable, allowed the Telus complaint and restored the MGB decision. The Crown appealed the decision to the Supreme Court of Canada. On April 17, 2003, the Supreme Court of Canada dismissed the leave application.

1997 and 1998 Complaints

Following the 1996 decision the MGB scheduled a hearing of the then outstanding 1997 and 1998 complaints by Telus respecting the same or similar issues. The hearing of these complaints began on June 12, 2000. However, before any decision respecting those years, the Court of Queen's Bench issued the decision referred to above. Because of the ongoing complaint and subsequent application for leave to appeal to the Supreme Court of Canada, this matter has been held in abeyance pending resolution of the 1996 complaint.

Once the Supreme Court of Canada denied leave to appeal on April 17, 2003 the MGB referred the matter of the two years of complaints back to the parties for comment on a process for resolution. The parties agreed the hearing of the 1997 and 1998 complaints did not need to be reopened for oral arguments over the implications of the Alberta Court of Appeal decision about the 1996 complaint. However, the parties asked for and were granted the opportunity to submit written argument about the impact of the Court of Appeal decision on the 1997 and 1998 complaints. The parties also agreed that a decision by the MGB for these two years should be held in abeyance pending the conclusion of the hearing of the subject complaints (1999, 2000, 2001, 2002). Therefore the decision respecting the 1997 and 1998 complaints remains outstanding.

BOARD ORDER: MGB 124/04

Subject Complaints (1999 to 2002)

The subject complaints are for the years 1999 to 2002, inclusive, and relate to the linear property assessments for each of the municipalities referenced in Appendix “C” of this Order. The principle issue remains whether or not the application or feature software component of a DMS switch is assessable as linear property. The Complainant has raised other separate issues respecting:

- an improper sub-delegation of the Minister of Municipal Affairs’ (Minister) authority in the adoption of the Linear Property Assessment Minister’s Guidelines;
- inequitable treatment in the depreciation applicable to the DMS switch if the application or feature software component is an assessable cost of the linear property; and
- whether equity is being maintained with cable undertakings, as represented by Shaw Communications Inc. (Shaw).

The Alberta Linear Property Assessment Minister’s Guidelines established by Ministerial Order will be referred to as the “Guidelines”. If there is need to provide a distinction between the Guidelines established for any relevant year, the appropriate year will precede the word “Guidelines”.

ORGANIZATION OF THIS ORDER

Due to the complexities of the evidence and argument relating to each of the issues and the possible impact of the 1996 decision on the subject complaints, the MGB has decided to organize this decision around the major issues in the following order.

Section One Legislative Changes/Relevance of Board Order MGB 099/99

This section will address the changes in legislation that affected the 1996 complaint in comparison to the legislation in effect for the subject complaint years of 1999 to 2002. In addition, any changes in the facts will be addressed respecting the 1996 decision.

Section Two Ministerial Prescription/Minister’s Guidelines

Whether the Ministerial Prescription does include feature software within the meaning of “machinery and equipment” and if the inclusion of the Prescription within the Guidelines results in an improper sub delegation of the Minister’s authority.

BOARD ORDER: MGB 124/04

Section Three Machinery and Equipment vs. Telecommunication System

Is feature software judged to be linear property based on whether it is integral to the operation of a DMS switch (machinery and equipment) or intended for or used in the communication systems of telecom systems.

Section Four Equity

If feature software is found to be linear property, is the manner and extent of depreciation applied to the subject property fair and equitable when compared to the typical age life of the software, or cablecom systems.

In addition, this section will address the issue of comparability for the purposes of determining issues of equity between telecoms and cablecoms.

However, prior to addressing the major issues, the MGB will provide an overview of the legislation, as it exists for the years under complaint. The MGB is of the view that it is important to review the applicable legislation as a whole, in order to understand first the relationship between the various sections and to be able to place the facts and arguments of the parties within the context provided by the legislation.

LEGISLATION

Assessments in Alberta have as their basis, the authority given under the Act. A municipality collects taxes on property located within its boundaries based on an assessment valuation of a property value set by an assessor. The Act defines property and establishes valuation standards for the property. Property for assessment purposes falls to two general categories. The first is land, or improvements or land and improvements. This includes as an improvement, depending on whether or not a municipality has established a business tax, machinery and equipment. The second type is “linear property”. The parties agree that the DMS switch falls within the definition of linear property, however the dispute focuses on whether or not the feature software loaded on or in the switch falls within that definition of linear property.

To put the assessment of linear property in context, it is necessary to set out the legislative scheme.

Municipal Government Act

The Act, for the purpose of assessment and taxation, provides interpretation provisions to give meaning to certain sections. In the case of linear property, the definitions fall into a number of categories broadly identified as electric power systems, street lighting systems, telecommunication systems and pipelines. In the context of linear property, a telecommunication system is defined as follows.

BOARD ORDER: MGB 124/04

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

(k) "linear property" means

(ii) telecommunications systems, including

(A) cables, amplifiers, antennas 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 , SA 1988 cT-3.5, 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, antennas or drop lines installed in and owned by the owner of a building to which telecommunications services are being supplied, or

(D) land or buildings,

The description of the linear property includes the term “machinery and equipment”, however the term is defined separately in the regulations.

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

(l) "machinery and equipment" has the meaning given to it in the regulations;

In addition and for the purpose of the definition of linear property, a “telecommunication system” is given the following meaning.

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

(w) "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;

The legislation provides specific instructions for the preparation of linear property. In addition, the assessor is given authority to request the information needed to prepare the assessment, and in the absence of receiving such information, what remedies the assessor may take. The assessor is instructed to ensure that each assessment reflects the valuation standard set out in the regulation for linear property, *Matters Relating to Assessment and Taxation Regulation 289/99*.

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

(2) Each assessment must reflect

(a) the valuation standard set out in the regulations for linear property, and

BOARD ORDER: MGB 124/04

- (b) the specifications and characteristics of the linear property on October 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the linear property, as contained in
 - (i) the records of the Alberta Energy and Utilities Board, or*
 - (ii) the report requested by the assessor under subsection (3).**
- (3) If the assessor considers it necessary, the assessor may request the operator of linear property to provide a report relating to that property setting out the information requested by the assessor.*
- (4) On receiving a request under subsection (3), the operator must provide the report not later than December 31.*
- (5) If the operator does not provide the report in accordance with subsection (4), the assessor must prepare the assessment using whatever information is available about the linear property.*

The Act sets out the general duty of the assessor to apply the regulations in a fair and equitable manner.

- 293(1) In preparing an assessment, the assessor must, in a fair and equitable manner,
 - (a) apply the valuation standards set out in the regulations, and*
 - (b) follow the procedures set out in the regulation.**
- (2) if there are no procedures set out in the regulation for preparing assessments, the assessor must take into consideration assessments of similar property in the same municipality in which the property is being assessed is located.*

The Act also sets out who is the assessed person of linear property.

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

Column 1 Assessed Property
(i) linear property

Column 2 Assessed Person
(i) the operator of the linear property

Section 322 gives the Minister the authority to establish valuation standards and any other matter necessary to carry out the intent of the Act.

322 The Minister may make regulations

- (a) respecting qualifications to be met by persons authorized to carry out the duties and responsibilities of an assessor under this Act;*
- (b) defining "farming operations", "farm building" and "machinery and equipment";*
- (c) respecting the extent to which farm buildings and machinery and equipment may be assessed under section 298;*
- (d) establishing valuation standards for property;*
- (e) respecting procedures for preparing or adopting assessments;*

BOARD ORDER: MGB 124/04

- (e.1) respecting the manner in which an assessor must inform an owner or occupier of any property of the purpose for which information is being collected under sections 294 and 295;*
- (f) respecting the allowance of depreciation on machinery and equipment;*
- (g) prescribing standards to be met by assessors in the preparation of assessments;*
- (h) respecting equalized assessments;*
- (h.1) respecting the audit of any matters relating to assessments;*
- (i) respecting any other matter considered necessary to carry out the intent of this Act.*

The Act does recognize that some delegation can take place, but at the same time limits what can and cannot be delegated by the Minister. The Act specifically does not allow delegation of any power or duty to make regulations.

578(1) The Minister may delegate in writing to any person any power, duty or function of the Minister under this Act, including any power, duty or function that involves the Minister forming an opinion or belief.

(2) Subsection (1) does not apply to any power or duty to make regulations.

Interpretation Act

To assist in giving meaning to certain words within the legislation, one may refer to the *Interpretation Act*. This act, in addition to providing meaning, does provide context for those meanings. In respect to the making of Regulations, *the Interpretation Act* provides the following definitions.

1(1) In this Act,

- (a) “enact” includes issue, make, establish or prescribe;*
- (c) “regulation” means a regulation, order, rule, form, tariff of costs or fees, proclamation, bylaw or resolution enacted*
 - (i) in the execution of a power conferred by or under the authority of an Act, or*
 - (ii) by or under the authority of the Lieutenant Governor in Council,**but does not include an order of a court made in the course of an action or an order made by a public officer or administrative tribunal in a dispute between 2 or more persons;*

Regulations Act

For the purpose of determining what is or is not a regulation, one refers to the definitions and limitations specifically spelled out in the *Regulations Act*.

1(1) In this Act,

- (a) “file” means file with the registrar in the manner prescribed in section 2;*

BOARD ORDER: MGB 124/04

- (b) *“local authority” means a city, town, village, municipal district, improvement district, Metis settlement, health region under the Regional Health Authorities Act, irrigation district, drainage district, special area, school division or school district;*
 - (c) *“Minister” means the Minister determined under section 16 of the Government Organization Act as the Minister responsible for this Act;*
 - (d) *“publish” means publish in the manner prescribed in section 3;*
 - (e) *“registrar” means the Registrar of Regulations appointed under this Act;*
 - (f) *“regulation” means a regulation as defined in the Interpretation Act that is of a legislative nature.*
- (2) *The following are not regulations within the meaning of subsection (1)(f):*
- (a) *a regulation, rule, order, bylaw or resolution of*
 - (i) *a local authority,*
 - (ii) *a corporation incorporated under a public Act, or*
 - (iii) *a corporation incorporated by or under a private Act;*
 - (b) *a General Council Policy of the Metis Settlements General Council incorporated under the Metis Settlements Act;*
 - (c) *a proclamation;*
 - (d) *a document adopted or incorporated by reference in a regulation.*

Matters Relating to Assessment and Taxation Regulation 289/99

The definition of what is included in linear property for a telecommunication system, includes the words “machinery and equipment”. No particular meaning is given to these words in the Act, other than that given to them in the regulations. Section 2(b) of the Regulation, gives a definition of “machinery and equipment” and relates this meaning to a telecommunication system.

2 In this Part,

- (b) *“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, or*

Pursuant to section 292 of the Act, the assessor must reflect the valuation standards set out in the regulation. The Regulation addresses several types of valuation standards. The Regulation directs that the valuation standard be calculated in accordance with the procedures referred to for each. These procedures are contained in Minister’s Guidelines established and maintained by the Department of Alberta Municipal Affairs.

3(2) In preparing an assessment for a parcel of land based on agricultural use value, the assessor must follow the procedures set out in the Alberta Farm Land Assessment Minister's Guidelines established and maintained by the Department of Municipal Affairs, as amended from time to time.

BOARD ORDER: MGB 124/04

5(1) The valuation standard for railway is that calculated in accordance with the procedures referred to in subsection (2).

(2) In preparing an assessment for railway, the assessor must follow the procedures set out in the Alberta Railway Assessment Minister's Guidelines established and maintained by the Department of Municipal Affairs, as amended from time to time.

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 Minister's Guidelines established and maintained by the Department of Municipal Affairs, as amended from time to time.

7(1) The valuation standard for machinery and equipment is that calculated in accordance with the procedures referred to in subsection (2).

(2) In preparing an assessment for machinery and equipment, the assessor must follow the procedures set out in the Alberta Machinery and Equipment Assessment Minister's Guidelines established and maintained by the Department of Municipal Affairs, as amended from time to time.

Alberta Linear Property Assessment Minister's Guidelines

The Minister has approved as Ministerial Orders, Guidelines for each of the years under complaint. These Guidelines address farmland assessment, linear property assessment, machinery and equipment assessment and railway assessment. They first appeared for the 1998 tax year and were revised in each subsequent year. In the case of the subject complaints, the appropriate reference is to the Linear Property Guidelines. However, for the purposes of this section of the Board Order, the MGB will refer to the 2002 Guidelines noting changes only in those instances within the body of the Board Order where there is a relevant difference between the appropriate years.

The Guidelines contain a general section that provides for the basic procedures and the appendices to the Guidelines are referred to as assessment manuals and construction cost reporting guides. The general section also contains some definitions that provide meaning to certain words, but most relate back to the meanings given in the Act.

The Guidelines for linear property contain definitions related to linear property and generally refers to words used in the development of costs. In addition, the linear property section also contains a "Ministerial Prescription" that all computer software costs shall be included in the base cost of the property. This same Ministerial Prescription has been prescribed for the Guidelines for machinery and equipment.

Part 2: ALBERTA LINEAR PROPERTY ASSESSMENT MINISTER'S GUIDELINES

(Note: Guidelines are established in each year and the Ministerial Prescription referred to below is identical in each of the years under complaint.)

2.004 MINISTERIAL PRESCRIPTION

For the purposes of these Guidelines and section 2(b) of the Regulation, it is hereby prescribed that the cost of all computer software, including both basic software and application software, intended for or used in connection with the monitoring, control or operation of any assessable property shall be included in the base cost of the property which is otherwise assessable.

The Guidelines in Appendix V contain the 2002 Alberta Construction Cost Reporting Guide. A similar guide was adopted in 2001. In the years 1999 and 2000 the Special Property Assessment Guide (SPAG) was the appropriate construction cost guide.

The 2001 and 2002 Guidelines also include, as an Appendix, an Interpretive Guide. The purpose of this Interpretive Guide is to provide minimum standards for reporting construction costs and to describe the construction costs to be included in determining assessable costs.

Reporting Handbook

Certain types of linear property are assessed under a scheme based on each owner or operator of the linear property reporting to the DLA the cost of the linear property. In order to ensure that each owner or operator is reporting the proper information, the DLA, for each assessment year issues a Linear Property Assessment Reporting Information Handbook for each of the types of linear property assessed under the reporting scheme. In the case of the subject property, the DLA issued a reporting Handbook for telecommunication systems. In the years 1999 and 2000, separate Handbooks were issued for telecom systems and cablecom systems, however for the year 2001 the Handbooks for these two types of property were combined into one Handbook entitled "Linear Property Assessment Reporting Information Handbook For Cable Television Telecommunication Systems". For the year 2002, the DLA issued a Handbook entitled "Linear Property Assessment Unit Telecommunication and Electric Power Systems Reporting Handbook". This Handbook included separate sections for both telecom systems and cablecom systems.

Due to the size of the Handbooks, the MGB has not reproduced the Handbooks for the purposes of this decision. However, generally speaking, the Handbooks do provide a distinction between telecom systems and cablecom systems, primarily in the area of the number of subscribers. Cablecom systems (television), for certain types of equipment, report categories based on the number of subscribers and channels offered. This is typically referred to as a "penetration rate" for the purpose of calculating regulated depreciation.

SECTION ONE – LEGISLATIVE CHANGES/BOARD ORDER MGB 099/99

OVERVIEW

The Complainant is arguing that the MGB decision in Board Order MGB 099/99 decided that the test for feature software is whether or not it is integral to the operation of the DMS switch. As the Alberta Court of Appeal has upheld this decision, this test remains unless changed by broadening of the legislation. The position of the Respondent is that the test is still that of whether the feature software is intended for or used in the communication system of a telecommunication system. Regardless, if the test is integral to the DMS switch, the definition of “machinery and equipment has been expanded to include feature software.

ISSUES

1. Are the facts and the argument the same in the subject case as were the facts and argument in the 1996 decision (Board Order MGB 099/99)?
2. Was the legislation in place at the time of the 1996 decision the same as the legislation currently in place?

Legislative and Factual Changes

The following gives an overview of the circumstances related to each decision, the 1996 decision and the subject complaints.

1996 Telus Linear Property Complaint – Board Order MGB 099/99	1999 – 2002 Telus Linear Property Complaints
Agreed Statement of Fact: One of which is “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 the upgrades for the DMS switch.”	No Agreed Statement of Facts.
Argument focused on whether feature software is integral to operation unit, DMS switch.	Argument expanded to include feature software integral to telecommunication system.

BOARD ORDER: MGB 124/04

1996 Telus Linear Property Complaint – Board Order MGB 099/99	1999 – 2002 Telus Linear Property Complaints
<p>Legislation January 1, 1995, the new <i>Municipal Government Act</i> proclaimed, effective for the 1995 assessment year for taxes imposed in 1996. New <i>Municipal Government Act</i> repealed the following:</p> <ol style="list-style-type: none"> a) Previous <i>Municipal Government Act</i> b) <i>Municipal Taxation Act</i> c) <i>Electric Power and Pipe Line Assessment Act</i> <p><i>Municipal Government Act</i> sets out that assessments of each type of property must reflect the valuation standard set out in the regulations for that property.</p> <p><i>Regulation 365/94</i></p> <ul style="list-style-type: none"> • Valuation standard is calculated in accordance with the Alberta Linear Property Assessment Minister’s Guidelines • Defines “machinery and equipment” to mean 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 a telecommunication system. 	<p>Legislation <i>Municipal Government Act</i> in existence for four years with the first complaint in 1999.</p> <p><i>Municipal Government Act</i> sets out that assessments of each type of property must reflect the valuation standard set out in the regulations for that property.</p> <p><i>Regulation 289/99</i></p> <ul style="list-style-type: none"> • Valuation standard is calculated in accordance with the Alberta Linear Property Assessment Minister’s Guidelines • Defines “machinery and equipment” to mean 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 a telecommunication system.
<p>No Minister’s Guidelines existed and valuation standard fell to the standard adopted under the repealed <i>Electric Power and Pipe Line Act</i>. (<i>Regulation 74/91</i>)</p>	<p>Minister’s Guidelines adopted for each year under complaint.</p>

BOARD ORDER: MGB 124/04

<p>1996 Telus Linear Property Complaint – Board Order MGB 099/99</p>	<p>1999 – 2002 Telus Linear Property Complaints</p>
<p><i>Electric Power and Pipe Line Act</i> included telecommunication systems in the definition of “works and transmission lines” by giving it the meaning of ... installations, materials, devices, fittings, apparatus, appliances, equipment, machinery, ways and easements and structures used in the transmission or sale of telecommunications services... .”</p> <p>Note: no reference to “machinery and equipment”.</p>	<p><i>Municipal Government Act</i> defines “linear property” in a “telecommunication system” as including</p> <p>A) cables, amplifiers, antenna and drop lines, and</p> <p>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 own or operated by a company ..., but not including... .</p> <p>Note: <i>Municipal Government Act</i> now includes the term “machinery and equipment” in the definition.</p>
<p>Minister had not prescribed that feature software forms an integral part of an operational unit and is included in the definition of “machinery and equipment”.</p>	<p>Ministerial Prescription adopted by Ministerial Order including feature software in the definition of “machinery and equipment”.</p>
<p>Summary Definitions within the <i>Municipal Government Act</i> for a telecommunication systems different than definition within the <i>Electric Power and Pipe Line Act</i>, from which the only valuation standard existed.</p> <p>Only definition that matched any of the words in the definition of linear property used in or intended for a telecommunication system was for “machinery and equipment”.</p>	<p>Summary Definitions within the <i>Municipal Government Act</i>.</p>

SUMMARY OF THE COMPLAINANT'S POSITION

Legislative Scheme

In arguing that the Ministerial Prescription does not have the binding force of law, or alternatively is not applicable because it is in conflict with the Regulations, the Complainant submitted that there is no reason not to decide the subject complaints in the same manner as the 1996 complaint.

The Complainant submitted the MGB in the 1996 decision held that a telecommunication system is the sum of the physical parts integral to its function as an operational telecommunication system. As feature software is not required for POTS, it is not integral to the DMS switch and is not assessable. This decision was found to be reasonable by the Alberta Court of Appeal and the decision continues to be the guiding authority of the analysis of the subject complaints.

The Complainant submitted the issue in the 1996 complaint was whether a licence fee paid to activate feature software was assessable as linear property. The MGB decision considered two possible interpretations of a telecommunication system and reviewed the Regulations in place at the time of the assessment. The Complainant stated the MGB found that no guidelines existed for the assessment of a telecommunication system, but determined that Regulation 74/91 could be used to fill the gap in the legislation. In addition, the MGB referred to the then Special Properties Assessment Guide (SPAG) for further assistance. This guide was without legislative authority, however it did speak to software costs. The SPAG established a relationship between software, machinery and equipment, and the integral part of an operational unit. The Complainant argued that the SPAG provided the MGB with direction on the definition of machinery and equipment and, based on that definition, found that application software could not be a component cost for the purpose of linear property.

Legislative Changes Since 1996 Decision

The Complainant submitted the Act has not been amended since the 1996 decision and Regulation 289/99 does not represent any substantive change to the assessment regime. The definition of machinery and equipment remains unchanged and the requirement that an assessable item be integral to the operational unit is still the test.

The Complainant submitted that for the assessment years 1999 and 2000, the SPAG was the interpretative guide used by linear property taxpayers. SPAG instructed that software was to be included in the assessment of machinery and equipment if integral to the operational unit. For the 2001 and 2002 assessment years, the Department issued the Construction Cost Reporting Guide (CCRG), with instructions regarding software similar to SPAG in that only software costs integral to the operational unit were to be included as an assessable cost.

BOARD ORDER: MGB 124/04

In addition, the Complainant argued that the authority of the Minister in the new Ministerial Prescription regarding feature software costs is still limited to considering only feature software within the context of an operational unit as section 2 (b) of the regulations refers to other things (feature software) prescribed by the Minister that forms an integral part of an operational unit.

It is Telus' position that there is nothing new in the Act or in the validly enacted regulations since the 1996 decision. As nothing is new, the Complainant argues the MGB should follow the reasoning of the 1996 decision.

SUMMARY OF THE RESPONDENT'S POSITION

Legislative Scheme

The Respondent submitted that it is inaccurate to say the highest court in the land agreed with the reasoning in Board Order MGB 099/99. The Respondent argued that judicial review is not an appeal on the merits of an administrative tribunal's decision, as there is no appeal from a MGB decision. However, the Court of Queen's Bench retains an inherent jurisdiction to review administrative tribunals' actions, but a court's powers on judicial review is narrow. Therefore, unless the standard of review is found to be correctness, the court does not retry the matter. The court's concern is whether the tribunal properly exercised powers conferred on it by statute.

The Respondent argued that in every case of judicial review, the reviewing judge must start by determining the standard of review using the pragmatic and functional approach established by the Supreme Court of Canada. The factors to be considered are the presence or absence of a privative clause or statutory right of appeal; the expertise of the tribunal and the nature of the question – law, fact, or mixed law and fact. The reviewing judge held the proper standard to review Board Order MGB 099/99 was reasonableness *simpliciter*, and found the decision was not reasonable. On appeal to the Alberta Court of Appeal, the issues to be decided were what standard applied on appeal to the standard of review selected by the reviewing judge and what standard of review should be employed on appeal in the application of the selected standard to the tribunal's decision. The Respondent argued the issues before the Court of Appeal were not the same issues before the MGB in its 1996 decision.

The decision of the Court of Appeal was not whether the decision was correct but rather whether the decision was "clearly irrational". The Court of Appeal held that the decision was not "clearly irrational" which is different than saying it is "correct". The Respondent addressed the Application for leave to appeal to the Supreme Court of Canada, by arguing that the dismissal of the leave application had nothing to do with the merits of the MGB decision, but with the legal principles and relationships between administrative bodies, reviewing courts and Courts of Appeal.

In conclusion, the Respondent argued it would be an error to conclude that the Court of Appeal and the Supreme Court of Canada endorsed the decisions reasoning. More importantly, it does

BOARD ORDER: MGB 124/04

not mean the MGB is bound to follow the reasoning in Board Order MGB 099/99. Further, the MGB has a duty to hear each case separately according to its own merits and must not believe it is limited to its reasoning in Board Order MGB 099/99, especially given the change in the witnesses, the evidence, and Guidelines in the subject complaints compared to the 1996 complaint.

The Respondent argued that the Complainants view of the Ministerial Prescription in context of section 2(b) of the regulation was incorrect and far too narrow a view and does not recognize the use of the words “of any assessable property” within the Ministerial Prescription. The Respondent also argued that the factual base and arguments of the case in 1996 are different from the current complaint years as there are no agreed facts and the issue of integral to an operation unit is not an argument to which the Respondent is limiting itself as it did in 1996.

Agreed Statement of Facts

The Respondent reminded the MGB that in the 1996 decision there was an Agreed Statement of Facts and the focus of the argument was on whether or not the feature software was integral to the operational unit, the DMS switch, whereas in these complaints there is no Agreed Statement of Facts and the argument is not focused on whether the feature software is integral to the DMS switch. In these complaints the Respondent argues that the new Ministerial Prescription includes feature software as an assessable cost and, as well, argues that the feature software should be examined in the context of the total telecommunication system.

FINDINGS

The MGB finds as follows.

1. There is no Agreed Statement of Facts in the subject case and the argument is broadened in the subject case.
2. The legislation in place at the time of Board Order MGB 099/99 is different from the legislation applicable to the subject case.

REASONS

The MGB is of the opinion that Board Order MGB 099/99 was based on a set of agreed facts and there are no agreed facts in the subject complaints. For the 1996 complaints, the parties submitted a set of agreed facts. Principle to the MGB decision in 1996 is the agreed fact that a DMS switch is switching machinery and equipment. This has substantial importance resulting from the transition of the assessment of linear property from the *Electric Power and Pipe Line Act*, repealed on January 1, 1995, to the *Municipal Government Act* proclaimed on January 1, 1995.

BOARD ORDER: MGB 124/04

Under the *Electric Power and Pipe Line Act*, the Complainant's property fell under the definition of "works and transmission lines", which did not include the words "machinery and equipment". Further, the *Electric Power and Pipe Line Act* did not include a definition of "machinery and equipment", but rather this definition was contained, for the year in question, in the *Standards of Assessment Regulation 365/94*. Under the new *Municipal Government Act*, the Complainant's property became "linear property" and it was now specified that the "linear property" included "machinery and equipment".

With the proclamation of the *Municipal Government Act*, the valuation standard for "linear property" became that calculated in accordance with the procedures as set out in the Minister's Guidelines. For the 1996 year the Minister had not adopted any Guidelines, but had adopted a *Standards of Assessment Regulation 365/94* and a *Transitional Regulation 372/94*. However, no direct reference had been made to a repeal or substitution of the only valuation tool available: the *Works and Transmission Lines Assessment Regulation 74/91*.

In Board Order MGB 099/99, the MGB reasoned that this legislative transition could give one of two views of the situation. One being that no linear property assessment was valid for the year in question or "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. The MGB choose the latter view and attempted to draw some connection or relationship between what existed prior to 1995 and what existed for 1995 and found that the SPAG existed before and after 1995 and was being used in each era.

The MGB in Board Order MGB 099/99 relied on the definition of "machinery and equipment" and the focus of the argument of both parties with regard to what was or was not included in a DMS switch and more importantly what was integral to an operational unit. In the 1996 decision the DMS switch was considered to be machinery and equipment (M&E) and that machinery and equipment was part and parcel of the telecommunications system. It was concluded that the definition of M&E included only things that were integral to that M&E. The panel in the 1996 decision reasoned that since feature software was not integral to the DMS switch, it fell outside the definition of M&E and therefore fell outside the definition of telecommunications systems. In the subject case the parties, specifically the Respondent, have broadened the scope of their argument and focused more on the role of feature software in the overall telecommunications system, thus requiring the MGB to re-examine its approach in the subject complaints.

In the previous decision the MGB relied on the Special Property Assessment Guide, which has now been clearly replaced. As well the MGB relied on how the DMS switch operated at that time to determine if the feature software was assessable.

However, in the present complaints, the parties do not agree on any facts, have broadened the arguments, the Minister has adopted Guidelines, and the Minister has also adopted a Ministerial Prescription clarifying the definition of "machinery and equipment" as it applies to feature software. The MGB acknowledges that the Complainant is arguing that the Guidelines and

BOARD ORDER: MGB 124/04

Ministerial Prescription are an improper delegation of authority and are without effect. However, within the context of Board Order MGB 099/99, this decision would only have meaning if the Guidelines and Prescription were found to be without effect.

The MGB does not accept the Complainant's argument that the Ministerial Prescription does not have any effect or should be given a very narrow meaning but does accept the Respondents interpretation. In addition and within the context of all the events since the 1996 decision, the MGB uses a purposeful approach to the interpretation of the Ministerial Prescription in that its purpose was clearly to include feature software costs within assessable items.

SECTION TWO – MINISTERIAL PRESCRIPTION/MINISTER'S GUIDELINES

OVERVIEW

As outlined above, there have been a number of legislative changes since the 1996 complaints decided in Board Order MGB 099/99. The first being the adoption of the Minister's Guidelines for the purpose of linear property valuation, which did not exist for the 1996 complaints. The second is the Minister prescribing that feature software is included in the definition of "machinery and equipment". Ministerial Order adopted both the Minister's Guidelines and the Ministerial Prescription, however, the Complainant is arguing that the Minister's Guidelines and by extension, the Ministerial Prescription, are an improper subdelegation of authority. In order to decide this question, the MGB must address the following issues.

ISSUES

1. If software becomes an assessable cost pursuant to the Ministerial Prescription within the Guidelines, did the Minister have the authority to establish the Guidelines or were the Guidelines, and by extension the Ministerial Prescription, adopted by the Department of Municipal Affairs?
2. If adopted by the Department of Municipal Affairs, is this an improper delegation of authority by the Minister?
3. Regardless of the subdelegation question, is the Ministerial Prescription to include feature software within the definition of machinery and equipment contrary to the definition in the Regulation or for the purpose of clarification?
4. Regardless of the result of the Ministerial Prescription, does the Minister have authority to clarify the definition of machinery and equipment?

SUMMARY OF THE COMPLAINANT'S POSITION

Guidelines

The Complainant argues that the Guidelines are an improper sub-delegation of authority and are no more than guiding principles. This argument is based on the words "... established and maintained by the Department of Municipal Affairs ..." used in the valuation standards for linear property within Regulation 298/99. The Complainant submitted that the Minister attempted to address the 1996 MGB decision by including a "Ministerial Prescription" within the Guidelines.

The Complainant argued that the Guidelines, and by extension the Prescription, amount to an invalid sub-delegation of the power to make regulations, which power is granted exclusively to the Minister. As a sub-delegation, the Guidelines do not have the force of law and are not binding. However they do provide guidance where they are not inconsistent with the validly enacted and binding law. The Complainant referenced Jones and de Villars, Principles of Administrative Law, which asks one question: "Did the appropriate legislative body grant this particular power to this particular person to be exercised in this particular way?" The Complainant stated the question here is whether the Act granted the Department of Municipal Affairs the particular power to create Guidelines. It is the Complainant's position that the Act did not grant that power to the Department. The result is the Guidelines amount to an improper sub-delegation of the Minister's power to create regulations and represent an attempt to circumvent the 1996 MGB decision.

The Complainant argues this based on the following.

Legislative and Regulatory Framework

In section 292 of the Act, the Complainant argued that it clearly sets out that the regulations will provide the valuation standard for linear property. Section 322 of the Act authorizes the Minister to make regulations establishing valuation standards for property. While section 578 sets out the Minister's ability to delegate, it expressly provides that the Minister cannot delegate authority to make regulations. The Minister enacted Alberta Regulation 289/99 to provide the valuation standard for linear property. It states in section 6(2) "In preparing an assessment for linear property, the assessor must follow the procedures set out in the Alberta Linear Property Assessment Minister's Guidelines established and maintained by the Department of Municipal Affairs, as amended from time to time." Based on a plain reading of the Act, the Minister cannot delegate his power to create valuation standards for linear property to the Department. The Complainant submitted, on this basis alone, the Guidelines and Prescription are invalidly enacted.

Legal Principle of Delegatus Non Potest Delegare

If the legislative and regulatory framework is insufficient to demonstrate the Guidelines have no force, then the general rule that a delegate cannot sub-delegate statutory powers applies. The Complainant takes the position that the Minister is not entitled to sub-delegate his statutory power to the Department to establish the Guidelines and the included Ministerial Prescription. The Act provides that the Minister may make regulations but also expressly states the Minister cannot delegate his power to make regulations. The Regulation made pursuant to the Minister's authority provides that the tax assessor must follow the valuation standards and procedures established by the Department. Thus, it is effectively the Department that is making the Regulation, which amounts to an obvious case of sub-delegation of the Minister's power.

Invalid Delegation of Legislative Powers & the Rule Against Turning Legislative Powers into Administrative Powers

The Complainant submitted that there are three classifications of statutory powers: legislative, administrative and judicial. While legislative and administrative powers are often not easily distinguishable, Holland and McGown, Delegated Legislation in Canada, quoted with approval the following test from deSmith's Judicial Review of Administrative Action:

“A distinction often made between legislative and administrative acts is that between the general and the particular. A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; an administrative act cannot be exactly defined, but it includes the adoption of a policy, the making and issue of a specific direction, and the application of a general rule to a particular case in accordance with the requirements of policy or expediency or administrative practice.”

It is the Complainant's position that the valuation standards and the wording of the Ministerial Prescription amount to creation of general rules of conduct without reference to particular cases and are legislative in nature. As such, the act of creating the Guidelines and the Ministerial Prescription is a legislative act. The Complainant submitted that the legislature has authorized the Minister to exercise legislative power, and the Minister cannot delegate that power to any other body. Further, by sub-delegating his power to establish regulations, the Minister has effectively turned his legislative power into an administrative one.

The Complainant conceded that the need to imply power to confer administrative powers has been noted in Lewisham vs. Roberts where Lord Denning described the necessity as follows:

“... Now I take it to be quite plain that when a minister is entrusted with administrative, as distinct from legislative, functions he is entitled to act by any authorized official of his department. The minister is not bound to give his mind to the matter personally. This is implicit in the modern machinery of government... .”

BOARD ORDER: MGB 124/04

However, the Complainant submitted that according to Holland and McGown, when legislative power is conveyed by the enabling statute, this power cannot be excised in an administrative manner. If this is done, then the exercise of the power is unauthorized on the basis that the statutory delegate failed to comply with the legislature's intention that the public would have access to published rules and thus know what was expected.

The Complainant submitted that the Minister's power to enact regulations granted under section 322 of the Act was exercised in an improper manner. The Minister effectively abdicates his authority under section 6 of the Regulation 289/99 by delegating his responsibility to the Department. Had it been the intent of the Legislature that the Department could establish valuation standards, it would not have restricted the Minister's powers of delegation through section 578 of the Act.

Circumstances in which Sub-Delegation is Permitted

The Complainant submitted that sub-delegation is allowed in three general circumstances. The first is circumstances of wartime or emergency, which does not apply. The second is when expressly authorized by statute. The Act does not expressly authorize sub-delegation; it prohibits it. The third circumstance is where failure to do so would render the governing statute unworkable. There is no administrative need for the Minister to delegate his regulation making power to the Department.

Ministerial Order: Insufficient to Validate the Guidelines

It is the Complainant's position that once the Minister abdicated his regulation making authority in section 6 of the Regulation 289/99 by directing that the assessor must follow the Guidelines established and maintained by the Department, the Minister cannot bring the Guidelines under his proper jurisdiction by Ministerial Order. Section 578(2) of the Act prohibits the Minister from delegating his authority to enact regulations and a subsequent order signed by the Minister does not correct this error in jurisdiction.

Guidelines Not Binding when Not Authorized by Statute

The Complainant submitted that in the event that the Guidelines are found to be a valid sub-delegation, the Guidelines are not binding in that they are not substantive law. The general rule is that regulations form substantive law as compared to guidelines and directives. The Act does not expressly grant the power to issue the Guidelines and expressly prohibits the Minister's delegation to the Department. As the Guidelines were created in the absence of statutory authority, they cannot be considered binding.

Statutes and Regulations Prevail over Guidelines

In the event the Guidelines and Ministerial Prescription are found to be valid, the Complainant argues the definition of “machinery and equipment” in Regulation 289/99 must prevail over the wording of the Ministerial Prescription. It is the Complainant’s submission that non-statutory instruments such as the Guidelines have no effect in the face of contradictory statutes or regulations, and statutes or regulations prevail over policies or guidelines. If the Ministerial Prescription is found to be binding, it is still a requirement in the definition of “machinery and equipment” that feature software form an integral part of the operational unit. Given that the Regulation prevails over the Guidelines, the proper application of the definition of “machinery and equipment” is essential to the resolution of these complaints.

Minister’s Options

The Complainant’s position is that the Minister could have taken other action to properly alter the Regulation. One option would have been to change the wording of the definition of machinery and equipment. The second option would have been to enact a regulation to establish the valuation standards for property. Had he done so, he would have validly exercised his authority and created binding valuation standards. Instead the Minister improperly delegated his authority to make regulations to the Department.

SUMMARY OF THE RESPONDENT’S POSITION

Guidelines

The Respondent’s position is the MGB does not have jurisdiction to rule on whether or not the Guidelines have been validly passed or whether the Minister has made an invalid sub-delegation. The Respondent submitted that these issues can only be decided by the courts. The MGB must proceed on the basis that the Guidelines are part of the legislation. The Respondent expanded on this position as follows.

MGB Jurisdiction to Examine the Validity of the Guidelines

The Respondent submitted the MGB owes its existence to the statutes (the Act) and acquires its jurisdiction from that statute. However, the Act does not give the MGB the power to declare or treat the Guidelines or any other legislation as invalid. The Respondent argued the Courts have stated that tribunals do not have the power to strike down or hold invalid other legislation.

The MGB does have the power to interpret statutory provisions in order to determine whether property is assessable. However, there is a distinction between interpreting a statute to examine jurisdictional boundaries and treating legislation as invalid. It is the Respondent’s position that the Act does not give the MGB the authority to determine questions of law and the validity of legislation is purely a question of law. In addition, the Respondent submitted finding the

BOARD ORDER: MGB 124/04

Guidelines invalid would be analogous to the MGB directing the Minister, over which the MGB has no jurisdiction.

Guidelines Are Regulations

The Respondent's position is that the *Interpretation Act* provides that a regulation means an order enacted in the execution of a power conferred by or under the authority of an act (section 1(1)(c)). Also, in this *Interpretation Act*, "enacted" means "issue, make, establish or prescribe" (section 1(1)(a)). The Respondent submitted the Guidelines are established by Ministerial Order in the exercise of the power conferred under the authority of section 322 of the Act.

The Respondent submitted that the *Interpretation Act* is to apply to every enactment unless the enactment says differently. As the Act does not have a provision saying the Interpretation Act does not apply, the Guidelines are a regulation according to the definition of a regulation in the *Interpretation Act*.

Sub-Delegation of the Minister's Power

The Respondent submitted the Guidelines and Ministerial Prescription within the Guidelines are not sub-delegations of the Minister's power. It is the Minister who exercises the power and it is the Minister who exercised that power by establishing the Guidelines by Ministerial Order. The Respondent submitted that the Guidelines are established by Ministerial Order, therefore the Minister himself exercised the regulation making power and there is no delegation.

In response to the Complainant's contention that the Department actually creates and maintains the Guidelines, the Respondent stated this is not a delegation because there is no prohibition in the Act and there is a principle of law that these types of duties are an administrative necessity, done by the Minister's officials or his department.

Guidelines Binding and Authorized by Statute

In response to the Complainant's argument that Guidelines are not binding, the Respondent submitted the Guidelines and Ministerial Prescription are rules expressly authorized by the Act and are legislative in nature. The test is not what a document is called, but its effect that governs whether it is binding.

The Respondent referred to a number of decisions of the Supreme Court of Canada to establish the criteria for a determination of whether the Guidelines are binding and authorized by statute. These criteria are roughly divided into three headings: form, content and effect. As for form the Supreme Court of Canada provided that there must be a connection between the legislation and the instrument, in short there must be an enactment. The Court found that this scope is limited to documents actually tabled in the Legislative Assembly. However, the Court stated these criteria do not operate cumulatively. The Respondent stated that an instrument may be legislative in

BOARD ORDER: MGB 124/04

content, though not in form, and under the criteria may be determined to be of a legislative nature. That the Guidelines have not been tabled is not conclusive in this matter.

Regarding the content and effect, the Respondent referred to the Supreme Court of Canada in Language Rights Under Manitoba Act 1870 (1992), 88 D.L.R. (4th) 385 in which the Court approved the following definition of “regulation”:

“A regulation is a rule of conduct, enacted by a regulation-making authority pursuant to an Act of Parliament, which has the force of law over an undetermined number of persons... .”

The Respondent submitted that although this quote refers to regulations, it still provides assistance in developing a general definition of the phrase “of a legislative nature” and goes on to further explain:

“The phrase from the above quotation which requires elaboration in relation to the content and effect of Orders in Council are “rule of conduct”, “force of law” and “an undetermined number of persons”. A “rule of conduct” can be described as a rule which sets norms or standards of conduct, which determine the manner in which rights are exercised and responsibilities are fulfilled. Pairing this with the phrase “force of law”, the rule must be unilateral and have the binding legal effect. Finally, it must also apply to “an undermined number of persons”, that is it must be of general application rather than directed at specific individuals or situations.”

It is the Respondent’s position that in the subject matter, the Guidelines set out norms and standards, and the rules of the Guidelines are unilateral and have binding legal effect. In addition, the Guidelines are not directed at specific individuals. Therefore, the Guidelines are binding, as they are legislative in nature and expressly authorized by the Act.

Does the Ministerial Prescription Conflict with the Regulation?

It is the Respondent’s position that the essence of the rules of statutory interpretation respecting conflicting provisions is that the rules are not engaged unless there is a “true conflict” and the assumption that the legislature did not intend to enact conflicting provisions. The test outlined by the Supreme Court of Canada is that statutory provisions do not conflict unless they truly cannot stand together. The Respondent argued that the conflict the Ministerial Prescription has is with the previous decision of the MGB respecting the 1996 complaint. The Respondent suggested that the Prescription was established to address this decision and it is open to the Legislature and the Minister to do so.

BOARD ORDER: MGB 124/04

FINDINGS

The MGB finds as follows.

1. The Minister has the authority to prescribe what is included in the definition of machinery and equipment.
2. The Minister has exercised his authority to prescribe the cost of all computer software is included in the base cost of machinery and equipment and as a result is linear property.
3. The Prescription provides clarification of what is to be included in the definition of machinery and equipment.
4. The Minister, in exercising his authority to prescribe what is included in the definition of machinery and equipment, has not created an improper sub delegation of authority.
5. The Minister has the authority to adopt guidelines for the assessment of linear property.
6. The Minister, in adopting the Minister's Guidelines, has not created an improper sub delegation of authority.

REASONS

The MGB finds that it is necessary to address the broad question raised by the Respondent that the MGB does not have the authority to rule on the validity of the legislation. The issues put before the MGB by the Complainant all relate to whether or not feature software is an assessable cost and in support of their arguments rely on a presentation of certain facts regarding the operation of a DMS switch within the context of a telecommunication system. The Complainant also accepts that the Minister has attempted to address the question of assessability by the adoption of a Prescription including all software as an assessable cost. However, The Complainant also argues that the Minister has improperly adopted this Prescription and in doing so, rendered this issue moot, returning, somewhat, the issue to that decided in the 1996 complaints. Therefore the MGB is of the opinion that in order to properly decide the matter of whether the computer software costs are included in the base cost of the linear property, it must decide whether the Prescription and Guidelines have been properly adopted. Within the totality of the subject complaint the MGB is required to address matters of mixed fact and law. This specific item is a question of law, however, it is inextricably interwoven with the ability to decide the facts.

The MGB would also comment that the Minister's Guidelines and the Ministerial Prescription are seen by the MGB to be two separate issues when it addresses the question of improper sub delegation. Just because the Ministerial Prescription is included in the Minister's Guidelines, they are not necessarily seen as being one and the same. Authority to adopt the Minister's

BOARD ORDER: MGB 124/04

Guidelines does flow from the section of the Regulation dealing with the valuation of linear property, while the Ministerial Prescription flows from the authority referred to in the definition of machinery and equipment itself. Because the Prescription performs two functions, it does not necessarily mean the functions are intertwined. If the Minister's Guidelines are an improper sub delegation, it does not mean that the act of prescribing other things to be included in the definition of machinery and equipment is an improper sub delegation. Each must be judged on the facts relative to each action.

Ministerial Prescription

As it stands, the Act, for the purpose of defining a "telecommunication system" as linear property, has provided a list of things that is included in a telecommunication system of which one is "machinery and equipment". The Act further defines "machinery and equipment" as having the meaning given in the regulations. The Regulation in section 2(b) (AR 289/99) provides a definition for "machinery and equipment" that includes the phrase "... and any other thing prescribed by the Minister that forms an integral part of an operational unit ...". The Minister has included in the year's Minister's Guidelines a "Ministerial Prescription" that states as follows:

"For the purpose of these Guidelines and section 2(b) of the Regulation, it is hereby prescribed that the cost of all computer software, including both basic software and application software, intended for or used in connection with the monitoring, control or operation of any assessable property shall be included in the base cost of the property which is otherwise assessable."

Based on the legislation, there is a chain starting with the Act, which directs that "machinery and equipment" is to be defined by regulation and the regulation, in defining "machinery and equipment", also clearly states that the Minister may add to this definition. The MGB sees this, in an era of rapidly changing technology, as a reasonable and efficient way of keeping the definition of machinery and equipment current. What the MGB sees as the real issue is whether the Ministerial Prescription provides clarification in the definition of machinery and equipment or changes the definition. If done to change the definition, the Prescription then becomes an improper sub delegation of the authority that may only be exercised by regulation. However, the MGB does not see the Ministerial Prescription as changing the basic definition of "machinery and equipment", but clarifying that if the various things that make up "machinery and equipment" use computer software, the cost of the software is included in the base cost of those things listed in the definition of "machinery and equipment". Therefore the Minister has effectively resolved the question of whether or not the cost of all computer software is a cost to be used in calculating the linear property assessment of machinery and equipment intended for or used in a telecommunication system.

Minister's Guidelines

The MGB received substantial representation from the Complainant arguing that the Minister's Guidelines are an improper sub delegation of the Minister's authority to make regulations. In order to decide this question relative to the assessment of the Complainant's linear property, the MGB looked at the legislative chain that gave rise to the Guidelines. The Act, in section 292(2)(a), states the assessment must reflect the valuation standard set out in the regulations for linear property. In the Regulation, in section 6, the valuation standard for linear property must be calculated in accordance with the procedures set out in the Alberta Linear Property Assessment Minister's Guidelines.

The Regulation further states these Guidelines are to be established and maintained by the Department of Municipal Affairs. The Guidelines have been produced and have, in each year under complaint, been adopted by the Minister pursuant to a Ministerial Order.

The MGB then considered, within the context of the legislation, what exactly are the Minister's Guidelines. Under section 322 of the Act, the Minister may make regulations, within the context of the assessment provisions, respecting any matter considered necessary to carry out the intent of the Act. Under section 1(f) of the *Interpretation Act* a "regulation" means a regulation, order, rule, form, tariff of costs or fees, proclamation, bylaw or resolution enacted in the execution of a power conferred by or under authority of an Act, or by or under the authority of the Lieutenant Governor in Council. However, the Regulations Act, in section 1(2)(d), specifically excludes "adopted or incorporated by reference in a regulation". The Minister's Guidelines are incorporated by reference in section 6 (2) of Alberta Regulation 289/99.

The Complainant argued on two basic points: the Minister adopted the Guidelines when they properly should be a regulation and in doing so, the Minister has undertaken a legislative function or, the Regulation has improperly delegated the authority to make the Guidelines to the Department of Municipal Affairs. Support for the second point is based on the words used in the Regulation that the Guidelines are to be "established and maintained by the Department of Municipal Affairs". To answer the first question, the MGB finds that the Act, in reality, delegates the establishment of a valuation standard to a regulation, which in the case of linear property the Regulation says the valuation standard is a regulated process. The Regulation then establishes the procedures to calculate the assessed value are set out in the Minister's Guidelines. The Regulation then further qualifies that the procedures are to be established and maintained by the Department of Municipal Affairs. The valuation standard is set by the Regulation and that standard is whatever result is gained in each year under complaint by following set procedures. The Act and Regulation have not delegated the establishment of a valuation standard to the Minister, but only the procedures to be followed in determining an assessment. In the view of the MGB, this seems a reasonable approach to address the need to adjust procedures in the context of changing situations to ensure that assessments reflect ongoing changes in technology and costs. Linear property is characterized by specialized equipment, which in a global and

BOARD ORDER: MGB 124/04

competitive economy requires innovations and rapid changes in equipment and technology, so the assessment procedures must be able to respond to these rapid changes.

In regard to the issue of the Guidelines being established and maintained by the Department of Municipal Affairs, the MGB sees this as a reflection of fact regardless of how it is termed. The test, as the MGB sees it, is whether the Guidelines have been sanctioned by the Minister, which the Minister has done by virtue of the Ministerial Order adopted for each year under complaint. In the normal course of affairs, a Department prepares and updates many documents for the Minister, but such documents only carry weight if sanctioned by the Minister, as is the case with the Guidelines.

However, the MGB is of the opinion that if it is wrong on the issue of sub delegation with respect to the Guidelines, the Ministerial Prescription adopted pursuant to the authority contained in the definition of “machinery and equipment” is sufficient to make feature software a cost to be included in the assessment of linear property.

SECTION THREE – MACHINERY AND EQUIPMENT VS. TELECOMMUNICATION SYSTEMS

OVERVIEW

The Respondent has adopted the position that the Ministerial Prescription has included the cost of feature software as a component cost of a DMS switch for assessment purposes. In addition, the Respondent has adopted the position that the feature software is also included in the broader definition of things intended for or used in the communication systems of telecommunication carriers. Therefore, the cost of feature software is a component cost of linear property and is included in the linear property assessment. The Complainant argues that the Ministerial Prescription does not achieve the result described by the Respondent and feature software must still be examined in the context of whether or not it is integral to the operational unit, the DMS switch.

ISSUES

1. What is a telecommunication system?
2. Is a DMS switch an operational unit or a component of a telecommunication system?
3. If an operational unit, is a DMS switch machinery and equipment?
4. If machinery and equipment, is feature software integral to the DMS switch?
5. If a DMS switch is a component of a telecommunication system, but not machinery and equipment, is the software integral to the telecommunication system?

BOARD ORDER: MGB 124/04

6. Is there a difference, for the purpose of a telecommunication system, between basic and feature software?
7. Regardless of whether a DMS switch is machinery and equipment, do the Guidelines make both basic and feature software an assessable cost of a DMS switch?
8. Is the fee paid by the Complainant a royalty, licence or patent fee, which is a non-assessable cost, or is it a software cost which is assessable?
9. If feature software is an assessable cost and is linear property, is Telus the assessed person?

SUMMARY OF THE COMPLAINANT'S POSITION

Telecommunication System

The Complainant does not dispute that it is operating a telecommunication system that includes linear property. However it argues that the DMS switch falls within the meaning of "machinery and equipment intended for or used in a telecommunication system." As machinery and equipment, it argues that the test is what is an operational unit and what is integral to the operational unit. The DMS switch is the operational unit and only basic software is integral to that operational unit. Feature software is not integral because it is not necessary to the switches' operation. Since it is only basic software that is integral, only the cost of basic software becomes a component cost of the assessed value of a DMS switch for the purpose of a linear assessment.

DMS Switch

The Complainant submitted that a DMS switch utilizes software that consists of basic software and feature software. Nortel loads both the basic and feature software on each DMS switch, but feature software remains dormant unless a particular group or package of the feature software is activated. Basic software allows the network to perform the basic functions, including all routing. In conjunction with the basic software, the DMS switch provides basic telephone service. Nortel provides feature software loaded on the switch. The feature software load consists of hundreds of feature packages that can be activated on an individual basis. Examples include Call Waiting and Call Display.

Telus decides which optional features it wishes to activate for a particular exchange. While the switch has the ability to provide all the optional features, unless activated at Telus' request, the features remain dormant. Any of the optional features can be activated in any DMS switch by paying Nortel a "one time" licence fee for the feature. Telus must also pay an additional fee for software updates. Telus holds the software under a licence which does not convey rights of property, it merely permits it to use the software. Even if assessable, Telus is not the assessed person.

BOARD ORDER: MGB 124/04

In order to determine where a DMS switch and, more particularly, feature software fits within the legislative scheme, the Complainant submitted that consideration must be given to the Act as a taxing statute. Historically, in a taxing statute, the basic rule of statutory interpretation was strict construction. This doctrine was applied on the basis that tax legislation imposes a burden on the individual. It applied to provisions imposing a tax burden and those creating a tax exemption. It held that a taxpayer should not be deprived of common law rights without specific, explicit taxing statutory authority to that effect. Corporation Notre-Dame de Bon-Secours vs. Communaute Urbaine de Quebec has modified this rule to a more purposive approach described by the Complainant as:

“The interpretation of tax legislation should follow the ordinary rules of interpretation;

A legislative provision should be given a strict or liberal interpretation depending on the purpose underlying it and that purpose must be identified in light of the context of the statute, its objective and the legislative intent: this is the teleological approach;

The teleological approach will favour the taxpayer or the tax department depending solely on the legislative provision in question, and not on the existence of predetermined presumptions;

Substance should be given precedence over form to the extent that this is consistent with the wording and objective of the statute;

Only a reasonable doubt, not resolved by the ordinary rules of interpretation will be settled by recourse to the residual presumption in favour of the taxpayer.”

Nonetheless, the Complainant argues that the provisions of the Act defining “linear property” and “a telecommunication system” do not lend themselves to the plain meaning or purposive approach. The Complainant’s position is that there has been no material change to the legislation since the 1996 MGB decision and, as recognized by the Alberta Court of Appeal in the 1996 decision, this panel is faced with a difficult challenge in trying to determine exactly what the provisions of the Act intended to be assessed. Because of this difficulty, the Complainant submitted that the teleological approach is the only reasonable method of statutory interpretation to be applied to the subject complaints.

The Complainant argued that the MGB must not review the legislation in a factual vacuum. Rather, it must consider the complaints in the context of the operational realities of a modern telecommunication system. To provide context the Complainant reviewed the history of the legislation relating to the assessment of telecommunications. Prior to 1990, the Complainant had been Alberta Government Telephone (AGT). At that time the Government provided provincial grants in lieu of municipal taxes. This changed when AGT was privatized in 1990 and the property of the Complainant, became assessable on the same basis as other privately held

BOARD ORDER: MGB 124/04

property. The assessment was prepared under the then Electric Power and Pipe Line Assessment Act (EPPLAA) as “works and transmission lines”. This legislation was used to assess large voice and cable carriers up to the introduction of the Act.

The Complainant argues that the new Act created the legal fiction of “linear property”. The term has no ordinary meaning, other than to describe a particular type of property for assessment purposes. It is the Complainant’s contention that, although the Act was drafted using different language, it was intended to be a seamless replacement for the *Electric Power and Pipe Line Act* in that what was assessed under that old Act was intended to be assessed under the new Act. The same holds true for the Regulations made under the two different acts. The language used in Alberta Regulation 365/94 and Alberta Regulation 289/99 set out the same valuation standards with respect to linear property. Both Regulations provide the same definition for “machinery and equipment”.

The Complainant also asserts that even if one accepts that the Ministerial Prescription is proper, feature software must be examined in the context of section 2 (b) of the Regulation which still requires a determination of whether the feature software is integral to the operational unit, the DMS switch. As previously found in the 1996 decision the feature software is not integral to the operation of the DMS switch.

SUMMARY OF THE RESPONDENT’S POSITION

Telecommunication System

The Respondent submitted that a telecommunication system can be characterized as having a number of parts, sections, sub-systems, including both hardware and software, which when connected and operated together, provide an end-to-end system. These parts, in turn, are made up of many individual pieces of apparatus or devices, which in turn are made up of individual components such as silicon chips, wires, cables connectors and fittings.

The layout of a telecommunication system has several distinct portions. The portions include the customer network; that is the devices or apparatus within the customer’s building which in the view of the Respondent are not assessable. The access network consists of the equipment connecting the customer’s premises with the telecommunication carrier’s main centre. That portion acts as a collecting link that gathers the signals from the customer source to the main centre. The main centre or central office, also known as the hub or point of presence, includes the apparatus or devices, such as the DMS switch, which make up the telecommunication’s centre. The next portion is the transport or backbone network that connects one central office with other central offices of the same telecommunication system or other telecommunication systems. This portion acts as a high-speed link for telecommunication signals.

DMS Switch

While a DMS switch is located in the central office, all the telecommunication system parts include both hardware and software. Both technologies are necessary to the end-to-end telecommunication system. The software in the DMS switch contains the record of the telephone numbers assigned for each customer and, without this, the DMS switch would not allow the customer to make or receive telephone calls. Similarly, without the line card (hardware, but which includes the software) the DMS switch still could not process calls to and from customers.

The DMS switch is a complex machine made up of hardware and software. The switch provides the major part of the switching, routing and related functions used by Telus to provide telecommunication services to its customers.

The Respondent argues that the hardware of a DMS switch consists of various kinds of modules, plug-ins, and circuit packs. Not all hardware in the switch is necessarily used in every telephone call, as some hardware is dedicated to certain specific functions, business or residential uses. Some software packages are used in virtually every call and other software packages are only used in certain circumstances. While some of the software is labelled basic and some is labelled feature, this labelling is entirely artificial and is used by the vendor of the switch for sales and marketing purposes. Over time there is a migration of feature software into the basic category. The Respondent argues that the switch operates no differently whether the software is labelled feature or basic. Regardless of that labelling, all the DMS hardware and software form part of the telecommunication system.

With respect to who is the assessed person the Respondent referred to section 304 of the Act, which prescribes the operator of the linear property as the assessed person. In this specific case the operator of the linear property is Telus.

FINDINGS

The MGB finds the matter to be as follows.

1. A telecommunication system includes all the components, both assessable and non-assessable, that the system uses or intends to use for the transmission, emission or reception of telecommunications.
2. The feature software is used or intended to be used for the transmission, emission or reception of telecommunications.
3. Feature software including the associated licence agreement costs are assessable costs within a telecommunication systems as linear property.

BOARD ORDER: MGB 124/04

4. Components of a telecommunication system within a telecom or cablecom client's property are not assessable costs to be included within the cablecom or telecom's property.
5. Telus is the operator of the linear property.

REASONS

Telecommunication System

In order to decide the issue of whether feature software is part of an integral unit or part of the larger telecommunication systems it is necessary to first view the telecommunication systems as part of larger global systems. Modern technology has resulted in communication occurring across the globe and between a variety of parties. Telecommunication requires a sender and a receiver, the client. In the context of the assessment of linear property it is the property of the telecom and the cablecom which is being assessed. It is the equipment and software of the telecom and the cablecom which communicates with the client that forms the telecommunication system which is being assessed. Having set this context, the MGB examines the issue of the feature software being integral to an operational unit versus integral to the telecommunication system for the property of the telecom and the cablecom.

As the focus of the 1996 decision was whether or not the feature software was integral to a component part, the DMS switch, the MGB in the current complaint is challenged to consider whether the feature software is an integral part of the larger whole, the telecommunication system. The focus of the argument on the feature software, in the context of the larger whole combined with the changing technology and the use of the technology, results in the MGB concluding that it must accept the use of the feature software in the larger context of a telecommunication system.

The MGB heard in evidence how some of the feature software in 1996 has now migrated to be part of the basic software and that over time it is expected that further features will become more and more basic as the industry evolves. In addition, the MGB heard in evidence that the distinction between basic and feature software may be artificial and that the DMS switch operates in various complex combinations of software. The MGB places considerable weight on this testimony, which leads to the conclusion that the feature software must be examined in the light of the larger telecommunication system rather than just as an integral part of a single component.

In this decision the arguments focused the MGB's attention on the role feature software plays in the operation of the switch within the context of the overall telecommunications system. The switch will indeed work perfectly well by applying POTS without feature software. However, when feature software is enabled it does not so much enhance the DMS switch as enhance the width and breadth of the telecommunication service provided to the subscribers. This argument

BOARD ORDER: MGB 124/04

focused the MGB's attention beyond the switch as an "operational unit" in favour of the effect feature software has on the total telecommunication system.

In the MGB's view, providing the additional features, like Call Forwarding and Voice Messaging, are clearly integral to a modern telecommunication system and quite different from the software excluded in the definition of M&E in SPAG which influenced the 1996 panel to exclude feature software. The type of software excluded, for example "accounting, business and other like software", is clearly ancillary whereas certain feature software, even if not integral to the DMS switch, is integral to a telecommunications system.

The principal argument of the Complainant is that the question is distilled down to the DMS switch and which components are integral to its operation. The Respondent, on the other hand, is arguing that the question encompasses the larger picture of what a telecommunication system is and what are the component parts that are integral to the transmission, emission or reception of telecommunications. The facts are that Telus is operating a telecommunication system that includes all the component parts intended for or used in the transmission of telecommunication. Whether the parts are comprised of equipment, lines, amplifiers, switches, land, improvements or personal property, they are all part of the telecommunication system and are used for or intended to be used for the sending of telecommunications.

The MGB noted the uncontested evidence of the Respondent's witness Forest that software and equipment may exist with the land owned by the client. The MGB accepts the testimony of Mr. Driscoll that a CRTC ruling directed the property of the telecom and cablecom stops at the property line of the client. The MGB believes this parallels the intent of section 284 (1) (k) (ii) B& C, that software within the client's parcel of land is not assessable as part of the cablecom or telecom property. This supports the contention that what is being assessed is only the system within the property of telecom and the cablecom. The context of the Act and the assessment of linear property to a specific linear property operator and the recognition that there is a sender and a receiver does not, in the view of the MGB, suggest that all the equipment and software held by the receiver or client is being assessed. For point of illustration and within a global context, the MGB does not interpret the Act as requiring that equipment and software located on a client/receiver's parcel of land in Europe receiving a telephone message or data transfer becomes part of the system referred to in the Act. The purpose of the linear property assessment in the context of a system is to assess the system of the sender or carrier. Although the receiver or client may have equipment and software on their parcel of land it is not this property that is being assessed to the telecom or cablecom. This would appear to the MGB to be consistent also with the CRTC decision referenced.

DMS Switch

The DMS switch is essentially a computer loaded with software and this software enables the DMS switch to perform a routing function enabling the telecommunication system to direct telephone calls to the proper recipient with all the normal or basic features associated with

BOARD ORDER: MGB 124/04

telephone service. The parties do not dispute that this is necessary for the transmission, emission or reception of telecommunications, as a telephone call is a form of telecommunications. The software loaded on a DMS switch can also provide a wide variety of optional features, however in recent years at least two of the optional features are now provided in conjunction with what used to be assumed to be basic service. The two additions to basic service are 911 Emergency and 411 Directory Assistance. Regardless, if a telephone subscriber wishes certain additional features such as Call Waiting, Caller ID, etc. they can subscribe to one or more of the many additional features available and by doing so can expand their telecommunication abilities. In addition, by offering the services, Telus is expanding its telecommunication system.

All the activated software loaded on a DMS switch, whether basic or feature software, is intended for or used in the transmission, emission or reception of telecommunication. The MGB, in regard to the subject complaints, is of the opinion that if used or intended for use in the transmission, emission or reception of telecommunications then they form part of the system's operation. The test is if something is used in or intended to be used in the system, not whether it is integral to a component of the system. It is possible for a component of the system to operate without a certain part whether it is hardware or software, however the test is not whether the system could still operate in some fashion, but whether the hardware or software is there because it is being used in the system or is there because it is intended to be used in the system. In the case of feature software, it is loaded on a DMS switch with the intent that it be used in the transmission, emission or reception of telecommunications, whether initially with the activation of the switch or at some future time when demand warrants its use. This being the case, all the components of a DMS switch, including all the software, are component costs in determining its assessed value.

Notwithstanding the use of the term license in the software license agreement, the substance of the agreement is a capital expenditure in the context of linear property assessment and the Ministerial Prescription. The evidence was that the license agreement expenditure is recorded as a capital expenditure cost for income tax purposes and CRTC rate application purposes. These agreements deal with both basic and feature software, which support that both are capital expenditures. Therefore, these costs are not within the meaning of license referred to as non-assessable in the CCRG/SPAG.

With respect to the issue of who is the assessed person, the MGB accepts that section 304 of the Act, specifically section (1)(i), fully addresses this matter. Simply stated, the operator of the linear property is the assessed person. Having found that all software is included within Telus' linear property and Telus being the operator of this linear property the assessed person can only be Telus.

SECTION FOUR - EQUITY

BACKGROUND

Under the procedures for establishing the valuation or assessment of linear property, the costs and the level of depreciation are prescribed for each type of equipment or type of service. For example, the components of a telecom system are depreciated based on a set schedule as compared to a cablecom which is to give a level of depreciation based on the number of actual subscribers compared to the number of potential subscribers. Because the depreciation rates are prescribed they may not necessarily relate exactly to the actual life of a component or two different types of depreciation may suggest unfairness between two different types of systems. The assessment procedures require the reporting of costs and the application of the various factors including the prescribed depreciation rates for each individual telecommunication system, telecom and cablecom.

OVERVIEW

The Complainant argued that the application of an age/life table to the DMS switch would be a more appropriate method to determine depreciation of a DMS switch. Depreciation based on an age/life table would provide for considerably more depreciation to the DMS switch than the schedule of depreciation allowed by the Minister's Guidelines. In support, the Complainant referenced the age life allowed by the Canadian Radio-television and Telecommunication Commission and the Income Tax Act thus the depreciation in the Minister's Guidelines are inequitable. The Complainant also suggested that the different method of determining depreciation between a telecom system and a cablecom undertaking creates an inequity. In addition, the inclusion of feature software in a telecom and not in a cablecom results in an inequity.

The Complainant submitted that if the MGB finds feature software to be assessable, a challenge still exists based on equity. The need for fairness and equity is compelling when it is clear that competitors are not bearing the same tax burden as exhibited in the depreciation schedules.

The Complainant submitted that for equity to apply, a taxpayer must be able to identify similar property. In the 1996 complaint, the Complainant also took the position that the assessment of application software was inequitable because similar software owned by other linear property holders was not assessed. While the MGB did not specifically address the matter, the Alberta Court of Appeal stated the MGB had implicitly dealt with equity. Based on the comments of the Alberta Court of Appeal, the Complainant submitted that a similar taxpayer would be one who owns or operates a telecommunication system. It is also the Complainant's position that comparable telecommunication systems need not be physically similar and should be interpreted as property of the same general nature.

BOARD ORDER: MGB 124/04

The Complainant argued that similar telecommunication companies, such as cablecoms, use software which functions in the same manner as Telus' feature software. In addition, Telus stated the licence fees it pays are of the same general nature as those paid by the cablecom for "Home Box Office" and other Pay Per View services. The Complainant is of the belief that the assessments of cablecom also does not reflect the investments cablecoms have made in data transfer equipment and software resulting in an inequity.

In order to deal with these equity issues this part of the order has been divided into two parts: Part A – Depreciation and Equity and Part B - Telecoms and Cablecoms.

PART A – DEPRECIATION AND EQUITY

ISSUES

1. Do the regulations prescribe required and additional depreciation?
2. Do the regulations prescribe additional depreciation for telecom systems?
3. Does the MGB have authority to grant additional depreciation?
4. If it has authority should the MGB apply additional depreciation? Does an inequity exist and if so what is the remedy? Should the MGB apply the depreciation factors used by the Canadian Radio-television and Telecommunication Commission or those prescribed in the Minister's Guidelines and Linear Property Assessment Manuals?
5. For each of the years under complaint are the depreciation factors the same? If not the same in which years does the MGB have discretion if any? If discretion exists, does an inequity exist and if so, should a remedy be granted? If yes, what is the remedy?

LEGISLATION

In order to deal with the issue of equity in the context of depreciation factors the MGB has examined in detail the following legislation relevant to the question of equity.

The DLA in section 292 of the Act (quoted in the early part of this Board Order) is directed to prepare the assessment of linear property according to the regulations.

Section 293 of the Act (quoted in the early part of this Board Order) provides the assessor with direction to apply the valuation standards and the procedures in the regulations in a fair and equitable manner.

BOARD ORDER: MGB 124/04

The Act limits the MGB’s ability to adjust an assessment.

499 (2) The Board must not alter

(a) any assessment that is fair and equitable, taking into consideration assessments of similar property in the same municipality,

As stated earlier in this Order the valuation standard for linear property is established in the *Matters Relating to Assessment and Taxation Regulation (AR 289/1999)* as being the procedures set out in the Alberta Linear Property Assessment Minister’s Guidelines.

The rules for depreciation for telecoms and cablecoms are the same for the year 2002 and 2001. The 2002 and 2001 Linear Property Assessment Manual set out depreciation and additional depreciation factors for each of the property types.

2002 Linear Property Assessment Manual	2001 Linear Property Assessment Manual
<p>3.000 SCHEDULE C – DEPRECIATION The depreciation factors described in Schedule C for linear property that is described in Schedule C are exhaustive.</p> <p>No additional depreciation can be applied except as specified in Schedule D.</p>	<p>3.000 SCHEDULE C – DEPRECIATION The depreciation factors described in Schedule C for linear property that is described in Schedule C are exhaustive.</p> <p>No additional depreciation can be applied except as specified in Schedule D.</p>
<p>3.003 TELECOMMUNICATION SYSTEMS DEPRECIATION FACTORS</p> <p>3.003.100 TELEPHONE SYSTEMS The depreciation factor for telephone systems is 0.75.</p> <p>3.003.200 CABLE TELEVISION SYSTEMS The depreciation factor for cable television systems is 0.75.</p>	<p>3.003 TELECOMMUNICATION SYSTEMS DEPRECIATION FACTORS</p> <p>3.003.100 TELEPHONE SYSTEMS The depreciation factor for telephone systems is 0.75.</p> <p>3.003.200 CABLE TELEVISION SYSTEMS The depreciation factor for cable television systems is 0.75.</p>
<p>4.000 SCHEDULE D – ADDITIONAL DEPRECIATION</p> <p>The additional depreciation for Linear Property in Schedule C, as specified in Schedule D, is exhaustive. No additional depreciation is to be given by the assessors.</p> <p>4.002 TELECOMMUNICATION SYSTEMS DEPRECIATION FACTORS</p>	<p>4.000 SCHEDULE D – ADDITIONAL DEPRECIATION</p> <p>The additional depreciation for Linear Property in Schedule C, as specified in Schedule D, is exhaustive. No additional depreciation is to be given by the assessors.</p> <p>4.002 TELECOMMUNICATION SYSTEMS DEPRECIATION FACTORS</p>

BOARD ORDER: MGB 124/04

2002 Linear Property Assessment Manual	2001 Linear Property Assessment Manual																																																
<p>4.002.100 Cable Television Systems</p> <p>Service Drops, Transmission and Distribution Line</p> <p>Additional depreciation of cable television systems shall be determined using the table and formula below.</p> <table border="0"> <thead> <tr> <th><u>Penetration Rate</u></th> <th><u>Depreciation Factor</u></th> </tr> </thead> <tbody> <tr><td>80 and above</td><td>1.00</td></tr> <tr><td>75 to 79.99</td><td>0.95</td></tr> <tr><td>70 to 74.99</td><td>0.90</td></tr> <tr><td>65 to 69.99</td><td>0.85</td></tr> <tr><td>60 to 64.99</td><td>0.80</td></tr> <tr><td>55 to 59.99</td><td>0.75</td></tr> <tr><td>50 to 54.99</td><td>0.70</td></tr> <tr><td>45 to 45.99</td><td>0.65</td></tr> <tr><td>40 to 44.99</td><td>0.60</td></tr> <tr><td>35 to 39.99</td><td>0.55</td></tr> <tr><td>Under 35</td><td>0.50</td></tr> </tbody> </table> <p>Note: Formula to Determine Penetration Rate Percentage =</p> <p>$\frac{\text{.. total operational services}}{\text{total services per cable system}} \times 100$</p>	<u>Penetration Rate</u>	<u>Depreciation Factor</u>	80 and above	1.00	75 to 79.99	0.95	70 to 74.99	0.90	65 to 69.99	0.85	60 to 64.99	0.80	55 to 59.99	0.75	50 to 54.99	0.70	45 to 45.99	0.65	40 to 44.99	0.60	35 to 39.99	0.55	Under 35	0.50	<p>4.002.100 Cable Television Systems</p> <p>Service Drops, Transmission and Distribution Line</p> <p>Additional depreciation of cable television systems shall be determined using the table and formula below.</p> <table border="0"> <thead> <tr> <th><u>Penetration Rate</u></th> <th><u>Depreciation Factor</u></th> </tr> </thead> <tbody> <tr><td>80 and above</td><td>1.00</td></tr> <tr><td>75 to 79.99</td><td>0.95</td></tr> <tr><td>70 to 74.99</td><td>0.90</td></tr> <tr><td>65 to 69.99</td><td>0.85</td></tr> <tr><td>60 to 64.99</td><td>0.80</td></tr> <tr><td>55 to 59.99</td><td>0.75</td></tr> <tr><td>50 to 54.99</td><td>0.70</td></tr> <tr><td>45 to 45.99</td><td>0.65</td></tr> <tr><td>40 to 44.99</td><td>0.60</td></tr> <tr><td>35 to 39.99</td><td>0.55</td></tr> <tr><td>Under 35</td><td>0.50</td></tr> </tbody> </table> <p>Note: Formula to Determine Penetration Rate Percentage =</p> <p>(total operational services divided by total services per cable system) x 100</p>	<u>Penetration Rate</u>	<u>Depreciation Factor</u>	80 and above	1.00	75 to 79.99	0.95	70 to 74.99	0.90	65 to 69.99	0.85	60 to 64.99	0.80	55 to 59.99	0.75	50 to 54.99	0.70	45 to 45.99	0.65	40 to 44.99	0.60	35 to 39.99	0.55	Under 35	0.50
<u>Penetration Rate</u>	<u>Depreciation Factor</u>																																																
80 and above	1.00																																																
75 to 79.99	0.95																																																
70 to 74.99	0.90																																																
65 to 69.99	0.85																																																
60 to 64.99	0.80																																																
55 to 59.99	0.75																																																
50 to 54.99	0.70																																																
45 to 45.99	0.65																																																
40 to 44.99	0.60																																																
35 to 39.99	0.55																																																
Under 35	0.50																																																
<u>Penetration Rate</u>	<u>Depreciation Factor</u>																																																
80 and above	1.00																																																
75 to 79.99	0.95																																																
70 to 74.99	0.90																																																
65 to 69.99	0.85																																																
60 to 64.99	0.80																																																
55 to 59.99	0.75																																																
50 to 54.99	0.70																																																
45 to 45.99	0.65																																																
40 to 44.99	0.60																																																
35 to 39.99	0.55																																																
Under 35	0.50																																																

For the 2000 and 1999 years the depreciation rules were as follows.

2000 Linear Property Assessment Manual	1999 Linear Property Assessment Manual
3.000 SCHEDULE C-DEPRECIATION	3. SCHEDULE C - DEPRECIATION
For linear property that is <u>not</u> described in Schedule C the depreciation factor shall be determined in a manner that is fair and equitable with the factors in Schedule C.	For linear property that is <u>not</u> described in Schedule C the depreciation factor shall be determined in a manner that is fair and equitable with the factors in Schedule C.
3.002 TELECOMMUNICATION SYSTEM DEPRECIATION FACTORS	3.2 TELECOMMUNICATION SYSTEMS
3.002.100 Telephone Systems The depreciation factor for telephone systems is 0.75.	3.2.1 Telephone Systems The depreciation factor for telephone systems is 0.75.
3.002.200 Cable Television Systems The depreciation factor for cable television systems is 0.75.	3.2.2 Cable Television Systems The depreciation factor for cable television systems is 0.75.

BOARD ORDER: MGB 124/04

<p>4.000 SCHEDULE D -ADDITIONAL DEPRECIATION</p> <p>4.002 TELECOMMUNICATION SYSTEMS DEPRECIATION FACTORS</p> <p>4.002.100 Cable Television Systems</p> <p>Service Drops, Transmission and Distribution Line</p> <p>Additional depreciation of cable television systems shall be determined using the table and the formula below.</p> <table border="1"> <thead> <tr> <th><u>Penetration Rate</u></th> <th><u>Depreciation Factor</u></th> </tr> </thead> <tbody> <tr><td>80 and above</td><td>1.00</td></tr> <tr><td>75 to 79.99</td><td>0.95</td></tr> <tr><td>70 to 74.99</td><td>0.90</td></tr> <tr><td>65 to 69.99</td><td>0.85</td></tr> <tr><td>60 to 64.99</td><td>0.80</td></tr> <tr><td>55 to 59.99</td><td>0.75</td></tr> <tr><td>50 to 54.99</td><td>0.70</td></tr> <tr><td>45 to 45.99</td><td>0.65</td></tr> <tr><td>40 to 44.99</td><td>0.60</td></tr> <tr><td>35 to 39.99</td><td>0.55</td></tr> <tr><td>Under 35</td><td>0.50</td></tr> </tbody> </table> <p>Note: Formula to Determine Penetration Rate = (total operational services divided by total services per cable system) x 100</p>	<u>Penetration Rate</u>	<u>Depreciation Factor</u>	80 and above	1.00	75 to 79.99	0.95	70 to 74.99	0.90	65 to 69.99	0.85	60 to 64.99	0.80	55 to 59.99	0.75	50 to 54.99	0.70	45 to 45.99	0.65	40 to 44.99	0.60	35 to 39.99	0.55	Under 35	0.50	<p>4. SCHEDULE D – ADDITIONAL DEPRECIATION</p> <p>4.2 TELECOMMUNICATION SYSTEMS</p> <p>4.2.1 Cable Television Systems</p> <p>4.2.1.1 Service Drops, Transmission and Distribution Line</p> <p>Additional depreciation of cable television systems shall be determined using the table and the formula below.</p> <table border="1"> <thead> <tr> <th><u>Penetration Rate</u></th> <th><u>Depreciation Factor</u></th> </tr> </thead> <tbody> <tr><td>80 and above</td><td>1.00</td></tr> <tr><td>75 to 79.99</td><td>0.95</td></tr> <tr><td>70 to 74.99</td><td>0.90</td></tr> <tr><td>65 to 69.99</td><td>0.85</td></tr> <tr><td>60 to 64.99</td><td>0.80</td></tr> <tr><td>55 to 59.99</td><td>0.75</td></tr> <tr><td>50 to 54.99</td><td>0.70</td></tr> <tr><td>45 to 45.99</td><td>0.65</td></tr> <tr><td>40 to 44.99</td><td>0.60</td></tr> <tr><td>35 to 39.99</td><td>0.55</td></tr> <tr><td>Under 35</td><td>0.50</td></tr> </tbody> </table> <p>Note: Formula to Determine Penetration Rate = (total operational services divided by total services per cable system) x 100</p>	<u>Penetration Rate</u>	<u>Depreciation Factor</u>	80 and above	1.00	75 to 79.99	0.95	70 to 74.99	0.90	65 to 69.99	0.85	60 to 64.99	0.80	55 to 59.99	0.75	50 to 54.99	0.70	45 to 45.99	0.65	40 to 44.99	0.60	35 to 39.99	0.55	Under 35	0.50
<u>Penetration Rate</u>	<u>Depreciation Factor</u>																																																
80 and above	1.00																																																
75 to 79.99	0.95																																																
70 to 74.99	0.90																																																
65 to 69.99	0.85																																																
60 to 64.99	0.80																																																
55 to 59.99	0.75																																																
50 to 54.99	0.70																																																
45 to 45.99	0.65																																																
40 to 44.99	0.60																																																
35 to 39.99	0.55																																																
Under 35	0.50																																																
<u>Penetration Rate</u>	<u>Depreciation Factor</u>																																																
80 and above	1.00																																																
75 to 79.99	0.95																																																
70 to 74.99	0.90																																																
65 to 69.99	0.85																																																
60 to 64.99	0.80																																																
55 to 59.99	0.75																																																
50 to 54.99	0.70																																																
45 to 45.99	0.65																																																
40 to 44.99	0.60																																																
35 to 39.99	0.55																																																
Under 35	0.50																																																

SUMMARY OF THE COMPLAINANT’S POSITION

Depreciation

The Complainant’s position is that if the MGB finds the Guidelines to have no effect, the current depreciation rate of 25% applicable to a DMS switch is inequitable in comparison to the additional depreciation granted to cablecoms based on penetration rate. For linear property assessments the current depreciation rate for a DMS switch is 25%, calculated on a gross assessment basis. It is the Complainant’s position that the depreciation should be based on an average service life of 10 years, which is appropriate and consistent with assessments of other linear property. The Complainant s suggested that the depreciation scheme should be more like that utilized by the CRTC. The Complainant emphasized the need to place priority on the achievement of equity.

SUMMARY OF THE RESPONDENT'S POSITION

Depreciation

The Respondent argued that the Complainant's request for additional depreciation amounts to a complaint about the assessment policy and is not a valid ground for complaint. Further, if the Guidelines do not allow for additional depreciation, then the MGB cannot change the assessment policy reflected in the legislation by granting additional depreciation.

The Respondent submitted the legislation allows the Minister to make Guidelines for the assessment of linear property, the Minister has done so and the Complainant cannot seek to amend the Guidelines by filing a complaint. The Respondent stated the linear property is valued using a regulated cost approach through the use of standardized costs with depreciation at fixed rates. The linear assessor has limited discretion and must follow the procedures in preparation of an assessment.

FINDINGS ON DEPRECIATION

1. Depreciation is prescribed for each of the years under complaint.
2. In all four years telecom systems and cablecom systems both receive an immediate and fixed depreciation of 25%.
3. In all four years additional depreciation is prescribed only for cablecom systems based on a penetration rate. There is no additional depreciation prescribed for telecom systems.
4. The DLA applied the depreciation according to the prescribed rules.
5. The MGB has no authority to deviate from the prescribed depreciation.

REASONS

The MGB agrees with the Respondent on the matter of depreciation. The Complainant is attempting to have the policies and rules on depreciation changed through the complaint process. As stated earlier in this decision these rules have been properly adopted and prescribed by the legislator, in this case the Minister. Therefore, it is the legislator who sets the rules not the MGB. It is within the full authority of the legislator to legislate and determine that telecom systems and cablecom systems will or will not be treated the same. It is not the role of the MGB to question this legislative direction. A complaint cannot be made to the MGB regarding that exercise of legislative authority. If The Complainant does not agree with these rules then the remedy is to approach the legislator and determine if Telus can influence a change in the legislation. Although the MGB found it of interest as to how the CRTC applies depreciation to telecom, the Act and

BOARD ORDER: MGB 124/04

the associated regulations provide the specific applicable legislation with respect to the application of depreciation to telecoms for the purposes of property assessments.

The MGB finds nothing ambiguous about the rules to be applied with respect to depreciation and finds no misinterpretation of the rules or misapplication or unfair application of the depreciation rules to the subject property by the DLA that would require the adjudicative attention of the MGB. The MGB observes that in the case of the 2001 and 2002 Linear Property Assessment Manual, Schedule C and D are very clear that the depreciation to be applied is exhaustive. Although the term ‘exhaustive’ is not used in the 1999 and 2000 Linear Property Assessment Manual in Schedule C and D, the MGB concludes the words mean the same. In the case of the 1999 and 2000 Manual discretion can be applied only to those types of linear property not described in Schedule C, however, telecoms are described in Schedule C. In the case of additional depreciation the reference to additional depreciation is to only cablecom systems and not other systems. The MGB examined all the depreciation schedules in the 1999 and 2000 Manuals and observed that if there is discretion to consider additional depreciation then that discretionary authority is clearly and precisely described, as is the case with power systems. This discretionary authority to provide additional depreciation for power systems is not extended to telecoms.

Although Board Order MGB 168/01 dealt with the matter of depreciation applied to pipelines it also enunciated the finding that depreciation is a matter of prescription and regulation and unless there is clear authority in the depreciation schedules to provide discretion for additional depreciation the rules must be strictly applied. MGB 168/01 also enunciated the limited role of the MGB to examine whether or not the DLA has applied the depreciation schedules properly. In this case the Complainant did not provide sufficient evidence or argument to convince the MGB that depreciation applied to the subject property is not strictly prescribed and regulated nor did the DLA improperly apply the prescribed depreciation regulations. As a result any question of equity within and between the various prescribed depreciation regulations is one which is in the domain of the legislators and not the MGB.

PART B – EQUITY BETWEEN TELEPHONE SYSTEMS AND CABLE SYSTEMS

OVERVIEW

The Complainant also raised the question of whether all cablecoms are reporting all their software costs. Telus referenced the cablecoms need for substantial software cost in operating the additional cable features such as movies on demand and Pay Per View and suggested that based on their level of assessment, the software costs needed to provide these features does not appear to be included. The Respondent argues that appropriate requests for cost reporting were made to both telecoms and cablecoms and there is no substantive evidence provided by The Complainant to suggest that cablecoms did not report their costs. Again the Respondent stresses that preparation of linear assessments for telecommunication systems is a regulated scheme, which prescribes different assessment procedures for telecoms and cablecoms. The Respondent

BOARD ORDER: MGB 124/04

contends that they followed all the prescribed procedures in preparing the assessments for both the subject and cablecoms.

ISSUES

1. Do telecom and cablecom systems operate the same or different software? Do each of the systems have similar equipment, software and associated costs?
2. Did the DLA apply the prescribed regulations to both systems in a fair and equitable manner?
3. Is further disclosure required?

Legislation

In order to decide these issues related to whether or not the subject property has been treated equitably with cablecoms the MGB examines in detail the specific prescriptions for the preparation of assessments for telecom and cablecom systems in addition to those sections of the Act, Regulations and Manuals previously referenced.

2002 MINISTER'S GUIDELINES FOR THE ASSESSMENT OF FARMLAND, LINEAR PROPERTY, MACHINERY AND EQUIPMENT, RAILWAY

2.004 Ministerial Prescription

For the purposes of these Guidelines and section 2 (b) of the Regulation, it is hereby prescribed that the cost of all computer software, including both basic software and applications software, intended for or used in connection with the monitoring, control or operation of an assessable property shall be included in the base cost of the property which is otherwise assessable.

PART 2: ALBERTA LINEAR PROPERTY ASSESSMENT MINISTER'S GUIDELINES

2.002 CALCULATION OF ASSESSMENT

The assessed value of linear property in a municipality, excluding wellsite land, shall be calculated by:

- (a) establishing the base cost as prescribed in Schedule A of the *2002 Alberta Linear Property Assessment Manual*;
- (b) multiplying the base cost by the appropriated Assessment Year Modifier prescribed in Schedule B of the *2002 Alberta Linear Property Assessment Manual*, to adjust the base cost to the assessment year;

BOARD ORDER: MGB 124/04

- (c) multiplying the amount determined in clause (b) for the appropriate depreciation as prescribed in Schedule C of the *2002 Alberta Linear Property Assessment Manual*;
- (d) if applicable, adjusting the amount determined in clause (c) for additional depreciation as prescribed in Schedule D of the *2002 Alberta Linear Property Assessment Manual*.

2002 ALBERTA LINEAR PROPERTY ASSESSMENT MANUAL

- 1.000 SCHEDULE A –BASE COST
- 1.001.200 Table 2 – Cost Factors for Telecommunication Systems
- 1.001.300 Table 3 – Cost Factors for Cable Television Systems

For brevity the Cost Factor Tables are not duplicated. For some years of construction the cost factor is the same for telecom and cablecom and for some years the cost factors are different. The table for Telecommunications Systems identifies that Cable Television Systems are not included.

- 1.004 TELECOMMUNICATION SYSTEMS
- 1.004.100 Cable Television Systems
- 1.004.200 Transmission and Distribution Lines

Formula: Base Cost = n X rate per metre in each component type
Where n = length in metre(s) in each component type

Code	Component Type	Rate Per Metre (\$)
CTD 10	Trunk Line 0 to 13 mm	6.17
CTD 20	Trunk Line 14 to 19 mm	7.00
CTD 30	Trunk Line 20 to 25 mm	8.85
CTD 40	Joint Trunk Line 13 mm with 13 mm Distribution Line	10.56
CTD 50	Joint Trunk Line 19 mm with 13 mm Distribution Line	11.15
CTD 60	Additional Trunk Line to existing Trunk Line 13mm	3.08
CTD 70	Additional Trunk Line to existing Trunk Line 19mm	3.50
CTD 80	Additional Trunk Line to existing Trunk Line 25mm	4.42
CTD 90	Distribution Line 10 mm	8.55
CTD100	Distribution Line 13 mm	8.70

- 1.004.300 Service Hookups

Formula: Base Cost = n X rate per customer hookup in each component type
Where n = the number of customer hookups in each component type

BOARD ORDER: MGB 124/04

Code	Component Type	Rate Per Customer Hookup (\$)
CSH 10	Single Service Drop	45.00
CSH 20	Service Drops Within a building	32.00

1.004.400 Cable Headend Equipment

Formula: Base Cost = n X rate per channel in the applicable component type
 Where n = number of channels in the applicable component type

Code	Component Type	Rate Per Channel (\$)
CHD 10	Under 2000 Subscribers	1000
CHD 20	2001 to 6000 Subscribers	2000
CHD 30	Over 6000 Subscribers	5000

Note: Rates are based on a 6 Mhz analog channel

2.000 SCHEDULE B – ASSESSMENT YEAR MODIFIERS

2.002 TELECOMMUNICATION SYSTEMS (TM, CM)

Code	Property Type	Year	Assessment Year Modifier
TM 02	Telecommunications Systems	2002	0.99
CM 02	Cable Television Systems	2002	1.03

The depreciation schedules have been described in detail in the discussion on equity and depreciation and are not repeated in this part of the order. Also for purposes of brevity the applicable parts of the Linear Assessment Manuals for 2001, 2000 and 1999 have not been repeated. Each of the years have the same similar structure and rules to those quoted above for 2002. It is important to note that the Manuals for 2001, 2000, and 1999 had the same Ministerial Prescription with respect to basic and feature software included.

In addition to the Manuals, the MGB examined the Linear Property Assessment Reporting Information Handbooks for 2002, 2001, 2000 and 1999. As a result of the fact that the format of the handbook changed for each of the years these materials are not duplicated in this order.

BOARD ORDER: MGB 124/04

2002 ALBERTA CONSTRUCTION COST REPORTING GUIDE

1.000 COST TO BE INCLUDED IN DETERMINING ASSESSABLE COSTS

The costs of construction reported by the company to the assessor are the actual expenditures made in constructing the facility as referenced in the agreement with the contractor or as incurred directly by the company.

Costs include both direct and indirect costs.

2.000 COSTS TO BE EXCLUDED IN DETERMINING ASSESSABLE COSTS

2.400.100 Royalties, Licenses and Patent Fees

The payments made for the right to use particular processes are excluded.

2.400.900 Computer Costs

Hardware and software computer costs that are not used, or intended to be used, as part of or in connection with the property being assessed, but are necessary to support the business activities carried on at the facility, such as accounting and personnel, are excluded.

Linear property owners were also supplied with an interpretive guide in 2002.

INTERPRETIVE GUIDE TO APPENDIX V OF THE CONSOLIDATION OF 2002 MINISTER'S GUIDELINES

REPORTING CONSTRUCTION COSTS

STANDARDS FOR REPORTING COSTS

The following standards are presented as minimum requirements for reporting construction costs:

- All construction costs should be reported. The company representative should note those costs that the company believes should be excluded from the assessment and cite the appropriate section of this guide or provide a full explanation for the exclusion.

BOARD ORDER: MGB 124/04

INCLUDED COSTS

COMPUTER COSTS

The computer costs, hardware and software, incurred during construction to monitor and control construction are included.

The computer costs, hardware and software that are an integral part of an operation unit, for example incurred to monitor, operate and/or control processing systems and equipment, are included. *(See also: Excluded Computer costs, page 10-13.)*

EXCLUDED COSTS

COMPUTER COSTS

The computer costs, hardware and software, not required to operate the facility but necessary to support the business activities carried on at the facility, for example accounting and personnel are excluded. *(See also Included Computer Costs, page 10-10.)*

In 2000 and 1999 the linear property owner was given access to the SPECIAL PROPERTY ASSESSMENT GUIDE (SPAG) which provided the following guidance in determining costs.

SECTION II ASSESSABLE COSTS

(10) Computer Costs

Costs of hardware and software, either owned or leased which are used to monitor or control Machinery and Equipment that form an integral part of an operational unit. See also Computer Costs, Section III, Item (15).

SECTION III NON-ASSESSABLE COSTS

(15) Computer Costs

Computer costs incurred exclusively for accounting functions or other functions that are not part of the manufacturing or processing operation. See also Computer Costs, Section II, Item (10).

COMPLAINANT'S POSITION

The Complainant argued the Ministerial Prescription is inherently inequitable because the prescription directs that the cost of feature software be in the assessment. Cost is not defined

BOARD ORDER: MGB 124/04

except in the Interpretive Guide to the Guidelines as the “sum of money expended in obtaining an object”. In the subject complaints, the money expended for software is the licence fee, which is not assessable. Telus is left without guidance as to how to compute the cost of the feature software. The Complainant argued that the Minister takes the position that a DMS switch is more valuable with feature software and while licence fees are not assessable, value is nevertheless added to the DMS switch.

The Ministerial Prescription is an attempt to capture the incremental increase in value of the DMS switch when feature software is activated. However, the Complainant submitted that without any standard for the capture of this value, how is a linear taxpayer to obtain an equitable assessment for feature software? In summary, the system of valuing feature software, to the extent there is one at all, is inherently inequitable as it allows the taxpayer to select the valuation method of their own choosing without verification to ensure equitable treatment.

The Complainant submitted the Minister purports to achieve equity because the same standard form letters requesting reporting is sent to all linear property taxpayers. Regardless of how the taxpayer responds, the Minister suggests equity is achieved because the same request is sent. If the MGB accepts this principal, then equity is rendered virtually meaningless because the test is not equitable assessment but an equitable request, no matter what response it receives.

The Complainant submitted that cablecoms are one example of an industry expanding into areas other than the traditional cable services. It is the Complainant’s position that there are numerous examples (e.g. Shaw) paying licence fees or using software analogous to feature software without being subject to linear property assessment. In support of this position, The Complainant suggested that significant licence fees are paid for software to provide cable, data, and internet services. A review of the assessment history of cablecoms indicates that they have received preferential treatment. They are assessed based on typical costs for a basic cablecom system, which does not include any amount for feature software.

In support of this position, the Complainant submitted that up to 2002, cablecoms were reporting based on a different handbook than telecoms. The handbook for cable reporting was based on 1992 rates and even with the combined or consolidated handbook for 2002, preferential treatment is given to cablecoms as they are only required to report specifically enumerated linear property. The effect is that for cablecoms the licence fees paid by such taxpayers for feature software have been exempt from assessment.

Telus chooses Shaw, a cable undertaking in the City of Calgary, as representative of the non-reporting of software costs. The argument raised by the Complainant is that the amount of assessment for Shaw in Calgary is considerably less than Telus’ assessment in Calgary and, therefore, an inequity exists. The position of the Complainant is that in order to provide the added features such as Movies on Demand or Pay Per View programming, Shaw operates switching equipment similar to a DMS switch, in that its operation is controlled and managed by computer software. The Complainant argued that given the size of the assessment generated by

BOARD ORDER: MGB 124/04

the software costs associated with a DMS switch, there should be some relationship with the assessment of Shaw's switching equipment. As there is no relationship between Telus' assessment in Calgary and Shaw's assessment, the Complainant requested the MGB direct that a representative of Shaw appear and give evidence as to the what is reported to the DLA.

RESPONDENT'S POSITION

The Respondent emphasized the need to examine the question of equity within the context of the creation within the legislation of two sub-sets of telecommunication systems, one being telecoms and the other being cablecoms. The regulations develop two separate and distinctive procedures for assessing each system therefore the question of equity can be compared only between like telecommunication carriers and not between a telecom and a cablecom.

The Respondent submitted that the main theories of the Complainant are that cablecoms are similar property to telecoms, feature software is found in a cablecom and is not assessed and Telus is assessed for license fees while cablecoms pay similar licence fees but they are not assessed. However, the Respondent submitted that the Complainant did not provide any evidence in support of these theories.

The Respondent argued that what the Complainant did provide is a reference to "middleware" software and implies that this software is similar to the software used in a telecommunication system by a DMS switch. The Respondent submitted that this software is used to support the business activities such as accounting and personnel and are excluded from the calculation of base costs. Further, that while telecoms and cablecoms are both telecommunication systems as recognized by section 284(1)(k(ii)), the section also acknowledges the subsets of this property type. The Respondent submitted that none of the Complainant's evidence supports the theory that a cablecom uses the same type of software used in the systems of a telecom.

The Respondent testified that all linear property owners including telecom companies and cablecoms were requested to submit their reported cost information and all received the various handbooks and cost guides. The Respondent also testified that all the cost and depreciation factors were applied as required in the Manuals.

The Respondent's witness, Mr. Forest clarified that the equipment, software and associated costs within a telecom are substantially different than the equipment, software and associated costs used by a cablecom, thus the significant difference in the assessment between the two systems. The Respondent's witness, Mr. Driscoll emphasized that in his view the feature software used by Telus enhanced and changed the nature of the equipment in contrast to the software used by the cablecom to provide additional product (e.g. videos, movies etc.) which runs through the lines but does not enhance or change how the equipment can function. With respect to the reference to the recent investments by Shaw, the Respondent indicated that these investments are very recent and if there is assessable property within these investments, these assessable costs will show up in future years' assessments with respect to the data subsidiary of Shaw being Big Pipe.

BOARD ORDER: MGB 124/04

If an equity comparison could be made, the request for an equity remedy must be prefaced by Telus fully complying with all the cost reporting requirements to ensure the starting point of comparison is a sound basis for examination of equity. The Respondent suggests that there may be evidence that Telus is not at a sound starting point to claim an equity remedy. An equity remedy must be prefaced by “clean hands”.

Motions

The Complainant, as part of their presentation, introduced a motion requesting the MGB to cause a representative of Shaw to be served notice to attend the hearing and provide information respecting the reporting of linear property by Shaw. The MGB reserved its decision in this matter pending the completion of the evidence and argument.

The Respondent, as part of their response to the presentation of the Complainant, introduced a motion requesting the MGB to cause Telus to be served notice to produce costing information for their linear property. The MGB reserved its decision in this matter pending the completion of the evidence and argument.

FINDINGS

1. Cablecoms operate different equipment and software than telecoms, and so are not similar properties.
2. Ministerial rules prescribe different cost and depreciation factors for telecom and cablecom systems.

REASONS

The MGB recognizes that the Act identifies both telecom and cablecom within the definition of telecommunication systems and therefore from this broad context the two systems are similar. However, the assessment rules established for both systems are different. The MGB accepts the explanation of the Respondent’s witness, Mr. Driscoll, that there are clearly two regulated procedures, one for telecoms and one for cablecoms and a plain reading of the Guidelines reaches the same conclusion. An examination of equity can be made only between like regulated systems. As a result the MGB accepts the argument that Telus’ property and related assessments can be compared only to like telecoms (e.g. GT Group Telecom, Bell, etc.) and not to other cablecoms (e.g. Shaw). If there are different results created by the assessment rules applied to telecom and cablecom then these results have been specifically legislated. The role of the MGB is not to question the legislated rules.

In addition, the evidence from the parties illustrates that although the two systems traditionally provided different services, the lines have blurred as technology changes, both systems are now

BOARD ORDER: MGB 124/04

offering some of the same services. The evidence from the parties leads the MGB to conclude that although the systems may have some similar equipment there are significant amounts of equipment and software which are dissimilar and have significantly differing costs. The MGB places considerable weight in the testimony of the Respondent's witness, Mr. Forest, who explained that the equipment and software used by the two systems is significantly different. The Complainant's witness, Mr. Carozza, also indicated that although telecom and cablecom have similar broadcast means the technologies are different. As indicated by the Respondent's witness, Mr. Forest, cablecom is typically a one-way system whereas telecom is a two-way system. There is no switching in a one-way cablecom, it is one way to a multi-point system and there is no switching required. "The cablecom system is straight forward and simple, and runs on a PC rather than a DMS switch." There is a significant cost difference between the cablecom software and the telecom software. "The cablecom software is in the order of \$2,000-\$3,000 whereas the software associated with the DMS switch within a telecom system is in the range of \$2 to \$3 million or more for 40 switches."

As indicated by the Respondent's witness, Mr. Forest, in the case of Video on Demand the technology and equipment are at the edge of the network, in the set top box in the client's home or business. With respect to cablecom a good deal of the software is included within the set top box which is in the home of the subscriber and is not assessed as part of the telecommunication system just like the telephone and related equipment within the home of the telecom subscriber is not assessed as it is not in the systems property but within the client's property. The Respondent's witness, Mr. Driscoll, the DLA, confirmed this assessment practice and explained that pursuant to a CRTC decision the wire in the home owner's house no longer belongs to Telus or Shaw and so it is not the property of the telecom or cablecom company.

With regard to data transfer the MGB placed significant weight on the Respondent's witness Forest. In the case of data transfer, a two-way system is needed, however, it is not symmetric like telecom and the equipment does not necessarily reside in the head end equipment but rather in the set top box or similar device in the client's home or business. With respect to data transfer the Respondent's witness did agree that a two-way system was needed unlike cablevision distribution, however, the data switch used in the case of a cablecom is different and the costs are significantly different from the DMS switch used by a telecom. According to the witness a DMS switch can cost up to \$500 per port, or for a 20,000 line switch in the neighbourhood of \$10 million compared to \$35 to \$40 per port for a 30 to 40 port switch in the thousands of dollars for cablecom data transfer. The DMS switch is far more "robust" than the data base switch.

Although the Complainant did point out that they were making comparisons to Shaw and the Respondent's witness, Mr. Forest, was not aware in any detail of the equipment and software used specifically by Shaw, the MGB found the testimony of Mr. Forest and his knowledge of the telecommunication industry to be worthy of significant weight.

The Complainant argued that the costs and fees for channel content such as Super Channel and Home Box Office were not included in the assessed costs of the cablecom and since the licence

BOARD ORDER: MGB 124/04

fees for feature software were included for Telus' property an inequity existed. The MGB does not accept this argument and places weight on the testimony of the Respondent's witness, Mr. Driscoll, on this matter. Based on the testimony of Mr. Driscoll the Shaw expenditures on movies (e.g. Super Channel, Home Box Office etc.) are post construction costs and therefore are not assessable costs. The MGB agrees with the analogy of Mr. Driscoll that the movie content is similar to adding oil product to an existing pipeline and this product is not assessable. In contrast the MGB heard that feature software and the associated licence fees are capitalized and add capacity and further utility to the system rather than just adding content.

Mr. Driscoll indicated that if there is assessable property associated with recently new investments by Shaw, as referenced by the Complainant, these investments if they contain assessable costs associated with linear property will show up in upcoming years assessments under the new data subsidiary of Shaw, Big Pipe. In previous years this data function was associated with Shaw Fiberlink. In consideration of all the evidence and argument, the MGB finds the quotation of newspaper clippings and the presence of large office structures and associated expenditures related to Shaw insufficient to outweigh the more specific and relevant evidence of the Respondent and insufficient to generate further disclosure or inquiry into the matter.

Within the differences in equipment, software and associated costs between telecom and cablecom and the different treatment in the regulations, the MGB does not find in the submission by the Complainant that the assessment submitted by Shaw is too low and illustrates an inequity. The MGB also examined the volumes of assessment sheets for Shaw and observed that very few of these locations had headend equipment and thus served little purpose in illustrating the software associated with headend equipment was inappropriately assessed. At best this evidence illustrates to the MGB that there is a difference in equipment and associated software costs and this does not lead to a conclusion that the DLA has prepared the assessment for the subject property in an unfair and inequitable manner. The evidence of the Complainant was insufficient to alter a similar conclusion reached in Board Order MGB 135/03.

If the MGB accepted the argument of the Complainant it would require the DLA and this Board to ignore the clear prescribed rules and regulations which treat telecom and cablecom as individual systems. Again the MGB accepts the argument of the Respondent that the Complainant is attempting to have the policy changed since the regulations identify different cost factors and depreciation rates, and different equipment, which after being applied will have different results. In the context of Bramalea Ltd. vs. British Columbia (Assessor for Area 9 (Vancouver)) 76 D.L.R. (4th) 53 (Bramalea) the MGB views these different cost factors and depreciation factors as expressed legislative authority to treat telecom and cablecom entities individually.

As stated within the reasons related to equity and depreciation factors the legislator has the right to legislate and if the legislator decides to apply different rates and factors to different types of telecommunication systems and to recognize different equipment it is not within the mandate of

BOARD ORDER: MGB 124/04

the MGB to question that legislative action or the results that the legislative action may achieve. Thus within this context the MGB is not prepared to accept the motion of the Complainant to seek disclosure from one cable company (e.g. Shaw) when the only matter under complaint is a telecom and not a cablecom. As well, within this context the MGB cannot accept the motion of the Respondent to have the Complainant disclose further information on how Telus prepared their costing report when the DLA has already accepted the costing report and prepared the assessment.

The MGB did scrutinize and examine the testimony of the Respondent as to its procedures and methods used to obtain information for the costing report submitted by the telecom and cablecom systems, specifically as it applies to the contentious issue of feature software and the associated costs. The MGB concludes that these report requests must be prefaced by the examination of the Ministerial Prescription related to software, which appears in all the years under complaint.

“For the purposes of these Guidelines and section 2(b) of the Regulation, it is hereby prescribed that the cost of all computer software, including both basic software and applications software, intended for or used in connection with the monitoring, control or operation of an assessable property shall be included in the base cost of the property which is otherwise assessable.”

The MGB, having determined that this prescription was properly adopted and does apply to each year under complaint, accepts that the prescription is clear and that all basic and feature software costs must be included in any reporting for the years under complaint. The MGB accepts the testimony of the Respondent that an information request was made to all telecommunication systems including all telecom and cablecom systems and that all factors were applied correctly to both systems.

Attached to the information request was a Linear Property Assessment Reporting Information Handbook. That handbook also references the Alberta Linear Property Assessment Minister’s Guidelines in which the above Ministerial Prescription is contained.

The MGB accepts the direction as the reporting for cablevision companies is clear and follows through on the properly adopted Ministerial Prescription related to computer software. For the other years under complaint the MGB observes that the format of the Handbooks have changed but does not find any significant difference in the handbook which would lead to a different conclusion especially in light of the Ministerial Prescription which applied to all years without change.

Further to these information handbooks, the DLA provides the telecom and cablecom providers and other reporting entities with costing manuals. Handbooks and costing manuals combined with all the referenced legislation and the key overarching Ministerial Prescription related to the inclusion of feature software was provided by the DLA to both the Complainant and cablecoms. This body of information convinces the MGB that the DLA provided sufficient information and

BOARD ORDER: MGB 124/04

guidance to the reporting entities and in sufficient clarity to ensure the capital expenditures for feature software would be included in the reported costs.

The principles of equity enunciated in Bramalea are in the forefront of the MGB's analysis in these specific equity issues and, as a result, the MGB reviewed in great detail the argument and evidence of the Complainant and the Respondent related to the claim of inequity. Bramalea enunciates that when a taxpayer is in competition with another business in the same class, fairness in taxation is paramount unless the legislative authority instructs otherwise. The MGB also observes that the Bramalea case is grounded in a fact scenario testing the valuation standard of market value whereas the valuation standard in this case is regulated rates. Nonetheless, the MGB recognizes that the fundamental concept of fairness in assessment procedures must be upheld and all the evidence must be reviewed in this context. Based on the balance of the evidence, the MGB is satisfied that fairness has been achieved in the DLA's application of the prescribed regulated rates and processes.

DECISION

The complaint is rejected on all grounds and the assessments are confirmed for each of the years under complaint.

SUMMARY

After reviewing all the volumes of evidence and argument and then stepping back and viewing the evidence and argument of the Complainant in its totality, the MGB agrees with the Respondent that the bulk of this complaint is grounded in a disagreement with established legislation. The venue to change regulation rests before the legislator and not this Board.

Based on past decisions of tribunals and courts the legislator has the right to change or clarify laws, regulations and rules. As a result of the 1999 decision on the 1996 assessment of feature software regarding the subject property the rules were clarified and feature software for the years under complaint are clearly linear property and assessable. The MGB has concluded that the facts in the subject case and the argument are different from the 1999 decision and, more importantly, that the legislative framework has been clarified to include feature software costs. The MGB has found that the Ministerial Prescription and the Ministerial Guidelines are not an improper sub-delegation of authority, resulting in the inclusion of both basic and feature software costs as a component cost of the DMS switch. If the DMS switch or the feature software is not machinery and equipment, then feature software is included in the broader definition of a telecommunication system as something intended for or used in the communication system of a telecommunication carrier.

The application of depreciation and additional depreciation is prescribed and limits are placed on the discretion of the DLA and this Board, therefore this Board has no ability to apply additional depreciation. While the MGB found that both telecom and cablecom systems are

BOARD ORDER: MGB 124/04

telecommunication systems pursuant to the definition in the Act and that they provide some similar services, the nature of the equipment and the costs in each system can be significantly different which, when combined with the differing regulated factors and processes, will achieve a different result.

Thus the MGB is satisfied that Telus' assessment correctly includes feature software costs, is equitable with other like properties based on the evidence before it, and was prepared within the rules that apply to telecoms. Since the assessment of telecommunications systems is based on a reporting system pursuant to section 292 of the Act and on the application of prescribed rates, both parties have a significant responsibility in the preparation of linear property assessment for a telecommunication system. The property owner must supply accurate costing information and the DLA must accurately apply the different rates and processes. As a general observation the MGB would encourage the parties to explore additional systems to enhance the transparency of the linear property assessment process for telecommunication systems and to continue to develop systems which adapt and respond quickly to the rapidly changing technological world.

No costs to either party.

Dated at the City of Edmonton, in the Province of Alberta, this 21st day of December 2004.

MUNICIPAL GOVERNMENT BOARD

(SGD) D. Thomas, Presiding Officer

APPENDIX "A"

APPEARANCES

NAME	CAPACITY
A. L. Friend	Solicitor for the Complainant
G. Johnson	Solicitor for the Complainant
K. Shaw	Witness for the Complainant
Ms. M. Cosentino-Fast	Witness for the Complainant
R. Defleming	Witness for the Complainant
J. Webster	Witness for the Complainant
D. Carozza	Witness for the Complainant
B. A. Sjolie	Solicitor for the Respondent
Ms. C. M. Zukiwski	Solicitor for the Respondent
Ms. K. J. Durkin	Solicitor for the Respondent
D. Driscoll	Witness for the Respondent
M. Forest	Witness for the Respondent
Ms. I. Johnson	Solicitor representing the City of Edmonton
Ms. S. Trylinski	Solicitor representing the City of Calgary
W. W. Barclay	Solicitor representing AUMA
J. McGowan	Witness representing AUMA

APPENDIX "B"

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE MGB:

NO.	ITEM
Exhibit 1	Preliminary Argument of Telus Communications Inc.
Exhibit 2	Complainant's Will Say Statements
Exhibit 3	Complainant's Report of Ken Shaw
Exhibit 4	Complainant's Table of Authorities (Volume 1 of 4)
Exhibit 5	Complainant's Table of Authorities (Volume 2 of 4)
Exhibit 6	Complainant's Table of Authorities (Volume 3 of 4)
Exhibit 7	Complainant's Table of Authorities (Volume 4 of 4)
Exhibit 8	Rebuttal Argument of Telus
Exhibit 9	Minister's Request for Additional Disclosure (Volume 1 of 4)
Exhibit 10	Minister's Request for Additional Disclosure (Volume 2 of 4)
Exhibit 11	Minister's Request for Additional Disclosure (Volume 3 of 4)
Exhibit 12	Minister's Request for Additional Disclosure (Volume 4 of 4)

BOARD ORDER: MGB 124/04

Exhibit 13	Reply Statement of Rick Defleming in Response to Statement of Miro Forest
Exhibit 14	Reply Statement of Dino Carozza
Exhibit 15	Hamilton Case
Exhibit 16	Report of Miro Forest
Exhibit 17	Report of Dan Driscoll
Exhibit 18	Supplementary Report of Dan Driscoll
Exhibit 19	Respondent's Argument
Exhibit 20	Respondent's Volume of Authorities, Volume 1
Exhibit 21	Respondent's Volume of Authorities Relating to Appendix 5 of Main Argument
Exhibit 22	Respondent's Volume of Authorities that Relate to Appendices 2 and 3 of Main Argument, Volume 3
Exhibit 23	Respondent's Volume of Legislation Volume 4
Exhibit 24	Respondent's Volume of Legislation Volume 4(a)
Exhibit 25	List of Documents Prepared for the June 19, 2003 Preliminary Hearing
Exhibit 26	List of Documents Prepared for the August 7, 2003 Preliminary Hearing with Inserted Correspondence
Exhibit 27	Documents Prepared for October 2, 2003 Preliminary Hearing
Exhibit 28	Package of Correspondence from Brownlee Fryett Dated October 31, 2003
Exhibit 29	List of Correspondence Attached to October 31, 2003 Brownlee Fryett Letter
Exhibit 30	Notice of Intervention by the City of Edmonton
Exhibit 31	Will Say Statement of Ernie Patterson
Exhibit 32	Document Titled American Society of Appraisers – Appraisal Disciplines
Exhibit 33	Machinery and Equipment Comparison Sheet
Exhibit 34	Linear Property Assessment Unit Telecommunications and Electric Power Section Business Operations Guide for Tax Year 2001
Exhibit 35	Pages 20, 21, 22, and 23 of The Municipal Taxation Act
Exhibit 36	Statutes of Alberta 1990
Exhibit 37	Document Titled Liberate Technologies--Solutions
Exhibit 38	Document Titled Liberate Solutions for MHP
Exhibit 39	Sheet Titled Assessment in 2001 for Taxation in 2002 Tax Payers Assessed Pursuant to Section 284(1)(k)(ii)
Exhibit 40	Rebuttal Evidence of Maria Cosentino-Fast
Exhibit 41	Method Study on DMS-100 Local Switch

BOARD ORDER: MGB 124/04

“APPENDIX C”

LIST OF PROPERTIES UNDER COMPLAINT AND IMPACTED MUNICIPALITIES

Due to the volume of records for each year under complaint, the list of specific properties and the list of impacted municipalities is not included within this Order. A list can be obtained from the Edmonton offices of the MGB.