

BOARD ORDER: MGB 135/03

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 A 2001 (tax year) and a 2002 (tax year) complaint about certain properties assessed as linear property by the Linear Assessor

BETWEEN:

GT Group Telecom Services Corp., represented by Bennett Jones - Complainant

- a n d -

The Department of Alberta Municipal Affairs and the Designated Linear Assessor of the Province of Alberta, represented by Brownlee Fryett – Respondent

- a n d -

City of Calgary and City of Edmonton - Intervenors

BEFORE:

Members:

C. Bethune, Presiding Officer

T. Biggs, Member

N. Dennis, Member

Secretariat:

D. Woolsey

Upon notice being given to the affected parties, a hearing was held in the City of Calgary, in the Province of Alberta commencing January 20, 2003.

This is a complaint to the Municipal Government Board (MGB) about linear assessments entered on the assessment roll for linear property by the Linear Assessor as contained in Appendix “C” and “D”.

DECISION HISTORY

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This order forms the second part of the decision on the linear property assessment complaints filed by GT Group Telecom Services Corp. (GT). On April 28, 2003 the MGB issued Board Order MGB 059/03 ruling that the subject property, known as data assets, is linear property and is assessable. As the MGB has addressed the issue of whether or not data equipment is assessable, this decision will be restricted to the second issue of equity in the assessment of data equipment.

OVERVIEW

In addition to the issue of whether or not the equipment and lines used for the transmission of data is assessable as linear property, the Complainant raised the issue that if assessable as linear property, the assessment is not fair or equitable in comparison to cable television companies providing a similar service in addition to the television/movie service. Nor is it equitable with companies providing only data service. The basis for the complaint is that a review of assessments for cable television providers offering data service do not include the same equipment for which the Complainant is assessed and in the case of only data service, no assessment appears. To address this issue the parties relied on a comparison with cable television providers who also provide a data service and companies providing only data service. As a comparison to cable television providers the parties used Shaw's cable system in Calgary as an example and the newly created Big Pipe data system as the example for companies providing only data service.

To further provide the context for this complaint, the total assessment for GT in the City of Calgary is approximately \$24 million compared to the approximately \$35 million assessment in the City of Calgary for the Shaw cable television system that includes a data component.

BACKGROUND

General

GT filed linear property assessment complaints for the tax years 2001 and 2002. With the consent of the parties, these complaints were heard together. GT is a local carrier of data and voice services which include Local Area Network (LAN) connect services for data networking, internet gateway access, individual and multiple-user business voice and "fax" lines, and data application services such as private networking.

GT operates equipment that, for this decision, can be divided into two types: telephone lines plus equipment for telephone and fax services; and the data lines and equipment used for Internet and network services. Colloquially, the telephone system is called "Voice Assets" and the data system is called "Data Assets". Generally speaking there are a number of systems similar to that operated by GT and they are assessed in a similar fashion as GT. The question of inequity arises in relation to cable

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television companies which offer, as an additional service, Internet and network services; as well as companies entering the field of data service that are not assessed.

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Request For Additional Information

Further to the hearing, on April 3, 2003 the MGB requested the Designated Linear Assessor (DLA) to respond to written questions from the MGB to determine what instructions were provided to all linear property owners and more specifically to cable and telecommunications companies for reporting their linear property inventory. The DLA replied on April 24, 2003 and the Complainant was given an opportunity to respond to this information and did so on May 2, 2003. Further to the receipt of this information the MGB, on May 16, 2003, asked for an explanation of the DLA's response. The DLA replied June 2, 2003 and again the Complainant was given opportunity for a response to this information and did so on June 6, 2003.

Handbooks

The preparation of assessments for telecommunications linear property is a self-reporting system. In general the DLA makes a request to the linear property owners and the information received in response to this request is used to prepare the assessment. In order to facilitate this self-reporting requirement, the DLA had established for the 2001 tax year two separate handbooks: one for the telecommunication reporting and one for the cable television reporting. For the 2002 tax year the DLA issued a combined Handbook for both telecommunication reporting and cable television reporting. Although a combined Handbook, a distinction was still made between the two systems.

Complainants Request for Information

At the outset of the hearing the Complainant made a request, pursuant to Section 497 of the Act, for the production of certain information by the Respondent and/or persons in the employ of the Respondent, as well as the City of Calgary and the City of Edmonton, intervening in the matter. The MGB decided that it could not determine the relevancy of or the need for the information without the context provided by the evidence and argument of the parties respecting the merits of the complaints. Therefore, the MGB reserved its decision. The decision in this matter can be found at the conclusion of this Board Order.

ISSUES

1. Given the use of actual costs, standardized costs and regulated rates within the linear property assessment scheme, can an inequity exist?
2. While telecommunication systems and cable television systems do provide, in part, a similar service, are the physical parts of the system similar?

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3. If the physical parts are similar, do both systems require the equipment to a similar degree?
4. If the physical parts are similar and required to a similar degree, are cable companies reporting the equipment?
5. If not reporting the equipment is the non-reporting a result of the direction given in the Handbook/s provided by the Respondent?
6. If the Handbook/s require the reporting of all linear equipment, are cable companies not reporting as required?
7. If not reporting as required, is this an isolated error or is the non-reporting a systemic` problem?
8. If non-reporting is systemic, what is the appropriate remedy?

LEGISLATION

Municipal Government Act

Although the MGB has already decided the matter of whether or not the data systems are linear property in Board Order MGB 059/03, the definition of linear property is also relevant to the question of equity. The definition of linear property, in accordance with Section 284(1)(k) includes telecommunication systems with a listing of the type of equipment that is included in a telecommunications system. To give meaning to the term “telecommunications system” one must look to the definition contained in section 284(1)(w).

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;

With section 284(1)(w) giving meaning to the term “telecommunications system”, section 284(1)(k) then gives further meaning to the type of equipment by including limitations and exceptions, for example, linear property does not include buildings. In addition, to meet the test of linear property the system must be owned or operated by a company defined by the *Telecommunications Act* or subject to the regulatory authority of the CRTC. This is to say that one must look not only at the physical makeup of the system, but also beyond to determine if the system or component is assessable as linear property. The relationship between the Municipal Government Act and the Telecommunications Act has been explored in Board Order MGB 059/03.

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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,

Assessments for linear property must be prepared by an assessor designated by the Minister. They must reflect the valuation standard in the regulations, the specifications and characteristics of the property at a specific time, be based on a report requested by the assessor plus the information provided in reply. In the case of telecommunications equipment, the assessor requests an inventory report from the linear property owner.

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

(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).

The Act requires the assessor to apply the valuation standards 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 regulations.

The definition of an assessor includes the linear assessor.

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

(d) *"assessor" means a person who has the qualifications set out in the regulations and*

(i) *is designated by the Minister to carry out the duties and responsibilities of an assessor under this Act, or*

(ii) *is appointed by a municipality to the position of designated officer to carry out the duties and responsibilities of an assessor under this Act,*

In addition, the MGB cannot alter an assessment that is determined to be fair and equitable.

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, ...*

Matters Relating to Assessment and Taxation Regulation AR 289/99

To give further meaning to the definition of linear property provided in section 284(1)(k)(ii), section 6 of the Regulation establishes a connection to the Alberta Linear Property Assessment Minister's Guidelines.

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.*

Minister's Guidelines for the Assessment of Farmland, Linear Property, Machinery and Equipment, Railway (Guidelines)

The Minister has adopted guidelines for the assessment of linear property. The Guidelines establish base costs and assessment year modifiers for telecommunications systems. In addition, the Guidelines establish base costs, assessment year modifiers and a depreciation schedule for Cable Television Systems. The tables involved are not reproduced here but form part of the exhibits.

The Guidelines confirm that the DLA is an assessor for purposes of the Act and regulations.

1.002 GENERAL DEFINITIONS

(c) "assessor" means:

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(i) in respect of Linear Property, the person designated by the Minister to carry out the duties and responsibilities of an assessor under the Act, and ...

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GENERAL SUMMARY OF COMPLAINANT'S POSITION

The Complainant submitted that they basically provide two types of service. One being a voice service with dial tone desktop telephone that includes services related to the voice environment such as voicemail. The other service is data-related provided by connecting two remote offices whether provincially, nationally or internationally. This service also includes other types of data service including Internet service.

The Complainant outlined the history of its services. GT first entered the business about five years ago. The Company first developed the infrastructure for a data only service. Once in the field, it decided to compete for voice service and developed the infrastructure needed for this. The Complainant expanded their network to provide the two services. The infrastructure is composed of voice equipment provided by a manufacture of voice service systems known as Lucent. A supplier known as Cisco provides the data equipment.

The Complainant maintains two offices: one in Calgary and one in Edmonton. The main central office is located in Calgary and contains most of the equipment. The equipment in Edmonton is a remote extension of the switch with communication via fibre optic cable. The Complainant does maintain assets outside of Calgary and Edmonton, however, most of the infrastructure is in the two Cities. Outside of Calgary and Edmonton, the Complainant has what is referred to as "points of presence" or "POPS". The POPS are infrastructure related to the service supplied to that point but they do not generate any of the services at the site. In relation to the services provided, if voice service is provided via a POPS then there would be Lucent hardware, if data is provided then there would be Cisco hardware or both. The Complainant generally stated that if developing a voice service then Lucent equipment would also be required in addition to the Cisco equipment required for data.

The Complainant submitted that, in their opinion, they have been assessed inequitably with other providers of data services. As requested by the DLA, the Complainant reported all their data equipment and as a result of that reporting is being assessed for that equipment. However, in reviewing assessments of some of the other providers of data services, it is their opinion that they are not being assessed for their data equipment. Principally, the Complainant referred to cable television providers who also provide a similar data service. It is the Complainant's opinion that because the data service equipment represents approximately 40% of their assessment, similar proportion should be assessed to cable providers for their data service. In the case of other providers of only data service, no assessment appears.

GENERAL SUMMARY OF RESPONDENT'S POSITION

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The Respondent did not dispute the evidence regarding the extent and type of equipment the Complainant requires for their data service. The Respondent did not dispute that a cable television provider would require extra equipment to enable the addition of a data service in connection with the provision to cable television service. In both direct testimony and under questioning the Respondent confirmed that if a cable television provider entered into the market of providing data service to the extent they do provide the service, it would account for approximately 2 to 4% of the total cost of the integrated system. However, whether this equipment is similar to the equipment required by the Complainant has not been shown.

The Respondent also submitted that without knowledge of the similarity of equipment between the data system of the Complainant and the additional equipment of the cable television provider, it is not known if the equipment is being reported. The Handbooks circulated to cable television providers, while providing a superficial description of the equipment to be reported, does nevertheless require full reporting of all equipment.

As for Big Pipe, the example of a pure data service, the DLA is monitoring the ongoing development and construction of this system and when completed and the system is operational, the linear property will be assessed.

SUMMARY OF MGB QUESTIONS TO RESPONDENT AND REPLY

As a result of the testimony of the parties regarding the Handbooks, the MGB asked the Respondent to confirm whether or not both Handbooks were sent to the cable television providers for the 2001 tax year and what was sent for the 2002 tax year. In addition, the Respondent was asked to provide copies of the correspondence provided with the Handbooks.

The Respondent did advise that for the 2001 tax year telecommunication handbooks were sent to telecommunication companies and cable television handbooks were sent to cable television companies. For the 2002 tax year the combined handbook was sent to both telecommunication and cable television companies. In addition, the Respondent provided the correspondence and listing of the companies that received handbooks.

DOES FAIRNESS AND EQUITY APPLY TO LINEAR PROPERTY ASSESSMENTS?

Given the fact that a certain aspect of linear property assessments entails the application of actual depreciated costs, standardized costs or regulated costs depending on type of linear property, is equity a standard that is applied to linear property assessment? To address this issue, the parties commented as follows.

Complainant's Position

The Complainant argues that Section 293 of the Act applies to the DLA and as a result, the DLA must apply the valuation standards in the regulation in a fair and equitable manner. Therefore, the Complainant argues, the subject property must be treated in a fair and equitable manner with the Complainant's competitors.

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 regulations.

(2) If there are no procedures set out in the regulations for preparing assessments, the assessor must take into consideration assessments of similar property in the same municipality in which the property that is being assessed is located.

In addition, the Complainant supports this position by reference to Bramalea Ltd. v. British Columbia (Assessor for Area 9(Vancouver)(B.C.C.A.) which qualifies that every taxpayer has two distinct rights: a right to an assessment at actual value and a right to an assessment which is equitable whichever provides the taxpayer with the most benefit. The Complainant points out that the principles of Bramalea have been adopted in Alberta in the case of Strathcona v. Shell. The Complainant says these roots of being treated equitably go back to the foundations in Jonas v. Gilbert. The Complainant emphasized the following extract from Bramalea dealing with the situation where a taxpayer is in competition with other taxpayers in its class:

“Where the taxpayer subjected to the higher assessment is in competition with others in the same class, and is for this reason unable to pass on the extra tax burden to customers, the unfairness of such a result becomes blatant.”

Respondent's Position

The Respondent submitted that equity in terms of regulated assessments such as linear property is only applicable in the case of an allegation that the assessor has not followed the prescribed method consistently. The Respondent submits the Complainant has not proved this allegation.

Finding

The principle of fairness and equity does apply to the application of the regulations applicable to the assessment of linear property.

Reasons

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The principles of fairness and equity apply to the assessment practices for linear property as prescribed by the Act, but only in so far as the application of the regulations. Section 293 requires the DLA to apply the regulations in a fair and equitable manner and Section 499 (2) requires that the MGB must not alter an assessment that is fair and equitable. However, this authority is limited to the application of the regulations by the DLA and not to the fairness of the actual regulations; that matter rests with the legislators. The Respondent does not disagree with the proposition that the test of fairness and equity does apply but simply disagrees with the application of that test as proposed by the Complainant as applied to the subject complaints. Thus the MGB focuses its attention squarely to the question of whether or not the DLA applied the regulation in a fair and equitable manner in the subject case and whether an equity remedy is warranted.

IS THE DATA SYSTEM EQUIPMENT SIMILAR IN BOTH TYPE AND EXTENT TO A CABLE TELEVISION SYSTEM WITH ADDED DATA CAPABILITY?

Complainant's Position

The Complainant classifies its operations into two distinct functions: voice services and data services. The DLA is assessing both the data (Cisco type equipment) and voice equipment (Lucent Switching Equipment) of the Complainant but not that of its competitors as represented by cable television providers which also have a data service.

The Complainant testified that voice and data systems operated by the Complainant are two different systems and cannot be integrated. Specifically, the voice networks are analog and digital while data systems are digital and as a result the Complainant maintains voice and data as two separate systems.

The data services are provided utilizing Cisco hardware at both the sending end and the receiving end whereas voice services are generated by use of Lucent equipment which allows for dial tone generation and interconnection to Public Switched Telephone Network (PSTN). Data services are not connected to PSTN. Customers may choose to utilize the voice infrastructure for data services, however, the Complainant maintains no common hardware that supports both voice and data services.

In support the Complainant provided pictures of the type of equipment used and a schematic drawing of the Complainant's data system with the various components identified.

Respondent's Position

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The Respondent submitted that cable television systems are different from a telecommunication system. Once a cable system is in place, additional service such as a data system can be added for a small investment. This investment is in the range of 2 to 3% of the cost of the cable system.

Basic cable television systems are one-way and they are systems that connect a single point to many points. The television signals are gathered from some signal source at the head end and then sent by the transmission facilities. Each cable channel occupies a six-megahertz bandwidth and they are stacked one on top of another. This starts at 50 megahertz and would go right up to 700 megahertz. In the case of a two-way system the reverse direction uses the frequencies below 50 megahertz down to about 5 megahertz. This is accomplished by the addition of filters, fairly small devices that separate these two directions of frequency.

The classic cable television system is designed differently than a point-to-point system, such as the Complainant's access network that goes to a hub and the hubs are connected through some transport facility with a fan out to other customer locations. These types of telecommunication networks can be global in extent whereas cable television systems typically serve a single community.

The Respondent submitted that typically telecommunication systems cost more; the cost of the digital multiplex switch being one example. This switch has 20 million lines of code and is a significant investment as compared to a cable system, which has no need for such a device because there is no switching. The signal is there all the time so a cable system has a lower cost in comparison. The bulk of the cost of a cable system is in the cable plant in comparison to a telecommunication system with the costs spread across the whole of the transmission facilities being the switching, access network and equipment at the customers' premises at the end points.

As an example of the differences in values, the Respondent submitted that, as a rough figure, telecommunication companies, when they do sell, do so for a value in excess of \$2,000 per subscriber compared to cable systems that trade in the range of \$300 to \$500 per subscriber.

In conclusion, the Respondent submitted that from the perspective of architecture, cost structures, configuration used, extent of network and investment, two-way cable systems are not similar to telecommunication systems. To provide the equipment necessary to convert a one-way cable system to a two-way cable system with data capability would require a relatively small investment: in the range of 2 to 4% of the cost of a total system.

Findings

1. Most physical parts of a telecommunication system and a data capable cable television system are dissimilar.

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2. While some of the same equipment used by a data system is used by a cable television system with data transfer capability, the amount of equipment required is not similar.

Reasons

The only evidence provided by the Complainant relates to the equipment they require in operating a data system. The Complainant argued that, because they require this equipment in order provide a data service, the cable television providers need the same equipment and because it is not found in the cable assessment, the assessment is inequitable. However, the Complainant did not provide any evidence regarding the similarity or amount of equipment required by a cable company to develop data capability within an existing cable television system.

On the other hand, the Respondent did bring forward substantial evidence as to how a cable television system operates and what equipment is required by a cable system to develop a data capability within that system. The evidence is that once a cable system is in place, it can add to the one-way cable television service, a two-way data service by the addition of a limited amount of equipment. Based on the undisputed evidence of the Respondent, a cable television system providing a data service is not similar in most ways to a data system operated by the Complainant. In addition, the evidence is that a cable television system is limited in its customer base to the community in which it is located as compared to the international customer potential of the Complainant's system. Therefore, the two systems are different in both the vast majority of the physical aspects as well as the capabilities of the system.

While the MGB has found the systems to be generally dissimilar, it is possible that both systems, to some extent, require the use of similar equipment. However, it has not been shown by the Complainant that the different systems required all the same equipment or even to what extent the same equipment is required. Therefore, the Respondent's evidence is accepted that the equipment required to provide a data service within a cable television system equates to 2 to 4% of the cost of the total system.

SELF-REPORTING

Complainant's Position

The Complainant submitted that in response to the request by the DLA to report their linear property, they responded with a complete list of inventory. The report included all telecommunication assets within the following categories:

- network electronics and equipment

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- hub sites and backbones
- points of presence (POPS)
- central office and switches
- fibre build
- co-locates.

However, it appears that in the case of competitors, mainly cable television providers, the request for a list of inventory was limited to that equipment related to the television component alone. A question arises in regard to the use of two handbooks for the 2001 tax year, and for 2002 tax year the joining of the two handbooks into one handbook. There also appears to be a potential for non-reporting of head end equipment, because it may be assessed in the business assessment for the premises in which it is located.

Another example of non-reporting is the new pure data service being developed by Shaw under the name of “Big Pipe”. Very little, if any, assessment exists for this system that has publicly been stated as requiring a substantial capital investment.

The Complainant accepts the court direction in AEC Valuation Western Inc. v. Alberta Municipal Government Board that an inequity does not arise when a single error is made. However, in this case the assessment practices of the DLA with respect to the subject property and other property offering the same service is not a simple singular isolated error but rather a systemic inequitable practice. In order to emphasize this point the Complainant again made reference to examples of cable companies and their activities in the area of data service.

Respondent’s Position

The Respondent submitted that telecommunication and cable providers are required to report their linear property. This reporting is done in response to a request, in the form of a Handbook, by the DLA. For the 2001 tax year, the DLA used two Handbooks, one for Telecommunication Systems, not including Cable Television Systems, and one for Cable Television Systems. For the 2002 tax year, the two Handbooks were combined into one and sent to both Telecommunication and Cable companies. This was confirmed by the Respondent when replying to the MGB’s specific requests for information of this nature.

For the 2001 tax year, the cable companies received the Handbook titled “Linear Property Assessment Reporting Handbook For Cable Television Telecommunication Systems”. This Handbook, under the “Request For Information – Detail”, stated as follows:

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“Please report any items including installed costs of property components that form any part of cable television telecommunication systems as defined in the Act, whether or not it is specifically mentioned in this handbook. Also report any cost information associated with service, maintenance and equipment refurbishing that occurred during the assessment year. Please report this information by providing the Authorization For Expenditure (AFE) and referencing the affected property on the inventory report form.”

The Handbook, for the purpose of reporting, proceeds to describe the various cable components including service hook-ups, transmission and distribution lines, conduit, and head end equipment.

For the 2002 tax year, the DLA issued a combined Handbook titled “Linear Property Assessment Unit Telecommunications and Electric Power Reporting Information Handbook”. For the purposes of reporting, the Handbook defined a cable television system as any component of a telecommunication system used primarily for transmission, emission, or distribution of a telecommunications signal for display of a picture on a television set.

The Handbook then proceeds to provide a listing of the equipment for telecommunication systems, cable television systems and electric power systems. This listing is explained in the following manner.

“The following list provides some samples of the type of information to report. This list does not account for all the property information you must report. It is provided to help you gain an appreciation for the type of property that is subject to assessment.”

The equipment listing for cable television systems is as follows:

- transmission line
- distribution line
- fibre optic cable
- head end equipment.

The Respondent submitted that it was their intent when they issued the Handbooks that all companies would report all their equipment. However, the Respondent could not confirm whether or not this component of the system was included in the reporting for each year under complaint. The Respondent did, however, reconfirm that the cost of adding a data service to a cable television service is approximately 2 to 4% of the value of a cable television service.

With respect to the example of Big Pipe, the Respondent did state that they are aware of the development of the data service, and will be assessing it when the service is operational. If parts of the service were in operation during the years under complaint, they were not assessed because the DLA

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was not aware of that operational status. This would be an error on the part of the DLA, but not an intentional one.

FINDINGS

1. The DLA asked the cable companies to report all of their cable television equipment.
2. The cable television companies did not report equipment necessary to permit a data service.
3. Big Pipe, when operational would be required to report all their linear property.

REASONS

The MGB reviewed the Handbooks for each year under complaint and the general wording could lead a provider of cable television service with additional data service to assume that reporting is limited to only the equipment associated with the provision of cable television service. The MGB does not accept that this was the intent of the DLA for the 2001 and 2002 tax years. However, the ambiguity provided by the title of the 2001 Handbook, the definition of a cable television service in the 2002 Handbook, the listing of certain types of equipment and the inability of the Respondent to confirm the reporting of the data equipment, leads the MGB to conclude that such reporting was not undertaken by the cable television companies. This conclusion is supported by the fact that, if reported, the Respondent could have simply introduced an example of the actual reporting. Not being provided with such an example can only lead to a conclusion that the equipment was not reported.

In the absence of evidence by the DLA that shows the reporting of the data equipment, the MGB must accept that cable television providers having data capabilities are not being assessed for the equipment necessary to provide the data service. In addition, because of the ambiguity of the Handbooks the MGB does not see this as an error in reporting, but a systemic problem resulting from the vague and somewhat confusing reporting instructions issued by the DLA.

The MGB is cognisant of the Respondent's implication that Section 292 of the Act would seem to indicate that the DLA is limited to assess only what is reported and this would alleviate the DLA of the responsibility of investigating the correctness of the reporting. However, if one would accept this interpretation, then it becomes paramount that the DLA be very precise as to what is reported.

However, the issue of vague reporting instructions does not apply to Big Pipe. The DLA is aware of the development of this service and is monitoring the situation. The testimony of the Respondent is that when the service is operational, Big Pipe will be assessed. As the issue of whether or not Big Pipe is

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operational is not before the MGB, here is no reason not to accept the Respondent's position respecting this item.

REMEDY

It is clear to the MGB that a systemic problem exists with the reporting of the additional equipment needed to provide a data service via a cable television system. Because there is no evidence to support a contention that the equipment is being reported and ultimately assessed, fairness and equity requires that the MGB consider a remedy and apply the remedy where most appropriate. In the case of property assessments the standard is an estimate of market value and the MGB has suggested in other decisions that because it is an estimate, divergence of 5% or less would not require an adjustment. However, in the case of linear property, the standard is actual depreciated costs, set costs or regulated cost, which would suggest that it must be exact, not an estimate. This being the case, any inequity, regardless of the magnitude, must be addressed.

Because there is a great difference in the level of equipment required between a data service and the provision of a data service as an add-on to cable television, the MGB is not prepared to consider the removal of all data equipment from the Complainant's assessment. However, the evidence points to approximately 2 to 4% of the value of a cable system is not being assessed, therefore the appropriate remedy would be to reduce the data component of the assessment of the Complainant by an equal amount. However, the appropriate remedy suggested by Bramalea is to reduce the Complainant's assessment by an amount that restores an equitable relationship. Because the Respondent could provide only an estimate of the amount of equipment not captured in the cable television assessment, the MGB will use the higher of the 4% to ensure that equity is attained.

REQUEST FOR INFORMATION

The MGB, having heard the evidence and argument of the parties, and information regarding the Handbooks, is of the opinion that additional information is not necessary. During the course of the hearing the Complainant and the MGB raised questions regarding both the assessment of the equipment and the reporting of the equipment. The Respondent did provide a response in their evidence, in response to questioning and replies to the follow-up question by the MGB. The MGB is satisfied the Respondent has provided whatever information is available and needed to decide this matter.

CONCLUSION

The evidence does not indicate that the failure to report the data equipment is intentional. In addition, there is no evidence to indicate the DLA intentionally intended the equipment not be reported. However, if self-reporting is to be relied upon to prepare assessments, it becomes imperative that the

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instructions are clear and very specific as to what must be reported. This should be considered a mandatory requirement by the DLA if all assessed persons are to see the assessments as fair and equitable in relation to other assessed persons.

Finally, this matter could have been resolved in a quick and efficient manner by the Respondent either producing the documents showing the assessment of the equipment or admitting it was not reported. If not reported, the process could then be reduced to the determination of whether or not the non-reporting is an error not requiring a remedy or a systemic problem in need of a remedy.

DECISION

The complaints for the 2001 and 2002 tax year are allowed in part and each of the assessments for the data component of the assessments under complaint are reduced by 4%. The DLA, in consultation with the Complainant, is to provide the MGB, the Complainant, and the Intervenors within 30 days of the date of this order, the revised assessments based on a 4% reduction of the data component of the assessments under complaint.

Following the receipt of the revised assessments, and subject to either agreement of the Respondent or a lack of comment by the Complainant within five working days of receipt of the revised assessment, the MGB will issue a Board Order establishing the revised assessments for the years under complaint.

No costs to either party.

It is so ordered.

Dated at the City of Edmonton, in the Province of Alberta, this 22nd day of September 2003.

MUNICIPAL GOVERNMENT BOARD

(SGD) C. Bethune, Presiding Officer

APPENDIX "A"

APPEARANCES

NAME	CAPACITY
T. Friend	For Complainant
G. Johnson	For Complainant
K. Shaw	For Complainant
E. Howe	For Complainant
F. Noronha	For Complainant
J. Deasum	For Complainant
B. Sjolie	For Respondent
C. Zukiwski	For Respondent
H. Williams	For Respondent
M. Forest	For Respondent
I. Johnson	City of Edmonton
K. Anderson	City of Edmonton
S. Trylinski	City of Calgary
J. Lindsay	City of Calgary

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APPENDIX "B"

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE MGB

NO.	ITEM
Exhibit 1A	Complainant's Submission of Facts, Issues and Witnesses, June 12, 2002
Exhibit 2A	Daniel Evan Howe, Witness of the Complainant, Evidence & Will Say Statements
Exhibit 3A	Witness Report of Complainant, Ken Shaw, Deloitte & Touche, August 21, 2002
Exhibit 4A	Complainant's Submission, September 16, 2002
Exhibit 5A	Complainant's Authorities, Volume 1 of 2, September 16, 2002
Exhibit 6A	Complainant's Authorities, Volume 2 of 2, September 16, 2002
Exhibit 7A	Complainant's Rebuttal in Response to Respondent's Submission of Facts, Issues and Witnesses, July 16, 2002
Exhibit 8A	December 13, 2002, Complainant's Rebuttal
Exhibit 9R	Respondent's Submission of Facts, Issues and Witnesses
Exhibit 10R	Evidence of Miro Forest, Witness of Respondent, August 29, 2002
Exhibit 11R	Respondent's Will Say Statements and Volume of Documents
Exhibit 12R	Respondent's Legal Argument, October 8, 2002
Exhibit 13I	City of Edmonton's Submission, November 13, 2002
Exhibit 14I	Brief of the Intervenor, City of Calgary
Exhibit 15I	City of Edmonton's Rebuttal Submission, January 10, 2003
Exhibit 16I	Notice of Intervention, The City of Edmonton
Exhibit 17I	Notice of Intervention, The City of Calgary
Exhibit 18	Municipal Government Board Order MGB 006/03
Exhibit 19R	Vitae of Miro Forest, P.Eng, Witness of Respondent
Exhibit 20R	Vitae of Harold Williams, Witness of Respondent
Exhibit 21A	Vitae of Kenneth C. Shaw, Witness of Complainant
Exhibit 22A	Letter from Larry Collins, ASB to Gannett Fleming Inc.
Exhibit 23A	Linear Property Assessment, Reporting Information Handbook
Exhibit 24A	Alberta Regulation 367/94
Exhibit 25A	Assessment Notices and detail reports for linear properties of numerous property owners
Exhibit 26A	Local Governments Services Division Organization Chart
Exhibit 27A	Detail linear assessment reports (5) for Shaw Cablesystems and Northern Cablevision for four municipalities

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APPENDIX “C”

2001 (TAX YEAR) LINEAR PROPERTY ASSESSMENT COMPLAINTS
ORIGINAL AND AMENDED ASSESSMENT - GT GROUP TELECOM SERVICES CORP.

MCode	Municipality Name	PPI-ID #	Original Assessment under complaint	Amended Assessment under complaint
0003	City of Airdrie	801455	113,290	n/a
0003	City of Airdrie	801447	42,800	n/a
0012	County of Athabasca	801538	15,230	n/a
0012	County of Athabasca	801544	30,470	n/a
0013	Village of Barons	801487	15,230	n/a
0013	Village of Barons	801490	30,470	n/a
0031	Town of Blackfalds	801495	15,230	n/a
0031	Town of Blackfalds	801498	30,470	n/a
0039	Town of Bow Island	801508	30,470	n/a
0039	Town of Bow Island	801503	15,230	n/a
0041	Village of Boyle	801515	30,470	n/a
0041	Village of Boyle	801512	15,230	n/a
0043	Town of Brooks	801554	35,020	n/a
0043	Town of Brooks	801549	20,620	n/a
0046	City of Calgary	801557	2,163,600	n/a
0046	City of Calgary	801563	5,472,360	n/a
0046	City of Calgary	801907	2,528,950	n/a
0046	City of Calgary	801936	7,586,840	n/a
0046	City of Calgary	801942	971,000	n/a
0046	City of Calgary	801952	2,824,350	n/a
0046	City of Calgary	801928	515,140	n/a
0046	City of Calgary	801914	323,670	n/a
0046	City of Calgary	801921	2,824,350	n/a
0046	City of Calgary	801962	1,225,870	n/a
0050	Town of Canmore	801573	35,020	n/a
0050	Town of Canmore	801569	20,620	n/a
0069	Town of Coaldale	801585	4,970	n/a
0069	Town of Coaldale	801590	4,970	n/a
0079	Town of Crossfield	801606	30,470	n/a
0079	Town of Crossfield	801601	15,230	n/a
0098	City of Edmonton	801609	431,370	n/a
0098	City of Edmonton	801957	941,450	n/a
0098	City of Edmonton	801613	1,150,510	n/a
0098	City of Edmonton	801917	107,890	n/a
0098	City of Edmonton	801911	842,980	n/a
0098	City of Edmonton	801931	171,710	n/a
0098	City of Edmonton	801924	941,450	n/a

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MCode	Municipality Name	PPI-ID #	Original Assessment under complaint	Amended Assessment under complaint
0098	City of Edmonton	901947	323,670	n/a
0098	City of Edmonton	801965	408,620	n/a
0098	City of Edmonton	801938	2,528,950	n/a
0117	City of Fort Saskatchewan	801770	30,470	n/a
0117	City of Fort Saskatchewan	801767	15,230	n/a
0167	Improvement District No. 12	797847	155,940	n/a
0201	Leduc County	801775	55,460	n/a
0201	Leduc County	801778	107,840	n/a
0235	County of Newell	801892	30,470	n/a
0235	County of Newell	801886	15,230	n/a
0238	Town of Okotoks	801783	6,330	n/a
0239	Town of Olds	801788	6,330	n/a
0245	Parkland County	801799	n/a	35,020
0245	Parkland County	801793	n/a	20,620
0251	M.D. of Pincher Creek	801806	30,470	n/a
0251	M.D. of Pincher Creek	801803	15,230	n/a
0254	Town of Ponoka	801811	15,230	n/a
0254	Town of Ponoka	801814	30,470	n/a
0262	City of Red Deer	801824	206,220	n/a
0262	City of Red Deer	801819	86,340	n/a
0264	Town of Redcliff	801828	15,230	n/a
0264	Town of Redcliff	801834	30,470	n/a
0292	City of St. Albert	801852	20,620	n/a
0292	City of St. Albert	801856	35,020	n/a
0302	Strathcona County	801846	72,810	n/a
0302	Strathcona County	801841	34,860	n/a
0311	Town of Taber	801878	20,620	n/a
0311	Town of Taber	801882	35,020	n/a
0333	Town of Vulcan	801902	30,470	n/a
0333	Town of Vulcan	801896	15,230	n/a
0353	M.D. of Willow Creek	801799	35,020	0
0353	M.D. of Willow Creek	801793	20,260	0
0356	Town of Chestermere	801582	4,970	n/a
0356	Town of Chestermere	801578	4,970	n/a
0360	Town of Coalhurst	801593	4,970	n/a
0360	Town of Coalhurst	801597	4,970	n/a
0376	Cypress County	801868	15,230	n/a
0376	Cypress County	801874	30,470	n/a
0382	M.D. of Bighorn	801747	4,970	n/a
0382	M.D. of Bighorn	801752	4,970	n/a
0387	Town of Banff	801478	4,970	n/a
0387	Town of Banff	801481	4,970	n/a
0508	R.M. of Wood Buffalo	801467	15,230	n/a

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MCode	Municipality Name	PPI-ID #	Original Assessment under complaint	Amended Assessment under complaint
0508	R.M. of Wood Buffalo	801474	30,470	n/a
A508	R.M. of Wood Buffalo - Urban	801758	17,960	n/a
A508	R.M. of Wood Buffalo - Urban	801761	62,980	n/a

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APPENDIX “D”

2002 (TAX YEAR) LINEAR PROPERTY ASSESSMENT COMPLAINTS
ORIGINAL AND AMENDED ASSESSMENT - GT GROUP TELECOM SERVICES CORP.

MCode	Municipality Name	PPI-ID #	Original Assessment under complaint	Amended Assessment under complaint
0003	City of Airdrie	862196	31,460	28,020
0003	City of Airdrie	862197	99,120	80,730
0012	County of Athabasca	801538	15,390	12,430
0012	County of Athabasca	801544	30,780	24,860
0031	Town of Blackfalds	801495	15,390	12,430
0031	Town of Blackfalds	801498	30,780	24,860
0041	Village of Boyle	862198	5,020	2,480
0041	Village of Boyle	862199	5,020	2,480
0043	Town of Brooks	897248	26,110	18,200
0043	Town of Brooks	897250	40,130	29,020
0046	City of Calgary	922232	334,590	359,770
0046	City of Calgary	922236	7,747,690	8,330,850
0046	City of Calgary	922234	3,212,020	3,453,790
0046	City of Calgary	922233	1,065,590	1,689,840
0046	City of Calgary	922237	2,582,560	2,776,950
0046	City of Calgary	922240	3,212,020	3,453,790
0046	City of Calgary	922241	469,470	378,600
0046	City of Calgary	922239	7,524,760	5,975,560
0046	City of Calgary	922235	3,275,730	2,657,090
0046	City of Calgary	922238	1,003,760	1,079,310
0046	City of Calgary	929994	n/a	126,200
0050	Town of Canmore	922242	35,000	12,430
0050	Town of Canmore	922243	70,010	24,860
0065	Town of Claresholm	897333	15,240	12,310
0065	Town of Claresholm	897335	30,480	24,620
0069	Town of Coaldale	897261	15,390	12,430
0069	Town of Coaldale	897263	30,780	24,860
0070	Town of Cochrane	897336	15,240	12,310
0079	Town of Cochrane	897337	30,480	24,620
0079	Town of Crossfield	801601	15,390	12,430
0079	Town of Crossfield	801606	30,780	24,860
0098	City of Edmonton	922268	1,070,670	1,151,260
0098	City of Edmonton	922297	860,860	925,650
0098	City of Edmonton	922298	1,070,670	1,151,260
0098	City of Edmonton	922299	334,590	359,770

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MCode	Municipality Name	PPI-ID #	Original Assessment under complaint	Amended Assessment under complaint
0098	City of Edmonton	922301	156,490	126,200
0098	City of Edmonton	922304	355,200	563,280
0098	City of Edmonton	922302	1,322,920	988,790
0098	City of Edmonton	922305	111,530	119,920
0098	City of Edmonton	922303	3,376,110	2,465,700
0098	City of Edmonton	922300	2,582,560	2,776,950
0098	City of Edmonton	929995	n/a	42,070
0116	Fort McMurray - Urban Area	922307	49,630	21,940
0116	Fort McMurray - Urban Area	922306	123,000	61,480
0117	City of Fort Saskatchewan	922308	58,850	n/a
0148	Town of High River	922309	80,370	49,230
0148	Town of High River	922310	160,760	98,480
0180	Town of Innisfail	897320	15,240	12,310
0180	Town of Innisfail	897325	30,480	24,620
0200	City of Leduc	897331	98,860	78,050
0200	City of Leduc	897330	44,610	35,770
0201	Leduc County	897265	60,430	48,530
0201	Leduc County	897266	130,640	103,700
0203	City of Lethbridge	922311	46,890	21,720
0203	City of Lethbridge	922312	121,800	61,230
0217	City of Medicine Hat	922313	110,840	73,850
0217	City of Medicine Hat	922314	221,720	147,720
0235	County of Newell	897267	5,020	2,480
0235	County of Newell	897269	5,020	2,480
0238	Town of Okotoks	801783	6,390	3,060
0239	Town of Olds	801788	6,390	3,060
0245	Parkland County	897271	15,390	12,430
0245	Parkland County	897272	30,780	24,860
0254	Town of Ponoka	801811	15,390	12,430
0254	Town of Ponoka	801814	30,780	24,860
0262	City of Red Deer	922315	316,300	148,800
0262	City of Red Deer	922316	129,420	56,050
0264	Town of Redcliff	897276	5,020	2,480
0264	Town of Redcliff	897277	5,020	2,480
0292	City of St. Albert	897278	15,390	12,430
0292	City of St. Albert	897279	30,780	24,860
0302	Strathcona County	922318	115,720	57,950
0302	Strathcona County	922317	48,250	22,760
0303	Town of Strathmore	897315	6,330	3,030
0311	Town of Taber	897285	61,560	49,730
0311	Town of Taber	897284	30,780	24,860

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MCode	Municipality Name	PPI-ID #	Original Assessment under complaint	Amended Assessment under complaint
0314	County of Thorhild	924418	4,970	2,460
0314	County of Thorhild	924419	4,970	2,460
0333	Town of Vulcan	897288	5,020	2,480
0333	Town of Vulcan	897290	5,020	2,480
0334	Vulcan County	924416	4,970	2,460
0334	Vulcan County	924417	4,970	2,460
0356	Town of Chestermere	897292	61,560	49,730
0356	Town of Chestermere	897291	30,780	24,860
0360	Town of Coalhurst	897293	15,390	12,430
0360	Town of Coalhurst	897294	30,780	24,860
0376	Cypress County	897296	5,020	2,480
0376	Cypress County	897302	5,020	2,480
0376	Cypress County	924415	4,970	2,460
0376	Cypress County	924414	4,970	2,460
0382	M.D. of Bighorn	897305	15,390	12,430
0382	M.D. of Bighorn	897307	30,780	24,860
0387	Town of Banff	897311	30,780	24,860
0387	Town of Banff	897309	15,390	12,430
0508	R.M. of Wood Buffalo	801467	15,390	12,430
0508	R.M. of Wood Buffalo	801474	30,780	24,860