

Bond Case Briefs

Municipal Finance Law Since 1971

TAX - CALIFORNIA

Time Warner Cable Inc. v. County of Los Angeles

Court of Appeal, Second District, Division 1, California - July 19, 2018 - Cal.Rptr.3d - 2018 WL 3471088 - 18 Cal. Daily Op. Serv. 7224

Telecommunications company filed refund petition, contesting valuation of its possessory interests in public rights-of-way based on television, broadband, and telephone revenue.

The Superior Court reversed in part, and county appealed.

The Court of Appeal held that:

- Assessor was not required to value possessory interests in public right-of-way by capitalizing cable television franchise fee and could include broadband and telephone revenue;
- Evidence did not support assessor's determination that five percent of gross income from all three income streams represented the fair market value of the possessory interests;
- Assessor was required to allocate portion of economic rent to nontaxable intangible assets; and
- Substantial evidence supported use of 10-year term of possession.

In light of lack of evidence of an open and competitive market, assessor was not required to value telecommunications company's possessory interests in public right-of-way, which company used to provide cable television, broadband internet, and telephone services, by capitalizing cable television franchise fee, but rather could base value on the economic rent the possessory interests would command in a rational market; while company argued that possessory interests were available to any prospective cable operator at five percent of television revenue, there was no evidence prospective cable operators were purchasing new franchises or there was an actual, working market for cable television possessory interests, and subject possessory interests generated a considerable amount of revenue for company beyond television services.

Evidence did not support assessor's determination that five percent of gross income from all three income streams, including cable television, telephone, and broadband internet, represented the fair market value of telecommunications company's possessory interests in public right-of-way; while there was evidence cable companies paid five percent of television revenue as franchise fee for the possessory interest to provide cable television service, and company may have previously paid a franchise fee on cable modem service, there was no evidence as to purported similarities in the way possessory interests were used to provide television, broadband, and telephone services, and television, broadband, and telephone businesses did not operate in similar competitive environments.

When assessing tax on telecommunications company's possessory interests in public right-of-way, county assessor was required to allocate portion of economic rent to nontaxable intangible assets.

Substantial evidence supported assessor's use of 10-year term of possession when assessing telecommunications company's possessory interests in public right-of-way which company used to provide cable, telephone, and broadband internet services, even though average remaining term of

company's franchises was five years; there was substantial evidence that company and the franchisors understood that the acquired franchises would last as long as company wanted them to last, and company acknowledged that all parties implicitly understood that it would physically occupy its rights-of-way for as long as it chose to do so, notwithstanding anticipated change from local to state control.