Property Taxation on Communications Providers: A Primer for State Legislatures

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Executive Committee Task Force State and Local Taxation

National Conference of State Legislatures
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The National Conference of State Legislatures is the bipartisan organization that serves the legislators and staffs of the states, commonwealths and territories.

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Foreword

As part of its continuing mission to examine tax issues of importance to the states, the National Conference of State Legislatures' (NCSL) Executive Committee Task Force on State and Local Taxation held a series of panels in 2013 and 2014 regarding tax issues affecting the deployment of broadband communications infrastructure. These efforts resulted in the adoption of a Task Force resolution in November 2013 that encouraged states "...who wish to encourage broadband deployment consider exempting communications network equipment from the sales and use tax."

As the Task Force examined the more complex property tax issues related to communications infrastructure, members decided that an in-depth examination of these property tax issues would benefit state policymakers. The Task Force directed NCSL staff to work with interested stakeholders to draft a white paper that examined key property tax issues related to communications infrastructure. The report would include an overview of state practices and an examination of recent state reforms to modernize property tax systems in ways that encourage broadband deployment and achieve tax parity among competing providers of telecommunications services.

This white paper relies on previous publications by the NCSL Fiscal Affairs Program which examine, in general terms, the role of property taxes in state and local finance. It provides a high-level overview of key issues related to the property tax while focusing specifically on property tax provisions related to the communications industry. For additional detail on property tax systems generally, the bibliography highlights a number of reports from NCSL and other sources.

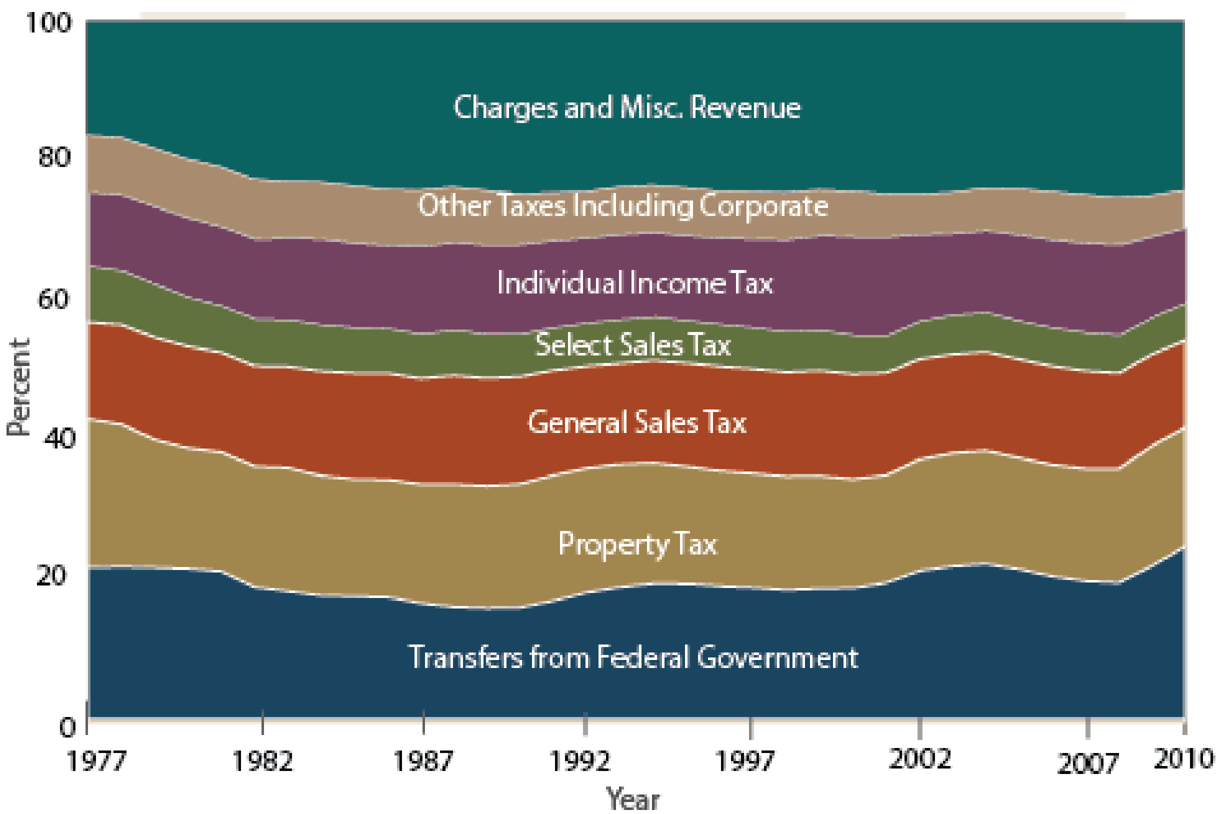
The original report was released in July 2015. This August 2017 update reflects state legislative activity between July 2015 and July 2017.

Introduction and Overview

Historically, property taxes have, and continue to be, the primary revenue source for local governments in the United States. However, state constitutions and statutes determine the rules under which local governments determine property values, set tax rates, levy and collect property taxes, and adjudicate disputes between taxpayers and taxing jurisdictions. Therefore, state legislatures play a critical role in determining how property taxes impact residential and business property owners. Additionally, as states have established a much greater role in funding education over the past three decades, state laws to ensure property tax uniformity across local jurisdictions have become increasingly important to ensure equity in school funding.

Reliance on property taxes has been declining nationwide since the depression. However, the shift in reliance away from property taxes accelerated in the late-1970s when voters in California approved Proposition 13, which rolled back property taxes to 1% of value and limited valuation growth to 2% per year. Property taxes were and remain very unpopular with voters, and other states followed California's lead. Reliance on property taxes fell from 26% of state and local revenue in the late 1980s to 17% in 1998 – roughly where they remain today.

State and Local Government Revenue by Source, 1977-2010



Source: Tax Policy Center; U.S. Census Bureau, Governments Division

This report highlights ways that state property tax policies result in disproportionately high tax burdens on communications providers as compared to other competitive businesses. It examines how some states have modernized their tax policies to balance the need for tax revenues with the important economic benefits that accrue from private sector investment in communications infrastructure.

<u>Specific Property Tax Policy Issues Related to Communications Infrastructure</u>

There are three types of property that may be subject to property taxes:

- **<u>Real property</u>** is generally defined as land plus buildings and structures permanently affixed to the land. Real property is typically taxable in every state, whether owned by a business or by an individual.
- **<u>Personal property</u>** is generally defined as property that has a physical form or substance but not permanently affixed to the land, such as machinery and equipment. Most states tax personal property owned by a business while exempting personal property owned by individuals.
- **<u>Intangible property</u>** is generally defined as property that does not have physical form or substance. Examples include stocks, bonds, cash, copyrights, trademarks, goodwill, and licenses. Most states exempt intangible property by constitution or statute, although as discussed further in this section, valuation methods used by some states can have the effect of including intangible property in the tax base.

Property taxes are typically imposed on the **"fair market value"** of property, commonly defined as the price an informed, willing buyer would pay a willing seller. However, states sometimes deviate from this principle when determining the value of telecommunications property, such as:

- Assessing telecommunications property on the basis of the enterprise value as a **"unit,"** which can result in taxation of more than the actual value of tangible property by including significant intangible value, even in states where intangibles are statutorily or constitutionally exempt from taxation; and
- Applying **assessment ratios** that result in the taxation of a higher percentage of fair market value compared to other general businesses; and
- Defining the personal property of telecommunications providers as "real property" so that it is taxable in states that do not tax personal property.

These practices, either individually or in combination, often result in higher effective tax rates on the property of telecommunications companies as compared to other general businesses.

Unit Valuation and the Taxation of Intangible Assets of Telecommunications Companies

In most states, the value of business property is determined by local municipal or county assessors. However, in the case of telecommunications property, property values may be determined at the state level by the Department of Revenue or State Tax Commission **– a procedure known as "central assessment."** Central assessment is not a problem in and of itself, as it may be more efficient for a single entity with specialized expertise to value such property and it may be easier for a telecommunications company to deal with a single assessor than multiple assessors. In discussing central assessment in its September 2014 report entitled "The Best and Worst of International Property Tax Administration," the Council on State Taxation (COST) noted that:

> "Property tax system administration is fairest for the taxpayer when it is consistent throughout a jurisdiction. If different municipalities or other governmental sub-units within the same jurisdiction follow different rules, taxpayers can be disadvantaged. Strong central oversight is necessary for a fair and efficient property tax system. The State of Maryland sets a good example for requiring consistency across the State."

However, telecommunications property that is centrally assessed is sometimes valued using the 'unit value' methodology.

The **unit value methodology** was developed in the mid-nineteenth century for the property of a railroad where it was difficult to value the property in a jurisdiction by looking at just the property situated in that jurisdiction in isolation. The concept of valuing the entire system of assets was born and commonly referred to as the "unit valuation." This concept was extended to public utilities. The unit valuation approach raises the question – should the property tax system value the business enterprise or its property?

The **unit valuation approach** assumes a regulated business will earn its authorized rate of return. It values public utility monopolies based on the connection that existed between the investment in tangible assets by a monopoly provider (its 'rate base') and the rate of return that a regulatory body allowed it to earn on that investment. In other words, the monopoly provider's earnings were directly related to its investment. Today, the old rate regulated telecommunication company is a thing of the past.

Telecommunications companies offer a wide variety of services and products and competition has replaced rate of return regulation. Companies providing advanced telecommunications services, such as cloud computing and other Internet-based services that are available today, have no regulatory mechanism that provides a guaranteed rate of return on investment. Since there is no longer a direct connection between investment and earnings, there is no longer a sound policy basis for using the unit method of valuation, without significant adjustments, to avoid overvaluing telecommunications property.

Unit value assessments are often based on the earning potential of the entire business enterprise, which typically includes significant intangible value from assets such as trademarks, licenses, goodwill, and more. The resulting valuation of telecommunications company property using the unit value methodology can be dramatically higher than the valuation of the tangible property using traditional "cost" approaches that typically apply to other businesses.

The **unit valuation method** is not typically applied to the property of general business taxpayers. Instead, the valuation methodologies applied to general businesses assess the value of their individual tangible assets only. For example, if a telecommunications company and a general business have the exact same computer servers located in buildings next to each other, the value of the telecommunications company's server will frequently be much higher than the value of the other company's server. This disparity exists even though many non-communications businesses may also have significant intangible assets.

The competitive nature of the industry and changes in technology make intangible assets a more significant portion of a telecommunications company's assets today than ever before. For example, wireless providers cannot operate without licenses issued by the Federal Communications Commission and recent auctions have resulted in very high valuations for these FCC licenses.

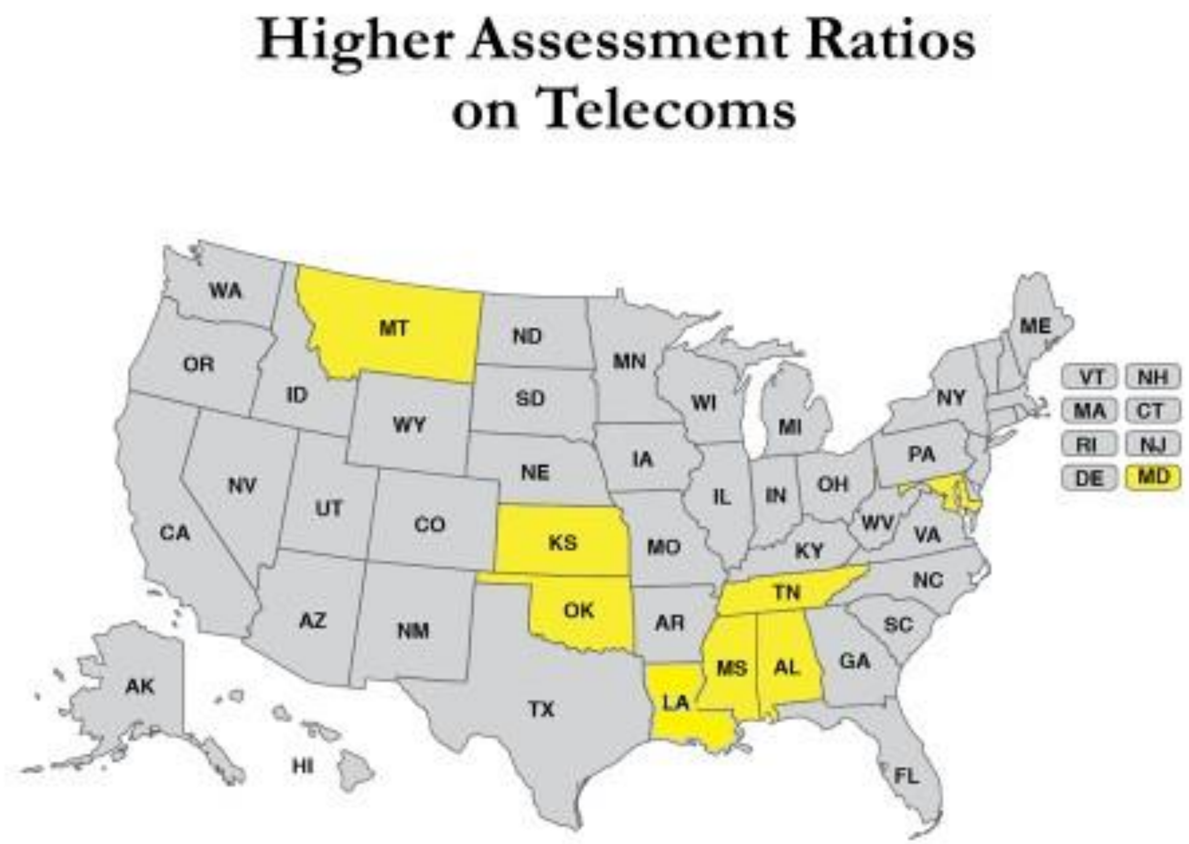
Including intangible assets in a telecommunications company's value creates a competitive disparity. To address this inequity, some states try to remove intangible assets from the unit valuation. However, because the unit value methodology values the entire business enterprise, it can be difficult to completely remove the intangibles from a unit valuation. The unit method inherently includes intangible value in the tax base and creates disparity among telecommunications providers and between telecommunications companies and other general business taxpayers.

States utilizing unit valuation and directly or indirectly including intangible value for some telecommunications providers include: **Alabama, Arkansas, Colorado, Georgia, Iowa, Idaho, Kansas, Louisiana, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, Oregon, South Carolina, Tennessee, Texas, Utah, Washington, West Virginia and Wyoming.** However, some of these states attempt to mitigate at least partially the impact of taxing the intangible assets. Arkansas, Idaho, North Carolina, South Carolina, Texas, Utah, Washington and Wyoming have taking measures with varying degrees of success to deduct some "business intangibles" from their unit valuation. Colorado and Oregon exempt wireless licenses but tax other intangibles.

Higher Assessment Ratios

An **"assessment ratio"** is the percentage of the property value to which the tax rate is applied to determine the actual amount of property tax. In some states, the assessment ratio applied to the fair market value of communications company property is higher than that of other business taxpayers. For example, the assessment ratio in Alabama for general business is 20% of market value while telecommunications companies are assessed at 30% of market value. This causes telecommunications companies to pay one and one-half times the effective tax rate compared to that of non-telecommunication businesses.

States with a higher assessment ratio on some telecommunications company property include: **Alabama, Kansas, Louisiana, Maryland, Mississippi, Montana, and Oklahoma ~~and Tennessee~~.** However, Kansas and Louisiana ~~and Tennessee~~ have income tax credits or refunds to partially offset the higher assessment ratio for some personal property. In 2017, Tennessee ended the use of the higher assessment ratios which also eliminated the need for tax credits to offset the discriminatory tax treatment of telecommunications property.



Taxation of Communications Company Personal Property

While most states exempt the tangible personal property of individual taxpayers from the personal property tax, tangible personal property owned by business is typically taxable. However, there are some exemptions. For example, Delaware, Iowa, New Jersey, New York, Ohio, and Pennsylvania exempt business personal property from the property tax altogether.

A handful of states that exempt business personal property from the property tax make an exception for the property of communications companies. In other words, all business personal property is exempt except that owned by communications companies. As discussed earlier, this tax treatment results from the legacy treatment of communications providers as regulated monopolies. The communications marketplace has changed, but some states' tax laws and practices have not.

Delaware, Iowa, and New Jersey tax the personal property of some communications companies while exempting the personal property of other ~~competitive~~ businesses**. In Delaware, the "special betterments tax"** only applies to the property of a single local exchange carrier operating in the State. New Jersey taxes the personal property of any telecommunications company that provides more than 50% of the service lines with the taxing jurisdiction. In Iowa, only certain taxpayers such as telecommunication companies must pay taxes on personal property. For all other taxpayers, personal property is exempt from taxation. Ohio, on the other hand, included the property of communications companies when it phased out the taxation of business personal property starting in 2010.

Some states also retain personal property taxes on telecommunication providers separate from other competitive businesses. Connecticut imposes a special property tax administered by the state for wireline telecommunications companies. This special tax applies a higher mill rate than the statewide average. Maine splits the assessment of cable and satellite companies, which are locally assessed, with the assessment of wireless and wireline telecommunications property, which are centrally assessed. In New York, landline and cable companies are assessed a "special franchise tax" which applies to equipment located on public property. Nassau County and New York City also have a "split roll" which imposes higher taxes on landline telephone companies. Pennsylvania exempts personal property from local taxation, but it applies a public utility realty tax on local exchange providers.

Other Types of Property Tax Discrimination

Policy Issues Related to Property Tax Treatment of Communications Property

Responding to public criticism of the property tax, many states have adopted strategies to provide property tax relief to residential taxpayers. These programs typically exempt a portion of a homeowner's property value from taxation (homestead exemption), limit property tax to a **percentage of income (circuitbreaker)**, cap the allowable annual growth in property values each year (assessment limitation), or limit taxes to a certain **percentage of taxable value (rate limit)**.

However, as legislators protect residential property owners from increases in property taxes, the burden of taxation is shifted to business taxpayers often with disparate impacts by type of business. Within the business community, as states compete for capital intensive manufacturing industries and the high-paying jobs they create, there is increasing pressure on legislatures to exempt specialized manufacturing facilities like microchip fabrication plants and other advanced production facilities. When combined with the growth in "knowledge-based" industries that do not make large capital investments, states trying to preserve the business property tax base are left with relatively few capital intensive industries to tax.

As a result of these market and political pressures, and because of its legacy treatment as a regulated public utility in some states, communications companies bear a disproportionate property tax burden in many states.[1] Communications companies must make sizeable investments to keep up with consumer demand for better coverage and higher bandwidth, yet with limited exceptions they do not have the ability to move infrastructure to other states.

Property taxes are a recurring expense for businesses and have a disproportionate impact on businesses like communications providers who must invest frequently to modernize networks. Since communications providers must constantly invest in new equipment to upgrade network quality and speed, any tax reductions that accrue from depreciating older equipment are continuously offset by investments in new equipment. Also, some providers must build out new networks while maintaining old "legacy" networks, which can result in added property tax costs attributable to the taxation of both networks.

As the communications marketplace changes, disparate tax treatment increasingly creates problems of **"horizontal equity" – that is, like treatment of competing businesses**. Ironically, the massive investment that communications providers have made in increasing the availability and quality of high-speed Internet Access now makes it possible for non-traditional companies to provide communications services that compete with companies that are classified as communications service providers. As a result, two companies purchasing and deploying the same piece of equipment – a router or switch, for example – may pay significantly different property taxes on the same piece of equipment. That same piece of equipment may also be valued differently based on the type of service that it is used to provide.

In the 2015 legislative session, the Oregon legislature grappled with this issue as new providers balked at being subject to the same "central assessment" of their communications equipment as communications providers. Instead of eliminating the property tax practices that result in higher taxes on communications providers, the legislature enacted a special provision that keeps the new investment of non-traditional providers from being subject to central assessment.

[1] See Robert Cline, Tom Neubig, and Andrew Phillips, "Total State and Local Business Taxes," March, 2006. Available at: http://c.ymcdn.com/sites/www.nmtri.org/resource/resmgr/imported/50StateTaxStudyMarch2006.pdf

For policymakers, property taxes on communications companies come with a hidden economic cost because the recurring impact of property taxes diverts money that would otherwise be spent on network investment to property taxes. **A growing body of economic evidence from the US and abroad suggests that investment in communications infrastructure provides spillover economic benefits for the many businesses that use the infrastructure.[2]** This evidence suggests that efforts to modernize state property tax systems to treat communications providers like other competitive businesses would have a significant and lasting positive impact on infrastructure investment. This new investment would generate additional property and other tax revenues to offset some of the revenue reduction from eliminating the discriminatory treatment of communications providers. This is especially the case in high cost rural areas where returns on investment are lower and taxes weigh more heavily in capital investment decisions.

While many legislators acknowledge the need for reform of taxes on telecommunications property, they are faced with the reality that reforms will likely result in short term reductions in revenues available for schools and local governments. Several states have addressed this issue by applying property tax policy changes prospectively. In 2015, for example, Arkansas changed the law to eliminate the taxation of the intangible value for property placed in service beginning in 2015. Kansas implemented a similar approach over a decade ago, phasing out the taxation of telecommunications personal property only for new property placed in service after the effective date of the law change. Similar phase-ins of property tax reforms were also implemented successfully in Maine and Ohio. In Tennessee, the elimination of discriminatory assessment ratios on telecommunication companies was coupled with the elimination of an income tax credit available to businesses affected by the higher assessment ratios effective June 2017.

The next section highlights actions states have taken to modernize property tax systems to address disparities between property taxes on telecommunications companies and other competitive businesses.

[2] See Raul Katz, "Assessment of the Economic Impact of Taxation on Communications Investment in the United States," October, 2012. Available at: http://www.broadbandtax.org/downloads/BTI_KatzStudy_October-2012.pdf

Recent State Reforms

Some states have implemented reforms to address the discriminatory taxation of telecommunications property or initiated studies to provide recommendations to address the disparate treatment of telecommunications property. Here is a brief overview of these actions:

The **Arizona** legislature passed SB 1326 into law on 2017 as Chapter 220. The measure determines how depreciation for qualifying broadband infrastructure should be calculated. Qualifying broadband infrastructure is defined as cable, telecommunications equipment and other tangible personal property capable of being used for or in connection with transmission of data at a rate that is equal to four megabits per second in at least one direction. Depreciation of cable and telecommunications equipment would be computed on a straight-line basis using ten and five year lives, respectively. This new law ends the disparate treatment of telecommunications ("landline" and "wireless") property which was specifically excluded from legislation enacted in 2011 (HB2001) that created an aggressive accelerated depreciation schedule that was limited to commercial and agriculture property.

The **Arkansas** General Assembly enacted legislation in 2015 (SB683, Act 1118) which excludes the value of intangible property acquired after January 1, 2015 from the determination of the valuation of broadband communication entities for property tax purposes. The legislation applies to providers of commercial mobile radio service, telecommunication and video service, and cable television service.

Connecticut instituted a 100% property tax exemption for all tangible personal property that a certified competitive video service provider acquires on or after October 1, 2007 and on or before September 30, 2010, even if the tangible personal property is used solely or in part in the provision of competitive video programming service. Further, personal property (acquired on or after September 30, 2007) to render both telecommunications service and certified competitive video service is allowed a partial property tax exemption as "dual-use" personal property. A certified competitive video service provider determines the taxable portion of "dual-use" property by deducting an "exemption" from that property's fully depreciated value.

Delaware legislation enacted in 2012 provides for a two year income tax credit against the "wire and transmitter property taxes paid only by local exchange telephone companies equal to a percentage of the taxpayer's Delaware communications infrastructure investment cost, coupled with a repeal of the tax altogether effective January 1, 2015. This reform will repeal the 1914 law that was created to tax every corporation engaged in telephonic business in Delaware, but which prior to the phase out applied to only one company.

In 2015, the legislature passed HB 171 (governor had not signed as of July 24, 2015) which caps the amount of Special Betterments Tax imposed on local exchange telephone companies by a municipality for poles, wires, conduit and cable used for distribution of telephone communication. As passed, future taxes may not exceed the amount of tax actually paid to each municipal corporation in the fiscal year ending June 30, 2015.

In **Kansas,** an income tax credit is allowed for all taxable years commencing after December 31, 2000 for property taxes imposed on property initially acquired and first placed into service in Kansas on and after January 1, 2001. The credit represents the difference between the Property Tax levied at the 33% (Public Utility) assessment rate and the ("Non-Public Utility") assessment rate of 25%. The amount of the Income Tax Credit which exceeds the Income Tax liability for a taxable year is refunded to the taxpayer. In addition, machinery and equipment acquired by qualified purchase or lease made or entered into after June 30, 2006 is exempt from property taxation for all commercial taxpayers, including telecommunications, wireless and video providers.

Maine enacted legislation in 2000 that reduced the rate for telecommunications tangible property from 27 mills to 20 mills over the period of 2003 through 2009. The six-year phase out of the higher rates on telecommunications property resulted in rates that are approximately the same as the statewide average for other types of locally assessed property. In 2011, the legislature enacted additional reform measures which repealed the state's personal property tax and replaced it with a state excise tax on qualified telecommunications equipment. Property assessments for 2012 were subject to a 19.2 state mill rate. For assessments made in 2013 and thereafter, the State Tax Assessor is required to apply the mill rate of the municipality in which the qualified telecommunication equipment is located. The additional tax reform stemmed from a 2009 working group commissioned to study Maine telecommunication taxes.

Mississippi enacted a property tax exemption for broadband equipment, effective from July 1, 2003 through June 30, 2020. This law provides for a property tax exemption for eligible equipment deployed in counties that have elected to participate. The exemption is good for ten years from the date the equipment is placed in service (e.g., equipment placed in service in 2012 will be exempt from the property tax for 10 years). In addition, the Mississippi Telecommunications Ad Valorem Tax Reduction Fund was established to provide annual refunds to telecommunications companies to partially offset the additional property taxes that some telecommunications providers pay as compared to other competitive businesses.

New York passed a 4 year pilot program where the State sets caps for local assessors in valuing the so-called "outside plant" (e.g., poles and wires) of telecommunications companies that is located on private property. This is intended to bring the treatment of outside plant on private property in line with the treatment of the same property located on public property. After the 4 years is up, the legislature will reevaluate the program and decide whether to make it permanent. The pilot is effective for property tax valuations applied after January 1, 2015.

In 2005, the **Ohio** General Assembly enacted a phase-out of tangible personal property taxes imposed upon general business, telephone and telecommunications, and railroad properties over a period starting in tax year 2006 and ending in tax year 2010. Although the tax was phased out for most taxpayers during 2009, it continued to apply to telephone companies and interexchange telecommunications companies through tax year 2010. Starting with the 2007 tax year, telecom companies were defined as general business taxpayers instead of public utilities and their listing percentages phased-out as follows: 20% during 2007, 15% during 2008, 10% during 2009, 5% during 2010, and 0% during 2011 and thereafter.

The **Oklahoma** legislature passed legislation to put forward a constitutional amendment to eliminate the taxation of intangible property for all taxpayers, including telecommunications companies. The proposal was adopted by voters at the general election in November 2012. The amendment was the legislature's response to a court ruling that all intangible assets – whether owned by a business or an individual taxpayer – were subject to taxation unless specifically exempted in the constitution. This decision would have dramatically expanded the base of the property tax because, prior to the ruling, most business and residential intangible property (other than telecommunications, utility, and railroad property) was not subject to taxation. After passage of the amendment, the Oklahoma Tax Commission revised its methodologies for assessing telecommunications as a unit and accepted fair market value property analysis studies. Oklahoma also reduced the assessment ratio for property used by telecommunications companies to provide video services to equalize it with the ratio applicable to cable providers.

The **Tennessee** "Telecommunications Ad Valorem Tax Reduction Fund" was created by statute in 2001. The law provides that money from the fund is to be used to refund a portion of the excess local property paid by local exchange telecommunications companies who are subject to higher assessment ratios than those applied to the property of other business taxpayers. In 2017, the Tennessee legislature passed HB 1367, legislation that ends the use of discriminatory assessment ratios on local exchange telephone companies and telephone cooperatives. These companies will now be assessed at the rate applicable to commercial and industrial property of the same type.

Conclusion

If they have not already done so, states seeking to enact policies favorable to investment in communications networks may want to modernize property tax policies related to communications property. Many states have antiquated property tax systems that have not been modernized since the telecommunications industry evolved from a regulated monopoly marketplace.

This report highlights the variety of approaches that states have enacted over the last decade or so to modernize their property tax policies related to communications infrastructure.

Legislatures face significant challenges in balancing the need for modernization of property taxes on communications providers with the short term revenue implications of such changes on schools and local governments. One way that states have addressed this challenge is to phase-in property tax changes so that they only apply to new investments.

Appendix A:
Summary of State Property Tax Provisions Related to Telecommunications Service Provider Property

Alabama

All taxable real and personal property in Alabama, with the exception of public utility property, is assessed on the local level by the county assessing official. A "classification" system sets assessment ratios for different types of property as follows: owner-occupied residential real property is assessed at 10 percent of value; business property is generally assessed at 20 percent of value; and all property of utilities used in the business is assessed at 30 percent of value. The state's property tax rate is 6.5 mills for all property types. In addition to statewide property taxes, each county or city government can impose local property taxes and can set its own millage rates.

The Alabama Department of Revenue Property Tax Division sets the standards and procedures for equalization of property values in the counties, and supervises and controls the valuation and assessment of property, and collection of all ad valorem taxes to ensure that property is taxed uniformly throughout the state. Wireless property and cable property is locally assessed as business property at the 20 percent assessment ratio. Landline property is centrally assessed by the state Property Tax Division as public utility property using unitary valuation at the 30 percent assessment ratio. The wireline values are then distributed to the local jurisdictions and the property is taxed using the local tax rates. There has been no significant property tax reform legislation for Alabama in recent years.

Alaska

In Alaska, businesses pay property taxes on real property and personal property. Generally speaking, property is assessed at 100 percent of full and true value (i.e., fair market value). Intangible personal property is not taxable. Exemptions for inventory vary by locality. Municipalities may elect to exempt business personal property in part. There are few statutory guidelines for valuing property in Alaska, but property may be valued using the cost, income, and market approaches. Assessors typically rely on a basic cost approach (based on original cost) to value business personal property. With limited exceptions, property taxes are assessed, levied, and collected at the local level according to local ordinances.

Arizona

In Arizona, businesses pay property taxes on real property and most tangible personal property. All commercial taxpayers are subject to tax at 100 percent of market value, including centrally assessed and locally assessed commercial taxpayers. The Arizona Department of Revenue centrally assesses the property of wireline and wireless providers, as well as public utilities, railroads, airlines, and pipelines, using the unit valuation method. All other taxpayers are valued and assessed by county assessors, primarily using the cost approach.

To determine the fair market value for telecommunications company property under the unit method, the statutes direct the Department to use the cost approach, with specific provisions for determining useful lives and residual values for the types of property owned by such companies. The formula has the effect of valuing telecommunication companies at a higher level than if they were locally assessed, as evidenced by a recent case decided by the Arizona Court of Appeals. [Cable One, Inc., v. Arizona Department of Revenue; 304 P.3d 1098, 1101 n.8 (Ariz. App. 2013)]

In 2017, the Arizona legislature passed SB 1326 which allowed the equipment of cable and telecommunications companies to have the same accelerated depreciation applicable to commercial and agricultural equipment.

Arkansas

All communications providers (including wireless, cable and local telephone companies) are considered "utilities" and are centrally assessed by the Arkansas Public Service Commission. The PSC uses the unit method for valuation and captures intangibles, including the value of Federal Communications Commission (FCC) spectrum licenses required by wireless providers to operate. However, legislation passed in 2015 (SB 683, Act 1118) excludes the value of intangible property acquired after January 1, 2015 from the valuation of broadband communications entities. The intangible value of locally assessed business property is not subject to taxation. There is no difference in the assessment ratios for communications companies as compared to general business.

California

In California, businesses pay property taxes on real property (including possessory interests) and personal property. Property is generally assessed at 100 percent of full cash value (i.e., fair market value). Under Proposition 13, assessed values for real property, other than state-assessed real property and possessory interests are limited to an annual inflation factor of no more than two percent, provided there has not been a change in ownership.

Intangible personal property is not taxable, however, according to recent litigation, "indirect" intangibles (i.e., intangibles to which the taxpayer cannot ascribe a portion of the business's income stream) need not be excluded under the income approach. [Elk Hills Power, LLC v. Bd. of Equalization, 57 Cal.4th 593, 304 P.3d 1052 (Cal. 2013)] Business inventories and software, except basic operational programs, are exempt. Property may be valued using the cost approach (based on replacement, reproduction, or historical costs), income approach, market approach, and/or the stock and debt approach. Possessory interests may be valued using the cost, income, and/or comparative sales approaches but, in practice, typically are valued using the income approach.

In the case of cable franchises, possessory interests generally are valued based on discounted economic rents for the subject franchise over the term of the franchise agreement. Property, except franchises, owned or used by regulated telephone companies (which includes wireless and wireline companies) is subject to central assessment by the California Board of Equalization (BOE). Regulated telephone companies are typically valued using the cost approach; however, the BOE employs unit valuation and is authorized to use all three approaches to value. Cable companies are assessed locally.

Colorado

In Colorado, businesses pay property taxes on both real property and personal property. Business property is assessed based on a 29 percent assessment ratio, while residential property is assessed at a ratio of 7.96 percent of market value. The Colorado Division of Property Taxation centrally assesses the property of wireless and wireline providers as well as public utilities, railroads, airlines and pipelines, using the unit valuation method, in which the Division values the entire business enterprise. All other taxpayers, including cable and satellite television companies, are valued and assessed by county assessors, primarily using the cost approach. To determine fair market value under the unit method, the Division uses some combination of the income, market, and cost approaches.

A major difference between Colorado and most other states that use the unit method is that most intangible property, including software, is exempt by statute (39-3-118) for locally assessed taxpayers, but not exempt for centrally assessed taxpayers, other than FCC licenses which are statutorily exempt (39-4-102(1)(b). In a 2013 ruling, the Colorado Supreme Court held that disparities in valuations caused by the different treatment of centrally assessed and locally assessed taxpayers were not unconstitutional. [Qwest v. Colorado Division of Property Taxation, 304 P. 3d 217 (Colo. 2013)]

Connecticut

Connecticut taxes all real and tangible personal property not specifically exempt by statute. Generally, real and tangible personal property are assessed at 70 percent of fair market value (determined using depreciation schedules with varying floors based on the type of property) and taxed at the rate applicable in the town the property is located. The mill rates range from 10.5 to 74.29 depending on the locality, but most jurisdictions have levies of 40 mills or less. The personal property of some wireline telecommunications companies is subject to a special property tax administered by the state in lieu of local property taxes. The assessment ratio is 70 percent of the depreciated value (using federal schedules) and the statewide rate is 47 mills, with no valuation floor.

The state imposes a gross receipts tax in lieu of the personal property tax on property used to provide television or video programming services by community antenna television, direct broadcast satellite and certified competitive video service. Property used to provide both telecommunications and video programming is partially exempt from property tax based on the ratio of video programming receipts to total receipts.

Delaware

Delaware does not tax the personal property of communications companies. However, the outside plant of local telephone companies is taxed under a "Special Betterments Tax." Special betterments subject to the tax include poles, wires, cable and conduits for distribution of telephone communication services. The special betterments tax does not apply to wireless or cable property. In addition, landline companies face inconsistent application among counties and municipalities with regard to valuations and depreciation of the outside plant.

District of Columbia

Only the real property of communications companies is subject to property tax. Tangible personal property is exempt because telecommunications providers and cable providers are subject to the gross receipts tax.

Florida

In Florida, businesses pay property taxes on both real and tangible personal property. Communications companies are assessed at the county level, where property is valued at fair market value (just value). Most property appraisers use the cost method in determining the value of tangible personal property. In addition, each entity receives a $25,000 assessed value exemption per county.

Georgia

In Georgia, businesses pay property taxes on real property and personal property. With limited exceptions, property is typically assessed at 40 percent of fair market value. Intangible personal property generally is nontaxable. Business inventory is exempt from state-level property taxation, while counties have the option to exempt inventory. (Most counties do not grant the exemption.) County assessors are required to consider the cost, income, and sales comparison approaches for valuing real and personal property. The sales comparison approach must be used to value machinery, equipment, personal fixtures, and trade fixtures if there is a ready market for such property. If a ready market does not exist, county assessors must use the basic cost approach (based on replacement or reproduction cost) to value such property. If the basic cost approach does not adequately reflect physical deterioration or obsolescence or otherwise is not representative of fair market value, county assessors must apply the approach of combination of approaches to value that, in their judgment, results in the best estimate of fair market value.

Property owned by public utilities, including wireline telephone companies, is subject to central assessment by the Georgia Department of Revenue. The Department uses unit valuation and the cost, income, and stock and debt approaches, or any combination thereof, when valuing public utility property. Wireless telephone companies and cable companies are assessed locally, and their business personal property generally is assessed using the basic cost approach.

Hawaii

In Hawaii, there is no personal property tax. Businesses pay real property tax to the counties. Hawaii telecommunications service providers are classified as "public utilities". As a public utility, service providers must collect and remit a 4% "Public Service Company tax" (PSC), imposed on customers' monthly phone charges, to the state of Hawaii. Counties have been granted constitutional authority to either impose their real property tax on "public utilities" or, alternatively, exempt public utilities from their county's real property tax and in lieu thereof, impose an incremental, additional PSC add-on tax that's a customer pass-through via billed customer intrastate telecommunications service charges. Rates range from 1.885% to 4.2% depending on county-specific formulas that compute the ratio of gross income to net income. As a practical matter, all counties have elected to exempt telecommunications companies from their real property tax, and have opted to instead impose the PSC tax.

Idaho

In Idaho, businesses pay property taxes on real property and most personal property. However, intangible property, including custom software, is exempt. All property is assessed at 100 percent of market value, and there are no classifications. The Idaho Tax Commission centrally assesses the property of wireline providers, as well as public utilities, railroads, airlines and pipelines, using the unit valuation method. To determine fair market value under the unit method, the Department uses some combination of the income, market, and cost approaches.

All other taxpayers, including wireless and cable companies, are valued and assessed by county assessors, primarily using the cost approach. Once a unit value is determined, the Department deducts values for exempt property, including intangible property. In March 2013, the state legislature passed a partial repeal of the personal property tax. The bill exempts the first $100,000 worth of personal property owned by every business in the state in each county of operation. It also exempts all business personal property with an acquisition price under $3,000.

Illinois

In Illinois, businesses pay property taxes on real property. Tangible personal property is not subject to taxation. In Cook County, real property is assessed by the Cook County Assessor. The Cook County assessment ratio for commercial/industrial property is 25 percent, and real property is revalued every three years. Outside of Cook County, real property is assessed by a township assessor and the assessment ratio for commercial/industrial property is 33.3 percent. Real property outside of Cook County is revalued every four years.

Indiana

All real property and tangible personal property is subject to tax. Intangible property, including application software, is exempt from property tax. Inventory is no longer taxed. The distributable property of public utilities, wireless companies and railroads are centrally assessed by the Department of Local Government Finance. For cable companies, the cable assets are locally assessed while the telephony assets are centrally assessed. The Department assesses only the property that is directly used to deliver the service (state distributable) and buildings and improvements for railroads. Local assessing officials assess all personal property not directly used to provide the utility service, as well as all land, buildings, and building improvements associated with the public utility. The assessment ratio for all property in Indiana is 100 percent of value. Regulations establish a floor value of no less than 30 percent of the adjusted cost of certain depreciable property.

Iowa

In Iowa, businesses pay property taxes on real property. Most personal property is exempt, except for certain taxpayers, including telecommunications companies other than long distance companies. All commercial taxpayers, including centrally assessed and locally assessed commercial taxpayers, are subject to tax at 100 percent of market value. The Iowa Department of Revenue centrally assesses the property of wireline providers using the unit valuation method, in which the Department values the entire business enterprise that provides the relevant service.

All other commercial and industrial taxpayers, including wireless, are valued and assessed by county assessors, primarily using the cost approach. The Iowa Supreme Court recently held that a cable company that provided VOIP service qualities as a telephone company and was thus subject to central assessment. [Kay-Decker v. Iowa State Board of Tax Review, Case No. 13-0925 (Dec. 19, 2014)] For many years, the Department also used the cost approach for most telecommunications companies. However, in 2014, the Department in began using the unit method for many of these companies, and disputes have arisen concerning whether that method is permissible. In 2013, Iowa enacted an exemption for telecommunications companies (not including wireless or VOIP providers) for some of the value of otherwise taxable property of such companies, according to a sliding scale with reduced exemption percentages for higher increments of value.

Kansas

In Kansas, all real property and tangible personal property is subject to tax except personal property acquired after July 1, 2006 is exempt from taxation. Intangible property, including application software, is exempt from property tax. The Kansas Department of Revenue assesses the operating property of motor carriers, railroads, regulated telecommunications companies, and utilities. The department uses unit valuation and employs the three approaches to determining value. Wireless and cable companies are locally assessed using only the cost approach. With a public utility assessment ratio of 33 percent, in comparison to an assessment ratio of 25 percent for commercial and industrial, public utilities assessed values are 24 percent higher, with associated higher taxes, than locally assessed property.

Kentucky

In Kentucky, businesses generally pay state and local property taxes on real property and personal property. Property is assessed at 100 percent of fair cash value (i.e., fair market value), which may be determined using the cost, income, and/or market approaches. Tangible personal property owned by providers of multichannel video programming services (i.e., cable companies) and communications services (i.e., wireline and wireless telephone companies) is subject to central assessment by the Kentucky Department of Revenue. Real property owned by said providers is assessed locally.

Centrally assessed tangible personal property of multichannel video programming services and communications services providers must be valued and assessed in accordance with the procedures established for locally assessed property. However, the Department has the ability to use unit valuation but generally values property using the cost approach. Providers of multichannel video programming services and communications services became subject to a state gross receipts tax and were excluded from the public service corporation property tax in 2006.

Louisiana

In Louisiana, businesses pay property taxes on real property and personal property. All property is categorized and assessed on the basis of various percentages of fair market value or, in limited circumstances, use value. Depending on the classification, real property generally is assessed at ten percent or fifteen percent of fair market value. Business personal property generally is assessed at fifteen percent of fair market value. Property, other than real property, meeting the definition of "public service properties" is assessed at twenty-five percent of fair market value. Intangible personal property generally is exempt from taxation; however, intangible personal property meeting the definition of "public service properties" is taxable. Inventory is generally taxable unless held in the state for storage purposes only.

Property may be valued using the cost (based on replacement or reproduction cost), income, and market approaches. Public service operating properties, including immovable, major movable and other movable property owned or used by wireline telephone companies, are subject to central assessment by the Louisiana Tax Commission. The Commission applies unit valuation and employs the cost, income, and market approaches when valuing centrally assessed property. Wireline telephone company property typically is assessed using the cost approach. Wireless telephone companies and cable companies are assessed locally, and their property generally is assessed using the cost approach.

Maine

All personal and real property is subject to taxation in Maine. Generally, intangibles are not subject to taxation with the exception of software, which is taxable. The assessment of property owned by cable and satellite companies is the responsibility of the local assessor. Maine Revenue Services (MRS) has the responsibility of assessment and taxation of wireless and wireline telecommunications property. This includes valuing all taxable property according to "just value" of fair market value and using the current municipal mill rate. The mill rates range from 11.0 in Hollis to 26.54 in Brunswick, with the statewide average at about 14 mills.

Maryland

In Maryland, businesses pay property taxes on real property and personal property. Most real property typically is assessed at 100 percent of phased-in full cash value (i.e., fair market value), while most personal property typically is assessed at 100 percent of full cash value. Intangible personal property is nontaxable. Commercial inventory generally is exempt from state-level taxation but may be taxable at the local level. Property may be valued using the cost, income, and sales comparison approaches, although most personal property is valued using the cost approach (based on acquisition cost). Public utility operating property is subject to assessment by the Maryland Department of Assessments and Taxation.

When valuing public utility operating property, the Department uses unit valuation and considers the earning capacity of the operating unit and all other factors relevant to a determination of value of the operating unit. Wireline telephone companies are classified as public utilities for property tax purposes. Property of wireless telephone companies and cable companies is taxed like the property of an ordinary business. Providers of VoIP service typically are assessed by the Department if they file a tariff with the Maryland Public Service Commission.

Massachusetts

The outside plant (poles, wires, cable and conduits) of landline telecommunications companies is assessed by the Department of Revenue using the cost approach. Network equipment used to provide telecommunications service is exempt from property tax. Wireless company and cable company property is valued by local jurisdictions, also using the cost approach.

Michigan

Michigan assesses property using a classified system which includes six real property and five personal property classifications including Industrial, Commercial and Utility. All real and personal property is assessed, unless specifically exempted; intangible property is exempt by statute. All taxable property is required to be assessed at 50 percent of true cash value, the state equalized valuation. Taxable value may not rise by more than the lesser of the increase in the consumer price index or 5 percent. Real property assessments principally use sales and cost data to establish assessment changes. Personal property assessments use acquisition costs adjusted by depreciation multipliers.

Landline telephone companies are classified as Utilities and are subject to state assessment on the value of all real and tangible personal property at the average statewide tax rate paid by other commercial, industrial, and utility property in the preceding calendar year. Telephone companies receive a credit equal to 12 percent of eligible investment in equipment capable of carrying 200 kilobits per second in two directions, subject to certain limitations; as well as a credit that is equal to certain telecommunication rights-of-way maintenance fees paid, subject to certain limitations and carry forward provisions. Telecommunications property not classified as utility property, including wireless and cable property, is classified as commercial property and is assessed by local assessors.

Minnesota

In Minnesota, businesses pay property tax on real property only. For the purposes of property taxation, real property includes land, buildings, structures, improvements, or other fixtures upon it, and the right to [1] occupy, [2] sell, [3] lease, [4] enter, [4] give away, or [5] borrow against the real property. Real estate is taxed based upon its market basis by each individual county. Minnesota has a classification system for assessment which ranges from 0.5 percent to 2.0 percent. Commercial and Industrial real estate is assessed at 1.5 percent for the first $ 500,000 in market value and 2.0 percent for the excess. Agricultural land has the lowest assessment at 0.5 percent while residential property is assessed between 1.0 percent to 1.25 percent. This results in business property being valued and taxed at 1.6 to 3 times more than agricultural land and residential property.

Mississippi

In Mississippi, business property taxes are paid on both real and tangible personal property, while intangible property is exempt. Wireless property is assessed at the local level. Wireline and cable property is centrally assessed using the unit valuation approach. Assessors can determine fair market value by using income, cost, or market approaches. The state does not mandate which approach must be used. Once fair market value has been determined, Mississippi law provides that telecommunications providers be subject to a 15 percent assessment ratio for both real and business personal property. This compares to public service corporation assessment ratios of 30 percent and residential of 10 percent. Therefore, communication service provider rates are roughly comparable to most businesses in the state.

Missouri

In Missouri, all real property and tangible personal property is subject to tax. Intangible property, including application software, is exempt from property tax. The operating property of motor carriers, railroads and utilities are centrally assessed using unit valuation and the three approaches to value. Wireless and cable companies are locally assessed. For locally assessed property, equipment purchased after January 1, 2006 must be depreciated using the IRS Cost Recovery Code (MACRS). The personal property assessment ratio is 33 1/3 percent and the real commercial property assessment ratio is 32 percent.

Montana

In Montana, businesses pay property taxes on both real property and tangible personal property. The property of telecommunications companies is taxed based on an assessment ratio of 6 percent, while most commercial and industrial property is assessed at a 3 percent ratio, although additional classifications also exist. The Montana Department of Revenue centrally assesses the property of wireless and wireline providers, as well as public utilities, railroads, airlines and pipelines, using the unit valuation method. To determine the fair market value under the unit method, the Department uses some combination of the income, market, and cost approaches. An intangible property deduction is made for each valuation method prior to arriving at the correlated unit value. Once the correlated unit value is determined, the Department allocates a percentage of this value to Montana. The Department then deducts values for other exempt property such as vehicles. The property of other taxpayers is assessed by the Department's county offices, primarily using the cost approach.

In 2008, the Department moved wireless companies from local assessment to central assessment, and in 2010 it moved cable companies to central assessment. Both actions, which led to the use of the unit method and the higher 6 percent assessment ratio, were sustained by the courts. While the state has a statutory exemption for intangible property, the restrictive manner in which the intangible exemption is applied by the Department was challenged by taxpayers in court [*Gold Creek Cellular of Montana Ltd. and AT&T Mobility, LLC vs. Department of Revenue, 372 Mont. 71 (2013)*]. The Montana Supreme Court ruled that the Department's regulations defining goodwill and intangible personal property were invalid because they conflicted with the statutes.

Nebraska

In Nebraska, businesses pay property taxes on tangible personal property and real property. The state of Nebraska Department of Property Assessments utilizes central assessment by unit valuation for public service entities which includes landline and wireless telecommunications providers. Cable television is locally assessed like other business property. Income, market, equity residual and cost approaches are all used to compute the unit value for telecommunication businesses. Although there is constitutional authority to tax intangibles in Nebraska, there is no current statute imposing a property tax on intangibles. Nebraska taxable value is defined as the actual value of real property and franchise where applicable and the net book value of tangible personal property. The Nebraska taxable value is determined by the sum of the unit value allocated to Nebraska less a deduction for the actual value of the tangible personal property, plus the net book value of all the tangible personal property of the entity allocated to Nebraska. The net book value of tangible personal property is determined by applying the appropriate Nebraska depreciation factor to the Nebraska adjusted basis.

Nevada

In Nevada, businesses are either locally or state assessed and pay property taxes on taxable tangible real and personal property. Business and residential property are assessed at 35 percent of the total assessed value/taxable value at a rate no greater than $3.66 per $100 of assessed value. Many jurisdictions are currently at or near the maximum rate. Business property that physically crosses the state or county lines and is used directly in the operation of a business such as telephone companies (except those that deliver video and wireless communications), gas and electric utilities, airlines, carlines, and railroads are state assessed and valued by the Nevada Department of Taxation. The taxable value of state assessed property shall not be any greater than the replacement cost less depreciation (RCNLD) of the system value.

Under local assessment, land property values are estimated from market sales or other recognized appraisal methods and buildings are estimated at replacement cost new less depreciation. The land value is added to the improvement's taxable value to arrive at the property's overall taxable value. Business personal property values are determined by the county assessor based on the Nevada Tax Commission regulations which establish the standards for determining the "cost of replacement" and schedules of depreciation based on the expected life, ranging from three to 30 years. "Cost of replacement" is determined by the cost of all improvements, any additions or renovations of the personal property, excluding routine maintenance and repairs added to the cost of acquisition.

Acquisition cost is the actual cost to the present owner including transportation and installation, but excluding sales tax.

New Hampshire

With the exception of land and buildings which are taxed locally, neither communications property nor tangible personal property is taxable in New Hampshire.

New Jersey

The tangible personal property of landline telephone companies is taxable for the telephone company with a market share of 51 percent or greater. If the market share dips below 51 percent, by statute, a landline telephone company no longer has to pay property tax for its tangible personal property. The property of wireless providers and cable companies is not taxable in New Jersey but land and buildings are taxable for all businesses at the local level.

New Mexico

In New Mexico, businesses pay property taxes on real property and most tangible personal property. All commercial taxpayers are subject to taxation at 33.33 percent of market value, including centrally assessed and locally assessed commercial taxpayers. The New Mexico Taxation and Revenue centrally assesses the property of wireless and wireline providers, as well as public utilities, railroads, airlines and pipelines, using the unit valuation method, in which the Department values the entire business enterprise that provides the relevant service.

All other taxpayers, including cable companies, are valued and assessed by county assessors, primarily using the cost approach. To determine the fair market value under the unit method, the Department uses some combination of the income, market, and cost approaches. Intangible property is not explicitly exempt by statute in New Mexico, but is regarded as non-taxable by regulation since only tangible property is subject to tax. New Mexico law does have special valuation methods for many industries, and gives communications companies an election to use only the cost approach.

New York

The taxation of communications property varies widely in New York. There are several types of property taxes that are applied in varying ways to the communications sector. While New York does not generally tax tangible personal property, the state considers lines, wires, poles, electrical conductors, fiber optic equipment, and related equipment to be real property. Landline companies and cable companies are subject to a real property tax on "Special Franchise" property which is centrally administered and assessed using the reproduction cost method by the Office of Real Property Tax Services (ORPTS). The Special Franchise property tax applies to equipment located on public property. In addition, Nassau County and New York City have a "split roll" which requires higher taxes on the "utility" class which includes landline telephone companies. Wireless companies and cable companies are assessed locally for their real property (land and buildings, e.g., towers).

North Carolina

In North Carolina, businesses pay property taxes on real property and personal property. Most property is assessed at 100 percent of true value in money (i.e., fair market value). North Carolina provides a list of specifically exempted properties, including most intangible personal property and business inventory. Software, other than embedded or software purchased or licensed from an unrelated entity that is capitalized on the taxpayer's books, is nontaxable. In addition, effective for tax years beginning on or after July 1, 2014, software developed or modified to meet customers' specified needs is exempt from tax. Property is typically valued, whether centrally or locally assessed, based on one or more of the cost, income, or market approaches. Under the cost approach, costs are generally based on GAAP historical costs. Property owned by telephone companies is subject to central assessment by the North Carolina Department of Revenue.

For taxable years beginning on or after July 1, 2015, property owned by mobile telecommunications companies will also be subject to central assessment by the Department. The Department is authorized to use unit valuation when valuing centrally assessed property. The Department considers the cost, income, and stock and debt approaches when valuing centrally assessed property, however, the Department may only use the cost approach (replacement, reproduction, or GAAP historical cost) when valuing the tangible personal property of a mobile telecommunications company. Cable companies are assessed locally, typically under the cost approach to value.

North Dakota

Personal property is exempt from property taxes in North Dakota, except the personal property of entities that are assessed by the State Board of Equalization. These state-assessed entities include railroads, investor-owned public utilities, pipelines, and airlines.

Telecommunications companies – defined as entities that provide two-way communications – are subject to a 2.5 percent tax on their adjusted gross receipts in lieu of property tax on all real and personal property used by the telecommunications carrier in its telecommunications operations. Cable television and other services offering one-way transmission, including radio or television signals for broadcast purposes, video programming or other programming are not considered telecommunications service for purposes of the gross receipts tax. Real property used in those operations is subject to local assessment.

Ohio

In Ohio, businesses primarily pay property taxes on real property. In 2005, the Ohio Legislature implemented a gradual and progressive phase-out of the property tax on business tangible personal property. The tax was progressively phased out over a four-year period for most businesses and was effectively eliminated beginning with the 2009 tax year. With respect to telecommunications companies, the tax on tangible personal property was effectively eliminated beginning with the 2011 tax year. Intangible personal property is generally nontaxable, and inventory is effectively exempt as a result of the phase-out of the tax on intangible personal property.

Real property generally is assessed at thirty-five percent of true value in money (i.e., fair market value). County assessors may consider all three approaches (cost, income, and market) to value, but county assessors typically rely on the cost approach. Land may be valued using any combination of four methods—the market data method, the allocation method, the land residual method, and the development method—with the market data method being the preferred method. Wireline and wireless telecommunications companies and cable companies are assessed locally.

Oklahoma

In Oklahoma, businesses pay property taxes on both real property and tangible personal property. The Oklahoma State Tax Commission centrally assesses the property of wireless, wireline, and video programming providers using the unit valuation approach. To determine the fair market value under the unit valuation approach, the Tax Commission is permitted to use either the income, market, or cost approaches. However, a 2012 Constitutional amendment approved by the voters exempts intangibles from the property tax, so the Tax Commission must subtract intangible values before determining fair market value. Once fair market value is determined, Oklahoma law provides that "public utility" property (which is defined to include the property of communications providers) is subject to an assessment ratio of 22.85 percent. This compares to the county assessment ratios that by law must be between 10 percent and 15 percent for other business and residential taxpayers. As a result, real estate and personal property of communications service providers is taxed at rates approximately 1.5 to 2.3 times higher than businesses that are not considered public utilities. Real property is assessed and taxed by the local jurisdictions.

Oregon

In Oregon, businesses pay property taxes on both real property and personal property. All property is assessed at 100 percent of market value, and there are no classifications. The Oregon Department of Revenue centrally assesses the property of wireless and wireline providers as well as public utilities, railroads, airlines and pipelines, using the unit valuation method, in which the Department values the entire business enterprise that provides the relevant service. All other taxpayers are valued and assessed by county assessors, primarily using the cost approach.

To determine fair market value under the unit method, the Department uses some combination of the income, "stock and debt," and cost approaches. Centrally assessed taxpayers are taxed on their intangible property, while locally assessed taxpayers receive an exemption for their intangible property. FCC licenses, whether owned by a centrally assessed or locally assessed taxpayer, are exempt from taxation.

In 2014, the Oregon Supreme Court upheld the Department's decision to change the assessment of companies that provide data transmission services by whatever means from local to central assessment. *[Comcast Corporation v. Department of Revenue, 356 Or. 282 (2014)]* In 2015, Oregon enacted legislation exempting the value of franchises and satellites, continuing the intangibles property tax exemption for wireless licenses, and providing a limited exemption for certain other intangible property. The legislation also exempts "data center" assets from central assessment for businesses that use less than 10% of their total property ~~is used~~ in the business of communications and provides an intangibles exemption for symmetrical gigabit broadband services.

Pennsylvania
The property tax is imposed on the real property of general business at the local level. Pennsylvania law grants counties, cities, boroughs, townships, and school districts the authority to impose tax. The rate of tax is based on the aggregate of all the local levying bodies within whose jurisdiction the real property is located. Pennsylvania law does not subject personal property to tax. Pennsylvania exempts from local property tax the real property of a public utility, which includes local exchange providers. However, real property is subject to the public utility realty tax at the state level. The tax on public utility realty is applied to each dollar of state taxable value assigned to the property at the end of the preceding calendar year.

State taxable value is the current market value as calculated by adjusting the assessed value of the property for county real estate taxes for the common level ratio of assessed values to market values of the county, as established by the State Tax Equalization Board after July of the taxable year. The millage rate is calculated by the Department of Revenue by dividing the amount of the total realty tax equivalent, which is the amount of real estate taxes that the local taxing authority could have imposed on utility realty but for the utility realty tax, by the total state taxable value of all utility realty located in Pennsylvania.

Rhode Island
In Rhode Island, businesses pay property taxes on real property and personal property. Property generally is assessed at full and fair cash value, or at a uniform percentage thereof, not to exceed 100 percent, as determined by local assessors. Intangible personal property is exempt from taxation. Inventory is mostly nontaxable. Valuation methods for real property vary from locality to locality due to an absence of any state guidelines, but real property typically is valued using the cost, income, and market approaches. Tangible personal property is valued based on the original purchase price (new or used) including all costs such as freight and installation. Lines, cables, conduits, ducts, pipes, machines and machinery, equipment, and other tangible personal property of cable and telecommunications corporations, used exclusively in the carrying on of the business of the corporation, are exempt from local taxation. Said property is subject to central assessment by the Rhode Island Department of

Revenue. Cable and telecommunications corporations report the value of their tangible personal property based on original cost less accumulated depreciation (with a twenty-five percent floor), to which the Department applies an average assessment ratio and average tax rate.

South Carolina

In South Carolina, businesses pay property taxes on real property and personal property. All property is categorized in several classifications and assessed on the basis of various ratios of true value in money (i.e., fair market value). South Carolina has an assessment ratio of 10.5 percent applied to the appraised value. Personal property is assessed at a tax rate of 33 percent of fair market value. Most real property is generally assessed at a ratio of six percent of appraised value, but utility real property is assessed at ratio of 10.5 percent.

Most intangible personal property is nontaxable. Business inventory generally is exempt from taxation. Property may be valued using the cost, income, and market approaches. For purposes of the cost approach, costs can be based on replacement cost new or GAAP historical costs depending on the type of filer. Property owned or used in the conduct of a wireless or wireline telephone business or cable business is subject to central assessment by the South Carolina Department of Revenue. The Department is authorized to use unit valuation when valuing centrally assessed property.

South Dakota

Personal property of most businesses is exempt in South Dakota. Local exchange telephone companies and wireless providers are subject to a four percent gross receipts tax in lieu of the property tax. The Department of Revenue is responsible for assessing the property of companies that provide long distance service in South Dakota. The property is assessed by the Department in July and the taxable value is then certified and sent to the counties in August. The counties determine and collect the tax at the same rate and at the same time as locally assessed property.

Tennessee

All real and personal property other than public utility company property in Tennessee is assessed by county assessors. The State Board of Equalization establishes policies and procedures for local assessors of property and hears property appeals beyond the county level. Wireless and wireline property is assessed by the state Office of State Assessed Properties. Annual renditions are required only for public utility property and locally assessed business personal property (due April 1 for public utilities and March 1 for all other businesses). The assessment ratio for the different classes of property is established by state law. Assessments are based on a percentage of fair market value of the property as of January 1.

Prior to 2017, the assessment ratios were ~~The required percentages are~~ as follows: public utility including wireline providers (real and personal property) - 55 percent; commercial and industrial (40 percent on real property and 30 percent on personal property); farm - 25 percent; and residential - 25 percent. The county commission and city governing bodies determine local property tax rates. The property taxes are collected by county trustees and city collecting officials. Cable companies are assessed locally as commercial property. In 2017, the legislature passed ~~After the passage of~~ HB 1367 which eliminated the discriminatory assessment ratio on wireline companies. The legislature also repealed provisions enacted in 2001 to create the "Telecommunications Ad Valorem Tax Reduction Fund." This fund had been used to provide tax credits to wireline providers for the discriminatory taxation that resulted from the higher assessment ratios. Since the higher assessment ratios were eliminated, there was no need to continue the fund.

Texas

In Texas, businesses pay property taxes on real property and personal property. Property other than certain special-use property is assessed at 100 percent of fair cash market value. Most intangible personal property, including software, is nontaxable. Inventory is taxable. Assessors must consider the cost, income, and market approaches for valuing property, however, assessors primarily use the cost approach. Under the cost approach, costs typically are based on replacement cost new and/or GAAP historical cost. Most businesses, including wireless and wireline telecommunications companies and cable companies, are assessed at the local level.

Utah

In Utah, businesses pay property taxes on real property and most tangible personal property. The Property Tax Division of the Utah Tax Commission centrally assesses the property of wireless and wireline providers, as well as railroads, airlines and pipelines, using the unit valuation method, in which the Division values the entire business enterprise that provides the relevant service. All other taxpayers, including cable and satellite television providers, are valued and assessed by county assessors, primarily using the cost approach.

All commercial taxpayers are subject to tax at 100 percent of market value, including centrally assessed and locally assessed commercial taxpayers. To determine the fair market value under the unit method, the Division uses some combination of the income, market, and cost approaches, although use of the market approach and its "stock and debt" adaptation is discouraged by a Tax Commission rule. Once a unit value is determined, the Property Tax Division deducts values for exempt property, including intangible property. Counties have a right to appeal Division assessments, and challenges from the counties are common. There has been considerable litigation concerning the issues of what intangible property is exempt and how to exclude it from the unit, particularly goodwill.

Vermont

In Vermont, most businesses pay property taxes on real property and personal property. Property generally is assessed at 100 percent of fair market value. In the case of business personal property, a town may provide that such property is to be assessed at (1) fifty percent of its cost (with a ten percent floor), or (2) at its net book value (with a ten percent floor), at the election of the taxpayer. Most intangible personal property is nontaxable, and a specific exemption exists for money, securities, mortgages, and other evidences of debt. Municipalities, at their discretion, may elect to not tax business inventory. Valuation methods for real and personal property vary from locality to locality, but the cost (based on replacement cost), income, and market data approaches are used. Real and personal property, except land and buildings, used in carrying on a telephone business in Vermont is exempt from local taxation.

Each person or corporation owning or operating a telephone line or business in Vermont, excluding resellers of telephone transmission capacity who do not own or operate and telephone lines or transmission facilities in the state, are subject to central assessment by the Vermont Department of Taxes, Division of Property Valuation and Review. This state-imposed tax is imposed on the net book value of all personal property of the owner or operator located in the state. Cable companies are assessed locally. A state-imposed education property tax is also levied on all nonresidential property. Real and personal property, except land and buildings, used in carrying on a telephone business in Vermont is exempt from the education property tax. Cable companies are subject to the education property tax.

Virginia
In Virginia, businesses pay property taxes on real and personal property. Typically, real and personal property is assessed at 100 percent of fair market value, however, assessment ratios can vary by locality. Most intangible personal property and inventory are exempt from taxation. Tangible personal property used in the cable television business, other than machines and tools, motor vehicles, delivery equipment, trunk and feeder cables, studio equipment, antennae and office furniture and equipment, is treated as exempt intangible personal property. Of the three generally accepted approaches to value, local assessors primarily use the market data approach to value real property and the cost approach (based on original cost) to value personal property.

The Virginia State Corporation Commission, Division of Public Service Taxation, is responsible for assessing the real and tangible personal property of public service corporations, including wireline and wireless telephone companies. The Commission is authorized to use the cost, income, and market approaches when valuing property of public service corporations, however, it generally uses the cost approach (based on original cost) to value telephone property.

Centrally assessed property is taxed at the real estate rate applicable in the respective locality, which tends to be lower than business personal property rate. Cable companies are assessed locally, but providers of VoIP service are treated as telephone companies and subject to central assessment if they hold a certificate of convenience and necessity granted by the Commission.

Washington
In Washington, businesses pay property taxes on both real property and tangible personal property. All property is assessed at 100 percent of market value, and there are no classifications. The Washington Department of Revenue centrally assesses the property of wireless and wireline providers, as well as public utilities, railroads, airlines and pipelines, using the unit valuation method. All other taxpayers, including cable companies, are valued and assessed by county assessors, primarily using the cost approach. To determine the fair market value under the unit method, the Department uses some combination of the income, market, and cost approaches. Once a unit value is determined, the Department deducts values for exempt property, including intangible property. The taxable fair market value is then equalized with the property values of other commercial property. A telecommunications company has pending litigation challenging a Department rule that limits the exemption in a way that is inconsistent with the statute. [*AT&T Mobility v. Department of Revenue, Case No. 14-2-00280-4 (Thurston County Superior Court.)*]

West Virginia
In West Virginia, most businesses pay property taxes on real and personal property. Most property is assessed at sixty percent of its true and actual value (i.e., fair market value). Intangible personal property has been exempt from taxation since 2003. FCC licenses are not taxable, while inventory generally is taxable. With certain exceptions, real and personal property is valued using one or more of the three generally accepted approaches to value—the cost, income, and market approaches. Owners and operators of telephone lines, wholly or in part, within the state are subject to central assessment by the West Virginia Board of Public Works, with the West Virginia State Tax Department issuing estimates of tentative assessed values for the Board's consideration in establishing final values. Non-operating real property of such owners and operators is assessed locally. The State Tax Department considers the cost (based on original cost), income, and stock and debt approaches when valuing telephone operating property, which primarily includes properties that are considered by the FCC as part of the rate base for ratemaking purposes. The State Tax Department also applies unit valuation. Cable companies are assessed locally.

Wisconsin

All real property and tangible personal property is subject to tax. Intangible property, with the exception noted below, is exempt from property tax. All manufacturing and industrial property, railroads, air carriers, pipeline, telecommunications companies (wireless, wireline and tower companies), and the operating property of public utilities are centrally assessed. Cable company property is assessed locally. Computers, computerized equipment and software owned by companies subject to local property taxes are exempt from general property tax. However, for telephone companies, only computers, computerized equipment and software used for general business purposes, such as personnel and planning, are exempt from the telephone company property tax. The assessment ratio for all property in Wisconsin is 100 percent.

Wyoming

In Wyoming, businesses pay property taxes on both real property and tangible personal property. The Wyoming Department of Revenue centrally assesses the property of wireless and wireline providers, as well as public utilities, railroads, pipelines, cable companies and satellite television companies using the unit valuation method. All other taxpayers are valued and assessed by county assessors, primarily using the cost approach. To determine the fair market value under the unit method, the Department uses some combination of the income, market, and cost approaches. Once a unit value is determined, the Department deducts values for exempt property, including intangible property. The property of industrial companies and centrally assessed companies is taxed based on an assessment ratio of 11.5 percent, while most commercial and industrial property is assessed at a 9.5 percent ratio. Wyoming amended its intangible exemption in statutes in 2008 and now has a very broad definition of "intangible property" eligible for the exemption.

Appendix B:
NCSL Resolution on Communications Network Equipment Exemption
Executive Committee Task Force on State and Local Taxation

Whereas, American consumers increasingly rely on high-speed communications networks in their everyday lives for work, entertainment, emergency communications, and other purposes; and

Whereas, communications networks have become an integral part of the business process for millions of American businesses in sectors as diverse as agriculture, health care, manufacturing, retail, transportation, and many others; and

Whereas, communications networks, both wired or wireless, have become integral to the delivery of government services and have the potential to allow for more efficient and cost effective delivery of government services; and

Whereas, the United States is a technology leader with respect to wired and wireless broadband deployment; and

Whereas, this technology leadership has allowed American businesses to lead the way in the global marketplace in areas such as applications development, "cloud-based" services, and the utilization of software in the communications networks; and

Whereas, the rapid adoption of new communications technologies by American businesses and consumers requires the investment of tens of billions of dollars to keep pace with the exponential growth in demand for network capacity; and

Whereas, state economic growth and competitiveness is dependent upon the deployment of modern, efficient communications networks; and

Whereas, a 2013 study by Ernst & Young confirmed what many prior economic studies have concluded – that the taxation of business inputs results in tax pyramiding, economic distortions, and a lack of transparency in the tax system; and

Whereas, a study by Dr. Raul Katz at Columbia University found that (1) sales taxes on communications network investment reduce economic growth by increasing the cost of investment and slowing communications network investment, and (2) that the elimination of sales taxes on communications network investment in the states that impose such taxes could increase economic growth by $33 billion and lead to the creation of 243,000 jobs in 3 years; and

Whereas, the National Conference of State Legislatures supports the policy goal of encouraging deployment of high speed communications networks across all States, including rural and underserved areas;

Be it therefore resolved, that the National Conference of State Legislatures recommends that states who wish to encourage broadband deployment consider exempting communications network equipment from the sales and use tax.

Adopted November 23, 2013 by NCSL Task Force on State and Local Taxation