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DELAY REDUCTION CASE

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FILED
SEP 27 2023
Clerk of the Napa Superior Court
By: ______ Deputy

CASE MANAGEMENT CONFERENCE
DATE: 3/6/2024
TIME: 8:30am
PLACE: Courtroom B
825 Brown Street, Napa CA 94559

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

PACIFIC BELL TELEPHONE COMPANY, AT&T MOBILITY LLC, SPRINT SPECTRUM, L.P., T-MOBILE WEST LLC, and CENTURYLINK COMMUNICATIONS LLC, Plaintiffs/Claimants, v. COUNTY OF NAPA, CALIFORNIA STATE BOARD OF EQUALIZATION, Defendants.	Case No 23CV001211 **COMPLAINT FOR PROPERTY TAX REFUND AND DECLARATORY RELIEF** *UNLIMITED CIVIL CASE*

Pacific Bell Telephone Company, AT&T Mobility LLC, Sprint Spectrum L.P., T-Mobile West LLC, and CenturyLink Communications LLC (collectively, "Claimants") file this action pursuant to Revenue and Taxation Code sections 5140 and 5096 *et seq.* to seek the refund of excessive property taxes that the County of Napa ("Defendant" or "the County") illegally levied and erroneously and illegally collected. As set forth below, the County levied and collected property taxes on Claimants' property at a rate that violates the California Constitution.

PARTIES

1. Claimant Pacific Bell Telephone Company ("Pacific Bell") is and at all times herein mentioned was a corporation duly organized and existing under the laws of the State of California, with its principal place of business located at 430 Bush Street, San Francisco, County of San Francisco, California. Claimant's property is subject to ad valorem tax assessment by the California State Board of Equalization ("BOE" or "the State Board"). The County levies and collects ad valorem property taxes on Claimant's property. Claimant's BOE Number is 0279.

2. Claimant AT&T Mobility LLC ("AT&T Mobility") is and at all times herein mentioned was a limited liability company duly organized and existing under the laws of the State of Delaware, with its principal place of business located at 1025 Lenox Park Blvd. NE, Atlanta, County of Fulton, Georgia. Claimant's property is subject to ad valorem tax assessment by the State Board. The County levies and collects ad valorem property taxes on Claimant's property. Claimant's BOE Number is 2606.

3. Claimant Sprint Spectrum, L.P. ("Sprint Spectrum") is and at all times herein mentioned was a limited partnership duly organized and existing under the laws of the State of Delaware, with its principal place of business located at 6100 Sprint Parkway, Overland Park, Johnson County, Kansas. Sprint Spectrum was formerly known as Sprint Telephony PCS, L.P. before changing its name in 2018. Claimant's property is subject to ad valorem tax assessment by the State Board. The County levies and collects ad valorem property taxes on Claimant's property. Claimant's BOE Number is 2720.

4. Claimant T-Mobile West LLC ("T-Mobile") is and at all times herein mentioned was a limited liability company duly organized and existing under the laws of the State of

Delaware, with its principal place of business located at 12920 SE 38th St., Bellevue, King County, Washington. Claimant's property is subject to ad valorem tax assessment by the State Board. The County levies and collects ad valorem property taxes on Claimant's property. Claimant's BOE Number is 2748.

5. Claimant CenturyLink Communications LLC ("CenturyLink") is and at all times herein mentioned was a limited liability company duly organized and existing under the laws of the State of Delaware. CenturyLink's current principal place of business is located at 1025 Eldorado Blvd. Broomfield, Colorado, Broomfield County, Colorado. Claimants' property is subject to ad valorem tax assessment by the State Board. The County levies and collects ad valorem property taxes on Claimants' property. Claimant's BOE Number is 2463.

6. Defendant County of Napa is and at all times herein mentioned was a legal subdivision of the State of California pursuant to article XI, section 1 of the California Constitution. The County has the power and authority to levy taxes on state-assessed property, including Claimants' property, pursuant to the tax rate set forth in Revenue and Taxation Code section 100(b). The County's officers, agents, and employees have levied and collected property taxes on Claimants' state-assessed property in the County. The County is a named party to this action pursuant to Revenue and Taxation Code section 5140.

7. Defendant California State Board of Equalization assesses Claimants' property in California pursuant to section 19 of Article XIII of the California Constitution ("Section 19") and Revenue & Taxation Code section 721 *et seq*. Although the State Board conducts the assessment of Claimants' state-assessed (also referred to as "unitary") property in California, the State Board does not set Claimants' tax rates or have the authority to instruct the County to use a different tax rate. The issue in this action is not the assessment of Claimants' property in California but rather the tax rate applied to Claimants' unitary property in California. Notwithstanding its lack of authority with respect to tax rates, the State Board is named as a Defendant in this action pursuant to Revenue & Taxation Code section 5146, which provides that the State Board "shall be joined as a party to the action" if "any portion of the taxes sought to be recovered were levied on state-assessed property."

JURISDICTION AND VENUE

8. This Court, as a court of general jurisdiction, has jurisdiction over this matter pursuant to Article VI, section 1, of the California Constitution and pursuant to Revenue and Taxation Code sections 5140 and 5141 and California Code of Civil Procedure section 1060.

9. Venue is proper in this Court pursuant to Revenue & Taxation Code section 5140 and Code of Civil Procedure sections 393(b) and 394(a) because Claimant's causes of action arise in the County of Napa and the claims are against the County of Napa.

ALLEGATIONS

I. CALIFORNIA'S PROPERTY TAX SYSTEM

A. Property Tax Assessment

10. The State Board is charged with assessing the property of certain public utilities, including regulated telephone companies, in California pursuant to Section 19 and Revenue & Taxation Code section 721 *et seq.* Claimants are privately held public utilities under Section 19 that own property subject to assessment by the State Board.

11. The taxable value of "state-assessed property" under Section 19 (known as "unitary property") is determined for assessment purposes by the State Board. (Rev. & Tax. Code § 108 ["State assessed property. 'State-assessed property' means all property required to be assessed by the board under Section 19 of Article XIII of the Constitution and which is subject to local taxation."].) In contrast, local assessors assess all other property (known as "locally assessed" property).

B. Property Tax Rates

12. Unitary property and locally assessed property are subject to different tax rates. The County Board of Supervisors, acting on behalf of the County, adopts the tax rates to be applied in the County for both locally assessed and state-assessed property, including Claimants' state-assessed property.

13. Locally assessed property is assigned to particular tax rate areas within the County, based on the property's location in the County.

14. The annual ad valorem tax rate for each tax rate area is established as 1% plus an

amount necessary to produce revenues to make payments for the interest and principal on any bonded indebtedness of local agencies, school entities, or special districts. (Rev. & Tax. Code, § 93 ("Section 93").) This latter portion of the tax rate, known as the "debt service component," varies among tax rate areas due to differences in bonded indebtedness at different locations within a county.

15. Under Revenue & Taxation Code section 100, subdivision (a), the value attributable to the state-assessed unitary property of a regulated telephone company is generally allocated to a single countywide tax rate area in each county in which the property is located.

16. The "unitary" tax rate to be applied to these countywide tax rate areas is established in accordance with the formula in Revenue & Taxation Code Section 100, subdivision (b)(2) (hereinafter, "Section 100"). The Section 100 tax rate resembles the Section 93 tax rate in some respects and differs from it in others: Like Section 93, Section 100 starts with a baseline 1% tax rate component for general government services. But the debt service component of Section 100 is calculated by taking the previous year's unitary debt service component rate, and multiplying it by the percentage change between the county's ad valorem debt service levy for the secured roll (excluding unitary levies and certain other levies) for the two preceding fiscal years.

17. In short, Claimants' unitary tax rate, and thus their tax liability, is calculated under a different formula from the tax rate for most other property in California. As elaborated below, the difference in those formulas has led to the County applying higher tax rates to Claimants' property compared to other property in the County.

II. CLAIMANTS' CLAIMS FOR REFUND

18. Claimants' property value as of January 1 of each year is assessed by the State Board under Section 19 and Revenue and Taxation Code sections 721 *et seq.*

19. For each fiscal year at issue in this action, the State Board assessed the value of Claimants' state-assessed California property and allocated that value amongst the various counties in Claimants' respective service areas. Pursuant to its authority under Revenue and Taxation Code section 756, the State Board transmitted to the County a roll showing Claimants' state-assessed property in the County.

20. Pursuant to Revenue and Taxation Code section 100(b), the County then calculated the tax rate to apply against the value of Claimants' state-assessed property allocated to the County for each fiscal year at issue in this action. Specifically, the County used the Board's allocated value of Claimants' state-assessed property, calculated the tax rate for that property based on the calculation set forth in section 100(b), and then levied taxes on Claimants' property for each fiscal year in the sums as follows:

Claimant	Fiscal Year	Taxes Levied
AT&T Mobility	2018-2019	$130,697.00
Pacific Bell	2018-2019	$977,817.00
CenturyLink	2018-2019	$21,336.68
Sprint Spectrum	2018-2019	$87,502.26
T-Mobile	2018-2019	$82,442.70
CenturyLink	2019-2020	$20,103.74
Sprint Spectrum	2019-2020	$97,478.00
T-Mobile	2019-2020	$81,410.50
CenturyLink	2020-2021	$26,268.38
Sprint Spectrum	2020-2021	$85,921.46
T-Mobile	2020-2021	$78,999.98
CenturyLink	2021-2022	$25,736.04
Sprint Spectrum	2021-2022	$22,568.64
T-Mobile	2021-2022	$91,926.50
CenturyLink	2022-2023	$42,217.30
Sprint Spectrum	2022-2023	$7,632.98
T-Mobile	2022-2023	$130,860.06

21. Claimants paid those taxes in full.

22. Between October 2022 and January 2023, Claimants submitted verified claims for partial refunds of property taxes to the Board of Supervisors for the County for each fiscal year at issue in this action. In those claims, Claimants requested a partial refund of the property taxes paid in the amounts reflected in the following table, plus appropriate interest. True and correct copies of those claims for refund, with the associated property tax bills and proofs of payment, are attached as Exhibit 1.

Claimant	Fiscal Year	Refund Claim Amount
AT&T Mobility	2018-2019	$62,974.00
Pacific Bell	2018-2019	$471,146.00
CenturyLink	2018-2019	$10,280.74
Sprint Spectrum	2018-2019	$42,282.92
T-Mobile	2018-2019	$39,838.03
CenturyLink	2019-2020	$9,866.00
Sprint Spectrum	2019-2020	$48,252.02
T-Mobile	2019-2020	$40,399.02
CenturyLink	2020-2021	$12,782.40
Sprint Spectrum	2020-2021	$41,810.10
T-Mobile	2020-2021	$38,442.03
CenturyLink	2021-2022	$12,736.38
Sprint Spectrum	2021-2022	$11,168.88
T-Mobile	2021-2022	$45,493.03
CenturyLink	2022-2023	$21,073.27
Sprint Spectrum	2022-2023	$3,810.10
T-Mobile	2022-2023	$32,660.21

23. Claimants sought refunds of taxes on the basis that the tax rate adopted and applied by the County to levy and collect property taxes on Claimants' state-assessed property was contrary to law.

24. Specifically, the property tax rate applied by the County to compute Claimants' property taxes exceeded the rate applied in the same year to other, locally assessed property in the County, as reflected by the County's average property tax rate, which is computed and reported by the State Board.

25. The State Board publishes the average property tax rates for each California county in Table 14 of the State Board's Open Data Portal, available at https://www.boe.ca.gov/dataportal/dataset.htm?url=PropTaxGenPropTaxLevies. The State Board obtains the data it uses to compute the average property tax rate for each county in the State from the State Controller's Office. The State Controller obtains the data used by the State Board from County Auditors, which are required to submit the data used by the State Board to the State Controller pursuant to Government Code section 29109.

26. The table below compares the average property tax rate in the County, as reported

by the State Board, to the property tax rate applied to the Claimants' state-assessed property by the County for each fiscal year at issue in this action for which data is available. In each year, the tax rate applied to Claimants' state-assessed property exceeded the average tax rate in the County.

Fiscal Year	County Average Property Tax Rate	Claimants' Tax Rate
2018-2019	1.118%	2.1634%
2019-2020	1.109%	2.1906%
2020-2021	1.106%	2.1543%
2021-2022	1.106%	2.1896%

27. The County denied Claimants' claims for refunds for the fiscal years at issue in this action on March 28, 2023. True and correct copies of the County's denial letters are attached as Exhibit 2. Claimants' claims are timely.

28. Claimants have paid all property taxes required by law to be paid, timely filed administrative claims for refund (Revenue and Taxation Code section 5097(a)(2)) and have otherwise satisfied all procedural prerequisites to commencing and maintaining this action for refund. As state-assessed taxpayers contesting the tax rate applied to their property, and not the State Board's assessment or allocation, Claimants were not required to first file a petition for reassessment with the State Board or an assessment appeal with the County board of equalization or assessment appeals board prior to filing their claims for refund with the County under Revenue and Taxation Code section 5097. Nor were Claimants required to pursue those administrative remedies before filing the instant action under section 5140. In an opinion letter dated July 25, 2019, the State Board advised that neither the State Board nor the County board of equalization has jurisdiction to consider the propriety of the tax rate set by the County. (See Exhibit 3.) Therefore, the State Board explained, no petition for reassessment or assessment appeal need be filed to exhaust administrative remedies. (See *ibid.*)

29. Having timely exhausted all administrative remedies, Claimants hereby bring this action to recover the portion of their property taxes that the County levied and collected in violation of law.

III. DISCRIMINATORY PROPERTY TAX RATES ON STATE-ASSESSED PROPERTY ARE UNCONSTITUTIONAL

30. The discriminatory property tax rates applied to Claimants' state-assessed property violate Section 19, which provides, in relevant part:

> State board to assess and tax property of public utilities. The Board shall annually assess (1) pipelines, flumes, canals, ditches, and aqueducts lying within 2 or more counties and (2) property, except franchises, owned or used by regulated railway, telegraph, or telephone companies, car companies operating on railways in the State, and companies transmitting or selling gas or electricity. *This property shall be subject to taxation to the same extent and in the same manner as other property.* No other tax or license charge may be imposed on these companies which differs from that imposed on mercantile, manufacturing, and other business corporations.

(Cal. Const. art. XIII, § 19, emphasis added.)

31. The California Supreme Court has interpreted Section 19's command that state-assessed property be "subject to taxation to the same extent and in the same manner as other property" to require that taxes on state-assessed utility property must be levied "at the same *rate* as locally assessed property." (*ITT World Commc'ns v. City & Cty. of San Francisco* (1985) 37 Cal.3d 859, 870.)

32. In *County of Santa Clara v. Superior Court*, the Sixth District Court of Appeal considered the legal issue raised by Claimants here and recognized that "the tax rates set out by section 100(b) ask [state-assessed utilities] to pay a disproportionate share of the debt burden." (*County of Santa Clara v. Superior Ct.* (2023) 87 Cal.App.5th 347, 371.) The United States Court of Appeals for the Ninth Circuit reached the same conclusion about the operation of section 100(b) when it considered the inequitable tax scheme at issue here. The court upheld the district court's preliminary injunction (issued pursuant to a federal law protecting railroads from discriminatory taxation) barring defendant California counties from levying property taxes on the taxpayer railroad's state-assessed property at a rate that exceeds the rate applicable to other locally assessed property. (*BNSF Railway Co. v. County of Alameda* (9th Cir. 2021) 7 F.4th 874, 878, 888.)

33. Despite acknowledging the discrimination in tax rates, the Sixth District concluded that Section 19 "does not preclude imposition of different rates," dismissing the Supreme Court's interpretation of Section 19 in *ITT* as dicta. (*Santa Clara, supra*, at p. 371.)

34. Claimants acknowledge that the *Santa Clara* decision binds the trial court. (See *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) But Claimants have a good faith basis for asserting their claims for refund here and on appeal in the First District Court of Appeal, which is not bound by *Santa Clara*. For at least the reasons set forth below, Claimants believe *Santa Clara* was wrongly decided and that Section 19 forbids rate discrimination in the taxation of utility property.

35. First, *Santa Clara* incorrectly concluded that the Supreme Court's interpretation of Section 19 in *ITT* was dicta. To the contrary, the *ITT* Court's holding that Section 19 prohibits differential *rates*, and not differential valuation, was central to its reasoning that Section 19 does not extend Proposition 13's *valuation* rollback provision to utility property. (See *ITT, supra*, at p. 870). And while the *Santa Clara* court declined to take judicial notice of the briefing in *ITT*, (see *Santa Clara, supra*, at p. 363), those papers make clear that the question whether Section 19 prohibits discriminatory tax rates was not only raised to and decided by the *ITT* Court, but that the plaintiff, the State Board, and amici, including the County, shared the understanding that Section 19 forbids disparate rates. (See Exhibit 4).

36. Second, since the adoption of Section 19's predecessor, and continuing through its recodification as Section 19, government officials—from the Attorney General, to the State Board, to the California counties themselves (including Napa County)—have consistently understood Section 19 to require that utility property be taxed at the same rate as other property, from the 1930s when it was adopted (see Exhibit 5), to the 1940s in briefing in *Southern California Telephone Co. v. City of Los Angeles* (1941) 45 Cal.App.2d 111, to the 1950s in statements by the State Board and the Attorney General (see Exhibit 6) and in briefing in *People v. County of Tulare* (1955) 45 Cal.2d 317, to the 1970s in the adoption of Proposition 13 (see Exhibit 7), to the 1980s in *ITT* and in the adoption of AB 454, the bill that first enacted a formula for a countywide tax rate for unitary property (see Exhibit 8). This longstanding historical

consensus that Section 19 forbids tax rate discrimination accords with the plain meaning of its text, which requires that utility property be "subject to taxation to the same extent and in the same manner as other property." (Cal. Const. art. XIII, § 19.)

37. Third, the Sixth District's interpretation of Section 19 runs counter to the structure of the Constitution and the history of California's constitutional property tax scheme. (See Exhibit 9.) In particular, *Santa Clara* failed to consider important context provided by section 1 of Article XIII, commonly known as the Uniformity Clause. Since the adoption of California's first constitution in 1849, the Uniformity Clause has required that "[t]axation shall be equal and uniform throughout the state. All property in this State shall be taxed in proportion to its value." (Cal. Const. art. XI, § 13 (1849).) To this day, the Uniformity Clause requires that property "shall be taxed in proportion to its full value," which courts interpret to carry forward the uniformity and equality requirements enshrined in California's first constitution. (See Cal. Const. art. XIII, § 1, subdivision (b); *Watchtower Bible & Tract Soc'y v. Los Angeles County* (1947) 30 Cal.2d 426, 429 [Uniformity Clause requires that property be subjected to "the same [tax] burden."]; *Dawson v. County of Los Angeles* (1940) 15 Cal.2d 77, 80 [holding property can be subject to differential tax burden either by application of a different rate or manner of valuation].) The Uniformity Clause's baseline requirement of uniform tax rates, and the development of the Constitution's property tax scheme against that backdrop, provide key interpretive context informing the meaning of Section 19's "same extent and in the same manner" mandate—context that the Sixth District never considered.

38. Fourth, *Santa Clara*'s neglect of the broader constitutional context for Section 19 led to another serious error in its analysis. There exists only one exception to the otherwise ironclad constitutional rule of property tax uniformity: differential taxation is "permissible" only where "the *Constitution* makes those classifications and either fixes or authorizes the rates." (*First Unitarian Church of Los Angeles v. County of Los Angeles* (1957) 48 Cal.2d 419, 432-33, *rev'd on other grounds*, 357 U.S. 545 (1958), emphasis added.) By contrast, the *Legislature* is forbidden from "discriminat[ing] between different classes of property or citizens in the imposition of taxes," because if "it can tax one class of property or citizens at a particular rate and

another class at a different rate ... there is no limit whatever to its discretion in these respects." (*People v. McCreery* (1868) 34 Cal.432, 462.) The Sixth District not only overlooked those principles but got them backward. Rather than acknowledging the baseline rule that only the Constitution can authorize disuniformity in property tax rates, the Sixth District grounded its entire analysis in the notion that the legislative power is plenary, and that "[i]f there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action." (*Santa Clara, supra*, at p. 358 [citation omitted].) This fundamental error pervades the court's reasoning, all of which flows from the faulty assumption that the legislature has presumptive authority to establish discriminatory tax rates.

FIRST CAUSE OF ACTION

(Claim for Refund of State-Assessed Property Tax Under Rev. & Tax. Code § 5140)

(by all Plaintiffs against the County)

39. Claimants reallege and incorporate by reference Paragraphs 1 through 38 as though set forth in full.

40. Claimants have satisfied any and all administrative remedies required by law for seeking partial tax refunds through a judicial action.

41. Claimants hereby seek refund of the portion of their property taxes that were levied and collected by the County in violation of law.

SECOND CAUSE OF ACTION

(Declaratory Relief)

(by all Plaintiffs against the County)

42. Claimants reallege and incorporate by reference Paragraphs 1 through 38 as though set forth in full.

43. A present, actual, and justiciable controversy has arisen between Claimants and the County regarding the constitutionality of the rates at which the County levies and collects property taxes on Claimants' state-assessed property, and Claimants' corresponding rights, duties, and obligations with respect to the County's levy and collection of property taxes on Claimants' state-assessed property.

44. A judicial declaration that the tax rate applied by the County to Claimants' state-assessed property in excess of the average property tax rate in the County violates section 19 of Article XIII of the California Constitution is necessary and appropriate at this time, as the County continues to levy and collect taxes on Claimants' property at a rate that exceeds the average property tax rate in the County. A judicial declaration is necessary and appropriate to clarify Claimants' rights, duties, and obligations with respect to the County's levy and collection of property taxes on Claimants' state-assessed property.

PRAYER FOR RELIEF

WHEREFORE, Claimants pray for judgment against the County of Napa as follows:

1. That the County be ordered to issue Claimants partial refunds of their property taxes for each fiscal year at issue in this action in amounts no less than those enumerated in the following table:

Claimant	Fiscal Year	Refund Claim Amount
AT&T Mobility	2018-2019	$62,974.00
Pacific Bell	2018-2019	$471,146.00
CenturyLink	2018-2019	$10,280.74
Sprint Spectrum	2018-2019	$42,282.92
T-Mobile	2018-2019	$39,838.03
CenturyLink	2019-2020	$9,866.00
Sprint Spectrum	2019-2020	$48,252.02
T-Mobile	2019-2020	$40,399.02
CenturyLink	2020-2021	$12,782.40
Sprint Spectrum	2020-2021	$41,810.10
T-Mobile	2020-2021	$38,442.03
CenturyLink	2021-2022	$12,736.38
Sprint Spectrum	2021-2022	$11,168.88
T-Mobile	2021-2022	$45,493.03
CenturyLink	2022-2023	$21,073.27
Sprint Spectrum	2022-2023	$3,810.10
T-Mobile	2022-2023	$32,660.21

2. For interest on taxes paid, as provided by law;
3. For a declaratory judgment that the tax rate applied by the County to Claimants' state-assessed property in excess of the average property tax rate in the County

violates section 19 of Article XIII of the California Constitution;

4. For Claimants' reasonable attorneys' fees, as permitted by law;

5. For Claimants' costs of suit; and

6. For such other and further relief as the Court may deem just.

Dated this 26th day of September, 2023

MUNGER, TOLLES & OLSON LLP

By: ______________________

Faye Paul Teller
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PACIFIC BELL TELEPHONE COMPANY,
AT&T MOBILITY LLC,
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CENTURYLINK COMMUNICATIONS LLC