

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CELLCO PARTNERSHIP,	:
d/b/a VERIZON WIRELESS,	:
Plaintiff	: Nos. 04-01965; 04-01966; 04-10967;
	: 04-01968; 04-01969; 04-01970
vs.	:
	:
LYCOMING COUNTY BOARD OF	:
ASSESSMENT,	:
Defendant	:

OPINION AND ORDER

This matter came before the Court on the appeal filed by Cellco Partnership, d/b/a Verizon Wireless (hereinafter Cellco) , to the real estate taxation applied to their communications towers in Lycoming County. The stipulated facts are as follows:

1. The communications tower facilities for the sites range in height from 110 feet to 380 feet.
2. Located on each one of these towers are wireless communications antennae and connecting appurtenances.
3. Each site has an equipment shelter wherein the radio equipment is located and which equipment is connected by coaxial cable to the antennae placed at various heights on the towers.
4. The lease areas are generally 100 feet by 100 feet compounds surrounded by a security fence.
5. Each facility has underground or overhead utility lines that provide each site with telephone and electrical service. Some of the facilities also have a stand alone

emergency power generator.

6. There is an access road from each facility to the public street.

7. Some of the towers have lights, which are required by the Federal Aviation Administration.

8. Each facility is an unmanned, automated facility with no regular personnel working at the various sites.

9. The sites have no water service.

10. The sites have no sewage facilities.

11. The wireless communications antennae placed on the towers receive and transmit radio signals for an area ranging from 2-5 miles from each site. These signals are used to provide commercial mobile radio service- commonly referred to as cellular service or cell phone service – to Verizon Wireless customers through their wireless handsets – commonly referred to as cell phones.

12. Each facility is connected to a mobile telephone switching office (“MTSO”) maintained by Verizon Wireless. This connection is effected through a T-1 or other high-capacity telephone line or by microwave transmission. If the connection is effected through microwave transmission, then the microwave antenna is mounted on the tower. The network of communications tower facilities, together with the MTSO to which such tower facilities are connected, constitutes the Verizon Wireless cellular communications network.

13. The location, height, and configuration of each tower, and the placement of the wireless communication antennae on each tower, are determined by Verizon Wireless’s radio engineers so as to provide the optimum radio signal coverage for

the surrounding area, taking into account the location, height, and configuration of the surrounding Verizon Wireless tower sites.

14. The towers are a necessary and integral part of Verizon Wireless' communications network.

The Lycoming County Tax Assessment Board found that the towers were taxable as real estate. Cellco appealed.

In Shenandoah Mobile Company v. Dauphin County Board of Assessment Appeals, 869 A.2d 562 (Pa.Commw.Ct. 2005), the Commonwealth Court found that cellular communications towers and related equipment owned by Shenandoah constituted real estate, not personalty, and therefore were taxable. Cellco acknowledges that Shenandoah found cellular communications towers and related equipment were taxable, but argues that the Commonwealth Court erred because it failed to address City of Pittsburgh v. WIIC-TV Corporation, 14 Pa.Commw. 18, 321 A.2d 387 (1974)(hereinafter "WIIC-TV"), which found television towers were excluded from taxation. Cellco essentially argues that cellular towers are the same or similar to television towers and should be treated the same for tax purposes. The Court cannot agree. The Court notes that as a lower court it is bound to follow the Commonwealth Court decision in Shenandoah. Even if the Court were not obligated to follow Shenandoah, the Court does not believe WIIC-TV would compel a different result in this case.

In WIIC-TV, the television tower was not subject to taxation because the Commonwealth Court found it was within the following exclusion: "...Machinery, tools, appliances and other equipment contained in any mill, mine, manufactory, or industrial establishment shall not be considered or included as part of the real estate in determining the

value of such mill, mine, manufactory or industrial establishment.” The television station involved in that case was a manned facility, and at least a portion of the programs were produced on site. Therefore, the television station, like a newspaper plant, was considered an industrial establishment. The television tower was considered machinery, tools, appliances or other equipment necessary and integral to the manufacturing or production of the programs created on site.

The cellular phone towers in the cases before the court are neither part of an industrial establishment nor part of any manufacturing or production process. Each facility is an unmanned, automated facility with no regular personnel working at the various sites. Stipulation, paragraph 8. The towers, and the tower facilities in general, are used for transferring and receiving signals to and from cellular devices, see Stipulation, paragraph 11; they are not used to produce a tangible or intangible product. The court does not believe an ordinary person would consider the cellular phone tower facility an industrial establishment. Even if the facility could be considered an industrial establishment, the court does not find that the towers are necessary and integral to a manufacturing or production process. Nothing is made or created at the facilities.

ORDER

AND NOW, this ____ day of November 2006, the Court DENIES the appeal of
Cellco Partnership, d/b/a Verizon Wireless.

By The Court,

Kenneth D. Brown, P.J.

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