

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairman David Corbin at 10:45 a.m. on February 19, 2004, in Room 519-S of the Capitol.

All members were present.

Committee staff present:

Chris Courtwright, Legislative Research Department
Martha Dorsey, Legislative Research Department
Gordon Self, Revisor of Statutes Office
Shirley Higgins, Committee Secretary

Conferees appearing before the committee:

John Smith, Pixius Communications, LLC
Robert J. O'Connor, Stinson, Morrison, and Hecker LLP
Harriet Lange, Kansas Association of Broadcasters
Terry Atherton, KSGL/KMYR Radio (Agape Communications)
Gerald C. Frantz, Sedgwick County Appraiser
Patricia J. Parker, Assistant Sedgwick County Counselor
Mark Beck, Director, Division of Property Valuation

Others attending:

See Attached List.

Senator Corbin called the Committee's attention to the minutes of the February 17 meeting.

Senator Buhler moved to approve the minutes of the February 17, 2004, meeting, seconded by Senator Donovan. The motion carried.

SB 478—Personal property classification for wireless communication towers, antenna, and relay sites

John Smith, Pixius Communications, LLC, testified in support of **SB 478**. He explained that Pixius Communications provides broadband service to customers in under served areas in Kansas over a wireless data communications network. Pixius leases space on cell towers to broadcast to their customers; therefore, the classification of wireless communication towers, antennas, and relay sites has a critical role in the cost structure of Pixius' business. Any tax increase to the landowner or tower owner will be passed through to the tenants of the towers. He went on to explain that Sedgwick County landowners having cell towers on their property saw their tax bill increase to more than 20 times last year's amount after the Sedgwick County Appraiser's Office reclassified cell towers from personal property to commercial real property. Mr. Smith emphasized that no other Kansas county has reclassified cell towers. He explained that wireless customers have fixed price contracts; therefore, the service provider cannot recover the tax increase from the current subscriber base. He urged the Committee to support the passage of **SB 478** so that Pixius and other wireless service providers can continue to provide economical service to future subscribers. (Attachment 1)

Robert J. O'Connor, testified in support of **SB 478** as counsel for cell tower owners in cases arising out of Sedgwick County which are currently pending before the Board of Tax Appeals. He pointed out that all Kansas counties classified and valued cell towers as personal property prior to 2003. However, after Sedgwick County reclassified cell towers, other counties have indicated that they are planning to reclassify cell towers as real property and then value them as commercial real property for 2004. He went on to say that, since 1989, the Property Valuation Department's personal property guide has specifically classified radio station, television, citizens band, and cable television towers as personal property. He noted that cell towers are structurally identical to those towers. He was advised that PVD does not intend to change the classification of those towers or make a specific classification provision for cell towers, pending the current BOTAs hearings. Mr. O'Connor said that a January 1, 2002, effective date for **SB 478** would terminate all pending Sedgwick County BOTAs cases. To ensure that conflicting results do not occur in the assessment of such towers as commercial and industrial machinery and equipment, he suggested that the bill be amended on line 19 by deleting "K.S.A. 79-503a" and inserting K.S.A. 79-1439(b). (Attachment 2)

CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE at 10:45 a.m. on February 19, 2004, in Room 519-S of the Capitol.

Harriet Lange, Kansas Association of Broadcasters, testified in support of **SB 478**. She requested that the bill be amended to include broadcast towers in the definition of commercial and industrial machinery and equipment. She complained that radio and television stations in Wichita have been impacted by the Sedgwick County Appraiser's unilateral decision to appraise all towers as real property rather than personal property. She contended that broadcast towers should continue to be appraised as personal property because radio and television towers are not permanent fixtures but rather are movable or removable. (Attachment 3)

Terry Atherton, manager of KSGL and KMYR radio in Wichita, testified in support of **SB 478**. He explained that, after the classification of his seven towers was changed from personal property to real property, property valuations went from \$2,000 to over \$50,000 for a single tower, and the KMYR property assessment dramatically raised from \$50,000 to \$600,000. The resulting tax bill for the first half was more than double the whole year's payment for last year. He pointed out that his radio stations do not make money from the towers but from advertising. The dramatic increase in taxation is serious for his radio stations and could mean the difference in whether he stays in business or not. (Attachment 4)

Senator Corbin called the Committee's attention to written testimony in support of **SB 478** submitted by John R. Cmelak, Verizon Wireless. (Attachment 5)

Gerald C. Frantz, Sedgwick County Appraiser, testified in opposition to **SB 478**. He noted that Article 11 of the State Constitution states, "The legislature shall provide a uniform and equal rate of assessment and taxation." In this regard, he called attention to a picture of cell tower located in Wichita. He noted that the tower has three co-locators, each of which generates \$1,000 per month to the tower owner for the rental of space, or a gross income of \$36,000 per year. The tower owner will receive \$30,600 net income per year. As personal property, the cell tower would generate \$1,350 per year in taxes. As real property, it would generate \$8,500 in taxes. By comparison, the owner of a single family residence valued at \$71,500 pictured in his testimony pays \$1,300 per year in taxes, but the property generates no income. Mr. Frantz contended that it is unfair for property which does not generate any income to be taxed approximately the same as the cell tower which does generate income. He then called attention to a picture of an office building in which the owner invested for the same reason as the cell tower owner—to generate income. The office building, which generates about the same amount of income as the cell tower, is taxed \$8,035 a year. (Attachment 6)

Patricia J. Parker, Assistant County Counselor for Sedgwick County, testified in opposition to **SB 478** on behalf of the Sedgwick County Appraiser's Office. She noted that there are 29 tower related cases pending at the Board of Tax Appeals, 22 of which are set for trial in August 2004. The issue is the same in all cases, i.e., whether the wireless communication towers are real property and valued at fair market value or personal property and valued at retail cost when new, less depreciation. Ms. Parker explained that the Sedgwick County Appraisal Office maintains that the towers are real property because they are fixtures and because K.S.A. 79-430 defines them as real property. In her opinion, specific statutes lead one to conclude that the legislature has declared wireless communication towers to be valued and assessed as commercial real property at the same assessment rate at which the land supporting the towers are assessed. She requested that the Committee not recommend **SB 478** favorably but rather allow pending litigation to run its course. (Attachment 7)

As to broadcast towers, Ms. Parker confirmed that they are not valued on the income approach because they do not generate income. Unlike other towers, they are valued on the cost approach. She also clarified that K.S.A. 79-430 has not been interpreted by a court. She explained that the International Association of Assessing Officers, which is the organization that regulates county appraisers, developed a course on the valuation of cell towers. When Mr. Frantz taught that course, there was significant discussion regarding cell towers as real property. She noted that the wireless communication industry is a very fast growing industry not only in Kansas but in other states, and many appraisal offices in other states have noticed inequities which they feel need to be addressed. She contended that each case must be weighted in light of the fixture test applied by the Kansas Court of Appeals in a dispute concerning oil refinery tanks and towers.

Senator Lee noted that the intent of K.S.A. 79-430 was to address the issue of a commercial tower being located on tax exempt church property. The statute was an attempt to allow tax exempt property to keep its exemption, but the tower would be taxed. The land would be assessed if it was not exempt.

CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE at 10:45 a.m. on February 19, 2004, in Room 519-S of the Capitol.

Senator Lee noted that K.S.A. 79-430 is being used as a defense for the Sedgwick County Appraiser's action, yet the Department of Revenue's personal property valuation guide suggests that regular television towers should be appraised as personal property. She requested that the Division of Property Valuation provide the Committee with copies of that guideline. Mark Beck, Director of Property Valuation, noted that the guideline uses "suggests" but does not dictate. He explained that appraisers are expected to look at the property from the standpoint of a three-pronged test beyond that suggestion. He agreed with Senator Lee that K.S.A. 79-430, as drafted, is extremely difficult to interpret. He recalled that, when originally drafted in 1997, it was an attempt deal with the issue of not losing the exclusive use of a church building because a tower was built on the building. Ms. Lange stood to inform the Committee that she found that testimony and legislative records show that one intent of the legislation was to send separate tax bills to the tower owner and to the landowner. The other intent was to address the exempt status of municipalities, churches, and nonexempt organizations that wanted to lease land or property to commercial tower owners. She emphasized that broadcast towers were never part of the discussion. Senator Lee commented that she was part of the group that developed K.S.A. 79-430 in 1997. She noted that the intent of the legislation was to deal with the nonexempt building issue and to not change the valuation process of the towers in order to protect an exempt church. She observed that the argument on which the Sedgwick County Appraisal Office based its action definitely was not the intent of those drafting the law. In response, Ms. Parker clarified that K.S.A. 79-430 was not the initial reason used by Sedgwick County to determine whether or not this property should be classified and valued as real property.

There being no others wishing to testify, the hearing on **SB 478** was closed.

Mr. Beck noted that **SB 478** defines all wireless communications towers, antenna, and relay sites as commercial and industrial machinery and equipment and as tangible personal property for property tax purposes. He explained that the Division of Property Valuation values and assesses public utilities, many of which have radio and microwave towers that may be defined as wireless communications, while others have satellite dishes that may be defined as antennas. Public utilities are valued using the unit valuation method, and commercial and industrial property is valued at retail cost when new and depreciated over its economic life. With the bill, the unit value must be broken up. Because public utilities operate as a unit, it is virtually impossible to ascertain the value of its parts. In order to exclude public utilities from the bill, Mr. Beck requested that **SB 478** be amended on line 15 after "sites" by inserting, "except public utility property valued and assessed pursuant to K.S.A. 79-5a01 *et. seq.*, and amendments thereto." (Attachment 8)

Senator Lee moved to amend **SB 478** as requested by Mr. Beck, seconded by Senator Taddiken. The motion carried.

Gordon Self, Revisor of Statutes, distributed copies of a balloon of **SB 478** with technical amendments on line 19. (Attachment 9)

Senator Journey moved to technically amend **SB 478** as shown in the balloon and that it be amended to include broadcast towers, seconded by Senator Buhler. The motion carried.

Senator Donovan moved to recommend **SB 478** favorably for passage as amended, seconded by Senator Journey. The motion carried.

Senator Corbin opened a discussion on bills previously heard, **SB 415** concerning classification of property for property tax purposes and **SB 370** concerning an income tax deduction for long-term care insurance premium costs.

Senator Lee moved to recommend **SB 415** favorably for passage, seconded by Senator Goodwin. The motion carried.

With regard to **SB 370**, Senator Corbin recalled that the Legislative Research Department distributed additional information to the Committee on the fiscal note. Committee discussion followed regarding the imposition of a limit on the amount of income in order to qualify for the deduction. Senator Corbin reminded the Committee that Mr. Self indicated that the bill needs to be technically amended on page 4, line 32 by

CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE at 10:45 a.m. on February 19, 2004, in Room 519-S of the Capitol.

inserting "year" after "tax.

Senator Pugh moved that **SB 370** be technically amended as suggested and to recommend it favorably for passage as amended, seconded by Senator Buhler. The motion carried.

Senator Haley expressed his opinion that, as an incentive for low-income persons to purchase long-term health care insurance, the bill should include a provision for a refundable credit for low-income persons. Staff indicated that the concept would need to be researched in order to determine what the fiscal note would be.


Senator Corbin informed the Committee that he plans to request that **SB 468** concerning the revocation or nonrenewal of professional licenses for delinquent taxes or returns and a companion bill, **SB 414**, be assigned to a summer tax interim committee for further study.

The meeting was adjourned at 11:55 a.m.

The next meeting is scheduled for February 20, 2004.

SENATE ASSESSMENT AND TAXATION COMMITTEE GUEST LIST

DATE: February 19, 2004

NAME	REPRESENTING
Richard Cram	KDOR
MARK DECEL	KDOR
April Holman	KS Action for Children
LARRY R BAER	LKM
Michael D. Repoon	Sedgwick County
Jerry FENITE	SEDGWICK COUNTY
Patricia Parker	Sedgwick County
Diana Sabgar	Sedgwick County
Marie Shelton	KEAIA
STEVE KEARNEY	ACCTEL
Nelson Krueger	Western Wireless
Anne Spiess	KTIA - KS Telecom Industry Assn
George Fisher	KS Taxpayers Network
BILL Brady	KS Gov't Consulting
Kathleen O'Connor	Self
Fabian Malik	Self
Dianne O'Connor	self
Gandy Braden	Cingular Wireless
	self

Presentation by
~~Jay S. Maxwell, Managing Member~~ John Smith
Pixius Communications, LLC

Before the Senate
Assessment and Taxation Committee
February 19, 2004

Chairman Corbin and Members of the Committee:

Thank you for the opportunity to appear before you today on behalf of Pixius Communications, LLC about the personal property classification of wireless communication towers, antennas and relay sites. ~~My name is Jay Maxwell.~~ I am the Managing Member for Pixius.

At Pixius our mission is to provide broadband data communications services to underserved areas in Kansas. Primarily, these areas are located in rural Kansas. However, there are additional underserved pockets within metropolitan areas that do not have access to broadband services.

Pixius Communications, LLC provides broadband service to its customers over a wireless data communications network. The network operates similar to that of a cellular network in that Pixius leases space on cell towers to broadcast data to their customers. Please don't confuse the Pixius service with the data communications offerings from PCS carriers such as Sprint. The Pixius service provides data throughput at much higher rates than a PCS carrier and is fixed, not mobile service.

The classification of wireless communication towers, antennas and relay sites have a critical role in the cost structure of Pixius' business. Any tax increase to the landowner or tower owner would be passed through to the tenants of the towers. This increase would have a negative financial impact on Pixius' ability to provide broadband data communications services to underserved areas in Kansas. Since this legislation is crucial to Pixius' business, let's ask and answer a few questions.

What happened to property taxes in Sedgwick County?

Sedgwick County landowners having cell towers on their property have seen their tax values and tax bills increase from a modest 2-3 times to more than 20 times last year's amount. In conversations with owners that lease tower space to Pixius, we have heard instances of valuation increases as dramatic as:

- From \$14,269 to \$151,100 per year
- From \$7,000 to \$75,000 per year
- From \$15,025 to \$302,200 per year

Senate Assessment & Taxation
2-19-04 Attachment 1

Why did this increase occur?

This dramatic increase occurred because in 2003 the Sedgwick County Appraiser's office reclassified cell towers from personal property to commercial real property. No other Kansas county reclassified except Sedgwick County. In fact, for as long as cell towers have been taxed in Kansas, Sedgwick County and all the other Kansas counties have classified cell towers as personal property.

Why should cell towers be classified as personal property?

The determination of whether property is real or personal must be made on a case-by-case basis. The three tests that comprise the fixture law test are:

- annexation
- adaptability
- intent

All three tests must be considered.¹ Let's look at each.

- *Annexation:* Towers rest on a concrete pad and sometimes are anchored by three sets of guyed wires. To restore the land to its original condition, the tower, concrete pad and guyed anchors must be removed. As a condition of obtaining a ground lease, landowners require that the tower equipment be removed and the land be returned to its original condition. TEST PASSED
- *Adaptability:* The basic function of a cell tower is to broadcast radio waves. Products sold to customers by carriers who lease space on these towers use radio waves. Since the tower is involved in the production of the product, it is personal property. TEST PASSED
- *Intent:* Lease agreements state that the tower owner will remove the tower and all associated facilities and return the land to its original condition at the termination of the ground lease. The intent of both parties is that the tower not become a permanent structure. TEST PASSED

How will this taxation impact the wireless industry?

Most land lease agreements have tax pass-through clauses, which allow the landowner to pass all the property tax on to the tower owner for payment. In one situation if the landowner took the initial steps at the County level to seek tax relief, but failed to follow through on the required later procedural steps at the

¹ 2004 Personal Property Valuation Guide, Classification and Assessment, Real Property v. Personal Property – Revised 12/2003

County or State Board of Tax Appeals levels, his failure to proceed would terminate the tower owner's rights to seek tax relief. In another situation, the landowner may not have sought relief from 2003's increased tax and simply paid their bill. The landowner would then seek reimbursement from the tower owner for a share of those taxes under the "pass-through" clause in their ground lease.

This continues as the tower owner would then "pass-through" their tax increase to the tower lessee. This is Pixius.

How will this impact the wireless customer?

Wireless customers include cellular/PCS customers, paging customers and wireless data communications companies. Each of these customer types typically has fixed price contracts with their customers so the service provider cannot recover the tax increase from the current subscriber base. The result is the cost to future subscribers will be higher. Will the increase in cost hinder the growth of limited services? Probably. Will this have an adverse impact on economic growth, the delivery of health care service and education in Kansas? Definitely.

In conclusion, so that Pixius and other wireless service providers may continue to provide economical and reliable service to Kansas, I urge you to support the passage of SB 478. This service is essential to the continued economic development of Kansas.

Thank you.

February 11, 2004

SENT VIA ELECTRONIC MAIL

Senator Dave Corbin
Capitol Building
300 S.W. 10th St., Rm. 143-N
Topeka, Kansas 66612-1504

Re: Senate Bill 478

Dear Senator Corbin:

This letter supports passage of S. B. 478.

I am counsel for cell tower owners in cases arising out of Sedgwick County and now pending before the Kansas Board of Tax Appeals. For 2003, Sedgwick County re-classified all cell towers from personal property to real property, and valued them as commercial real property. The result was to increase cell tower valuations from three-fold to 12-fold compared to 2002. Prior to 2003, Sedgwick County had classified and valued cell towers as personal property, and for 2003 and all prior years, all other Kansas counties have classified and valued cell towers as personal property. Some Kansas Counties have indicated that they are planning to reclassify cell towers as real property and value them as commercial real property for 2004.

Cell towers are structurally identical to radio station, television, citizens band and cable tv towers. Since the 1989 state-wide reappraisal through the April, 2003 revision, the Property Valuation Department's Personal Property Guide has specifically classified radio station, television, citizens band and cable tv towers as personal property. Cell towers have never been classified specifically in that Guide. I am advised that PVD does not intend either to change the classification of those towers nor to make a specific classification provision of cell towers, pending the current BOTAs proceedings.

Cell towers are properly classified as personal property under the "three prong" test of In re Equalization Appeals of Total Petroleum, Inc., 28 Kan. App. 2d, 16 P.3d 981 (2000).

The January 1, 2002 effective date of S.B. 478 would terminate all pending Sedgwick County BOTAs cases which raise these cell tower issues.

Present K.S.A. 79-430 will remain necessary, whether or not S.B. 478 is enacted. It is/will be necessary to do two things: (1) to require the "split out" of the interests of the landowner-tower site lessor and the interests of the tower owner-lessee, and (2) to provide the classification status of the tower site leased land.

*Senate Assessment & Taxation
2-19-04
Attachment 2*

Thank you for considering this letter.

Sincerely,

STINSON MORRISON HECKER LLP

s/ Robert J. O'Connor

Robert J. O'Connor

RJO:roc

February 18, 2004

SENT VIA ELECTRONIC MAIL

Senator Dave Corbin
Capitol Building
300 S.W. 10th St., Rm. 143-N
Topeka, Kansas 66612-1504

Re: Senate Bill 478

Dear Senator Corbin:

This letter supplements my February 11, 2004 letter in support of S.B. 478, but suggests a change to the bill in its present form.

Suggested Revision to S.B. 478.

The present version of S.B. 478 contains a reference to K.S.A. 79-503a. I understand that the Revisor of Statutes office will suggest that such reference should be deleted together with the entire sentence which contains that reference. I agree that the reference to K.S.A. 79-503a is wrong. However, I suggest that the sentence should not be deleted but instead the appropriate statutory reference should be inserted. The sentence specifies which kind of personal property cell towers are to be classified. Specifically, such towers should be stated to be "commercial and industrial machinery and equipment."

The Kansas Constitution (Art. 11, Sec. 1(b)) and the implementing statute (K.S.A. 79-1439(b)) define six categories of "tangible personal property," with varying assessment rates from 12% to 30%. Sub-part (E) of those constitutional and statutory provisions defines a "commercial and industrial machinery and equipment" class of personal property, with a 20% assessment rate. Cell towers should be classified under that sub-part. Otherwise, conflicting results may occur in the assessment of such towers.

Impact of Reclassification.

The 2002-to-2003 property tax increases on towers owned by my BOTA client Mr. Brad Murray illustrates the impact of the Sedgwick County's aforesaid re-classification. Of Murray's 17 towers in Sedgwick County: (A) the taxes on four towers basically doubled; (B) the taxes on four other towers basically tripled; (C) the taxes on four other towers increased 4.5, 6.7, 6.8 and 8.3 times; (D) the taxes on four other towers increased 10.5, 10.7, 11.4 and 12.7 times; and (E) the taxes on one other tower increased 20 times. Also, I have been advised by the owner of the Agape five-tower radio station in Wichita that its ^{valuation} property taxes increased from \$50,000 to \$600,000 as a result of the re-classification; Agape has a pending BOTA proceeding.

Total Petroleum Compliance. [*In re Equalization Appeals of Total Petroleum, Inc.*, 28 Kan. App. 2d 295, 16 P.3d 981 (2000)]

Cell towers are personal property under the Total Petroleum analysis:

A. "Off the Shelf". Cell towers are "off the shelf" items in much the same way that automobiles are. Once the purchaser has decided the specifics of what he wants, he chooses from a variety of standard models and features/options "packages" which the manufacturer has available by model/part number.

B. "Erector Sets." Cell tower components are delivered to the tower-site by truck (not rail car), with the larger pieces having been pre-assembled in maximum lengths of 20'-30'. On-site assembly consists of "erector set" assembly by nuts and bolts connections of the various components; little, if any, welding is used. Disassembly consists of disconnecting the nuts-bolt connections of the components; torch or other cutting is not required. After tower disassembly and removal, concrete bases and anchors are

removed to a depth of 2'-3' below ground level, the ground surface is restored and the site is reusable for purposes consistent with the adjacent land, i.e. agricultural, commercial, residential uses.

C. Land Issues. Cell towers have minimal attachment to their site. They can be installed in virtually any land/site environment. Cell tower sites are small (80'x80' to 150'x150' typically, depending upon the style/height of the tower). The use of the land adjacent to a cell tower (either with the tower present or after its removal) typically is not disrupted significantly by the presence of the tower. The land is restored upon cell tower removal. Cell towers do not cause environmental contamination.

D. Intent. The intention of the parties is considered the most important element of the Total Petroleum analysis to determine whether an item of personal property retains its character or becomes a real property "fixture" upon its installation to real property. Tower-site land leases and other types of tower permitting documents commonly require the removal of cell towers under certain conditions, i.e., the end of the term of the lease/permit period, the earlier termination of the lease/permit, or non-use of the tower for a stated period consecutive months.

Thank you for considering these supplemental remarks.

Sincerely,

STINSON MORRISON HECKER LLP

s/ Robert J. O'Connor

Robert J. O'Connor

ROC/jmj



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Testimony before Senate Committee on Assessment and Taxation
Regarding SB 478
February 19, 2004
Harriet Lange
President/Executive Director

Mr. Chairman, Members of the Committee, I am Harriet Lange with the Kansas Association of Broadcasters. KAB serves a membership of radio and television broadcast stations in Kansas. We appreciate the opportunity to appear before you today in support of SB 478 and ask that you amend the bill slightly to include broadcast towers. A balloon of the bill with our proposed amendment is attached.

Our member radio and television stations in Wichita have been impacted by the Sedgwick County Appraiser's unilateral decision to appraise all towers as "real" property rather than "personal" property. Along with the change from "personal" to "real", property tax bills increased dramatically.

My focus will be on why broadcast towers should continue to be appraised as personal property. One of our members will testify to the practical impact on his stations of the Sedgwick County Appraiser's action.

Radio and television broadcast towers are not "permanent" fixtures, but rather are movable or "removable". Broadcast towers are correctly defined as tangible personal property. Consider these facts:

- The Federal Communications Commission or the FAA may require that a broadcast tower be moved to comply with its regulations.
- Lease agreements for land on which towers are placed many times require that the tower be removed at the end of the lease. The tower is of no value to anyone other than the license holder for the radio or television station.

*Senate Assessment & Taxation
2-19-04
Attachment 3*

- Broadcast towers do not generate revenue for stations, but rather are the “distribution” method in the production process.
- And finally, the Kansas Department of Revenue’s Personal Property Valuation Guide suggests that radio and television towers should be appraised as personal property.

The fact that a government bureaucrat can significantly change the definition of property for tax purposes, with impunity and without regard to the facts, is troubling. To rectify the situation in Sedgwick County, we urge you to amend SB 478 to include broadcast towers, and pass the bill.

Thank you for your consideration.

SENATE BILL No. 478

By Committee on Assessment and Taxation

2-9

9 AN ACT concerning personal property taxation; relating to classification;
10 wireless communication towers, antenna and relay sites.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. (a) In accordance with the provisions of section 1 of article
14 11 of the Kansas constitution, all wireless communication towers, antenna
15 and relay sites, are hereby defined as commercial and industrial machin-
16 ery and equipment, and shall be classified for property tax purposes as
17 tangible personal property within subclass 5 of class 2 of section 1 of
18 article 11 of the Kansas constitution. All such property shall be valued in
19 accordance with the provisions of K.S.A. 79-503a, and amendments
20 thereto.

21 (b) The provisions of this section shall apply to all taxable years com-
22 mencing after December 31, 2002.

23 Sec. 2. This act shall take effect and be in force from and after its
24 publication in the statute book.

broadcast towers,



Good morning. I'm Terry Atherton with Agape Communications in Wichita. I manage two AM radio stations for our family owned business- KSGL and KMYR. KSGL is a Christian format, and on KMYR we play an oldies format of the old standards by folks like Frank Sinatra, Nat "King" Cole, and Doris Day.

Thank you for this opportunity to share with you my concerns and personal experience about the tower taxation situation in Sedgwick County.

We were notified early last year by the appraiser's office that the classification of our towers would be changed from personal property to real property. Since we have seven towers for our two AM radio stations this resulted in a dramatic change in our evaluations, and consequently our tax bill. Property valuations went from \$2,000.00 to over \$50,000.00 for a single tower and the dramatic rise on our KMYR property assessment from \$50,000.00 to over \$600,000. This resulted in a tax bill for the first half that was more than double our whole year's payment last year.

The county seems to believe that we make our money from our towers. Nothing could be further from the truth. We make our money from advertising revenue. No one leases space on our towers. Our towers are another piece of the broadcasting puzzle that helps us produce a signal that you hear through your radio. You receive that signal free of charge, I might add. We have two stations that produce directional signal patterns. KSGL uses two towers in an east-west directional pattern. Two towers for one signal. KMYR has a more complex pattern, and requires five towers to make our directional pattern that protect broadcasters in other parts of the state. We don't make five times the revenue because we require five towers. Quite the contrary. It takes just that much more upkeep to keep us operational.

On a side note to all this. Last May we had a fire that destroyed the building that housed our KMYR transmitter and all the other equipment (phasors, processors, remote control, ect.). Since then we have been operating with reduced power, and using only one tower, the other four sitting idle. We're trying to rebuild, but we have had to use some of our insurance money to pay the county's tax bill, and will have to use another nine thousand plus dollars to pay the second half in May if something isn't done to resolve this before then.

It was interesting to see the arbitrary valuation the county placed on these fifty-year-old towers. The KSGL towers we valued a little lower than the KMYR towers, and the KMYR towers actually had a higher valuation than the KFDI towers to the north of us.

The predicament the county has placed us in is a serious one. It could mean the difference in whether we stay in business or not, and our ability to restore our fire damaged facility.

Thank you for your concern in this matter, and it is my hope that this situation will be corrected.

Terry Atherton

General Manager
KSGL/KMYR



February 19, 2004

Dear Chairman Corbin and Members of the Senate Assessment and Taxation Committee,

VZW strenuously supports SB 478, legislation clarifying that wireless telecommunications structures and equipment that are placed on real property represent personal property for property tax reporting and valuation purposes.

The tax valuations and tax bills of Sedgwick County tower owners have recently doubled (best case scenario), and in more egregious situations, increased up to twenty-fold from their levels as compared with only one year ago. These dramatic tax increases are solely the result of the Sedgwick County Appraiser's 2003 reclassification of cell towers from personal to commercial real property. Sedgwick County stands alone as the only Kansas County that has implemented such a reclassification for 2003.

Verizon Wireless submits that Sedgwick County's reclassification of cell towers from personal to commercial real property is not in accord with Kansas law, primarily because:

- 1) Intent: As a condition of obtaining a ground lease, landowners generally require upon lease termination that the tower itself and related equipment be removed and the land be returned to its original condition. It is therefore the intent of both parties that the tower *not* become a permanent structure.
- 2) Annexation: Cell towers typically rest on a concrete pad (and some are anchored and stabilized by guyed wires). The tower, concrete pad, and guyed wires are all readily removable, and the individual tower components are always bolted together without welding. The tower and wires are each fully capable of relocation and redeployment, allowing the landowner to restore the property to its prior use (agricultural, commercial, residential, etc.) Towers can therefore be accurately analogized to "giant erector sets."
- 3) Adaptability: The location of a cell tower is more a function of a carrier's particular radio communication needs than it is of the specific requirements of the land site.

Based on these reasons, Verizon Wireless respectfully requests your legislative support for SB 478. This legislation promotes sound, uniform tax policy, while simultaneously keeping the cost of wireless service as affordable as possible for Kansans.

Respectfully submitted,

John R. Cmelak
Director – Tax Policy
Verizon Wireless

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2-19-04
Attachment 5



SEDGWICK COUNTY, KANSAS

OFFICE OF THE APPRAISER

TO: Senate Assessment and Taxation Committee

FROM: Gerald C. Frantz, CAE, Sedgwick County Appraiser

DATE: February 19, 2004

SUBJ: Senate Bill 478

Chairman Corbin and members of the Assessment and Taxation Committee I am Gerald C. Frantz, a ~~state of Kansas Registered Mass Appraiser~~ and an International Association of Assessing Officers designated Certified Assessment Evaluator and the Sedgwick County Appraiser. I stand today to testify in opposition of Senate Bill 478.

The Constitution of the State of Kansas, Article 11, states, "The legislature shall provide for a uniform and equal rate of assessment and taxation....".

The cell tower below is located in the vicinity of Maize and Kellogg in Wichita; it has 3 co-locators, each of which will generate income of \$1000 per month to the tower owner, or a gross income of \$36,000 per year.



With expenses about 15% of the gross income, this tower owner will see about **\$30,600 net income per year.**

- As personal property, this cell tower would be valued at \$33,109 and as personal property would generate \$1,350 per year in taxes.
- As real property, this cell tower would have an appraised value of \$210,600 and as real property would generate \$8,500 in taxes.

By comparison, this single family residence, located at 415 N. 10th in Towanda, KS, is valued at \$71,500.



This property pays about \$1,300 per year in taxes – and this property **generates no income.**

In contrast, the owner of the property below has invested in property for the same reason the cell tower owner has invested – to generate income.



This property is located near Central and Ridge Road in Wichita

- Current appraised value of \$282,880
- Taxes of \$8,035

We respectfully ask for a uniform and equal rate of assessment, and fair and equitable taxation. We ask that you do not favorably recommend Senate Bill 478.



OFFICE OF THE COUNTY COUNSELOR
SEDGWICK COUNTY, KANSAS

Patricia J. Parker
Assistant County Counselor

COUNTY COURTHOUSE ■ 525 N. MAIN, SUITE 359 ■ WICHITA, KS 67203-3790
PHONE (316) 660-9340 ■ FAX (316) 383-7007

TO: SENATE ASSESSMENT AND TAXATION COMMITTEE

FROM: PATRICIA J. PARKER, ASSISTANT COUNTY COUNSELOR
SEDGWICK COUNTY, KANSAS

RE: SENATE BILL 478

DATE: FEBRUARY 19, 2004

Chairman Corbin and Committee Members, I am Patricia Parker, A.A.S., speaking on behalf of the Sedgwick County Appraisal Office.

The Sedgwick County Appraisal Office has classified and valued wireless communication towers as commercial real property for tax years 2003 and 2004. That classification and valuation has been appealed by tower owners to the State Board of Tax Appeals. There are currently 29 tower related cases pending at the Board. 22 of them are set for trial before BOTAs in August, 2004. The issue is the same in all the cases, i.e. whether the wireless communication towers are real property and valued at fair market value or personal property and valued at retail cost when new, less depreciation.

The Sedgwick County Appraisal Office maintains that these towers are real property. **First, they are real property because they are fixtures.** The fixture test was recently reiterated by the Kansas Court of Appeals in In re Equalization Appeals of Total Petroleum, Inc., 28 Kan.App. 2d 295, 16 P.3d 981 (2000). The Court noted that the test in Kansas for determining whether personal property becomes a fixture is: 1) annexation to the realty; 2) adaptation to the use of that part of the realty to which it is attached; and 3) the intention of the party making the annexation. The property in dispute were oil refinery tanks and towers. The Court applied the fixture test to the property and held that they were indeed fixtures, thus should be classified and valued as real property. The facts of each case will differ and must be weighed in light of the fixture test. **Secondly, they are real property because K.S.A. 79-430 defines them as real property.** K.S.A. 79-430 states:

“79-430. Listing and taxation of certain leased portions of real property. For all purposes associated with property taxation, the provisions of K.S.A. 79-412 notwithstanding, that portion

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of the fair market value of real property attributable to the leasing of real property, or the creation of any other interest of less than fee simple in real property, for the purpose of the placement of a wireless communication tower, antenna or relay site upon the real property, shall be entered on the assessment roll separate from the remaining fair market value. Such portion of the fair market value shall be separately taxed to the owner of such wireless communication tower, antenna or relay site as real property at the same classification and same tax rate as the real property upon which the wireless communications tower, antenna or relay site is located except that, in the event the real property upon which the wireless communications tower, antenna or relay site is located is exempt from property taxation, such real property shall continue to be exempt from property taxation, except that portion of the fair market value of such tax-exempt real property attributable to the leasing of such tax-exempt real property, or the creation of any other interest of less than fee simple in such tax-exempt real property, for the purpose of the placement of a wireless communications tower, antenna or relay site upon such tax-exempt real property, shall be taxable and shall be assessed to the owner of such wireless communications tower, antenna or relay site as real property at 25% of value. Such tax shall be a lien on the interest in the real property of such owner of the wireless communications tower, antenna or relay site and shall be collected in the same manner as the collection of other taxes on real property.

1. **History:** L. 1997, ch. 126, § 37; July 1.”

Another statute that must be noted when looking at K.S.A. 79-430 is K.S.A. 79-102. That statute defines certain terms used within the taxation act. K.S.A. 79-102 provides in pertinent part:

“**79-102. Words and phrases.** That the terms "real property," "real estate," and "land," when used in this act, except as otherwise specifically provided, shall include not only the land itself, but all buildings, fixtures, improvements, mines, minerals, quarries, mineral springs and wells, rights and privileges appertaining thereto...”

1. **History:** L. 1907, ch. 408, § 1; July 1; R.S. 1923, 79-102.”

A logical reading of these statutes would lead one to conclude that the legislature created a statute which specifically handles the issue of appraisal and assessment of land and the towers on the land apart from the more general statute found at K.S.A. 79-412 which provides for the separate assessment of buildings on leased ground if the lease is filed with the Register of Deeds Office. It appears the legislature has declared wireless communication towers to be valued and assessed as commercial real property at the same assessment rate at which the land supporting said towers are assessed. Furthermore, any delinquent taxes accruing on the property attributable to the tower owner shall be a lien on the interest of the real property of the tower owner and shall be collected in the same manner as the collection of other taxes on real property.

The Sedgwick County Appraisal Office requests that this committee not favorably recommend SB 478 and allow the pending litigation to run its course.

Thank you for your attention and I will be happy to respond to questions you may have.



K A N S A S

JOAN WAGNON, SECRETARY

DEPARTMENT OF REVENUE
DIVISION OF PROPERTY VALUATION

KATHLEEN SEBELIUS, GOVERNOR

MEMORANDUM

TO: Sen. David R. Corbin
Committee on Assessment & Taxation

FROM: Mark S. Beck
Director of Property Valuation

DATE: February 19, 2004

SUBJECT: S.B. 478

S.B. 478 defines by law all wireless communications towers, antenna and relay sites as commercial and industrial machinery and equipment and as tangible personal property for property tax purposes.

As you know, the Division values and assesses public utilities. Many public utilities have radio and microwave towers that may be defined as wireless communications towers while others have satellite dishes that may be defined as antennas. Public utilities are valued using the "unit valuation" method - *i.e.*, the entire unit is valued as an operating unit rather than each part being separately valued. Public utility property is valued at "fair market value." Commercial and industrial personal property is valued at retail cost when new and depreciated over its economic life or seven years whichever is less to a residual value of 20% of retail cost when new.

Our concern is that now the "unit value" must be broken up. In the income approach, the favored approach to valuing most public utility property, it is virtually impossible to associate the income to the various parts of the utility's unit. And, because public utilities operate as a unit, it is virtually impossible to ascertain the value of its parts.

The Division requests that on line 15 after the word "sites," the phrase "except public utility property valued and assessed pursuant to K.S.A. 79-5a01 *et seq.*, and amendments thereto" be added.

SENATE BILL No. 478

By Committee on Assessment and Taxation

Proposed Amendments to
Senate Bill No. 478

2-9

9 AN ACT concerning personal property taxation; relating to classification;
10 wireless communication towers, antenna and relay sites.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. (a) In accordance with the provisions of section 1 of article
14 11 of the Kansas constitution, all wireless communication towers, antenna
15 and relay sites, are hereby defined as commercial and industrial machin-
16 ery and equipment, and shall be classified for property tax purposes as
17 tangible personal property within subclass 5 of class 2 of section 1 of
18 article 11 of the Kansas constitution. All such property shall be valued in
19 accordance with the provisions of K.S.A. 79-503a, and amendments
20 thereto.

21 (b) The provisions of this section shall apply to all taxable years com-
22 mencing after December 31, 2002.

23 Sec. 2. This act shall take effect and be in force from and after its
24 publication in the statute book.

except public utility property valued and
assessed pursuant to K.S.A. 79-5a01 et seq.,
and amendments thereto,

8-2

SENATE BILL No. 478

By Committee on Assessment and Taxation

2-9

Proposed Amendment

Gordon Self, Revisor

9 AN ACT concerning personal property taxation; relating to classification;
10 wireless communication towers, antenna and relay sites.

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18 article 11 of the Kansas constitution. All such property shall be valued in
19 accordance with the provisions of K.S.A. ~~70-503a~~ and amendments
20 thereto.

subsection (b)(2)(E) of

79-1439

21 (b) The provisions of this section shall apply to all taxable years com-
22 mencing after December 31, 2002.

23 Sec. 2. This act shall take effect and be in force from and after its
24 publication in the statute book.

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