

REPRESENTATIVE FOR PETITIONER:
Shawn Pittman, Deloitte Tax, LLP

REPRESENTATIVE FOR RESPONDENT:
Michael C. Dart, Department of Local Government Finance

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

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| CINCINNATI SMSA LTD., |) | |
| |) | Petition No.: 93-000-05-9-2-00001 |
| Petitioner, |) | |
| v. |) | Multiple Counties/Townships |
| |) | (Utility Distributable Property) |
| DEPARTMENT OF LOCAL |) | |
| GOVERNMENT FINANCE, |) | March 1, 2005, Assessment |
| |) | |
| Respondent. |) | |

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| BLOOMINGTON CELLULAR TELEPHONE CO.) |) | |
| |) | Petition No.: 93-000-05-9-2-00002 |
| Petitioner, |) | |
| v. |) | Multiple Counties/Townships |
| |) | (Utility Distributable Property) |
| DEPARTMENT OF LOCAL |) | |
| GOVERNMENT FINANCE, |) | March 1, 2005, Assessment |
| |) | |
| Respondent. |) | |

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| NEW CINGULAR WIRELESS, PCS, LLC, |) | |
| |) | Petition No.: 93-000-05-9-2-00003 |
| Petitioner, |) | |
| v. |) | Multiple Counties/Townships |
| |) | (Utility Distributable Property) |
| DEPARTMENT OF LOCAL |) | |
| GOVERNMENT FINANCE, |) | March 1, 2005, Assessment |
| |) | |
| Respondent. |) | |

Appeal from the Final Determination of
Department of Local Government Finance

December 5, 2006

FINAL DETERMINATION

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The issue presented for consideration by the Board is whether the Petitioners are entitled to an abnormal obsolescence adjustment to their utility distributable property for the March 1, 2005, assessment.

PROCEDURAL HISTORY

2. Cincinnati SMSA Ltd. (Cincinnati SMSA), Bloomington Cellular Telephone Company (Bloomington Cellular), and New Cingular Wireless, LLC (New Cingular), (collectively the Petitioners), each filed UD-45s, public utility distributable property assessment returns, with the Department of Local Government Finance (the Department) on March 25, 2005.
3. The Department issued a tentative assessment for the 2005 assessment on May 2, 2005, for Cincinnati SMSA and Bloomington Cellular, and on May 9, 2006, for New Cingular. The Petitioners filed objections to the tentative assessments on May 18, 2005.
4. The Department held a hearing to review the tentative assessment and objections on June 9, 2005. It issued a Final Determination for each of the Petitioners on June 29, 2005. The Final Determinations found the value of distributable property to be \$133,820 for Cincinnati SMSA, \$1,835,980 for Bloomington Cellular, and \$110,185,990 for New Cingular.
5. The Petitioners each filed a Form 139 appeal to the Board on July 14, 2005. The Board consolidated the petitions and issued a notice of hearing to the parties dated June 27, 2006, scheduling a hearing for August 31, 2006. On June 29, 2006, the Board issued a

notice rescheduling the hearing for August 21, 2006.

HEARING FACTS AND OTHER MATTERS OF RECORD

6. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Carol S. Comer, held a hearing on August 21, 2006, in Indianapolis, Indiana.

7. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Shawn Pittman, Tax Representative, Deloitte Tax¹
Pamela Willmoth, Director of Tax, Cingular Wireless
Nancy Plampin, Tax Manager, Cingular Wireless
Ray Hodges, Technology Futures, Inc.

For the Respondent:

Kurt Barrow, Policy Analyst
Keilah Heffington, Utility Specialist

8. The following exhibits were offered by the Petitioner:²

- Petitioner's Exhibit A.1. - Petition for Review of Department of Local Government Finance Action, Form 139, filed by Bloomington Cellular on July 14, 2005
- Petitioner's Exhibit A.2. - Petition for Review of Department of Local Government Finance Action, Form 139, filed by Cincinnati SMSA on July 14, 2005
- Petitioner's Exhibit A.3. - Petition for Review of Department of Local Government Finance Action, Form 139, filed by New Cingular Wireless on July 14, 2005.
- Petitioner's Exhibit C.1. - March 1, 2005, Tentative Assessment of Bloomington
- Petitioner's Exhibit C.2. - March 1, 2005, Tentative Assessment of Cincinnati

¹ Mr. Pittman represented the Petitioners as a certified tax representative. He was also sworn to testify.

² The Petitioner withdrew Exhibits B.1, B.2, and B.3, and O.1, O.2, and O.3, in favor of the Respondent's Exhibits B.1, B.2, and B.3, and C.1, C.2, and C.3. Further, the Respondent objected to Petitioner's Exhibits K and M as hearsay. The Board may consider hearsay evidence pursuant to 52 IAC 2-7-3. The ALJ determined that the Respondent's arguments go to the weight of the evidence and the Petitioner's Exhibits K and M were admitted over objection. Finally, the Respondent objected to the admission of documents that were related to AT&T's property tax filings for 2003 and 2004, Petitioner's Exhibits P and Q1 and Q2, on relevancy grounds. These exhibits were also admitted over objection.

- Petitioner's Exhibit C.3. - March 1, 2005, Tentative Assessment of New Cingular
- Petitioner's Exhibit D. - Protest Letter and Request for Hearing
- Petitioner's Exhibit E. - Request to Reschedule Hearing
- Petitioner's Exhibit F. - Notice of Department of Local Government Finance Hearing
- Petitioner's Exhibit G. - Cingular Wireless Asset Structure
- Petitioner's Exhibit H.1. - Bloomington Revised March 1, 2005, Schedule A
- Petitioner's Exhibit H.2. - Cincinnati Revised March 1, 2005, Schedule A
- Petitioner's Exhibit H.3. - New Cingular Revised March 1, 2005, Schedule A
- Petitioner's Exhibit H.4. - Bloomington Revised March 1, 2005, Schedule A
- Petitioner's Exhibit H.5. - Cincinnati Revised March 1, 2005, Schedule A
- Petitioner's Exhibit H.6. - New Cingular Revised March 1, 2005, Schedule A
- Petitioner's Exhibit I.1. - Bloomington Replacement Cost of All Orange Network Equipment Adjustment Calculation
- Petitioner's Exhibit I.2. - Cincinnati Replacement Cost of All Orange Network Equipment Adjustment Calculation
- Petitioner's Exhibit I.3. - New Cingular Replacement Cost of All Orange Network Equipment Adjustment Calculation
- Petitioner's Exhibit J.1. - Bloomington Replacement Cost of All Orange Network 2G TDMA Equipment Adjustment Calculation
- Petitioner's Exhibit J.2. - Cincinnati Replacement Cost of All Orange Network 2G TDMA Equipment Adjustment Calculation
- Petitioner's Exhibit J.3. - New Cingular Replacement Cost of All Orange Network 2G TDMA Equipment Adjustment Calculation
- Petitioner's Exhibit K. - Standard & Poor study, Cingular's Purchase Price Allocation of AT & T Wireless
- Petitioner's Exhibit L.1. - Technology Futures, Inc., "Technology Forecast and Valuation of Cellular Equipment" dated May 2005
- Petitioner's Exhibit L.2. - Technology Futures, Inc., "Technology Forecast and Valuation of Cellular Equipment for Cingular" dated April 2006
- Petitioner's Exhibit M. - 2.5G GSM vs. 2G TDMA Analysis of Cost Structure
- Petitioner's Exhibit N. - DLGF Findings of Fact and Conclusion of Law in the Matter of the March 1, 2005, tentative distributable assessment for New Cingular Wireless PCS LLC, Bloomington Cellular Telephone Company, and Cincinnati SMSA Limited Partnership
- Petitioner's Exhibit P.1. - Stipulation Agreement, *AT&T Wireless v. DLGF*, *Petition No. 93-000-03-9-2-0001*(March 1, 2003)
- Petitioner's Exhibit P.2. - AT&T Wireless Revised March 1, 2003, Schedule A
- Petitioner's Exhibit P.3. - AT&T Wireless March 1, 2003, Replacement Cost of 2G TDMA Equipment Adjustment Calculation
- Petitioner's Exhibit P.4. - Technology Forecast and Valuation of Cellular Cell Site Equipment for AT&T Wireless July 2003

Petitioner's Exhibit P.5. - 2.5G GSM vs. 2G TDMA Analysis of Cost Structure for March 25, 2003
Petitioner's Exhibit Q.1. - March 1, 2004 Annual Report for AT&T Wireless
Petitioner's Exhibit Q.2. - March 1, 2004 Assessment Notice for AT&T Wireless

9. The following exhibits were offered by the Respondent:

Respondent's Exhibit B.1. - Bloomington UD-45
Respondent's Exhibit B.2. - Cincinnati UD-45
Respondent's Exhibit B.3. - New Cingular Form UD-45
Respondent's Exhibit C.1. - Bloomington Tentative Assessment
Respondent's Exhibit C.2. - Cincinnati Tentative Assessment
Respondent's Exhibit C.3. - New Cingular Tentative Assessment
Respondent's Exhibit G. - DLGF Memo on UD-45 Filing
Respondent's Exhibit L. - Technology Futures, Inc., Report

10. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – The 139 Petitions
Board Exhibit B – Notice of Hearing dated June 29, 2006

11. At the hearing, the Department objected to the admission of all evidence and testimony offered by the Petitioners due to the Petitioners' failure to timely exchange a list of witnesses and exhibits in accordance with 52 IAC 2-7-1(b)(2), and failure to timely exchange copies of documentary evidence or summaries of statements of testimonial evidence in accordance with 52 IAC 2-7-1(b)(1). According to the Petitioners' representative, the Petitioners provided their list of witnesses and exhibits on August 4th, 2006, eleven business days or seventeen days prior to the hearing and provided their documentary evidence on August 15th, 2006, three business days or six days prior to the hearing. The Petitioners further argued that, of the forty exhibits the Petitioners provided to the Respondent on August 15th, only two exhibits were not previously provided to the Respondent at the June 9th, 2005 hearing. Finally, the Petitioners argued that their witnesses were not substantially different than the witnesses presented at the June 9, 2005, hearing.

12. The Petitioner's representative, as a certified tax representative, is charged with familiarity with the Board's governing rules. Further, the rule is explicit that the time for exchanging witness and exhibit lists is counted in business days rather than calendar days. The Board, however, finds little prejudice in the delay. The exhibits and witness lists were exchanged prior to the hearing. More importantly, the Petitioners provided the vast majority of Exhibits to the Department more than a year before the hearing and the Petitioners' arguments and witnesses were substantially similar to the arguments and witnesses presented at the Department hearing. The Board, therefore, denies the Respondent's Motion to Dismiss, but cautions Mr. Pittman that any future failure to comply with the Board's clear procedural rules may result in evidence being stricken from the record.
13. The property at issue in this appeal consists of public utility personal property assessed pursuant to Ind. Code 6-1.1-8. The property is located in Dearborn County for Cincinnati SMSA. The property is located in Lawrence, Madison, Marion, and Monroe Counties for Bloomington Cellular, and located in Allen, Bartholomew, Benton, Blackford, Boone, Brown, Carroll, Clark, Clay, Clinton, Crawford, Daviess, Decatur, DeKalb, Delaware, Dubois, Elkhart, Floyd, Fountain, Gibson, Grant, Greene, Hamilton, Hancock, Harrison, Hendricks, Henry, Howard, Huntington, Jackson, Jasper, Jay, Jefferson, Jennings, Johnson, Knox, Kosciusko, Lagrange, Lake, Laporte, Lawrence, Madison, Marion, Marshall, Martin, Monroe, Montgomery, Morgan, Newton, Noble, Ohio, Orange, Owen, Parke, Perry, Pike, Porter, Posey, Putnam, Randolph, Ripley, Rush, Scott, Shelby, Spencer, Saint Joseph, Starke, Steuben, Sullivan, Switzerland, Tippecanoe, Tipton, Vanderburgh, Vermillion, Vigo, Warrick, Washington, Wayne, White, and Whitley Counties for New Cingular.
14. The Respondent determined the assessed value of the property to be \$133,820 for Cincinnati SMSA, \$1,835,980 for Bloomington Cellular, and \$110,185,990 for New Cingular.

15. The Petitioners requested assessed values of \$107, 910 for Cincinnati SMSA, \$1,224,850 for Bloomington Cellular, and \$75,810,960 for New Cingular.

JURISDICTIONAL FRAMEWORK

16. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

17. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
18. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
19. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id; Meridian Towers*, 805 N.E.2d at 479.

ANALYSIS

20. The Petitioners contend that TDMA equipment has been made obsolete by the newer and more productive GSM equipment. According to the Petitioners, therefore, they are entitled to an abnormal obsolescence deduction of 66% on their assessments.
21. In support of its contention, the Petitioners presented the following testimony and other evidence:
- a. The Petitioners' representative, Shawn Pittman, testified that Cingular Wireless purchased AT&T Wireless in October of 2004 because Cingular Wireless and AT&T share the same technology. *Pittman testimony*. According to Mr. Pittman, both companies used the 2 g technology, TDMA, and the 2.5 g technology GSM. *Id.* Mr. Pittman testified that TDMA is not compatible with 2.5 g or 3 g technology. *Id.*
 - b. Mr. Pittman testified that, for the March 1, 2005, assessment, the former AT&T Wireless assets were written down to reflect the purchase price of those assets based on Standard & Poor's price allocation. *Pittman testimony*. Mr. Pittman argues that, prior to the merger AT&T was receiving an abnormal obsolescence adjustment based on "replacement cost minus depreciation" on AT&T's TDMA assets. *Pittman testimony*.
 - c. The Petitioners' witness, Ray Hodges, testified that analog equipment and TDMA equipment are economically obsolete and are rapidly declining in usage. *Hodges testimony*. According to Mr. Hodges, the only reason such technologies are operating today is because the FCC requires that the analog system, which works over the same network as TDMA, be maintained until 2008. *Id.* In response to cross examination, Mr. Hodges admitted that the TDMA assets still perform the functions which Cingular Wireless purchased them to perform, but argued that the

market has moved beyond those functions. *Id.* Further, Mr. Hodges admitted that Cingular Wireless purchased the AT&T TDMA assets knowing that the TDMA assets would not be useful for very long. *Id.* According to Mr. Hodges, however, the TDMA equipment will likely be disposed of as junk rather than used as telephone equipment. *Id.*

- d. Mr. Hodges testified that the revenues produced by the TDMA network do not cover the costs of maintaining the network. *Hodges testimony.* According to the witness, only a small percentage of revenue is generated by the TDMA network. *Id.* In fact, Mr. Hodges testified, AT&T imposed a surcharge on TDMA users to encourage migration to the GSM technology. *Id.*
- e. Finally Mr. Hodges testified that replacement cost is based on the fact that new generations of technology are introduced “at fairly regular intervals.” *Hodges testimony.* According to Mr. Hodges, cellular technology has evolved from the first generation analog technology to the second generation digital technology to 2.5 g. *Id.* 3g is state of the art and 4g is in trial use. *Id.* Further, Mr. Hodges testified, work has already begun on technologies beyond 4g. *Id.* According to the Petitioners’ witness, there is a “long pipeline of regular and periodic upgrades to technology.” *Id.*
- f. In its rebuttal case, the Petitioners’ witness, Nancy Plampton, argued that tax cost used for income tax depreciation is not kept at the level of detail that Indiana requires in the UD45. *Plampton testimony.* Further, Ms. Plampton argued, the UD45 requires reporting of significantly more assets than are reported for income tax purposes. *Id.* Finally, according to the Petitioners’ witness, the largest Cingular entity, PCS, is an LLC that is not a stand alone entity for income tax purposes. *Id.* Thus, Ms. Plampton argues, the Petitioners use book costs because tax cost is not available. *Id.*

- g. In closing, the Petitioners argued that the taxpayers fully disclosed their request for abnormal obsolescence. *Pittman argument*. According to Mr. Pittman, the Petitioners provided two different replacement cost studies, one based on Ray Hodges' report and one based on the actual purchase of AT&T assets. *Id.* Mr. Pittman argues that both studies result in a similar adjustment. *Id.* In response to cross examination, however, Mr. Hodges admitted that he did not give an opinion of value of the assets. *Hodges testimony*. Further, Mr. Hodges testified that his report did not specifically relate to the Petitioners' property, but rather applies to the entire industry. *Id.*
22. The Respondent contends that the Petitioners failed to timely request an obsolescence adjustment. The Respondent further contends that the Petitioners are not entitled to an adjustment because the use of a newer technology does not constitute abnormal obsolescence where the property is still operating. Finally, the Respondent contends that, to the extent an abnormal obsolescence adjustment is warranted, the Petitioners failed to adequately quantify that abnormal obsolescence.
23. In support of its contentions, the Respondent presented the following testimony and other evidence:
- a. The Respondent's witness, Kurt Barrow, testified that utility property is valued based on federal book value depreciated by federal depreciation. *Barrow testimony*. According to Mr. Barrow, value in use or fair value is not used to value utility property. *Id.*
- b. The Respondent argues that, in their annual filings, the Petitioners noted that "the purchase price allocation resulted in a material decrease to the historical cost of the legacy AWS assets in order to bring the costs in line with fair market value." *Dart argument; Respondent Exhibits B.1, B.2 and B.3*. According to Mr. Barrow, this suggests that the taxpayer adjusted the historical cost of the assets to fair

market value and, therefore, used market value rather than federal tax basis in the Petitioners' annual reports. *Barrow testimony*.

- c. Mr. Barrow testified that it was his opinion that the taxpayer was using "replacement" cost using the term "value." *Barrow testimony*. According to Mr. Barrow, using replacement cost cures most forms of obsolescence. *Id.* On cross examination, however, Mr. Barrow agreed that in determining the value of distributable property, the Department may consider the cost of replacement or reproduction less depreciation. *Id.*
- d. Finally, Mr. Barrow testified that he reviewed all of the Petitioners' exhibits and that the Petitioners failed to quantify obsolescence using generally accepted appraisal principles in any of the Petitioners' documents. *Barrow testimony*.
- e. The Respondent's witness, Keilah Heffington, testified that the Department uses the taxpayer's annual report to prepare its tentative assessment. *Heffington testimony*. According to Ms. Heffington, a taxpayer would report abnormal obsolescence on line 45. *Id.* Here, however, the Petitioners made no request for abnormal obsolescence in their annual reports. *Id.* Ms. Heffington testified that the Petitioners merely attached a letter stating that they had taken a 66% write down on AT&T assets. *Id.*
- f. In addition to their failure to request abnormal obsolescence, the Respondent's witness testified that the Petitioners' annual reports also included no supplemental information and no intangible claims for FCC licenses, goodwill, application software and other items. *Heffington testimony*. Further, Ms. Heffington testified that the Petitioners noted that they had already written down assets that would have normally been written down on line 45. *Id.* Also, according to Ms. Heffington, the values on the Petitioners' annual reports were reported at historical cost rather than federal tax basis, but the Petitioners appear to still be

seeking an adjustment to federal tax basis for depreciation. *Id.* Finally, Ms. Heffington testified, the Petitioners did not file their annual reports to shareholders or certified financial statements as required by the UD45. *Id.*

g. Ms. Heffington also testified that the Standard & Poor's report only applied to AT&T equipment. *Heffington testimony.* According to Ms. Heffington, Cingular Wireless is five different companies. *Id.*

h. In closing, the Respondent argued that the information provided by the Petitioners was unorganized and unreliable and not in accordance with general appraisal methods. *Dart argument.* According to the Respondent, the Petitioners' case is simply not sufficient to support a \$39 million adjustment. *Id.*

24. Indiana law requires that a public utility company file a "statement concerning the value and description of the property which is either owned or used by the company" on a form prescribed by the Department. *Ind. Code § 6-1.1-8-19.* Pursuant to this, the Department requires a UD-45, Annual Report of Public Utility Company, to be filed by all public utility companies each year along with financial statements, depreciation records, and the annual report to shareholders. 50 I.A.C. 5.1-3-2. According to the Department's rules, "[a]n adjustment for abnormal obsolescence will be permitted to the extent that the property qualifies for the adjustment and the public utility is able to substantiate the facts, circumstances, and amount of the claim in order to properly determine the true tax value of the subject property." 50 I.A.C. 5.1-11-3. Thus, for a Petitioner to show that he is entitled to receive an adjustment for obsolescence, a taxpayer must both identify the causes of obsolescence he believes is present and also quantify the amount of obsolescence he believes should be applied to its property. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998).

25. Abnormal obsolescence "occurs as a result of factors over which the Taxpayer has no control and is unanticipated, unexpected, and cannot reasonably be foreseen by a prudent

businessperson prior to the occurrence.” 50 I.A.C. 5.1-11-1. Further, abnormal obsolescence is “of a nonrecurring nature.” *Id.* Abnormal obsolescence includes unforeseen changes in market values; adverse governmental action; exceptional technological obsolescence; or destruction by catastrophe; “that have a direct effect upon the value of the property of the taxpayer at the tax situs in question on a going concern basis.” *Id.*

26. Here, the Petitioners contend that they are entitled to an abnormal obsolescence adjustment because TDMA equipment is economically obsolete and has seen a rapid decline in usage. *Hodges testimony.* The Department’s regulations, however, address such technological change. According to 50 IAC 5.1-11-2(b):

Abnormal obsolescence due to exceptional technological obsolescence should be recognized to the extent that it causes the subject property to be incapable of use for current production or adaptation to a different use. The invention of a newer, more productive piece of equipment which would produce a better quality item or utilization of state of the art technology that produces more efficiently at a lower cost of production does not cause an older, currently used asset to be considered abnormally obsolete. If the asset is still capable of performing the function for which it was acquired and is producing both on and before the assessment date, no adjustment shall be allowed. The use of historical cost, short useful life, and accelerated federal tax depreciation result in an equitable assessment on the property in question.

50 IAC 5.1-11-2(b). In response to cross examination, Mr. Hodges admitted that the TDMA assets still perform the functions which Cingular Wireless purchased them to perform. *Hodges testimony.* Further, Mr. Hodges admitted that Cingular Wireless purchased the AT&T TDMA assets knowing that the TDMA assets would not be useful for very long. *Id.* Finally, Mr. Hodges testified that new generations of technology are introduced “at fairly regular intervals.” *Id.* According to Mr. Hodges, there is a “long pipeline of regular and periodic upgrades to technology.” *Id.* The Petitioners’ own evidence, therefore, suggests that the Petitioners’ assets are not entitled to obsolescence because the change in cellular technology is neither unexpected nor non-recurring.

Further, the TDMA assets are still capable of performing the function for which they were purchased and, in fact, are still performing those functions.

27. Even if the Board were to determine that abnormal obsolescence applied because the newer technologies operate over an incompatible system, the Petitioners still fail in their claim for obsolescence because the Petitioners failed to present probative evidence that the causes of obsolescence identified by the Petitioner resulted in an actual loss in value to its property. *See Miller Structures, Inc. v. State Bd. of Tax Comm'rs*, 748 N.E.2d 943, 954 (Ind. Tax Ct. 2001). Obsolescence may be quantified using generally recognized appraisal principles. *See, e.g., Hometowne Assoc., L.P. v. Maley*, 839 N.E.2d 269, 277 (Ind. Tax Ct. 2005). Here, the Petitioners submitted a group of exhibits and claimed that those exhibits quantified their abnormal obsolescence adjustment. *Pittman argument*. The Petitioners, however, failed to provide any explanation of that quantification. While the Petitioners may have quantified their claim for obsolescence in the binder of exhibits they presented, the Board is not required to sift through the Petitioners' evidence in an effort to make the Petitioners' case for them. "[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis." *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004)). The Petitioners "cannot 'generically claim without explanation that [they] made a prima facie case then [] cite to . . . the record as though the evidence speaks for itself.'" *Fidelity Federal Savings & Loan v. Jennings Co. Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).
28. Even if the Board were required to decipher the Petitioners' unexplained exhibits, it could not determine a "value" for any abnormal depreciation from the documents that the Petitioners contend support their request for a 66% deduction. The Petitioners argue that they provided two different replacement cost studies, one based on Ray Hodges' report and one from Standard & Poor's based on the actual purchase of AT&T assets, to quantify the obsolescence adjustment. *Pittman argument*. In response to cross examination, however, Mr. Hodges admitted that his report did not give an opinion of

value for the assets. *Hodges testimony*. Mr. Hodges also testified that his report did not specifically relate to the Petitioners' property, but rather applied to the entire industry.

Id.

29. The Petitioners presented no testimony regarding the Standard & Poor's report. Further, the report does not address any of the Petitioners here, Cincinnati SMSA Ltd., Bloomington Cellular Telephone Company, or New Cingular Wireless, LLC.³

Respondent Exhibit K at 1. Even if the Board were to assume that Cincinnati SMSA, Bloomington Cellular, and New Cingular are the same as the Cingular Wireless, LLC entity that purchased the AT&T assets, there is no explanation as to what percentage of the Petitioners' assets are former AT&T assets. In addition, according to the Petitioners' witness, 65% of the Petitioners' clients are on GSM and 79% of the minutes used are on GSM technology. Despite the fact that most of the Petitioners' assets are GSM technology rather than TDMA, however, the Petitioners appear to claim a blanket 66% deduction on all of their equipment. Finally, the memorandum reports that the purchase price allocation was only in the "final draft stage" when the report was prepared and there is no evidence that the report was prepared in accordance with standard appraisal practices.

30. The Board "has the discretion to reject submitted statistics and reports if it determines that they are unreliable." *GTE North Incorporated v. State Bd. of Tax Commr's.*, 634 N.E.2d 882, 888 (Ind. Tax Ct. 1994).⁴ The Board, therefore, determines that neither the

³ The Petitioners presented no testimony or other evidence to explain the relationship between the Petitioners or between the Petitioners and Cingular Wireless, LLC. As the evidence presently exists, the Board has three Petitioners, Cincinnati SMSA, Bloomington Cellular and New Cingular and evidence related solely to Cingular Wireless' purchase of AT&T's assets.

⁴ The Board agrees with the Respondent that the Petitioners' evidence is unorganized, unreliable and not in accordance with general accounting principles. The Petitioners contend that they do not keep records at the level of detail required by Indiana. That the Petitioners chose not to comply with Indiana reporting requirements, however, does not justify the lack of support for their claims. *See Muncie Novelty Co., v. Department of State Revenue*, 720 N.E.2d 779 (Ind. Tax Ct. 1999) (Revenue Department justified in charging additional tax and imposing a penalty where the taxpayer failed to maintain proper records).

Hodge's report nor the Standard & Poor's report is probative evidence of the true tax value of the Petitioners' assets.

31. Finally, the Petitioners claim that the fact that the Department allowed an adjustment to a different taxpayer in a prior year entitles them to an adjustment. *Pittman argument*. The Petitioners are mistaken in their reliance on AT&T's prior assessment. Each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, evidence as to a property's assessment in one tax year is not probative of its true tax value in a different tax year. *See, Id.*⁵

32. The Petitioners failed to present a prima facie case to quantify an abnormal obsolescence adjustment for the TDMA equipment at issue. Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't. Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

33. The Petitioners failed to raise a prima facie case that they are entitled to an abnormal obsolescence adjustment. The Board finds in favor of the Respondent.

⁵ We also note that utility companies "shall disclose any claim for an adjustment for abnormal obsolescence in the annual report filed with the state board under 50 IAC 5.1-3-2." 50 I.A.C. 5.1-11-4. Here the Petitioners made no such claim in their UD-45 filings.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>, The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.