

THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN THE ARIZONA TAX COURT

TX 2024-000326

03/27/2026

HONORABLE ERIK THORSON

CLERK OF THE COURT  
G. Duran  
Deputy

WYYERD CONNECT L L C

PAUL J MOONEY

v.

ARIZONA DEPARTMENT OF REVENUE

KIMBERLY J CYGAN

JAMES M SUSA  
AARON RICHARD CLOUSE

**UNDER ADVISEMENT RULING**

The Court held oral argument on February 2, 2026, regarding Defendants Arizona Department of Revenue (the “Department”) and Maricopa County’s Motion for Summary Judgment, filed July 29, 2025 (“Defendants’ Motion”), and Plaintiff’s Response to Defendants’ Motion for Summary Judgment; and Plaintiff’s Cross-Motion for Summary Judgment, filed September 23, 2025 (“Cross-Motion”), as well as subsequent filings related thereto, each of those.

The Court has considered the filings and arguments of the Parties, the relevant authorities and applicable law, as well as the entire record of the case, and—considering all facts and reasonable inferences therefrom in the light most favorable to the non-movants, respectively—hereby finds as follows regarding the Motions.

Plaintiff Wyyerd Connect, LLC (“Wyyerd”) owns property in Maricopa County and is identified by the Department as taxpayer identification number 56-869 (the “Property”). (Defendants’ Statement of Facts, filed July 29, 2025 (“DSOF”), at ¶2, *undisputed*; Wyyerd’s Supplement Statement of Facts, filed September 23, 2025 (“PSSOF”), at 1, *undisputed*.) Wyyerd is an internet service provider (“ISP”) that provides internet access services to residential and business customers. (PSSOF ¶1, *undisputed*.)

Wyyerd does not directly provide telephone services to its customers but re-sells “Voice over Internet Protocol” (“VoIP”) telephone services to its customers through a company called

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Alianza. (PSSOF ¶2, *undisputed*.) Wyverd has a license agreement with Alianza that allows its ISP customers to purchase Alianza's VoIP services for a fee collected by Wyverd as part of its billing for ISP services. (PSSOF ¶10, *undisputed*.)

For calendar year 2023, Wyverd reported its total revenues of \$8,211,762.70 to the Federal Communications Commission ("FCC") which included \$158,322.00 of revenues from re-selling VoIP (i.e., 1.9% of Wyverd's total revenues). (PSSOF ¶5, *undisputed*.) For calendar year 2022, Wyverd reported its total revenues of \$1,093,114.71 to the FCC which included \$24,697.82 of revenues from re-selling VoIP (i.e., 2.2% of Wyverd's total revenues). (PSSOF ¶6, *undisputed*.)

Wyverd filed its First Amended Complaint and Notice of Appeal alleging that the Department's full cash value for tax year 2025 was excessive and alleging a claim for illegally collected tax and discrimination for tax years 2024 and 2025. (*See generally* First Amended Complaint and Notice of Appeal, filed December 12, 2024.)

Defendants seek summary judgment contending that (1) Wyverd is a telecommunications company and subject to valuation under A.R.S. § 42-14403; (2) appellate precedent forecloses Wyverd's uniformity and discrimination claims; and (3) Construction Work in Progress ("CWIP") is telecommunications property to be included in the valuation of telecommunications companies. (*See generally* Defs.' Mot.)

Wyverd seeks summary judgment on the same issues except that if Wyverd's Cross-Motion is denied, Wyverd contends that its uniformity and discrimination claim requires trial based on issues of fact. (*See generally* Cross-Mot.)

Summary judgment is appropriate if "there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law." Ariz. R. Civ. P. 56(a); *General Motors Corp. v. Maricopa Cty.*, 237 Ariz. 337, 339 ¶7 (App. 2015). "The valuation or classification as approved by the appropriate state or county authority is presumed to be correct and lawful." A.R.S. § 42-16212(B).

A.R.S. § 42-14403(A) provides the following:

On or before August 31 of each year, the department shall determine the valuation as of January 1 of the property of all telecommunications companies operating in this state at its full cash value. Real estate shall be valued at market value, and personal property shall be valued on a unitary basis at its cost less depreciation. In addition, the taxpayer may submit documentation

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showing the need for, and the department shall consider, an additional adjustment to recognize obsolescence using standard appraisal methods and techniques.

Cost is defined as “the original cost as reported on the company’s books and records.” A.R.S. § 42-14403(C)(1).

A telecommunications company is defined as “any person that owns communications transmission facilities and that provides public telephone or telecommunications exchange or inter-exchange access for compensation to effect two-way communication to, from, through or within this state.” A.R.S. § 42-14401.

Defendants contend that Wyyerd meets the definition of a telecommunications company because it provides two-way telecommunications services and therefore is subject to valuation under A.R.S. § 42-14403. (Defs.’ Mot., at 4.) Defendants rely on *Cable One, Inc. v. Ariz. Dep’t of Revenue*, 232 Ariz. 275 (App. 2013).<sup>1</sup> (Defs.’ Mot., at 4–6.)

In *Cable One*, the Arizona Court of Appeals stated that “A.R.S. § 42-14401 is not limited to companies that directly connect to the PSTN.” 232 Ariz. at 279 ¶18. (PSTN is “the traditional, circuit-switched telephone network known as the ‘public switched telephone network.’” *Id.* at 277 ¶8.) The Court of Appeals found “that through its VoIP service, Cable One is providing ‘telecommunications exchange or inter-exchange access for compensation to effect two-way communications to, from, through or within this state.’” *Id.* at 279 ¶18 (quoting A.R.S. § 42-14401).

Wyyerd contends that *Cable One* is distinguishable because Wyyerd’s business activities are different than those in *Cable One*. (Cross Mot., at 6.) Wyyerd contends that the test set forth in *Cable One* does not apply because Wyyerd does not provide VoIP services using its own property. (Cross Mot., at 11.) Wyyerd bills for VoIP services provided by Alianza pursuant to the license agreement between Wyyerd and Alianza. (Cross-Mot., at 11.) Wyyerd contends that it does not own any facilities or equipment that allow people to make or receive VoIP calls and does not advertise or promote such services on its website. (Cross Mot., at 6.) Defendants

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<sup>1</sup> At oral argument, Defendants’ counsel requested that the Court take judicial notice of the underlying tax decision in *Cable One*. Plaintiff’s counsel did not object. Therefore, the Court took judicial notice of the Minute Entry filed November 17, 2011 in TX2010-000170. *See Cable One Inc v. Ariz. State Dep’t of Revenue*, TX2010-000170, 2011 WL 13220796 (Ariz. Tax Ct. Nov. 17, 2011), *rev’d sub nom. Cable One, Inc. v. Ariz. Dep’t of Revenue*, 232 Ariz. 275, 304 P.3d 1098 (App. 2013).

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contend that this does not create a distinction for property tax purposes. (Def.'s Reply, filed November 12, 2025, at 3.)

The Court of Appeals stated in *Cable One*:

Accordingly, Cable One's argument that it does not own communications transmission facilities because it does not "interface" directly with the PSTN misses the mark. The Legislature did not describe the technology the facilities must use to transmit the communications. Instead, as discussed, the Legislature described the facilities in terms of function: "communications transmission facilities." As long as the facility serves or facilitates the transmission of communications, it is a communications transmission facility. Accordingly, we agree with the Department that "communications transmission facilities" include but are not limited to PSTN facilities.

232 Ariz. at 283 ¶33. *Cable One* is analogous here. Defendants contend that Wyerd supplies the infrastructure to connect to the internet and the VoIP service uses the internet infrastructure. (Def.'s Reply, at 3.) Wyerd provides internet access to its customers as well as reselling VoIP services. (PSSOF ¶¶1–2, *undisputed*.)

Wyerd's reported total revenue includes revenue from the reselling of VoIP. (PSSOF ¶¶5–6, *undisputed*.) The Court recognizes that only a small percentage of Wyerd's revenues come from the reselling of VoIP. However, in *Cable One*, the Court of Appeals addressed Cable One's argument that "it cannot be centrally assessed as a telecommunications company because the 'predominant use of its Arizona property is to provide cable television services,' not VoIP service." 232 Ariz. at 284 ¶41. The Court rejected that argument finding that the valuation statute did not refer to predominant use. *Id.*

**THE COURT FINDS that** Wyerd is a telecommunications company under A.R.S. § 42-14401 and subject to valuation under A.R.S. § 42-14403.

The 2025 full cash value for Wyerd's Arizona property was set by the Department at \$82,968,000. (DSOF ¶5, *undisputed*.) Wyerd contends that the full cash value is excessive because it includes approximately \$52,448,368 of CWIP and should be reduced to no more than \$39,519,531. (Cross Mot., at 8.) The 2024 full cash value for Wyerd's Arizona property was set by the Department at \$46,591,000. (DSOF ¶4, *undisputed*.) Wyerd contends that the full cash value is excessive because it includes approximately \$31,333,219 of CWIP and should be reduced to no more than \$15,607,781. (Cross Mot., at 8.)

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The valuation formula set forth in A.R.S. § 42-14403(A) states: “Real estate shall be valued at market value, and personal property shall be valued on a unitary basis at its cost less depreciation.” Cost is defined as “the original cost as reported on the company’s books and records.” A.R.S. § 42-14403(C)(1). CWIP is not addressed in the telecommunications company statutes.

Wyverd contends that its CWIP all relates to cost of expanding its fiber-optic network and is not taxable under A.R.S. § 42-14403. (Cross-Mot., at 12.) Wyverd contends that the reported CWIP in tax years 2024 and 2025 are not part of the statutory formula under A.R.S. § 42-14403 because CWIP is neither a cost of the property in service nor depreciable. (Cross Mot., at 7.)

Defendants contend that Wyverd’s CWIP is property of a telecommunications company and therefore is included in the Department’s valuation. (Defs.’ Mot., at 7.) Defendants contend that CWIP is addressed in other property valuation statutes and the Legislature could have included a similar rule for telecommunications companies if it wanted to. (Defs.’ Mot., at 7.) Defendants also contend that Wyverd includes the value of CWIP on its books and records and there is no exception in the definition of “cost” for CWIP. (Defs.’ Mot., at 8.)

Wyverd cites several examples of references to CWIP in other statutes. (Cross-Mot., at 7 n.3.) A.R.S. § 42-14155(D)(5) states that CWIP is included in renewable energy equipment. Other statutes Wyverd cites state that CWIP is not subject to valuation or is valued at a percentage of cost. Defendants contend that including language in the telecommunications statute that CWIP is to be taxed would be redundant because under the current language all telecommunications company property shown on the books and records is subject to tax. (Defs.’ Reply, at 6–7.) The Court agrees. Here, CWIP is included on Wyverd’s books and records. (DSOF ¶¶3, 6, 9, *disputed that CWIP is taxable.*)

**THE COURT FINDS that** CWIP is included as part of the statutory valuation set forth in A.R.S. § 42-14403.

Wyverd also asserts a claim under the Uniformity Clause as an alternative claim and contends that such claim involves issues of fact for trial. (Cross Mot., at 13–14.) Defendants contend that Wyverd’s Uniformity Clause claim fails because Wyverd is not like similarly situated properties because the properties cited have separated VoIP property into new legal entities. (Defs.’ Reply, at 8.) Wyverd’s discrimination claim is based on whether CWIP is taxable and whether its internet access property has been valued in a discriminatory manner. (Cross-Mot., at 13.) On the record before it, the Court has been able to resolve the first question, but not the second.

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**THE COURT FINDS that** questions of fact remain as to the Uniformity Clause claim.

**IT IS ORDERED granting in part** Defendants' Motion for Summary Judgment, filed July 29, 2025, as to the findings that Wyverd is a telecommunications company under A.R.S. § 42-14401 and that CWIP is to be included as part of the statutory valuation set forth in A.R.S. § 42-14403. All other relief requested in the motion is denied.

**IT IS FURTHER ORDERED denying** Plaintiff's Cross-Motion for Summary Judgment, filed September 23, 2025.