

# New York State Court of Appeals Holds Cell Sites to be Taxable Real Property

January 24, 2019

On December 13 2018, the New York Court of Appeals held in T-Mobile Northeast, LLC v. DeBellis that cellular sites and the equipment at the sites are considered real property and thus taxable under the New York State Real Property Tax Law (“RPTL.”) (2018 N.Y. Slip. Op. 08539, 2018 WL 6533281).

T-Mobile brought an action against the City of Mount Vernon claiming that its cellular equipment installed on the exterior of buildings throughout the City was not taxable real property and the company was entitled to refunds. The equipment consisted of base transceiver stations, antennas, and coaxial, T-1, and fiber optical cables. T-Mobile argued that its equipment was not real property under the RPTL section 102(12)(i) (the equipment was not “lines, wires, poles, supports and inclosures for electrical conductors” used for transmission of electromagnetic data) nor was the equipment real property under RPTL section 102(12)(b) (equipment affixed to the real estate.)

The Court stated that T-Mobile’s cellular site equipment is real property under the plain language of RPTL 102(12)(i) and thus, taxable.

This decision conflicts with holdings in the First and Third Departments which stated that fiber optic cable does not fall within the statutory definition of real property under the RPTL, and thus is not subject to property tax. ( RCN N.Y. Communications, LLC v. Tax Commission of the City of New York 95 AD3d 456 (1<sup>st</sup> Dep’t 2012), Level 3 Communications v. Clinton County, 144 A.D.3d 115 (3<sup>rd</sup> Dep’t 2016)). It appears that T-Mobile overturns the law set forth in the First and Third Departments although T-Mobile involved the assessability of fiber optic cable at cellular sites as opposed to RCN and Level 3 which involved fiber optic cable in the private right of way. There is additional case law pending which we will monitor and we will continue to keep you apprised of any new developments.

At this time there has been no guidance issued from the New York Office of Real Property Tax Services on how this case will be applied to fiber optic cable in the private right of way that is not associated with a cellular site. It is unclear how this decision will impact ORPTS advisory appraisals to local municipalities. It is equally unclear how this decision will impact ORPTS ceiling assessments on telecommunications property which previously excluded the value of fiber optic cable. Moreover, to the extent that the value of fiber optic cable is included in future ceiling assessments, the different methodologies for doing so can have varying and potentially significant impacts.

We will learn more about the impact of this decision over the next several months as assessing jurisdictions begin releasing their tentative assessment rolls. We will keep you apprised of any new developments at the legislative or judicial levels.

In the interim we recommend that all telecommunication companies pay close attention to any notices they receive from assessing units and compare the current values against prior notices. If you have not been actively appealing your assessments, this would be a good opportunity to re-consider your position.

Please email or call Bob Sorge (516-357-3783 / [RSorge@cullenandykman.com](mailto:RSorge@cullenandykman.com) ), Karen Levin (516-296-9110 / [KLevin@cullenanddykman.com](mailto:KLevin@cullenanddykman.com) ), or Mike Hrankiwsyj (516-357-3886 / [MHrankiwsyj@cullenanddykman.com](mailto:MHrankiwsyj@cullenanddykman.com) ) to discuss your options. Do not hesitate as there are statutory filing deadlines to file an administrative complaint and failure to timely file will lead to the loss of your ability to seek an assessment reduction in the current assessment year.

## Practices

- Corporate
- Real Estate

## Attorneys

- Michael G. Hrankiwsyj
- Karen I. Levin
- Robert J. Sorge