



## Virginia Local Government Law

### 10 Lessons from the Verizon Cases at the State Corporation Commission

By: **Andrew McRoberts**. *Wednesday, November 23rd, 2011*

In December of 2009, Verizon Communication, Inc.'s two "baby bell" subsidiaries in Virginia (Verizon Virginia, Inc. and Verizon South, Inc. — collectively, "Verizon") filed applications to correct erroneous assessments of almost all of its personal property in the Commonwealth for tax year 2009, and seeking significant refunds. Verizon ultimately added a claim for tax year 2010 as well, pushing estimates of the local tax dollars at risk to well over \$36 million statewide.

Although personal property taxes are imposed locally by Virginia's counties, cities and towns, the assessments (valuation) of the items of property for public service corporations are done centrally by order of the **State Corporation Commission**. By statute, challenges to the SCC's assessment are filed and litigated at the Commission, rather than in local circuit courts.

Once given an opportunity to do so, over 100 Virginia local governments filed notices of participation. **Sands Anderson PC** represented 29 of those localities over the course of the litigation.

Along with Fairfax County and other large localities with in-house tax litigators, the **Sands Anderson Government Group** was pleased to take a lead in the ultimately successful Virginia local government effort to defend Verizon's applications. On August 3, 2011, **Verizon moved to voluntarily dismiss** its multi-million dollar claims and the Commission granted those motions. No refunds were paid.

While there were many issues arising from the cases, we took away a number of "lessons learned" that we are pleased to share. Here are the top ten:

# 1: Just because they're big, doesn't make them right. Being right on the law and the facts make you right.

# 2: A big response is required at the SCC in response to a big Public Service Corporation, however. Go big or go home.

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# 3: There is strength in numbers and in unity. Having over 100 localities, from big to small, helped make the difference. Having many localities raising the same arguments and supporting each other's evidence was key.

# 4: The SCC process is complex and difficult. Procedures are different than in circuit court, and discovery is lengthy and restricted. Summary resolution, difficult in circuit court, is even more difficult at the SCC. Similar to federal court, the frequency, number of volume of the filings can be significant.

# 5: The SCC process does work in time. Although it took far longer than any locality desired, a complete dismissal of the applications was a very desirable result.

# 6: Having a good expert is very important. We were able to find and retain an expert with defense experience in similar cases filed by another Verizon subsidiary and other public service corporations in other states. This expert was able to assist us in our defense and in analyzing Verizon's complex production in discovery. That gave us an edge.

# 7: The SCC's Assessment Staff is not necessarily right, but must be proven wrong. The assessment is presumed correct and the burden is on the applicant to prove otherwise.

# 8: In this case, the SCC's Assessment Staff was more right than Verizon. We think. Although we never reached the merits, the SCC's methodology and valuation appeared to be far more reasonable than the methodology and rock-bottom valuation of Verizon.

# 9: A tax appeal (whether or not at the SCC) is a creature of statute, which the applicants and respondents must follow closely. The procedure and remedies available are prescribed by statute.

# 10: Having legal counsel experienced with the SCC and Virginia tax assessment law is critical to success.

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