

Appeal No. VA88/0/238

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 1988
VALUATION ACT, 1988

Cablelink Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Cablelink Ltd: Television Relay Network within the County Borough of Dublin

B E F O R E

Paul Butler

Barrister (Acting Chairman)

Mary Devins

Solicitor

Brian O'Farrell

Valuer

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 20TH DAY OF DECEMBER, 1988

By notice of appeal dated the 24th day of August, 1988, the appellants appealed against the determination of the respondent fixing a rateable valuation of the above described hereditaments at £10,000.

The hereditament was listed for revision in 1987, subsequent to the passing of the Valuation Act, 1986. Section 3 of the Valuation Act, 1986 amended section 48 of the Valuation Act, 1852, by the insertion of a schedule, reference No. 3 which refers to "All cable, pipelines and conduits

(whether underground, on the surface or overhead) and including all pylons, supports and other constructions which pertain to them". Before 1987 the only rateable hereditaments of the appellants were described as "rights or other easements over land".

At the oral hearing, which took place on 9th December 1988, Miss Mary Laffoy, S.C., instructed by Eugene F Collins & Son, Solicitors, 61 Fitzwilliam Square, Dublin 2 represented the appellants. Mr. Frank O'Donnell, B.Agr.Sc. M.I.A.V.I. M.I.R.F.F., Valuer, Mr. Brian J Malone, Technical Manager, Cablelink Ltd. and Mr. Peter Grant, Head of Finance, Cablelink Ltd. also attended. Mr. Aindrias O' Caoimh, Barrister, instructed by the Chief State Solicitor, represented the Commissioner of Valuation. Mr. E.P. Whelan, B.E., District Valuer with the Valuation Office was also in attendance.

By written submission dated 6th December 1988, Mr. O'Donnell, Principal of Messrs. Frank O'Donnell & Company, Valuation and Rating Consultants set out in some detail his estimate of the net annual value of Cablelink's complete undertaking in the greater Dublin area. Applying a percentage of 1/175 of N.A.V. for R.V., and allowing for apportionment for the area within the County Borough, the subject of this appeal, Mr. O'Donnell felt that a rateable valuation of £1,500 would be correct for this hereditament.

Miss Laffoy S.C., in the course of the oral hearing, pointed out that, in her opinion, the only correct method of arriving at an estimate of N.A.V. for the County Borough cable network of Cablelink Ltd., was by using the "profits" method. She felt that it was unrealistic to speak of a hypothetical tenant in this case, since any tenant would be in possession of what was effectively a "severed network".

Mr. Brian Malone, elaborating on his written submission, explained that the two principal antennae reception sites, i.e. those receiving the U.K. signals, are both situate outside the County Borough of Dublin. He pointed out that any hypothetical tenant would find it extremely difficult to construct similar reception sites in the County Borough. A new and separate network would have to be designed for the County Borough, if it were to be treated as divisible from the entire network in the greater Dublin area.

Mr. Malone referred to several disadvantages attaching to the operation of Cablelink Ltd., viz;

1. Cablelink operates to relay television programmes by virtue of a licence granted by the Minister for Communications under the terms

of the Wireless Telegraphy Regulations, 1974. This licence, once it has been in force for seven years, may be revoked by the Minister on giving at least two years' notice.

2. Signal piracy or self-connection is a serious problem and one which has proved very costly for the company. In 1988, the company will spend £220,000 in attempting to combat this problem.
3. Many of the devices used by Cablelink are located outdoors and are therefore subject to deterioration due to climatic and environmental factors.
4. The advent of new technology and the increasing availability of programme services directly to the consumer will provide severe competition for Cablelink in the near future.

Mr. Peter Grant referred to his written submission dated 2nd December 1988 and explained that the Consolidated Financial Statements of Cablelink Ltd., which were submitted to the Tribunal, included the Financial Statements of Cablelink Waterford Limited and Cablelink Galway Limited and that the financial results for the greater Dublin area must be adjusted for the two subsidiary operations.

Both parties to the appeal agreed that the network within the County Borough represented 55% of the entire network in the greater Dublin area.

The parties fundamentally disagreed in the area of what expenses should be allowable as deductions from income to show profits.

Mr. A. O'Caomh, on behalf of the respondent, argued that the figure shown for depreciation in the Consolidated Statement of Source and Application of Funds for Cablelink Ltd. for the year ended 30th September 1986, was inaccurate in that it included items which were not strictly relevant to the hereditaments under appeal.

He also pointed out that to allow a hypothetical tenant a reduction of 20% because of the indivisibility of the undertaking, (as suggested by Mr. O'Donnell), was unrealistic, as it might

equally well be argued that only a notional rent might be required of any tenant because of this alleged indivisibility.

Mr. E. Whelan, in his written submission dated 21 November 1988, accepted the figures shown for income in the Consolidated Financial Statement of Cablelink Ltd. He felt, however, that the figures shown for expenses were inaccurate. On cross-examination he later conceded that depreciation should be allowed as an expense, and that a figure of somewhere in the region of £600,000 would be appropriate for same.

Mr. Whelan furnished the Tribunal with four methods of arriving at a correct rateable valuation, viz:

- (A) Profits Method
- (B) Contractor's Method
- (C) R.V. per connection
- (D) N.A.V. per connection.

Using each of his four methods, Mr. Whelan arrived at a rateable valuation of £10,000. (These figures are reproduced and appended hereto at Appendix A.)

Miss Laffoy S.C., pointed out that the figures allowed for rates in Method A, as above, referred only to rates payable in the County Borough whereas the figures for income and expenditure referred to the entire greater Dublin area. By contrast, she also pointed out that the figures used in Method D all referred to the County Borough only.

Mr. Whelan used as a comparison Cork Communications Ltd., a television relay network with 25,000 connections, in respect of which the Commissioner of Valuation and the Valuer representing Cork Communications Ltd., have agreed a rateable valuation of £2,250.00. This R.V. has not yet been levied.

A further area of disagreement between the parties was what percentage of NAV should represent R.V. Mr. Whelan, in all of his methods of computation, relied on a figure of 1/100, whereas Miss Lafoy argued that a figure of 1/175 was fairer. On cross-examination Mr. Whelan agreed that in the earlier stages of negotiation in the case of Cork Communications Ltd., the Valuation Office had based their calculations on a percentage of 1/175.

Mr. Whelan disagreed with Mr. O'Donnell that the existing R.V. on the administrative building of Cablelink Ltd. at 33A Ballsbridge Terrace should be deducted when calculating N.A.V. He felt that these buildings should be taken into account when assessing the N.A.V. of the entire enterprise.

In view of the fact that the respondent offered no evidence to refute the financial statements submitted by the appellants, the Tribunal accepts the financial statements of Cablelink Ltd., prepared and audited by Messrs. Stokes, Kennedy, Crowley & Co., Chartered Accountants.

It is, however, conscious of the fact that property, previously deemed to have no rateable value, is now, since the passing of the Valuation Act, 1986, deemed to be rateable.

Since the only realistic comparison offered by either party is Cork Communications Ltd., the Tribunal must take note of the evidence offered in this regard. However, it is borne in mind that the network in Cork is considerably smaller than that under appeal and the Tribunal has not received detailed evidence as to the method by which the R.V. for Cork Communications Ltd. was determined.

The Tribunal is aware that hereditaments of this nature occupy a special position in the rating code since the enactment of the Valuation Act 1986 and that no exact method can be applied when arriving at a correct rateable valuation.

It seems clear that the earlier valuation of £1,500, which referred only to easements, must be increased to take into account the hereditaments made rateable since 1986.

In all the circumstances, therefore, the Tribunal has come to the conclusion that the correct rateable valuation for this hereditament is £5,000.