

Mark Reynolds

1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 Opinion Number: _____

3 Filing Date: October 30, 2017

4 **NO. A-1-CA-35126**

5 **CABLE ONE, INC., a Delaware**
6 **corporation,**

7 Plaintiff-Appellee,

8 v.

9 **NEW MEXICO TAXATION**
10 **AND REVENUE DEPARTMENT,**
11 **a governmental agency of the**
12 **State of New Mexico, and**
13 **DEMESIA PADILLA, in her official**
14 **capacity as the Secretary of the**
15 **New Mexico Taxation and**
16 **Revenue Department,**

17 Defendants-Appellants.

18 **APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY**

19 **Francis J. Mathew, District Judge**

20 Sutin, Thayer & Browne, APC
21 Justin R. Sawyer
22 Timothy R. Van Valen
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1 **OPINION**

2 **HANISEE, Judge.**

3 {1} We have before us a matter of first impression—whether a company whose
4 tangible property located in New Mexico is used to provide cable television
5 programming, internet, and interconnected Voice over Internet Protocol (VoIP) to
6 customers comes within the definition of “communications system,” thereby
7 subjecting it to reclassification and valuation by the New Mexico Taxation and
8 Revenue Department (the Department). We hold Cable One’s tangible property falls
9 squarely within the Property Tax Code’s (the Code), NMSA 1978, §§ 7-35-1 to -38-
10 93 (1973, as amended through 2016), definition of “communications system”
11 pursuant to Section 7-36-30(B)(1) and that the Department properly reclassified it and
12 subjected it to valuation also pursuant to Section 7-36-30. The district court having
13 concluded otherwise, we reverse.

14 **BACKGROUND**

15 {2} Cable One operates two cable systems in New Mexico: one in Sandoval County
16 (the Rio Rancho system) and one in Chavez County (the Roswell system). Each
17 system is capable of providing Cable One’s customers with cable television service
18 (i.e., video programming), internet access, and interconnected VoIP. When Cable One
19 began its operations in New Mexico in the early 1980s, its primary purpose was to

1 provide cable television service. Between 2002 and 2011, Cable One repurposed a
2 number of its channels in both the Rio Rancho and Roswell systems in order to
3 provide high-speed data (internet) and interconnected VoIP services. Cable One’s
4 tangible property within New Mexico includes a “headend” for each of the two
5 systems it operates. According to Cable One, a “ ‘headend’ . . . serves as a collection
6 system for signals over the cable television system” and “also houses equipment that
7 enables Cable One to provide internet access service and interconnected VoIP service
8 to customers over the same cable television system.” Cable One’s system uses optical
9 means to transmit and receive information.

10 {3} In 2008, the Department “became aware that many cable companies were
11 transitioning from one-way to two-way communication services.” Historically, cable
12 television companies were considered to provide “one-way” service, meaning that
13 their systems were designed to transmit but not receive information and were thus not
14 considered “communications systems” for purposes of central assessment.¹ Telephone

15 ¹“Central assessment” generally refers to assessment by a state taxation
16 authority rather than local assessors and denotes the use of a special method of
17 valuation intended to address the challenge of uniformly valuing certain types of
18 businesses and property. *See Comcast Corp. v. Dep’t of Rev.*, 337 P.3d 768, 772-73
19 (Or. 2014) (en banc) (explaining that central assessment “had its origins in unit
20 valuation, an assessment method that . . . was devised to address the difficult task of
21 valuing a business . . . when the property of the business is located in more than one
22 taxing district[.]” and “developed to remedy the perceived problems with unit
23 valuations performed by local assessors”); *see also* § 7-36-2(B), (C) (reserving to the

1 companies, by contrast, provide two-way service because their systems are capable
2 of both transmitting and receiving information. In response to the “ever[-]evolving
3 technological advancements [in] the cable television, broadband internet, VoIP, and
4 traditional telephone industr[ies,]” the Department began centrally assessing “all
5 cable companies operating in the state which provided two-way communications
6 services that [Sections] 7-36-2 and 7-36-30 . . . governed.” Specifically, the
7 Department now centrally assesses “all cable television companies which provide
8 broadband internet and VoIP services.”

9 {4} Upon being notified that the Department reclassified Cable One’s property as
10 a “communications system,” Cable One began paying its taxes under protest. Cable
11 One filed a complaint in January 2014 seeking a partial refund of its 2013 taxes paid
12 and a declaratory judgment that its property is not part of a communications system.
13 In response to the district court’s question at the motion for summary judgment
14 hearing regarding why its internet access and VoIP services did not qualify under
15 Section 7-36-30(B)’s definition of “communications system,” Cable One conceded
16 that those services “would fit within [Section 7-36-30(B)(1)’s] definition” but argued

17 Department the authority to assess the property of particular types of business); § 7-
18 36-15(B) (prescribing a standard valuation method for all property “[u]nless a method
19 or methods of valuation are authorized in Sections 7-36-20 through 7-36-33”); §§ 7-
20 36-22 to -25, and -27 to -33 (providing a special and different valuation method for
21 each type of property subject to central assessment under Section 7-36-2(B), (C)).

1 that the court could not look at Subsection (B)(1) “in a vacuum.” Cable One argued
2 that “canons of statutory construction are clear . . . that [courts are] to look at a statute
3 in its whole and give effect to every provision of it.” Cable One contended that the
4 Department’s reliance on Subsection (B)(1)’s definition of “communications system”
5 to guide its determination failed to consider the Code’s overall scheme of central
6 assessment and whether the Legislature intended for property such as Cable One’s to
7 come within that scheme. As evidence that the Legislature did *not* intend for its
8 property to be centrally assessed, Cable One relied on (1) distinctions between it and
9 other centrally-assessed industries, such as whether they are regulated by the Public
10 Regulations Commission and cross county lines; (2) the definition of “plant” property
11 contained in Section 7-36-30(B)(4), of which Cable One contended it had none,
12 meaning it had no relevant property to be centrally assessed; (3) the failure of House
13 Bill 617 (H.B. 617) during the 2008 legislative session, which would have amended
14 the definition of “communications system;” and (4) the Department’s own long-
15 standing construction that cable companies are not subject to central assessment,
16 which Cable One argues should be controlling.

17 {5} The Department responded that when Cable One repurposed parts of its
18 existing system between 2002 and 2011 in order to be able to both transmit and
19 receive information, it—like such similarly capable telecommunications

1 companies—became subject to central assessment under Sections 7-36-2 and 7-36-30
2 because its property then plainly qualified under the statutory definition of
3 “communications system.” The Department noted that the definition employs and the
4 statute in general refers to the broader term “communications system” rather than the
5 narrower term “telecommunications system” that Cable One urged the district court
6 to conclude the Legislature intended. The Department also challenged Cable One’s
7 interpretation of the definition of “plant” as violative of rules of statutory construction
8 and its reliance on H.B. 617 “to infer legislative intent” as “groundless.”

9 {6} The district court granted in part Cable One’s motion for summary judgment,
10 concluding that Cable One’s property “is not part of a ‘communication[s] system’
11 under the . . . Code.” In its order, the district court never addressed whether Cable
12 One’s property met Section 7-36-30(B)(1)’s definition of “communications system.”
13 Instead, it primarily relied on the administrative gloss doctrine—i.e., that “[a]n
14 administrative interpretation of even ambiguous language might bind an agency over
15 a period of time to a particular construction” as the district court described it—and
16 its view of the failure of H.B. 617 as “persuasive evidence that [the Legislature]
17 intended to preserve the then current assessment practices concerning cable television
18 property” to conclude that Cable One’s property “is not part of a ‘communication[s]
19 system’ under the . . . Code.”

1 {7} The district court denied Cable One’s summary judgment motion with respect
2 to its claim for a refund of its 2013 taxes based upon its need to conduct an
3 evidentiary hearing to ascertain the refund amount to which Cable One may be
4 entitled. While the January 2014 action was still pending, Cable One filed a second
5 complaint in January 2015 seeking the same relief as to its 2014 taxes. After the cases
6 were consolidated, Cable One moved for summary judgment on its refund claims for
7 tax years 2013 and 2014. The parties stipulated to the refund amounts for those two
8 years and agreed that there was no need for an evidentiary hearing. In its final
9 judgment, the district court ordered the Department to refund Cable One \$54,387.40
10 of its 2013 taxes and \$53,986.84 of its 2014 taxes, amounts that represent the
11 “difference between the property taxes Cable One paid under central assessment . . .
12 and what it would have paid under local assessment.” The Department timely
13 appealed.

14 **DISCUSSION**

15 {8} The singular question before us is whether the Department properly reclassified
16 Cable One’s property as a “communications system?” The Department argues that
17 when Cable One repurposed its equipment to expand its services to include both
18 internet access and VoIP, it “transformed its[] business from a cable company into a
19 communications system” as defined in Section 7-36-30(B)(1), thus bringing Cable

1 One under the Department’s authority. Cable One argues that the Legislature intended
2 the term “communications system” to apply only to “traditional, regulated
3 telecommunications companies,” which Cable One is not, meaning the Department
4 had no authority to reclassify Cable One’s property and value it under Section 7-36-
5 30. We agree with the Department.

6 **Standard of Review**

7 ¶ “Summary judgment is appropriate where there are no genuine issues of
8 material fact and the movant is entitled to judgment as a matter of law.” *Self v. United*
9 *Parcel Serv., Inc.*, 1998-NMSC-046, ¶ 6, 126 N.M. 396, 970 P.2d 582. The parties
10 agree that there are no material facts in dispute and that the issue presented on appeal
11 is purely legal. *See Fed. Express Corp. v. Abeyta*, 2004-NMCA-011, ¶ 2, 135 N.M.
12 37, 84 P.3d 85. We likewise review de novo the district court’s conclusion that Cable
13 One’s property is not part of a communications system because that conclusion rests
14 upon the district court’s interpretation of the Code, which is also a question of law.
15 *See Cooper v. Chevron U.S.A., Inc.*, 2002-NMSC-020, ¶ 16, 132 N.M. 382, 49 P.3d
16 61 (“The meaning of language used in a statute is a question of law that we review
17 de novo.”).

1 **I. The Legislature Intended for Cable One’s Property to Be Classified as**
2 **“Communications System” and Subject to Central Assessment by the**
3 **Department**

4 **A. Applicable Rules of Statutory Construction**

5 {10} In construing a statute, our “primary goal is to ascertain and give effect to the
6 intent of the Legislature.” *Starko, Inc. v. N.M. Human Servs. Dep’t*, 2014-NMSC-033,
7 ¶ 18, 333 P.3d 947 (internal quotation marks and citation omitted). “In discerning the
8 Legislature’s intent, we are aided by classic canons of statutory construction, and we
9 look first to the plain language of the statute, giving the words their ordinary
10 meaning, unless the Legislature indicates a different one was intended.” *Marbob*
11 *Energy Corp. v. N.M. Oil Conservation Comm’n*, 2009-NMSC-013, ¶ 9, 146 N.M.
12 24, 206 P.3d 135 (alteration, internal quotation marks, and citation omitted). We also
13 examine “the context in which [the statute] was promulgated, including the history
14 of the statute and the object and purpose the Legislature sought to accomplish.” *Maes*
15 *v. Audubon Indem. Ins. Grp.*, 2007-NMSC-046, ¶ 11, 142 N.M. 235, 164 P.3d 934.
16 In instances where the Legislature has specially defined a term in a statute, courts are
17 required to follow and apply the Legislature’s definition “unless the definition is
18 arbitrary, creates obvious incongruities in the statute, defeats a major purpose of the
19 legislation[,] or is so discordant to common usage as to generate confusion.”
20 *Wilschinsky v. Medina*, 1989-NMSC-047, ¶ 26, 108 N.M. 511, 775 P.2d 713 (internal

1 quotation marks and citation omitted). We accord such weight to statutory definitions
2 because courts “presume [that statutory definitions] accurately reflect legislative
3 intent.” 2A Norman J. Singer, *Statutes and Statutory Construction* § 47:7 at 310 (7th
4 ed. 2014). “Unless it would lead to an unreasonable result, we regard a statute’s
5 definition of a term as the Legislature’s intended meaning.” *Morris v. Brandenburg*,
6 2016-NMSC-027, ¶ 15, 376 P.3d 836; *Sw. Land Inv., Inc. v. Hubbard*, 1993-NMSC-
7 072, ¶ 6, 116 N.M. 742, 867 P.2d 412 (explaining in a case involving interpretation
8 of the term “owner” as contained in the Code, that courts “must follow the
9 [L]egislature’s intent as evidenced by a legislative definition unless that definition
10 results in an unreasonable classification”).

11 **B. Cable One Comes Within the Statutory Definition of “Communications**
12 **System”**

13 {11} As used in the Code, “communications system” means “a system for the
14 transmission and reception of information by the use of electronic, magnetic or
15 optical means or any combination thereof and which system or any portion thereof
16 is available for use by another person for consideration.” Section 7-36-30(B)(1). As
17 the Department points out, the Legislature’s definition evinces its intent that any
18 property that—(1) is used for the transmission and reception of information; (2)
19 employs electronic, magnetic, or optical means, or any combination thereof, to
20 accomplish the transmittal and reception of information; and (3) that it be available

1 for use by another person for consideration is considered part of a “communications
2 system.” *Id.* The undisputed facts in the record establish that Cable One’s property
3 qualifies under the plain language of Section 7-36-30(A) and (B)(1) for classification
4 as part of a “communications system.” Cable One, in fact, conceded at the motion for
5 summary judgment hearing that its property in New Mexico meets the definition of
6 “communications system.”

7 {12} Cable One argues, however, that the fact that the Department “begin[s] and
8 end[s its] argument with the definition of ‘communications system’ ” in Section 7-36-
9 30(B)(1) constitutes “selective parsing of the statutory scheme.” According to Cable
10 One, another statutory provision—specifically Section 7-36-30(B)(4)—“give[s] rise
11 to [an] ambiguity” regarding whether the Legislature intended for Cable One’s
12 property to be considered part of a “communications system.” Thus, Cable One
13 argues that we must turn to other interpretive aids in order to determine whether the
14 statutory definition of “communications system” applies to Cable One’s property.
15 What Cable One disregards, however, is that “techniques in aid of construction of a
16 statute are used to resolve an ambiguity, not to create one.” *Tafoya v. N.M. State*
17 *Police Bd.*, 1970-NMSC-106, ¶ 13, 81 N.M. 710, 472 P.2d 973. Moreover, in
18 instances such as this where the Legislature has specially defined a term, the
19 Department’s focus on Section 7-36-30(B)(1)’s definition is appropriate because “our

1 analysis is bound by the statutory language” and we are not at liberty to “go beyond
2 the plain language” of the definition. *Morris*, 2016-NMSC-027, ¶ 16. That is
3 particularly so where, as here, the party challenging the application of the definition
4 has failed to allege—much less establish—that the definition either leads to an
5 unreasonable result, is arbitrary, is incongruous with the rest of the statute, defeats the
6 legislative purpose of the statute, or generates confusion because it is so discordant
7 to common usage. *See id.* ¶ 15; *Wilschinsky*, 1989-NMSC-047, ¶ 26.

8 {13} Thus, because Cable One has failed to challenge the statutory definition itself
9 under the applicable standard, no further construction is required. However, to the
10 extent Cable One’s asserted ambiguity argument could be construed as contending
11 that the definition of “communications system” is incongruous with the rest of
12 Section 7-36-30 or other provisions of the Code, we explain why that argument also
13 fails.

14 **C. Section 7-36-30(B)(1)’s Definition of “Communications System” Is Not**
15 **“Incongruous” With Section 7-36-30(B)(4)’s Definition of “Plant”**

16 {14} “Plant” is defined as “all tangible property located in this state and used or
17 useful for the provision of communication service as reflected by the uniform system
18 of accounting in use by the taxpayer, but does not include construction work in
19 progress or materials and supplies[.]” Section 7-36-30(B)(4). According to Cable
20 One, “[n]one of Cable One’s property in . . . New Mexico meets [Section 7-36-

1 30(B)(4)'s] definition [of 'plant'], as Cable One has never maintained and is not
2 required to maintain its books and records in accordance with any uniform system of
3 accounting." Cable One contends that the phrase "uniform system of accounting"
4 refers specifically and only to the Federal Communications Commission's Uniform
5 System of Accounts (USOA)—"a historical financial accounting system" that is
6 intended "for use by telephone companies," 47 C.F.R. § 32.1 (2016); 47 U.S.C.
7 § 220(a)(2) (2012)—despite the facial differences between the terms. Thus, reasons
8 Cable One, because it does not and is not required to use the USOA, it does not have
9 property that qualifies as a "plant" as contemplated by Section 7-36-30(B)(4), and
10 because it does not have property that qualifies as a "plant," it cannot be considered
11 to have property that is part of a "communications system" as defined in Section 7-
12 36-30(B)(1). Cable One's strained reading of Section 7-36-30—particularly its
13 decontextualization of the term "plant" and the inordinate weight it places on the term
14 "uniform system of accounting" as used within the definition of "plant"—is an
15 extreme deviation from not only the approach taken throughout the Code with respect
16 to the relationship between property classification and valuation, but also well-
17 established rules of statutory construction.

18 {15} Our Legislature enacted a property tax code that distinguishes between
19 different classes of property and establishes special methods of valuation tied to a

1 property's classification. *See generally* §§ 7-36-1 to -33. While "classification" and
2 "valuation" are related concepts, they are distinct. *See, e.g.*, § 7-36-2(E) (providing
3 that the Department "may delegate authority to the county assessor for the valuation
4 *and* classification of property" (emphasis added)).

5 {16} The purpose of property classification is "to shift the burden of taxes from
6 property, as such, to productivity, . . . its utility, its general setting in the economic
7 organization of society, so that every[]one will be called upon to contribute according
8 to his ability to bear the burdens[.]" *Hilger v. Moore*, 182 P. 477, 483 (Mont. 1919).
9 Thus, classification of property inherently focuses on categorizing property based on
10 its use. *See, e.g.*, N.M. Const. art. VIII, § 3 (exempting from taxation certain classes
11 of property, including "all church property not *used* for commercial purposes, all
12 property *used* for educational or charitable purposes, [and] all cemeteries *not used* or
13 held for private or corporate profit" (emphases added)); § 7-36-2.1(A) (providing that
14 "[p]roperty subject to valuation for property taxation purposes shall be classified as
15 either residential property or nonresidential property"); § 7-36-20 (providing a special
16 method of valuation for "land *used* primarily for agricultural purposes"); § 7-36-
17 23(A) (providing a special method of valuation for "all mineral property and property
18 *used* in connection with mineral property").

1 {17} Valuation, by contrast, focuses on the process by which the government—after
2 taking into consideration the purpose for which particular property is
3 used—ascertains the property’s value in order to levy a uniform tax thereon. *See* N.M.
4 Const. art. VIII, § 1(A) (providing that “taxes levied upon tangible property shall be
5 in proportion to the value thereof,” and “[d]ifferent methods may be provided by law
6 to determine value of different kinds of property”); *First Nat’l Bank v. Bernalillo Cty.*
7 *Valuation Protest Bd.*, 1977-NMCA-005, ¶ 29, 90 N.M. 110, 560 P.2d 174
8 (explaining that those tasked with assessing or valuing property must “exercise an
9 honest judgment” and that an “ ‘honest judgment’ is not one that favors the state or
10 the taxpayer” but “should be a fair, reasonable, just and truthful judgment of valuation
11 of property”); *see also Gerner v. State Tax Comm’n*, 1963-NMSC-022, ¶ 9, 71 N.M.
12 385, 378 P.2d 619 (explaining that “to have uniformity and equality in a form of tax,
13 the valuations must be established by some standard”); *Black’s Law Dictionary* 1784
14 (10th ed. 2014) (defining “assessed valuation” as “[t]he value that a taxing authority
15 gives to property and to which the tax rate is applied”). In order to determine the
16 proper valuation method to use to assess the value of property, the property must first
17 be classified. *See Jicarilla Apache Nation v. Rodarte*, 2004-NMSC-035, ¶¶ 2, 3, 14,
18 136 N.M. 630, 103 P.3d 554 (describing the issue presented as whether certain
19 property “should be classified and valued as agricultural land” rather than

1 “recreational” land because “[t]he question whether property is entitled to the special
2 valuation method in Section 7-36-20 [for land used primarily for agricultural
3 purposes] is a question of classification” (internal quotation marks omitted)). It is a
4 property’s classification that dictates the applicable valuation method or methods, not
5 whether a particular valuation method can be applied that determines whether
6 property should be classified a certain way. *See Rodarte*, 2004-NMSC-035, ¶¶ 2, 3,
7 14.

8 {18} Cable One’s interpretation turns this analysis on its head, making a property’s
9 classification as a “communications system” dependent not on the purpose for which
10 the property is used but instead on whether a particular valuation method may apply
11 depending on whether the property’s owner uses a specific accounting method.
12 Critically, Cable One’s analysis ignores that the term “plant” appears in neither the
13 definition of “communications system” nor in Section 7-36-30(A), which establishes
14 the applicable scope of Section 7-36-30. *See* § 7-36-30(A) (“All property that is part
15 of a communications system and is subject to valuation for property taxation purposes
16 shall be valued in accordance with the provisions of this section.”). That is to say, the
17 Legislature did not make a property’s *classification* as a “communications system”
18 contingent on whether a taxpayer’s property includes a “plant” and most certainly did
19 not make classification dependent on whether the taxpayer employs the USOA.

1 Rather, “plant” appears only in Section 7-36-30(B)(4), wherein it is defined as set
2 forth previously, and Section 7-36-30(D), which prescribes one of two *valuation*
3 methods that a taxpayer whose property is classified as “communications system”
4 may elect to have the Department apply. *See* § 7-36-30(C) (providing that “[e]ach
5 taxpayer having property subject to valuation under this section shall elect to have
6 that property valued by the [D]epartment in accordance with either Subsection D or
7 Subsection F of this section”); § 7-36-30(D) (providing a valuation method that
8 focuses on the value of the taxpayer’s “plant,” “construction work in progress,” and
9 “materials and supplies”). Importantly, the term “plant” also does not appear in
10 Subsection F, the other of the two possible valuation methods a taxpayer may elect
11 and, notably, the one that Cable One did not choose. *See* § 7-36-30(F) (providing an
12 alternative valuation method that uses “one or more or a combination of the following
13 methods of valuation and applying the unit rule or appraisal to the property: (1)
14 capitalization of earnings[,] (2) market value of stock and debt[,] or (3) cost less
15 depreciation and obsolescence”).

16 {19} While we are mindful that “where several sections of a statute are involved,
17 they must be read together so that all parts are given effect[,]” *High Ridge Hinkle*
18 *Joint Venture v. City of Albuquerque*, 1998-NMSC-050, ¶ 5, 126 N.M. 413, 970 P.2d
19 599, that rule of statutory construction does not apply here because neither Section

1 7-36-30(B)(4) nor Section 7-36-30(D)—both relating to valuation—is “involved” in
2 resolving the pertinent issue Cable One raises here: whether the Department properly
3 reclassified its property as “communications system.” They relate only to the manner
4 in which the Department ascertains the taxable value of property already classified
5 as a “communications system” based on whether it meets Section 7-36-30(B)(1)’s
6 statutory definition. Additionally, to adopt Cable One’s construction of the statute
7 would effectively require that we read into Section 7-36-30(A) and (B)(1) language
8 that is not there. Specifically, we would need to rewrite Subsection A to say “[a]ll
9 property that is part of a communications system [and includes a plant] . . . shall be
10 valued in accordance with the provisions of this section” and Subsection (B)(1) to say
11 “ ‘communications system’ means a system [that includes a plant and is used] for the
12 transmission and reception of information[.]” We are not at liberty to do so. *See*
13 *Albuquerque Commons P’ship v. City Council of City of Albuquerque*, 2011-NMSC-
14 002, ¶ 7, 149 N.M. 308, 248 P.3d 856 (explaining that courts “may only add words
15 to a statute where it is necessary to make the statute conform to the [L]egislature’s
16 clear intent, or to prevent the statute from being absurd” (internal quotation marks and
17 citation omitted)). Thus, following applicable rules of statutory construction and
18 properly placing in context the term “plant,” we conclude there exists no “obvious
19 incongruit[y]” between the definitions of “communications system” and “plant.”

1 *Wilschinsky*, 1989-NMSC-047, ¶ 26. We briefly examine legislative history to
2 illustrate that there is neither incongruity—obvious or not—within the statute nor
3 ambiguity as to the Legislature’s intent regarding whether Cable One’s property may
4 be classified as a “communications system.”

5 **D. Legislative History Evinces the Legislature’s Intent to Expand the**
6 **Department’s Central Assessment Authority Beyond “Traditional,**
7 **Regulated Telecommunications Companies”**

8 {20} Legislative history—particularly the Legislature’s 1985 amendment of Sections
9 7-36-2 and 7-36-30—further reinforces our conclusion that the Legislature did not
10 intend to restrict the Department’s central assessment authority to only “traditional,
11 regulated telecommunications companies” as Cable One contends. *See N.M. Real*
12 *Estate Comm’n v. Barger*, 2012-NMCA-081, ¶ 18, 284 P.3d 1112 (explaining that
13 “[t]here is New Mexico precedent for looking to later amendments of statutes [to] aid
14 in interpreting ambiguous or unclear statutory language”); *In re Gabriel M.*, 2002-
15 NMCA-047, ¶ 15, 132 N.M. 124, 45 P.3d 64 (explaining that courts may compare an
16 earlier version of a statute with a current version “to help determine legislative
17 intent”). Prior to 1985, the Department’s central assessment authority extended to
18 property “used in the conduct of the following businesses:”

- 19 (1) railroad;
- 20 (2) *telegraph, telephone or microwave transmission;*

- 1 (3) pipeline;
- 2 (4) public utility; and
- 3 (5) airline.

4 NMSA 1953, § 72-29-2 (1975) (emphasis added) (Vol. 10 Repl., Part 2, 1975 Pocket
5 Supp.). Accordingly, a special valuation method existed for “property that is part of
6 a *telephone or telegraph* communications system.” NMSA 1953, § 72-29-19 (1975)
7 (emphasis added) (Vol. 10 Repl., Part 2, 1975 Pocket Supp.). Importantly, in the pre-
8 1985 version of what is now Section 7-36-30, there was provided only one special
9 method of valuation for property classified as “part of a telephone or telegraph
10 communications system”: the one that considers “[p]lant,” “[c]onstruction work in
11 progress[,]” and “materials and supplies” property in determining value, i.e., present-
12 day Section 7-36-30(D). *See* § 72-29-19(A), (C)-(E).

13 {21} In 1985, however, the Legislature amended the Code in three critical ways.
14 First, it specifically removed references to “telephone or telegraph,” replacing the
15 prior classification with a new one: “communications system.” *See* 1985 N.M. Laws,
16 ch. 109, §§ 2(B), 6. Second, it enacted the definition of “communications system”
17 previously discussed and subjected to central assessment all property used as part of
18 a “communications system as that term is defined in Section 7-36-30[.]” 1985 N.M.
19 Laws, ch. 109, § 2(B). Importantly, the new classification and definition retained no

1 reference to “telephone” or “telegraph” systems to qualify the term “communications
2 system.” *See id.* Third, it provided an “alternative to valuation” under the preexisting
3 method that allowed the taxpayer to elect to have its property valued “using one or
4 more or a combination of” three methods: “(1) capitalization of earnings; (2) market
5 value of stock and debt; or (3) cost less depreciation and obsolescence[,]” 1985 N.M.
6 Laws, ch. 109, § 6(G), (H),² i.e., the option provided by present-day Section 7-36-
7 30(F) that contains no reference to “plant” property. We note that our Legislature was
8 not the only one to so amend its property tax code in response to technological
9 innovations in information transmission that occurred in the latter part of the
10 twentieth century. *See Cable One, Inc. v. Ariz. Dep’t of Revenue*, 304 P.3d 1098,
11 1103-04 (Ariz. Ct. App. 2013) (explaining that the Arizona legislature enacted its
12 “telecommunications company definition” in 1985 at a time when “the
13 telecommunications industry was undergoing profound changes concerning local and
14 long-distance telephone services and who could provide those service[s]”); *see also*
15 *Comcast Corp.*, 337 P.3d at 774-75, 787-89 (explaining that until 1973, Oregon

16 ²The 1985 amendment allowed election of either of the two prescribed
17 valuation methods for only the 1986 and 1987 property tax years. *See* 1985 N.M.
18 Laws, ch. 109, § 6(G). A 1987 amendment extended the ability to elect a valuation
19 method through the 1989 property tax year. *See* 1987 N.M. Laws, ch. 206, § 1. In
20 1989, the Legislature amended Section 7-36-30 to its current form, which continues
21 to allow the taxpayer to select between the two valuation methods provided in
22 Sections 7-36-30(D) and (F). *See* 1989 N.M. Laws, ch. 112, § 1; § 7-36-30(C).

1 centrally assessed only “ ‘telegraph communication’ and ‘telephone
2 communication’ ” businesses but that in 1973 the Oregon legislature “replaced the
3 references to telegraph and telephone communication with the more general term
4 ‘communication’ ” and describing the three major “evolutionary period[s] for cable
5 television” between 1950 and the mid-1990s). Notably, our own Supreme Court, also
6 in 1985, expressed an “aware[ness] that the telecommunications field is rapidly
7 developing” when it held that cable companies providing the then-new service of
8 “digital high speed data transmission” on an intrastate basis were subject to regulation
9 by the State Corporation Commission. *In re Generic Investigation into Cable
10 Television Servs. in State of N.M.*, 1985-NMSC-087, ¶¶ 3, 4, 27, 103 N.M. 345, 707
11 P.2d 1155.

12 {22} This history also reveals the Legislature’s intent to broaden the understanding
13 of what types of communications-related property would be subject to central
14 assessment and Section 7-36-30’s special valuation methods. It also reveals an
15 awareness by the Legislature that after so broadening the scope of Section 7-36-30,
16 it became necessary to provide another method of valuation—one that does not
17 approach valuation by considering the tangible property cost of a “plant.” Thus, it is
18 true that prior to 1985, only property that was part of a traditional telephone or
19 telegraph system fell under the Department’s authority. Section 72-29-2. However,

1 after 1985, *any* property that is part of a “system for the transmission and reception
2 of information by the use of electronic, magnetic or optical means or any combination
3 thereof and which system or any portion thereof and is available for use by another
4 person for consideration” is subject to classification as “communications system.”
5 Sections 7-36-2(B)(2), -30(B)(1). Perhaps most significantly, that a company
6 arguably does not possess any property meeting Section 7-36-30(B)(4)’s definition
7 of “plant” for valuation purposes in no way disqualifies it from having its property
8 classified as “communications system.”

9 {23} Cable One fails to offer any explanation that would reconcile the Legislature’s
10 1985 amendment of Sections 7-36-2 and 7-36-30 with its claim that “central
11 assessment . . . is intended to apply only to . . . traditional, regulated
12 telecommunications companies[.]” If the Legislature had intended to limit the
13 Department’s authority to centrally assess only “traditional” telecommunications
14 companies that use the USOA as Cable One contends, it would have made little sense
15 to amend the Code in 1985 as it did. We cannot ignore the Legislature’s express
16 removal and replacement of “telephone” and “telegraph” and assume the 1985
17 amendments do not evince legislative intent to change the then-existing law and
18 broaden the scope of the Department’s central assessment authority. *See State v.*
19 *Adam M.*, 1998-NMCA-014, ¶¶ 19-20, 124 N.M. 505, 953 P.2d 40 (rejecting a

1 request to read into a statute language that the Legislature had deleted); *In re Estate*
2 *of Greig*, 1988-NMCA-037, ¶ 12, 107 N.M. 227, 755 P.2d 71 (explaining that
3 “[w]hen the [L]egislature enacts a new law or amends an existing one, it does so for
4 the express purpose of changing the law as it previously existed”). In light of this
5 legislative history and the clear, unambiguous definition of “communications
6 system,” we conclude that the Legislature intended to grant the Department the
7 authority to classify Cable One’s property as “communications system” and assess it
8 under Section 7-36-30 when Cable One elected to repurpose portions of its system
9 in order to provide two-way communications services (i.e., internet and VoIP) to its
10 customers.³

11 **II. Cable One’s Other Arguments**

12 {24} Cable One makes a number of other arguments regarding why its property
13 should not be subject to central assessment by the Department. We briefly address
14 each one.

15 ³While in no way necessary to our holding, we observe its consistence with
16 those of other state appellate courts that have considered similar challenges brought
17 by Cable One. *See Kay-Decker v. Iowa State Bd. of Tax Review*, 857 N.W.2d 216,
18 217 (Iowa 2014) (holding that Cable One’s provision of VoIP service allowed it to
19 be subjected to central assessment as a “telephone company operating a line in this
20 state” under Iowa Code §§ 433.1 (2003), 433.12 (2008)); *Cable One, Inc.*, 304 P.3d
21 at 1109 (holding that “Cable One is a telecommunications company under [Ariz. Rev.
22 Stat. Ann.] § 42-14401 [(1999)] and therefore subject to central assessment by the
23 [Arizona] Department [of Revenue]”).

1 **A. The Failure of H.B. 617 During the 2008 Legislative Session**

2 {25} Cable One argues that absent action by the Legislature to amend the Code, the
3 Department is bound by its previous interpretation that Cable One is not subject to
4 central assessment and must leave valuation of its property to county assessors. Cable
5 One points to a failed attempt by the Legislature in 2008 to amend Section 7-36-30's
6 definition of "communications system" as evidence that the Legislature did not intend
7 for its property to be centrally assessed under the then-existing—and still-
8 existing—definition of "communications system." Given our foregoing analysis of
9 and conclusion regarding Section 7-36-30, we find it unnecessary to address
10 arguments related to what intent may be gleaned from the Legislature's failure to
11 amend the definition of "communications system" in 2008, other than to caution
12 parties and district courts against jumping to and relying on legislative inaction as
13 somehow providing evidence of legislative intent. *See Wegner v. Hair Prods. of*
14 *Texas*, 2005-NMCA-043, ¶ 7, 137 N.M. 328, 110 P.3d 544 ("Legislative silence is
15 not a reliable indicator of intent."); *see also Regents of Univ. of N.M. v. N.M. Fed'n*
16 *of Teachers*, 1998-NMSC-020, ¶¶ 29-33, 125 N.M. 401, 962 P.2d 1236 (refusing to
17 consider evidence of "legislative history" and construe "the language of statutory
18 provisions that were never enacted" because such evidence "tells us nothing

1 dispositive about the Legislature’s intentions” and instead reaffirming that courts are
2 to “determine legislative intent primarily from” the language of the statute itself).

3 **B. Overreach by the Department**

4 {26} Cable One also argues that the Department never “attempt[ed] to clarify or
5 broaden the . . . Code through a regulation or ruling” and that the Department’s sua
6 sponte decision in 2008 to begin centrally assessing Cable One and similar companies
7 was an unlawful assertion of authority. Again, for the reasons previously discussed,
8 we conclude that the Department was not required to “clarify or broaden” the
9 interpretation of what property was subject to central assessment under Sections 7-36-
10 2(B)(2) and 7-36-30 in order to assess Cable One because the Legislature had already
11 provided the Department with such authority.

12 **C. Whether the Department Was Required to Leave Assessment of Cable**
13 **One’s Property to County Assessors and Allow County Assessors to Value**
14 **Cable One’s Property in Accordance with Section 7-36-2(F)**

15 {27} Finally, Cable One argues that the Department does not have sole authority to
16 value “communications system” property and contends that Section 7-36-2(F)
17 provides county assessors with the ability to “value property belonging to companies
18 subject to central assessment.” Section 7-36-2(F) provides

19 The [D]epartment is authorized to enter into one or more agreements
20 with each county assessor . . . under which the county assessor agrees to
21 perform the valuation of property for which the [D]epartment is
22 responsible under Subsection B of this section but which property is not

1 subject to the special methods of valuation set forth in Sections 7-36-27,
2 7-36-28[,] and 7-36-30 through 7-36-32.

3 According to Cable One, this subsection indicates that the Legislature (1)
4 “contemplated that some property of ‘communications systems’ would not be
5 susceptible to valuation under either of [Section 7-36-30’s] special methods,” and (2)
6 “chose not to vest [the Department] with plenary power to use any other method to
7 value such property.” Cable One misconstrues Section 7-36-2.

8 {28} Subsection F *permits*—but does not require—the Department to enter into
9 agreements with county assessors to have county assessors perform valuations *if and*
10 *only if* it is for property listed Section 7-36-2(B) that “is not subject to the special
11 methods of valuation set forth in Sections 7-36-27, 7-36-28[,] and 7-36-30 through
12 7-36-32.” The only type of property listed in Section 7-36-2(B) that is not subject to
13 a special valuation method in the enumerated sections is “public utility” property. All
14 other types of property—railroad, communications system, pipeline, and
15 airline—have prescribed special methods of valuation. *See* Section 7-36-27
16 (providing a special method of valuation for oil, natural gas, carbon dioxide, and
17 liquid hydrocarbons pipelines); § 7-36-28 (providing a special method of valuation
18 for water pipelines); § 7-36-30 (providing a special method of valuation for
19 “communications system” property); § 7-36-31 (providing a special method of
20 valuation for railroads); § 7-36-32 (providing a special method of valuation for

1 commercial aircraft). Cable One's claim that Section 7-36-2(F) allows county
2 assessors to value "communications system" property under a valuation method other
3 than those provided in Section 7-36-30 is incorrect.

4 **CONCLUSION**

5 {29} For the foregoing reasons, we reverse the district court's grant of summary
6 judgment in favor of Cable One and remand for entry of judgment in light of this
7 opinion.


8 {30} **IT IS SO ORDERED.**

9 


10

J. MILES HANISEE, Judge

11 **WE CONCUR:**

12 
13

MICHAEL E. VIGIL, Judge

14 
15

M. MONICA ZAMORA, Judge