Exhibit B

To Notice of Appeal

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

Clarendon County, Florence County, Lee County, Sumter County, Williamsburg County, Williamsburg County School District, Clarendon School District Two, Florence School District One, Florence School District Three, Sumter County School District, Clarendon County Hospital District, Lee County School District, and Clarendon School District One, Petitioners, vs. South Carolina Department of Revenue and Farmers Telephone Cooperative, Inc., FTC Communications, LLC and FTC Diversified Services, LLC, Respondents.	Docket No. 17-ALJ-17-0237-CC **TAXING ENTITIES' MOTION FOR RECONSIDERATION**

Petitioners (the "Taxing Entities") hereby move the Court pursuant to Rules 29(D) and 68 of the Rules of Procedure for the Administrative Law Court and Rule 59(e), SCRCP, to Reconsider, Alter or Amend ("Motion") the Court's February 24, 2020 Final Order ("Order"). The Taxing Entities sincerely appreciate the thoughtful and thorough Order issued by the Court, and they offer this Motion for the purpose of ensuring all issues have been appropriately preserved for appellate review, should one or more of the Parties[1] choose to appeal. In support of this Motion, the Taxing Entities respectfully ask that the Court reconsider and alter or amend the Order in the following respects:

The Taxing Entities Have Standing Under S.C. Code Ann. § 12-4-535

The Order concludes the Taxing Entities do not have standing pursuant to S.C. Code Ann. § 12-4-535. (Order, p. 34 n.29). The Taxing Entities assert all statutory requirements of Section 12-4-535 have been met by the Taxing Entities for each tax year in dispute and respectfully ask the Court to reconsider this conclusion.[2]

[1] Unless otherwise defined in this Motion, the terms used herein have the same definition as in the Order.

[2] The Taxing Entities seek reconsideration of this issue solely to preserve this issue and to provide additional ground for standing in the event the Order's conclusions regarding the Taxing Entities' standing are appealed.

Section 12-4-535 of the South Carolina Code of Laws provides counties with a right to request a contested case hearing before the Administrative Law Court ("ALC") in response to the Department's issuance of a department determination. To achieve statutory standing pursuant to Section 12-4-535, a county must comply with the requirements of both Section 12-4-535(B) and 12-4-535(C). Section 12-4-535(B) requires a county, within thirty days of the date the department determination is mailed or hand delivered, to respond in writing by first class mail or hand delivery to the department of revenue ("Department") and state its agreement or disagreement with the department determination. Section 12-535(C) requires a county to, by resolution, request a contested case hearing before the ALC within thirty days after the county disagreement notice was mailed or hand delivered. Thus, a county must both (a) deliver a written disagreement notice to the Department within thirty days of the department determination and (b) file a request for contested case hearing within thirty days of the delivery of the disagreement notice. There is no language in Section 12-4-535 prohibiting a county from complying with both of the above-stated requirements simultaneously.

Here, the Order concludes the Supplemental Certifications were *de facto* department determinations. (Order, p. 39). The only issue remaining is whether the Taxing Entities complied with the timing requirements of Section 12-4-535 for each tax year in dispute.

2010–2016

The initial Supplemental Certifications, specifically those covering tax years 2010 through 2016, were dated July 6, 2017 and were sent by the Department to the respective county auditors for each of the Taxing Entities ("Auditors"). Less than thirty days later, on July 17, 2017,[3] and on July 26, 2017,[4] the Taxing Entities made two filings with the ALC and served a copy of each on the Department by U.S. Mail. These filings, which were both titled a Consolidated Supplement to Request for Contested Case Hearing, were in writing, stated the Taxing Entities disagreement with the Supplemental Certifications, were delivered by U.S. Mail to the Department, and were delivered within the required thirty day period, all in compliance with Section 12-4-535(B). Furthermore, each of these filings also served as a request for contested case hearing timely objecting to the Supplemental Certifications within thirty days of delivering the "disagreement notice" to the Department, all in compliance with Section 12-4-535(C).

[3] This filing was made on behalf of the Taxing Entities and attached copies of the Supplemental Certifications received by the respective auditors for Clarendon County, Sumter County, Florence County, and Williamsburg County.
[4] This filing was made on behalf of the Taxing Entities and attached copies of the Supplemental Certifications received by the Lee County Auditor.

2017

Subsequently, the Department mailed to the Auditors those certain Supplemental Certifications for tax year 2017, dated August 24, 2017, but which were not received until August 28, 2017. Less than thirty days later, on September 25, 2017,[5] the Taxing Entities filed a Consolidated Supplement to Request for Contested Case Hearing with the ALC and served a copy on the Department by U.S. Mail. This filing was in writing, stated the Taxing Entities disagreement with the Supplemental Certifications, was delivered by U.S. Mail to the Department, and was delivered within the required thirty day period, all in compliance with Section 12-4-535(B). Just as in 2010–2016 above, this filing also served as a request for contested case hearing and it was filed within thirty days of delivering the "disagreement notice" to the Department, all in compliance with Section 12-4-535(C).

2018

Subsequently, the Department mailed to the Auditors those certain Supplemental Certifications for tax year 2018, dated August 15, 2018. Less than thirty days later, on September 10, 2018,[6] the Taxing Entities filed a Consolidated Supplement to Request for Contested Case Hearing with the ALC and served a copy on the Department by U.S. Mail. This filing was in writing, stated the Taxing Entities disagreement with the Supplemental Certifications, was delivered by U.S. Mail to the Department, and was delivered within the required thirty day period, all in compliance with Section 12-4-535(B). Just as in 2010–2017 above, this filing also served as a request for contested case hearing and it was filed within thirty days of delivering the "disagreement notice" to the Department, all in compliance with Section 12-4-535(C).

In summary, the Taxing Entities, through their duly authorized and engaged legal counsel, requested a contested case hearing specifically objecting to the Supplemental Certifications by supplementing the Taxing Entities' original request for contested case hearing on the same day and at the same time that the Taxing Entities provided a written "disagreement notice" to the Department by sending a copy of the requests for contested case hearing to the Department by U.S. Mail. In effect, the Taxing Entities consolidated the requirements of Section 12-4-535(B) and 12-4-535(C) into a single step and complied with both requirements simultaneously. For these

[5] This filing was made on behalf of the Taxing Entities and attached copies of the Supplemental Certifications received by the auditor for Sumter County.

[6] This filing was made on behalf of the Taxing Entities and attached copies of the Supplemental Certifications received by the respective auditors for Clarendon County, Sumter County, Florence County, Lee County, and Williamsburg County.

reasons, the Taxing Entities respectfully request the Court reconsider its conclusion regarding the Taxing Entities' standing pursuant to Section 12-4-535.

The Farmers Entities' Use of the Property for Exempt Purposes is so *De Minimis* that the Property Cannot Qualify for the Rural Telephone Exemption

The Farmers Entities are not entitled to the Rural Telephone Exemption because their use of the Property for an exempt purpose was so *de minimis* that it failed to constitute a *bona fide* tax exempt use. The Farmers Entities and the Taxing Entities both asserted different methods for measuring the use of the Property. The Farmers Entities asserted that minutes of use and certain financial metrics were the appropriate measure of use. The Court rejected the Farmers Entities' proposed metric, stating "it is clear that minutes of use is a theoretically unsound way to measure the use and capacity of the entire network and all the services it provides." (Order, p. 21; *see also* Order, p. 10 ("Accordingly, 'minutes of use' is no longer an appropriate measure of how a modern network is being used for non-telephone services that are not measured using minutes of use.")). Further, the Court found that revenue allocation was an inappropriate measure of use, stating that the Farmers Entities' billing practice for certain time periods "artificially inflates the revenue (as a proxy for use) coming from voice subscribers." (Order, p. 23).

In contrast, the Court's discussion of bandwidth as a measure of use is more favorable. The Court found that "[b]andwidth is the industry standard for measuring the capacity of modern, packet switched networks." (Order, p. 20). The Court further stated that "[r]ecognizing the interconnected nature of the Taxpayer's network, I find that the best way to calculate relative use of Taxpayers' network for exempt and non-exempt services is to use bandwidth as a common denominator." (Order, p. 58). With regard to the bandwidth devoted to voice traffic, the Court found that Mr. Moss's bandwidth usage calculations showed a very clear downward trend, establishing "that less than 5% of the Farmers Entities' overall network utilization was attributable to voice for any of the tax years in dispute." (*Id.*). In fact, Mr. Moss's calculations showed that voice utilization as a percentage of total network usage accounted for a high of 4.75% in 2010 and a low of 0.64% in 2017. (*Id.*). By all accounts, the use of the Farmers Entities' network for voice services is decreasing. Mr. Wyatt's corrected calculation of FTCC's voice traffic showed that in years 2017 and 2018, voice traffic counted for only 2.96% and 1.94%, respectively, of total traffic. (Order, p. 20).

The Court rejected both methods and chose the cost method of valuation. To be sure, the cost method of valuation is a tried and true, common property valuation technique.[7] Here, however, the Court's choice of the cost method of valuation does not preclude an analysis of whether the Property meets the basic, threshold use requirement necessary for the Rural Telephone Exemption. Put another way, a property's *use* and its *valuation* under the cost method can be distinct analytical points.

Although the Court concluded that the cost method of valuation was appropriate, the Court still needed to determine whether the Farmers Entities' actual use of the Property was sufficient to qualify for the Rural Telephone Exemption. The Taxing Entities assert that the use of the network for the tax exempt purpose is so *de minimis* that it is not a *bona fide* use. The Taxing Entities would direct the Court's attention to the testimony of the Farmers Entities' tax attorney, in which he stated:

> Q: All right. But you would agree with me that if property used as [sic] around, you know, 1 percent for an exempt purpose and 99 percent for a non-exempt purpose that raises the question of whether it's an actual bonafide [sic] use for an exempt purpose, right?
>
> A: Correct. In the deposition when you asked me that question the response was, you know, when you're taking something to that level extreme is a taxpayer playing games? Are they truly using property for the intended purpose?

(Tr. Trans. 683:6–16). According to both Mr. Moss and Mr. Wyatt, the two telecommunications experts in this case, the Farmers Entities currently use around 1% of the network for voice traffic. Further, the Court found that "the relative use of Taxpayer's network for voice telephone service is declining and is becoming more and more ***de minimis***." (Order, p. 58) (emphasis in original). At some point in the very near future,[8] the network traffic attributable to voice services will have to be measured using the ten thousandth decimal place. There comes a point when the use of the network for the exempt purpose is so *de minimis* that we have to ask the question posed by the

[7] For the avoidance of doubt, the Taxing Entities continue to assert that to the extent the Farmers Entities are entitled to the Rural Telephone Exemption at all, they should only be able to claim the exemption for the proportion in which the Property is actually used for voice services, as measured by bandwidth utilization. The Taxing Entities would respectfully propose that the cost approach to valuation does not adequately take into account the rapidly declining use of the network for voice services. Essentially, the Rural Telephone Exemption has served its purpose, as the Farmers Entities long ago built a network that provides voices services to its rural customers.

[8] The well-publicized advent of 5G technology is almost certain to cause a drastic escalation in data traffic over all telecommunications networks.

Farmers Entities' tax attorney: "Are they truly using the property for the intended purpose?" (Tr. Trans. 683:6–16.)

In *Hercules Contractors & Engineers, Inc.*, the Court of Appeals reviewed a sales tax exemption statute that applied to "machines used in manufacturing." *See generally* 280 S.C. 426, 313 S.E.2d 300 (Ct. App. 1984). Similar to this case, the exemption statute did not include a qualification such as "primarily" or "exclusively." *See id.* at 429, 313 S.E.2d at 303 (quoting S.C. Code Ann. § 12-35-550). The Court of Appeals concluded that the exemption applied so long as the machines were "substantially" used in manufacturing. *Id.* at 438, 313 S.E.2d at 308. This is consistent with the case law requiring that a reviewing court adopt a strict construction against the taxpayer seeking the exemption.[9] Whatever the term "substantially" means, it certainly means something different than *de minimis*. It must mean something much more than 1%.

The record supports a finding that the Farmers Entities' use of their network for the exempt purpose is so *de minimis* (and becoming more so), it cannot be concluded the Farmers Entities are actually using their network for a *bona fide* tax exempt purpose. Therefore, the Farmers Entities should not be able to take advantage of the Rural Telephone Exemption.

The Court's Conclusions Should Also Expressly Apply to Farmers' Property

The finding that the Taxpayers' property is not eligible for the Exemption should expressly apply to the property owned by Farmers Telephone Cooperative, Inc. ("Farmers").[10] Farmers is a party to this case and is, therefore, subject to the jurisdiction of this Court.[11] In the Order, the Court made a number of findings about Farmers' property and how it is used and relied upon by the Taxpayers. For example, the Court found:

a. "Farmers, FTCC, and Diversified all share a common telephone network infrastructure, but each entity also separately owns a number of different assets. The network and

[9] When statutes granting exemptions are found to be ambiguous, our courts require the statutes to be construed strictly against the taxpayer. Given the ambiguity over the extent/level of use required for a taxpayer to qualify for the exemption here, any construction permitting a merely *de minimis* use of the property to qualify for the exemption seems problematic.

[10] Even if the Court continues to disagree with the Taxing Entities regarding the threshold use requirements and the valuation of the Property for tax purposes, the Taxing Entities would assert that the Court's conclusions regarding the Taxpayers' exemption ratio (75% exempt; 25% non-exempt) would apply equally to Farmers.

[11] Farmers has never disputed the Court's jurisdiction over Farmers, nor has it ever moved to be dismissed. Moreover, in the Taxing Entities' Prehearing Statement the Taxing Entities stated plainly: "The Taxing Entities challenge the property tax exemptions granted by the South Carolina Department of Revenue ("The Department") to ***Farmers Telephone Cooperative, Inc.***, FTC Communications, LLC, and FTC Diversified Services, LLC ("Taxpayers") for tax years 2010 through 2017." (Taxing Entities Prehearing Statement, at p. 2). Finally, this Court reviews the grant of the exemptions—all of them—*de novo*.

assets are used by each entity to provide a variety of services, including both landline telephone service, wireless voice services, and data services." (Order, p. 85).

b. "Consequently, cellular networks are dependent on the "backbone" landline networks to complete calls and transmit other data." (Order, p. 12).

c. "All of the services provided by Farmers, FTCC, and Diversified (voice telephone service, wireless telephone service, internet service, television services, operator/answering services, and security alarm services) are provided using the existing, interconnected landline infrastructure." (Order, p. 17).

d. "FTCC's wireless network depends upon the Farmers' core landline network to operate." (Order, p. 18).

e. "However, Diversified' s network ultimately connects to and utilizes Farmers' core network in order to provide its telephone services." (Order, p. 18).

f. "Because of the interconnectedness of the Farmers Entities' network, it is practically impossible to classify certain assets as exempt or non-exempt based upon the relative use of the network. For example, a fiber-optic cable in Taxpayer's network is used to provide rural telephone service, but it is also used to provide non-exempt services such as the Internet." (Order, p. 57).

g. "Testimony at trial confirmed that voice telephone services utilize the very same IP-based backbone as the non-exempt services including internet, cable television, security, and other data-intensive services." (Order, p. 57 n.44).

It is clear from the Court's findings that all of the Farmers Entities (a term defined in the Order as Farmers, FTCC, and Diversified) use the exact same network infrastructure. Thus, the data, security services, IP TV, and other non-exempt services are traversing Farmers' infrastructure every moment of every day.

Indeed, Mr. Brad Erwin, Farmers' CEO, confirmed in his testimony that Farmers directly provides certain non-exempt services, such as broadband internet services, television service, security services, and wireless service. (Tr. Trans. 537:21–538:7). Nevertheless, Farmers has claimed the Rural Telephone Exemption every year in recent memory. The Court found that the provision of non-exempt services removed the Rural Telephone Exemption from at least a portion (25%) of FTCC's and Diversified's property. Because FTCC and Diversified cannot function without utilizing Farmers' network, and given Mr. Erwin's testimony about the non-exempt services Farmers directly provides, Farmers is not entitled to receive the Rural Telephone

Exemption for 100% of its property. Therefore, the Taxing Entities request that the Court enter an express finding that Farmers is not entitled to receive the Rural Telephone Exemption for any of the years at issue in this case. However, even if the Court continues to disagree with the Taxing Entities regarding whether the Taxpayer met the basic threshold use requirements to qualify for the Rural Telephone Exemption, the Court's factual findings suggest, inescapably, that at a minimum only 75% of Farmers' property would be exempt from taxation for the years at issue in the case.

Section 12-4-720(C) is an Exception to Section 12-4-720(A)(1), which Precludes the Taxpayers from Using the Tax Return Amendment Process to Apply for/Claim the Exemption

In the Order, the Court identifies a potential conflict between section 12-4-720(A)(1), section 12-4-720(C), and section 12-54-85(F)(1). The Court resolves the potential conflict by concluding that "under the facts of this case Taxpayers could timely apply for an exemption in two ways: (1) list the property as exempt on the original return or (2) list the property as exempt on an amended return timely filed pursuant to section 12-54-85(F)." (Order, p. 65)

However, the Taxing Entities assert that to resolve the potential conflict, we should interpret Section 12-4-720(C) as an exception to Section 12-4-720(A)(1). The language of Section 12-4-720(A)(1) explicitly begins with, "Except as otherwise provided." In other words, the general rule in the statute pre-supposes that exceptions will apply and those exceptions will *overrule the general rule*. Section 12-4-720(C) is precisely such an exception.

Practically, the exception would have a very limited scope. It would only apply to other taxpayers that are required to file property tax returns with the Department, which would include, among others, large businesses such as manufacturers, utilities, railroads, and airlines.[12] Considering section 12-4-720(C) to be an exception makes sense when we look at the entire legislative scheme. Because these large business are significant sources of revenue for local governmental entities, it makes sense that they would have to—without fail—apply for/claim the exemption on their original returns. These exemptions have a high dollar impact on local government bodies, and the General Assembly meant that the local governments should be protected.

[12] It is noteworthy that the Taxing Entities' construction would not apply to nonprofit entities, veterans, or any individual applying for an exemption—these taxpayers would still be able to file within the three year amendment period.

In the Order, the Court cites to *Hock RH, LLC v. S.C. Dep't of Revenue*, which illustrates an interesting point. In that case, the taxpayer was not a taxpayer that was required to file annual property tax returns with the Department under 12-4-720(C). 423 S.C. 208, 813 S.E.2d 540 (Ct. App. 2018). This distinguishes the present case from *Hock RH, LLC*. When it comes to taxpayers such as landlords who lease property to charter schools, the General Assembly has decided that those entities are entitled to a three year period to file applications for exemption because that type of taxpayer is unlikely to own enough property to create a multi-million dollar property tax refund liability for local governments. In this case, we are dealing with a different class of taxpayer—a taxpayer that is so big it has to file returns with the Department annually. The General Assembly has decided that County and school district budgets require additional protection from large refund claims. To protect the local governments, the General Assembly clearly created an exception, applicable to some of the largest taxpayers in the state. That exception requires timely annual applications/claims for exemption, submitted without regard to the tax return amendment timeline.

The Exemption Cannot Be Granted Because the June 1st Deadline Was Not Met

The Order concludes that the Department failed to meet section 12-4-710's June 1st deadline because, although "[t]he Department made an ***initial*** decision concerning the exemption annually for all tax years in question . . . the Department did not comply with its obligation to notify the counties of its initial determination by June 1st." (Order, p. 80) (emphasis in original). The Order also concludes that "since the Department did not send the counties notice of their exemption determination by June 1st of the year in which the Department received the exemption request, the counties did not receive notice of the exemption in time to consider them before finalizing their budgets by July 1st." (Order, p. 81).

As the Court noted, "[t]he July 1st deadline is important because, for example, 75% of Clarendon County's annual budget is funded from ad valorem property tax revenues, and counties are required to have their budgets finalized by June 30th of each year." It is clear that the General Assembly intended that the Department follow the deadlines set forth in section 12-4-710 for the ***benefit of the counties***. (*See* Order, p. 82) (stating that "the Department's failure to meet the June 1st deadline contravenes the purpose of the statutory scheme identified by the Supreme Court in *TNS Mills*").

In tax exemption cases, the General Assembly has shown, and the Supreme Court has affirmed, that the June 1st deadline of Section 12-4-710 is intended to benefit counties and local governments by (1) requiring the Department (as well as taxpayers) to comply with statutory

deadlines so that (2) counties and local governments are afforded sufficient time in which to comply with their statutorily mandated budgeting requirements. Pertinently, the Supreme Court held that

> [t]he Code requires the Department to make annual determinations concerning exemptions and to notify the appropriate county officials of what property was exempted from taxation by June first. ***The interpretation advanced . . . would negate the purpose of notifying county officials by June first because the information given them would be worthless***; the amount of exempted property, would change every time the Department granted a retroactive exemption.

331 S.C. at 620–21, 503 S.E.2d at 476 (emphasis added). And,

> [t]he plain language of these Code sections, when read together, show ***the legislature intended to set clear deadlines for applying for exemptions as part of an overall plan to enable the counties and school districts to plan budgets for each fiscal year.*** Any interpretation allowing the Department to grant exemptions after the deadline would negate the benefit of this plan.

331 S.C. at 621, 503 S.E.2d at 476 (emphasis added). Further, the Court quoted with approval the Supreme Court's statement in *TNS Mills* that "[t]here would be no purpose in establishing deadlines if failure to meet them *was of no consequence*." (Order, p. 82) (citing *TNS Mills, Inc.*, 331 S.C. at 620, 503 S.E.2d at 476).

Yet, the Order imposes no consequence on any party other than the Taxing Entities for the Department's failure to follow the statutory scheme mandated by the General Assembly. Instead, the Order's holding shifts the burden of loss onto the Taxing Entities—the very entities the General Assembly intended to protect with, and benefit from, the mandatory deadlines imposed upon both taxpayers and the Department. In addition to shifting the burden of loss onto the party the statute intends to protect, permitting the Department to maintain its authority to grant tax exemptions under these circumstances would negate the requirements of Section 12-4-710, as the Department would be permitted to continue its historic practice of non-compliance with the June 1st deadline.

The Order relied on a South Carolina Supreme Court case, *Johnston v. South Carolina Department of Labor, Licensing & Regulation*, which held that it "will not assume the Legislature intended the [agency] to lose its power to act for failing to comply with the statutory time limit." 365 S.C. 293, 298, 617 S.E.2d 363, 365 (2005). However, the circumstances surrounding the Supreme Court's decision in *Johnston* are fundamentally different than the circumstances of *TNS Mills* or this present case.

In *Johnston*, the primary issue was whether the Real Estate Appraisers Board's failure to timely provide written notice to a licensed real estate appraiser of the Board's decision to fine the appraiser and suspend his license for one year invalidated the Board's decision. 365 S.C. at 295, 617 S.E.2d at 364. After an administrative hearing where the Board determined the appraiser had violated the relevant act, the Board issued its written decision to the appraiser. *Id.* Two weeks after the Board's written decision, the Board mailed a copy of the notice of its decision by certified mail, return receipt requested. *Id.* However, because of a simple misprint of the zip code on the envelope addressed to the appraiser, the notice was received, and signed for, by another individual. *Id.* at 295–96, 617 S.E.2d at 264. To correct this mistake, the Board provided written notice of its decision in person to the appraiser approximately two weeks after the statute's deadline for service had lapsed. *Id.* at 296, 617 S.E.2d at 264. The Supreme Court ultimately concluded that "[t]he failure of the Board to meet the deadline does not render the order a nullity." *Id.* at 297, 617 S.E.2d at 365.

As an initial matter, the overarching rules of statutory interpretation in cases of tax exemptions (i.e., to be strictly construed against the taxpayer) were not applicable to the statutes in *Johnston*.[13] Second, the Supreme Court's decision was not without at least some consequence to the Board, as the ultimate holding concluded that "the order [was] valid, but *ineffective*, until it [was] served upon the appraiser." *Id.* at 297, 617 S.E.2d at 365 (emphasis in original). Third, there was no other interested party situated similarly to the Taxing Entities. The Board's failure to comply with the notice requirements only impacted the appraiser, as its decision to suspend the appraiser's license remained ineffective until the notice was properly served. Thus, the appraiser—the only other party in addition to the Board—merely maintained his license for an additional two weeks before it was ultimately suspended for one year. Further, the Supreme Court noted the following with respect to the General Assembly's intention in enacting the relevant statutes:

> ***There is no indication that the Legislature intended for the time limit to prevent the Board from having the ability to discipline an errant appraiser*** if the Board fails to serve notice of the written decision within the prescribed time period. Instead, the Legislature intended to speed the resolution of appraiser disciplinary cases for the benefit of all parties involved.

Id. at 297–98, 617 S.E.2d at 365 (emphasis added).

[13] *See* S.C. Code Ann. §§ 40-60-2, *et seq.*

In this case, Section 12-4-710's June 1st deadline was intended by the General Assembly to protect counties and local governments—not taxpayers and not the Department. The effects of the Board's procedural mistake (caused by a typo) in *Johnston* are not comparable to the effects of the Department's systemic disregard of Section 12-4-710's June 1st deadline. Therefore, the Taxing Entities request that the Court enter an express finding that the Department's failure to comply with Section 12-4-710's deadline precludes the Department from granting a tax exemption.

Farmers Failed to Show What Proportion of its Property was Exempt in 1973

The Order concludes that "even though for decades Farmers has claimed 100% of its property as exempt, and the Department has granted Farmers a 100% exemption each year, ***the evidence did not establish what proportion of Farmers' property was exempt in 1973.***" (Order, p. 59) (emphasis added). Furthermore, the Court concluded that "[t]he Department's historical practice of granting this percentage at best *implies* it has been carried forward since 1973. (Order, p. 59) (emphasis in original).

The burden was on the Taxpayers to prove their rights to the Exemption by bringing themselves clearly within the conditions imposed by the statute. *TNS Mills*, 331 S.C. at 618, 503 S.E.2d at 475; *York Cty. Fair Assoc. v. S.C. Tax Comm'n*, 249 S.C. 337, 341, 154 S.E.2d 361, 363 (1967)). Section 12-37-220(B)(10) requires a determination of what proportion of property was exempt in 1973 in order to determine what proportion of property is currently exempt. The Court found that there was no evidence in the record to establish what proportion of Farmers' property was exempt in 1973. (Order, p. 59). Therefore, the Taxpayers failed to meet their burden of bringing themselves clearly within the conditions imposed by Section 12-37-220(B)(10) and are not entitled to the Exemption.

Wireless Voice Service Should Not be Considered Telephone Service

The Taxing Entities would ask that the Court reconsider its conclusion that wireless voice services fit within the definition of "telephone service," as the term is used in the Rural Telephone Exemption. The Court has found on a number of occasions that the term "telephone service" is, in the context of this case and the Rural Telephone Exemption, an ambiguous term. Thus, the following interpretive principle comes into play: "The language of a tax exemption statute must be given its plain, ordinary meaning and ***must be strictly construed against the claimed exemption.***" *John D. Hollingsworth On Wheels, Inc. v. Greenville County Treasurer*, 276 S.C. 314, 278 S.E.2d 340 (1981).

In the Order, the Court concludes that "in 1978 'telephone service' was understood within the industry, and was commonly defined, to encompass only voice communications services which were communicated through a telephone and transmitted by a physician connection (i.e., a wire) to another telephone user." (Order, p. 51). The Court also states that it "agrees with the Taxing Entities that a wireless network as we contemplate it today may not have been conceived by the legislature when it drafted and enacted section 12-37-220(B)(10)."

The Taxing Entities would argue that interpreting the term "telephone service" to include a transformative technology like the cellular/wireless phone is tantamount to giving the term a liberal construction. Indeed, if the General Assembly could not have conceived of such a novel technological advancement at the time,[14] it is hard to imagine how a strict construction of the statute could include a unique function provided by the then-unimagined technology. Accordingly, the Taxing Entities would ask that the Court amend its Order to reflect that wireless technology is not eligible for the Rural Telephone Exemption.

Even Under the Cost Valuation Method, the Record Supports a Lower Exemption Ratio

The Court chose to reject the valuations based on use proposed by the Parties. This is, of course, not unusual, and there are numerous cases supporting the decision of an administrative law judge to choose a value different than the specific value proposed by the parties. *See generally Charleston County Assessor v. University Ventures, LLC*, 427 S.C. 273, 831 S.E.2d 412 (2019); *Smith v. Newberry County Assessor*, 350 S.C. 572, 567 S.E.2d 501 (Ct. App. 2002); *Hearn v. Laurens County Assessor*, No. 2013-000753, 2014 WL 368912 (S.C. Ct. App. July 23, 2014). However, in each of these cases, it is clear that the court must choose a value within the range of values supported by evidence in the record. Based on the record in this case, the Taxing entities suggest a different range of values would apply.

The Parties submitted a great deal of evidence regarding the overall use of the network and how that use might impact the exemption status. However, only one witness presented any definite testimony regarding the cost of building a voice-only network—Mr. Joe Moss.

[14] The Taxing Entities would assert that the copper to fiber technological transformation is different in kind that the wireline to wireless transformation. The testimony showed that fiber optic cable was used to replace various copper components of the Farmers Entities' network over the years, and that it is used to this day in conjunction with copper cable. Thus, the fiber optic cable transformation is essentially a technological enhancement to the network that existed in 1978. In contrast, wireless technology is an entirely new and novel technology (compared to what existed in 1978), requiring additional components and equipment that extends far beyond the basic network infrastructure that existed in 1978.

The Court qualified Mr. Moss as an expert witness in the area of telecommunications. In several instances, the Court noted Mr. Moss's credibility and breadth of knowledge. Regarding the value of a voice-only network, the Court noted that "Mr. Moss's estimation that building a voice-only network would be between fifty to sixty percent cheaper is probative." (Order, p. 60). Mr. Wyatt, the expert for the Farmers Entities, did not render an opinion regarding the value of a voice only network.

Further, Mr. Erwin, Farmers' CEO, provided very limited testimony, speaking to only ***one component*** of a massive telecommunications network. He testified:

> Q: All right. And did you hear Mr. Moss's testimony on the cost now if you--obviously, your system is already in place, but if you were starting out fresh, did you hear his testimony on the cost to build a voice only now and that could be done much more cheaply?
>
> A: I--I did. And you know, I'd like to speak specifically to his reference of the card in the Juniper router and the cost reduction therein. Mr. Moss referred to you could put a 1-gig card instead of a 10-gig card. A 1-gig card costs $114,000. A 10-gig card costs $150,000. Miraculously, that's close to his 30 to 40 percent reduction on that one element. But the amount of traffic would require at least two 1-gig cards if we did not have a 10-gig card. Therefore, you would be spending 248--$228,000 instead of $150,000.

(Trial Tr. 1035:24–1036:16).

Thus, Mr. Erwin addressed his belief about a single piece of equipment and how it might impact value. As the Court noted in the Order, the Farmers Entities' network includes wireless towers, miles and miles of fiber optic cable, Juniper routers, Cienna routers, and much, much more. Mr. Erwin expressed no fact testimony regarding any other portion of the Farmers Entities' vast, interconnected network. It is, therefore, impossible to make any supportable conclusions about valuation based on Mr. Erwin's testimony.

As to the value of a total voice-only network, only one witness provided any testimony—Mr. Moss. Thus, should the Court choose to continue using the cost method of valuation, the ***maximum amount*** of the Farmers Entities' property that could be exempt is 50%.

Conclusion

The Taxing Entities respectfully request that the Court reconsider and alter or amend its Order in accordance with the principles outlined above.

Respectfully submitted,

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March 5, 2020

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 5, 2020, she caused to be served the foregoing **TAXING ENTITIES' MOTION FOR RECONSIDERATION** on all parties of record as set forth below:

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