

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,)

Docket No. 17-ALJ-17-0237-CC

Petitioners,)

vs.)

South Carolina Department of Revenue,)
Farmers Telephone Cooperative, Inc., FTC)
Communications, LLC and FTC Diversified)
Services, LLC,)

Respondents.)

AMENDED FINAL ORDER

RECEIVED

JUL 15 2020

SC Court of Appeals

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or Court) on a Request for Contested Case filed by Petitioner Clarendon County on July 10, 2017. Thereafter, other parties moved to intervene as Petitioners, and their requests were granted. The Court refers to Petitioners, collectively, as the Taxing Entities. Taxing Entities contest the decision of the South Carolina Department of Revenue (Department) to grant FTC Communications, LLC (FTCC) and FTC Diversified Services, LLC (Diversified, and collectively with FTCC, Taxpayers) a property tax exemption pursuant to S.C. Code Ann. § 12-37-220(B)(10) (the Rural Telephone Service Exemption) for tax years 2010-2018.¹ On December 15, 2017, Taxpayers filed a Motion to Dismiss on the ground that this Court did not have subject matter jurisdiction to grant Taxing

¹ Taxing Entities originally contested the Department's decision in tax years 2010 through 2016 but later supplemented their request to also include tax years 2017 and 2018.

Entities a Contested Case. Shortly thereafter, on December 18, 2017, Taxing Entities filed a Motion for Partial Summary Judgement. A consolidated hearing on both motions took place before this Court on February 13, 2018. The Court denied both motions in separate orders. Consequently, four primary issues remain to be considered in the merits hearing: (1) whether Taxing Entities have standing to contest the Settlement Agreement and/or the Supplemental Certifications; (2) whether Taxpayers' property qualifies for the Rural Telephone Service Exemption for tax years 2010 through 2018; (3) whether Taxpayers properly applied for the exemption; and (4) whether the Department's granting of the exemption was illegally retroactive.

Answering the questions raised in this case is anything but simple. The Rural Telephone Service Exemption merely states that property "used in providing rural telephone service" is exempt, but it does not define any of the operative terms such as "used," "rural," or "telephone service." It also does not explain what percentage of assets might be exempt for a telephone company created after 1973, such as FTCC or Diversified, and how that percentage might be calculated when the telephone company is a single member LLC and, therefore, an entity that assumes the tax benefits of its single member. In addition, 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 assets are used by each entity to provide a variety of services, including both landline telephone service, wireless voice services, and data service. Thus, in order to answer the ultimate issue in this case, the Court must resolve numerous factual questions that are intertwined with a variety of legal issues.

A hearing on the merits was held on May 20-24, 2019, before the Court regarding these issues, and a Final Order was issued on February 24, 2020. Following that decision, Taxing Entities and Taxpayers timely filed Motions for Reconsideration. In response to the issues raised in the Motions, the Court issues this Amended Final Order.

PROCEDURAL BACKGROUND

On July 10, 2017, Clarendon County filed a request for contested case and attached a settlement agreement (the Settlement Agreement) between the Department and Taxpayers as the

contested “agency decision.” Clarendon County had received the Settlement Agreement on June 21, 2017. Thereafter, Clarendon County, along with intervenors Florence County, Sumter County, Williamsburg County, and Williamsburg County School District, filed a Consolidated Supplement to Request for Contested Case Hearing (Supplement). In the Supplement, the Counties declared: “Together with the Settlement Agreement previously filed with this Court, the enclosed [Supplemental Certifications]² constitute department determinations from which the Taxing Entities have statutory rights to a contested case before this Court pursuant to South Carolina Code Annotated sections 12-60-2130 and 12-60-2150.” Florence County received a Supplemental Certification on July 12, 2017, and presumably the other counties received Supplemental Certifications around the same time.

Farmers Telephone Cooperative, Inc. (Farmers), the parent company of Taxpayers (and together with Taxpayers, Farmers Entities), was thereafter added as a Respondent and entered a Notice of Appearance on August 15, 2017. The remaining intervenors, including Lee County, became part of the Taxing Entities and joined in the request for a contested case challenging the Settlement Agreement and the Supplemental Certifications.

On September 25, 2017, the Taxing Entities filed a Consolidated Supplement to Request for Contested Case Hearing pursuant to sections 12-60-2130 and 12-60-2150 challenging the Department’s Certifications for tax year 2017, which also granted FTCC and Diversified the property tax exemption under section 12-37-220(B)(10). Sumter County received notice of the 2017 Supplemental Certification on August 28, 2017, and it is understood the Department sent out similar letters to the remaining Taxing Entities around the same time. Later, Taxing Entities again supplemented their request to also contest the Department’s decision to grant the exemption to Taxpayers in tax year 2018.

² The Supplemental Certifications refer to supplemental property tax assessment certifications sent to the counties from the Department after the Department determined Taxpayers were entitled to the Rural Telephone Service Exemption.

STIPULATIONS OF FACT³

At the hearing in this matter and pursuant to SCALC Rule 25(c), the parties entered the following written stipulations of facts into the Record:

Overview

1. Farmers Telephone Cooperative, Inc. (Farmers) was incorporated in South Carolina in 1952. The Department of Revenue has granted the Rural Telephone Service Exemption codified in section 12-37-220(B)(10) of the South Carolina Code to Farmers to exempt it from property taxes for property it owns and uses to provide rural telephone service in South Carolina.

2. FTC Communications, LLC (FTCC) was organized as a limited liability company in South Carolina on July 1, 2009, and is a single-member LLC of Farmers.

3. FTC Diversified Services, LLC (Diversified) was organized as a limited liability company in South Carolina effective July 1, 2012, and is a single-member LLC of Farmers.

4. FTCC provides wireless service, operator service, and answering services. Diversified provides land-line telephone service, television services, internet service, and security services.

5. For the purposes of this Joint Stipulation of Facts, Clarendon County, Florence County, Lee County, Sumter County, and Williamsburg County are each a "County," and collectively, the "Counties."

6. For the purposes of this Joint Stipulation of Facts, 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 are each a "District," and collectively, the "Districts," and together with the Counties, the "Taxing Entities."

³ The Stipulations of Fact are set forth as the parties presented them to the Court without any grammatical revisions.

Property tax returns, refund claims, protests, assessments, and certifications

Farmers

7. For all years relevant to this matter, Farmers timely filed property tax returns.

FTCC

8. On April 29, 2010, FTCC filed a property tax return and supplemental data for property tax year 2010 with the South Carolina Department of Revenue (Department). On May 28, 2010, the Department issued a proposed property tax assessment to FTCC and determined the assessed value of FTCC's property was \$2,456,910. In its Distribution Report, the Department allocated the assessed value of FTCC's property to the applicable taxing districts, including the counties of Clarendon, Florence, Lee, Sumter, and Williamsburg. The applicable Taxing Entities issued property tax bills based on this assessed value, which FTCC received and paid.

9. On April 14, 2011, FTCC filed a property tax return and supplemental data with the Department for tax year 2011. On April 25, 2011, the Department issued a proposed assessment to FTCC and determined FTCC's property had an assessed value of \$2,799,110. The Department allocated the assessed value to the counties of Clarendon, Florence, Georgetown, Lee, Sumter, and Williamsburg. FTCC paid the assessed property tax.

10. On April 2, 2012, FTCC filed a property tax return for tax year 2012. On July 13, 2012, the Department issued a proposed assessment to FTCC and determined FTCC's property had an assessed value of \$3,024,480. The Department allocated the assessed value to the counties of Clarendon, Florence, Georgetown, Lee, Sumter, and Williamsburg.

11. In a letter dated October 11, 2012, FTCC protested the 2012 proposed assessment because the assessment did not exempt FTCC's property pursuant to section 12-37-220(B)(10).

12. As a result of the protest, on October 16, 2012, the Department issued a revised proposed assessment to FTCC representing 80% of the original 2012 property tax assessment. Also on October 16, 2012, the Department sent a Memorandum to the county auditors for the Taxing Entities advising that FTCC had protested the 2012 assessment. The Memorandum provided a copy of the revised proposed assessment. The County Auditors for the Taxing Entities

received this revised proposed assessment. As a result of the protest, FTCC was billed for 80% of the assessment, which it paid.

13. On December 28, 2012, FTCC sent a letter to the Department requesting a property tax exemption for FTCC's rural telephone property pursuant to section 12-37-220(B)(10). FTCC further requested the exemption be applied to tax years 2010 and 2011 and that it be issued a refund of its property taxes for these years. Specifically, FTCC requested a refund of \$726,966.53 for tax year 2010 and \$827,067.55 for tax year 2011. FTCC claimed it was not aware it could qualify for the exemption as a single-member limited liability company until the 2011 decision in *CFRE, LLC v. Greenville County Assessor*⁴ clarified the tax status of a single-member limited liability company.

FTCC and Diversified

14. On April 30, 2013, FTCC filed a property tax return for tax year 2013. On January 14, 2014, the Department issued a proposed assessment to FTCC and determined FTCC's property had an assessed value of \$3,928,850. The Department allocated the assessed value to the counties of Clarendon, Florence, Georgetown, Lee, Sumter, and Williamsburg.

15. On or about April 30, 2013, Diversified filed a property tax return for tax year 2013. On January 15, 2014, the Department issued a Proposed Assessment to Diversified for tax year 2013. The Department determined Diversified's property had an assessed value of \$2,943,310. The Department allocated the assessed value to the counties of Clarendon, Florence, Lee, Sumter, and Williamsburg.

16. In a letter dated February 18, 2014, FTCC and Diversified protested the proposed assessments from the Department for tax year 2013 because the assessments did not exempt FTCC's and Diversified's properties from property tax pursuant to Section 12-37-220(B)(10).

17. As a result of the protest, on February 27, 2014, the Department issued a revised proposed assessment to FTCC and Diversified representing 80% of each entities' original 2013

⁴ *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 71, 716 S.E.2d 877, 879 (2011).

property tax assessment. Also on February 27, 2014, the Department sent a Memorandum to the county auditors for the Taxing Entities advising that FTCC and Diversified had protested the 2013 assessments. The Memorandum provided a copy of the revised proposed assessments. The County Auditors for the Taxing Entities received these revised proposed assessments. As a result of the protest, FTCC and Diversified were billed for 80% of the assessments, which they paid.

18. On April 25, 2014, Diversified filed a property tax return for tax year 2014. On August 12, 2014, the Department issued a Proposed Assessment to Diversified, proposing a property tax assessment of \$2,767,670 against Diversified's property for tax year 2014. The Proposed Assessment included a Distribution Report, in which the Department allocated the assessed value to the counties of Clarendon, Florence, Lee, Sumter, and Williamsburg.

19. On April 28, 2014, FTCC filed a property tax return for tax year 2014. On August 12, 2014, the Department issued a proposed assessment to FTCC and determined FTCC's property had an assessed value of \$4,379,100. The Department allocated the assessed value to the counties of Clarendon, Florence, Georgetown, Lee, Sumter, and Williamsburg.

20. In a letter dated November 6, 2014, FTCC and Diversified protested the proposed assessments from the Department for tax year 2014 because the assessments did not exempt FTCC's and Diversified's properties from property tax pursuant to Section 12-37-220(B)(10).

21. As a result of the protest, on December 16, 2014, the Department issued a revised proposed assessment to FTCC and Diversified representing 80% of each entities' original 2014 property tax assessments. Also on December 16, 2014, the Department sent a Memorandum to the county auditors for the Taxing Entities advising that FTCC and Diversified had protested the 2014 assessments. The Memorandum provided a copy of the revised proposed assessments. The County Auditors for the Taxing Entities received these revised proposed assessments. As a result of the protest, FTCC and Diversified were billed for 80% of the assessments, which they paid.

22. On April 24, 2015, FTCC filed a property tax return for tax year 2015. On August 24, 2015, the Department issued a proposed assessment to FTCC and determined FTCC's property

had an assessed value of \$4,306,020. The Department allocated the assessed value to the counties of Clarendon, Florence, Georgetown, Lee, Sumter, and Williamsburg.

23. On April 24, 2015, Diversified filed a property tax return for tax year 2015. On August 24, 2015, the Department issued a proposed assessment to Diversified for tax year 2015. The Department determined Diversified's property had an assessed value of \$2,556,670. The Department allocated the assessed value to the counties of Clarendon, Florence, Lee, Sumter, and Williamsburg.

24. In a letter dated October 8, 2015, FTCC and Diversified protested the proposed assessments from the Department for tax year 2015 because the assessments did not exempt FTCC's and Diversified's properties from property tax pursuant to Section 12-37-220(B)(10). As a result of the protest, FTCC and Diversified were billed for 80% percent of their respective assessments for tax year 2015, which they paid.

25. As a result of the protest, on October 26, 2015, the Department issued a revised proposed assessment to FTCC and Diversified representing 80% of the original 2015 property tax assessments. Also on February 27, 2014, the Department sent a Memorandum to the county auditors for the Taxing Entities advising that FTCC and Diversified had protested the 2015 assessment. The Memorandum provided a copy of the revised proposed assessments. The county auditors for the Taxing Entities received these revised proposed assessments. As a result of the protest, FTCC and Diversified were billed for 80% of the assessments, which they paid.

26. On April 25, 2016, FTCC and Diversified filed property tax returns for tax year 2016. On August 16, 2016, the Department sent a memorandum to the county auditors for the Taxing Entities with utility certifications for the 2016 tax year. The certifications for FTCC and Diversified for tax year 2016 showed an assessed value for each of \$0 and noted the status as "under appeal."

27. On April 25, 2017, FTCC and Diversified filed property tax returns for tax year 2017.

28. On April 23, 2018, FTCC and Diversified filed a property tax return for tax year 2018.

The Counties

29. Each County has retained the law firms of Parker Poe Adams & Bernstein LLP and Kozlarek Law LLC (collectively “Counsel”) to represent the Counties in this matter in compliance with all applicable policies and procedures of each County for the retention of outside counsel. Each County took all necessary steps to authorize Counsel to file appeals for tax years 2010-2018, which appeals form the basis of this case.

30. In accordance with State law, the Counties are each required to adopt their annual budgets before the fiscal year begins on July 1. Consequently, June 30 is the deadline for the County to adopt its budget for the ensuing July 1 – June 30 fiscal year.

31. The Counties’ property tax revenues are managed by each County’s respective County Assessor, county auditor, and County Treasurer. The County Assessor values and assesses certain real property located in the County. The county auditor values and assesses certain personal property located in the County and coordinates with certain governmental bodies authorized to impose millage to ensure the millage rate is correct. The County Treasurer issues and collects tax bills on behalf of the County, the Districts, and other local governmental entities. For utility taxpayers, like the Taxpayers in this Matter, the Department communicates directly with the county auditor by providing assessment notifications and certifications, which the county auditor enters onto the tax duplicate and uses to apply the appropriate millage rates for the various governmental bodies authorized to impose millage.

32. For tax years 2010-2011, the county auditor for each County received formal notice from the Department via a memo dated June 14, 2017 that the appeals involving the rural telephone service exemption for Farmers Coop, FTCC, and Diversified had been resolved and that pursuant to the January 8, 2017 settlement agreement FTCC and Diversified will now be subject to the rural telephone service exemption just like Farmers Coop has been in prior years.

33. For tax years 2012–2015, the county auditor for each County received notifications from the Department each year that Taxpayers had protested the assessments for those years and received revised certifications assessing Farmers at 80%. The County Auditor of each County received formal notice from the Department via a memo dated June 14, 2017 that the appeals involving the rural telephone service exemption for Farmers,⁵ FTCC, and Diversified had been resolved and that pursuant to the January 8, 2017 settlement agreement FTCC and Diversified will now be subject to the rural telephone service exemption just like Farmers has been in prior years.

The Districts

34. Each District has retained Counsel to represent the District in this matter in compliance with all applicable policies and procedures of each District for the retention of outside counsel. Each District took all necessary steps to authorize Counsel to file appeals for tax years 2010-2018, which appeals form the basis of this case.

35. The Districts' property tax revenues are managed by each District's respective county assessor, county auditor, and county treasurer. The county assessor values and assesses certain real property located in the County. The county auditor values and assesses certain personal property located in the County and coordinates with certain governmental bodies authorized to impose millage to ensure the millage rate is correct. The county treasurer issues and collects tax bills on behalf of the County, the Districts, and other local governmental entities. For utility taxpayers, like the Taxpayers in this Matter, the Department communicates directly with the county auditor by providing assessment notifications and certifications, which the county auditor enters onto the tax duplicate and uses to apply the appropriate millage rates for the various governmental bodies authorized to impose millage.

⁵ The Court notes that although Farmers was a party to the settlement agreement, their tax returns were not appealed nor are those tax returns at issue in this case.

Settlement Agreement and Revised Certifications

36. On January 8, 2017, the Department, FTCC and Diversified entered into Settlement Agreement, wherein the Department granted FTCC and Diversified a property tax exemption pursuant to section 12-37-220(B)(10) for tax years 2010–2015. In the Settlement Agreement, the parties agreed that property used to provide FTCC's wireless telephone service and Diversified's land-line telephone service qualified for the property tax exemption pursuant to section 12-37-220(B)(10). The parties also agreed that property of FTCC and Diversified that was used to provide services other than wireless and land-line telephone service is not exempt from property taxes at any level. None of the Taxing Entities were a party to the Settlement Agreement.

37. Pursuant to the Settlement Agreement, FTCC and Diversified filed amended property tax returns for every applicable year.

38. The Department reviewed the filed amended property tax returns for FTCC and Diversified and calculated revised assessments. In the revised assessments, the Department exempted FTCC's wireless telephone service and Diversified's land-line telephone service under section 12-37-220(B)(10).

39. On June 14, 2017, the Department certified the final revised assessments to FTCC proposing a property tax assessment of \$236,490 for tax year 2010.

40. On June 14, 2017, the Department certified the final revised assessments to FTCC proposing a property tax assessment of \$290,560 for tax year 2011.

41. On June 14, 2017, the Department certified the final revised assessments to FTCC proposing a property tax assessment of \$308,630 for tax year 2012.

42. On June 14, 2017, the Department certified the final revised assessments to FTCC proposing a property tax assessment of \$373,570 for tax year 2013.

43. On June 14, 2017, the Department certified the final revised assessments to FTCC proposing a property tax assessment of \$392,790 for tax year 2014.

44. On June 14, 2017, the Department certified the final revised assessments to FTCC proposing a property tax assessment of \$411,910 for tax year 2015.

45. On June 14, 2017, the Department certified the final revised assessments to Diversified proposing a property tax assessment of \$2,717,450 for tax year 2013.

46. On June 14, 2017, the Department certified the final revised assessments to Diversified proposing a property tax assessment of \$2,547,140 for tax year 2014.

47. On June 14, 2017, the Department certified the final revised assessments to Diversified proposing a property tax assessment of \$2,287,440 for tax year 2015.

48. The respective county auditors for Clarendon County, Florence County, Lee County, Sumter County, and Williamsburg County received formal notice of the Settlement Agreement in a memo from the Department dated June 14, 2017.

49. On July 6, 2017, the Department certified the final revised assessments to FTCC proposing a property tax assessment of \$588,670 for tax year 2016.

50. On July 6, 2017, the Department certified the final revised assessments to Diversified proposing a property tax assessment of \$2,287,440 for tax year 2016.

51. The respective county auditors for Clarendon County, Florence County, Lee County, Sumter County, and Williamsburg County received a revised notice of the Settlement Agreement in a memo from the Department dated July 6, 2017.

FINDINGS OF FACT

Having listened to the testimony, and after reviewing the Record, I make the following findings of fact based upon a preponderance of the evidence.

History of Telephone Service and Telecommunications Industry

Technological History

The earliest telephone systems used a one-to-one physical connection between end-users to complete a call. One user's handset was connected to another user's handset by two copper wires that carried an electrical current through the central switching office and over the Public Switched Telephone Network. The telephone handset allowed the electrical current to be modulated to carry sound (or voice) over the connection. The central switching office had a manual switchboard (the switch) that allowed the switchboard operator to connect two electric

circuits to complete a telephone call from one end-user to another. This rudimentary analog system is commonly referred to as “plain old telephone service” or POTS. Additionally, each pair of copper wires could handle only a single voice telephone call at a time. This type of network design is known as a “circuit-switched network” and remained the standard architecture through the 1980s.

As technology advanced, the manual switchboard (and the switchboard operator) were replaced by a mechanical switch. The two copper wires (two voice channels) were replaced with twisted pairs, or bundles, of copper wires to provide multiple lines. Then, in the early 1980s, the deployment of digital technology significantly changed telephone networks. Mechanical switches were replaced by electronic switches, and the sections of the system between the central switching office and the remote terminals moved from analog to digital. Digital technology allowed copper wire pairs to provide twenty-four voice channels instead of two voice channels.

In the mid to late 1980s, telephone networks underwent another significant change with the advent of fiber-optic technology. Copper wires were replaced with glass fiber, which transported laser light instead of electrical currents. The deployment of fiber-optic networks coincided with the arrival of the Internet and the ability to “packetize” data by assembling little bits of information into packets that could be routed through a network to an Internet Protocol (IP) address. This type of network design is known as a “packet-switched network.”

Although the evolution to fiber-optic telephone networks was initially driven by the increasing need for additional telephone lines, the exponential increase in bandwidth capacity (i.e. the amount of information that can be transported over a network) that came with fiber-optic lines allowed telephone networks to be utilized for much more than POTS.

Another technological development important to this case is the development of wireless or cellular telephone service. The first wireless telephone systems were deployed in the United States in the 1980s. Up to this point, telephone networks had always required a physical connection between end users. In wireless systems, the end users connect to the network over the radio spectrum using cell towers. The cell towers are deployed in a patchwork, or mesh design, in

a geographical area allowing an end user to make a voice call while traveling between multiple towers with minimal interruptions in service.

However, the concept of a “wireless network” is somewhat of a misnomer because all “wireless networks” still require a landline (physical) network in order to function. More specifically, although wireless technology allows users to connect to cell towers, in order for the data collected by the tower to be transmitted to another user, the cell towers must be connected to the landline network via a “backhaul” system that allows the transmission of the data over the network. Consequently, cellular networks are dependent on the “backbone” landline networks to complete calls and transmit other data.

The first generation (1G) cellular wireless systems were analog and only allowed voice transmissions. However, subsequent generations of wireless networks (2G and 3G) offered digital voice and limited data service. The modern 4G systems allow voice and full internet access.

Modern Networks

Most modern telecommunications networks (including the Farmers Entities’ network) are designed using four categories of equipment that scale down in size, speed, and capability as the data moves through the core network toward individual end users. These four categories include core equipment, access equipment, edge equipment, and “last mile” equipment that connects the edge equipment to the subscriber’s premises via Consumer Premises Equipment (CPE) (e.g. telephones, computers, televisions). Specifically, end users connect to the last mile with their CPE, the last mile connects to an edge router, the edge routers are then aggregated into an access device, and the access devices are aggregated to connect into the core network, which connects to the public switches. Thus, while modern networks take advantage of increased capacities and efficiencies to carry more than voice traffic over the network, the network itself still operates on the principle of a one-to-one connection.

What is the Definition of Telephone Service?

A central factual issue in this case is the meaning of the statutory term “telephone service.”⁶ From a telephone engineering and provider perspective, the parties agree that landline voice calls are within the meaning of “telephone service,” but they disagree whether wireless telephone service and other services that are provided over modern networks should be included in that definition. Taxing Entities and Taxpayers introduced expert testimony on the topic. Taxing Entities presented the expert testimony of Joe Moss, II, who is a professional engineer. The Court qualified him as an expert in the area of telecommunications. Mr. Moss has over thirty-seven years of experience in his field, including experience with landline telephone networks and wireless cellular networks. The Court found him to be very credible. On behalf of Taxpayers, George Wyatt, a professional engineer, was also qualified in the area of telecommunications. Mr. Wyatt also had experience in the telecommunications industry, but the Court found his testimony to be less convincing than Mr. Moss’s.⁷

Mr. Moss explained that rural telephone service, as with any telephone service, “is providing service—voice service over a landline network that’s . . . routed to the public switch telephone network.” In 1980, telephone service meant “just voice service” and consisted of a device the user spoke into that was routed to the public switch telephone network and allowed communication with another user.⁸ But, despite changes in technology since the 1980s, the telephone industry’s definition of telephone service remains grounded in the service that is provided—voice communication—rather than the technology used to deliver it. For example, a smart phone is a telephone when it is used for voice communication although it can now be used

⁶ This issue is a mixed question of law and fact because the statute that uses the term “telephone service” was enacted in 1978, a time when what constituted “telephone service” was much different from today’s telephone service from a technological perspective. Thus, while the Court recognizes the importance of the factual inquiry into the definition of “telephone service,” the Court must also engage in statutory construction to try to ascertain the intent of the legislature in 1978 as applied to future technologies.

⁷ Overall, I find Mr. Moss was more convincing and credible than Mr. Wyatt based upon the breadth of knowledge, detail, and candor with which he testified.

⁸ Mr. Moss further explained that in 1980 there were some specialized services that could be provided over the voice network, which included a fax line or a burglar alarm. These were known as “special circuits.” However, the primary function of the network was to provide voice services.

for many other things because of advances in technology. Therefore, both a landline telephone and a wireless telephone that provide voice communication from one user to another over distance provide telephone service.

Nevertheless, the more difficult question is whether telephone service includes the transmission of non-voice-related data. After 1978, providers of landline telephone service began adding other services, including call forwarding, call blocking, and caller ID. These services appear to be directly related to voice communications, but they are not actually voice communications. Currently, telephone service providers are also providing services such as internet access and streaming video services like Netflix. These services do not involve voice communications and are also available through smart phones. However, as explained by Mr. Moss, telephone service is defined in the industry by its application or the purpose for which is being used. Thus, since streaming video services like Netflix, etc., do not provide voice communication, they are not within the industry's definition of "telephone service."

Types of Telephone Carriers

Farmers and FTCC are classified as "incumbent local exchange carriers" or ILECs. South Carolina law defines an ILEC as "a telecommunications company . . . which provide[s] local exchange service⁹ pursuant to a certificate of public convenience and necessity issued by the commission before July 1, 1995 or operating as a local exchange carrier before that date pursuant to commission authority, to provide local exchange service within a certificated geographic service area of the State." S.C. Code Ann. § 58-9-10(11) (2015). By virtue of its status as the incumbent, an ILEC receives some protections from competition, but it also has certain obligations and duties under the Federal Telecommunications Act of 1996 and under state law. An ILEC can only operate within its designated territory.

⁹ Under South Carolina law, "basic local exchange telephone service" means "for residential and single-line business customers, access to basic voice grade local service, access to available emergency services and directory assistance, the capability to access interconnecting carriers, relay services, access to operator services, and one annual local directory listing (white pages or equivalent)." S.C. Code Ann. § 58-9-10(9).

An ILEC is also a “carrier of last resort,” which means it is a “facilities-based local exchange carrier . . . which has the obligation to provide basic local exchange telephone service, upon reasonable request, to all residential and single-line business customers within a defined service or geographic area.” S.C. Code Ann. § 58-9-10(10) (2015). A carrier of last resort may meet its obligation “by using any available technology of equal or greater service quality than is required by applicable commission regulations . . . including, but not limited to, the provision of a broadband connection that allows the customer to access basic voice grade local service from the carrier of last resort or other available voice provider of the customer's choice.” *Id.*

In contrast, Diversified is classified as a “competitive local exchange carrier” or CLEC. A CLEC is a carrier that receives a certificate of public convenience from a state commission authorizing it to operate in a particular geographic area in the state. Because a CLEC is not the incumbent, it does not have the same obligations and duties to provide certain services that an ILEC provides. Additionally, a CLEC can operate in any territory—including an ILEC’s territory—in which the state has authorized it to operate. Diversified was created as a CLEC to fill in certain donut holes in Farmers’ ILEC territory. It is possible for a CLEC to also be designated as a carrier of last resort. *Office of Regulatory Staff v. S.C. Pub. Serv. Comm’n*, 374 S.C. 46, 62, 647 S.E.2d 223, 231 (2007).

Receipt of Universal Service Funds

The Universal Service Fund (Federal USF) was established pursuant to the Telecommunications Act of 1996 and was “intended, in part, to promote an initiative of universal service” that “would ensure access to basic telephone service at affordable rates for all Americans.” *Office of Regulatory Staff v. S.C. Pub. Serv. Comm’n*, 374 S.C. 46, 50–53, 647 S.E.2d 223, 225–27 (2007). The Federal USF requires that “[e]very telecommunications carrier that provides interstate telecommunications services shall contribute . . . to preserve and advance universal service.” 47 U.S.C. § 254(d) (West). In practice, this means a fee is assessed on every telephone line and remitted to the federal government to be redistributed to subsidize providers serving high cost areas. “The [Federal Communications] Commission may exempt a carrier . . . from this

requirement if the carrier's telecommunications activities are limited to such an extent that the level of such carrier's contribution to the preservation and advancement of universal service would be de minimis.” 47 U.S.C.A. § 254 (West).

The Telecommunications Act of 1996 also gave states “authority to adopt their own approaches for encouraging universal service.” *Office of Regulatory Staff*, 374 S.C. at 50–53, 647 S.E.2d at 225–27. Accordingly, the General Assembly authorized the South Carolina Public Service Commission (SCPSC) to establish a state universal service fund (State USF). *See* S.C. Code Ann. § 58-9-280(E) (2015 & Supp. 2019). The State USF is available to carriers in South Carolina who undertake the obligations of being a “carrier of last resort.” *Id.*; *Office of Regulatory Staff*, 374 S.C. at 62, 647 S.E.2d at 232. Pursuant to section 58-9-280(E)(3), the SCPSC must require wireless carriers to contribute to the State USF if it determines the wireless carriers compete with basic local exchange companies for local telephone service.

Both Farmers and FTCC are carriers of last resort that receive USF funds from to assist them provisioning service in high-cost areas. FTCC was the first provider to receive high cost support through the Federal USF and the SCPSC for wireless telephone service.

Role of Rural Telephone Cooperatives

Rural telephone cooperatives have historically filled the need for telephone service (universal service) in rural communities where it was too cost prohibitive for larger, national telephone companies to do so. Consistent with this purpose, Farmers was established as a rural telephone cooperative with a mission to provide telephone service to underserved, rural areas. Importantly, Farmers Entities allow people in the communities they serve, including anyone driving through Farmers’ service area, reliable access to emergency services. Farmers has customers who have landline or wireless service solely for emergency purposes.

Having reliable access to the voice telephone network has been mandated by the Federal Communications Commission (FCC). This mandate is known as the “Five Nines of Reliability” and requires that the network be available 99.999% of the time. To meet this level of reliability, the Farmers Entities’ network prioritizes voice traffic. This means voice traffic travels through the

system first, data moves second, and television is third. Putting voice through first ensures emergency services are always available.

Farmers Entities' Network, Services, and Assets

Farmers

Farmers provides rural telephone service in Williamsburg, Clarendon, Sumter, and Lee Counties, as well as portions of Florence County. It is organized as a nonprofit that is owned by its members who purchase services from the cooperative. It serves rural, high-cost areas and receives substantial funding from the USF.

When the Rural Telephone Service Exemption was enacted in 1978, Farmers provided voice telephone service to rural communities through analog technology, mechanical switching, and copper wires or POTS. As technology and consumer demands evolved, Farmers upgraded its network to provide new telecommunication services in addition to POTS. Specifically, in the mid-1990s, Farmers began offering dial-up internet access over its telephone network. Then, in the early 2000s, Farmers began offering security services to its members. Around 2011 it added television services.

Farmers' core network is a well-designed, modern telecommunications network that has been built to meet the "five nines of reliability" requirement. Farmers' core network consists of copper wires and fiber optic cables that connect different transport routers and access routers.¹⁰ The network also contains several tandem locations, which are physical locations containing equipment that connects the local exchange network to the public switch telephone network. Landline voice traffic is routed by the tandems to the public switch network through a "soft switch" or "Metaswitch" that Farmers leases from Horry Telephone Cooperative. Mobile voice traffic is routed on the network to the public switch network through the mobile telephone switching office or "MTSO" owned by AT&T.

¹⁰ Approximately 68--70% of the Farmers core network is still copper. Diversified's network is approximately 90% copper and only 10% fiber-optic cable.

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.¹¹

FTCC

FTCC was organized as a limited liability company in South Carolina on July 1, 2009. It is a wholly owned subsidiary of Farmers. FTCC serves small, rural communities. FTCC has “eligible telecommunications carrier” or “ETC” status with the FCC and the SCPSC, a status that is reserved for providers who serve rural, high-cost areas. FTCC receives support for wireless telephone service through the USF with the approval of the SCPSC.

In 1994, FTCC began to resell wireless services under the umbrella of Bell South Mobility. In approximately 2000, FTCC contracted with AT&T to provide wireless services and, at that time, began building its own independent wireless network. Its wireless services contain two components: voice service and data service. As part of the voice services, a FTCC customer can place and receive telephone calls within FTCC’s territory or anywhere the customer has access to an AT&T network. FTCC now provides wireless cellular service, operator service, and answering services. Within its service area, FTCC has approximately 23,000 voice telephone access lines.

FTCC’s wireless network depends upon the Farmers’ core landline network to operate. Wireless voice traffic on the core network is routed to the public switch network by the MTSO.

FTCC has applied for the tax exemption for assets used in providing wireless rural telephone services, including, but not limited to, the following: wireless towers (including monopole structures, lattice structures, and guidewire structures throughout the wireless network), radios and antennas connected to the towers, and banks that house various electronic elements used in bringing the wireless signal to a mobile telephone switching office.

¹¹ Farmers and Diversified both provide Internet Protocol Television (IPTV) service, which provides the type of television services that most consumers equate with “cable TV” but which is provided using a different type of technology—an internet protocol transmission path over the Farmers network rather than a coaxial cable (as used by most cable television companies).

Since the settlement between Farmers and the Department in 2017, FTCC has segregated the following assets as non-exempt and claims no exemption for them: platforms that provide for operator and answering services.

Diversified

Diversified was organized as a limited liability company in South Carolina on July 1, 2012. It, too, is a wholly owned subsidiary of Farmers.

Diversified was founded in 2001 as a CLEC to provide landline telephone service in certain “donut hole” areas within the geographic ILEC footprint of Farmers but where Farmers is not the ILEC. Like Farmers, Diversified provides landline telephone service, but it also provides internet, television, and security services.

Diversified owns a separate landline system consisting of copper, fiber-optic cable, routers, and other equipment. However, Diversified’s network ultimately connects to, and utilizes, Farmers’ core network in order to provide its telephone services. It has more telephone service accounts than television, internet, or security service accounts. Specifically, as of December 31, 2017, Diversified had approximately 7,067 telephone service accounts versus approximately 4,325 internet accounts, 1,832 television accounts, and 851 security services accounts.

Diversified has applied for the Rural Telephone Service Exemption for its landline assets, which are the same type of assets Farmers claims. Since the settlement between Farmers and the Department in 2017, Diversified has segregated the following assets as non-exempt: internet service provider equipment and the head end for IPTV.

Measuring the Relative Use of the Network

The parties introduced competing methods for measuring the relative use of the Farmers Entities’ network for voice telephone services compared to other services, such as video-streaming. The methods include minutes of use, bandwidth, cost, and revenue.

Minutes of Use

The Farmers Entities advocate for using “minutes of use” to quantify the relative use of the network for voice traffic. “Minutes of use” is a term of art in the telecommunications industry that

is used to measure ability of the network to efficiently divide its limited number of connections between a certain number of subscribers. Most telephone networks—both landline and wireless—are designed and built based on the network’s anticipated minutes of use to ensure that the network is available to all users no matter how long one user may stay on the line (that user’s minutes of use). This measure helps explain why networks are concerned with being available 99.999% of the time for any given user.

The Farmers Entities used, and still use, minutes of use to help them design a network that meets consumer demand for voice traffic during peak times. Farmers’ engineers review minutes of use reports on a weekly basis to determine whether Farmers needs to make adjustments to meet capacity and maintain the mandated high reliability of its landline network.

Thus, in the past, the greatest limiting factor to networks was the number of fixed connections and time-use; to grow a network, additional telephones required additional connections. However, because modern networks now utilize fiber-optic cables that have a much greater capacity to transfer data over the network (bandwidth), the number of subscriber lines and connections are not the only limiting factor; the network is also constrained by the amount of bandwidth available. Accordingly, “minutes of use” is no longer an appropriate measure of how a modern network like the Farmers Entities’ network is being utilized, particularly when the network is being used for non-telephone services that are not measured using minutes of use.

Bandwidth

Taxing Entities argue bandwidth is the only appropriate measure of the utilization of the Farmers Entities’ network. As discussed above, bandwidth refers to the data transfer rate of information transmitted through the network. Because data on packet-switched networks consists of bits, bandwidth is usually stated as bits per second, such as kilobits per second, megabits per second, or gigabits per second.¹² Bandwidth is the industry standard for measuring the capacity

¹² According to Mr. Moss, the transport of information across a network is measured in “bits per second.” He further explained that while the transport of information is measured in bits, the content made up of that information (like a movie) is typically measured in “bytes.” Eight bits make up a “byte.”

of modern, packet-switched networks. Data usage over modern networks is typically measured by the total amount of data (measured in kilobytes) that is sent and received by a particular subscriber, without any consideration for how long any piece of network equipment, such as a television or a laptop computer, is in use.

Using the data provided by Taxpayers, Mr. Moss analyzed the entire Farmers Entities' network in the aggregate to estimate the percentage of overall network utilization (measured by bandwidth utilization) that was attributable to voice telephone services versus all other services in 2018.¹³ Based on his calculations, in 2018 approximately 0.45% of the network's bandwidth was attributable to voice traffic. Applying that calculation to industry trends and growth rates relating to bandwidth utilization for North America from 2010–2017, the voice utilization of the network from 2010–2017 was as follows: 4.75% (2010), 3.16% (2011), 2.19% (2012), 1.08% (2013), 1.32% (2014), 1.01% (2015), 0.83% (2016), and 0.64% (2017).

Mr. Moss's calculations show that less than 5% of the Farmers Entities' overall network utilization was attributable to voice for any of the tax years in dispute. His findings established a clear downward trend towards less and less utilization of the network for voice services over time. This trend is consistent with Taxpayers' internal records, which confirm that despite slow or negative growth in the number of subscribers during the years in dispute, the demand for data services continued to grow aggressively.

Because of the difference in the way voice traffic and data are traditionally calculated (minutes of use versus bandwidth), it is difficult to find a common denominator to accurately compare the two within the same network. To use a simple metaphor of a train carrying data, a two-hour phone call might need one train car full of data to carry the message for the whole two

¹³ Taxpayers also calculated voice traffic using bandwidth but only for FTCC. However, Mr. Moss testified, convincingly, that these calculations were flawed due to Taxpayers' failure to properly convert bits to bytes. Because a byte is made up of eight bits, a failure to convert a sum of bits to bytes in the denominator would understate the amount of data in the denominator by a factor of eight, significantly skewing the percentage of data attributable to voice services. After correcting for this conversion error, Mr. Moss testified that the percentage of network utilization attributable to voice services (for FTCC only) was 73.07% for 2010; 36.9% for 2011; 20.9% for 2012; 11.96% for 2013; 6.99% for 2014; 4.24% for 2015; 4.84% for 2016; 2.96% for 2017; and 1.94% for 2018. Even using Taxpayers' calculations, the relative use of the network for voice is low and shows a clear downward trend.

hours, but meanwhile, thousands of train cars full of data for other services traveled the same distance in two minutes. Therefore, even if the phone was in use for two hours, it was not taking up as much space (in this case, bandwidth) on the network, it was just taking up more time. It is hard to compare the two trains, but 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.

Cost

Another way to measure the use of the network is to determine what portion of property (infrastructure) is used to provide telephone service and determine the cost of that portion of the property. This is the way the Department currently assesses rural telephone cooperatives. Specifically, the Department uses the unit valuation method¹⁴ and the cost approach to value (based on the gross investment value) to apply an assessment ratio. The Department then certifies the assessed amount to the appropriate county auditor(s) so that they can attach their local millage rate and bill the taxpayer accordingly. The Department indicated it has begun to reevaluate how it values multi-use property and whether it should incorporate the revenue/income approach in assessing the property of rural telephone cooperatives. Nevertheless, the Department currently has no policy or procedure regarding this issue.

The cost method makes up for a flaw in using bandwidth and minutes of use to calculate “use” —failure to take into account the fact that the bulk of the Farmer Entities’ equipment and property would still be needed to provide voice telephone service even if data services, such as TV and Internet, were eliminated. After all, we are dealing with a **property** tax exemption, not a time exemption or a bandwidth exemption. Even if many of Taxpayers’ customers are not using their phones except for emergency services (and thus would have only de minimis minutes of use or

¹⁴ The unit valuation concept is a method of valuation that takes into account the value of an entity’s entire property as a whole operating unit, regardless of where the property is located. *CSX Transportation, Inc. v. S.C. Dep’t of Revenue*, 851 F.3d 320, 323 (4th Cir. 2017). The unit valuation method is useful in valuing the property of companies whose systems are integrated and spread over multiple taxing and assessment districts, and the Department uses this method to value property owned by telecommunications companies, power companies, water and sewer systems, pipelines, and railroads.

bandwidth on the network), the majority of Taxpayers' assets are still being used to provide the ability to access rural telephone service when needed.

Indeed, if Diversified ceased to provide IPTV, internet, and security services, the components of the landline system that exist would still be needed. As Mr. Moss explained, if a telecommunications system reconfigured itself today to provide only voice landline services, it would utilize much of its existing equipment and remain configured much in the same manner. Based on the expert testimony, the Court finds that if the Farmers Entities were to build a landline-only telephone network, that network would be similar to the current Farmers Entities' network. Specifically, a landline-only network would utilize much of the same equipment, be placed in the same geographic locations, and would have evolved to fiber-optic.

Nevertheless, some costs could be saved if a carrier only provided voice telephone services because the network would not need as much capacity. Unfortunately, although Mr. Moss and Farmers' CEO offered some opinions on this subject, the evidence presented did not specifically explain the cost of a voice-only network. Mr. Moss estimated the cost of building a landline-only network would be, "off the top of [his] head," between fifty to sixty percent cheaper. Mr. Moss also testified the incremental cost to build a telecommunications network (which could provide the additional "non-telephone" services the Farmers Entities provide) on top of a basic, voice-only network would be approximately 30–40%, although he conceded that giving such a figure was difficult because it is hard to quantify with so many moving parts. Furthermore, Mr. Moss explained that, in constructing a voice-only network, a landline provider could replace a 10 gigabit per second line card with one 1 gigabit per second capacity for cost-savings. However, Farmers' CEO testified that such a network would require at least two 1 gigabit cards, which would cost more than one 10 gigabit card.

Overall, although Mr. Moss's conclusions were estimations, the Court finds the cost of building a landline-only network with lower capacity equipment would be significantly lower than (1) the cost of the current network (with all its attendant services) or (2) scaling up an existing network.

Revenue

Another way to measure relative use of the network is to determine how much revenue each service produces. For example, in fiscal year 2017, FTCC's revenue associated with voice services accounted for approximately seventy-five percent of its total revenue, and Diversified's revenue associated with voice services accounted for approximately fifty-eight percent of its total revenue. Thus, it would appear subscriptions for voice services are FTCC's and Diversified's greatest source of revenue. However, although this type of revenue information seems probative on the surface, Taxpayers' financial records only establish how Taxpayers bill their subscribers and bundle their services, not how Taxpayers physically use their property. For example, through most of the tax years in dispute, Taxpayers required every subscriber to have a landline telephone in order to subscribe to internet access, even if the customer never used the landline or did not want the service. This practice artificially inflates the revenue (as a proxy for use) coming from voice subscribers. Furthermore, Taylor Ingram,¹⁵ who reviews utility returns for the Department, explained that the income approach is not necessarily a good way to measure rural telephone cooperatives because, generally, profitability is not their primary goal.

Farmers' Tax Exemption History

Farmers, Taxpayers' parent company, has claimed the Rural Telephone Service Exemption since its inception. Moreover, Farmers has always claimed 100% of its assets as exempt. Each year, Farmers, like other telephone companies and cooperatives, files a property tax return with the Department that consists of the main utility property tax form (PT-420), along with either a Form PT-427 and/or a Form PT-429. Farmers filed all three forms for the tax years at issue. The PT-427 and PT-429 are distribution forms that list out the taxpayer's gross investments by county and taxing district, which the Department uses to determine the distribution of the taxpayer's assets across counties and taxing districts. In addition to the PT forms, Farmers and other telephone

¹⁵ Taylor Ingram is an appraiser for the Department and has served as the utility assessment coordinator since 2006. He testified in his individual capacity as well as a 30(b)(6) witness on behalf of the Department. By agreement of the parties, Mr. Ingram's Rule 30(b)(6) testimony was presented by way of deposition designations. Mr. Ingram oversaw the tax return process for FTCC and Diversified for tax years 2010–2017.

companies file copies of their annual reports to the SCPSC, which include an itemization of regulated assets (to include landline assets) and non-regulated assets (to include cable, wireless, and internet assets). The Department utilizes the SCPSC report to cross-reference the gross investment amounts for landline assets that have been reported as exempt assets on the property tax return.

On the front of Form PT-420 the Department requires that:

[t]he following information, where applicable, *must* be filed with the Office Audit Section prior to April 30 annually, after which an appropriate penalty will be applied as provided by law.

* * *

5) A **complete explanation** of the method used to determine exempt property when applicable.

(emphasis added). The PT-420 has contained this same instruction and language for every tax year at issue.¹⁶

Additionally, the PT-429 has a column titled “Exempt property (Leave Blank).” Farmers left this column blank on its PT-429’s. However, Farmers identified one row of property as “Rural Property.” Mr. Ingram testified the exempt column is for the Department’s use; however, on Farmers’ 2011 PT-429, the Department did not write in the column and, instead, wrote “Exempt” in the margin next to the row labeled as “Rural Property” on the PT-429. Thus, the Court finds nothing on the tax forms submitted by Farmers identified certain property as exempt.

Nevertheless, although Farmers’ returns do not specifically demarcate which assets are exempt or non-exempt, the Department has allowed Farmers to continuously claim the property tax exemption, in part because Farmers has historically received the exemption. Thus, the Department has always allowed Farmers to claim the exemption and has always interpreted Farmers listing certain property as “rural” on its tax return to indicate it was claiming the exemption for that property.

¹⁶ Curiously, this particular requirement on the front of the PT-420 was not discussed by the parties at trial.

The Rural Telephone Service Exemption Application

Utilities file property tax returns on an annual basis and are annually appraised and assessed by the Department. The Department does not provide a specific application form for the Rural Telephone Service Exemption or any of the exemptions related to utility property taxes. Historically, only a small number of companies receive the exemption. There are only six rural telephone cooperatives¹⁷ and approximately twenty rural telephone companies that routinely receive the Rural Telephone Service Exemption in South Carolina. Indeed, until this case, Mr. Ingram had never had a company apply for the Rural Telephone Service Exemption that was not already receiving the exemption. Thus, the Department has primarily relied on historic precedent rather than an application to administer the Rural Telephone Service Exemption. Nevertheless, as Mr. Ingram explained, although Taxpayers filed their original returns the same way as Farmers, he would not have interpreted Taxpayers' filings to be an application for exemption since "the process would be different because Farmers Telephone Cooperative would have been included in the companies that had a rural telephone exemption for years."

Taxpayers' Original Tax Returns

The original tax returns submitted by Taxpayers for tax years 2010-2016 consisted of a PT-420, PT-427, and SCPSC Report. Therefore, unlike Farmers, Taxpayers did not include a PT-429. Taxpayers thus filed their original returns using a form that, unlike the PT-429, does not have a column for exempt property. Moreover, Taxpayers did not include the word "exempt" anywhere on their original returns or within the documents attached to the returns. Nor is there any indication that an exemption was being applied for, claimed, or requested using alternative language on the returns or in the attachments. However, similar to Farmers, Taxpayers listed some of the property on the PT-427 as "Rural." Although Taxpayers claim that there is significance to identifying

¹⁷ The Telephone Cooperative Act, S.C. Code Ann. §§ 33-46-10 *et seq.*, defines a "telephone cooperative" as a "corporation which is financed . . . in whole or in part by the Department of Agriculture under the provisions of the Rural Electric Act of 1936 . . . for the purposes of owning or operating in this State equipment or facilities for the transmission of intelligence through a communication service system including, but not limited to, telephone service, mobile radio, and cable television on a cooperative basis . . ." S.C. Code Ann. § 33-46-20(4).

property as “rural,” FTCC identified some property as “rural” on its original 2010 and 2011 returns when it admits it was not claiming the exemption.

Indeed, when Mr. Ingram reviewed Taxpayers’ original returns before Taxpayers protested, he did not interpret those returns to be claiming a property tax exemption. In response to a question about FTCC’s original 2011 tax return, Mr. Ingram testified that “[u]pon receipt of this return, there would have been no indication that they were asking for any sort of exemption on any property.” When he was asked more specifically about the identification of certain property as “rural,” Mr. Ingram convincingly explained that the mere inclusion of the word “rural” on Form PT-427 was insufficient to claim the Rural Telephone Service Exemption. In fact, despite Taxpayers filing their returns similarly to Farmers’ returns, Mr. Ingram would not have given them the exemption “unless there was some sort of correspondence letting me know they’re requesting the exemption.” Essentially, Taxpayers’ original returns for tax years 2010-2016 were insufficient to inform the Department that an exemption was being claimed.

Taxpayers’ Amended Returns

As part of the Settlement Agreement, the parties agreed FTCC and Diversified would submit amended tax returns for tax years 2010-2016 that identified the **now agreed upon** categories of exempt and non-exempt assets so the Department could re-assess the property appropriately. However, neither FTCC nor Diversified filed complete amended returns but rather filed amended PT-427s.¹⁸

The amended returns for FTCC and Diversified differ from the original returns filed by Taxpayers because the amended returns segregate property by different categories. For example, on FTCC’s amended 2010 return, property is split into two categories based upon the heading at the top of each page of the PT 427. These headings are “Wireless-Exempt” and “FTD.”¹⁹ Despite the “Wireless-Exempt” heading, FTCC did not intend to claim all of the properties listed in this

¹⁸ Mr. Ingram testified in his deposition that a full tax return includes both the PT-420 and the PT-427 (he did not mention the SCPSC Report).

¹⁹ Mr. Ingram testified at his deposition that he was not sure, but he thought FTD stood for Farmers Long Distance.

category as exempt and thus failed to identify the property for which it was seeking an exemption. Interestingly, in the margin next to some of the properties listed under “Wireless-Exempt,” the Department wrote “E’s” with a circle drawn around them to identify what properties it believed were being claimed as exempt.²⁰ These hand-written, circled E’s correspond with select properties under the Wireless-Exempt heading that FTCC also designated as “rural.” Also of note, under the FTD heading, some properties were likewise listed as “rural,” but were not being claimed as exempt and do not have an encircled E next to them.

Without the Department’s E’s written in the margin, FTCC’s 2010 amended PT-427 does not set forth which properties listed under the “Wireless-Exempt” heading are being claimed as exempt. Indeed, someone looking at the amended PT-427 would most likely assume, incorrectly, that all the properties listed under the “Wireless-Exempt” heading were being claimed as exempt when only the properties that were also identified as “rural” were being claimed as exempt.²¹ FTCC’s amended returns for tax years 2011-2016 are similarly filled out, as are its original returns for tax years 2017-2018. I find that only a reviewer with outside knowledge of the parties’ properties and intentions could discern which properties were being claimed as exempt on FTCC’s returns.

Surprisingly, Diversified’s amended returns for tax years 2013-2016 have even less specificity. Unlike FTCC’s amended returns, Diversified’s amended returns for tax years 2013-2016 do not include any headings with the word “exempt.” In fact, the word “exempt” does not appear on the amended PT-427s, nor is there any alternative language alluding to an exemption being claimed. Rather, Diversified segregated the properties listed on its PT-427 using headings

²⁰ Mr. Ingram testified the Department made the E notations next to certain lines of property under the Wireless-Exempt headline and these notations identified the properties under that heading which were actually exempt. Specifically, he stated the E’s were “something that we [the Department] would have internally written based on the information that came out in the Settlement Agreement.” Mr. Ingram further confirmed that anything written in the margins of the returns would have been added by the Department.

²¹ In his deposition, Department employee Charles Brewer examined the original and amended tax return for FTCC for tax year 2010. In comparing the two tax returns, he agreed that some property designated as “rural” fell under the non-exempt FTD heading. His testimony revealed the designation of “rural” on the tax return does not always indicate exempt property contrary to Taxpayers’ argument.

such as “Voice,” “ISP,” “WiFi,” etc. Diversified used the same headings on its original 2017 tax return. Mr. Ingram explained that the denotation of “Voice” at the top of the PT-427 on Diversified’s amended returns was unclear, although he thought the Department probably would have interpreted it as “landline telephone service.” He further confirmed the Department wrote an “E” next to certain lines of property in the “Voice” category based, in part, upon the Settlement Agreement even though the Settlement Agreement called for the specific designation of exempt properties. Therefore, it appears the Department assumed that property listed under the “Voice” heading represented property used for landline telephone service, and any properties also listed as “rural” under “Voice” were entitled to the exemption.²² Properties listed under the other headings were interpreted to be non-exempt.

Then, in tax year 2018, Diversified submitted an original PT-427 in which it included a “Voice-Exempt” heading, but like FTCC’s amended tax returns, only the properties also listed as “rural” under this heading were actually intended to be exempt.

The Department’s Interpretation of the Rural Telephone Service Exemption

The Department interprets section 12-37-220(B)(10) to provide that the percentage of property that can qualify for the Rural Telephone Service Exemption cannot exceed the percentage of property that qualified for the exemption in 1973 for that particular taxpayer. Accordingly, when reviewing the tax returns for rural telephone cooperatives each year, the Department’s practice has been to apply the same percentage that was applied the year before, resulting in the same percentage being carried forward year after year. Historically, the Department has exempted 100% of Farmers’ property. However, although the Department continues to exempt 100% of Farmers’ property in rural areas, the Department does not have any record of why Farmers was

²² In his deposition, Mr. Ingram clarified that with respect with the E’s written in next to some of the property designated as “rural” on the amended returns, even when no heading indicated an exempt property was being listed, he knew to mark certain property as exempt based on “the context of the previous tax years and per the Settlement Agreement. We would have known to look for the rural property in this particular tax year.” However, the Settlement Agreement called for specificity on the amended tax returns.

permitted to claim 100% of its assets as exempt or what property Farmers owned on December 31, 1973, nor was that information provided to the Department by Farmers.

Furthermore, prior to this case, the Department never addressed the issue of whether wireless assets are exempt under the Rural Telephone Service Exemption or to what extent multi-use property must be used to provide rural telephone service in order to qualify for the exemption.²³ In fact, the Department's staff initially determined wireless assets are not exempt. Furthermore, it has not been the Department's practice to ask taxpayers who are applying for the Rural Telephone Service Exemption to prorate mixed-use or dual-use assets. Similarly, the Department has not required taxpayers to provide information regarding whether property is being used exclusively or primarily for the exempt purpose (level of use).

The Department's Interpretation of "Department Determination"

The Department's staff maintains only the Department's Office of General Counsel for Litigation can prepare a department determination. The Department's staff also describe a settlement agreement as a mutually created document memorializing an agreement between the Department and a taxpayer. Further, they contend a settlement agreement can be entered into without a department determination ever being issued. The Department's staff assert a property tax assessment certification is only a statement sent from the Department's property division to a county conveying information to assist the county in calculating the taxes owed by a taxpayer.²⁴ Therefore, the Department does not consider either property tax assessment certifications or settlement agreements to be department determinations. Accordingly, the Department's staff does

²³ It appears there were two primary issues of concern for the Department: whether the *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011), applied to the Farmers Entities for purposes of the Rural Telephone Service Exemption, and, if it did, whether wireless assets qualified for the exemption.

²⁴ On October 8, 2018, the South Carolina General Assembly enacted Act 265, which amended county notification procedures. The Department must now provide notice to all county auditors, treasurers, assessors, and county administrators regarding any request for a refund, protest of a property tax matter (not involving individual exemptions), or department determinations. S.C. Code Ann. §§12-60-450(E)(4), 12-60-2120(A) and (B), §12-60-2150(B). In the case of a refund request or department determination, the county auditor is then required to notify other affected taxing entities. S.C. Code Ann. §12-60-2150(B); and S.C. Code Ann. §12-60-450(E)(4). However, none of these statutory amendments have changed the Department's view that settlement agreements are not department determinations and counties have no right to appeal settlements.

not consider the Supplemental Certifications issued in this case (which Department staff referred to as final assessment certifications) to be subject to an appeal to the ALC.²⁵ However, none of the staff's interpretations have been formally memorialized by the Department.

Interaction Between the Department and Counties

General Practice

According to the Department, its Property Division does not send a formal department determination to counties concerning the grant or denial of an exemption application for utility companies. Instead, the Property Division notifies counties of exemption decisions through its certification of the property tax assessment for each utility company (the certified assessment factors the exemption decision into the assessed amount). However, under the facts of this case, the Department's certification is the final decision in the Department's review of the utility's property tax return assessment and exemption request.²⁶

The annual certified assessment is the document counties use to issue property tax bills to utility taxpayers. Pursuant to South Carolina law, the Department forwards its certified property tax assessments to the taxing authorities no later than August 15th of the applicable tax year. S.C. Code Ann. § 12-37-970 (2014). The Department complies with this requirement by mailing the annual utility certifications in early August to every county in which each utility company operates.

Although the Department adheres to the statutory August 15th deadline, they do not adhere to the statutorily required June 1st deadline to notify counties of property exemption decisions related to manufacturers or utilities. *See* S.C. Code Ann. § 12-4-710 (2014). The Department disregards that deadline because the Property Division receives hundreds of filings in late April or early May each year,²⁷ and it would be impossible for the Property Division to review the returns,

²⁵ In fact, it is referred to by the Department as a final assessment certification.

²⁶ The Court recognizes there may be instances in which the Department specifically issues a final decision and, thus, the certification in those instances would not be the Department's final decision.

²⁷ The assessment for property taxation is determined from information on the property tax returns submitted by the taxpayer on or before the last day of the fourth month after the close of the accounting period regularly employed by the taxpayer for income tax purposes. S.C. Code Ann. § 12-37-970. According to the Department staff, most utilities

render an opinion of value for an appraisal, issue a proposed assessment, and then certify that assessment to counties within a three to four-week period.

The Department generally sends its correspondence, including notices of a taxpayer protest, to the county auditor, who it understands to be the county representative for property tax purposes. If a taxpayer protests an assessment, the Department will send the County Auditor a memorandum containing information about the taxpayer and indicating a protest has been filed, but the memorandum usually does not include an explanation for the protest. It has not been the Department's practice to include in these memoranda the details of whether the dispute is over valuation or exemptions, or the specific dollar amount that is in dispute.

This Case

In this case, once the Department received Taxpayers' protest, the Department sent a memorandum to each County Auditor indicating that FTCC and/or Diversified had protested the assessment. Notably, the memorandum included a copy of Taxpayers' letter of protest, which provided a more detailed explanation of the nature and basis of the protest and appeal. The memorandum also included a revised assessment for 80% of the assessed value and advised the County Auditor that he would receive a final assessment certification from the Department once the protest was resolved. The Department sent this memorandum to each County Auditor for each tax year at issue.

Although county auditors were notified of the protests, the Clarendon County Auditor did not pass this information on to Clarendon County's CFO.²⁸ Importantly, the CFO's role, in part, is to develop the County's budget. In that role, the CFO projects each year's budget based on historical data from the year before and historical trends. In other words, the CFO examines the revenue collected in prior years and prior expenditures to project what the revenues and expenditures will be for the county in the coming year. As for projected revenue, the CFO relies

and manufacturers have a calendar accounting period that closes on December 31, so their property tax returns are not due under law until April 30th of the following year.

²⁸ The testimony on the county budget process came from the CFO for Clarendon County, and the Taxing Entities presented no other fact witnesses (such as an auditor or CFO for any other county).

on what the county has “collected in the prior year and in years past.” As for refunds, the county relies “almost exclusively” on its historical refund activity.

Clarendon County’s Budget Process

Clarendon County’s CFO testified 75% of Clarendon County’s annual budget is funded from ad valorem property tax revenues. These tax revenues account for a majority of Clarendon County’s total annual budget. Clarendon County is required to have its budget finalized by June 30th of each year. Finalizing the budget is an extended process, which spans approximately four months, three council readings, and a public hearing. The CFO testified that without a finalized and effective budget beginning on July 1st, Clarendon County would be without authorization to contract for goods and services and would, thus, be incapable of making many needed operational decisions throughout the year. He further testified that, had the Department timely notified Clarendon County about the property tax exemption, Clarendon County would have been able to revise and adjust its budget prior to it being finalized.

Notification to the Counties

The respective county auditors for Clarendon County, Florence County, Lee County, Sumter County, and Williamsburg County received notice of the Settlement Agreement in a memorandum from the Department dated June 14, 2017. Thereafter, in memorandums entitled “Utility Appeal Resolution Certification[s]” and dated July 6, 2017, the Department advised Clarendon County, Florence County, Lee County, Sumter County, and Williamsburg County that, in relevant part:

Per the signed settlement agreement, both [FTCC and Diversified] will now be subject to the rural telephone exemption just as [Farmers] has been in years prior. . . . Please use the following assessments when billing these companies for tax years 2010 through 2016, and in doing so take careful notice of the “exempt” or “non-exempt” clarification on each line item. If the assessment is labeled as “exempt,” then the corresponding assessment is exempt from the county portion of the millage. If the assessment is labeled as “non-exempt,” then the corresponding assessment is subject to all millage for billing purposes.

To each respective County's memorandum, the Department attached the "Utilities Supplemental Certification[s]" (Supplemental Certifications) for FTCC for tax years 2010-2016 and for Diversified for tax years 2013-2016. Based on the Supplemental Certifications, Taxpayers had substantial overpayments for each tax year in question which the counties are required to refund.

ISSUES

1. Whether Taxing Entities have standing to contest the Settlement Agreement and/or the Supplemental Certifications.
2. Whether Taxpayers' property qualifies for the Rural Telephone Service Exemption for tax years 2010 through 2018.
3. Whether Taxpayers properly applied for the exemption.
4. Whether the Department's granting of the exemption was illegally retroactive.

CONCLUSIONS OF LAW

I make the following conclusions of law based on a preponderance of the evidence.

Standard of Review

The hearing before the ALC is a contested case hearing and is heard **de novo**. *Marlboro Park Hosp. v. S.C. Dep't of Health and Envtl. Control*, 358 S.C. 573, 579, 595 S.E.2d 851, 854 (2004). This Court must make its factual findings based on the preponderance of the evidence. See S.C. Code Ann. § 1-23-600(A)(5) (Supp. 2019); see also *Anonymous (M-156-90) v. State Bd. of Med. Exam'rs*, 329 S.C. 371, 375-78, 496 S.E.2d 17, 19-20 (1998); *Nat'l Health Corp. v. Dep't of Health and Envtl. Control*, 298 S.C. 373, 379, 380 S.E.2d 841, 844 (Ct. App. 1989).

Burden of Proof

"In general, the party asserting the affirmative issue in an adjudicatory administrative proceeding has the burden of proof." *DIRECTV, Inc. & Subsidiaries v. S.C. Dep't of Revenue*, 421 S.C. 59, 78, 804 S.E.2d 633, 643 (Ct. App. 2017). The Taxing Entities contend the Settlement Agreement and the Supplemental Certifications constitute department determinations from which Taxing Entities can appeal to the Administrative Law Court. By challenging the Department's decision to exempt certain assets via the Supplemental Certifications for tax years 2010-2018,

Taxing Entities are asserting the affirmative issue in this case and have the burden to prove by a preponderance of the evidence that the Department's decision(s) was in error. *See id.* at 78, 804 S.E.2d at 643 (upholding the ALC's decision that burden of proof lies with the person challenging the Department's determination).

However, although the burden of proof is on Taxing Entities as the parties asserting the affirmative issue, under that umbrella is a countervailing burden on Taxpayers to establish they are entitled to this tax exemption. *See TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 618, 503 S.E.2d 471, 475 (1998) ("The burden is on claimants to prove their rights to an exemption by bringing themselves clearly within the conditions imposed by the statute."). Similarly, Taxpayers have the burden to show they are entitled to a refund. *Asmer v. Livingston*, 225 S.C. 341, 82 S.E.2d 465, 466 (1954) (holding a refund of taxes is solely a matter of governmental grace, and taxpayers seeking such relief must bring themselves clearly within the terms of the statute authorizing a refund). I find these interwoven burdens to be similar to the burden of proof discussed by the Supreme Court in *Sierra Club v. S.C. Dep't of Health and Env'tl. Control*, 426 S.C. 236, 826 S.E.2d 595 (2019). Specifically, in that case the Sierra Club was challenging a permit the Department issued to Chem-Nuclear, and the Supreme Court held:

Although Sierra Club undoubtedly bore the burden of proving its case, Chem-Nuclear nevertheless bore an overarching burden to satisfy the regulatory requirements necessary for Chem-Nuclear to earn its license. We do not read the court of appeals' conclusion that there was no evidence to show Chem-Nuclear's compliance with subsections 7.11.11.1 and 7.11.11.2 to be an impermissible shift in the burden of proof. The court of appeals applied the facts established at the hearing to the legal requirements set forth in the regulations and concluded substantial evidence did not support the ALC's findings as to subsections 7.10.7, 7.11.11.1, and 7.11.11.2.

Id. at 258–59, 826 S.E.2d at 67. Accordingly, although Taxing Entities must show how the Department's decision to grant Taxpayers the exemption was incorrect, Taxpayers also have an overarching burden to establish that they are entitled to the exemption. *See id.*

Adding to this conundrum is the fact that Farmers Entities are the parties who should possess clear knowledge of the facts and control the evidence regarding the property that was

exempted pursuant to the Rural Telephone Service Exemption in 1973. *See Roberts v. Roberts*, 296 S.C. 93, 99, 370 S.E.2d 881, 884 (Ct. App. 1988) (“The general rule is that the burden of evidence is imposed on the party best able to sustain it; so the party having peculiar knowledge of the facts or control of evidence, relating to an issue, has the burden of evidence as to it.” (citation omitted)). Therefore, although the Taxing Entities have the burden of proof to establish the Department’s decision regarding the exemption was erroneous, once Taxing Entities establish a prima facie case that the decision was in error, the burden of production shifts to Taxpayers to establish their right to the Rural Telephone Service Exemption. *Daisy Outdoor Adver. Co., Inc. v. S.C. Dep’t of Transp.*, 352 S.C. 113, 118, 572 S.E.2d 462, 465 (Ct. App. 2002) (“Once a party establishes a prima facie case, the burden of proof shifts to the opposing party.”); *Arkwright Mills v. Clearwater Mfg. Co.*, 217 S.C. 530, 539, 61 S.E.2d 165, 168-69 (1950) (“It is the settled rule of law that once a party establishes a prima facie case, judgment will go in his favor unless the opposite party produces evidence sufficient to overcome the prima facie presumption.”).

Finally, Respondents’ assertion that the Settlement Agreement bars consideration of this case is in the nature of an affirmative defense and, thus, the burden is upon Respondents to establish that defense. *Hoffman v. Greenville Cty.*, 242 S.C. 34, 39, 129 S.E.2d 757, 760 (1963) (“One who pleads an affirmative defense has the burden of proving it.”); *Cole v. S.C. Elec. & Gas, Inc.*, 355 S.C. 183, 195, 584 S.E.2d 405, 412 (Ct. App. 2003), *aff’d as modified*, 362 S.C. 445, 608 S.E.2d 859 (2005) (“When a defendant interposes an affirmative defense, he becomes as to that matter the actor in the suit, and the burden of proof rests upon him to establish his affirmative defense by the preponderance of the evidence.” (citation omitted)); *see also Earthscapes Unlimited, Inc. v. Ulbricht*, 390 S.C. 609, 615, 703 S.E.2d 221, 224 (2010) (“Statutory prohibition is in the nature of an affirmative defense[.]” (quoting *Madren v. Bradford*, 378 S.C. 187, 193, 661 S.E.2d 390, 393 (Ct. App. 2008))).

Standing

Before the merits hearing in this case, Taxpayers filed a Motion to Dismiss on the ground that this Court does not have subject matter jurisdiction to grant Taxing Entities a contested case

hearing. In their motion, Taxpayers were more concerned with whether Taxing Entities met the factual requirements for statutory standing than whether this Court has subject matter jurisdiction. In their proposed order, Taxpayers now frame the issue as whether Taxing Entities have a “right to seek a contested case hearing.”

Initially, the Court finds it has subject matter jurisdiction over this case because this Court has the “power to hear and determine cases of the general class to which the proceedings in question belong.” *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 331, 605 S.E.2d 506, 507 (2004) (quoting *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 238, 442 S.E.2d 598, 600 (1994)). This case involves a county government contesting a Department decision; generally, this Court is authorized to hear such cases pursuant to sections 12-60-2130 and 12-60-2150 of the South Carolina Code (2014) and section 1-23-600(A) of the South Carolina Code²⁹; *see also* S.C. Code Ann. § 12-4-535(C) (2014) (“If the county disagrees with, or fails to respond to, the department determination, the department by its director or designee or the county governing body by resolution may request a contested case hearing before the Administrative Law Court within thirty days after the date the county disagreement notice was, or should have been, mailed or hand delivered.”).³⁰ Therefore, this Court has subject matter jurisdiction over this matter.

²⁹ Regarding section 1-23-600, the Court specifically finds its jurisdiction would stem from the definition of contested case as defined in Section 1-23-505 and not Article I, Section 22, Constitution of the State of South Carolina, 1895, since the counties represent public rights, not private rights.

³⁰ Taxing Entities also argue section 12-4-535 gives them statutory standing in this case. The Court disagrees. Section 12-4-535 provides:

(A) The department may issue a department determination **directing the appropriate county official to comply** with all applicable state law relating to the valuation, assessment, or taxation of property.

(B) Within thirty days of the date the department determination is mailed or hand delivered, the county must respond in writing by first class mail or hand delivery to the department and state its agreement or disagreement with the department determination.

(C) If the county disagrees with, or fails to respond to, the department determination, the department by its director or designee or the county governing body by resolution may request a contested case hearing before the Administrative Law Court within thirty days after the date the county disagreement notice was, or should have been, mailed or hand delivered. A request for a contested case hearing before the Administrative Law Court must be made in accordance with its rules.

(D) The county governing body by resolution may request a department determination on any state law regarding the valuation, assessment, or taxation of property. Within thirty days of a request by

Moreover, the statutes giving this Court subject matter jurisdiction also function to give local governing bodies, such as the Taxing Entities, statutory standing to bring a contested case before this Court. *Youngblood v. S.C. Dep't of Soc. Servs.*, 402 S.C. 311, 317, 741 S.E.2d 515, 518 (2013) (“Statutory standing exists, as the name implies, when a statute confers a right to sue on a party, and determining whether a statute confers standing is an exercise in statutory interpretation.”). To acquire statutory standing, Taxing Entities must meet certain prerequisites in the statutes. *Bevivino v. Town of Mount Pleasant Bd. of Zoning Appeals*, 402 S.C. 57, 64, 737 S.E.2d 863, 867 (Ct. App. 2013) (“All Appellants, having satisfied the prerequisites for statutory standing, were entitled to maintain this action in the circuit court.”); *see also Freemantle v. Preston*, 398 S.C. 186, 194, 728 S.E.2d 40, 44 (2012) (“The traditional concepts of constitutional standing are inapplicable when standing is conferred by statute.”).

One of the prerequisites in the statutes that confer standing here is the issuance of a “department determination.” Specifically, section 12-60-2130, which is entitled “Taxpayer or local governing body may request contested case hearing,” provides, in relevant part:

a county governing body, the department may issue, in its discretion, the determination, which must be issued by first class mail or hand delivery to the county.

(emphasis added).

Taxing entities point to subsections (B) and (C) to support their authority to seek contested case review before the ALC. They argue that in filing this case they met both the requirement of stating their disagreement with the Supplemental Certifications (the Department’s de facto determinations) in writing within the thirty days of receiving it and filing a contested case with this Court. Accordingly, they argue the filing of this lawsuit and service on the Department meets the requirements of this statute to confer standing. However, Taxing Entities’ arguments ignore the implication of subsection (A). *S.C. State Ports Auth. v. Jasper Cty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006) (“A statute should not be construed by concentrating on an isolated phrase.”). Subsection (A), when read in conjunction with the rest of the rest of the statute, clearly establishes the Department initiates the administrative process under this statute to ensure county officials comply with the applicable laws. *Id.* (“In construing statutory language, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect.”). Therefore, Department action is warranted pursuant to this statute when a county official refuses or fails to comply with applicable law. In this instance, the matter before the Court is the other side of the coin. The Counties filed a contested case based on the Department’s directive in the Supplemental Certifications, thereby circumventing the need for such a confrontation. In sum, this Court finds section 12-4-535(A)-(C) is written as an enforcement statute. Finally, as to subsection (D), it is clearly inapplicable because the Counties’ governing bodies did not issue resolutions (nor do they need to) requesting a department determination.

A property taxpayer³¹ or the **local governing body**³² who disagrees with the **department determination** may request a contested case hearing before the Administrative Law Court if he files an action within thirty days of the date of the department's determination. . . . If a taxpayer requests a contested case hearing before the Administrative Law Court without exhausting his prehearing remedy because he failed to file a protest, the administrative law judge shall dismiss the action without prejudice.

S.C. Code Ann. 12-60-2130 (2014) (emphasis added). The preceding section, section 12-60-2120, governs how a **taxpayer** may protest a property tax assessment by a division of the department and requires all internal Department appeals to “be conducted pursuant to section 12-60-450(E), which in turn provides that the Department “**will make a department determination** using the information provided by the taxpayer” and delineates the information to be included in the department determination. S.C. Code Ann. § 12-60-2120(D) (2014); S.C. Code Ann. § 12-60-450(E) (2014) (emphasis added).

Section 12-60-2150(H) describes a similar process for a taxpayer to request, protest, and contest a refund. It provides, in relevant part:

(C) The claim for refund under this section must be mailed or delivered to the department If the claim for refund states the property is exempt, the claim for refund must state the basis on which exemption is claimed.

(D) The appropriate division of the department shall determine what refund is due, if any, and give the **taxpayer** written notice of its determination as soon as practicable after a claim has been filed.

(E) A **taxpayer** may appeal the division's decision by filing a written protest with the department following the procedures provided in Section 12-60-2110. For purposes of complying with the provisions of Section 12-60-2110, the written denial of any part of a claim for refund is the equivalent of a property tax assessment notice.

³¹ “Taxpayer” means “a person who is liable for a tax or who is responsible for collecting and remitting a tax” and includes “a licensee and an applicant for a license, issued by or administered by the department.” S.C. Code Ann. § 12-60-30(29) (2014).

³² “Local governing body” is not defined in Title 12. However, it is defined in Title 6, which governs local government. In Title 6, “local governing body” is defined to mean “the governing body of a county, municipality, or special purpose district.” S.C. Code Ann. § 6-1-300 (2004).

(F) The department shall consider the claim, determine the correct property tax assessment, and issue any necessary orders. **All appeals before the department must be conducted as provided in Section 12-60-450(C) through (E).**³³

(H) A property **taxpayer** or **the local governing body** who disagrees with the **department determination** may request a contested case hearing before the Administrative Law Court by filing the request in accordance with the Administrative Law Court rules within thirty days of the date of the department determination.

S.C. Code Ann. § 12-60-2150 (2014) (emphasis added). Similar to section 12-60-2120(D), section 12-60-2150(F) requires that all appeals be conducted as provided in sections 12-60-450(C)-(E).

Therefore, both section 12-60-2130 and section 12-60-2150 provide that a local governing body can appeal a department determination that it disagrees with. However, under both these statutes, the only procedural steps described for eliciting a department determination are procedural steps a taxpayer can take, not a local governing body.³⁴ Although there are no procedural steps delineated for a local governing body to elicit a department determination, they nevertheless have the right to appeal from a department determination. Therefore, to determine whether Petitioners have standing, the Court must determine whether a department determination was made.³⁵

³³ Section 12-60-450(E) provides that the Department “will make a department determination using the information provided by the taxpayer” and delineates the information to be included in the Department Determination. S.C. Code Ann. § 12-60-450(E) (2014).

³⁴ The only statute that comes close to describing procedural steps for a local governing body to take is section 12-4-535(D), which provides that a county governing body (by resolution) can request the Department to issue “a department determination on any state law regarding the valuation, assessment, or taxation of real property”; however, the Department is not required to issue a department determination in response. Rather, the Department “may issue, in its discretion, the determination” from which the local governing body can request a contested case hearing before this Court. *Id.* Although there are no procedural steps through which a county can force the Department to issue a department determination, it would be absurd to suggest a county can challenge a department determination but it cannot challenge the Department’s refusal to honor a county’s governing board’s request for a determination.

³⁵ Implicit in this question is also the issue of whether, in absence of a taxpayer-elicited department determination, a local governing body must rely on other principles of law to show standing. *See S.C. Pub. Interest Found. v. S.C. Dep’t of Transportation*, 421 S.C. 110, 117, 804 S.E.2d 854, 858 (2017) (“A plaintiff must have standing to institute an action.”); *id.* (“We recognize three types of standing: (1) standing conferred by statute; (2) ‘constitutional standing’; and (3) public importance standing.”).

What is a Department Determination?

The Revenue Procedures Act defines “department determination” as “the final determination **within** the department from which a person may request a contested case hearing before the Administrative Law Court.” S.C. Code Ann. 12-60-30(10) (2014) (emphasis added).³⁶ Respondents contend the meaning of “final determination” is modified by the adjectival phrase “from which a person may request a contested case hearing before the Administrative Law Court.” *See id.* Therefore, a “final determination” involves only matters in which a party may request a contested case before the Administrative Law Court. Following that reasoning, a “department determination” is something from which you can “request a contested case hearing before the Administrative Law Court,” but also, the right to a contested case in these circumstances is based, in part, on the existence of a department determination pursuant to section 12-60-2130 and section 12-60-2150(H).³⁷ Thus, the definition of “department determination” is circular.

I find the phrase “from which a person may request a contested case hearing” is simply an affirmation of the finality of the decision and not a requisite for a “department determination.” Furthermore, the terms within section 12-60-30(10) provide clarity as to the overall meaning of the statute. Since neither “final” nor “determination” are defined in the statutory scheme, the court generally looks to their usual definitions to determine their meanings. *See Lee v. Thermal Eng'g Corp.*, 352 S.C. 81, 91–92, 572 S.E.2d 298, 303 (Ct. App. 2002) (“Where a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning.”). Generally, “determination” is defined as “the resolving of a question by argument or reasoning.”

³⁶ Oddly, despite this specific statutory definition, Taxpayers contend “department determination” is a term of art, the meaning of which is made clear by the statutory scheme as well as Department policies and procedures. *See* ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 228 (2012) (“It is very rare that a defined meaning can be replaced with another permissible meaning of the word on the basis of the other textual indications; the definition is virtually conclusive.”).

³⁷ *See* S.C. Code Ann. § 12-60-30(4) (defining “contested case hearing” to have “the same meaning as it has in Section 1-23-310” and also defining it as “a hearing conducted pursuant to Article 3, Chapter 23, Title 1, the South Carolina Administrative Procedures Act, and includes the hearings conducted by the Administrative Law Court to review . . . department determinations”); S.C. Code Ann. § 1-23-310(3) (defining “contested case” to mean “a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party **are required by law** to be determined by an agency after an opportunity for hearing” (emphasis added)).

<http://www.merriam-webster.com/dictionary/determination> (last visited February 14, 2018). In this case, the Department entered into a Settlement Agreement with Taxpayers, and it did not issue a separate or distinct document(s) entitled “department determination.” Yet, to reach a decision regarding whether Taxpayers were initially exempt from property tax necessarily involved a determination since factual and legal reasoning was necessary to reach such a decision. Therefore, the Settlement Agreement was a determination by the Department as to whether Taxpayers’ property was taxable. But, as will be explained below, the Settlement Agreement was only a final determination as between the Department and Taxpayers; it was not the final determination that bound Taxing Entities—the final determinations that bound the Taxing Entities were the Supplemental Certifications.

Based on the above analysis, I find the factual determination of whether a particular Department decision was “final” is the controlling issue as to whether a department determination was issued.³⁸ The Settlement Agreement resolved the dispute between the Department and Taxpayer as to the tax liability of Taxpayer. However, that resolution was meaningless until the Department determined the value of the property at issue in the revised property assessments and then required the Taxing Entities to comply with the terms of Settlement Agreement by issuing subsequent determinations—the Supplemental Certifications. In other words, for the Settlement Agreement to have any meaning for the Taxpayers, there had to be a separate and subsequent implementation of that decision. In fact, the Department acknowledged its decision to exempt Taxpayers was not “final” until it sent the Supplemental Certifications to Clarendon County and

³⁸ In reaching this decision, the Court recognizes that simply because a decision is “final” does not necessarily mean it is a “department determination” for the purpose of requesting a contested case. For example, it is clear that under the statutory scheme if a taxpayer fails to protest a division decision or a proposed assessment within ninety days, then the division decision or proposed assessment will become “final.” S.C. Code Ann. § 12-60-450(A) (“A taxpayer can appeal a division decision or a proposed assessment by filing a written protest with the department within ninety days of the date of the division decision or the proposed assessment.”); S.C. Code Ann. § 12-60-420(B) (“If the taxpayer fails to file a protest, the division decision or proposed assessment will become final and, if applicable, an assessment will be made for the amount of a proposed assessment.”). This type of final decision is not appealable. Rather, the Court’s conclusion in this case regarding the appealability of the Department’s final determination evolves out of the facts of the case.

the other Taxing Entities. Thus, after the Settlement Agreement was ratified, the Department sent a memorandum with the Supplemental Certifications to the Taxing Entities, which corrected and clarified the assessments previously sent to Taxing Entities. Moreover, the Supplemental Certifications did not request or allow comment by the counties, which also indicated the finality of the Supplemental Certifications. Therefore, while nothing in the statutory scheme describes property tax assessment certifications as “department determinations,” the finality achieved by the certifications establishes, in part, that they served as the Department’s final determination requiring Taxing Entities to issue refunds. *See* § 12-60-30(10). The Supplemental Certifications were thus **de facto** department determinations.

Taxpayers nevertheless contend the Department did not make a final determination because “[n]either the Revenue Procedure Act nor Revenue Procedure #06-2 require the Department to issue a department determination when a taxpayer and the Department settle a case.” This argument implies that a department determination is a term of art that means something else besides merely a final determination. Obviously, when the Department enters into a settlement agreement, there is no need to make a separate department determination because the settlement agreement ends the conflict between the parties and acts as the final determination by the Department. There is thus no real distinction between a “department determination” and a “settlement agreement” in terms of the finality of the decision. The finality of a settlement agreement is underscored by the statutory prohibition against re-opening a settlement agreement unless there is fraud, malfeasance, or misrepresentation. *See* S.C. Code Ann. § 12-4-320(4). If a settlement is not a final determination, no such limitations would be placed upon it. In fact, the Department cannot even enter into a settlement agreement unless the Department’s director agrees to its terms, which certainly reflects the finality of the process. *See id.*

Next, as previously stated, a “department determination” is defined as “the final determination **within** the department from which a person may request a contested case hearing before the Administrative Law Court.” § 12-60-30(10) (emphasis added). The statute does not require the department determination be labeled “department determination” or issued in a

particular form, which is reflected by the definition of “department determination” found in South Carolina Revenue Procedure #06-2:

Department Determination - The final determination of an appeal approved by the Director or his designee made in accordance with this Revenue Procedure. This determination may be appealed to the Administrative Law Court. If a document is consistent with this definition, it will be deemed to be the Department determination even though it may be entitled a final agency determination or some other name.

(SC Rev. Proc. #06-2, II(B)) (emphasis added). Therefore, the Department’s own Revenue Procedure undermines its argument that a department determination must be titled as such or issued in a particular form. To allow the Department to dictate whether something is a department determination based upon what it labels a certain decision, rather than the substance of the decision, would set a dangerous precedent that is illustrated by what happened in this case. Specifically, Taxpayers’ tax attorney, Jeffrey Allen, testified that on the first draft of the Settlement Agreement, Taxpayers included a provision which required the Department to issue a “department determination.” Taxpayers wanted to include this provision in order to ensure those potentially affected by the exemption of Taxpayers’ assets had a right to appeal. However, the Department disagreed, and specifically insisted that the provision requiring the issuance of a department determination be stricken in order to foreclose any right of appeal. These actions against another branch of government demonstrate the danger of Respondent’s interpretation of “department determination.” Accordingly, the Department’s decision not to label its final determination as a “department determination” should not shield the Department’s decision from judicial review. *See Hodges*, 341 S.C. at 91, 533 S.E.2d at 584 (“The goal of statutory construction is . . . to prevent an interpretation that would lead to a result that is plainly absurd.”).

Also, if the Settlement Agreement is not considered a department determination, then the statutory scheme implies that a local governing body is precluded from requesting a contested case under section 12-60- 2130 and 12-60-2150 unless a taxpayer protests a decision, does not settle, and forces the Department to issue a statutorily required “department determination.” Under this view, the counties’ rights to challenge a decision that clearly affects them financially would be

dependent upon whether a taxpayer initiated the administrative review process and the taxpayer's subsequent decision not to settle.

To find that counties do not have a right to challenge a Department decision unless the taxpayer forces a department determination is troublesome because the statutes reflect that the General Assembly intended to grant local governing bodies an **independent** right to request a contested case. Specifically, sections 12-60-2130 and 12-60-2150 provide that either the taxpayer or the local governing body can request a contested case after a department determination is issued. These statutes do not require that a taxpayer must request a contested case for the local governing body to have the right to request a contested case, so why would the Court condition a local governing body's appeal rights on the taxpayer's actions up to that point?

In sum, based upon a plain reading of these sections, this Court concludes the General Assembly intended counties and local governments to have the right to seek review of department determinations affecting the counties. To find that the Settlement Agreement and Supplemental Certifications are not department determinations would also create conflict with the statutory scheme because local governments would have the statutory right to appeal but no means by which to procedurally accrue that right. *See Enos v. Doe*, 380 S.C. 295, 305, 669 S.E.2d 619, 623 (Ct. App. 2008) ("A court should not consider a particular clause in a statute as being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law."). The Department's own testimony illustrates the absurd result created by such an interpretation. In the 30(b)(6) deposition of the Department, the Department's designee was asked to consider a hypothetical in which a settlement agreement took \$50,000,000 of tax revenue off of a county's books as a result of a disputed issue being resolved by a settlement agreement between a taxpayer and the Department. The Department's official position: if the \$50,000,000 disputed issue was resolved by a settlement agreement and no "department determination" was issued from within the Office of General Counsel, then the county would have no right to appeal that decision.

Division Decision

Taxpayers also argue the Supplemental Certifications are not “department determinations” because they are “division decisions.” A “division decision” is defined as “a decision by a division of the department that affects the rights or obligations of a person for which no specific appeals rights are provided by this act.” S.C. Code Ann. § 12-60-31(13) (2014).

Reading this definition in isolation could lead to the conclusion that any decision labeled a “division decision” forecloses appeal rights by any party whom the decision affects. However, the statute could also be read as defining a certain level of decision within the internal administrative process. When we look at the statutory scheme as a whole, it describes different levels of the administrative process and what rights accrue at each level. *Dolan v. U.S. Postal Serv.*, 546 U.S. 481, 486, 126 S. Ct. 1252, 1257 (2006) (“The definition of words in isolation, however, is not necessarily controlling in statutory construction. Interpretation of a word or phrase depends upon reading the whole statutory text, considering the purpose and context of the statute, and consulting any precedents or authorities that inform the analysis.”); *see also CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011) (“We therefore should not concentrate on isolated phrases within the statute. . . . Instead, we read the statute as a whole and in a manner consonant and in harmony with its purpose.”).

Read in the context of the statutory scheme, the definition of “division decision” means that a “division decision” is a lower-level decision within the administrative process from which appeal rights do not immediately accrue; but, if the “division decision” is protested in the administrative process, it may eventually lead to an appealable decision in the form of a department determination. Here, the Supplemental Certifications resulted from the resolution of a protest and the resolution of the internal administrative review process, at which point they would be department determinations or final decisions, not “division decisions.” Additionally, if “division decisions” foreclose appeal rights as Respondents argue, then the Department could easily manipulate the local governing bodies’ legal rights. For example, the Department could classify a decision as “division decision” to circumvent a local governing body’s right to review under

section 12-60-2130 or section 12-60-2150(H). As this Court previously discussed, allowing the Department to label its own decisions would lead to an absurd result. *See Hodges*, 341 S.C. at 91, 533 S.E.2d at 584 (“The goal of statutory construction is . . . to prevent an interpretation that would lead to a result that is plainly absurd.”).

Statutory Requirements for a Department Determination

Taxpayers further argue that the Supplemental Certifications cannot be department determinations because they do not meet the statutory requirements. Specifically, section 12-60-450(E)(2) requires that a

department determination **adverse to the taxpayer** must be in writing and must: (a) be sent by first class mail or delivered to the taxpayer; (b) explain the basis for the department's determination; (c) inform the taxpayer of his right to request a contested case hearing; and (d) if a proposed assessment was protested, explain that the taxes will be assessed in thirty days and payment demanded unless the taxpayer requests a contested case hearing.

(emphasis added). The Supplemental Certifications and attached memorandums do not meet these requirements because they are not intended for the taxpayer—they were sent to the counties—and therefore the certifications do not “inform the taxpayer of his right to request a contested case hearing.” *Id.* Similarly, neither the Settlement Agreement nor the Supplemental Certifications were “adverse to the taxpayer,” but it is not the taxpayer who is at issue in this case, it is the counties. Moreover, whether the certifications adequately “explain the basis for the department’s determination” is a requirement for the sufficiency of the department determination, but it is not a requirement for the existence of a department determination. *Id.* If the Department fails to explain the basis of its decision in a department determination, it does not negate the existence of a determination, it merely makes it defective. Therefore, this provision is not pertinent to the issue of whether the counties have a right to a contested case hearing to challenge the Department’s determination.

Department Representative

The Department contends that a department determination can only be issued by an attorney because only an attorney within the Department’s Office of General Counsel can represent

the Department at a contested case hearing. The Department bases this interpretation, in part, on section 12-60-30(11), which defines a “department representative” as “the person appointed by the department to prepare the department's determination **and** represent the department at the contested case hearing.” S.C. Code Ann. § 12-60-30(11) (emphasis added). The Department then further relies on Rule 8 of the Rules of Procedure for the Administrative Law Court (SCALC Rules), which provides that the Department must be represented by an attorney in proceeding before the Court. SCALC Rule 8. Therefore, taking the statute and Court rule together, the Department argues the person who prepares the department determination must be an attorney; accordingly, any document that is not issued by an attorney cannot be a department determination.

The courts must interpret statutes in a manner that ascertains and effectuates the intent of the legislature, and in doing so, words must be given their “plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation.” *CFRE, LLC*, 395 S.C. at 74, 716 S.E.2d at 881. In this instance, it is difficult to believe the General Assembly, by using the term “represent” in a definition, meant to insulate the Department from any contested case review unless the contested decision was drafted by the Department’s attorneys. Moreover, such an interpretation would add another element to the definition of “department determination.” I find the Department’s construction is based upon an inference that is simply not supported in the statutory definition of “department determination.”

In fact, neither statutory law nor Revenue Procedure #06-2 require a department determination to be produced in a specific form, prepared by an attorney, or issued from the Department’s Office of General Counsel. Instead, a “department determination” only requires that a final determination be made **within** the Department. *See* § 12-60-30(10) (emphasis added). Accordingly, the logical interpretation of section 12-60-30(11) is that a “department representative” is an individual within the Department who is tasked with (1) preparing a final decision of the Department and (2) who will also stand behind the position taken in the department determination through testimony at a contested case hearing. Nevertheless, simply because that task is fulfilled by other means does not negate the creation of a Department decision.

Additionally, considering the procedural process leading up to a department determination or a settlement agreement (i.e., a protest), it is unsurprising that a department determination or settlement agreement would be reviewed by, or executed with the approval of, the Department's legal office to ensure any legal issues involved in the protest were properly resolved. For instance, in this case, the Department attorney, Bill Condon, signed off on the Settlement Agreement. Moreover, the Supplemental Certifications were issued pursuant to the Settlement Agreement (and therefore with the approval of a Department attorney). Accordingly, the Court does not find section 12-60-30(11)'s definition of "department representative" precludes a finding that a department determination was issued in this case.

Conclusion

The Department's decision to exempt Taxpayers' assets from property tax became the Department's "final determination" once the Supplemental Certifications were sent to the Taxing Entities. In fact, the Department conceded that its decision was final once it sent the Supplemental Certifications. Although the typical process for arriving at a department determination was not followed in this case, this fact does not mean that a department determination was not issued. Moreover, the Supplemental Certifications were necessary for Taxing Entities to generate revised tax bills exempting Taxpayers' assets. Therefore, the Supplemental Certifications were reviewable "department determinations." In sum, simply because there is no delineated procedure to challenge the Department's final decision does not vitiate the counties' right to challenge the decision.

Does the Settlement Agreement Bar Review of the Department Determination?

The Department is statutorily authorized to settle a case with a taxpayer and "enter into a written agreement with a person with regard to a tax liability." S.C. Code Ann. § 12-4-320(4) (2014); *see also* § 12-60-450. And, [i]f the agreement is approved by the director, it is final and conclusive, and the case may not be reopened by administrative or judicial action or otherwise, except in cases of fraud, malfeasance, or misrepresentation." § 12-4-320(4). Therefore, a settlement agreement resolving a disputed tax liability is "final and conclusive" with respect to the

Department and the taxpayer, and cannot be reopened by this Court absent fraud, malfeasance, or misrepresentation.³⁹ However, the statutory preclusion against re-opening the settlement agreement is only valid between the Department and the taxpayer—not a third party.

In this case, the question before the Court is not whether the Settlement Agreement is final and conclusive with respect to the Department and Taxpayers. Instead, the question is: what are the implications of the Settlement Agreement for Taxing Entities? Taxpayers contend that even if Taxing Entities have a right to request a contested case hearing, the Settlement Agreement between Taxpayers and the Department bars Taxing Entities from challenging the settlement tax years (i.e. 2010-2015). Whether a settlement agreement to which Taxing Entities were not a party would bar Taxing Entities from pursuing their legal case with the Department is a red herring that creates a legal conundrum that simply does not exist. Section 12-4-320(4) does not authorize the Department to “enter into a written agreement with a person” that binds third parties who are otherwise strangers to the settlement agreement. Indeed, the Record includes no evidence that Taxing Entities consented to the terms of the Settlement Agreement.

In South Carolina, settlement agreements are treated like contracts under the law. *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009). Accordingly, general contract principles apply to the construction of the Settlement Agreement. *Id.* at 241-42, 672 S.E.2d at 803. A fundamental tenet of contract law is that a contract cannot bind a party who has not assented to its terms. *Edens v. Laurel Hill, Inc.*, 271 S.C. 360, 364, 247 S.E.2d 434, 436 (1978) (“It is well settled in South Carolina that in order for there to be a binding contract between parties, there must be a mutual manifestation of assent to the terms.” (citing *Kitchens v. Lee*, 221 S.C. 59, 69 S.E.2d 67 (1957))); *Drafts v. Shull Sausage Co., Inc.*, 276 S.C. 52, 54, 275 S.E.2d 577, 577 (1981) (“Since the [third-party defendant] was not a party to the original contract . . . it owed no duty or obligation thereunder.”); *Florence City-Coty. Airport Comm’n v. Air Terminal Parking Co.*, 283 S.C. 337, 341, 322 S.E.2d 471, 473 (Ct. App. 1984) (“If one of the parties has not agreed,

³⁹ The Court’s focus is not on examining the validity of the settlement agreement between the Department and Taxpayers because I do not find there were sufficient facts to warrant such an inquiry.

then a prerequisite to formation of the contract is lacking.” (citing *Shealy v. Fowler*, 182 S.C. 81, 188 S.E. 499 (1936))). Neither Taxing Entities nor any individual local governing body signed the Settlement Agreement. There is also no acknowledgement on the face of the Settlement Agreement that any local governing body was even made aware of the Settlement Agreement prior to its execution, nor is there any witness testimony indicating that the Department or Taxpayers requested Taxing Entities’ input. Therefore, the Settlement Agreement between Taxpayers and the Department does not conclusively settle Taxing Entities’ right to challenge the legal effect of the Settlement Agreement on them.

The Department’s Exclusive Authority

Respondents contend the Department has exclusive authority over the assessment of property taxes for utilities, and Taxing Entities must comply with what the Department instructs them to do without any recourse. This argument is grounded in a correct statement of the Department’s authority, but it improperly extends that authority.

It is true that while counties have the authority to determine the value of the properties within their jurisdictions and to levy taxes upon nonexempt properties, the Department has the “sole responsibility for the appraisal, assessment, and equalization” for certain enumerated businesses, such as telephone companies. S.C. Code Ann. § 12-4-540; *cf.* S.C. Code Ann. § 4-9-30(5)(a) (providing counties can “assess property and levy ad valorem property taxes and uniform service charges”). The Department also has authority to determine property tax exemptions. S.C. Code Ann. § 12-4-710. Thus, Respondents are correct that the Department has exclusive authority to appraise and assess telephone-related property and to grant property tax exemptions regarding the same. *See* § 12-4-540(A)(1)(f); § 12-4-710.

And when the Department grants a property tax exemption, it is required to “certify the exemption to the auditor’s office in the county in which the property is located.” S.C. Code Ann. § 12-4-730 (2014). Upon receipt of the certification, the county auditor must “void any tax notice

applicable to the property.” *Id.*⁴⁰ Similarly, under section 12-4-750, the Department has the authority to revoke tax-exempt status and is thereafter required to “notify the appropriate county official, and the county auditor shall enter on the duplicate the taxes that would have been due for those years that the property escaped taxation, with an added ten percent penalty.” S.C. Code Ann. § 12-4-750(A) & (B). Additionally, the Department may “enter into a written agreement with a person with regard to a tax liability” and “[i]f the agreement is approved by the director, it is final and conclusive and the case may not be reopened by administrative or judicial action or otherwise, except in cases of fraud, malfeasance, or misrepresentation.” S.C. Code Ann. § 12-4-320.

Based on these statutory sections, Respondents argue that counties have no power to contest the Department’s assessment or exemption decisions but must simply carry out their ministerial duty to collect the assessment, issue refunds, or apply exemptions as determined by the Department. However, these statutes do not limit, or even reference, the right of local governing bodies to challenge a Department decision. Moreover, if the Department truly is the sole authority on property tax assessment, there should be no mandatory right to review whatsoever and a local governing body’s right to review under § 12-60-2130 and § 12-60-2150 would be rendered meaningless. In fact, if the Department is the sole authority, then even a taxpayer would not be entitled to request review of the determination affecting the taxpayer. Nevertheless, all the parties concede a taxpayer’s right to challenge the Department’s determinations under sections 12-60-2130 and 12-60-2150.

Simply because a governmental entity regulates another branch of government does not mean the regulated branch of government does not possess the right to due process to challenge that decision. *See* S.C. Code Ann. § 4-1-10 (“Each county is a body politic and corporate for the

⁴⁰ A companion statute regulating county auditors expressly states that county auditors do not assess property required by law to be assessed by the department and property owned by the federal government, state government, county government, or any of its political subdivisions and which is exempt from property taxation. S.C. Code Ann. § 12-37-9; *see also* S.C. Code Ann. § 12-37-90(h) (providing the county assessor shall “be the sole person responsible for the valuation of real property, except that required by law to be appraised and assessed by the department, and the values set by the assessor may be altered only by the assessor or by legally constituted appellate boards, the department, or the courts”).

following purposes: (1) To sue and be sued . . . (4) To do all acts in relation to the property and concerns of the county necessary thereto.”); *Glaze v. Grooms*, 324 S.C. 249, 255, 478 S.E.2d 841, 845 (1996) (holding that a local government that established “infringement of its own proprietary interests or statutory rights” has standing). Indeed, section 12-60-20 sets forth that the intent of the Revenue Procedures Act is “to provide the people of this State with a straightforward procedure to determine a dispute with the Department of Revenue and a dispute concerning property taxes” and “[t]he South Carolina Revenue Procedures Act must be interpreted and construed in accordance with, and in furtherance of, that intent.” S.C. Code Ann. § 12-60-20 (2014). This intent is no less applicable to local governing bodies that seek to protect the interests of the citizens it represents. In fact, in this instance, the local governing bodies’ rights to review of the Department’s decision is codified in sections 12-60-2130 and 12-60-2150.

Furthermore, as previously discussed, Respondents’ theory is that counties have no due process rights to challenge the Department’s property tax assessment unless a taxpayer challenges the assessment and thus elicits a department determination. Respondents’ theory would negate the established right of local governing bodies to request a contested case under sections 12-60-2130 and 12-60-2150. If the legislature had intended to void such a significant right of the counties in these instances, presumably it would have expressly done so. See *Giannini v. S.C. Dep’t of Transp.*, 378 S.C. 573, 587, 664 S.E.2d 450, 457 (2008) (“If the Legislature had intended for the \$600,000 aggregate cap to be divided in proportion to the verdicts awarded to each plaintiff, it could have said so.”); *Carroll v. Guess*, 302 S.C. 175, 177, 394 S.E.2d 707, 708 (1990) (“If the legislature had intended Section 38-77-180 to overrule the substantial right of a defendant to be tried in the county of his residence as contained in the mandatory language of Section 15-7-30, it would have so stated.”); *Hampton v. Haley*, 403 S.C. 395, 408, 743 S.E.2d 258, 265 (2013) (holding that the court “will not construe statutes to be unconstitutional when susceptible to a constitutional interpretation.”). However, there is nothing in sections 12-60-2130 and 12-60-2150 that prohibit a local government from receiving due process in this case following the Department’s determinations. Thus, although the State of South Carolina certainly has powers to

regulate counties, this case highlights the issue of the counties' right to due process under our system of government. In this case, I find their right to due process has **not** been expressly revoked.

Conclusion

Because I find the Supplemental Certifications are department determinations under the unique circumstances of this case, I conclude Taxing Entities have statutory standing to bring this case before this Court pursuant to section 12-60-2130 and section 12-60-2150(H). Moreover, I find Taxing Entities' right to bring this case under these statutory sections is not precluded by the existence of the Settlement Agreement or the Department's authority to make decisions regarding property tax assessments and property tax exemptions.

Does Taxpayers' Property Qualify for the Rural Telephone Exemption?

Our tax code provides that certain property is exempt from ad valorem taxation, to include:

(10) notwithstanding any other provisions of law, the property of telephone companies and rural telephone cooperatives operating in this State used in providing rural telephone service, which was exempt from property taxation as of December 31, 1973, shall be exempt from such property taxation; provided, however, that the amount of property subject to ad valorem taxation of any such company or cooperative in any tax district shall not be less than the net amount to which the tax millage was applied for the year ending December 31, 1973. Any property in any tax district added after December 31, 1973, shall likewise be exempt from property taxation in the proportion that the exempt property of such company or cooperative as of December 31, 1973, in that tax district was to the total property of such company or cooperative as of December 31, 1973, in that tax district;

S.C. Code Ann. § 12-37-220(B)(10) (2014).

The plain language of the exemption can be split into several distinct elements. The exemption applies to:

- (1) property
- (2) of telephone companies or rural telephone cooperatives
- (3) that operate in this State
- (4) and is used in providing rural telephone service
- (5) and which was exempt from property taxation as of December 31, 1973.

Id. For property added after December 31, 1973, the new property “shall likewise be exempt . . . in **the proportion**” that the exempt property of such company was to the total property of that company in the applicable tax district as of December 31, 1973. *Id.* (emphasis added). In applying this exemption to the case at bar, Taxing Entities argue, in part, Taxpayers cannot show they meet the fourth element—that their property is “used” to provide “rural telephone service.”

Telephone Service

No case law exists interpreting what “telephone service” means, and the General Assembly did not define “telephone service.” Furthermore, the meaning of “telephone service” as it was understood in 1978 is a question of law. *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007) (“The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature.”); *Centex Int’l, Inc. v. S.C. Dep’t of Revenue*, 406 S.C. 132, 139, 750 S.E.2d 65, 69 (2013) (holding questions of statutory interpretation are questions of law). Consequently, it is necessary for this Court to construe the meaning of “telephone service.” In construing this term, there are several principles of statutory construction that are relevant. Generally, “[w]hen faced with an undefined statutory term, the Court must interpret the term in accord with its usual and customary meaning.” *Branch v. City of Myrtle Beach*, 340 S.C. 405, 409–10, 532 S.E.2d 289, 292 (2000). Dictionaries can be helpful tools in defining statutory terms. *Liberty Mut. Ins. Co. v. S.C. Second Injury Fund*, 363 S.C. 612, 622, 611 S.E.2d 297, 302 (Ct. App. 2005). However, a current dictionary definition is not very useful in this case because we are dealing with a statutory term that was coined in 1978 based on technology that existed in 1978. *S. Bell Tel. & Tel. Co. v. Clayton*, 266 N.C. 687, 689, 147 S.E.2d 195, 196 (1966). Accordingly, in this instance, the term “telephone service” must be construed as it was understood in 1978. In addition, “telephone service” should be construed in light of “the purpose of the whole statute and the policy of the law.” *Branch*, 340 S.C. at 409–10, 532 S.E.2d at 292.

Moreover, when an undefined term is used in a particular industry, that term is construed as it is generally understood in the industry even though that meaning may differ from the common meaning. 82 C.J.S. Statutes § 420; *see also* 73 Am. Jur. 2d Statutes § 67 (noting “where a statutory

or regulatory term is a technical term of art, defined more appropriately by reference to a particular industry usage than by the usual tools of statutory construction, a court will employ that industry usage”). “This principle is particularly salutary where . . . words [have] a special meaning within the field regulated by the statute” *Corning Glass Works v. Brennan*, 417 U.S. 188, 201–02 (1974). And, if the industry term is not defined by statute, “courts often interpret the statute in light of testimony of witnesses familiar with the particular [industry].” 82 C.J.S. Statutes § 420

Finally, because section 12-37-220(B)(10) grants a tax exemption, this Court is required to narrowly construe its terms against Taxpayers. See *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (noting our courts have a “policy of strictly construing tax exemption statutes against the taxpayer”).

Following these rules of statutory construction, the Court begins by considering how the term “telephone service” was understood in the telephone industry in 1978. Here, the evidence established that “telephone service” was understood to mean voice communication from one person to another over a distance.⁴¹ However, the evidence also established that the transmission of data for purposes other than voice communication was not considered telephone service in the industry in 1978. As explained by Mr. Moss, telephone service was defined in the industry by its application or the purpose of which is being used. Thus, since email or streaming video services like Netflix do not provide voice communication, they are not within the industry’s definition of “telephone service.”

Next, the Court looks to the technological aspect of how telephone service was delivered in 1978. In 1978, “telephone service” was still dominated by POTS or voice traffic over a pair of copper wires. Other forms of telecommunication were active in 1978, including a wireless microwave network that was used for some national communications. However, while the

⁴¹ Although the current dictionary definition is not as pertinent in this case as explained above, the dictionary definition of telephone is consistent with the industry definition. The dictionary does not define “telephone service,” but it defines “telephone” to mean “an instrument for reproducing sounds at a distance; **specifically**: one in which sound is converted into impulses for transmission (as by wire or radio waves).” *Telephone*, WEBSTER’S ONLINE DICTIONARY, <http://www.merriam-webster.com/dictionary/telephone> (last visited January 10, 2020). Accordingly, telephone service would be a service that transmits sounds at a distance, which generally encompasses voice communication.

microwave network may have foreshadowed wireless networks, the Court finds that in 1978 telephone service was still considered to be landline voice communication between two parties over distance. Further, the General Assembly's use of the word "telephone" preceding "service," rather than another term known in 1978 such as "telecommunication," shows a clear intent to limit the application of section 12-37-220(B)(10) to voice services which occurred through a **telephone** landline network. *See, e.g., In re Hospital Pricing Litigation, King v. AnMed Health*, 377 S.C. 48, 59, 659 S.E.2d 131, 137 (2008) (discussing the statute's history and surrounding legislative facts to interpret the proper meaning of the statute's terms).⁴² Had the General Assembly intended to provide a property tax exemption for the property used in providing "telecommunications"—or any other type of communication—services it could have done so.

In summary, in 1978 "telephone service" was understood within the industry, and was commonly defined, to encompass only voice communication services which were communicated through a telephone and transmitted by a physical connection (i.e., a wire) to another telephone user. However, in this context, another technological advance must also be evaluated: wireless telephone service.

Wireless Telephone Service

If "telephone service" is understood in the industry to mean voice communication from one person to another over a distance, then both a landline telephone and a wireless telephone meet this definition. However, in order to accomplish communication over a distance, a wireless telephone relies on technology that was not yet broadly in use in 1978. Therefore, the Court must determine if the interpretation of telephone service in this case is limited by the technology used to deliver it in 1978, which was physical wires.

⁴² Accordingly, the Court rejects Mr. Wyatt's testimony that other communication services such as internet, email, video streaming, etc., should be included within the meaning of "telephone service." To include them would require the statute to be liberally construed in Taxpayers' favor, which goes against the principles of statutory construction and the plain meaning of "telephone" service. *Southeastern Kusan, Inc. v. S.C. Tax Comm'n*, 276 S.C. 487, 489, 280 S.E.2d 57, 58 (1981).

In considering this issue, it is important to recognize that the “[d]rafters of every era know that technological advances will proceed apace and that the rules they create will one day apply to all sorts of circumstances that they could not possibly envision.” SCALIA & GARNER, *supra*, 86. Moreover, like Justice Scalia, our courts have also recognized “a statute does not apply only to facts in existence at the time of its adoption. Statutes must be updated functionally to reflect changes in technology, terminology, and the legal landscape.” *Brooks v. Northwood Little League Inc.*, 327 S.C. 400, 406–07, 489 S.E.2d 647, 650–51 (Ct. App. 1997); *see also Wisconsin Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2074 (2018) (noting that although “every statute’s **meaning** is fixed at the time of enactment, new *applications* may arise in light of changes in the world” (emphasis original)).

Additionally, in construing the meaning of telephone service, the Court must be mindful that Taxpayers must bring themselves squarely within the terms of the statute to be entitled to the exemption. *York Cty. Fair Ass'n v. S.C. Tax Comm'n*, 249 S.C. 337, 341, 154 S.E.2d 361, 363 (1967) (“Since appellant is not clearly within the language of the statute, the trial judge properly disallowed its claim of exemption.”). Thus, for section 12-37-220(B)(10) to properly apply to technologies not contemplated at the time the statute was enacted, the new technology must fit squarely within the statute’s intended purpose. Here, the intent of the General Assembly in 1978 was to promote the advancement of telephone service in rural areas throughout South Carolina. In so doing, the General Assembly contemplated that telephone service would be provided via telephone wires of some sort. In earlier times, telephone wires were primarily made of copper. But, as technology progressed, these copper telephone wires have mostly been replaced by fiber-optic cables. This is the type of technological advancement which fits squarely within the plain meaning and intended purpose of section 12-37-220(B)(10) because, regardless of the type of connecting wire or cable, the intent to physically connect citizens in rural areas by voice remains fulfilled.

The Court further finds the evidence shows wireless telephone service has become a substitute for landline telephone service and, therefore, fulfills the same purpose as landline

telephone service. Taxpayers' expert, Mr. Meredith, testified to this substitution and the SCPSC also recognizes wireless telephone service as both competition for, and a substitute for, landline service. Indeed, the SCPSC has awarded FTCC, a wireless telephone service provider, with USF funding presumably because FTCC's is providing "rural telephone service" and fulfilling the goal of that mission through wireless telephone service. *See also* Op. S.C. Att'y Gen., WL 6629071, at *4 (Dec. 20, 2017) (observing "the [SC]PSC has found that '[w]ireless and landline voice telecommunications services are functionally equivalent services'" (citing *In Re Petition of South Carolina Telephone Coalition*, at 36)). From the end-user's perspective, wireless and landline are merely two different ways of providing the same telephone service.

Furthermore, wireless telephone service is still heavily reliant on the landline network. The only portion of wireless telephone service that is actually wireless is the connection between the wireless telephone and the radio tower. The radio towers are connected to the physical wires of the landline telephone system and rely on the landline backhaul system to complete calls and route them through the public switch network. And, in another part of this State's tax regime, the General Assembly has determined wireless telephone service is a type of telephone service. Specifically, for the purposes of sales and use tax, Regulation 117-329.4(a) clarifies that taxable "telephone services" include "telephone services provided via the traditional circuit-committed protocols of the public switched telephone network ("PSTN"), a wireless transmission system, a voice over Internet protocol ("VoIP"), or any of [sic] other method." S.C. Code Regs. Ann. 117-329.4(a) (2012).

Taxing Entities nevertheless claim that wireless technology is too far removed from what telephone service was in 1978 to fall within the scope of the exemption in section 12-37-220(B)(10). They argue wireless technology is fundamentally different than the technology available in 1978. The Court agrees with 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). However, that does not mean the statutory meaning of telephone service is static such that it cannot flex to accommodate a new technology that provides the same

service in substance if not in precisely the same form. *See City of Columbia v. Tatum*, 174 S.C. 366, 177 S.E. 541, 549–50 (1934) (“The language of the statute should be construed from a modern viewpoint, and not to prohibit progress in the public interest. The substance, and not the form, should control.”). Although wireless service utilizes a new technology, its function is not that different because it still relies on the landline backhaul system.

Technology aside, Taxing Entities also argue that, from a policy perspective, the same financial incentives necessary for the development of a rural landline telephone network are not necessary for the development of a wireless cellular network. Taxing Entities argue the competitive landscape within the wireless cellular industry and Taxpayers’ own territory shows that wireless providers are capable of profitably operating within the rural areas of South Carolina; and the exemption is intended to support unprofitable, high-cost investments in rural areas. Indeed, the Record shows that Verizon, T-Mobile, and Sprint all provide competitive wireless coverage in different parts of the Farmers Entities’ geographic area.

However, none of the listed competitors cover all the areas that Farmers Entities cover. The Farmers Entities service some areas that remain un-serviced by any other carrier, even if these un-serviced areas are small. Also, although the Court shares some of Taxing Entities’ concerns about subsidizing profitable wireless service, the evidence did not show the Farmers Entities are swimming in money. Even though FTCC, the wireless arm of Farmers Entities, is profitable, Diversified and Farmers are not profitable. The evidence further reflected that FTCC’s profits are used to off-set the costs of the unprofitable landlines, and Farmers teeters on being profitable or not every year.

Nevertheless, it is reasonable to question whether FTCC’s profit is enough to eliminate the need to subsidize rural telephone service through a tax exemption. Here, the State has determined it is still worthwhile to subsidize wireless as evidenced by its decision to distribute State USF funds to FTCC because FTCC is a substitute provider that is helping to achieve the policy of universal and affordable access to telephone service in rural areas. The underlying policy objective of the State USF is consistent with what is presumably the purpose of the Rural Telephone Service

Exemption: to provide a property tax incentive to those companies or cooperatives that provide telephone service in rural areas. *See People v. Gilbert*, 324 N.W.2d 834, 840 (Mich. 1982) (“Technological innovation may not be an obstacle to the application of a statute where the new technology facilitates the achievement of ends which the Legislature clearly meant to encourage or discourage.”). In this case, I find FTCC’s participation in a wireless market that is competitive and profitable does not prohibit it from qualifying for the Rural Telephone Service Exemption.

Taxing Entities also argue that wireless service should not be considered **rural** telephone service because many users of the Taxpayers’ wireless network are neither rural users nor South Carolina residents. I find this argument unpersuasive. Although there was evidence that people from out of state who drive on our State’s highways use Farmers Entities’ towers as they pass through the area, the extent of that use was not quantified and that fact does not eliminate the need or the purpose for providing rural telephone service in this area.

Overall, I conclude wireless telephone service constitutes “telephone service” as conceived by the General Assembly because, like traditional landline telephone service, it connects rural South Carolinians to each other by voice over the public switch telephone network. *See Mead v. Beaufort Cty. Assessor*, 419 S.C. 125, 134, 796 S.E.2d 165, 170 (Ct. App. 2016) (“A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute.”); *Brooks v. Northwood Little League Inc.*, 327 S.C. 400, 406–07, 489 S.E.2d 647, 650–51 (Ct. App. 1997); *see also City of Jefferson v. Cingular Wireless, LLC*, 2005 WL 1384062, at *1 (W.D. Mo. June 9, 2005) (finding ordinance that taxes persons “engaged in the business of supplying telephone and telephonic service” applies to mobile telephone services just as it applies to land line telephone services, even though mobile telephone technology did not exist at the time the ordinance was adopted). This finding is consistent with the testimony of Mr. Moss and Mr. Wyatt, who both agreed wireless service is telephone service and who both advanced that whether something is “telephone service” depends solely on the type of service that is being provided, not the medium or technology that is used to provide it. *See City of Columbia*, 174 S.C. at 366, 177 S.E. at 549–50 (“The substance, and not the form, should control.”); *Brooks*, 327 S.C.

at 406–07, 489 S.E.2d at 650–51 (“Statutes must be updated functionally to reflect changes in technology, terminology, and the legal landscape.”).

Rural

The evidence reflected that FTCC has ETC⁴³ carrier status with the FCC and the SCPSC, a status that is reserved for providers who serve rural, high-cost areas. Therefore, under South Carolina law, the areas FTCC serves qualify as rural. Also, the Federal Telecommunications Act defines the term “rural telephone company” as “a local exchange carrier operating entity to the extent that such entity . . . provides telephone exchange service, including exchange access, to fewer than 50,000 access lines.” 47 U.S.C.A. § 153(44)(B) (West). The evidence further showed that within its service area, FTCC has approximately 23,000 access lines and Diversified has approximately 6,800. Therefore, both FTCC and Diversified provide rural telephone service.

Used in Providing Rural Telephone Service

Taxing Entities argue Farmers Entities’ network is not used to provide rural telephone service because use of the network for that purpose is, at most, **de minimis**. Taxpayers contend that whether their assets are being used for rural telephone service is not dependent on how much a customer uses the network for that purpose, but rather the ability of the customer to use the network for that purpose. In other words, Taxpayers contend the relative use of their network for different purposes is irrelevant to the determination of whether Taxpayers’ assets are “used to provide rural telephone service.” Taxpayers’ argument has aspects that appear absurd but other aspects that are important in considering the legislative intent of the statute.

Before the Court examines what the meaning of “used” is for the purpose of the rural Telephone Service Exemption, it is important to note that Taxpayers concede their property that is used **exclusively** to provide Internet and television (IPTV) service is not exempt under the Rural Telephone Service Exemption. Accordingly, because Taxpayers have conceded this issue for purposes of this contested case hearing, the Court finds that any assets owned by Taxpayers and

⁴³ This stands for “eligible telecommunications carrier.”

used exclusively to provide Internet and IPTV services are not exempt from property tax. Similarly, under the Settlement Agreement, Diversified agreed that property used to provide security services is not exempt for the tax years covered by the Settlement Agreement (2010–2015). Furthermore, based upon the evidence, it appears that Diversified has continued to treat property used exclusively to provide security services as non-exempt in the years since the Settlement Agreement. Moreover, although witness testimony was conflicting on this point, Taxpayers’ expert conceded that security services are not telephone services. Accordingly, the Court finds that any property that is used exclusively to provide security services is not exempt under the Rural Telephone Service Exemption.

Next, for the purposes of this case, what does the term “used” mean? The plain language of the Rural Telephone Service Exemption simply states the exemption applies to property “used in providing rural telephone service.” § 12-37-220(B)(10). The word “used” is not defined in the exemption statute, which is significant considering the many ways use can be quantified. For example, property can be used “exclusively,” “primarily,” or even “substantially” to provide rural telephone service, but the statute has no such qualifiers.⁴⁴ *See id.* Similarly, the statute does not prohibit property from being used for other purposes; in other words, having a “dual use.”⁴⁵ *See*

⁴⁴ The Rural Telephone Service Exemption stands in contrast to other South Carolina property tax exemption statutes that explicitly require property to be used “exclusively” or “primarily” to qualify for the exemption. *See* S.C. Code Ann. § 12-37-220(A)(1) (providing for a property tax exemption for “property of the State, counties, municipalities, school districts, Water and Sewer Authorities and other political subdivisions, if the property is **used exclusively** for public purposes, and it shall be the duty of the Tax Commission and county assessor to determine whether such property is **used exclusively** for public purposes.”) (emphasis added); § 12-37-220(A)(11) (exempting property of public benefit corporations “used **exclusively** for economic development purposes”); § 12-37-220(B)(5) (exempting property of various veterans organizations “when used **exclusively** for the purpose of such organization”); § 12-37-220(B)(11)(a) (exempting property of nonprofit housing corporations “devoted **exclusively** to providing below-cost housing”); § 12-37-220(B)(16) (exempting property of “religious, charitable, eleemosynary, educational, or literary society, corporation, trust, or other association, when the property is used by it **primarily** for the holding of its meetings and the conduct of the business”); § 12-37-220(19) (exempting property owned by volunteer fire departments and rescue squads “used **exclusively** for the purposes of these departments and squads”); § 12-37-220(B)(20) (exempting property of “nonprofit museums which is used **exclusively** for such purpose”); § 12-37-220(B)(24) (exempting property that is “used **exclusively** for the promotion of the arts”); and § 12-37-220(B)(34) (granting exemption only to facilities “devoted **directly and primarily** to research and development”).

⁴⁵ South Carolina courts have not interpreted any property tax exemption where the use required by the statute is not an exclusive use. However, the South Carolina Court of Appeals has held, in a case interpreting a sales tax exemption which applied to “machines used in manufacturing,” that the exemption applied so long as the machines

id. Also, the statute does not restrict the type of technology or assets (telephones, copper wires, etc.) that may be used to deliver the telephone service. *See id.*

Generally, “[w]here a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning.” *Berkeley Cty. Sch. Dist. v. S.C. Dep’t of Revenue*, 383 S.C. 334, 345, 679 S.E.2d 913, 919 (2009). In this case, Merriam-Webster defines “used” as “employed in accomplishing something.” *Used*, WEBSTER’S ONLINE DICTIONARY, <http://www.merriam-webster.com/dictionary/used> (last visited Sept. 17, 2019). Under this definition, the exemption would be granted for assets employed to accomplish rural telephone service.

In this case, Taxpayers’ network is **used**, in part, to provide rural telephone service. However, the conflict in this case is **how much** the network is used for exempt services versus non-exempt service. Unfortunately, the dictionary definition does not resolve how to evaluate the extent to which the property must be used to qualify for the exemption. To resolve this issue, both parties sought to quantify relative use. 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 Taxpayers’ network is used to provide rural telephone service, but it is also used to provide non-exempt services such as the Internet.⁴⁶ The fiber-optic cable is used for rural telephone service, but how much of its use can be relegated to providing that service compared to other services?

Recognizing the interconnected nature of the Taxpayers’ 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. Based upon Mr. Moss’ estimation, which I found most credible, the relative use of Farmers Entities’ network for voice telephone service was no more

were “substantially” used in manufacturing. *Hercules Contractors & Engineers, Inc. v. S.C. Tax Comm’n*, 280 S.C. 426, 440, 313 S.E.2d 300, 309 (Ct. App. 1984).

⁴⁶ 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.

than 5% for any of the tax years in dispute.⁴⁷ In fact, even after adjusting his analysis to account for two criticisms raised by Taxpayers' expert, the relative use of Farmers Entities' property for voice telephone services was no more than 19.12% for tax year 2010, 12.65% for tax year 2011, 8.7% for tax year 2012, 7.18% for tax year 2013, 5.25% for tax year 2014, 4.01% for tax year 2015, 3.13% for tax year 2016, 2.38% for tax year 2017, and 1.79% for tax year 2018. Therefore, the relative use of Taxpayer's network for voice telephone service is declining and is becoming more and more **de minimis**.

In light of the declining use, Taxing Entities argue the prevailing rule in other jurisdictions is that "in the absence of an exclusivity requirement, it is the primary, as distinguished from an incidental, use of the property that determines the question whether it is exempt from taxation." 84 C.J.S. Taxation § 278.⁴⁸ Based on Mr. Moss's bandwidth estimates, the evidence shows Taxpayers' interconnected network is only incidentally used in providing voice services. However, I do not find this controlling. Although measuring the relative use of the network with bandwidth shows Taxpayers' network is only incidentally used in providing voice services, the Court finds bandwidth does not adequately capture the use of the network under the statute for two reasons. First, the intention of the exemption is to encourage the development of rural telephone service to supply the ability to connect to the public switch network and access emergency services 99.999% of the time. In other words, access is an important component of use in this scenario that does not necessarily correlate with traditional measure of use such as minutes of use or bandwidth.⁴⁹ Second, and relatedly, bandwidth does not capture the fact that no matter how **de**

⁴⁷ The total amount of data transmitted on the network consists of emails, streaming video services, television service, security services, telephone calls, and various forms of data transmission, and each transfer utilizes bandwidth at significantly different rates.

⁴⁸ Taxing Entities also cite to a Nebraska case and a Vermont case in support of this argument. See *City of York v. York County Bd. of Equalization*, 266 Neb. 297, 664 N.W.2d 445 (2003) ("The primary or dominant use, and not an incidental use, is controlling in determining whether property is exempt from taxation."); *American Museum of Fly Fishing, Inc. v. Town of Manchester*, 151 Vt. 103, 557 A.2d 900 (1989) ("Before a property is entitled to tax-exempt status as a public use, it must meet certain criteria, as follows: . . . (2) the primary use must directly benefit an indefinite class of persons who are part of the public.").

⁴⁹ Because the purpose of the exemption inherently includes an aspect of the **ability to use or access** telephone service, I find this case is distinguishable from other circumstances where **de minimis** use, with no access component, would be more significant. See, e.g., *Hercules Contractors & Engineers, Inc.*, 280 S.C. 426, 438, 313 S.E.2d 300,

minimis the use of Taxpayer's network is for telephone service, a majority of the network infrastructure is physically needed to provide voice telephone service even if the infrastructure is also used for non-exempt data services.⁵⁰ Similarly, Taxpayers' minutes of use theory does not accurately how much of the network is used for services other than voice telephone service. Therefore, I find the more pertinent question is what percentage of Taxpayers' infrastructure would be necessary to provide voice telephone service if all other services were excluded. This answer to this question more accurately reflects the property that is used in providing rural telephone service.

What Percentage of the Property is Exempt?

The Rural Telephone Exemption provides that property **used** in providing rural telephone service that was exempt as of December 31, 1973, shall continue to be exempt. § 12-37-220(B)(10). This language implies that if property was exempt in 1973, but is no longer **used** for rural telephone service, then that property would no longer be exempt. The exemption also discusses what proportion of property added after 1973 should be deemed exempt. Specifically, the statute provides that for property added after December 31, 1973, the new property "shall likewise be exempt . . . in **the proportion**" that the exempt property of such company was to the total property of that company in the applicable tax district **as of December 31, 1973**. *Id.* (emphasis added). Accordingly, if in 1973 all of Farmers' property was **used** to provide rural telephone service, then the exempt proportion would have been 100% and any property Farmers later added would also be 100% exempt. In other words, the legislature has fixed the proportion of newly added property that is exempt to the proportion that was exempt in 1973.

Here, Farmers has claimed for decades that 100% of its property as exempt, and the Department has granted Farmers a 100% exemption each year. However, the evidence did not establish the specific nature of Farmers' property that was exempted as of December 31, 1973.

308 (Ct. App. 1984) (holding a sales tax exemption for "machines used in manufacturing" applied so long as the machines were "substantially" used in manufacturing even though the statute contained no such qualification).

⁵⁰ For example, it is possible that even though only 5% of the network's bandwidth capacity is used for voice telephone services, 80% of the network infrastructure (i.e. property) is necessary to provide voice telephone services.

Taxpayers rather rely upon the fact that the Department has historically granted Taxpayer's claim that 100% of its property is exempt and contend the Court should thus continue to allow that privilege not just for Farmers but for FTCC's and Diversified's properties. This argument presents several issues.

First, the manifest purpose of the statute is to subsidize property used for the provision of rural telephone service. *See Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.").

Furthermore, our Supreme Court has held:

The true guide to statutory construction is not the phraseology of an isolated section or provision, but the language of the statute as a whole considered in the light of its manifest purpose. In applying the rule of strict construction the courts may not give to particular words a significance clearly repugnant to the meaning of the statute as a whole, or destructive of its obvious intent.

Laurens Cty. Sch. Districts 55 & 56 v. Cox, 308 S.C. 171, 174, 417 S.E.2d 560, 561 (1992).

Here, if FTCC and Diversified are considered one and the same with Farmers, then they are entitled to the same exemption as long as it was **properly** granted to Farmers in 1973. However, although the legislature's language is clear in fixing the proportion of exempt property as it was as of December 31, 1973, discerning what portion Taxpayers are entitled to carry forward is clouded by Taxpayers' failure to identify the Department's original determination of what proportion of property was exempt in 1973 and thus its application going forward. Further, Farmers has claimed the Rural Telephone Exemption every year in recent memory even though Farmers' CEO confirmed that Farmers provides certain non-exempt services, such as broadband internet services, television service, security services, and wireless service. Therefore, the Department's decision to grant Farmers' a 100% exemption every year even though less than 100% of its property is used to provide rural telephone service is a misuse of the exemption. FTCC and Diversified similarly provide services that are not rural telephone service. Accordingly, in applying the exemption to property that is used for telephone service, the Court must be careful to ensure the application of the exemption is actually granted for property used to provide rural

telephone service.⁵¹ It is the actual usage for which the Taxpayers are entitled to claim a tax exemption.

Secondly, in fulfilling the legislative intent of the statute, the Court cannot ignore how rural telephone service is currently provided to Taxpayers' customers. It is clear from the evidence presented that in modern times neither Farmers, FTCC, nor Diversified use 100% of their property to provide rural telephone service. Thus, even if FTCC and Diversified were entitled to claim Farmers' carry-forward exemption, Farmers' current claim of that exemption is based upon a method of providing telephone service that works in tandem with a usage that is not rural telephone service. Since the current paradigm was not in existence in 1973, the Court must evaluate the overall system to determine the proportion of the system that is utilized to provide rural telephone service. In making that determination, the Court evaluates what proportion of the property of Diversified and FTCC is necessary to provide rural telephone service and the extent that limited use of the system for the provision of rural telephone service fits within the legislative intent to reward companies who use their property to provide rural telephone service.

As previously discussed, the relative use of Taxpayers' network for telephone service is miniscule compared to the other services Taxpayers' customers use. However, the proportion of the network that is physically used and necessary to provide rural telephone service is significant. But, neither minutes of use nor bandwidth adequately capture what proportion of Taxpayers' network is used for telephone service. The parties' advocacy of these two disparate methods for measuring "relative" use to the exclusion of other theories complicates the Court's decision in this case. Moreover, the Department, for its part, did not weigh in on how it would evaluate the extent to which the network is used for telephone services versus non-telephonic services. Therefore, the Court turns to the Department's historical method of valuing utility property for tax purposes—cost—to gain clarity as to the proportion of the infrastructure that is attributable to rural telephone service.

⁵¹ Farmers conceded this reasoning when it agreed that property of FTCC and Diversified that was used to provide services other than wireless and land-line telephone service is not exempt from property taxes at any level.

The Department has traditionally used the unit valuation method based upon a cost approach to value to assess the property of utilities.⁵² In other words, the Department values all the functioning assets as an ongoing concern to arrive at the total value of the assets. The total value of the assets is then used to apply an assessment ratio, and the Department then certifies the assessed amount to the appropriate county auditor(s) so that they can attach their local millage rate and bill the taxpayer accordingly. Following that paradigm, the Court finds that, in light of the facts of this case, the cost of establishing a network to provide for rural telephone service is the most accurate way to capture the use of the network for property tax purposes for Diversified and FTCC.⁵³

In this instance, the evidence established that if Farmers Entities were to build a voice-only telephone network, that network would be similar to the current Farmers Entities' network. Specifically, a landline-only network would utilize much of the existing equipment, be placed in the same geographic locations, and would have evolved to fiber-optic. Mr. Moss's estimation that building a voice-only network would be between fifty to sixty percent cheaper is probative.⁵⁴ However, although a voice-only network could use lower-capacity equipment (i.e. cheaper), Farmers' CEO indicated using lower-capacity equipment would not always result in cost-savings. Based upon this evidence as a whole, I find that a voice-only network would cost 25% less than the current network. Accordingly, I find that 75% of Diversified and FTCC's assets are used to provide rural telephone service and thus are exempt.⁵⁵

⁵² The Department also uses revenue instead of cost for the unit valuation method. Because, as described previously, revenue from landlines overrepresents the use of the network for landline services, the Court does not find the revenue method of unit valuation to be the best measurement of use of the network for rural telephone service.

⁵³ The Court nonetheless recognizes that FTCC, as a wireless provider, may be better valued using the revenue approach to value under the unit valuation method. However, the Court must make this determination based upon the evidence presented.

⁵⁴ In its Motion for Reconsideration, Taxpayers refer to the testimony of Mr. Moss as speculation. But that testimony was given as his expert opinion with over thirty-seven years of experience in his field, including experience with landline telephone networks and wireless cellular networks. Furthermore, Mr. Moss's testimony is the only testimony in the record directly addressing how much less a telephone-only system would cost. In fact, his testimony was given, in part, in response to questions from Farmers' counsel and only challenged in Farmers' case by Farmers' CEO.

⁵⁵ In its Motion for Reconsideration, Taxpayers emphasized the testimony of its expert witness. However, I did not find his opinions persuasive. Taxpayers also emphasized the testimony of Mr. Moss that "most" of Farmers existing equipment will remain configured in the same manner as it already exists. However, to argue that most would exist

Did Taxpayers Properly Apply for the Exemption?

Taxing Entities argue the Department erred in awarding Taxpayers the exemption because Taxpayers were statutorily required to claim the rural telephone exemption on their original tax returns and failed to do so. Taxpayers argue (1) they applied for the exemption on their original returns and (2) the statutory scheme allows them to apply for the exemption up to three years after their original tax returns were filed. As explained below, the Court finds Taxpayers properly applied for the exemption for some tax years, but not for others.

Initially, the Court notes that although FTCC and Diversified are single-member LLCs of Farmers, this does not mean that Farmers' receipt of the exemption should be automatically applied to FTCC and Diversified without FTCC or Diversified first applying for the exemption themselves. S.C. Code Ann. § 12-60-1750(1) ("Notwithstanding any other provision of law, no refund of property taxes must be given . . . for a property tax exemption requiring an application, unless the application was timely filed . . ."). Indeed, FTCC's and Diversified's operations are clearly functionally distinct from Farmers and, thus, they must show they independently qualify for the exemption even if their relationship to Farmers makes them eligible to receive it.

General Law on Applying for Exemptions

As the Supreme Court noted in *TNS Mills*, "[t]he General Assembly has the power to provide for methods and procedures in applying for exemptions for the purpose of property taxes." *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 617, 503 S.E.2d 471, 475 (1998) (citing S.C. Const. Art. X, § 3); *see also* 71 Am. Jur. 2d *State and Local Taxation* § 208 ("Tax exemptions are privileges accorded as a matter of legislative grace and not as a matter of taxpayer right."). Thus, a taxpayer must properly apply for the exemption pursuant to the methods and procedures set by the General Assembly, which, in the case of *TNS Mills*, and in this case, means compliance with section 12-4-720 of the South Carolina Code (2014). *See TNS Mills, Inc.*, 331 S.C. at 618,

in the same manner recognizes that some would not. In this instance, I simply find that 25% of the equipment would not be needed for a telephone-only network. It is also important to recognize that Taxpayers were required to prove their entitlement to an exemption. Accordingly, if there is any lack of evidence regarding this issue, its absence would be weighed against Taxpayers. *See TNS Mills, supra*.

503 S.E.2d at 475 (citing S.C. Code Ann. § 12-4-720 (Supp. 1991-1992)). A taxpayer must likewise properly apply for an exemption to be granted one through a refund request. S.C. Code Ann. § 12-60-1750(1) (2014) (“Notwithstanding any other provision of law, no refund of property taxes must be given . . . for a property tax exemption requiring an application, unless the application was timely filed . . .”). “The department, upon receipt of an application and upon proper investigation, may declare the real and personal property of a property owner qualifying for an exemption from ad valorem taxation identified in this chapter as exempt and shall certify the exemption to the auditor's office in the county in which the property is located.” S.C. Code Ann. § 12-4-730 (2014); *see also* 71 Am. Jur. 2d *State and Local Taxation* § 208 (“Tax exemptions are never presumed.”).

Section 12-4-720 governs both how and when to apply for a property tax exemption. It specifies that:

(A) Applications for property exemptions, other than the exemption provided by Section 12-37-220(A)(9), must be filed as follows:

(1) Except as otherwise provided any property owner whose property may qualify for property exemption shall file an application for exemption with the department within the period provided in Section 12-54-85(F)⁵⁶ for claims for refund. This item does not relieve the taxpayer of any responsibility to file timely and accurate property tax returns.

* * *

(B) If a taxpayer files a property tax return listing property as exempt, that listing is considered an application for exemption from property taxes.

(C) A taxpayer who is required to file property tax returns with the department shall claim any exemption on the return each year the property is exempt.

(D) Except for the requirement in subsection (C), the owner is not required to file more than one application for each exemption, unless there is a change in the status of the property as reported in the initial application or unless requesting an exemption for property which was not included in the initial or subsequent application.⁵⁷

⁵⁶ In relevant part, section 12-54-85(F)(1) provides: “claims for credit or refund must be filed within three years from the time the return was filed, or two years from the date the tax was paid, whichever is later.” S.C. Code Ann. § 12-54-85(F)(1) (2014).

⁵⁷ Under subsection (D), once the exemption is granted, the rural telephone cooperative need not reapply for the exemption each year, but it does need to claim the exemption on each property tax return in subsequent tax years.

S.C. Code Ann. § 12-4-720. Under this statute, Taxpayers are required to file an application for the exemption pursuant to subsection (A)(1). Additionally, Taxpayers must also comply with subsection (C) and claim the exemption annually on their tax returns because they fall within the group of taxpayers (utilities) who must file annually with the Department. *See* S.C. Code Ann. § 12-37-970 (2014 & Supp. 2019); S.C. Code Ann. § 12-4-540 (2014). Thus, the law distinguishes an “application” for an exemption from a “claim” for the exemption.⁵⁸ As explained in section (D), a taxpayer is required to “apply” for an exemption once and, thereafter, the taxpayer is only required to “claim” the exemption. § 12-4-720(D). Accordingly, the application for an exemption precedes the claim for the exemption.

Taxing Entities claim that allowing a taxpayer to apply for an exemption up to three years after filing their original return under subsection (A)(1)⁵⁹ conflicts with subsection (C)’s requirement that a taxpayer **shall** claim the exemption on the return **each year** the property qualifies as exempt. *See TNS Mills, Inc.*, 331 S.C. at 620, 503 S.E.2d at 476 (“Ordinarily, the use of the word ‘shall’ in a statute means that the action referred to is mandatory.” (citation omitted). Additionally, unlike subsections (B) and (C), which both describe the tax return as the vehicle for applying for, or for claiming, the exemption, subsection (A)(1) says nothing about applying for the exemption on the return. §§ 12-4-720(A)(1), (B), (C). As a result of these apparent conflicts between the subsections in section 12-4-720, the exact method and timeline for applying for an exemption is somewhat unclear.

To resolve the conflict, it is helpful to look at the legislative history of section 12-4-720. *Limehouse v. Hulsey*, 404 S.C. 93, 106, 744 S.E.2d 566, 573 (2013) (“[A]s the rules of statutory

⁵⁸ Although the law distinguishes between applying for an exemption and claiming an exemption, the Court finds these two terms will often overlap in practice. For example, under subsection 12-4-720(C), listing a property as exempt qualifies as an application. The Court finds that listing a property would also qualify as claiming the exemption for that tax year. Similarly, it is likely that if a taxpayer claims a property as exempt, he probably listed the property as exempt and thus applied for the exemption. Therefore, the distinction between these terms is not very significant.

⁵⁹ More specifically, subsection (A)(1) requires an application for exemption be filed within the timeframe of a refund request under section 12-54-85(F)(1), which means the application must be filed within three years from the time the return was filed or two years from the date the tax was paid, whichever is later. S.C. Code Ann. § 12-54-85(F)(1) (2014):

construction dictate, it is also necessary for courts to consider the legislative history in order to effectuate the purpose of the statute.”). In 1991, section 12-4-720 required a taxpayer to “file an application for exemption between January first and April fifteenth of the first year for which the exemption is claimed.” 1991 S.C. Laws Act 50, §2. This was the law in place when *TNS Mills* was decided, and it clearly set forth a deadline for the application. Then, in 1995, the General Assembly amended section 12-4-720 to, in part, “revise or extend the time for filing exemption applications.” 1995 S.C. Laws Act 125. As part of this amendment, the General Assembly removed the language requiring the application for exemption to be filed by between January first and April fifteenth and added subsections (A)(1) and (C) as they currently read.

The deletion of the April deadline and the addition of the extended timeframe shows the General Assembly intended to give taxpayers time to file an application for exemption beyond April fifteenth; however, the General Assembly simultaneously added subsection (C) requiring taxpayers to claim any exemption on their tax return every year it seeks an exemption. Although these two requirements appear to conflict, it is clear the General Assembly meant for taxpayers to apply for an exemption up to three years after their original tax return was filed. Nevertheless, in its proposed order, the Department asserts “the statutory framework regarding the **application and granting** of property tax exemptions is not easy to decipher.” (emphasis added). In reconciling the statute, the Department argues that if a taxpayer is required to submit their application with their original return in compliance with subsection (C), then it would render subsection (A)(1)’s extended timeframe meaningless.⁶⁰ However, the Department fails to note that the reversal is also true – if subsection (A)(1) is given its full meaning, then it would seem to render subsection (C) meaningless.⁶¹

⁶⁰ Notably, the Department’s 30(b)(6) witness testified in her deposition that subsection 12-4-720(C) applies to Taxpayers. She also agreed that, to comply with this subsection, a taxpayer “would have to state the exemption in a way that the department could understand they were requesting the exemption.”

⁶¹ Additionally, if subsection (A)(1) is given its full meaning, then its last sentence – “[t]his item does not relieve the taxpayer of any responsibility to file timely and accurate property tax returns” – must also be given its full meaning and would suggest that a taxpayers should comply with subsection (C). § 12-4-720.

To resolve the perceived conflict in section 12-4-720, we look to the statutory construction principle of harmonizing “conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd.” *Hodges v. Rainey*, 341 S.C. 79, 91, 533 S.E.2d 578, 584 (2000). Also, a “statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect.” *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). Following these principles, the intent of the General Assembly becomes clear.

Subsections (A)(1), (B) and (C) recognize that the Department need not conduct an extensive examination each year of property that has been listed as exempt by the taxpayer and thereafter found by the Department to be properly exempt under the tax laws. Rather, once that determination is made by the Department, the validity of a prior exemption determination continues in effect, as long as basis for granting the exemption does not change. Nevertheless, after the taxpayer’s exemption application is granted, they cannot rest on their laurels in subsequent years; they must still **claim** the exemption every year.⁶² Interpreting the statute in this manner gives meaning to the requirements of both section 12-4-720(A)(1) and section 12-4-720(C). *Applying*, WEBSTER’S ONLINE DICTIONARY, <http://www.merriam-webster.com/dictionary/benefit> (last visited February 10, 2020) (defining applying as “to make an appeal or request especially in the form of a written application”); *Claiming*, WEBSTER’S ONLINE DICTIONARY, <http://www.merriam-webster.com/dictionary/claiming> (last visited February 10, 2020) (defining claiming as “to ask for especially as a right”).

Further, when we read section 12-4-720(C) carefully, it does not state that the exemption must be claimed on an **original** return; rather, it states the exemption must be claimed “on the return each year the property is exempt.” § 12-4-720(C) (emphasis added). Because the statute does not require the property to be claimed on the original return, it could be claimed on an

⁶² Although a strict reading of section 12-4-720(C) also requires the taxpayer to claim the tax exemption on **each** year of the request, including the year for which the exemption is applied, when the statute is read as a whole, the purpose of this requirement is for the taxpayer to claim the exemption each year after its application is granted. In other words, whether a claim must be made in the first year is a matter of semantics because, by applying for the exemption in the first year, a party is seeking to claim their right to the exemption.

amended return for the tax year at issue.⁶³ Therefore, **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).⁶⁴ After initially applying through one of these methods, Taxpayers could submit subsequent returns (or amended returns, as necessary) merely **claiming** the exemption instead of **applying** for it. § 12-4-720(D). However, as the Court already noted, it is likely that if a taxpayer claims the exemption, he will have “listed” the property as exemption and, therefore, also applied for the exemption under § 12-4-720(C). Moreover, section 12-4-720(A)(1) makes clear that this privilege does not relieve the taxpayer of any responsibility to initially file a timely and correct property tax return.

Taxpayers’ Original Returns

Taxpayers contend they applied for the Rural Telephone Service Exemption on their original tax returns for each tax year at issue. Specifically, Taxpayers claim that by filing their tax returns in the same manner as Farmers (who was historically granted the exemption), and by identifying some of their property as “rural” on their tax returns, they properly applied for the exemption. They further argue that even if they did not apply for the exemption on their original returns, they applied via their protests each year. The Department maintains it never questioned whether FTCC or Diversified had actually applied for the exemption.

Significantly, Taxpayers admit that when FTCC filed its returns in 2010 and 2011, FTCC did not intend to apply for the exemption. Indeed, FTCC did not intend to apply for any exemption

⁶³ Taxing Entities argue section 12-4-720(C) is an exception to section 12-4-720(A)(1), which precludes Taxpayers from utilizing the three-year period to apply for an exemption. Taxing Entities argue this exemption is for taxpayers who must file an annual property tax return, which is primarily large businesses, utilities, railroads, and other large taxpayers whose claims for refunds could have significant repercussions on local governments. In other words, Taxing Entities argue the three-year application period is only for taxpayers who do not contribute a significant amount in taxes. This interpretation, which discriminates between significant and insignificant taxpayers, has no basis in the language of section 12-4-720 and is counter to the broad legislative intent to “revise or extend the time for filing exemption applications.” 1995 S.C. Laws Act 125.

⁶⁴ The Court is not suggesting that taxpayers, generally, cannot apply for a tax exemption through other means, but rather that under the facts of this case, the only documents that could be construed as “applications” are FTCC’s and Diversified’s tax returns. As the Court will discuss below, the Court finds that a protest cannot also function as an application for exemption.

because it did not believe it qualified for the exemption as a single-member LLC of Farmers. Despite FTCC's lack of intent, Taxpayers now claim FTCC unintentionally applied for the exemption by filing the same documents with its tax return in 2010 and 2011 as Farmers filed with its returns.

Initially, the Court finds Taxpayer did not, and cannot, haphazardly apply for an exemption when they have no intent to do so. Taxpayers' admitted lack of intent is remarkably similar to the situation in *TNS Mills* in which TNS admitted in the circuit court that it had filed its tax returns without intending to claim the exemption for pollution control equipment but then argued on appeal that it had claimed the exemption anyway just by signing its tax returns, which included boiler plate language about the exemption. *TNS Mills, Inc.*, 331 S.C. at 617, 503 S.E.2d at 474. Our Supreme Court found "TNS did not intend to apply for this exemption when it filed its tax returns" and TNS could not apply for the exemption by simply signing off on pre-printed language on the return without doing more to show they were claiming the exemption. *Id.* at 619, 503 S.E.2d at 475. The Supreme Court ultimately found that "TNS's tax filing were too incomplete to clearly satisfy the requirement of the code" to apply for an exemption. *Id.*

Applying the ruling in *TNS Mills* to this case, I find FTCC could not have applied for the exemption on their original tax returns in 2010 and 2011 because (1) FTCC did not intend to apply for it and (2) FTCC did not clearly comply with the requirements for applying for an exemption. The original tax returns submitted by Taxpayers for tax years 2010-2016, which consisted of a PT-420, PT-27, and SCPSC Report, do not include the word "exempt" anywhere on the return or within documents attached to the return. Nor is there any assertion that an exemption is being applied for, claimed, or requested using alternative language on the return or in the attachments.⁶⁵

⁶⁵ Interestingly, on the front of Form PT-420, the Department requires that

The following information, where applicable, must be filed with the Office Audit Section prior to April 30 annually, after which an appropriate penalty will be applied as provided by law.

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5) A complete explanation of the method used to determine exempt property when applicable.

As evidenced by all Taxpayers' original returns filed during the period at issue, the PT-420 has contained this same instruction and language for every tax year at issue. However, there is no evidence in the record of Taxpayers submitting any explanation of how exempt property was determined for any of the tax years at issue. Curiously, this

A person looking at these returns would not discern any indication that Taxpayers were requesting an exemption.

More specifically, it is clear these returns do not comply with subsection 12-4-720(B), which provides that “[i]f a taxpayer files a property tax return listing property as exempt, that listing is considered an application for exemption from property taxes.” S.C. Code Ann. § 12-4-720(B). In other words, Taxpayers did not take an affirmative action to identify the property they claim as “exempt” on their tax return. Although this is a low threshold, there is no evidence of it being met here. Rather, the evidence before the Court is that Taxpayers simply identified some property as “rural” on their tax returns. The plain meaning of section 12-4-720 is clear and unambiguous—it requires the taxpayer to list the property as “exempt” not “rural.” *See CFRE, LLC*, 395 S.C. at 74, 716 S.E.2d at 881 (“Thus if the words are unambiguous, we must apply their literal meaning.”). Therefore, Taxpayers did not apply for the exemption pursuant to section 12-4-720(B).⁶⁶

The original returns also do not otherwise qualify for an exemption under subsections 12-4-720(A)(1) and (C). According to Taxpayers, the Department understood they were claiming the exemption on their original returns because the documents they filed for their returns (PT-420, PT-427, and SCPSC report) were consistent with the documents filed by Farmers, who annually received the exemption without issue. Taxpayers also argue that their designation of certain property as “rural” was sufficient to trigger the exemption. The Court disagrees.

Contrary to Taxpayers’ assertions, the Department received the PT-420, PT-427, and SCPSC report from FTCC in 2010 and 2011 and did not infer an application for the exemption. In fact, Mr. Ingram testified that despite Taxpayers filing their returns similarly to Farmers, he

particular requirement on the front of the PT-420 was not discussed by the parties at trial. Although a tax form produced by the Department does not have the weight of a statute or regulation, Taxpayers’ failure to follow this directive shows a distinct lack of commitment to obtaining the exemption.

⁶⁶ Although the Department never indicated to Taxpayers that they were not properly applying for the exemption, and therefore Taxpayers may not have realized they were not properly applying for the exemption, the clarity with which the statute indicates how to apply for an exemption belies any argument (not that any were raised) about detrimental reliance on the Department’s acceptance of Taxpayers’ filings as a proper applications.

would not have given them the exemption “unless there was some sort of correspondence letting me know they’re requesting the exemption.” Mr. Ingram also testified that labeling certain property as “rural” would have been insufficient to signal an application for exemption.⁶⁷ It was not until 2012, after Taxpayers protested their 2012 tax assessment because they believed they qualified for the exemption, that the Department understood that Taxpayers were applying for the exemption.

Despite the Department’s historical failure to infer an application for exemption from FTCC’s 2010 and 2011 tax returns, the Department contends it never questioned whether FTCC or Diversified had actually applied for the exemption. Like Taxpayers, the Department claims that when it receives a PT-420 along with a PT-427 or PT-429⁶⁸ and a copy of a company’s annual report to the SCPSC, it infers that the telephone company or cooperative is claiming the exemption.⁶⁹ The Department’s argument implies its interpretation of what constitutes an application for exemption should be entitled to deference.

Agency Deference

Generally, when a statute is unclear or ambiguous, the Court will defer to the agency’s interpretation if it is worthy of deference. *See Kiawah Dev. Partners, II v. S.C. Dep’t of Health & Envtl. Control*, 411 S.C. 16, 33, 766 S.E.2d 707, 717 (2014) (“If the statute or regulation ‘is silent or ambiguous with respect to the specific issue,’ the court then must give deference to the agency’s

⁶⁷ Interestingly, Mr. Ingram’s boss at the Department, Charles Brewer, testified in his deposition that although he had never examined Taxpayers’ tax returns, he understood that “they listed the property as rural, which we considered to be exempt.” But Mr. Brewer also indicated Mr. Ingram was the subject matter expert at the Department concerning utilities and he would be the better person from whom to seek out detailed information about specific filings at issue in the case. The testimony provided by the Department’s employees in this matter compared with its arguments in its proposed order appear to conflict with each other significantly to show the Department had no standard interpretation of what an application for exemption in this context looks like.

⁶⁸ Notably, in 2011 Farmers filed both a PT-427 and PT-429. The PT-429, which was not filed by Taxpayers, has a column labeled “EXEMPT PROPERTY (LEAVE BLANK).” Mr. Ingram testified the exempt is for the Department’s use; however, on Farmers’ 2011 PT-429, the Department wrote in the margins instead of in the column. There is no column on the PT-429 for the taxpayer to mark what property is exempt. And, in contrast to the PT-429, the PT-427 does not contain a column for exempt property.

⁶⁹ Testimony indicated the SCPSC report can reflect exempt and nonexempt assets based on what is designated, respectively, as “regulated” or “non-regulated assets” in the report. The testimony indicated that wireless assets are represented in several of the non-regulated (non-exempt) investment categories.

interpretation of the statute or regulation, assuming the interpretation is worthy of deference.” (citation omitted)); *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003) (holding the court “gives deference to an administrative agency's interpretation of an applicable statute or its own regulation”). Furthermore, a cornerstone of the deference analysis is also determining whether an agency interpretation is “long-standing.” See *Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue*, 388 S.C. 138, 149, 694 S.E.2d 525, 530–31 (2010) (“An agency's long-standing interpretation of a statute is usually entitled to be given deference and should not be overruled by a reviewing court in the absence of cogent reasons”); *Charleston Cty. Assessor v. Univ. Ventures, LLC*, 427 S.C. 273, 289, 831 S.E.2d 412, 420 (2019) (“We have previously ‘held in many cases that where the construction of the statute has been uniform for many years in administrative practice, and has been acquiesced in by the General Assembly for a long period of time, such construction is entitled to weight, and should not be overruled without cogent reasons.’” (quoting *Etiwan Fertilizer Co. v. S.C. Tax Comm'n*, 217 S.C. 354, 359, 60 S.E.2d 682, 684 (1950))).

It is notable that although the South Carolina appellate courts’ often separately address the deference given to an agency’s construction of the statute that is silent or ambiguous and the deference given to an agency’s construction that has been uniform for many years, both concepts are part of the overall agency deference doctrine and are not separate principles. Indeed, the danger of culling out the “long-standing interpretation” from that of the construction of an ambiguous statute/regulation is easily demonstrated. On one hand, ignoring the requirement of a long-standing administrative interpretation would allow an agency to construe its statutes or regulations on a case-by-case basis and seek deference for a mutable interpretation. For example, in *Harry v. South Carolina Department of Health and Environmental Control*, the Department sought deference for its staff member’s new interpretation of its regulations when the staff member had only been with the Department for eight months even though the Department had interpreted the regulation contrary to that staff members interpretation for over fifteen years. 09-ALJ-07-0255-CC, 2010 WL 8425978, (July 15, 2010); see also, *Billy Keyserling, Mayor of the City of Beaufort*,

the City of Beaufort, Mayor Joseph P. Riley, Jr., Mayor of the City of Charleston, the City of Charleston, Tim Goodwin, Mayor of the City of Folly Beach, the City of Folly, No. 15-ALJ-07-0319-CC, 2016 WL 1627204, at *6-7 (Apr. 19, 2016). Allowing agencies to change their interpretation on a whim raises the potential for equal protection issues. See *Weaver v. S.C. Coastal Council*, 309 S.C. 368, 423 S.E.2d 340 (S.C. 1992). On the other hand, if the long-standing interpretation requirement is a separate principle, then an agency that has held a long-standing interpretation of a statute/regulation could claim deference even though that interpretation is contrary to the plain meaning of the law. In sum, the Supreme Court's circumscription in *Kiawah* that deference is given to an agency's interpretation of a silent or ambiguous statute "assuming the interpretation is worthy of deference" accounts for the need to consider the entire doctrine before granting deference. *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control*, 411 S.C. 16, 32–33, 766 S.E.2d 707, 717 (2014).⁷⁰

Under the facts of this case, the Court finds the Department is not entitled to deference as to what constitutes an application for exemption outside of subsection 12-4-720(B) because the Department cannot show it consistently follows the interpretation it espouses. If the Department truly has a long-standing interpretation, the Court would expect the interpretation to be (1) recorded in the Department's policies or procedures to put taxpayers on notice and (2) consistently applied to all applicable taxpayers. The Department does not meet either of these expectations. Specifically, the Department has no written policies or procedures for determining the exemption at issue. If the Department's position is to be entitled to deference, its position ordinarily must be a formal interpretation by the Department and not its staff. *Neal v. Brown*, 383 S.C. 619, 682 S.E.2d 268, 270 (2009) (holding "an agency's Appellate Panel, not its staff, is typically entitled to deference in interpreting agency regulations"). In this case, the Department's position does not appear to be based upon any formal ruling or publication by the Department. The Department also admits there is no separate application form for the rural telephone service exemption although

⁷⁰ It is also notable that the issue of long-standing administrative interpretation was never raised before the ALC or the Supreme Court in *Kiawah*. Therefore, there would have been no need for the Supreme Court to address the issue.

section 12-37-970 of the South Carolina Code (2014) requires that “[t]he department by regulation shall prescribe the form of return required by this section, the information to be contained in it, and the manner in which the returns must be submitted.”

Next, even if the Department has previously applied the interpretation it now espouses, it does not consistently apply this interpretation because, if it did, it would have inferred that Taxpayers were requesting the rural telephone exemption based upon Taxpayers’ original returns and attached documents. Here, the Department staff has a routine **administrative practice** of applying the Rural Telephone Service Exemption to the same, small number of discrete companies year after year, including Farmers. But, when FTCC, and then Diversified, filed their tax returns, they were not part of the list of companies who routinely receive the Rural Telephone Service Exemption, and the Department, despite Taxpayers’ filings being exactly the same as Farmers’, did not infer they were claiming the exemption. Accordingly, while the Department **staff** has an **administrative practice** of applying the exemption to Farmers and the other discrete companies, the evidence did not show the Department has a long-standing statutory interpretation of what constitutes an application for exemption in these circumstances.

Overall, the Court finds the evidence shows the Department’s interpretation is based upon its staff’s historical administrative practice to grant the exemption to a discrete, historic group of taxpayers without any reference or nod to the underlying requirements of section 12-4-720. This practice is not grounded in a legal interpretation of a statute that would receive administrative deference. In fact, the Department has arbitrarily determined a collection of documents to be an application for an exemption when none of the documents mention the word “exempt” or otherwise allude to it. *See Turbeville v. Morris*, 203 S.C. 287, 26 S.E.2d 821, 832 (1943) (“‘Arbitrary’ means based alone upon one’s will, and not upon any course of reasoning and exercise of judgment; bound by no law; done capriciously or at pleasure, without adequate determining principle, nonrational; not governed by any fixed rules or standard.”). The Department’s failure to ground its interpretation in section 12-4-720 or produce public guidance

on how to apply for the Rural Telephone Service Exemption has contributed to the muddy situation now before the Court and its interpretation is not entitled to deference.

Conclusion

The evidence presented in this case does not clearly show Taxpayers met the requirements of 12-4-720 to apply for the exemption for all years in this case. *See TNS Mills, Inc.*, 331 S.C. at 619, 503 S.E.2d at 475 (holding “TNS’s tax filing were too incomplete to clearly satisfy the requirement of the code” to apply for an exemption.”). Moreover, to the extent the requirements of 12-4-720 are somewhat unclear, the statute must be construed against the Taxpayers’ receipt of the exemption. *See CFRE, LLC*, 395 S.C. at 74, 716 S.E.2d at 881 (holding that our courts have a policy of strictly construing tax exemption statutes against the taxpayer). With these principles in mind, because neither FTCC (for tax years 2010-2016) nor Diversified (for tax years 2013-2017) listed their property as exempt on their original tax returns or otherwise indicated they were applying for an exemption on these original tax returns, the Court finds Taxpayers did not apply for the exemption on their original returns for the years indicated. *See* 12-4-720. However, even if Taxpayers did not apply for the exemption on their original tax returns, there is still a question of whether Taxpayers timely applied for the exemption on the amended tax returns they filed pursuant to the Settlement Agreement.

Amended Returns

In July 2012, the Department’s Property Division sent a letter to FTCC indicating that, based on the information it had received, it did not believe FTCC qualified for the Rural Telephone Service Exemption. Following the Property Division’s initial denial of FTCC’s exemption request in August 2012, the Department and Farmers Entities entered discussions regarding whether FTCC and Diversified qualified for the Rural Telephone Service Exemption. These discussions eventually resulted in a settlement agreement between the Department and Farmers Entities. Pursuant to the Settlement Agreement, Taxpayers filed amended tax returns for tax years 2010-2016 on January 20, 2017. These amended property tax returns were to denote, specifically, what property was exempt. Initially, the Court notes that neither FTCC nor Diversified filed complete

amended returns because they only filed an amended PT-427.⁷¹ However, the Department only required Taxpayers to make the appropriate changes on the form PT-427. What is concerning is that Taxpayers' amended PT-427s show a disturbing lack of clarity as to what is being claimed as exempt. Moreover, Department cannot circumvent the requirements of law via a settlement agreement.

FTCC's Amended Returns

On FTCC's amended 2010 return, property is split into two categories based upon headings at the top of each page of the PT-427. These headings are "Wireless-Exempt" and "FTD." However, it is undisputed that the properties listed under the "Wireless-Exempt" heading are not all exempt. Rather, Taxpayers contend FTCC applied for an exemption only for the properties designated as "rural" under this heading. To the contrary, under the FTD heading, FTCC listed some properties as "rural," even though FTCC was not applying for an exemption for those properties. Thus, the only clear indication of which properties FTCC were claiming to be exempt was the Department's unofficial notations of E's (representing "exempt") next to certain lines of property on the amended returns. However, these notations were based upon information supplied independently of FTCC's tax returns. Moreover, Mr. Ingram testified that just labeling certain property as "rural" would have been insufficient to signal an application for exemption.

Nevertheless, despite the issues with clarity, the amended returns made it clear that FTCC was seeking an exemption for some of its properties. In his deposition, Mr. Ingram testified that seeing the heading "Wireless-Exempt" would have indicated to him that an exemption was being requested. Thus, the amended returns would have at least triggered further inquiry about an exemption. Accordingly, even though the Court finds the amended tax returns do not delineate what property is being claimed as exempt, the amended returns sufficiently list the property as exempt to qualify as applications for the Rural Telephone Service Exemption. *See* § 12-4-720(A)-(C). Similarly, FTCC submitted its original tax returns for tax years 2017 and 2018 with the

⁷¹ Mr. Ingram testified in his deposition that a full tax return includes both the PT-420 and the PT-427 (he did not mention the SCPSC Report).

“Wireless-Exempt” heading and the Court finds these returns were likewise sufficient to qualify as an application for the rural telephone service exemption. Therefore, the Court finds FTCC submitted sufficient amended returns for tax years 2010-2016 and sufficient original returns in tax years 2017-2018 to claim the exemption (although FTCC’s amended returns were not timely for all these years).

Diversified’s Amended Returns

Contrary to FTCC’s amended returns, Diversified’s amended returns for tax years 2013-2016 do not include headings with the word “exempt.” Indeed, the word “exempt” does not appear on the amended PT-427s, nor is there any alternative language alluding to an exemption being applied for or claimed. Rather, Diversified used headings such as “Voice,” “ISP,” and “WiFi” on its PT-247s to segregate its property. It also identified some property as “rural” underneath the headings. Diversified similarly labeled its original 2017 tax return. Mr. Ingram testified he was not sure “off the top of his head” what the denotation of “Voice” at the top of the PT-427 meant. It thus appears the Department inferred that property listed under the “Voice” category that was also listed as “rural” was exempt.⁷² However, similar properties listed under the other headings were interpreted to be non-exempt. Then, in tax year 2018, Diversified submitted a PT-427 in which it included a “Voice-Exempt” heading, but like FTCC’s 2018 tax return, only the properties also listed as “rural” under this heading were actually intended to be exempt.

Therefore, in the case of Diversified, because there is no indication on its amended 2013-2016 returns or its original 2017 return that any exemption is being claimed, the Court finds Diversified failed to make a sufficient application for the Rural Telephone Service Exemption on these returns. While it became clear in 2013 that Diversified intended to claim the exemption when it protested its 2013 tax assessment on this basis, intent is not enough. *See TNS Mills, Inc.*, 331 S.C. at 618, 503 S.E.2d at 475 (“One is estopped to claim an exemption with respect to property included in the list of taxable properties and for which no exemption has been claimed

⁷² Like FTCC’s amended tax returns, the Department made the E notations based upon information outside of the return and, thus, those notations do not exemplify the specificity required of the taxpayer.

before the taxing officers.”). Rather, section 12-4-720 requires the taxpayer to apply for the exemption in the first year and thereafter claim the exemption on the tax return for each year. Thus, although Diversified may have had the intent for tax years 2013-2017, it did not comply with the requirements of section 12-4-720 and, therefore, it did not properly apply for the Rural Telephone Service Exemption. Because it did not properly apply for the exemption, the Department erred in granting Diversified the exemption for these tax years.

In contrast, the Court finds Diversified sufficiently claimed an exemption on their 2018 tax return such that their tax return qualifies as an application for the exemption.

Were FTCC’s Amended Returns Timely Filed?

Having determined Diversified’s amended returns were insufficient to apply for the exemption, the Court now turns to whether FTCC’s amended returns were timely filed within the context of applying for, and claiming, the exemption. In considering this issue, the Court first reviews FTCC’s tax returns for tax years 2010 and 2011 since, unlike the other tax years, FTCC filed requests for refunds for these two tax years.

Section 12-4-720(A)(1) and section 12-54-85(F) require the amended return to be filed within three years from the time the return was filed, or two years from the date the tax was paid, whichever is later. Section 12-60-2150(A) also governs refunds and, to an extent, reiterates the requirements of section 12-4-720. Section 12-60-2150 provides that “[s]ubject to the limitations in Section 12-60-1750,⁷³ and within the time limitation of Section 12-54-85(F), a property taxpayer may seek a refund of property taxes paid and assessed by the department by filing a claim for refund with the department if . . . the taxpayer believes the property is exempt.” It further provides that “[a] claim for refund is timely filed if filed within the period specified in Section 12-54-85 even though the time for filing a protest under Section 12-60-450 has expired and no protest was filed.” S.C. Code Ann. § 12-60-2150(A) (2014); *see also* S.C. Code Ann. § 12-60-470(A) (2014).

⁷³ This statute provides that “[n]otwithstanding any other provision of law, no refund of property taxes must be given . . . for a property tax exemption requiring an application, unless the application was timely filed” § 12-60-1750(1).

Furthermore, the request for a refund of taxes is also “solely a matter of governmental grace . . . and any person seeking such relief must bring himself clearly within the terms of the statute authorizing same.” *Asmer*, 225 S.C. at 344, 82 S.E.2d at 466.

Here, FTCC did not claim the exemption in tax years 2010 and 2011 because it did not believe it could; but, in 2012, FTCC came to the conclusion based upon the case of *CFRE, LLC v. Greenville County Assessor*, it could claim the exemption as a single-member of its parent company. As a result, in December 2012, FTCC simply sent a letter to the Department requesting a refund and the exemption for tax years 2010 and 2011.⁷⁴ Much later, on January 20, 2017, FTCC filed amended tax returns for 2010 and 2011 pursuant to the Settlement Agreement.

Applying these facts to the law, FTCC sent a letter requesting a refund for tax years 2010 and 2011 within three years of filing its tax returns in compliance with § 12-60-2150(A). *See also* § 12-4-720(A)(1). However, FTCC did not submit any amended returns requesting the exemption for tax years 2010 and 2011 until 2017, long after the three-year time period had passed for these two tax years.⁷⁵ The Department itself interprets the three-year refund period “to mean that a taxpayer can file an amended return claiming the exemption and seeking a refund – even if the original return had not claimed the exemption – **so long as the amended return is filed within the standard three year statute of limitations.**” (emphasis added). The Court views subsections 12-4-720(A)(1) and (C) in keeping with that interpretation. In fact, the Department’s request for the belated amended returns reflected the futility of the letter alone to resolve FTCC’s exemption and refund request because the Department could not properly calculate the exemption without

⁷⁴ Pursuant to section 12-60-2150(C), “[t]he claim for refund under this section must be mailed or delivered to the department, and must include the information required in Section 12-60-450(B) [the information required to file a written protest], the fair market value, special use value, if applicable, and property classification of the property the taxpayer believes correct.” S.C. Code Ann. § 12-60-2150(C). Further, “[i]f the claim for refund states the property is exempt, the claim for refund must state the basis on which exemption is claimed.” *Id.* Based on a review of the parties’ arguments, there does not appear to be any contention that FTCC failed to follow these requirements when filings its request for a refund and exemption. It merely failed to also timely submit amended returns for the tax years at issue in compliance with subsections 12-4-720(A)(1), (C).

⁷⁵ Additionally, FTCC paid its taxes for tax years 2010 and 2011 when they were due, so the amended returns for these years were also submitted more than two years after the taxes were paid pursuant to section 12-4-720(A)(1) and section 12-54-85(F).

amended returns. Thus, I conclude that requesting the exemption without also submitting amended returns within the three-year timeframe was insufficient to meet the requirements to apply for an exemption under section 12-4-720.

Pursuant to this conclusion, FTCC's amended returns for tax years 2010-2013 cannot qualify as timely exemption applications because they were filed outside the timeframe of section 12-54-85(F). Accordingly, FTCC cannot qualify for the exemption for these tax years. S.C. Code Ann. § 12-60-1750(1) ("Notwithstanding any other provision of law, no refund of property taxes must be given . . . for a property tax exemption requiring an application, unless the application was timely filed . . ."). In contrast, FTCC's amended returns for tax years 2014-2016 were filed within three years of the original tax returns for these tax years and, therefore, FTCC timely applied for and claimed the exemption for these tax years. § 12-4-720(A)(1); § 12-54-85(F). FTCC also timely claimed the exemption on their original tax returns for tax years 2017 and 2018. For tax year 2018, Diversified likewise timely applied for, and claimed the exemption on its original return.

The Department nevertheless argues Taxpayers timely applied for the exemption. The Department's argument focuses on the "several steps" Taxpayers took "to claim or apply for the exemption," and how the correspondence with Taxpayers in 2012 removed doubt about whether Taxpayers had applied for the exemption. However, the Department does not explain why Taxpayers were not required to file amended returns within the three-year statutory period. Instead, the Department maintains that "because each **protest** was filed within three years from the due date of the applicable property tax return, the applications for exemption were timely filed for each year . . . under section 12-4-720(A)(1)."⁷⁶ As Mr. Ingram testified:

⁷⁶ The property tax returns for 2012 through 2015 were due on April 30th of each year. Three years after each tax return due date was April 30, 2015, April 30, 2016, April 30, 2017, and April 30, 2018, respectively. In letters to the Department dated October 1, 2012, February 18, 2014, November 6, 2014, and October 8, 2015, FTCC protested the proposed assessments for 2012, 2013, 2014, and 2015, respectively, for failure to exempt FTCC's assets under section 12-37-220(B)(10). Similarly, in letters to the Department dated February 18, 2014, November 6, 2014, and October 8, 2015, Diversified protested the proposed assessments for 2013, 2014, and 2015, respectively, for failure to exempt Diversified's assets under section 12-37-220(B)(10). These protest letters were not accompanied by amended returns that applied for or claimed the exemption.

[R]ather than just put [the request for exemption] on a property tax return, the taxpayer in this specific example went the route of a property tax appeal to make us aware that they were making an application for exemption for certain types of property. And I wouldn't say that's normal; we don't get that very often for certain types. So it's different than just filing it with your property tax return.

However, the Department has not cited any law for the proposition that requesting an exemption for the first time in a protest or an appeal qualifies as a lawful application for that exemption. Moreover, the statutory scheme does not provide a mechanism for **applying** for an exemption through a protest or an appeal. Rather, procedurally, a protest comes after the application for exemption is denied. *See* S.C. Code Ann. § 12-60-1730 (“A property taxpayer may appeal any property tax assessment or denial of exemption if a written protest is filed in accordance with this article.”).

The Department's willingness to grant an exemption over three years after Taxpayers initially protested the matter is also inapposite to its recent position in *Hock RH, LLC v. S.C. Dep't of Revenue*, 423 S.C. 208, 813 S.E.2d 540 (Ct. App. 2018). In this case, the Court of Appeals observed the following about the Department's position concerning a retroactive exemption:

Relying on *TNS Mills v. South Carolina Department of Revenue*, 331 S.C. 611, 503 S.E.2d 471, [the Department] submits that applying S.C. Code Ann. § 59-40-140(K) (Supp. 2014) retroactively will “have harmful effects” because counties may suffer “devastating” consequences if forced to refund property tax payments erroneously collected from charter schools that leased their campuses between 2006 and 2014. We reject this contention. First, the record contains no evidence that any other charter school has applied for such a refund, and **S.C. Code Ann. § 12-54-85(F)(1) (2014) sets forth appropriate deadlines to protect counties against such uncertainties.**

Hock, 423 S.C. at 218, 813 S.E.2d at 545 (emphasis added). Just like in *Hock*, granting the exemption in this case will arguably have “devastating” consequences on the counties involved in this litigation if they are required to refund approximately six years' worth of property taxes. Yet, despite evidence of that impact in this case, the Department takes the opposite position from what it took in *Hock*. But here, just like in *Hock*, section 12-54-85(F) limits the counties' exposure to refunds for an untold number of years. *Id.*

More importantly, in *TNS Mills*, the Supreme Court held “the Department does not have the authority to waive the application deadline and annual determination requirements of Article 7.” *TNS Mills, Inc.*, 331 S.C. at 627, 503 S.E.2d at 480. Simply put, the Court should not be complicit in dispensing with the requirements of the law. If a taxpayer does not appropriately and timely apply for an exemption, they cannot receive a refund. § 12-60-1750(1). Although the overall burden of proof in this case is somewhat unusual, Taxpayers retain the overarching burden of showing that they are lawfully entitled to a refund. *See Sierra Club*, 426 S.C. at 258-69, 826 S.E.2d at 67; *Asmer*, 225 S.C. at 344, 82 S.E.2d at 466 (“A refund of taxes is solely a matter of governmental grace . . . and any person seeking such relief must bring himself clearly within the terms of the statute authorizing same.”). They did not meet this burden for all tax years.

Did the Department Grant the Exemptions Retroactively and Illegally?

The parties disagree about whether the Department is required to adhere to a statutory deadline in section 12-4-710 and the effect of the Department’s failure to meet the statutory deadline. Specifically, section 12-4-710 of the South Carolina Code governs the timeline for the Department to determine whether a property qualifies for an exemption. It provides:

Except for the exemption provided by Section 12-37-220(A)(9),⁷⁷ the department shall determine if any property qualifies for exemption from local property taxes under Section 12-37-220 in accordance with the Constitution and general laws of this State. **This determination must be made on an annual basis and the appropriate county official so advised by June first of each year by the department.**

(emphasis added). This statute instructs the Department to (1) make a determination regarding applications for exemption on a yearly basis and (2) advise the appropriate county official(s) of that determination by June 1st. *See id.* However, the word “determination” is arguably ambiguous because it could refer to either an initial determination or a final determination. Taxing Entities argue the Department must make a **final** determination by June 1st of the tax year at issue and, because the Department failed to do this, the exemptions were illegally granted. Taxpayers argue

⁷⁷ This refers to the “Homestead Exemption,” which is not at issue here.

that this one-year deadline to make a determination about an exemption conflicts with section 12-4-720(A)(1)'s three-year filing period and, as such, the requirements of section 12-4-720(A)(1) should prevail under the law of last legislative expression because section 12-4-720(A)(1) was enacted at a later time. *See Feldman v. S.C. Tax Comm'n*, 203 S.C. 49, 26 S.E.2d 22, 24 (1943) (“In accordance with the principle that the last expression of the legislative will is the law, where conflicting provisions are found in the same statute, or in different statutes, the last in point of time or order of arrangement prevails.”).

Reconciling Section 12-4-710 and Section 12-4-720(A)(1)

The Court disagrees with Taxing Entities' interpretation that section 12-4-710 requires the Department to make a final decision regarding exemptions by June 1st of the tax year for which the exemption is applied for or claimed. Taxing Entities' interpretation is inconsistent with the administrative protest process for property tax assessment. Pursuant to the South Carolina Code, a taxpayer must file the return by April 15th. *See* S.C. Code Ann. § 12-37-970 (2014) (requiring taxpayers, including those engaged in the telephone business, to submit annual property tax returns to the Department by April 30th for taxpayers who have a December 31 year-end for income tax purposes). If the taxpayer submits their application for exemption with their tax return, and the Department sends the taxpayer notice of the denial that same day, the taxpayer then has ninety days after notice of the denial is mailed to them to protest the denial of the exemption. S.C. Code Ann. § 12-60-2110. Ninety days from April 15th is approximately June 1st. Thus, the administrative protest process could barely begin before the Department would be required to make a final decision on the exemption pursuant to Taxing Entities' theory of section 12-4-710. Furthermore, the Code presumes contested matters will be pending beyond June 1st of the tax year in question. *See* § 12-60-2140 (directing the Department to notify the counties if an appeal will not be resolved by December 31 of the tax year and issue corrected property tax assessments when the dispute is finally resolved). Therefore, Taxing Entities' interpretation would lead to absurd results. *Hodges*, 341 S.C. at 91, 533 S.E.2d at 584 (“The goal of statutory construction is to

harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd.”).

Next, the Court rejects the Department’s theory that section 12-4-710 should essentially be ignored because it conflicts with section 12-4-720(A)(1), which was enacted at a later time. The law of last legislative expression is only employed when there is a clear, irreconcilable conflict. *Feldman*, 203 S.C. at 49, 26 S.E.2d at 24 (holding the law of last legislative expression “is purely an arbitrary rule of construction and is to be resorted to only when there is clearly an irreconcilable conflict, and all other means of interpretation have been exhausted”). In this case, the Court finds the statutes can be harmonized. *See Hodges*, 341 S.C. at 91, 533 S.E.2d at 584 (“The goal of statutory construction is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd.”).

Specifically, the “determination” referenced in section 12-4-710 can be read to refer to an initial determination as to whether the exemption is granted and that initial determination can reasonably be made in the year the tax return is submitted rather than the tax year for which the return is intended. This interpretation would also allow the counties to have notice of a potential exemption issue prior to finalizing their budgets so they could consider any refunds resulting from exemptions potentially being granted.⁷⁸ This interpretation is also consistent with the Court of Appeals’ construction of section 12-4-710 in *TNS Mills*. In *TNS Mills*, the Court of Appeals held “[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.” *See TNS Mills, Inc.*, 331 S.C. at 620–21, 503 S.E.2d at 476. The Court of Appeals also made the following observation:

⁷⁸ This interpretation is also consistent with section 12-60-2150, which governs refunds and urges expediency in deciding the refund request even if it does not set a deadline for the Department to make a determination about the refund. *See* § 12-60-2150. Specifically, once a refund is requested, the Department “shall notify the counties affected by the claim for refund” and the “county auditor, upon notification, shall notify any affected municipalities or other political subdivisions.” S.C. Code Ann. § 12-60-2150(B). The “appropriate division” of the department is also required to determine if a refund is due and give the taxpayer written notice of its decision “as soon as practicable after a claim has been filed.” S.C. Code Ann. § 12-60-2150(D); S.C. Code Ann. § 12-60-470(D).

The plain language of these Code sections [§§ 12-4-710 to -730], when read together, show the legislature intended to set clear deadlines for applying for exemptions as part of an overall plan to enable 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.

TNS Mills, Inc., 331 S.C. at 621, 503 S.E.2d at 476.

The Department nonetheless argues the Court of Appeals' findings in *TNS Mills* are not applicable because the statutory scheme has since been amended. While the Department is correct that the statutory scheme has been amended, it does not necessarily follow that the Court of Appeals' findings in this regard are now incorrect. At the time *TNS Mills* was decided, section 12-4-720(A)(1) required applications for exemption for pollution control equipment to be filed between January 1st and April 15th of the first year for which the exemption was claimed. S.C. Code Ann. § 12-4-720(A)(1) (Supp. 1991). This timeframe also applied to the Rural Telephone Service Exemption. In *TNS Mills*, the Department nevertheless argued that section 12-4-730 gave it the authority to grant exemptions beyond the January 1-April 15 window, effectively arguing it had an unlimited timeline to grant exemptions. The *TNS Mills* court disagreed with the Department's interpretation of section 12-4-730 and found the Department had to adhere to the June 1st deadline because to allow the Department to grant exemptions whenever it wanted would negate both section 12-4-710 and section 12-4-720(A)(1).

Simply because the date to file for an exemption under section 12-4-720(A)(1) has changed since *TNS Mills* was decided does not mean the Court of Appeals' analysis of the policy and purpose of section 12-4-710 must be discarded. The Department is essentially making the same argument that it made in *TNS Mills*, which is that it has unlimited time to grant exemptions, but this time its argument is based on the allegation that it is impossible for the Department to meet the June 1st deadline. However, there is no reason for the Department to ignore the deadline if section 12-4-710 only requires the Department to make an initial decision about the exemption the same year it receives the application for exemption and notify the counties by June 1st after they receive the application; the conflict is removed and the statutes are harmonized.

In this case, the Department admits it did not, and does not, send a specific notice to counties regarding whether an exemption has been granted or denied. The Department made an **initial** decision concerning the exemption annually for all tax years in question in compliance with section 12-4-710; however, the Department did not comply with its obligation to notify the counties of its initial determination by June 1st. Rather, the Department sends counties the certified property tax assessments by August 15th each year and, if the assessment has been protested, the assessment will show the taxpayer is paying 80% of the assessment under protest, indicating to the county that the assessment is not final. *See* S.C. Code Ann. § 12-37-970 (“The Department of Revenue shall forward the assessments prepared as a result of the returns submitted pursuant to this section to the appropriate local taxing authorities no later than August fifteenth of the applicable tax year.”). The Department initially excuses its non-compliance with section 12-4-710 on the ground that it is administratively impossible for it to meet the June 1st deadline. The Department’s witnesses testified to this effect. However, when arguing this issue, the Department primarily centered its argument on the impossibility of issuing property tax assessments to the counties by June 1st. The Department has not squarely addressed its ability to issue initial notifications about its exemption decisions by June 1st.

Next, the Department and Taxpayers argue that even if the counties were not notified by June 1st, the property tax assessments sent to the counties in August sufficiently put Taxing Entities on notice of the dispute on a yearly basis beginning in 2012. Specifically, in tax years 2012-2015, the Department issued revised assessment certifications (representing 80% of the original assessment as required by law) to county auditors stating that the original assessment had been protested and was now considered to be “under appeal.” In each of the revised certifications, the Department attached the letter of protest and informed the county auditors that they would receive a finalized assessment certification once the appeal was resolved. Each letter of protest contained language stating: “The basis of the protest is the Department’s failure to exempt the company’s assets which are exempt under S.C. Code § 12-37-200(B)(10).” Starting in tax year 2013, the

letters of protest further notified county auditors that the protest and refund claims included tax years 2010 and 2011.

Taxing Entities argue the 80% property tax assessment are not sufficient to fulfill section 12-4-710's notice requirements because: (1) none of them were sent to the counties by the June 1st deadline; (2) the text of the 80% assessment does not provide notice that the Department granted any exemption; and (3) the assessments were not sent to the "appropriate county official" because this phrase is undefined and should not be interpreted to mean the county auditor.⁷⁹

The Court agrees with Taxing Entities 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 exemption request, the counties did not receive notice of the exemption in time to consider them before finalizing their budgets by July 1st. The 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. See § 12-37-970. Finalizing Clarendon County's budget is an extended process, which spans approximately four months, three council readings, and a public hearing before the budget is officially finalized. Had the Department timely notified Clarendon County about the property tax exemption, Clarendon County would have been able to revise and adjust its budget accordingly prior to it being finalized. Thus, the Department's failure to meet the June 1st deadline contravenes the purpose of statutory scheme identified by the Supreme Court in *TNS Mills*. See *TNS Mills, Inc.*, 331 S.C. at 621, 503 S.E.2d at 476 ("The plain language of these Code sections [§§ 12-4-710 to -730], when read together, show the legislature intended to set clear deadlines for applying for exemptions as part of an overall plan to enable counties and school districts to plan budgets for each fiscal year."). The Court also agrees that the 80% assessments that were sent to the counties did not specifically

⁷⁹ Taxing Entities also argue the 80% notices do not provide the dollar amounts of the taxable property in dispute. While the counties would undoubtedly like to receive this information, section 12-4-710 does not require the Department to communicate this information to the counties. It only requires the Department to notify the counties of its determination to grant the exemption or not.

inform them whether an exemption had been granted or denied or if the Department's initial appraisal of whether the exemption should be granted or denied.

Taxing Entities argue the Department's failure to comply with the statute's timeframes is even further exacerbated by the Department's failure to send the notice to the appropriate county official. In this case, the Department sent its notices to the county auditor. Taxing Entities nevertheless argue that county auditors do not set the county budgets or have the ability to affect them; therefore, they cannot be the official who receives notice of exemptions which may affect the counties' budgets. As to the phrase "appropriate county official," the Court finds that the Department reasonably inferred that it refers to the county auditor. Although "appropriate county official" is not defined, throughout the property tax scheme the Department's point of contact with the counties is the county auditor. *See, e.g.*, S.C. Code Ann. § 12-60-2150(B) (directing the Department to notify county auditors about property tax refund requests); § 12-60-2140. The Department has also historically considered the county auditor to be the point of contact at the county level with respect to property tax issues related to utilities. Furthermore, Taxing Entities do not interpret who this "appropriate county official" is if it is not the county auditor. The Court also finds this argument is hollow because it could be used to argue county auditors should not receive property tax assessments because those assessments likewise impact the counties' budgets. Although there was evidence presented that the Clarendon County Auditor does not communicate with Clarendon County's CFO, whether the county auditor appropriately communicates with county staff about property tax issues possibly affecting a county's budget is a separate issue. Indeed, a lack of communication between county officials would inherently create budget planning issues.

Regardless of the Department's failures, the ultimate question is what effect does the Department's failure to meet this statutory deadline to notify the counties have on the exemptions, if any? Neither section 12-4-710 nor any other statute addresses what happens if the Department fails to meet this deadline or fails to meet a deadline generally. And yet, in *TNS Mills*, the Supreme Court quoted with approval the Tax Commission's observation that "[t]here would be no purpose

in establishing deadlines if failure to meet them **was of no consequence.**" *TNS Mills, Inc.*, 331 S.C. at 620, 503 S.E.2d at 476 (emphasis added).⁸⁰ Nevertheless, in a similar situation where a licensing board failed to comply with a mandatory statutory deadline, our Supreme Court held:

We note that, although the thirty-day time limit is mandatory, the Legislature has not provided how that mandate is to be enforced. There is no language regarding the consequences if the Board misses the deadline for serving written notice of its decision on the appraiser. Accordingly, we will not assume the Legislature intended the Board to lose its power to act for failing to comply with the statutory time limit.

Johnston v. S.C. Dep't of Labor, Licensing, & Regulation, S.C. Real Estate Appraisers Bd., 365 S.C. 293, 298, 617 S.E.2d 363, 365 (2005); *see also Brock v. Pierce Cty.*, 476 U.S. 253, 253 (1986) ("Every failure of an agency to observe a procedural requirement does not void subsequent agency action, especially when important public rights are at stake. When, as here, there are less drastic remedies available for failure to meet a statutory deadline, courts should not assume that Congress intended that the agency lose its power to act."). In light of the holding in *Johnson*, the Court finds nothing in the relevant statutes suggests the Department's failure to comply with the statutory deadline in 12-4-720 would cause the Department to lose its authority to grant the exemption or cause a taxpayer, who property applied for the exemption, to lose his right to claim it. However, this finding does not mean the Court condones the Department's lengthy process of determining the exemptions in this case. For the Department to take five years to resolve an exemption request from 2012 is contrary to the spirit of the State's Revenue Procedures Act, which strives for the efficient and clear resolution of tax matters. S.C. Code Ann. § 12-60-20 (2014) ("It is the intent of the General Assembly to provide the people of this State with a straightforward procedure to determine a dispute with the Department of Revenue and a dispute concerning property taxes. The

⁸⁰ Notably, in *TNS Mills* it was much clearer that both the taxpayer and the Department failed to meet statutory deadlines for the exemption at issue, which also made it much clearer that the Department's decision to grant the exemption was illegal and retroactive. *See TNS Mills, Inc.*, 331 S.C. 611, 503 S.E.2d 471. Here, unlike the taxpayer in *TNS Mills*, Taxpayers properly and timely applied for, and claimed, the exemption for some years. But, like in *TNS Mills*, the Department did not timely notify the counties of its exemption decision pursuant to section 12-4-710. Thus, the cases can be distinguished despite their many similarities, with the result that the remedy for the Department's failure in this case is much less clear.

South Carolina Revenue Procedures Act must be interpreted and construed in accordance with, and in furtherance of, that intent.”).

CONCLUSION

The Court finds Taxpayers provide rural telephone service, in part, and thus qualify for the Rural Telephone Service Exemption, in part. Specifically, the Court finds Taxpayers’ landline and wireless assets that are used to provide rural telephone service, regardless of their relative use, qualify for the exemption. Further, the Court finds the assets qualifying for the exemption are determined by the unit valuation method based on cost with 75% of the overall assets being exempt.

As to the tax years in question, the Court concludes that FTCC timely applied for, and is entitled to, the exemption as set forth above for tax years 2014-2018. However, FTCC failed to timely apply for or claim the exemption in tax years 2010-2013 and is not entitled to the exemption for those tax years. The Court also concludes Diversified failed to properly apply for the exemption in tax years 2013-2017 and, therefore, cannot receive the exemption. However, Diversified timely applied for the exemption in tax year 2018 and is entitled to it for that year.

Finally, the Court concludes that although the Department’s decision to disregard section 12-4-710’s notification deadline is lamentable, its failure to timely comply with notice under this statute does not strip Taxpayers of their entitlement to the exemption, particularly in the absence of any statutory remedy to that effect. The Court also finds the Department’s lengthy decision-making process in this case resulted in an aggregation of refunds that are now larger and more painful to the counties than they would have been had the Department engaged in a more efficient decision-making process.

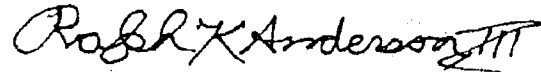
ORDER

IT IS THEREFORE ORDERED that FTCC is entitled to the Rural Telephone Service Exemption for tax years 2014-2018.

IT IS FURTHER ORDERED that Diversified is entitled to the Rural Telephone Service Exemption for tax year 2018.

IT IS FURTHER ORDERED that, pursuant to a cost-based valuation method, 75% of FTCC's and Diversified's landline telephone assets and wireless telephone assets qualify for the Rural Telephone Service Exemption.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

June 10, 2020
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Michelle Perez, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Stephanie Michelle Perez
Judicial Law Clerk

June 10, 2020
Columbia, South Carolina

RECEIVED

JUL 15 2020

SC Court of Appeals