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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable Ralph King Anderson, III, Chief Administrative Law Judge

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Appellate Case No. 2020-000983
Trial Court Case No. 17-ALJ-17-0237-CC

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 ..... Appellants-Respondents,

v.

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

Of Which, Farmers Telephone Cooperative, Inc., FTC Communications, LLC and FTC Diversified Services, LLC, are the Respondents-Appellants

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APPELLANTS-RESPONDENTS' INITIAL REPLY BRIEF TO RESPONDENTS-APPELLANTS' RESPONSE BRIEF

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INTRODUCTION

Taxing Entities offer this Reply Brief to correct and bring to the Court's attention the misstatements of fact and misapplications of the law in Taxpayers' Response Brief.[1] Taxpayers spend considerable time trying to prove that a common sense *de minimis* threshold use requirement does not exist within tax exemption statutes that are otherwise silent about the level of use required. They do so by attempting to discredit the myriad cases offered by Taxing Entities. Amidst all of Taxpayers' attempts to distinguish these cases, Taxpayers fail to cite one single case which actually supports their position. This is unsurprising, given that courts across jurisdictions, including this Court, recognize the general principle that a *de minimis* use threshold exists within every tax exemption statute.

Taxpayers also misconstrue Taxing Entities' arguments relating to the General Assembly's intended scope and purpose of the Exemption. Taxpayers do so by highlighting a previous, substantively different version of a property tax exemption for rural telephone cooperatives and rural telephone companies enacted in 1957. This 1957 exemption has no applicability to the current case, and Taxpayers appear to highlight it only for the purpose of mischaracterizing Taxing Entities' arguments. Specifically, Taxpayers paint Taxing Entities as unreasonable, strict constructionists by falsely stating that Taxing Entities propose an interpretation of the Exemption which only includes property that existed in 1978 (or, as Taxpayers claim, 1957).

To be very clear, Taxing Entities have never argued, and do not now argue, that only property that existed in 1978 is eligible for the Exemption. Taxing Entities consistently maintained throughout this case that the meaning of the terms found within section 12-37-220(B)(10) must be

[1] Taxing Entities incorporate and reiterate all of their arguments set forth in Taxing Entities' Brief, Taxing Entities' Respondent Brief, and Taxing Entities' Reply to DOR's Brief.

given the plain and ordinary meaning that was understood by the General Assembly at the time the Exemption was enacted. Taxpayers actually concede this point. At no point have Taxing Entities asserted that only 1970's technology qualifies for the Exemption. Certain technological advancements (e.g., the evolution from copper wires to fiber optic cables) are squarely within the parameters of the Exemption's intended meaning. However, certain new technology, such as the vast array of cellular data services Taxpayers now provide, could not have been within the meaning contemplated by the General Assembly in 1978. Therefore, the property used to provide those services does not fit within the Exemption's intended scope and purpose.

Additionally, Taxpayers improperly assert that they are entitled to the same three year period in which to file an application for a property tax refund that is afforded to most, but not all, property taxpayers under section 12-54-85(F). However, as explained in Taxing Entities' prior filings, and as reiterated in Section III below, Taxpayers' interpretation would render section 12-4-720(c) entirely meaningless because there would be no consequence for Taxpayers' proven failure to claim the Exemption on their tax returns each and every year as section 12-4-720(C) requires.

This interpretation also ignores the General Assembly's clearly expressed intent to require certain taxpayers to claim property tax exemptions on their property tax returns each and every year. The General Assembly has chosen to treat taxpayers such as utilities, manufacturers, airlines, railways, etc. differently for property tax purposes because the property taxes they pay are significant in comparison to amounts paid by general taxpayers. Like all property taxes, the taxes paid by these large entities belong solely to local governing bodies and make up a majority of their operating budgets. Permitting the interpretation that this class of taxpayers is permitted to seek property tax refunds three years after they failed to claim the exemption on their property tax

returns would also eviscerate the statutory protections afforded to local governing bodies. These protections were put in place so local governing bodies would not be required to disgorge a significant portion of their primary revenue source three years after a taxpayer failed to claim the property tax exemption in accordance with section 12-4-720(C).

Finally, Taxpayers wrongly allege that the issue of whether Farmers' property is eligible for the Exemption was not raised by Taxing Entities and is not properly preserved for appellate review. This argument is without merit. The record clearly shows that this issue was raised to the ALC in Taxing Entities' Prehearing Statement (and Taxpayers' Prehearing Statement, as well), raised again in Taxing Entities' Motion for Reconsideration, and ruled upon by the ALC in its Amended Final Order. Therefore, the issue was properly raised to, and ruled upon by, the ALC, and Taxing Entities properly preserved the issue for appellate review pursuant to Rule 59 of the South Carolina Rules of Civil Procedure ("SCRCP").[2]

ARGUMENTS

I. The Use of Taxpayers' Property to Provide Rural Telephone Service is Insufficient to Qualify for the Exemption.[3]

Taxpayers incorrectly argue that there is no limit to their ability to claim an exemption where the statute does not explicitly state the required level of use. Essentially, Taxpayers argue that when a tax exemption statute does not specifically address how the property is used, the

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[2] Because Taxpayers and DOR make similar arguments regarding (1) Taxing Entities' standing under section 12-4-535, (2) Taxpayers' failure to establish the percentage of Farmers' property used to provide rural telephone service in 1973, and (3) the pertinent holding from *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998), Taxing Entities address these arguments collectively at Sections II, III, & V(B) of Taxing Entities' Reply to DOR's Brief.

[3] This section responds to Taxpayers' arguments in Section I(A) of Taxpayers' Response Brief. For Taxing Entities' full position on this matter, Taxing Entities direct the Court to pages 34–36 of Taxing Entities' Brief.

property is exempt so long as it is used *at all* to provide the exempt service—no matter how minimal that use may be.[4]

Notwithstanding their ardent pleas to the contrary, Taxpayers' argument is in direct conflict with this Court's previous holding in *Hercules Contractors & Eng'rs, Inc. v. S.C. Tax Comm'n*, 280 S.C. 426, 439, 313 S.E.2d 300, 308 (Ct. App. 1984). Taxpayers also fail to cite one case in support of this argument. Rather than offering authority in support of their position, Taxpayers spend considerable time twisting the Court's holding in *Hercules* to attempt to show that the Court did not recognize an implicit *de minimis* standard or that the Court did not recognize a substantiality requirement in the absence of an explicit threshold use requirement—even when the Court did just that.

With respect to an implicit *de minimis* standard in a tax exemption statute without an explicit threshold use requirement, the *Hercules* Court explicitly held that "it would not be reasonable to hold that the legislature intended only a minimum use by a manufacturer be sufficient to make a machine tax exempt." *Id.* at 439, 313 S.E.2d at 308. In other words, a *de minimis* use for the exempt purpose was insufficient to receive the exemption. *See id.*

Taxpayers' also argue that the property being "substantially" used for the exempt purpose was not a factor in the *Hercules* Court's decision. However, the Court did, in fact, hold that the facility was exempt from taxation because the facility was "*substantially used* in the manufacture of tangible personal property for sale, and this was a purpose for which it was built." *Id.* at 440, 313 S.E.2d at 309 (emphasis added). The Court made this finding after analyzing two out-of-jurisdiction cases which determined the respective exemptions applied because there was

[4] Specifically, Taxpayers state that "[i]n the absence of any express statutory requirement, the exemption is categorical and applies to any property that is 'used'—*e.g.*, used *at all*—to provide rural telephone service."(Taxpayers' Resp. Br. 9).

"substantial" use in those cases—two cases which likewise dealt with a tax exemption statute that did not contain an expressly articulated threshold use requirement. *Id.* at 439–40, 313 S.E.2d at 308–09 (citing *Morley v. Brown & Root, Inc.*, 219 Ark. 82, 239 S.W.2d 1012 (1951) & *Comm'r of Corps. and Taxation v. Assessors Boston*, 321 Mass. 90, 71 N.E.2d 874 (1947)). When a court construes two cases imposing a "substantial use" threshold and then states that a machine is exempt because it was "substantially used" for the exempt purpose, it is unclear to Taxing Entities what else the court could do to make it more plain that substantial use was a factor in the court's decision.

In addition to the *Hercules* Court's decision, courts across jurisdictions[5] recognize the same general principle: when a tax exemption statute does not explicitly state a threshold level of use required to receive the exemption, *de minimis* use of that property for a tax exempt purpose is *not* sufficient. (*See* Taxing Entities' Br. 34–36) (citing *Village of Lannon v. Wood-Land Contractors, Inc.*, 267 Wis.2d 158 (2003));[6] *see also Fernandes Super Markets, Inc. v. State Tax Comm'n*, 371 Mass. 318, 322, 357 N.E.2d 296, 299 (1976) (concluding that when a tax exemption statute applied simply to "corporations engaged in manufacturing," there was no intent by the legislature for the tax exemption to apply to companies whose manufacturing was "merely trivial or only incidental

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[5] Taxpayers seem to demonize Taxing Entities for relying on out-of-jurisdiction case law in support of certain arguments. However, when dealing with issues of first impression, it is unclear what other course of action any party to this case has.

[6] Taxpayers' incorrectly argue that *Village of Lannon* does not stand for an implicit *de minimis* use requirement in tax exemption statutes which do not include an explicit threshold use requirement. Taxpayers go so far as to say that the case stands only for the proposition that a taxpayer may not exploit an exemption through a "sham" use. First, the court explicitly held that "*de minimis* uses of the property are *not* sufficient to invoke this exemption." 267 Wis.2d at 173, 672 N.W.2d at 282. Second, there was no allegation within that case that the taxpayer was seeking to exploit the tax exemption statute. Taxpayers grossly overstate the court's holding in this regard. The *Village of Lannon* Court's (brief) discussion of "sham" tax exemption claims was merely for the purpose of explaining one policy reason why minimum use thresholds must be implied within tax exemption statutes, along with other reasons rooted in the law—such as, the almost universally held principle that tax exemption statutes are to be "strictly construed . . . with a presumption that the property in question is taxable." *Id.* at 173, 672 N.W.2d at 282.

to its principal business"; rather, "the degree of manufacturing must be 'substantial'"); *Cty. of Chesterfield v. BBC Brown Boveri, Inc.*, 238 Va. 64, 70, 380 S.E.2d 890, 893 (1989) (interpreting a tax exemption for "manufacturing and selling goods" the court looked at whether the manufacturing activity was "substantial" despite no substantiality requirement in the statute).

In this case, like in *Hercules* and the above-cited cases, the Exemption does not contain an expressly articulated threshold use requirement. The Exemption provides a property tax exemption for property "used in providing rural telephone service." S.C. Code Ann. § 12-37-220(B)(10). Because there is no expressly articulated threshold use requirement within the text of the Exemption, *de minimis* use for the exempt purpose does not qualify for the Exemption. In contrast, property used substantially for the exempt purpose would qualify. Relying on these principles as articulated by the *Hercules* Court, the Court must find that Taxpayers' property is used in more than a *de minimis* amount to provide "rural telephone service" before finding that Taxpayers' property is eligible to receive the Exemption—at all.

Taxpayers argue that if the Court were to determine the Exemption contains a *de minimis* threshold, then "FTCC and Diversified still qualify for the Exemption because the property at issue is *always—i.e.,* 100% of the time—being used to provide *access* to rural telephone service." (Taxpayers' Resp. Br. 27) (emphasis in original). This conclusion imposes words into the statute that are simply not there. Section 12-37-220(B)(10) does not state "used in providing *access to* rural telephone service."[7] It only states "used in providing rural telephone service." S.C. Code

[7] Taxpayers also assert that "[t]he parties agree the Rural Telephone Service Exemption was intended . . . (2) to provide telephone *access* and availability to, at a minimum, rural South Carolinians." (Taxpayers' Resp. Br. 11 n.5) (emphasis added). This statement is false. The parties never agreed, and Taxing Entities presently disagree, that the Exemption's intended purpose is to provide telephone "access." There is nothing within section 12-37-220(B)(10) that creates the "access" component Taxpayers now assert.

Ann. § 12-37-220(B)(10). The ALC's and Taxpayers' attempts to impose words into a statute that are otherwise absent are improper and contrary to well-settled principles of contract interpretation. *State v. Leopard*, 349 S.C. 467, 471, 563 S.E.2d 342, 344 (Ct. App. 2002) ("[A] court cannot rewrite the statute and inject matters into it which are not in the legislature's language."). If the Court accepts this argument, a taxpayer could be eligible to receive the Exemption if it were merely possible to use the network to make a phone call—regardless of how the network is *actually* used.[8]

The record clearly demonstrates that Taxpayers' use of their property to provide voice communication, whether through landline telephone service or wireless cellular service, is *de minimis*. And, it is becoming more and more so every single year. (*See* Taxing Entities' Br. 33–34); (*see also* Tr. 371:16–372:14; Trial Ex. 134 (showing that 4.75% of Taxpayers' network was utilized to provide voice calls in 2010 and decreased every year to a low of 0.45% in 2018); Order 66–67 ("[T]he relative use of Taxpayers' network for voice telephone service is declining and is becoming more and more **de minimis**."); R. __). Applying the principle established by the *Hercules* Court, the property must be used in more than a *de minimis* amount to provide rural telephone service or it is not eligible for the Exemption. Accordingly, Taxpayers' use of its property to provide rural telephone service is not sufficient to qualify for the Exemption. Therefore, the ALC's ruling that Taxpayers' property is eligible for the Exemption should be reversed.

[8] Even Taxpayers' tax attorney, Jeffrey Allen, disagrees with this position. At the hearing, Mr. Allen was asked whether property that was used 1% for an exempt purpose and 99% for a non-exempt purpose would constitute a bonafide use for an exempt purpose. In response, Mr. Allen testified that level of use would not constitute a bonafide use and that it would raise questions about whether the property was truly being used for the intended purpose. (Tr. 683:6–16; R.__).

II. The Exemption Applies to Only Property Used to Provide Landline Telephone Service.[9]

Taxpayers misstate Taxing Entities' arguments related to the interpretation and application of the Exemption in an effort to falsely frame the Exemption's intended scope and purpose. Incredibly, Taxpayers falsely accuse Taxing Entities of endorsing an interpretation of the Exemption that is "limited to the technology and materials in use at the time of its enactment." (Taxpayers' Resp. Br. 19). This is simply untrue, and this false narrative pervades Taxpayers' entire Response Brief.[10]

In support of their false accusations, Taxpayers highlight an earlier and substantively different statute enacted in 1957 that afforded a property tax exemption to rural telephone cooperatives. (*See* Taxpayers' Resp. Br. 4) (citing 1957 S.C. Acts 177, § 1; S.C. Code Ann. § 65-1522(46)–(47) (1960 Supp.)). However, in 1957, the property tax exemption applied to "**all property of every kind** owned by rural telephone cooperatives." (Taxpayers' Resp. Br. 4 n.4) (emphasis added). Under the 1957 statute, every single piece of property owned by a rural telephone cooperative was exempt from property taxation—no matter the specific use of that property. Then, in 1978, the General Assembly enacted the Exemption. Now, only property

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[9] This section responds to Taxpayers' arguments in Section I(B) of Taxpayers' Response Brief.

[10] Based upon the record below, it is shocking that Taxpayers represent Taxing Entities' position in this manner to the Court. All the parties agreed in their filings with the ALC that general technological advances did not render property ineligible for the Exemption. (*See, e.g.,* Taxing Entities' Proposed Final Order 64 ("[T]he law does not dictate that taxpayers must continue to use 1978 technology in order to qualify for the Rural Telephone Service Exemption."); *id* at 64–65 (stating that the advancement from copper wires to fiber optic cables "fits squarely within the plain meaning and intended purpose of [the Exemption]"); Taxing Entities' Resp. to DOR's Proposed Final Order 12 ("Taxing Entities have not argued that 'telephone service' can be provided only through copper wires and the technologies that existed in 1978."); Taxing Entities' Mot. Recons. 13, n.14 ("[T]he fiber optic cable transformation is essentially a technological enhancement to the network that existed in 1978. In contrast, wireless technology is an entirely new and novel technology. . . ."); R.__). Taxpayers are well aware of Taxing Entities' position on this matter, and their distortion of Taxing Entities' argument is simply an attempt to create a straw man.

specifically "used in providing rural telephone service" is eligible to receive a property tax exemption. S.C. Code Ann. § 12-37-220(B)(10). The only thing made clear by the substantive differences between the 1957 statute and the Exemption is that the General Assembly intended to prohibit rural telephone cooperatives from receiving a property tax exemption on all of their property. In other words, starting in 1978, the General Assembly decided a rural telephone cooperative's property must be specifically used to provide "rural telephone service" in order to receive the Exemption.

In the present case, the application of the Exemption is determined by the meaning of "rural telephone service," as that meaning was established by the General Assembly over 42 years ago when it enacted the Exemption in 1978. Everyone agrees that the primary inquiry is what the General Assembly meant when it used the phrase "rural telephone service." Taxpayers conveniently fail to discuss that when there is in an undefined phrase within a tax exemption statute, there are well-established rules the Court must adhere to when interpreting that phrase, including:

1. Tax exemption statutes are to be narrowly construed against the taxpayer. *See, e.g., CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (citing *Southeastern Kusan, Inc. v. S.C. Tax Comm'n*, 276 S.C. 487, 489, 280 S.E.2d 57, 58 (1981)).

2. Statutes are to be interpreted to ascertain and effectuate the intent of the General Assembly. *See, e.g., Alltel Commc'ns, Inc. v. S.C. Dep't of Revenue*, 399 S.C. 313, 320, 731 S.E.2d 869, 873 (2012).

3. In order to understand the General Assembly's intent, it is essential to understand the statute's history, as well as the circumstances and conditions which existed at the time of the statute's enactment. *See generally In re Hospital Pricing Litig. King*, 377 S.C. 48, 659 S.E.2d 131 (2008) (discussing the history and surrounding legislative facts to interpret the proper meaning of the statute's terms).[11]

[11] *See also Catawba Indian Tribe of S.C. v. State*, 372 S.C. 519, 526 n.6, 642 S.E.2d 751, 755 n.6 (2007) (considering historical facts from the period in which the statute was enacted to properly

In order to apply these well-settled rules of statutory interpretation, the Court must determine the General Assembly's meaning of "rural telephone service" in light of the statutory history of the Exemption, as well as the circumstances and conditions which existed when the disputed language was enacted in 1978. As noted above, the property tax exemption in effect in 1957 exempted all property of every kind owned by a rural telephone cooperative. Then, the General Assembly created the Exemption so that only the property specifically used in providing rural telephone service was exempt. Thus, the statutory history of the Exemption shows that the General Assembly intended to narrow the scope of the Exemption so that a rural telephone cooperative no longer received a property tax exemption for all of its property. Rather, rural telephone cooperatives now only receive the Exemption for property used to provide "rural telephone service."

Moreover, the circumstances and conditions which existed at the time the Exemption was enacted demonstrate that the General Assembly could not have intended a rural telephone provider to receive a property tax exemption for property used to provide anything other than landline telephone service. First, when the Exemption was enacted in 1978, "telephone service" was commonly understood to mean "voice traffic over a pair of copper wires." (Tr. 388:15–23; R.__). In 1978, telephone service was incapable of being provided in any manner other than through a physical connection from one use to another (i.e., a landline). (*Id.*; *id.* at 259:17–21; R.__). Second, the first wireless cellular system was not deployed in the United States until at least 1983, and

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understand the legislature's intent); *Abell v. Bell*, 229 S.C. 1, 5, 91 S.E.2d 548, 550 (1956) (stating that the intent of the General Assembly must be gathered "from a reading of the statute as a whole in the light of the circumstances and conditions existing at the time of its enactment"); *Greenville Baseball v. Bearden*, 200 S.C. 363, 20 S.E.2d 813, 815–16 (1942). ("A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design and policy of the lawmakers. And the history of the period in which the Act was passed may be considered.").

those first systems were not capable of providing any service other than voice communication, (Tr. 288:2–8; R.__), whereas today's wireless cellular devices are used predominately for non-telephone related services, such as e-mail, internet browsing, texting, and video streaming. Third, the Exemption was enacted to offset the costs of erecting telephone poles and running miles and miles of wires to users located in rural, undeveloped areas of South Carolina. Without providing a property tax exemption to rural telephone providers, the costs to provide telephone service to rural users would have been prohibitively expensive. (Tr. 513:15–23; 514:15–23; R.__); (*see also* Taxpayers' Resp. Br. 11 n.5 ("The parties agree the Rural Telephone Service Exemption was intended (1) to make the provision of telephone service financially viable in areas of the State that otherwise would be cost prohibitive. . . .")). Accordingly, based upon the circumstances and conditions which existed when the General Assembly enacted the Exemption, it is simply untenable to conclude that the General Assembly intended the Exemption to apply to any property used to provide wireless cellular services.

Furthermore, Taxpayers wrongly attempt to portray Taxing Entities as being opposed to applying the Exemption to any property or technology that did not exist in 1978. Taxing Entities are not proposing, nor have they ever proposed, an interpretation which precludes all technological advancements from coming within the General Assembly's intended scope for the Exemption.[12] This is a straw man argument created to distract and confuse the Court. For example, although telephone service was only provided through copper wires in 1978, the evolution from copper wires to fiber optic cables is the type of technological advancement that fits squarely within the

[12] Taxpayers' argument that Taxing Entities advance an interpretation which would only accommodate technology which existed at the time the Exemption was enacted is not true. (*See, e.g.,* Taxing Entities' Proposed Final Order 64–65; Taxing Entities' Mot. for Recons. 13 n.14.; R.__). Indeed, the parties provided supplemental briefs to the ALC on this precise issue. Taxpayers are, therefore, aware that their assertions are untrue.

Exemption's intended scope because fiber optic cables are still being used to provide landline telephone service to users in rural areas of South Carolina.

However, Taxpayers' property which is used to provide wireless cellular services does not fit within the General Assembly's intended scope and purpose for property "used in providing rural telephone service." There comes a point where technology changes so dramatically—so drastically and in such a revolutionary way—that the new technology is something different all together—something that no one could have foreseen or intended to be included in the Exemption. To illustrate the point, understand that Taxpayers are asking this Court to believe that in 1978 the General Assembly granted a tax exemption for the type of technology that allows a user to watch a YouTube video on a smart phone. (*See* Tr. 836:1–837:25; R.__). Taxpayers are asking this Court to believe that in 1978 the General Assembly granted a tax exemption for the type of technology that allows a user to monitor his or her deer camera from a smart phone. (*Id.* at 836:13–16; R.__). Taxpayers are asking this Court to believe that in 1978 the General Assembly granted an exemption for the type of technology that lets a rural customer access Netflix videos anywhere, anytime. This is clearly not what the General Assembly intended, and courts in other jurisdictions are reluctant to do the very thing Taxpayers request of this Court.

For example, the Supreme Court of Michigan was confronted with the question of whether a radar detector was a "radio receiving set" within the meaning of a 1929 statute protecting the confidentiality of police communications. *People v. Gilbert*, 414 Mich. 191, 197, 324 N.W.2d 834, 837 (1982). Noting that the legislature could not have possibly contemplated the advent of these devices in 1929 when the statute was enacted, the court determined that "[i]t is for the Legislature to decide whether, and the extent to which, the detection of police electronic surveillance should be barred." *Id.* at 198, 324 N.W.2d at 837. Pertinently, the court stated the following:

> The members of the Legislature had in mind a particular device, the radio, and not television sets or radar detectors that had not been developed in 1929. The advance in the art, 10 to 15 years after the statute was enacted, does not enlarge the meaning of the term "radio receiving set" from the only meaning known to those who used that term when the statute was enacted.
>
> Words do not stand outside their history. They draw their meaning from it . . . A court's responsibility when it construes a statute is to implement the purpose and intent of those who enact it. A failure to consider whether the Legislature understood the meaning of a term quite differently when a statute was enacted than it is understood today would allow a statute to be construed in a manner which extends its intended scope. The proper inquiry is not whether the term "radio receiving set" would be understood by a modern reader to include the use of radar but whether at the time the phrase was used the Legislature provided for this technological development.
>
> The behavior this statute sought to outlaw was the breach of confidential two-way police radio communications occurring after a crime against persons or property had been detected. The statute was not meant to protect police attempts to detect crimes by means of a radio technology which had yet to be developed.

Id. at 198–202, 324 N.W.2d at 837–39.

Additionally, a California court was required to determine whether an electronic signature on an initiative petition was a valid means of endorsing such petitions under a statute that only contemplated signatures on physical paper. *Ni v. Slocum*, 196 Cal. App. 4th 1636, 127 Cal. Rptr. 3d 620 (2011). The statutes implicated by this case required that initiative petitions be signed by eligible voters, and the voter "must personally affix his or her signature" to the petition. *Id.* at 1644, 127 Cal. Rptr. 3d at 625. The Court reviewed the legislative history of the law to determine the legislative intent and found:

> It is most persuasive to us that the Legislature did not anticipate the use of electronic signatures when it drafted the statute and has since taken no action that can be construed as approving them for this purpose. When the Legislature first required voters personally to affix information to an initiative petition in 1933, electronic signatures were not even a twinkle in the eyes of Messrs. Hewlitt and Packard. Necessarily, the legislators who enacted the language

> intended that voters would write directly on a paper copy of the petition, since there was no other means for a voter personally to affix information to a petition. Further, the language of the statute is materially unchanged from its form in 1961, still long before the advent of electronic signatures.

Id. at 1650–51, 127 Cal. Rptr. 3d at 630. After reviewing the governing law's legislative history, the court held that although "[s]tatutory interpretation must be prepared to accommodate technological innovation[,] . . . this particular technology is not entirely consistent with the present statutory scheme for the endorsement of initiative petitions because, at least as implemented here, electronic signature software deletes the circulator from the signature collection process" by allowing "voters to gain access to petitions from the Internet and execute them without the assistance or intervention of a circulator." *Id.* at 1652–1653, 127 Cal. Rptr. 3d at 631.

Further, in 2013, the Supreme Court of California held that California's Credit Card Act did not apply to online commerce when the governing statutes did not make any reference to online transactions or the internet. *See generally Apple Inc. v. Superior Court*, 56 Cal. 4th 128, 292 P.3d 883 (2013). In making this determination, the court first looked at the plain language of the statute and the statute's legislative history. *Id.* at 139, 292 P.3d at 847. The court ultimately held that "[h]aving thoroughly examined [the statute's] text, purpose, and history, we are unable to find the clarity of legislative intent or consistency with the statutory scheme necessary to conclude that the Legislature in 1990 intended to bring the enormous yet unforeseen advent of online commerce . . . within the coverage of the Credit Card Act." *Id.* at 150, 292 P.3d at 896.

In this case, Taxing Entities are not arguing that the Exemption does not encompass new technologies used to provide rural telephone service. However, Taxpayers' property used to provide wireless cellular services not only requires the Exemption to accommodate new technologies not imagined by the General Assembly in 1978, but it also requires the

accommodation of entirely *new services*. No evidence was presented in this case that the General Assembly intended to include property used to provide unimagined wireless data services (e.g., internet browsing, video streaming, etc.) within the Exemption's intended scope and purpose, as these services were not available until many years after the Exemption was enacted.

Accordingly, the ALC erred in finding that Taxpayers' property used to provide wireless cellular services was entitled to the Exemption. Therefore, the ALC's ruling should be reversed.

III. Taxpayers Failed Timely to Apply for and Claim the Exemption.[13]

Taxpayers argue that the ALC did not err when it granted a property tax refund for tax years 2014, 2015, and 2016 even though Taxpayers failed to claim the Exemption on their original tax returns for those years and even though Taxpayers did not apply for the Exemption until 2017 as a result of the Settlement Agreement. Taxpayers' argument is based on the ALC's interpretation that section 12-4-720 permits *all* taxpayers to file an application for a property tax exemption within the time periods ascribed in section 12-54-85(F). However, Taxpayers' argument and the ALC's holding both fail to acknowledge (1) the difference between taxpayers required annually to file with DOR and taxpayers who are not required annually to file under section 12-4-720(C); (2) the entirety of the General Assembly's clearly expressed intention for amending section 12-4-720; and (3) the other significant amendments made to section 12-4-720 by 1995 S.C. Act No. 125. Essentially, the interpretation advanced by Taxpayers, DOR, and the ALC presumes the General Assembly intended a futile act when it amended section 12-4-720 to include subsection (C).

Taxpayers argue that Taxing Entities' interpretation "improperly discriminates between significant and insignificant taxpayers . . . and is completely contrary to the General Assembly's

[13] This section responds to Taxpayers' arguments in Section II of Taxpayers' Response Brief. For Taxing Entities' full position on this matter, Taxing Entities direct the Court to pages 40–46 of Taxing Entities' Brief and pages 34–40 of Taxing Entities' Respondent Brief.

clear intention to *extend* the time to apply for exemptions when it revised § 12-4-720 in 1995." (Taxpayers' Resp. Br. 39). It is absolutely true that there is a critical difference between the way certain property taxpayers are treated by the General Assembly. However, contrary to Taxpayers' arguments that this distinction has no basis in the statute or in sound tax policy, the statutory scheme clearly reflects that the General Assembly did, in fact, intend to treat certain classes of property taxpayers differently—and it did so with good reason.

Only certain classes of taxpayers are required to claim property tax exemptions annually. *See* S.C. Code Ann. §§ 12-37-970 & 12-4-540. That class of taxpayers includes utility companies (like Taxpayers), manufacturing companies, airlines, railways, etc. S.C. Code Ann. § 12-4-540(A)(1). This class of taxpayers is required to claim property tax exemptions each and every year on their tax returns. S.C. Code Ann. § 12-4-720(C). The fact that taxpayers, generally, are entitled to seek property tax refunds within the three-year period prescribed in section 12-54-85(F) is not applicable to the issue before the Court because those other taxpayers are not also required to claim property tax exemptions each year. *See Florence Cty. Democratic Party v. Florence Cty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012) (stating that "where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect") (citing *Spectre, LLC v. S.C. Dep't of Health & Envtl. Control*, 386 S.C. 357, 688 S.E.2d 844 (2010)). In this case, section 12-54-85(F) is a generally applicable statute for taxpayers' ability to seek refunds within three years of the tax year at issue, whereas section 12-4-720(C) is a more specific statute that dictates an additional requirement for taxpayers required annually to claim property tax exemptions.

Given that (1) these types of larger companies own significant amounts of property within South Carolina counties; (2) the associated property tax revenues are solely for the benefit of those counties and other local governing bodies; and (3) property tax revenues represent a majority of counties' and other local governing bodies' revenue, it makes perfect sense that this class of taxpayers would be separately required to claim property tax exemptions each and every year—local governments need to know whether a significant revenue source will change year over year. It also makes perfect sense that this class of taxpayers would not be entitled to the same three-year lookback period to seek a refund afforded to other taxpayers who, in comparison, pay less significant amounts of property taxes. If every large utility, railroad company, or airline was permitted retroactively to seek property tax refunds, as Taxpayers wish to do in this case (after they were required by law to claim that exemption but failed to do so), local governments' budgets would be, at a minimum, severely compromised. In some situations, especially for those local governments that depend almost entirely on property tax revenues to provide for county operations and citizens' services (e.g., Clarendon County), the results could be devastating. (*See* Tr. 67:15–18, 66:8–67:9, 80:21–10; R.__).

Furthermore, when section 12-4-720 is read in context and with an understanding of 1995 S.C. Act No. 125's amendments and the General Assembly's clearly expressed intent of this section, it becomes apparent that the lookback period for property tax refunds permitted by section 12-54-85 does *not* apply to Taxpayers, or other taxpayers who are required to file annual property tax returns. Of critical import is the General Assembly's addition of subsection (C) which states, "[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." *Id.* § 12-4-720(C) (emphasis added). Taxpayers attempt to waive this statement away by stating that Taxing Entities "incorrectly assert[]

that subsection 12-4-720(C) contains an 'annual Exemption application requirement.'" (Taxpayers' Resp. Br. 36). However, the ALC correctly realized (before improperly holding to the contrary) that the terms "application" and "claim," as used in section 12-4-720, have no real significant distinction for taxpayers who are required to file annual returns. (*See* Order 74 n.2; R.__).

When subsection (C) and (D) are read together, it is clear that the General Assembly intended to require annual filers to claim a property tax exemption each and every year, and a failure to do so renders an annual filer ineligible to receive the exemption. Subsection (D) states the following: "**Except for the requirement in subsection (C),** the owner is not required to file more than one **application** for exemption. . . ." S.C. Code Ann. § 12-4-720(D) (emphasis added). The only requirement in subsection (C) is that taxpayers required to file annual property returns with DOR, ". . . shall **claim** any exemption on the return each year the property is exempt." *Id.* § 12-4-720(C). Therefore, taxpayers who are required to file annual property returns with DOR are required to claim a tax exemption each tax year or the taxpayers are not entitled to receive the exemption.

Taxpayers also state that the General Assembly amended section 12-4-720 to "extend the time for filing exemption applications." However, this is an incomplete and inaccurate statement. The General assembly stated that its intention of amending sections 12-4-710 and 12-4-720 was as follows:

> AN ACT TO AMEND SECTIONS 12-4-710 AND 12-4-720, . . . SO AS TO **REVISE** OR EXTEND **THE TIME FOR FILING EXEMPTION APPLICATIONS** AND ADD ADDITIONAL CATEGORIES OF EXEMPTIONS FOR WHICH NO APPLICATION IS REQUIRED; . . . **TO REQUIRE PROPERTY TAXPAYERS FILING PROPERTY TAX RETURNS TO CLAIM THE EXEMPTION ON THE RETURN FOR EACH YEAR** THE PROPERTY IS EXEMPT; AND **TO PROVIDE**

WHEN ADDITIONAL APPLICATIONS MUST BE FILED BY TAXPAYERS NOT REQUIRED TO FILE ANNUAL PROPERTY TAX RETURNS . . .

1995 S.C. Act No. 125 (emphasis added). Accordingly, the General Assembly stated plainly that it was (1) revising the time to file exemption applications for some taxpayers and extending the time to file exemption applications for others, (2) requiring annual property tax return filers to claim the exemption on the tax return *each* year, and (3) providing when taxpayers who are not required to file annual returns must file applications for exemptions. *Id.* Therefore, it must be true that the General Assembly did not intend to extend the time for filing exemption applications for *all* taxpayers. It must also be true that there are separate and distinct application requirements for taxpayers required to file annual returns compared to those not required to file annual returns. Accordingly, Taxpayers' claim that the General Assembly intended to extend the time to file exemption applications is simply untrue, especially for Taxpayers who are required to file tax returns and claim property tax exemptions each and every year with DOR.

Taxpayers also argue that because section 12-4-720(C) does not say exemptions must be claimed on the *original* return, it can be claimed in other ways, thus allowing Taxpayers to claim the Exemption on an amended return within the three year lookback period of section 12-54-85(F). This argument is meritless. Even if Taxpayers could claim the Exemption in ways other than on their original return, this does not negate the explicit requirement that **they do so each and every year**. *See* S.C. Code Ann. § 12-4-720(C). The record shows that they did not claim the Exemption on any tax returns until 2017 when they filed amended returns with the Department after entering into the Settlement Agreement. (Stip. of Facts ¶ 37; Trial Ex. 92; Tr. 131:13–15; R. __). If the Court were to agree with the ALC's finding and the Taxpayers' argument, then the Court would

render section 12-4-720(C)'s requirement that taxpayers (who are required to file annual returns) must claim a property tax exemption each and every year entirely meaningless.

Finally, Taxpayers argue that they are entitled to apply for a refund up to three years after the tax year in which they originally failed to claim the Exemption because this was allowed by the Court in *Hock RH, LLC vs. S.C. Dep't of Revenue*, 423 S.C. 208, 813 S.E.2d 540 (Ct. App. 2018). There is a major, fundamental difference between this case and *Hock RH, LLC* which cannot be ignored: the taxpayer in *Hock RH, LLC*, a public charter school, was *not* within the class of taxpayers required to file annual property tax returns with DOR under section 12-4-720(C). *See* S.C. Code Ann. § 12-4-540(A)(1). Therefore, *Hock RH, LLC* is irrelevant to the determination that Taxpayers, as annual filers, are not eligible to file an application for a refund within the period allowed in section 12-54-85(F).

For these reasons, Taxpayers' arguments that Taxpayers are entitled to seek refunds of property taxes (when they failed to claim the Exemption each and every year) up to the three year period provided in section 12-54-85(F) should be rejected. Therefore, the ALC's decision that FTCC is entitled to refunds for tax years 2014, 2015, and 2016 should be reversed.

IV. Farmers Eligibility for the Exemption was Raised to, and Ruled upon by, the ALC and is Preserved for Appellate Review.[14]

Over the course of eleven pages, Taxpayers' frantically argue that the issue of Farmers' eligibility for the Exemption was *not* before the ALC. (*See* Taxpayers' Resp. Br. 47–58). Working through every reason Taxpayers' provide is not necessary, as the record clearly shows that

[14] This section responds to Taxpayers' arguments in Section IV of Taxpayers' Response Brief. For Taxing Entities' full position on this matter, Taxing Entities direct the Court to pages 51–54 of Taxing Entities' Initial Brief.

Farmers' eligibility was raised to, and ruled upon by, the ALC. The issue is preserved for review and properly before this Court.

The law's requirements are simple. In order for an issue to be preserved for appeal, it must first be raised to, and ruled upon by, the trial judge. *Malloy v. Thompson*, 409 S.C. 557, 561, 762 S.E.2d 690, 692 (2014). "The issue must be sufficiently clear to bring into focus the precise nature of the alleged error so it can be reasonably understood by the judge." *Id.* Moreover, courts "are mindful of the need to approach issue preservation rules with a practical eye and not in a rigid, hyper-technical manner." *Herron v. Century BMW*, 395 S.C. 461, 470, 719 S.E.2d 640, 644 (2011). "'[W]here the question of issue preservation is subject to multiple interpretations, any doubt should be resolved in favor of preservation." *Johnson v. Roberts*, 422 S.C. 406, 412, 812 S.E.2d 207, 210 (Ct. App. 2018) (quoting *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 333, 730 S.E.2d 282, 287 (2012)).

In the ALC,[15] the Prehearing Statement is akin to an initial pleading in circuit court, as it is often a party's first opportunity to present a detailed statement of its position to the ALC. *See* Rule 14, SCALCR ("[T]he administrative law judge assigned to the case, by pre-hearing order, may request each party to prepare and return a Prehearing Statement **setting forth with particularity the issues in the contested case**.") (emphasis added). In this case, Taxing Entities raised the issue clearly in their Prehearing Statement by stating plainly that "Taxing Entities challenge the property tax exemption granted by [DOR] to **Farmers Telephone Cooperative, Inc.**, FTC Communications, LLC, and FTC Diversified Services, LLC ("**Taxpayers**") for tax

[15] The request for contested case hearing itself requires only minimal information. *See* Rule 11(D), SCALCR (stating that a request for contested case hearing must contain only certain contact information, a caption (or analogous informative statement), a copy of the order or decision to be challenged, and a statement of "the relief requested").

years 2010 through 2017." (Taxing Entities' Prehr'g Stmnt. 2 (emphasis added); R.__). Taxing Entities also stated that they were challenging "[w]hether the Department's grant of property tax exemptions to **Taxpayers[, which was defined to include Farmers,]** . . . are void because the property is outside the scope of the Rural Telephone Service Exemption." (*Id.* at 7 (emphasis added); R.__). It is unclear to Taxing Entities what more Taxpayers expect. Taxing Entities' clearly and sufficiently raised the issue of whether Taxpayers' property, which includes Farmers, FTCC, and Diversified, was eligible for the Exemption.

But more importantly, Taxpayers themselves chose to submit Farmers' property to the jurisdiction of the Court. Farmers, along with FTCC and Diversified, voluntarily intervened in the case. But, Farmers' voluntary submission of its property to the ALC's jurisdiction does not end with the voluntary intervention. In Taxpayers' Prehearing Statement to the ALC, Taxpayers defined Farmers Telephone Cooperative, Inc., FTC Communications, LLC, and FTC Diversified Services, LLC collectively as "Farmers." (*See* Taxpayers' Prehr'g Stmnt. 1 (filed Sept. 27, 2017); R.__). In Section 3, entitled "Issues Presented for Determination and Expected Claims or Defenses," Taxpayers stated "**Farmers** asserts that the property tax exemption statute for providing rural telephone service . . . was meant to cover all property used in providing such services, whether provided by land-lines or wirelessly." (*Id.* at 4 (emphasis added); R.__). Taxpayers further stated that "**Farmers** asserts that property with a dual use is entirely exempt under the statute[,]" and "[t]he fact that some **Farmers** property that is used in providing rural telephone service is also used for another purpose is simply irrelevant under the clear terms of the statute." (*Id.* (emphasis added); R.__). Therefore, Taxpayers cannot maintain that there was a lack of notice or a lack of opportunity to refute the claims as they relate to Farmers' property. Farmers

voluntarily intervened in this case, submitted to the ALC's jurisdiction, and raised issues to the ALC relating to whether Farmers' property was eligible for the Exemption.[16]

Moreover, the ALC heard a full week of live testimony, much of which was about Farmers' infrastructure and the steps Farmers took to claim the Exemption. The ALC also received nearly 200 exhibits, **including Farmers' tax returns for 2011–2018**. (*See* Trial Exs. 1–8; R. __). Importantly, the parties, including Farmers, stipulated to the admissibility of the exhibits before the trial even began. Farmers, therefore, consented to having its tax returns submitted as evidence. Even the parties' Joint Stipulations of Fact included stipulations specifically related to Farmers. (Stip. of Facts ¶ 1 ("Farmers Telephone Cooperative, Inc. ('Farmers') was incorporated in South Carolina in 1952. The Department of Revenue ("Department") 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."); *id.* at ¶ 3 ("FTC Diversified Services, LLC ('Diversified,' and collectively with FTCC and **Farmers**, the '**Taxpayers**') . . .) (emphasis added); *id.* at ¶ 7 ("For all years relevant to this matter, Farmers timely filed property tax returns."); R.__).

Closing arguments before the ALC are uncommon, so there was no opportunity to expressly argue the issue at trial.[17] However, after the ALC issued an initial ruling, Taxing Entities

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[16] Furthermore, Farmers was a party to the Settlement Agreement, along with DOR, FTCC and Diversified. (Trial Ex. 91 at 1 ("The parties to this Settlement Agreement ('Agreement') include [DOR] and the following entities: **Farmers Telephone Cooperative, Inc.** ('Farmers Coop'); FTC Communications, LLC ('FTCC'); and FTC Diversified Services, LLC ('Diversified') (these three entities are collectively referred to as 'Taxpayers').") (emphasis added); R.__).

[17] Taxpayers claim Taxing Entities did not raise the issue in their proposed order. However, Taxpayers have not always held that position. Taxpayers felt compelled to address the issue in their Response to the Taxing Entities Proposed Order. (*See* Farmers' Resp. to Taxing Entities' Proposed Order 7–12 (addressing the topic "The Farmers' Assets Qualify for the Rural Telephone Service Exemption," where "Farmers" is defined (by reference to Taxpayers' Proposed Order) as,

filed a Motion for Reconsideration to ensure that the issue was clearly preserved in accordance with Rule 59(e), SCRCP. (*See* Taxing Entities' Mot. for Recons. 6–8; R.__). Although the ALC did not agree with the Taxing Entities in its Amended Final Order, the ALC most certainly ruled on the issue. The Amended Final Order is replete with detailed findings and conclusions regarding the applicability of the Exemption to Farmers' property, including the following excerpts:

> 1. "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." (Order 19 (emphasis added); R.__).
>
> 2. "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." (*Id.* at 20 (emphasis added); R.__).
>
> 3. "**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)." (*Id.* at n.11 (emphasis added); R.__).
>
> 4. "**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." (*Id.* at 26 (emphasis added); R.__).
>
> 5. "Here, if FTC 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." (*Id.* at 69 (emphasis added); R.__)
>
> 6. "**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 service, 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." (*Id.* (emphasis added); R.__)

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collectively, Farmers, FTCC and Diversified)); R.__). Taxpayers know this issue was raised and ruled upon.

These are just a few of many examples.[18] Not only did the ALC hear evidence on the issue, but the ALC actually found that Farmers claiming, and DOR granting, the Exemption for certain Farmers' property was a "misuse of the exemption." (*Id.* at 69; R.__) Accordingly, the issue of Farmers' eligibility for the Exemption was raised to the ALC by both the Taxing Entities and by the Taxpayers. Then, the ALC ruled on the issue. Therefore, Taxpayers' arguments are without merit, and the preserved issue is properly before this Court.

CONCLUSION

For the reasons addressed in this Reply, and in Taxing Entities Brief, Taxing Entities' Respondent Brief, and Taxing Entities' Reply to DOR's Brief, Taxing Entities respectfully ask this Court to reverse the decisions of the ALC, and find:

(1) Taxpayers, including Farmers, are not eligible for the Exemption;

(2) Taxpayers' filing of amended property tax returns in 2017 did not remedy Taxpayers' failure to timely apply for the Exemption for tax years 2014, 2015, and 2016;

(3) DOR's failure to comply with the June 1st notification requirement of section 12-4-710 caused DOR to lose its authority to grant the Exemption;

(4) Farmers' property is only exempt under the Exemption to the same extent that FTCC's and Diversified's property is exempt; and

(5) Taxing Entities have standing to request a contested case hearing pursuant to section 12-4-535.

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[18] (*See also, e.g., id.* at 19 ("When the [Exemption] was enacted in 1978, **Farmers** provided voice telephone services to rural communities through analog technology, mechanical switching, and copper wires or POTS.") (emphasis added); *id.* at 19 n.10 ("Approximately 68–70% of the **Farmers** core network is still copper.") (emphasis added); 70 (". . . **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**.) (emphasis added); R.__).

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Columbia, South Carolina

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable Ralph King Anderson, III, Chief Administrative Law Judge

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Appellate Case No. 2020-000983
Trial Court Case No. 17-ALJ-17-0237-CC

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 ..... Appellants-Respondents,

v.

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

Of Which, Farmers Telephone Cooperative, Inc., FTC Communications, LLC and FTC Diversified Services, LLC, are the ..... Respondents-Appellants.

PROOF OF SERVICE

The undersigned hereby certifies that on March 25, 2021 he has caused to be served a copy of the foregoing ***Appellants-Respondents' Initial Reply Brief to Respondents-Appellants' Response Brief*** on all parties of record via electronic mail containing the above-referenced document to each counsel's individual AIS email address pursuant to SC Supreme Court COVID Order 2020-05-29-02 as follows:

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