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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Honorable Ralph K. Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2020-000983

Case No. 2017-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 whom

Farmers Telephone Cooperative, Inc.; FTC
Communications, LLC; and FTC Diversified
Services, LLC, areRespondents/Appellants.

AMICI CURIAE BRIEF OF
HORRY TELEPHONE COOPERATIVE, INC.; PALMETTO RURAL TELEPHONE
COOPERATIVE, INC.; PIEDMONT RURAL TELEPHONE COOPERATIVE, INC.;
SANDHILL TELEPHONE COOPERATIVE, INC.; AND WEST CAROLINA RURAL
TELEPHONE COOPERATIVE, INC.
IN SUPPORT OF RESPONDENTS/APPELLANTS

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INTEREST OF *AMICI*

Amici are five telephone cooperatives serving different parts of South Carolina: (1) Horry Telephone Cooperative, Inc.; (2) Palmetto Rural Telephone Cooperative, Inc.; (3) Piedmont Rural Telephone Cooperative, Inc.; (4) Sandhill Telephone Cooperative, Inc.; and (5) West Carolina Rural Telephone Cooperative, Inc. Serving different rural areas of the State, these cooperatives have similar stories. They were founded in the middle of the twentieth century, with the goal of connecting people to the world. First, this was by telephone over copper wires. Now, telephone service is increasingly provided over fiber, which supports not only voice service but also broadband-based services, including access to the Internet. The telephone cooperatives' mission, however, has remained constant: Provide a reliable connection for their members to communicate within and beyond their communities.

These five telephone cooperatives have much in common, both in history and purpose, with Farmers Telephone Cooperative, Inc., a litigant in this case. Importantly, *amici* take advantage of the same tax exemption in S.C. Code Ann. § 12-37-220(B)(10) that Farmers does and that is at issue in this appeal. *Amici* therefore have a strong interest in any judicial decision that impacts that tax exemption.

INTRODUCTION

This case raises many issues, both substantive and procedural. *Amici*, however, focus on only one: the meaning of S.C. Code Ann. § 12-37-220(B)(10). This provision exempts from taxation any property “used in providing rural telephone service.” The purpose of section 12-37-220(B)(10)’s exemption is to help connect the rural areas of the State, making it easier for people who live and work in rural areas to communicate with each other and the rest of the world. And for more than four decades, that provision has worked exactly as the General Assembly intended.

But now, the Taxing Entities seek to narrow the scope of section 12-37-220(B)(10) in a way that disregards the statute’s plain language and the rules of statutory construction. The Administrative Law Court did not go as far as the Taxing Entities advocated, but that court did improperly limit the scope of section 12-37-220(B)(10). That part of its order should therefore be reversed. Only then can the plain meaning of the General Assembly’s enactment be given effect and the policy that drove that enactment be furthered.

ARGUMENT

I. Property is exempt under section 12-37-220(B)(10) if it is used to provide rural telephone service, no matter how else the property may be used.

A major question in this case is whether section 12-37-220(B)(10) imposes any type of degree-of-use requirement on property that is exempt from taxation. Using the rules of statutory construction, the answer to that question is clear: No. As long

as property is used at all in providing rural telephone service, the property is exempt from taxation.

As a starting point, our Constitution gives the General Assembly the authority to “provide for exemptions” from property tax. S.C. Const. art. X, § 3. When the General Assembly passes such an exemption, the General Assembly’s intent is the proverbial North Star that guides interpreting what the exemption covers. *See Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). That intent, however, is not some mysterious meaning to be divined. Rather, “the text of the statute is considered the best evidence of the legislative intent.” *Id.* The text must be given its “plain and ordinary meaning.” *Olds v. City of Goose Creek*, 424 S.C. 240, 249, 818 S.E.2d 5, 10 (2018). That typically involves looking to a dictionary. *See Berkeley Cty. Sch. Dist. v. S.C. Dep’t of Revenue*, 383 S.C. 334, 345, 679 S.E.2d 913, 919 (2009).

Here, defining “use” is straightforward. “Use” means the “act of employing a thing for any (esp. a profitable) purpose.” II *Compact Edition of the Oxford English Dictionary* 3573 (1971). Thus, any property employed for providing rural telephone service qualifies for the exemption. *See* S.C. Code § 12-37-220(B)(10). It doesn’t matter whether the property is also used for something else. The only relevant inquiry under the statute is whether the property is employed to provide rural telephone service.

If this plain-language analysis leaves any doubt, another canon of statutory construction removes it. When a legislature uses “particular language in one section of a statute but omits it in another,” the legislature is presumed to have “act[ed]

intentionally and purposely.” *Keene Corp. v. United States*, 508 U.S. 200, 208 (1993); *see also Doe v. Marion*, 373 S.C. 390, 397–98, 645 S.E.2d 245, 249 (2007) (applying this rule).

In section 12-37-220(B)(10), the General Assembly said “used,” without any qualification. In many other provisions of Title 12 of the South Carolina Code, the General Assembly did the opposite, including some term (typically an adverb) to modify “used” in adopting a tax exemption or credit. Such provisions include:

- S.C. Code Ann. § 12-6-3360(M)(14)(b) (“primarily used”)
- S.C. Code Ann. § 12-6-3360 (M)(18) (“use primarily”)
- S.C. Code Ann. § 12-6-3376(A) (“primarily for use”)
- S.C. Code Ann. § 12-6-3587(B) (“exclusively used”)
- S.C. Code Ann. § 12-6-3610(A)(2), (A)(3) (“exclusively used”)
- S.C. Code Ann. § 12-6-3695(A)(2), (D)(1) (“directly and exclusively used”)
- S.C. Code Ann. § 12-20-105(B)(2), (C)(4), (C)(6)(b) (“used exclusively”)
- S.C. Code Ann. § 12-21-2420(8) (“used exclusively”)
- S.C. Code Ann. § 12-28-710(15) (“use exclusively”)
- S.C. Code Ann. § 12-36-1320(F) (“substantially used”)
- S.C. Code Ann. § 12-36-2120(4) (“use primarily”)
- S.C. Code Ann. § 12-36-2120(2) (“used solely”)
- S.C. Code Ann. § 12-36-2120(18), (32), (41) (“used exclusively”)
- S.C. Code Ann. § 12-36-2120(56) (“used directly and primarily”)
- S.C. Code Ann. § 12-36-2110(C) (“used exclusively”)

- S.C. Code Ann. § 12-37-10(6) (“used exclusively”)
- S.C. Code Ann. § 12-37-235 (“used exclusively”)
- S.C. Code Ann. § 12-43-220(f) (“used exclusively”)
- S.C. Code Ann. § 12-62-50(2)(1)(ii) (“used directly”)
- S.C. Code Ann. § 12-65-20(4)(a), (4)(b) (“used directly”)
- S.C. Code Ann. § 12-67-140(E) (“exclusive use”)
- S.C. Code Ann. § 12-67-120(1) (“used solely”)

Perhaps most importantly in applying this canon, consider how “used” is modified in other parts of section 12-37-220 itself. In that statute, the General Assembly modified “used” with “exclusively” nine times. *See* S.C. Code Ann. § 12-37-220(A)(1), (A)(4), (A)(11), (B)(5), (B)(7), (B)(8), (B)(19), (B)(20), (B)(24). The General Assembly modified “used” with “primarily” twice. *See id.* § 12-37-220(B)(12), (B)(16)(a). And the General Assembly modified “used” with “solely” once. *See id.* § 12-37-220(B)(25). Thus, when the General Assembly wanted to limit an exemption to property that was used only for a single purpose or even mostly for a single purpose, it knew exactly how to do that.

But the General Assembly did not do that in section 12-37-220(B)(10) when it came to property used to provide rural telephone service. It simply said “used.”

Given these South Carolina rules of statutory construction, the citations from the Taxing Entities to cases from other states are irrelevant. *See* Taxing Entities’ Br. 35–36; Taxing Entities’ Reply Br. 5. Similarly, the Taxing Entities cannot find refuge in *Hercules Contractors & Engineers, Inc. v. S.C. Tax Commission*, 280 S.C. 426, 313

S.E.2d 300 (Ct. App. 1984). Even if this Court in that case did read a de minimis requirement into section 12-35-550(17), such a requirement cannot be read into section 12-37-220(B)(10). In section 12-37-220, the General Assembly already imposed degree-of-use requirements in various exemptions by using, in various subsections, “exclusively” nine times, “primarily” two times, and “solely” one time. But—once again—in section 12-37-220(B)(10), the General Assembly didn’t qualify “used.” Thus, our General Assembly has spoken, and its choice not to qualify the term “used” controls. Reaching any other conclusion would be to rewrite section 12-37-220(B)(10). Of course, a court cannot do that. *See Hodges*, 341 S.C. at 87, 533 S.E.2d at 582.

Finally, even if there were a de minimis requirement, the Administrative Law Court properly rejected the Taxing Entities’ argument that rural telephone networks are used only to a de minimis extent to provide telephone service. The value of telephone networks is that they are *available* 100% of the time to complete telephone calls, regardless of the volume of traffic over the network at any given time. Keeping rural South Carolinians connected is the policy behind the property tax exemption at issue in this case.

II. “Telephone service” means “sound conveyed over distance,” regardless of how that sound is conveyed.

A second question raised by this case is what constitutes “telephone service” for purposes of section 12-37-220(B)(10)’s exemption.

According to the Taxing Entities, “telephone service” under this statute is limited to “voice services which occurred through a telephone landline network.”

Taxing Entities’ Br. 27. In short, their argument is that because telephone service in 1978 (when section 12-37-220(B)(10) was enacted) was provided over a landline all the way from one telephone to the other telephone, telephone service provided *over that same technology* is the only type of telephone service to which the exemption could apply.

This argument is wrong. Once again, words are to be given their ordinary meaning, which necessarily requires looking to what those words meant at the time the statute was enacted. *See Olds*, 424 S.C. at 249, 818 S.E.2d at 10. According to the 1971 edition of the *Oxford English Dictionary*, “telephone” means an “instrument, apparatus, or device for conveying sound over a distance.” II *Compact Edition of the Oxford English Dictionary* 3252. To be sure, in the 1970s, this was typically done over a wire. But the wire is simply “how” the sound was conveyed. The conveying-of-sound is “what” telephone service is.

Wireless smartphones may be able to do more than just make telephone calls, but they are still telephones. They convey sound over distance, just like landline telephones. And in fact, “wireless” is a bit of a misnomer. Cell phones actually largely rely on landline networks for telephone calls. On a most basic level, a cell phone-to-cell phone call works like this: The caller’s phone sends a wireless signal to the nearest cell tower. The call then travels along a landline (whether copper, fiber, or something else) to a switching station. The call next proceeds still along a landline to the cell tower closest to the call’s recipient. And finally, the call is sent from that cell tower to the recipient’s phone. Wireless calls are therefore more wired than wireless,

and they require the same landlines to make calls happen. Thus, this technology is not “so dramatically” different as the Taxing Entities contend. Taxing Entities’ Reply Br. 12.

Consider the implications of the Taxing Entities being correct that “telephone service” must be limited to the technology that existed at the time the statute was enacted. Under such reasoning, the First Amendment would not apply to online speech because the Internet did not exist in 1791. The Fourth Amendment would not protect people from unreasonable searches of their cars because only carriages existed in the eighteenth century. We know—and no one doubts—that neither of those things is true. See *Packingham v. North Carolina*, 137 S. Ct. 1730 (2017) (the First Amendment protects online speech); *United States v. Jones*, 565 U.S. 945 (2012) (the Fourth Amendment applies to automobiles). Put another way, just as a cell phone call is still a telephone call, even though the General Assembly may not have been aware of cell phones in 1978, speech on the Internet is still speech, even if the Framers could not have envisioned speech through that medium in 1791.

Cases like *Packingham* and *Jones* prove that a legal provision is not necessarily limited only to the technology that existed when that provision was adopted. Rather, many provisions—like section 12-37-220(B)(10)—are written in a way that allows technological advances to fall within their scope. Cf. *Brooks v. Northwood Little League, Inc.*, 327 S.C. 400, 407, 489 S.E.2d 647, 650 (Ct. App. 1997) (statutory interpretation must “reflect changes in technology, terminology, and the legal landscape”). In other words, section 12-37-220(B)(10) is technology-neutral.

III. Adopting the Taxing Entities’ interpretation of 12-37-220(B)(10) would undermine important State policy promoting broadband.

Resolving what section 12-37-220(B)(10) means should begin and end with the text of the statute. *See Smith v. Tiffany*, 419 S.C. 548, 555, 799 S.E.2d 479, 483 (2017). But if something more were needed, the policy considerations involved here reinforce the conclusion from applying the rules of statutory interpretation.

The purpose of section 12-37-220(B)(10)’s exemption is to help connect the rural areas of the State, making it easier for people who live and work in rural areas to communicate with each other and the rest of the world. At that time, the telephone was the dominant method of communicating across distances. Certainly, the telephone still is vitally important. The difference between today and the 1970s is not whether telephone service is provided, but *how* that service is provided: fiber has replaced copper, and some calls now include wireless technology. But the *what* (*i.e.*, telephone service) is the same. It’s just that fiber can do more than copper wires could. Fiber also brings broadband—and importantly, faster Internet access—to rural areas.

The General Assembly has expressly recognized that the cost to deploy broadband facilities in rural areas is significantly higher than in more densely populated areas and has declared that “[i]t is the public policy of this State to promote the efficient deployment of broadband facilities in the State.” S.C. Code Ann. § 58-9-3000(B)(1), (7). The General Assembly continues to dedicate money to broadband facilities. *See, e.g.*, 2020 S.C. Acts No. 142, § 10 (appropriating federal CARES funds for expanding broadband across the State); Rural Broadband Grant Program, S.C.

Office of Regulatory Staff, <https://tinyurl.com/3k8uhsfj> (last visited Apr. 1, 2021) (providing information about the competitive grant program approved by the Joint Bond Review Committee to expand broadband availability in rural areas).

Section 12-37-220(B)(10) promotes that public policy. That's because (as already discussed, *see supra* Part I) as long as property is used in any way to provide telephone service, it is exempt under that provision. The General Assembly knows about the technological developments, including broadband and wireless, in telephone service. *Cf.* S.C. Code Ann. § 58-9-10(10) (allowing a “carrier of last resort” (which telephone cooperatives are) to meet its telephone service obligations by providing a broadband connection). Thus, the current exemption furthers state policy by encouraging the telephone cooperatives to continue expanding broadband into the State's rural areas.

Indeed, interpreting section 12-37-220(B)(10) the way the Taxing Entities propose would undermine the State's policy. As just discussed, the General Assembly has committed tens of millions of dollars to expanding broadband to rural areas of the State. To read section 12-37-220(B)(10) as allowing local governments to tax fiber (or other similar) networks built by the telephone cooperatives would divert significant amounts of State-appropriated money for broadband to local governments' coffers.

Although the technology has evolved, the public policy is the same: to keep rural areas connected to the world, allowing those who live and work in rural areas to communicate within and beyond their communities. To narrow the scope of section

12-37-220(B)(10)'s exemption would therefore undermine the General Assembly's well-established policy of keeping rural South Carolinians connected.

CONCLUSION

The ALC's order should be reversed to the extent that order improperly limited the meaning of S.C. Code Ann. § 12-37-220(B)(10).

Respectfully Submitted,

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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
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South Carolina Department of Revenue; Farmers
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Farmers Telephone Cooperative, Inc.; FTC
Communications, LLC; and FTC Diversified
Services, LLC, areRespondents/Appellants.

CERTIFICATE OF COMPLIANCE

This Brief of *Amici Curiae* complies with Rules 208(b) and 211, SCACR, as
required by Rule 213, SCACR.

s/ Margaret M. Fox